

**MINUTES
of the
WATER QUALITY COMMITTEE
Icicle Village Resort
Leavenworth, Washington
July 17, 2019**

Table of Contents

Welcome and Introductions	4
Approval of Minutes	4
Washington Water Quality Issues.....	4
Clean Water Act § 401 Update	5
EPA Update/ Water Reuse Discussion	5
Harmful Algal Blooms Discussion	7
Abandoned Mines and Mining Pollutants Discussion	7
Water Quality Regulatory Update	8
Draft FY2019-2020 Committee Work Plan.....	8
Sunsetting Positions for Fall 2019 Meeting.....	8
Other Matters	8

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MEMBERS AND ALTERNATES PRESENT

ALASKA

ARIZONA

CALIFORNIA

Jeanine Jones

COLORADO

Patrick Pfaltzgraff

IDAHO

KANSAS

Tom Stiles (via phone)

MONTANA

Jan Langel
Tim Davis

NEBRASKA

NEVADA

NEW MEXICO

Greg Ridgley

NORTH DAKOTA

Jennifer Verleger

OKLAHOMA

OREGON

SOUTH DAKOTA

Kent Woodmansey

TEXAS

Jon Niermann
L'Oreal Stepney

UTAH

Todd Stonely

WASHINGTON

Mike Gallagher
Buck Smith
Mary Verner

WYOMING

Kevin Frederick
Chris Brown

GUESTS

Tanya Trujillo, Bellingham, WA
Genesee Adkins, HDR, Seattle, WA
Andrew Dunn, RH2 Engineering, Bothell, WA
Jim Davenport, JHDavenport LLC, Buena, WA
Tracy Streeter, Burns & McDonnell, Kansas City, MO
Dan Partridge, Washington Department of Ecology, Olympia, WA
Keeley Belva, Washington Department of Ecology, Olympia, WA
Kyle Miller, Arizona Department of Water Resources, Phoenix, AZ
Heather Bartlett, Washington Department of Ecology, Olympia, WA
John D'Antonio, New Mexico State Engineer's Office, Santa Fe, NM
Jess Cramer, U.S. Environmental Protection Agency, Washington, DC
Ward Scott, Western Governors' Association, Denver, CO (via phone)
Bernard Erickson, East Colombia Basin Irrigation District, Othello, WA
Jennifer Carr, Nevada Division of Environmental Protection, Carson City, NV
Steven Goans, Nebraska Department of Environmental Quality, Lincoln, NE

WESTFAST

Mindi Dalton, U.S. Geological Survey, Atlanta, GA
Doug Curtis, U.S. Bureau of Land Management, Washington, DC
Deborah Lawler, U.S. Bureau of Reclamation, Salt Lake City, UT
Roger Gorke, U.S. Environmental Protection Agency, Los Angeles, CA (via phone)

STAFF

Tony Willardson
Michelle Bushman
Adel Abdallah
Cheryl Redding

WELCOME AND INTRODUCTIONS

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

APPROVAL OF MINUTES

The minutes of the meeting held in Chandler, Arizona on March 21, 2019, were unanimously approved.

WASHINGTON WATER QUALITY ISSUES

Heather Bartlett, Water Quality Program Manager, Washington Department of Ecology discussed water quality issues in Washington, focusing her presentation on the Millennium Bulk Terminal. This would have represented the largest coal stockpile in the US, as well as a 25% - 30% increase in vessel traffic. Ecology's Water Quality Program has the delegated state and federal authority to protect, preserve and enhance WA's environment for current and future generations. (Water Pollution Control - RCW 90.48)

There are varying ways of going through a permitting process. Projects start with a Joint Aquatic Resources Permit Application. There are two main CWA permits - 401 water quality certifications; and 404 and Section 10 Federal permits. A determination of significance starts both the State and Federal Environmental Policy Act (SEPA and NEPA)

Washington has a public review process, and receives comments on the scoping process, as well as on EIS. Significant adverse impacts from the Millennium Bulk Terminal included diesel emissions and noise from trains, rail congestion and safety concerns, tribal concerns about impacts on fish survival and access, destruction of an historic district, and impacts on minority and low-income neighborhoods.

Millennium's 401 certification was denied by Ecology Water Quality Department with prejudice. Additionally, the Cowlitz County Hearings Examiner denied the local shoreline permit, and the Department of Natural Resources denied the sublease and authorization to construct. All of these issues are the subject of lawsuits that are now making their way through the appeals process. There are also claims pending under the Public Records Act and the Administrative Procedures Act.

Washington will continue to defend against the appeals. Federal law supersedes the water quality permit.

Kevin Frederick: With the loss of wetlands, were there any other specific losses?

Heather: Yes, the pylons that would be driven into the lake would impact fish

CLEAN WATER ACT § 401 UPDATE

Ward Scott provided a summary of recent 401 efforts of WGA, WSWC, and other organizations. Following the President's Executive Order in April, EPA did some outreach with states and tribes, although there was no real communication or conversation about meaningful things that could be done to improve the processes between applicants, federal agencies, and states. Tab N contains several letters the WSWC has written or signed. The states submitted extensive comments. EPA issued a new 401 guidance document, with changes to when an application starts the timeline. It discontinues the practice of applicants withdrawing their incomplete application and tolling the timeline. We've had some indication from EPA that they are looking for specific conditions to trigger 401 reviews – and would increase the frequency where states either waive their authority or issue denials. A proposed rule has been submitted to OMB already for review. Ward commends everyone's attention to the EPA docket.

Jess Cramer of EPA: As far as timelines, I believe what Ward said is accurate. The timeline has been extended to Aug 8.

EPA UPDATE AND WATER RESUSE DISCUSSION

Kent Woodmansey noted that EPA has asked for our interaction on the Water Reuse Action Plan. As part of the call with Roger last week, we discussed some of the things the Council could do together to update the July 2011 Water Reuse in the West document. We could have a water quality-quantity nexus or some of the other workshops that we've done. The rest of the water reuse issues mentioned in the preliminary guidance document were very broad: it goes all the way from septic systems and grey water reuse up to municipal reuse, agricultural reuse, it's just extremely broad. Do any of the State have any input on how we should proceed on this?

Pat Pfaltzgraff said he would be in favor of updating the Council's 2011 Water Reuse document. Kent suggested each state review their section, make edits, and send it in to Michelle. He thinks when the final guidance document from EPA comes out on reuse, we will have a lot more to talk about too, but thinks if we have an updated document that will help us figure out how we can fit, in this case with EPA a lot better on that as well.

Roger Gorke mentioned that other interstate organizations have expressed interest in updating state policies and laws as well, and that we may be able to coordinate those efforts.

Kent: I think that is something we can do. It's something the Council has an interest in. Several of our field trips over the last few years have looked at water reuse that is going on in the host state. I think it has a lot of states' interest.

Pat Pfaltzgraff: Could EPA bring some guidance to the issue and work with states in making each of the regulatory programs be able to "talk to each other."

Roger: I think that answer is a broad yes. Reuse issues are based on the quality of source water and its ultimate use. I think even in stepping back a little bit, how could those reusing water come to the federal government or the states to discuss why they are using water “this way” as opposed to “that way.” Working together to deal with water efficiently and appropriately.

Pat Pfaltzgraff: For direct potable reuse, you fall back on the Safe Drinking Water Act and we know how that works. There is not a portion of the Safe Drinking Water Act that deals with reclaimed water at this time, but I think we would be able to fit it under that framework. I guess what I’m asking is, would EPA be willing or able to engage the other federal resources, like the CBC or ATSDR in terms of what is safe for the public to be able to use and consume. Potentially if that water is used for irrigation of edible crops, or for other purposes like the splash pads the kids use – I mean, can you use reclaimed water for that? There is probably already a lot of contaminants in it already. It would be those kinds of questions, certainly for the State of Colorado, we would be very interesting in having that partnership with EPA to work through those issues.

Roger Gorke: I don’t think you’ll see something that specific in the guidance in September. It will be much softer than that. It will be more of a proposal, and an ask for how we can change our approach. This is supposed to be a plan for everyone across the water sector, not solely an EPA plan.

Pat Pfaltzgraff: That’s great. Thank you for your work on reuse, it’s very much appreciated.

Kent: Maybe in addition to the update, when we send that out if you have a specific issue that you would like to hear more of that you don’t have, maybe we need to ask for that too. Because that could help us inform where we want to go next.

Pat Pfaltzgraff: I agree. I know a lot of states are in various stages in progress with respect to the reuse side so I think that is a great idea.

Roger: Please work together with the other organizations you work with as well, like ACWA and ASDWA, etc. We want to do this on a basin scale.

Kent: I agree, but I think the Council has a unique organization structural where we are looking at both quantity/quality and then our Legal Committee too, even though this is the Water Quality Committee, really have people involved from all the different areas that are working together

Roger: Yes, and that’s why I think it is important that you bring your broader perspective.

Jen Verleger: North Dakota has commented on the Corps’ proposed water supply rule at how it basically hinders water reuse throughout North Dakota. If you want to reuse the water, you then have to use it right there and you are not able to transport it through the Corps’ reservoir.

Roger: We do want to hear what are federal policies that seem to be a real or perceived barrier to reuse. One agency may be hindering reuse. That is what ND has articulated in their

comments. How can we create or use a forum to raise these issues that is outside the regular notice and comment sessions? How can we use existing mechanisms to create a regular, ongoing dialogue...not just on reuse, but on peak flow issues, blending issues, etc. on the Clean Water Act side.

HARMFUL ALGAL BLOOMS DISCUSSION

Kent noted that on May 22, the Environmental Protection Agency released criteria for cyanotoxins. North Dakota looking at including those criteria in the future, but probably not in this round.

Jennifer Carr: Nevada started getting involved in 2015. Lake Mead slowly developed localized issues. We don't have a lot of surface water, but livestock watering and pets around ponds have been an issue as well. We're partnering with Agriculture and other interagency partners to come up with a guidance document. A summary guidance was recently updated, but they have not been adopted as regulations; we have informally used them. There's a high value on partnerships.

Steve Goens: Nebraska has been dealing with HABs for beach closings. We sample every year. The advisory level is at 20 - dropping down to 8 requires sampling. This year they are not on the advisory list - don't know if floods swept everything away. We sample surface water intakes and haven't seen problems there.

ABANDONED MINES AND MINING POLLUTANTS DISCUSSION

Good Samaritan has been an issue for the Council for over 15 years. EPA issued a 2007 guidance, other tools, a 2012 guidance. Each new administration has talked about this, but we still have not been successful in moving forward. How can we help support Good Samaritan efforts in states? Data has been collected by EPA/USGS on potential sites that could be eligible for funding under the San Juan watershed, not superfund sites, areas to have a Good Samaritan project. More active role in helping identify projects at the front end to help states/NGOs be a Good Samaritan (outside of addressing the liability issues.) Not an actual program, how do we create that, with specific actions that Head Quarters and Regional offices can take, workplan internally to help states, without legislation or good chunk of money thrown at it. EPA has been talking about this internally.

Pat Pfalzgraf: Colorado has been looking at this. EPA had a symposium, we've talked about accommodations that could be made outside of changing the law (CWA and CERCLA) to do work without incurring liability. Pennsylvania passed a statute. We're looking at relief for states to facilitate abandoned sites.

Roger: Looking at states, EPA is interested in what is being used, what is successful, can it be used by other states. Still a risk of Clean Water Act liability if the discharge is without a permit, or without stringent enough limits. It might be useful to share the example from

Pennsylvania with the Council. Could EPA update and change existing tools, administrative orders, to support, provide protection for Good Samaritans. Is there an opportunity for a longer-term administrative order, long-term protection. Is it possible to use the tools we've talked about in the past, used in concert with what the states are doing, and make meaningful progress.

WATER QUALITY REGULATOR UPDATE

Michelle provided an overview of several recent regulatory outreach efforts that WSWC has been involved in, together with other multi-state organizations. She summarized the Revolutionize USACE partners meeting; EPA's webinar series on alternative financing and market trading mechanisms and P3 pilot projects to reduce nutrients in watersheds; and EPA-Coast Guard efforts to work with stakeholders on the development of national standards for discharges incidental to the normal operation of vessels under CWA section 312(b), recently amended by the Vessel Incidental Discharge Act (VIDA).

DRAFT FY2019-2020 COMMITTEE WORK PLAN

Kent Woodmansey reviewed the draft Committee Work Plan. The work plan has been updated and revised a bit since we met in March 2019. The elements that have been updated are redlined in the briefing materials. Motion to adopt. Second. Approved.

SUNSETTING POSITIONS FOR FALL 2019 MEETING

There are no sunseting positions within the committee to review for the Fall 2019 meeting.

OTHER MATTERS

Some of the states' reports were shared at the end of this meeting, but those have been moved to the Full Council minutes. There being no other matters, the meeting was adjourned.