

**MINUTES
of the
WATER QUALITY COMMITTEE
Lied Lodge and Conference Center
Nebraska City, Nebraska
April 13, 2017**

Table of Contents

Welcome and Introductions	4
Approval of Minutes	4
Proposed Position.....	4
Sunsetting Position.....	4
Discussion: EPA Tribal Baseline Water Quality Standards	4
Discussion: Waters of the United States – What Now?.....	5
EPA Update	5
Gold King Mine Update and Abandoned Mine Regulation and Legislation.....	7
National Academies of Sciences Proceedings on Flowback and Produced Waters	8
FY2016-2017 Committee Work Plan	8
Sunsetting Positions for 2017 Summer Meeting	8
Other Matters	8

**MINUTES
of the
WATER QUALITY COMMITTEE
Lied Lodge and Conference Center
Nebraska City, Nebraska
April 13, 2017**

MEMBERS AND ALTERNATES PRESENT

ALASKA	--
ARIZONA	Einav Henenson
CALIFORNIA	--
COLORADO	John Stulp
IDAHO	John Simpson
KANSAS	Tracy Streeter Kenneth Titus Susan Metzger
MONTANA	Tim Davis Jan Langel
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

Kevin Frederick
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
Julie Ward, NE Department of Natural Resources, Lincoln, NE
Susan France, NE Department of Natural Resources, Lincoln, NE
Jeremy Goble, NE Department of Natural Resources, Lincoln, NE
Jordan Bunker, Southern Nevada Water Authority, Las Vegas, NE
LeRoy Sievers, NE Department of Natural Resources, Lincoln, NE
Skip Feeny, Colorado Water Quality Control Division, Denver, CO
Mike Thompson, NE Department of Natural Resources, Lincoln, NE
Sam Radford, NE Department of Environmental Quality, Lincoln, NE
Dennis McQuillan, New Mexico Environment Department, Santa Fe, NM
Doug Kluck, National Oceanic & Atmospheric Administration, Kansas City, MO
Ann Schwend, Montana Department of Natural Resources & Conservation, Helena, MT

WESTFAST

Roger Pierce, Federal Liaison, Murray, UT
Becky Fulkerson, Bureau of Reclamation, Washington, DC
Patrick Lambert, U.S. Geological Survey, Salt Lake City, UT
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
Kevin Werner, National Oceanic & Atmospheric Administration, Washington, DC

STAFF

Tony Willardson
Michelle Bushman
Sara Larsen
Cheryl Redding

WELCOME AND INTRODUCTIONS

Kevin Woodmansey, Chair of the Water Quality Committee, called the meeting to order.

APPROVAL OF MINUTES

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

PROPOSED POSITION

Kent reviewed the new position proposed by Jeanine Jones, supporting USDA Rural Water and Wastewater Programs. Jeff Fassett moved for unanimous approval to submit the position to the full Council, the motion was seconded and approved.

SUNSETTING POSITION

The Committee discussed proposed changes to Position #364, regarding the Clean Water State Revolving Fund and the Drinking Water State Revolving Fund, with the addition of State and Tribal Assistance Grants. Tim motioned for approval of the changes to be submitted to the full Council, Walt seconded, and the motion was approved.

The Committee next reviewed the proposed draft of a WSWC letter supporting the SRF and STAG programs, discussing industrial applications, drinking and wastewater facilities, permits, administration of the programs, environmental reviews, connecting the importance of the programs to the benefits of creating jobs and expanding the economy. The Committee made some modifications to the letter for clarity without being too specific, as the programs provide a variety of related benefits.

TRIBAL BASELINE WATER QUALITY STANDARDS

Michelle Bushman provided a brief update from Mary Lou Soscia, EPA, on the status of the Advance Notice of Proposed Rulemaking, published on September 29, 2016. EPA heard from 12 tribal governments and associations, and 11 state officials, agencies, and associations including WSWC. Most of the tribal comments were supportive, with the exception of certain tribal Nations in EPA Region 2. Most of the commenting states raised concerns. The Tribal baseline WQS are still on EPA's regulatory agenda. Moving forward, EPA intends to present options for the baseline WQS in the new Administration, and will consider the comments received during the public notice period in their decision making. In the meantime, they are currently focusing their work efforts on Treatment as State and Tribal Water Quality Standards, urging tribes to look at the new tools/templates and get their own standards in place.

DISCUSSION: WATERS OF THE UNITED STATES – WHAT NOW?

The WOTUS cases are still proceeding. The U.S. Supreme Court rejected the Administration's request to hold in abeyance the jurisdictional issue of whether the cases should be before the 6th Circuit or the District Courts. The issue will be heard this Fall. In the meantime, the EPA and Corps are working to develop a new rule that centers on the Scalia *Rapanos* opinion requiring a permanent connection between waters, as opposed to the Kennedy opinion requiring a significant nexus. Some of our states have been involved in EPA's outreach to ACWA for initial efforts to work on the new WOTUS rule as part of a two-step process, and they are looking at how to get the states involved in the process. ACWA is forming a subgroup to work on this, and it looks like South Dakota, Kansas, Alaska, Utah, and others are part of that workgroup.

Tony raised the question of what authority the States have to issue discharge permits and regulate waters under State jurisdiction in the absence of EPA jurisdiction. We have indicated that waters not covered by the Clean Water Act are still protected under the authority of the states. They may have constitutional authority, but will they need explicit statutory and regulatory authority? We have relied on the Clean Water Act for a long time. If currently-regulated waters are no longer under the jurisdiction of the Clean Water Act, will the states have to step in and legislate to be able to regulate and protect their own waters under their own authority?

Walt noted that Utah's Attorney General's office has assured him that they have adequate coverage of waters in the absence of Clean Water Act jurisdiction. Many states issue two permits—a state permit and a federal permit—but Utah issues only one discharge permit, and it's under the state authority of the Utah Water Quality Act. Walt raised the question of what to do with CWA 305(d) and 303(b) reporting on TMDLs and impaired waters, which might not be reported if they are no longer federal waters.

Kent said that for concentrated animal feeding operations, the federal government only requires a CAFO NPDES permit, but several states go beyond that and issue their own state permits. Some of those permits include groundwater quality requirements under state authority.

We're going to want to watch the development of the new rule, and some states are going to want to participate in the process.

EPA UPDATE

Roger Gorke, WestFAST Chair, provided an update on EPA leadership, budget, and priorities. He noted that the Administration proposed a 31% budget cut, including the possible loss of 3,200 positions. Congress is in the process of working on another continuing resolution and omnibus funding. Two areas of focus for this Administration are infrastructure and better federal state partnerships. Federal agencies are continuing to look at WestFAST as a model for

improving state-federal relationships. For the time being, continue working through the existing EPA-State relationships, as no one new has been appointed yet and everyone is “acting” in their various positions.

Jim Gebhardt, EPA Water Finance Center, added that there are no proposed cuts for SRF programs, and the WIFIA program still has funding for FY2017. The WIFIA pilot program started in 2014, and the first round of applications had 45 localities express an interest in a WIFIA loan, and we might be able to fund 10-20 of them. This administration remains committed to infrastructure.

Jim noted that, for now, the NDRP goals and efforts are still in place, with the six goals developed under the previous Administration remaining valid until the new Administration decides to implement something different. EPA continues to evaluate infrastructure financing structures that are valuable to the western states in collaboration with the Departments of Interior, Agriculture, and other stakeholders.

They have prepared a series of white papers detailing the collective thinking from stakeholders, and will refine those as they move forward. They have a final draft on SRFs in western states dealing with drought resilience and other project funding opportunities. They’ve delved into these issues more deeply with Oklahoma, Texas, and California, and will be presenting what they’ve learned during a webinar in June. They want to look more at developing models with private capital, how to transfer risks, important elements of contracts so that the relevant parties can look forward to returns on their investments and have sufficient “skin in the game.” They’re also looking at capturing ecosystem services in a market-based system, and how this breaks into revenue streams. Later this summer they should have a report on SRF guarantee authority to help maximize markets. Lastly, they are investigating the capacity of SRFs to use their liquidity for investments, collaborating with other SRFs to develop a water technology channel, and are working to articulate how this would function and some of the challenges that would have to be overcome.

They’ve contracted with Harvard’s Kennedy School to evaluate how to appropriate dollars toward water infrastructure and get more private dollars involved, and the Trump Administration has been looking at their findings. With the University of Carolina, they’ve looked at nine water projects that used some variation of public-private partnerships to deliver the projects. They provide good models for anyone looking for ways to deal with infrastructure down the road.

They are continually looking at new ideas, and will have several webinars to walk through their findings, wrapping it all up with a stakeholder finance forum somewhere in the West to discuss these ideas.

Roger acknowledged that they went a little into the weeds on financing, but these are the next steps for the Water Finance Center.

Tony asked about the role of municipal bonds, and Jim said they have an ongoing role in financing. One of the perennial issues is whether the tax exemption would be maintained. The Department of the Treasury thinks of it as a tax shelter. Every few years Congress gets stirred up and all the associations that represent municipalities go back to emphasize the importance of these exemptions, so the issue doesn't go anywhere. The tight limits on municipalities are slowly unwinding. The volume cap with continue to slowly erode.

Tony asked whether there is any mechanism for individual investors to get involved with P3s, and Jim responded that at this point they would need to get involved with other investors as a part of closed funds, consortiums, etc.

Pat asked whether there are any examples of infrastructure projects in the West with tax exempt bonds. Jim didn't know of any. There's a lot of research and proposals on financing mechanisms, but no deals that have been closed. The exemptions are a function of who owns the infrastructure, and in many cases the project wouldn't qualify. There's potential for creativity in projects, making forests more fire resilient, having investors put up money for watershed practices that reduce fire risk and improve water flows, downstream utilities willing to make revenue payments for those benefits, SRFs offering guarantees so that investors can be reassured about returns on their investments, developing two-tiered structures, etc.

GOLD KING MINE UPDATE AND ABANDONED MINE REGULATIONS & LEGISLATION

Colorado, New Mexico, and Utah provided updates on the Gold King Mine spill and other abandoned mine concerns. Dennis McQuillan, New Mexico Chief Scientist, addressed the ongoing monitoring efforts, measuring water samples from 80 wells and sites along the river, sampling sediments, crops, fish, and human biometrics for metals analysis. They are working toward publishing better information for the public on uncontaminated upstream sites, keeping an eye on treatment concerns for public water systems, and updating preparedness plans for spring runoff and high streamflow events.

Skip Feeny, Mine Impacted Stream Expert, Colorado Water Quality Control Division, discussed the task force Colorado formed to inventory abandoned mines and existing studies and datasets housed in different state and federal agencies. The taskforce includes the Colorado Water Control Division, Colorado Division of Reclamation Mining & Safety; and Colorado Hazardous Material and Waste Management Division, with additional agencies on the steering committee, including the Bureau of Land Management; the Department of Energy; the Environmental Protection Agency; the National Park Service; the U.S. Forest Service; and the U.S. Fish and Wildlife Service. The taskforce reached out to the Colorado Geological Survey to compile a list of all the Colorado mines. They wanted to determine how many mines are leaching and impacting surface water quality, so the Water Quality Control Division and Division of Reclamation Mining and Safety led a field survey study, visiting 175 mines and sampling 146 of them. They're preparing to publish the data.

Skip also reviewed the Gold King monitoring efforts to assess public health risks, with alert systems in place along the Animas River. Colorado has 6 sampling locations with real time

monitoring. If pH levels go up, the local authorities are notified. The study timeline runs from May 2016 through February 2018.

Walt Baker, Director of the Utah Division of Water Quality, noted that no Utah communities draw drinking water from the San Juan River, and while there were high lead levels following the Gold King Mine spill, metal concentrations did not exceed standards to the point of recreational impairments. Walt discussed the monitoring locations and screening results, as well as the context of larger long-term historic mine releases in the San Juan system reaching back several decades, with an estimated 8.6M tons of tailings discharged over the life of the mines, and approximately 5.5M gallons of contaminated water releases per day.

Utah DEQ is taking sediment cores in the San Juan River Delta down to a depth of about 16 feet. The USGS has set up three sediment traps. Studies are focusing on the long-term effects of the most recent spill on the surrounding area, including Lake Powell, and distinguishing the sources of metals, as some are naturally-occurring from the surrounding watersheds, rather than from mining activities. Walt also addressed the costs of the studies and reimbursements from EPA.

NATIONAL ACADEMIES OF SCIENCES PROCEEDINGS ON FLOWBACK AND PRODUCED WATERS

Michelle Bushman briefly summarized the results of the proceedings, noting that it contains some useful information that helps fulfill part of the Committee's Work Plan on state experiences with hydraulic fracturing.

FY2017 – 2018 COMMITTEE WORK PLAN

Kent stated that the Committee would hold a conference call before the next Council meeting to go through the items on the Work Plan and reorganize some of the priorities.

SUNSETTING POSITIONS FOR 2017 SUMMER MEETING

We have a sunseting positions #369 (CWA Jurisdiction) and #370 (regarding the Corps' interpretive rule on agricultural exemptions under CWA §404(f)(1)(A)) coming up at the summer meeting in California.

OTHER MATTERS

There being no other matters, the meeting was adjourned.