

MINUTES
of the
190th COUNCIL MEETING
Icicle Village Resort
Leavenworth, Washington
July 18, 2019

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MEMBERS AND ALTERNATES PRESENT

ALASKA	--
ARIZONA	Tom Buschaztke Kyle Miller
CALIFORNIA	Jeanine Jones
COLORADO	Patrick Pfaltzgraff
IDAHO	Jerry Rigby
KANSAS	David Barfield
MONTANA	Tim Davis Jan Langel
NEBRASKA	Steve Goans
NEVADA	--
NEW MEXICO	John D'Antonio Greg Ridgley
NORTH DAKOTA	Garland Erbele Jennifer Verleger
OKLAHOMA	Sara Gibson
OREGON	Tom Byler
SOUTH DAKOTA	Kent Woodmansey
TEXAS	Jon Niermann L'Oreal Stepney
UTAH	Todd Stonely

WASHINGTON

Mary Verner
Mike Gallagher
Buck Smith
Alan Reichman

WYOMING

Chris Brown
Kevin Frederick
Steve Wolff

GUESTS

Tanya Trujillo, Bellingham, WA
Jim Davenport, JH Davenport LLC, Buena, WA
Sue Lowry, Interstate Council on Water Policy, Cheyenne, WY
Genesee Adkins, HDR Architecture & Engineering, Seattle, WA
Dan Partridge, Washington Department of Ecology, Olympia, WA
Keeley Belva, Washington Department of Ecology, Olympia, WA

WESTFAST

Deborah Lawler, Federal Liaison, Murray, UT
Kevin Werner, NOAA Fisheries, Seattle, WA
Mindi Dalton, U.S. Geological Survey, Atlanta, GA
Jeffrey Arnold, U.S. Army Corps of Engineers, Seattle, WA
Doug Curtis, Bureau of Land Management, Washington, DC

STAFF

Tony Willardson
Michelle Bushman
Adel Abdallah
Cheryl Redding

WELCOME AND INTRODUCTIONS

WSWC Chair Jeanine Jones welcomed those in attendance at the meeting.

APPROVAL OF MINUTES

The minutes of the meeting held in Chandler, Arizona on March 22, 2019, were unanimously approved.

COMMITTEE REPORTS

A. Water Resources Committee

Tom Byler summarized the Water Resources Committee. The USGS gave some interesting updates. Jeanine reported on recent S2S workshops. Adel reported on a WIMS workshop, as well as WaDE. Tony led us through the work plan, and the Committee adopted it.

The Committee reviewed and approved a proposed position on Preservation of Radio Frequencies. The full Council moved, seconded and unanimously approved the position.

The Committee reviewed four sunseting positions. For position #392, regarding expanded and enhanced west-wide extreme precipitation monitoring, the Committee recommends adoption of this revised position as contained in the briefing materials. The full Council moved, seconded and unanimously approved. Position #394, Missouri River Mainstem Reservoir System/Fish & Wildlife – Tom recommended sunseting of this position. Second. Unanimously approved.

Position #395, DOE National Labs Programs. The Committee recommends adoption of this position as contained in the materials. There was a motion, second and unanimously approved.

Position #393 – Authority of States over water resources used in hydraulic fracturing – Tom noted that this is a great example of the work of the WSWC. We don't all share the same policies with regard to hydraulic fracturing in our different states. We would like to entertain approval of this position. Two versions of the revised position were handed out to members. The differences between the two versions was described by Tom. He entertained any comments or discussion.

Mary Verner thanked those who worked on making changes to the position. She preferred version one with the change of the word "natural" resources to "water" resources.

Steve Wolff asked a question about the WGA policy. Is the language consistent? Michelle confirmed that it was.

Greg Ridgley remarked that New Mexico would prefer version two. They could support version one if a change could be made to add language he read. They would concur with the change of the word "natural" to "water" as described by Mary.

Garland Erbele stated that North Dakota would support version 2 over #1, but could work with version 1, if necessary.

Jon Niermann said he only heard disagreement with the second resolved clause. He proposed maintaining version 2, and adding in the language by New Mexico.

Mary offered alternative language. Jon Niermann moved accepting version 2 as modified. The second resolved clause reads: “Be it further resolved that federal efforts to study the potential impacts of hydraulic fracturing on water resources should be based upon sound science and driven by states’ research and policy priorities.” Motion, second. Approved unanimously.

B. Water Quality Committee

Kent Woodmansey mentioned that Heather Bartlett talked about Washington Water Quality issues. The Committee also discussed water reuse, harmful algal blooms, abandoned mines, and will send out the water reuse report for an update. Michelle provided a regulatory update. The Committee approved the work plan.

C. Legal Committee

Chris Brown noted there were no action items, but he briefly reviewed some of the items the committee discussed, including perfecting water rights and proving beneficial use. The work plan was approved.

D. Executive Committee

Jennifer Verleger talked about long-term and short-term staffing, particularly with Sara’s departure, and staff changes. There is additional funding for WaDE through grants and for hiring additional staff with the increase in dues. They are looking into some ways to get better return on investment with CDs.

WESTFAST REPORT

WestFAST Chair Kevin Werner discussed federal agency member changes. The new Liaison is Deborah Lawler who started on April 28, 2019. Pat Lambert will become the new Chair. Andrew Hautzinger, USFWS is retiring. He extended a welcome to Mike Higgins who is taking Andrew’s place. He also welcomed new WestFAST members Jeff Arnold, USACE and Ed Clark, NOAA.

The updated WestFAST Workplan was drafted and will be finalized in August on their team call. Webinars are historically been held bi-monthly. They will be kicked off coming up shortly.

Infrastructure Symposium: Part II, will be held in the Fall timeframe in Washington, D.C. We had a great engagement in April, which was more of a meet and greet. The Water Policy Committee, formerly known as the Water Subcabinet, is interested in moving forward with a discussion of infrastructure.

Jeanine noted that WestFAST was one of the best efforts to come out of the Council's discussions.

STATE REPORTS

South Dakota: Kent Woodmansey – The written state report is under Tab V. It's been the wettest 12 months in the past 124 years. We are experiencing a lot of issues with flooding. In fact, Sioux Falls is flooding today.

Arizona: Tom Buschatzke -We successfully negotiated the Drought Contingency Plans (DCPs). AZ had a very robust 9-month process to work with water users, and it was sometimes acrimonious, but the effort resulted in consensus. Changes to underground storage credits and appropriations to tribes in mitigation for other water resources, and including tribes and cities with lower priority. There were only three no votes on the state legislation. I don't know the last time that happened. The Governor's Implementation and Augmentation Council is looking at water reuse, groundwater issues, and active management areas (AMA) after 2025. There are a lot of groundwater issues. The legislature wanted advisory councils to advise the Arizona Department of Water Resources. There are currently no reporting requirements on water use outside of AMAs, but the legislature refused to consider a bill requiring mandatory reporting.

Texas: Jon Niermann - We have two primary water agencies in the state: The Texas Water Development Board (TWDB) and Texas Commission on Environmental Quality (TCEQ). The TWDB is the infrastructure financing agency of the state. The TCEQ - water availability, river compact commissions, dam safety, etc. Jon read the Water Development Board's report (4 paragraphs.) L'Oreal Stepney The legislature looked at regional and state flood plans, with \$793 million to fund a flood program, to get flood related data, programs and staff up and running as soon as possible. By the end of the legislative session in May, there were 370 bills related to water. HB2771 will transfer produced water authority from RR Commission to TCEQ (delegation project from EPA, package by Sept 2021). Other bills addressed aquifer storage and recovery including reservoir water right permitting for ASR diversions; and dealing with reservoirs with sedimentation problems and loss of storage. They will be updating water availability models. HB1964 deals with senior water rights and environmental considerations, streamlining process for permit amendments without notice and comment. HB26 deals with flood plain management, alert of dam releases that could cause damage to property or life, part of the emergency management operations centers under the WIIN grant. TX approved \$3 million lead testing in schools, still waiting on direction from EPA on how this will be managed and suggestions on how to allocated those funds.

Nebraska: Steve Goens – We have a new name change effective July 1 - Nebraska Department of Environment and Energy. Legislation passed that allowed us to move forward with potential 404 assumption, so we are hiring staff to look into that, partial/full or other participation in that authority. We had a big flood - 84 counties we declared part of the federal disaster. We had a blizzard on other side of the state, with ice blocks 11 feet tall that lifted bridges. The May-June flood was significant, and we've dealt with other floods this year as well. Lots of Missouri River

states have been busy, and we're looking at a regulatory review, changes to federal requirements. We have a new drinking water program MOA. New NDEE.

Oklahoma: Sara Gibson – We have several counties under flood advisories. Currently no drought, which is great news after 10 years. For our SRF program, we are looking at no cost solutions, market studies, and results to manage that process. We started GIS mapping of smaller water supplies to identify lines and leaks; up to 60% losses through leaks in some smaller systems. Groundwater studies and an updated comprehensive water plan this coming year. Legislation passed regarding marginal water basins, looking at high TDS wells and drilling standards for marginal wells. We have an instream workgroup finalizing efforts to determine how it might work in OK; there are three bills introduced with the legislature, and this has garnered a lot of interest in OK right now.

Utah: Todd Adams – Legislature required secondary non-potable systems to be metered by next year, with further study. We have a Joint Resolution to study water banking, options to develop, pilot programs. The Navajo Water Rights settlement agreement has legislative approval (joint resolution), went through the highlights of the settlement and bill introduced in Congress. State already authorized the \$8M contribution to the settlement. Lake Powell Pipeline has some jurisdiction issues, and we are working with BLM, and have a draft EIS. Quagga muscle invasive species problem, Utah forefront of protecting other Utah water bodies. We had more water in the lake this year, and long lines to inspect water craft. We are updating our state water plan, looking at climate change, water conservation goals, and recommended goals from the legislative audit in 2015. It is cumbersome to find goals that are good regionally. Looking to promote AWWA, water audit software, tool to identify leaks, improve efficiency, data provide state, hoping to find legislative sponsors for a bill. We had a wet and cool May, snowpack had a second unusual peak. Water came off efficiently without flooding.

North Dakota: Garland Erbele - southern affected by flooding (Missouri River). The Corps of Engineers shut off water to protect downstream reservoirs and reduce flooding, so we have full reservoirs and additional inflow from MT. It's been interesting, high flows all through the summer. We had our first report of invasive Zebra mussels, along the Cheyenne River. Likely came out of Minnesota. Our game and fish department has implemented a drain and dry program. NAWS litigation appears to be completed, regarding a water project to divert water out of the Missouri River. The Manitoba lawsuit has gone on for 14 years, resolved this spring in ND favor, so we resumed the project to pipe good quality and quantity water to Minot, much needed. Legislative process went well. Revenues dependent on oil in the Bakken. Good position. No major legislation of concern.

Colorado: Pat Pfalzgraf – Colorado's efforts to look at reuse, treated wastewater, residential secondary gray water. Can't use this water at the kitchen sink due to contaminants. But looking at edible crops, marijuana, harder to have reclaimed water from fracking operations, does not fit neatly (categories, fits best with industrial, but hydrogen sulfide concerns about human health, bugs interact in the water and create a poison gas). DNR – 2019 leg session, \$50M appropriations, for water resources. Sports betting and tax would go toward water. This year we are free from drought, had a good snowpack. On the DCPs, we are looking at a potential demand management

program. Federal legislation has been introduced to extend the Platte River recovery effort another 15 years, for water development and recovering threatened and endangered species.

Montana: Jan Langel – Our Governor has thrown his hat into the ring for democratic presidential nomination. We have a Representative running for Governor. Lots of political activity around the state. One legislative bill from the agriculture community regarding MT trust lands. When the land is leased and water developed, the trust has name on water right. The bill’s language says if you develop water on the trust land it belongs to the stock owner. State court backed up the trust holding name on the right, but the bill passed. We’ll see how that turns out in the court probably. Legal availability of water, environmental concerns as part of analysis – how we program water rights in the state. We have a court decision, but there will probably be an appeal. The CSKT water rights settlement was ratified by MT in 2015, and we’re trying to get movement on the federal side.

Tim Davis - MT water quality side, we’re dealing with transboundary selenium, affects ID and WA. We are adopting a joint standard with British Columbia, in response to metallurgic coal mines in the valley to the north. We have a fish tissue standard, modeling in process right now. EPA and tribes and BS and Environment Canada are involved. We’ve adopted stringent nutrient criteria for P and N, with a nutrient variance to take steps to meet those criteria. This was challenged in court, but decision from court says we can go forward with the variances. It’s a tool to allow us to improve water quality without widespread economic harm. We brought everyone to the table when working on the standards.

Idaho: Jerry Rigby – we had significant snowpack, and a cold wet spring. We are still short of filling reservoirs due to federal administration of the reservoir under the Biological Opinion, and the requirement for a fish flush. One of the things the government changed was how to deal with dead space when there are active water rights. There was a compromise, with a right to divert in certain years. When misjudgment of fill, Idaho believes the federal government should share in the shortage, but the feds disagree. In 1990 we completed the Ft. Hall tribe agreement, but issues that couldn’t be resolved at the time have reached a point of having to be resolved now, to reach an “equitable adjustment” – but the tribe wants to open the entire settlement. We needed a decision about when the reservoirs can begin refilling – end of the irrigation season, or end of the calendar year. We don’t want to open the 27-year effort to reach a final decree. We have a substantial recharge program, groundwater management area over the aquifer, and recharge is part of the surface-groundwater agreement from a call on the river. We are trying to determine how much water can be recharged and how (we now have irrigation ditches to nowhere). We are piping water to Mountain Home AFB. The Governor recently established a Fish Council. We’re working on the provisions of the Columbia River treaty.

Oregon: Tom Byler - Klamath Basin has a 45-year-and-going adjudication. The irrigation districts are members of the Reclamation project, and they filed suit. We had administrative findings to quantify water rights, submitted to the court. The Klamath Tribes became the senior users, and exercised their ability to make calls on the river. This created consternation among other water users. The *Hawkins* case in the D.C. Court, they argued that DOI and BIA have an agreement, criteria had to be met, unlawful delegation of authority, too much discretion to tribes. The 2nd argument by irrigation districts was that the protocol agreement and call on the river is a major

federal action that requires a NEPA evaluation. Our conjunctive management rules adopted in 1988 are a relatively blunt tool not shaped to the needs of specific basins. We're engaged in a rulemaking to undertake evaluation of Klamath basin needs to develop more specific rules.

We are funding a basin study in the Walla Walla basin, in partnership with WA and USGS. We are looking at old statutes--communicating by telegraph, dam safety statutes that haven't been updated since the 1920s. It's a big lift for staff to review, ensure agency authority, public safety, right emergency protocols. Four dams status – formerly an agreement in the Klamath basin, Congress didn't approve, and the agreement fell apart. Pacific Corps and FERC and CA and OR moving process forward to remove dams despite that setback. Trump administration has taken a different position than Obama Administration, but removal still going forward, just more slowly, with speed bumps.

Wyoming: Steve Wolf – We're engaged in efforts to replace Pat Tyrrell; it's going slowly, but the advertisement has gone out for the State Engineer position. On the DCP, we're looking at demand management, big public outreach with water users, educating what it is, ask if they want to pursue the program setup; it's an extensive effort, looking at 18 months of public meetings. We hired University of WY folks to handle that. We've had a good water year with lots of snow and rain. Cold spring and summer, no significant flooding, and reservoirs filling. One exception, Laramie just flooded. We had a light legislative year, beneficial use discussion.

Kansas: Dave Barfield – We've had some interesting state politics with a new governor and legislature. It's been a wet year, especially May, setting new records, affecting Kansas reservoirs, only now slowly dropping levels down. We've had an active few years in the legislature with new tools, esp. Ogalalla, so a quiet legislative year has been nice. The tools from 2012 and 2015 included LIMAs, districts to address aquifer declines, and Water Conservation Areas, to allow flexibility to manage water and achieve goals. We had a district-wide aquifer decision, before the court now. Proposing aggressive LIMA to address concerns (different area). Look at the flexibilities and the conservation; usually little water users, recently some bigger water users, industrial water right holders doing some significant conservation things with this flexible multi-year goal. They've managed to over achieve their goal – we were initially disappointed by the small goals, but they didn't want to not meet the goal, and they are achieving significant water conservation, more efficient systems, saving water v. using for more crops. They are working on an innovative plan for direct water right administration – more allocation for the seniors, less for juniors, but cutting everyone back. WCA, water conservation area, flexible reductions that can be moved around from year to year. City Haze and Russell(?) Water transfer process, changes approved, but under judicial review.

New Mexico: John D'Antonio - a lot of new leadership, vacancies being filled. 30-day budget session coming up, trying to get away from trust funds for capital, have been using for operations, trying to build the agency back up. We still have drought in NM, last year was really bad, but relatively better this year. We are building up reservoirs again; it's been harder to meet our contract deliveries to Texas, we need rains below the reservoirs to get that water there. Notice published, 60 days, project applications, more transparency, days for the protest period, longer application time, especially with FTE count. The Permian Basin oil boom has had an impact on state budget (surplus) – there's a demand for water that comes with that, and we've

had controversies over water approvals. NM is trying to get away from fresh water for fracking purposes. HB536 promotes the use of reused water instead of potable water. Once we get into reuse and recycle portion under the Oil and Conservation decision, there is no State Engineer permit to use the water – but the new uses of water (outside of oil and gas) will probably involve the SEO. There is an opportunity to deliver water to Texas for fracking purposes. Water is unusable for ag purposes at that part of the Pecos, maybe deliver at that point with high TDS anyway. In the Aamodt settlement, NM share of the settlement was supposed to be \$50M, not to exceed, but the legislature agreed to another \$50M. The water project more than doubled in cost. Looks like federal government will step up for their share of costs as well. The SE is the water master for that project, metering order for all tribal and non-tribal people, for that project. We've been working on the implementation on Taos and Navajo as well. We are in five settlements negotiations with other tribes. The Gila project in SW of state is part of Arizona water settlement act.

California: Jeanie Jones – We've had earthquakes and fires and damage related to water resources, infrastructure and flooding, and we've been rebuilding several communities. We have a power utility filing for bankruptcy after power lines in high winds caused a wildfire. They now have to cut power in advance of extreme wind events, taking rural communities offline and water systems had to buy power generators. There are continuing implications of that preventative power cutoff to larger utilities, some of their power comes in on those transmission lines, and they could be cut off. We are looking at emergency conservation measures, educating the public. Evolving implications. Wildfires led to some free flow events, other water systems, small reservoirs got filled in or lost their distribution system to debris flows. We visited some of these high climate and drought vulnerable areas, incredible volume of debris.

Washington: Mary Verner – Governor is also running for President. We are experiencing drought, with an increased index for wildfire. Reclamation has been dealing with a canal regauge problem, mounding groundwater, and a question of who has water management rights. State permits to water or dewater the mound to prevent flooding. We have nitrate contamination in our groundwater, with advisory committee recommendations after 10 years, addressing CAFOs and other contaminant pathways. The recommendations are being contested by an organization that doesn't believe the science. We have PFAS and PFOS contamination around the military base, and are examining the groundwater and surface water (primarily the AFBs, but also other installations.) We are looking at applying for WIFIA funding to address that. In the Walla Walla basin we are partnering with OR, 30-year plan to address concerns there. After the Ogallala basin presentation in Coeur d'Alene, we brought Amy to WA, and that has been beneficial. Permit extension policy (short term to decades-long extensions, also impediment to water conservation, statute preventing impairment to senior water rights. Addressing these policies and issues at our retreat. Washington decree -Yakima River basin, conduct 2-year assessment of next adjudication. We are looking for someone willing to take that on, and have posted the position announcement. We've been tackling tribal water rights issues. We have a petition from tribes, indicating that they are willing to waive their sovereign jurisdiction and submit to McCarran proceedings in state court, ready for some certainty in water rights.

FUTURE COUNCIL MEETINGS

The WSWC Fall (191st) Council Meetings will be held in Breckenridge, Colorado on October 16-18, 2019. Sue Lowry raised the dates for the Spring meetings in Washington, D.C. and asked if we could firm them up.

SUNSETTING POSITIONS FOR SUMMER 2018 MEETINGS

Tab XYZ of the briefing materials contains sunsetting positions that will be brought up at the 2019 Fall meetings.

OTHER MATTERS

There being no other matters, the meeting was adjourned.