

MINUTES
of the
187th COUNCIL MEETING
Best Western Agate Beach Inn
Newport, Oregon
August 3, 2018

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MEMBERS AND ALTERNATES PRESENT

ALASKA	David Schade
ARIZONA	Einav Heneson
CALIFORNIA	Jeanine Jones
COLORADO	Rebecca Mitchell
IDAHO	Jerry Rigby
KANSAS	David Barfield Tracy Streeter
MONTANA	Jan Langel
NEBRASKA	Jeff Fassett (via phone)
NEVADA	--
NEW MEXICO	Tom Blaine Greg Ridgley
NORTH DAKOTA	Garland Erbele Jennifer Verleger
OKLAHOMA	Sara Gibson (via phone)
OREGON	Tom Byler
SOUTH DAKOTA	--
TEXAS	Jon Niermann
UTAH	Eric Millis Norm Johnson

WASHINGTON

Mike Gallagher
Buck Smith
Mary Verner

WYOMING

Pat Tyrrell
Kevin Frederick
Steve Wolff

GUESTS

David Moon, The Water Report, Eugene, OR
Robert Mace, Texas State University, Austin, TX
Michael Campana, Oregon State University, Corvallis, OR
Kathleen Ligon, Texas Water Development Board, Austin, TX
Mat Weaver, Idaho Department of Water Resources, Boise, ID
Christopher Estes, Chalk Board Enterprise, LLC, Anchorage, AK (via phone)
Brenda Bateman, Oregon Water Resources Department, Salem, OR
Andrew Sayers Fay, Alaska Department of Environmental Conservation, Anchorage, AK
(via phone)

WESTFAST

Roger Pierce, Federal Liaison, Murray, UT
Kevin Werner, NOAA Fisheries, Seattle, WA
Doug Cutis, U.S. Bureau of Land Management, Washington, DC
Deborah Lawler, U.S. Bureau of Reclamation, Salt Lake City, UT

STAFF

Tony Willardson
Michelle Bushman
Sara Larsen
Cheryl Redding

WELCOME AND INTRODUCTIONS

WSWC Chair Jerry Rigby welcomed those in attendance at the meeting.

APPROVAL OF MINUTES

The minutes of the meeting held in Arlington, Virginia on March 14, 2018 were unanimously approved.

AMERICAN WATER RESOURCES ASSOCIATION ACTIVITIES

Brenda Bateman, AWRA President reviewed a Powerpoint presentation on their current initiatives. AWRA is a small non-profit and their strength is in collaborative, multi-disciplinary work. The World Water Forum was held in Brazil this year, the first time it was held in the Southern Hemisphere. There were many discussions on sustainability goals, clean water and sanitation, water governance and security, and personal safety to access water. 400 institutions and 10,000 people attended. There was a Youth Forum – defined as under-35 and college educated.

The National Leadership Institute is an annual workshop for state water leaders, gathering folks who are responsible for their state water plans. The plan and processes are wildly different from state to state, and the workshop provides an opportunity to compare notes about their challenges and focus. A compilation of the info gathered will be available this fall.

AWRA has six Policy Statements, at a very high level, covering water topics and best practices. The AWRA cannot advocate or lobby.

1. Fresh Groundwater
2. Ensuring Sustainable Funding for Water-Resource Infrastructure
3. Strategic approaches for Revitalizing Water-Resource Infrastructure
4. Flood and Drought Preparedness
5. Integrated Water Resources Management
6. Organizing and Managing Water Resources in a Hydrologic Context

The AWRA organization will be seeking a new executive vice president.

Dr. Michael Campana noted that his powerpoint presentation is online at www.waterwired.org AWRA holds monthly webinars and specialty conferences every year. The 2018 AWA Annual Conf will be held Nov 4-8 in Baltimore, MD. The following year it will be held in SLC, UT (2019). One of the upcoming specialty conferences will be held June 16-19, in Sparks NV, on the topic of Improving Water Infrastructure through Resilient Adaptation. AWRA publishes a bimonthly Water Resources Impact Journal. Recent topics of great interest include the transboundary groundwater issue, and managed aquifer recharge. They will be developing a white paper. He also talked about the Groundwater Visibility Initiative and workshop findings.

Tony noted one of the challenges between states and academic research is getting the academics to address topics that water managers need in order to make decisions.

Dr. Campana said you have to find academicians who are willing to do that kind of work. You have to find people who are older and who are interested in looking at multi-disciplinary

problems. I can point you to some people. There are many in the water institutes and people like John Tracy in Idaho who are interested.

Tony expressed appreciation for Dr. Campana being here. And we appreciate AWRA.

INTERNATIONAL BORDER WATER ISSUES

Jerry provided an update on the Columbia River Treaty, which is reaching its 60-year mark. The treaty is not coming to an end, it is just changing. Storage facilities in Canada were built and paid for by the United States for flood control purposes. This has worked well and has been a major accomplishment. In 2024 the Treaty shifts responsibility for flood control away from Canada's primary responsibility. There is some question of interpretation, as the Canadian storage space can be used for flood control "as called upon." Canada has interpreted this to mean that U.S. storage space must be emptied out to accommodate potential flooding. Idaho does not have enough storage space to empty out as a contingency for flooding and still have sufficient water to make it through the drought years. On the Colorado River you have contingency plans for working through drought. For Idaho and the Snake River, that is not the case.

Other issues under negotiation are the high rates the United States is paying Canada for power, and ecological concerns. Idaho is opposed to the addition of ecological provisions, because they have a 30-year biological opinion to comply with. Oregon and Washington want to see ecological provisions included. The chief negotiators listened to a panel of states expressing their concerns. Montana is also involved in the Treaty. Not all of the issues have been framed, and the process will be long, but the negotiators are moving forward.

Jan Langel said Montana is looking into opening an agreement with Canada, Order 21. It looked at future development on the river, anticipating that most of the development would be on the Montana side. In reality, most of the development has been in Canada, and in ways not contemplated by the agreement. We have some issues with Canada taking the natural flow on the Milk River, and we've run into the problem of them not shutting off diversions. We want a more equitable agreement under the changed circumstances.

Mary Verner said Washington has an Office of Columbia River Treaty. They are very interested in how the water availability results will fare for different water projects. Washington operates and maintains the Soesel Dam on the border, but benefits accrue to Canadian side, which is different from the dams on the Columbia River. We don't anticipate being able to do any new infrastructure, but will continue to patch together the dam.

Garland Erbele talked about North Dakota's Red River border waters, which flows north into Canada across a flat area. In the 1940s, Canada built a dike on the border, with a 40 mile unpaved road that has no culverts, which causes flood waters to back up into North Dakota. The Canadian court ruled against North Dakota in a lawsuit under an interpretation of the French version of the agreement that says the agreement only applies to waters flowing south from Canada into the U.S. North Dakota wishes to continue the discussion with Manitoba. Interesting situation.

David Schade said Alaska has issues with some Canadian mines and a hydro project impacting Alaska. The Lt. Governor has taken the lead and is working directly with the Canadian provinces on a more local level. It has opened up some serious discussions.

COMMITTEE REPORTS

A. Water Resources Committee

Eric Millis, filling in for Tom Byler, reported on one sunseting Position #381 on expediting rural water supply infrastructure projects, which the Committee moved to bring to the Full Council as a whole. He moved the Council readopt this position. Second by Jeanine. Approved. Ward Scott discussed some of the WGA positions, which can be found in your briefing materials. John D'Antonio discussed infrastructure and talked about some of the financing available for improving infrastructure. A WSWC symposium on infrastructure is proposed for early next year.

B. Water Quality Committee

Kevin Frederick reported on Sunsetting Position #382. There was some discussion on whether or not to renew that particular position. There is an effort to try to codify EPA's Water Transfers Rule in Congress. Staff reworked the sunseting position, and the Committee modified and adopted the revised position. The revisions are contained under Tab C of the briefing materials. It cleans up some language and recommends codification of the regulation in federal statute. Kevin moved the adoption of the position. David Schade seconded the motion. It passed unanimously.

The Committee heard updates on WIFIA loans on the Omaha and King County projects. Roger Gorke provided an update on EPA matters. The Administration has established a water subcabinet to look at specific issues and problems, with opportunities to collaborate with states on water reuse and nutrients. He also addressed tribal TAS WQS, and states are interested in discussions with the tribes, potentially facilitating tribal WQS by adopting state WQS, or at least benefitting from lessons learned by the states as they developed their WQS. States are interested in a survey of tribal WQS. The WOTUS 2.0 review is at OMB and is approaching the 90-day point.

Ward Scott of WGA discussed WGA's water policy resolution and other WGA efforts relating to §401, state-federal relations as co-regulators, and the Lead and Copper Rule.

There was some discussion of WSWC Position #410 and the WSWC's principles to define what is and what is not a water of the U.S. Several conference calls have been held among the states and the WSWC staff. A survey has been posted online, and at this point about 11 states have responded. He asked that each state please take time to complete the survey. Encouraged everyone to look at Tab O in the materials for Position #410 prior to the Fall Council meetings.

C. Legal Committee

Jennifer Verleger reported that North Dakota has some continuing problems with the Army Corps of Engineers. Tom Byler gave a very good report on legal issues in Oregon. Michelle is putting together a survey of questions on calls and curtailments, and the states are interested in a more concise version of the survey with some questions on groundwater. The attorneys representing the State of Mississippi presented legal issues on interstate groundwater in the *Mississippi v. Tennessee* lawsuit currently before a Special Master appointed by the Supreme Court.

D. Executive Committee

Jeanine Jones gave a budget update and the status of dues payments. We had a ceremonial payment of dues from Alaska. Washington is trying to get caught up on their payments. Due to grant money that Sara has secured for WaDE, the budget is in very good shape. Tony will be reworking how the Council's budget accounts for grant funds. There are small revisions for the FY18-19 budget. One action item from the Committee is a position on Endangered Species and Water Rights. She moved adoption of the position. Seconded. The position passed unanimously.

WESTFAST REPORT

Pat Lambert provided an update on WestFAST. Roger Pierce's departure marks a decade of the WestFAST organization, having a liaison to the WSWC and working with WGA. Our federal agencies are trying to bring our ideas to the WSWC and seek input from you before we move forward with initiatives and programs, and the best way to implement them. Our March Principles meeting turned out to be a love fest.

WestFAST has supported the S2S program, and has been involved in the workshops with the Council and Jeanine. It was helpful to have Roger Pierce as the liaison with his NOAA expertise. Each liaison brings the benefit of their own skill set from a different federal agency.

We are working with Sara Larsen on pilot projects to move USGS data through WaDE to facilitate the sharing of information, from federal to state and state to federal.

We've been involved in the drought planning effort in Southern Oklahoma. Oregon is doing some planning in response to drought, and is looking at what it means to have the federal family all in to help support that planning and decision-making. There are many programs and science available to help.

WestFAST continues a healthy slate of activities. We cannot all be at each of the meetings, but we have had 5 or 6 of our federal agencies represented at this meeting. We were able to have EPA and USGS join in the WOTUS 2.0 discussion with the states and Council staff to discuss the limitations and opportunities with existing mapping tools. We are here to help connect you to the people in the federal agencies that can answer questions for you.

John D’Antonio is the incoming WestFAST liaison. He has worked on both the state and federal sides of water issues. We are very lucky to have him on board to continue the WestFAST efforts.

Roger Pierce: I have enjoyed working in this position. I have great people to work with and coordinate with from the federal family. We have some webinars in the queue on NIDIS and wildfires, as well as funding issues within EPA. The S2S effort will continue, and there is the draft outline of the NOAA report to Congress available for comment online. Jeanine, Tony, and I have worked on this topic and the full report will be forthcoming. We are putting together our annual WestFAST report and aligning it with the WSWC annual report. Please let us know if you have areas that need to be plugged in for WestFAST efforts. Roger will work with John on the transition process.

Jerry Rigby said the WestFAST group has brought all these agencies together, gotten them to communicate with each other, and we appreciate and benefit from those efforts.

WSWC NOMINATING SUBCOMITTEE REPORT/ELECTION OF OFFICERS

Pat Tyrrell made a motion for the Council to elect Jeanine Jones – Chair; Tim Davis – Vice-Chair; and Tracy Streeter – Secretary-Treasurer. David Schade seconded. The Council approved the motion by acclamation. Pat thanked the staff for their efforts. Jerry echoed that sentiment, and added his great respect for each of the WSWC members.

Jeanine Jones presented a gavel to Jerry and recognized the work that Jerry performed as the WSWC’s Chair. Jerry asked Roger Pierce to stand. He recognized the good work he performed in his service as the WestFAST Liaison. Jerry moved for a resolution of appreciation, which was seconded and approved by acclamation. This will be framed and presented to Roger.

STATE REPORTS

Oregon: Brenda Bateman – We are working on implementing the Integrated Water Resources Strategy. We will be asking for some resources for the place-based planning and drought data and indicators, but know we will also be facing a tough economy and litigation costs. We are also looking at dam safety and construction programs. We will likely have some reductions and lay-offs this year in our state staff. On behalf of Tom, she thanked everyone for coming to Oregon.

Alaska: David Schade – They’re dealing with the second round of Fish Petition 2, to change Fish and Game Title XI to require mandatory rejection of any project with an impact on a streambed longer than the life cycle of salmon. The Fish & Game and Department of Natural Resource said it is illegal under the constitution. The petition is now in front of the State Supreme Court and the legislature is considering the issue. An instream water flow decision was under appeal, waiting for the final order and how to deal with the separation of powers issue. Sturgeon

It is back in front of the Supreme Court. The State's budget is still in deficit, but is better due to higher oil and gas prices, and we are filling agency positions. We're moving forward with data in WaDE. Alaska's antidegradation requirements have been signed off.

California: Jeanine Jones – The Governor wants to move forward with the WaterFix Bay-Delta projects before he leaves office at the end of the year. The Twin Tunnels would move water from the Sacto River system and connect it to the pumping stations in the south Delta. The idea behind the project is to take water in a more fish friendly manner. After the EIR/EIS was completed we were sued by everyone. We negotiated contracts with everyone who would benefit. It wouldn't create new water, but it would provide greater certainty. The project is very controversial, and very expensive. It has been a big year in terms of money. The Water Commission allocated \$2.5 billion dollars for a handful of surface water and groundwater storage projects. A \$4 billion water and parks bond was approved in June. Another \$8.9 billion bond measure is on the ballot for November and is polling very well. The Oroville Dam reconstruction and structural improvements are still ongoing. The dam failure has spurred dam safety activities elsewhere in the state, and other states are looking more closely at their aging infrastructure.

Wyoming: Kevin Frederick - Legislation passed that gave Wyoming authority for bonding on methane bed wells. Governor Mead will term out this year. He has asked agencies to develop the salient points of the agencies responsibilities, authorities, hot topics etc. for the next governor to get up to speed. It amounts to some extra work, but we will compile the information fairly seamlessly.

Colorado: Becky Mitchell thanked Oregon for hosting meetings. Colorado has focused on drought this summer, as most of the state is experiencing drought to extreme drought. The Lt. Governor and Governor's staff recently toured some of the areas of the state with extreme drought in the southwest due to fires. We included drought response in our Water Plan, but carrying out the Plan can be different than we envisioned. We recognized the need for funding for the state's dam safety program in large part because of the Oroville failure. The legislature approved a temporary increase in funding to implement the Water Plan programs on storage, ag preservation, environment, industrial and municipal needs. We're demonstrating appropriate use of the funds and the importance of the Plan. We are looking for long-term funding for water projects. Private entities are pushing several referendums forward. We will have a new governor next year.

Montana: Jan Langel - Montana had a long winter. Most of the basins had over 100% of snowpack. May had record warmth, and we had some localized flooding as the snowpack was melting quickly. Waterwise the state is in good shape. Director Tubbs testified in support of S. 3168 to make the Reclamation Indian water settlement funds permanent. The Blackfeet Water Rights Compact was signed by the federal parties. Confederated Salish & Kootenai tribes still have compacts outstanding; if it doesn't go through, we face 1,200 water right claims in 2/3 of the state water basins. Due to budget cuts and vacancy requirements we haven't been able to fill about ¼ of our positions, which causes workload problems. Montana is a growing state and there is a lot more work to do. Our legislative session starts in Jan 2019. We're working on budget requests and drafts of bills. We have a Democratic governor now, and we may have a Republican after the election.

Washington: Mary Verner - Thank you to all of you for the warm welcome as this is my first meeting. We've had some significant legislation pass, including the Streamflow Restoration Act, and we are soliciting proposals. With new funding we are able to hire 17 new staff members. Our Millennial Bulk Terminal decision denied a §401 permit for a fossil fuel project on the coast. We had a significant dam failure in Washington. It was privately owned and never obtained a permit, and caused \$6 million in damage to habitat. Assistant Attorney General Laura Watson was called away yesterday and was unable to give a report on the culverts case requiring removal for fish passage, which will be of interest to WSWC member states. We're dealing with drought in the southwestern portion. Our snowpack melted quickly. Thanks to Oregon for hosting.

North Dakota: Garland Erbele - Thanks to Brenda and Oregon. The price of oil has led to renewed activity in the Bakken, so the 20% of revenue that goes into the water development fund has climbed to \$17.3M. It has also increased the demand for water for hydro-fracking activities. It's a challenge permitting and getting 30 million-acre-feet to them. Every 2 years North Dakota does a water development plan. We solicit information from project sponsors on potential projects, and \$1.2 billion of requests have come in. The State Water Commission cost shares these programs. This compilation of projects will be completed this fall.

Jen Verleger – State Senate and House leadership have taken issue with the validity of line item vetoes from the Governor striking some language on the budget, including the water budget. There is a power struggle over the constitutionality of the budget section and flexibility to move the funding between the buckets. The legislature is suing the Governor.

Idaho: Mat Weaver - Governor Butch Otter is stepping down after 12 years. Legislatively, it's been a calm year. The Eastern Snake Plain Aquifer, a major groundwater resource, has been in decline since 1952. It is the impetus for delivery calls and for the state's recharge program. We settled the most contentious recharge call, and groundwater users reduced their consumptive uses of the aquifer. In 2016-2017 Idaho had a huge snowpack, and this has made it easier to implement the recharge plan, reducing tensions along the river. Changes to FEMA insurance required Idaho to permit the operation and maintenance of seasonal dams, creating special flood hazard areas, and canal gates that restrict flows. Non-compliance threatened suspension of several FEMA programs, putting the state in between the irrigators and the federal agency. Idaho has developed guidance as an interim solution. A suspension may yet be forthcoming. The Snake River Basin Adjudication lasted almost 30 years. Now we're facing a legislative stock watering challenge to decreed rights for federal agencies under the Joyce Livestock decision. The court decision came in the 25th year of the adjudication. Generating a list of federal water rights and holding contested case hearings will impose a serious drain on IDWR resources. A new Governor coming in will have an impact on how this may move forward. Idaho is concerned about efforts toward cost recover for Landsat data and imagery, which has been free since 2008. It would cost Idaho \$60k - \$90k per year at pre-2008. Some years that could be problematic. Would like to keep things free and open, as we rely on that data.

Arizona: Einav Henenson - Thanked Oregon for hosting. Arizona had an extremely dry winter. Many parks were closed to recreation to reduce the threat of wildfires. Arizona, Nevada, and California continue to work on the Lower Basin Drought Contingency Plan. Projections show

a Lake Mead Tier 1 shortage by 2020, and a Tier 2 shortage as soon as 2026. A Tier 3 shortage represents an elevation of 1020' in Lake Mead and would be a dead pool condition. The risks have motivated collective action. ADWR needs legislative authority to sign the Plan, but stakeholders are working together to address the concerns and continue forward with adopting and implementing the Plan in a way that is acceptable to the stakeholders and can be passed by the legislature in January. The ADWR budget is similar to last year (other agencies saw reductions). We were authorized to have 150 FTEs, growth from the reduction below 100 FTEs, so we've regained some of the functions we lost through past cuts.

New Mexico: Greg Ridgley - Their Governor is term-limited, so New Mexico will have a new Governor in January. Drought is a big issue in New Mexico. Roughly half of the state is in extreme or exceptional drought. We had almost no snowpack this year, and streamgages have had record low flows almost every day this Spring. We're working on a water short sharing arrangement on the Rio Grande, with contributions from the acequias holding the most senior water rights from 1600. We're hoping for an active monsoon season to keep the reservoirs filled. We're working to update the state water plan. This will be the first plan that will include the 16 regional water plans, which were updated in 2016. Produced water important in New Mexico, with no surface water to speak of, so there is great interest in using that water for development instead of disposing of it. We just signed the EPA-NM MOU to work through the issues and evaluate respective authorities. We'll be holding a conference in November on that subject. The state land commissioner filed suit against the State Engineer for implementation of a 50-yr-old oil and gas statute on groundwater. The statute allows up to 3 af for projects to develop natural mineral resources. The proposal from a multi-national entity from Italy would drill 37 wells, build a pipeline to Albuquerque, and sell the water. The State Engineer denied the petition on the grounds that it was speculative. The permit has been litigation for the past seven years, and will likely continue. We have approval for the Aamodt water rights settlement and a final decree, but are facing cost overruns. Alan Mikkelson has been to New Mexico several times to address issues, projections that \$200M short of funding. NM had negotiated a firm cap on their obligations to contribute, but DOI wants to renegotiate the cost share, which is a controversial topic.

Texas: Jon Niermann - Experiencing drought in Texas and priority calls from senior water users. Our report is in the briefing materials with a map showing familiar shades of yellow and red. We have legislative recommendations to equitably apportion water, and are looking at ways to streamline water permits. We're looking forward to the Council's Infrastructure Symposium next year. Thanked Oregon for hosting the meeting.

Kathleen Ligon – Thanks to Oregon and to everyone on the WSWC. State Water Implementation Board approved a historical \$1.9B bond sale in November. Since Hurricane Harvey last summer, we're dealing with all things flood. Flood assessment we are not statutorily required to do will likely be a tough request in the budget cycle, but everyone is interested in the outcome.

Utah: Eric Millis - Thanks to Oregon. Utah has been hot and dry all summer, and we had a poor winter. The Southwest portion of the state has had some monsoon moisture. 2017 was a

good year and we were able to store water, which has helped. We've been working diligently on concepts for Drought Contingency planning for the Colorado River, and held a meeting in Midway with the 7 Colorado River Basin States to work through the details. The Reclamation Commissioner has encouraged us to complete the plan by the end of the year. We've made some waves in the Bear River system. PacifiCorp submitted a proposal to deal with the ability to ramp up power quickly in the event of a grid-wide power outage. Idaho, Wyoming, & Utah filed proposals on storage. Idaho led out on this, even though some of the Utah water users were reluctant. May be able to provide some water in a dry year after a wet year. The 3 states have met with PacifiCorp several times. Water conservation is a big issue in Utah, trying to meet needs into the future, and the state is utilizing rebate programs and secondary water metering for untreated water so we know what is being used where.

FUTURE COUNCIL MEETINGS

The 2018 WSWC Fall (188th) Council Meetings will be held in Coeur d'Alene, Idaho on October 23-26, 2018.

SUNSETTING POSITIONS FOR SUMMER 2018 MEETINGS

Tab XYZ of the briefing materials contains sunsetting positions that will be brought up at the 2018 Fall meetings. Jerry noted that if anyone had comments on the sunsetting positions, to please get those to the WSWC staff for further consideration by the Council.

OTHER MATTERS

There being no other matters, the meeting was adjourned.