



# Western States Water

## Addressing Water Needs and Strategies for a Sustainable Future

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### **WESTERN STATES WATER COUNCIL Fall Meetings – Coeur d’Alene, Idaho**

The 188<sup>th</sup> meetings of the Council were hosted by the State of Idaho in Coeur d’Alene on October 24-26. The Council revised and adopted its Vision on Water as a permanent mission statement. The Council also renewed four sunseting positions. The first recognizes the critical importance of federal water and climate data collection and analysis programs to the Western states. Language was added to clarify that these “federal programs provide useful products to assist in visualizing and interpreting data on water and snow, making water supply and availability information more accessible and easy to interpret.”

The second resolution addresses drought preparedness and monitoring networks. It emphasizes the important role of federal programs designed to improve forecasting and response capabilities, such as the National Integrated Drought Information System (NIDIS) and National Oceanic and Atmospheric Administration (NOAA) programs. The third resolution supports the Bureau of Reclamation’s Drought Response Program. The fourth resolution opposes federal policies that interfere with state authority over the allocation of surface water, including natural flows that would exist in the absence of reservoirs built by the U.S. Army Corps of Engineers (Corps).

The Council adopted a new position supporting state delegated authority under Clean Water Act (CWA) Section 401, to review federally permitted or licensed projects for impacts on water quality. Lastly, the Council adopted a new resolution on Clean Water Act jurisdiction, acknowledging that EPA has “actively sought meaningful state consultation, engagement and participation in its review and development of a new proposed rule to define Waters of the United States” and encouraging continued consultation in authentic partnership with the states. EPA is expected to publish a new rule in the coming weeks.

Tim Petty, Assistant Secretary for Water and Science, Department of the Interior, spoke to the Council. He noted the importance of developing positive relationships at all levels. He said that when he was

appointed to his position, he called David Ross at EPA, and they agreed to get together on a monthly basis. They reached out to Admiral Gallaudet at NOAA, R.D. James at the Corps, Cathy Tripodi at the Department of Energy, and Bill Northey at the Department of Agriculture. They started calling themselves the Water Subcabinet, getting together on a regular basis to discuss and support their respective key roles on water. Rather than reinvent the wheel, they hope to use programs and groups already engaged on water issues, and work more effectively together to address critical needs, including: infrastructure, storage, water reuse, aquifer recharge, produced water, drought contingency plans, open water data, streamgages, and Landsat technology.

A number of other federal agency representatives attended and participated in the Council meetings, including: Kevin Werner, WestFAST Chair (NOAA); Tom Hamill, NOAA Earth Systems Research Laboratory; Pat Lambert, WestFAST Vice-Chair, U.S. Geological Survey (USGS); Chris Carlson, U.S. Forest Service (USFS); Mindi Dalton, USGS Water Availability and Use Science Program Acting Coordinator; Doug Curtis, Bureau of Land Management (BLM); Deborah Lawler, U.S. Bureau of Reclamation (USBR); Jama Hamel, USBR Agrimet Program Coordinator; Stephen Bartell, U.S. Department of Justice (DOJ); Forrest Melton, National Aeronautics and Space Administration (NASA) Western Water Applications Office; and by phone, Roger Gorke, Environmental Protection Agency (EPA).

In the Water Resources Committee, WSWC Chair Jeanine Jones (California) provided an update on recent programmatic efforts on seasonal to subseasonal forecasting. Sara Larsen, WSWC, updated members on progress with our Water Data Exchange (WaDE).

Tracy Streeter (Kansas) provided an overview of some key provisions in the conservation title of the Farm Bill, including the Environmental Quality Incentives Program (EQIP) and the Conservation Reserve Program (CRP). He noted there is some tension between the eastern and western states about what the programs should include.

Amy Kremen, Ogallala Water Coordinated Agriculture Project Manager, described a recent summit

with 210 participants from the eight states that share the aquifer, held to build relationships and identify collaborative opportunities among producers, water management districts, elected officials, researchers, and non-profits. They looked at a combination of technology, conservation, soil health, water use, crop management, and other interconnected factors to improve water management and water quality.

The Water Quality Committee, Chaired by Kent Woodmansey (South Dakota), held a robust discussion on appropriate limits on federal jurisdiction under the Clean Water Act. Ward Scott, Policy Advisor, Western Governors' Association (WGA), discussed recent legislative and administrative efforts to limit states' CWA Section 401 authority. Mary Anne Nelson, Idaho Department of Water Quality, presented on Idaho's recent efforts toward assumption of the National Pollutant Discharge Elimination System (NPDES) program.

Roger Gorke (EPA) spoke briefly about a Department of Energy workshop on water scarcity and technology, and a symposium on produced waters in New Mexico. He noted that EPA is preparing webinar presentations on the Water Infrastructure Finance and Innovation Act (WIFIA) program and State Revolving Funds (SRFs) to show how the programs are working together.

During the Legal Committee, Jen Verleger (North Dakota) updated members on the timing of the Corps' final surplus water rule, and John D'Antonio, WestFAST Liaison, reported on his recent efforts to get the Corps to engage with the states in a more meaningful way to address concerns about natural flows.

Laura Watson, Washington Assistant Attorney General, presented the implications of *Washington v. United States*. The Supreme Court allowed the 9<sup>th</sup> Circuit's decision to stand, requiring Washington to replace over 800 culverts by 2030 in the middle of a construction boom. She also noted concerns about the court's expansive interpretation of tribal treaty rights.

Judge Eric Wildman, Idaho District Court, and Steve Snyder and Alf Brandt from the Dividing the Waters program, provided an overview of their Groundwater Bench Book, which is intended to assist judges that are new to water cases involving the science, law, and hydrologic modeling of groundwater.

Darrell Early, Natural Resources Division Chief from the Idaho Attorney General's Office, gave a presentation on several legal issues Idaho is facing, including stockwater rights, conjunctive management of groundwater and surface water, refill rights at on stream reservoirs, adjudication of water rights in the Coeur d'Alene-Spokane River Basin, and dealing with issues of

non-point source contamination impacting water quality at Coeur d'Alene Lake.

During the Full Council meeting Jama Hamel (USBR) provided an update on the growing AgriMet network, with almost 300 stations, collecting local weather and evapotranspiration data. Although the network was originally established to identify the consumptive water use of crops to assist irrigators, the data have also been used for ground-truthing remote sensing and satellite data, input for weather forecast models, drought monitoring, long-term climate models, wastewater reuse and groundwater quality, and water rights litigation.

Forrest Melton (NASA) described the ECOSTRESS thermal radiometer experiment, measuring evaporative stress data from the space station, which is included in the National Drought Monitor. It may provide a cost-effective complement to Landsat data. He also provided an update on other NASA missions, including the Gravity Recovery and Climate Experiment Follow-On (GRACE-FO), launched in May, and the Ice, Cloud, and Land Elevation Satellite-2 (ICESat-2), launched in September.

A field trip prior to the meetings offered members the opportunity to see Idaho's massive undertaking to clean up the Bunker Hill Superfund Site in the Coeur d'Alene River Basin.

The Council's Spring meetings will be held in Chandler, Arizona at the Gila River Wild Horse Pass Hotel on March 20-22, including a workshop on Wednesday morning.

### **Grazing Water Rights Workshop**

Pat O'Toole started the workshop with a rancher's perspective. He noted that relationships are almost more important than the law, because the law is interpreted in different ways. Pat grazes cattle and sheep on BLM and USFS allotments, as well as private lands.

The workshop included presentations from Gary Spackman, Director of the Idaho Department of Water Resources; Norman Johnson, Division Director, Utah Attorney General's Office; Christopher Brown, Senior Assistant Attorney General for Wyoming; and Greg Ridgley, General Counsel for the New Mexico Office of State Engineer. Chris Carlson (USFS) and Doug Curtis (BLM) also participated.

Although the states deal with stock water rights in a variety of ways, they grapple with issues of beneficial use, a complex history and culture, state and federal laws, and how to best approach relationships and disputes concerning water rights for stock grazing on federal lands.

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**The WESTERN STATES WATER COUNCIL is an organization of representatives appointed by the Governors of Alaska, Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming.**