MINUTES
of the
LEGAL COMMITTEE
Icicle Village Resort
Leavenworth, Washington
July 17, 2019

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MEMBERS AND ALTERNATES PRESENT

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ARIZONA	Tom Buschaztke Kyle Miller
CALIFORNIA	Jeanine Jones
COLORADO	Patrick Pfaltzgraff
IDAHO	Jerry Rigby
KANSAS	David Barfield
MONTANA	Tim Davis Jan Langel
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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
Dan Partridge, Washington Department of Ecology, Olympia, WA
Keeley Belva, Washington Department of Ecology, Olympia, WA
Jim Davenport, JH Davenport LLC, Buena, WA
Andrew Dunn, RH2 Engineering, Inc., Bothell, WA
Tracy Streeter, Burns & McDonnell, Kansas City, MO
Genesee Adkins, HDR Architecture & Engineering, Seattle, WA
Bernard Erickson, East Columbia Basin Irrigation District, Othello, WA

WESTFAST

Deborah Lawler, Federal Liaison, Murray, UT
Doug Curtis, Bureau of Land Management, Washington, DC

STAFF

Tony Willardson
Michelle Bushman
Adel Abdallah
Cheryl Redding

WELCOME AND INTRODUCTIONS

Chris Brown, Chair of the Legal Committee, called the meeting to order, and requested introductions be made around the room.

APPROVAL OF MINUTES

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

WASHINGTON LEGAL ISSUES

Alan Reichman, Senior Counsel, Ecology Division, Washington Attorney General's Office, provided a powerpoint presentation on legal issues and case law trends in Washington. He discussed Washington's approach to inchoate rights, beneficial use, and the perfection of rights. He talked about the water use differences between growing seasonal hay and permanent orchards. In recent years, with an increase in water right change application decisions, transfer markets started to blossom, which presented a lot of legal issues. He touched on the *Hirch* decision regarding the moratorium on wells for new development and the legislative override.

Washington reached a milestone in May – the Yakima County Court completed is Aquavella general adjudication, which lasted over 40 years. It resolved water rights claims for a major agricultural valley and tribal lands, over 22,000 water rights, and 15% of state's surface water rights. The extensive efforts to complete the adjudication has led to a workable, functioning basin. There were seven appeals of the final decree.

He talked in depth about two cases challenge the validity of instream flow rules. They are water management rules that govern allocation in different basins throughout the state. The instream flow rights function as water rights in the system, with a priority date and protections such that subsequent applications are denied if they would impair the instream flow.

Bassett v. Ecology: The Bassetts and the Olympic Resource Protection Council filed declaratory judgment action in Thurston County Superior Court to challenge the validity of the Dungeness Basin Instream Flo*w* Rule, WAC 173-518. Bassett contended that Ecology acted beyond its statutory authority, and in an arbitrary and capricious fashion, in adopting the Rule. The Superior Court upheld the Rule. Bassett appealed and sought direct review by the Supreme Court, which was denied. The case went to the Court of Appeals. The Court of Appeals affirmed, and upheld the Rule. It rejected numerous arguments which contended that Ecology acted beyond its statutory authority in adopting the Rule. Under RCW 90.54.020(2), Ecology is not required to conduct a "maximum net benefits" analysis before establishing instream flows. This provision "instructs DOE how to generally exercise its discretion and expertise in water management."

Ecology was not required to determine that the instream flows met the 4-part test for approval of other permit applications under RCW 90.03.290. Ecology adopts instream flows through a rule-making process that does not involve the criteria that govern the permitting process. "If water must be available for DOE to establish [minimum instream flows], DOE would be unable to use them when they are most vital to protect instream values and resources."

In the wake of the Supreme Court's *Swinomish* decision, Ecology did not err in establishing water reservations based on "overriding considerations of the public interest" under RCW 90.54.020(3)(a). After *Swinomish*, the Legislature enacted RCW 90.54.210(1), which expressly affirmed that the Dungeness and Wenatchee Rules' reservations are valid, and directed Ecology to implement them.

Under the Supreme Court's decision in *Postema*, notwithstanding a lack of express statutory authority, Ecology can close water bodies from new appropriations. Consistent with the broad rulemaking authority delegated to Ecology under the Water Resources Act, it can establish a closure when setting an instream flow would not be sufficient to protect instream values under RCW 90.54.020(3)(a).

With regard to priority dates, if a well was constructed earlier, but water use would start after the date the Rule became effective, it is still subject to the Rule. The Court held that Ecology did not exceed its authority by subjecting all new permit-exempt uses commencing after the effective date of the Rule to the Rule's instream flows and other requirements, contrary to the common law "relation-back doctrine."

This was a big victory for Ecology because it not only upholds the Dungeness Rule, but also protects all of Ecology's water management rules in basins throughout the state. A contrary decision could have made all the rules vulnerable to court challenges. Bassett did not file any petition for review of the Court of Appeals' decision by the Supreme Court.

CELP v. Ecology, Washington Court of Appeals: Center for Environmental Law & Policy (CELP) and other groups filed lawsuit challenging validity of certain sections of the Spokane River Instream Flow Rule –and challenging Ecology's decision to deny a petition for amendment of the Rule. The rule established summer minimum instream flows of 850 cfs in certain reaches of the Spokane River. CELP alleges that the flows were set too low, and do not adequately protect aesthetic and recreational values.

Ecology's primary (but not only) concern in setting the flows was protection of fish populations. CELP contends that Ecology is also required to consider aesthetics and recreation and set flows that are adequate to protect those values.

In 2017, the Superior Court ruled in favor of Ecology, upheld the Rule, and upheld Ecology's denial of the request for amendment of the Rule. CELP appealed, and its petition for direct review by the Supreme Court was denied, so the case went to the Court of Appeals.

The Court of Appeals ruled in favor of CELP and invalidated the Rule. The appellate court held that the summer instream flow provision exceeds the agency's statutory authority, and is arbitrary and capricious, because Ecology focused too narrowly on the protection of fish and only considered impacts on other values, such as whitewater recreation, in what the court saw as a cursory fashion. The court held that Ecology violated RCW 90.54.020(3)(a), which provides that rivers "shall be retained with base flows necessary to provide for the preservation of wildlife, fish, scenic, aesthetic and other environmental values, and navigational values." Ecology cannot

"establish an instream flow for the purpose of narrowly protecting only one instream value that Ecology deems best," and is required to "meaningfully consider a range of instream values and to consider how an instream flow that projects one value might impact the others." Ecology has filed a motion for reconsideration seeking clarification on whether the entire Rule is invalidated, or just the summer flow provision. The plaintiffs didn't really get the remedy they wanted, which was to leave the rule in place, but have Ecology reconsider the summer flow levels.

The two cases are very different in terms of how the defer to the agency in determining how to best manage water priorities and set flows, and whether they look narrowly or broadly at the rules.

Questions:

Chris: Which wells are permit exempt?

Alan: There are four types. They are not exempt from the priority system, though.

Tony: Some states have specialty water courts, and we've supported the work of the Dividing the Waters program to educate judges on water in the West. What is Washington's experience with judges dealing with water cases?

Alan: We do not have a water court system. Legislation has been introduced in the past to follow the model of Colorado and other states to create a water court, but that never really generated any traction. In *Aquavella*, we had judges on the case for years and years, so they developed expertise in water law. But generally we go before a judge dealing with the first water case they've ever had and they're starting from square one. A lot of our cases do start at the administrative tribunal, where administrative decisions are first appealed, and they do generate expertise over time. But it is an issue for us, going before three judges on the Court of Appeals who know nothing about water and we get very different decisions. I think there will be more exploration and discussion about creating a water court system in Washington, especially if we get more active in adjudications following our *Aquavella* Decree.

Greg Ridgley: Do your actions go from the administrative tribunal directly to the Court of Appeals? Or does it go first to a District Court?

Alan: It depends on the nature of the action. For challenges of rules, like the cases I discussed today, they go immediately to the District Court as the initial trial court. When Ecology issues a permit decision, the first appeal is at the administrative tribunal, which involves a full hearing before the board, and judicial review is available. It's a little complicated.

Greg: Where would that judicial review go after the administrative tribunal?

Alan: It is a review at the trial court level, which we call the Superior Court in Washington, but the review will be based on the record that was created at that administrative board. So it's

almost like an appellate review. Often people don't understand that they have to make their record at that tribunal, in terms of presenting evidence and witnesses.

Sara Gibson: For appeals from the administrative tribunal…do those end up in the court in the same jurisdictional district as the tribunal operates?

Alan: The Administrative Tribunal is based at the state capital in Olympia. Depending on the location of the dispute, say a water permit that Ecology denied in the Spokane area, they would have a choice of going to the Spokane County Superior Court, or the Thurston County Superior Court (where the state capital is). So there is some choice in the venue of where to go.

Tanya Trujillo: Are any other adjudications teed up?

Alan: The legislature has allocated some funds for this biennium for Ecology to do an assessment of various basins around the state and determine which may be suitable for the next adjudication. Our adjudication statute has provisions that before the Department can go through an adjudication it must get approval from the legislature to allocate funds—these are not inexpensive endeavors as many of you have experienced—and then Ecology must also go to the Office of the Administrator of the Courts for their approval as well. So we're in the assessment stage now.

Jim Davenport: In the *Hirsch* case, the court decided the case based on a theoretical injury to a superior right by the propose permit exempt wells—not an actual injury, but a theoretical or "legal" injury. Did the legislature fix that problem? Ordinarily a water right holder would have to prove damages before he can bring an injunction against a harmful use. Did the legislature create a right to enjoin a legal injury, notwithstanding there's no actual harm.

Alan: Very interesting question. The first decision created an exception for permit-exempt wells, in that the legislature allocated $250M or $300M over the next 15 years. People can go ahead and get building permits and subdivision approvals and build homes with permit exempt wells, and the Department is required to facilitate the development of plans, including various mitigation actions and projects. The legislature didn't make a decision on who has to prove whether there is an injury. It is still an open question for permitting based on the *Foster* decision. There is also a working group looking at whether that burden of proof needs to be evaluated, in terms of how instream flow is impaired.

PERFECTING WATER RIGHTS AND PROVING BENEFITICAL USE DICUSSION

The Committee held a Roundtable discussion on state perspectives of their requirements to prove beneficial use and how permit extensions are granted.

Chris Brown: My understanding is this topic was generated by Nevada, who is not here to participate in the discussion, so we'll hand it over to Tony to explain.

Tony Willardson: We put it on the agenda as a potential item for the workplan. One question is how the states define beneficial use. State Engineers issue a permit, there's a period of time to actually put the water to beneficial use, and demonstrate that beneficial use. There are exceptions for municipalities, for example, that may not have to immediately put the water to beneficial use, but rather looking at some future period of time in which they are going to need that water. There are challenges in construction schedules for permit applicants, to get the infrastructure in place in order to put the water to use. If it takes more time, what are the processes or the criteria that you consider in granting a reasonable extension to put that water to beneficial use. We wanted to get an idea from you around the room as to what are some of the challenges you've found as you've addressed those issues.

Chris: For your information this is also linked with agenda item number 9, updates to our Committee Workplan for 2019-2020. Wyoming does have statutory provisions to grant extensions. For surface waters, the applicant has to put the water to beneficial use within 5 years. The statute also allows the applicant to petition the State Engineer for an extension of time. It leaves all discretion to the State Engineer on whether or not good cause is shown. We have run into problems in the past with larger projects continually being extended for different reasons. We struggled to know when it is enough. Like most Western states, we have an anti-speculation doctrine—unless you're a municipality—and sooner or later we need to cancel some of those long-standing permits that have been reissued multiple times. One of the problems this creates is that we don't know the state of play for new permit applicants. If senior water rights aren't fully developed and being put to use, how do we judge what might be available, whether subsequent juniors will ever get wet water. With our priority system, if water isn't there, we turn you off so you aren't harming anyone. We don't have to worry about legal availability. So we do have a statutory process in place. Groundwater is similar, but there is a different time period for proof of construction of a well, and then three years to prove that that water is being put to beneficial use.

Jim Davenport: Since this is a Nevada-posed question, and I wrote the horn book on Nevada beneficial use, the answer is that beneficial use means "to put to work." The 19th Century notion of water use is that if it was working, it was good. It was also the consequence of the Industrial Revolution, the notion that if one man's economic situation was better, then the entire economy was better. It was therefore beneficial to the economy and to the public. That's the origin of beneficial use. But now statutes create specific categories of beneficial use—agriculture, manufacturing—whatever society has concluded are economically beneficial to the community.

Chris: Our legislators are wanting to know what are beneficial uses in Wyoming, and what are not. Because we do not have a statutory list of the total realm of beneficial uses.

Jim: Public has since determined, in places like Washington for example, that environmental uses are less economical but still publicly important (more broadly economical).

Chris: I would suggest that Wyoming has not yet made that morph yet.

Q (?): On the permits that were being perpetually extended that you canceled, were they appealed by the permit holders? Or did those just go away because they admitted defeat?

Chris: We had one in *Montana v. Wyoming.* Montana had taken issue with the Wyoming applicant for years. Our State Engineer Pat Tyrell finally said, you're done. I think the water right holder saw the writing on the wall, it had been so many years, so they did not appeal. So we did not have to wrestle with that question. Even so, the statute does say it is at the discretion of the State Engineer.

Q (?): So the permit was cancelled, it wasn't that they were certificated and lost their volume of water.

Chris: Straight cancelled.

Tom Byler: I have a cautionary tale about letting sleeping dogs lie when it comes to beneficial use and extensions and perfecting water rights. We had an issue that started about 20 years ago relative to municipal waters. Much like Chris in Wyoming, the law in Oregon is very similar in its general outline in terms of use it or lose it. You get your permit with the expectation that you have to develop it in 5 years. That had been the law for decades. There was also the ability to extend the deadline for good cause, with a number of criteria. That applied to all water users, even municipalities. About 20 years ago we started to look at some of our extensions and realized that cities were holding on to these extensions and had literally done nothing to develop their water rights for decades. We started to see litigation. Ultimately the legislature resolved this a few years back with a statute that gives cities a longer time to develop their water rights, but also an additional hurdle – in order to get the extension, there's a fish test along with the development of water right.

Jerry Rigby: Idaho adjudicated the entire Snake River. During that time, we basically had 27 years that the statute was tolled on forfeiture. I realize I'm moving into another area, because you're talking about permits. Once they become licensed or decreed, Idaho never had to worry about beneficial use for 27 years, because if you filed your claim, the statute was tolled until the claim was decided or decreed. Now suddenly we have all these decrees, and the question is, is there a partial forfeiture, is there a full forfeiture, what are the issues of forfeiture. That's probably an argument for another day.

Comment (?): You just restart the adjudication, Jerry.

Jerry: Yeah, let's do it! No, we are struggling as to when is it reasonable for a water user not to divert the entire decreed water right. Can you lose part of your decreed right? Even though you went through the adjudication, now you could lose the whole thing? Are others struggling with that?

Chris Brown: In WY, any of those rights that were adjudicated could be subject to abandonment just like any other water right claim. We don't have a very aggressive system of forfeiture – we don't actively go out and find water rights to forfeit. But any of those rights could be subject to a forfeiture action by junior users.

Jerry: Ours are coming up in the transfer process because there is no way to get additional water rights, other than to buy someone else's right. And in the transfer process, under the statute,

that's when they start looking at this and saying, well, but you didn't use it all, even though your decree was in effect.

Chris: In WY, it's easier to get a junior right than have the fight

Greg Ridgley: In NM, we've had successful examples of abandonment of water rights in that context, where someone has a previously adjudicated or licensed water right, and is subject to a change application, but for many years a portion of the right has not been used. People have lost that portion.

Jerry: You've raised another issue, the idea of abandonment as opposed to forfeiture. Abandonment requires intent, or at least actions that would express intent. Adjudication is never over. I have five sons and not one of them wanted to become a water lawyer.

Jan Langel: In MT we have a similar challenge. With our adjudication we don't get into those unless there is a transfer. When someone comes in to change and adjudicated water right, we look at the historic use, and even if the water court decreed a specific amount, you can only transfer the amount that was actually used. You can imagine how that comes across. We constantly get told that DNRC is "giving water rights a haircut," because we're reducing their rights and it causes a lot of consternation and a lot of headache for us.

Jerry: What are the defenses to that? Can economic be an excuse for non-use?

Greg Ridgley: In NM, beneficial use is a very flexible and broad term. I think we have almost no case law on what beneficial use means. I think it is any socially beneficial use or purpose of use. We have no statutory definition or statutory priority or hierarchy of beneficial uses. All beneficial uses are the same in NM. For decades it has been a routine practice to grant extensions of time, under the same practice Chris described – a good cause shown. Our courts have ratified the practice of the agency retroactively approving decades-worth of one-year-at-a-time extensions of time. So NM has been extremely liberal with that practice. It has become a problem. In some parts of our state, in the Estancia Basin, which is an area to the east of Albuquerque, our district office has started a formal process to weed through some of these long dormant permits that have extensions of time and nothing happening for years. They are just beginning the process of canceling some of those dormant permits. That raises part of the question you mentioned, Jerry, and what we're going to struggle with. If you have a water right that is the subject of change permit to transfer water, but it has not been put to beneficial use at the new place of use, what is the legal consequence of cancelation of that change permit? Because I can easily anticipate the argument that in NM you can only lose a water right through forfeiture or abandonment. We haven't had that fight yet, but I'm anticipating it in the future.

Dave Barfield: For KS, all the uses over the last 20 years are required to be metered. Our statute provides 5 years for irrigation, with up to a 10 year extension, with fairly liberal rules. For municipal we allow 20 years for the initial period, with extension up to four years. We have 15 defined uses in the rules, but the statutes don't define beneficial use. For transfers we try to balance between use it or lose it and not creating an incentive for waste. For irrigation changes to other

uses, we have a rule that allows a calculation of the number of acres they irrigate, and we don't require them to maximize their use.

Tony: Jerry, can you speak to the use of Landsat to prove use?

Jerry: I used to brag about the WSWC getting thermal – that's exactly what they're using in transfers. The look at what was decreed, fewer acres being watered, you forfeit the remaining acre-feet of water use.

Michelle read something from Kenny Titus – "Kansas currently does not have a major problem proving beneficial use because we now require that all active diversions be metered. Prior to this requirement, we did have some trouble proving use and would often have to request verification through power records and tax documents."

Garland: I'm actually more familiar with South Dakota law than North Dakota. in South Dakota when we addressed the issue of future municipal water supply, we would allow communities to apply for up to two times the projected use to allow for municipal growth of the population. They would have to review that every seven years, and come back in with some rationale for that. That's one thing I haven't heard, so I'm curious how other states are handling that.

John D'Antonio: We have a water planning statute that allows cities, counties, educational facilities to acquire water rights for future needs. So it's not speculative.

Garland: In South Dakota you could hold those rights in perpetuity if you renew them every seven years.

Chris: I don't think WY has anything that identifies a specific time, or projected growth over a certain time. Speculative rights are not defined.

Alan Reichman: Forfeiture of decreed rights, which we call relinquishment in WA – basically, that water right is solid as of the date of the conditional final order or decree which set the water right. But then after five years passes, there's always the possibility that you could have five years of non-use or reduced use, which would trigger forfeiture, unless they can show a particular statutory exception, such as unavailability of water. Water rights for municipal supply deal with fluctuation. For beneficial use, we have a standard for all water rights – beneficial use is based on actual use. Ecology has been issuing what we call pumps and pipes certificates, which were the final document after a permit that you get when you show proof of appropriation, or what was supposed to be beneficial use. Ecology had gotten into the practice of issuing these certificates, putting in the infrastructure for system capacity. The WA Supreme Court told us in the late 1990s that was wrong, which triggered our municipal water law, establishing how long cities have to put the inchoate water to use. But there is a lot more flexibility for municipal water rights. Another issue with the concept of perfection or beneficial use – how do they relate. Does perfection take place automatically when the water is put to beneficial use? Or do they have to go through the procedure, what we call proof of appropriation, to demonstrate the amount of water they've beneficially used, so they can move from having a permit or license for inchoate water to get a

certificate that documents the vested right? It's a thorny issue for us. It's remarkable how all of us have different permutations and variables, but face very similar issues.

Jerry: What are your statutory defenses to non-municipal forfeiture?

Alan: There's a wide range, drought or other unavailability of water, no economic exception. People will come in and say, hey, there's been a recession, things haven't panned out for development, we need more time. But there is no exception to forfeiture based on economics. There is what's called a determined future development exception, where if you very clearly lay out the future development plan, there is a period of 15 years to at least begin to establish it, and then move with due diligence towards it. So it's a wide range of statutory exceptions, including municipal, operation of legal proceedings, military service, and a whole host of others.

Adel: We are including beneficial use information in WaDE. We are keeping track of what each state is using as a definition for beneficial use, so that is an application you can update or edit. It gets tricky when someone would like to look at a regional analysis. For example, if you're looking at irrigation, agriculture, how states define beneficial use can affect the results that come back from the data in the region, when it comes to water budgets. It's tricky when USGS would like to look at trends in beneficial use, whether agriculture or municipal and industrial, and one solution we came up with in our design is to provide an option to the states to register their beneficial use with the equivalent USGS beneficial use. And if the state would like to keep the native terms, they would continue as they are. I think UT and NM have very close beneficial use terms to USGS. CO has a very unique system where beneficial use could be ten or fifteen different beneficial uses. It gets tricky to know if it's agricultural, which use is the primary one.

Tony: It can be difficult to identify the sector (agriculture, M&I, etc.) of use on the certificates, it may not be designated on the certificate of the water right.

Tom Buschatzke: We have a broad view of beneficial use like NM. In the context of our two water rights adjudications which covers essentially the whole state except the Colorado River, which has been ongoing since 1974 – not yet one right has been established. ADWR has existed since 1980, has the responsibility for managing surface water. We have never canceled a water right, to my knowledge. The predecessor, the State Land Department, has never canceled a water right. We had issues over forfeiture in the 1990s, when the legislature tried to define that forfeiture didn't apply to pre-1919 water rights before the state water code was put into place. The AZ Supreme Court held that law to be unconstitutional. We have a similar issue before the Supreme Court now. We have a transfer application from an entity municipal provider is using groundwater, they had access to transfer to surface water, but a look at the historical use shows it is way less than the transfer application. They argue that it's way less because the groundwater availability was subject to shortage uses, and their historic uses are artificially deflated by the fact that they didn't have the water itself. So we have some interesting challenges. We don't have much definition in statute on any of it—beneficial use, forfeiture, municipal use reserving water for the future. We really work in a very large vacuum on most of these issues.

Chris: I'm curious if AZ permits golf courses as irrigation or recreation.

Tom: It is not recreation, it is irrigation, but it also can depend. We have a bifurcated system of groundwater and surface water. We have more clarity for groundwater management than we do for surface water. We don't even have rules promulgated for surface water, for how you appropriate water.

Chris: It sounds like there is a lot of interest. The work plan is calling for a subcommittee to come up with a survey to send out to our states to gather that information, as well as on aquifer recharge and calls and curtailments. It sounds like most of us are interested in how the other states are doing this.

COLUMBIA RIVER TREATY UPDATE

The Committee discussed recent developments in the Columbia River Treaty talks between the U.S. and Canada.

Tom Buschatzke: I've heard that Washington is held at arm's length. Is that right? That sounds very different from what we experienced in the Colorado River Basin and working on Minute 323 to the Mexico Treaty.

Jim Davenport: The reason being, the Colorado River Basin was a Bureau of Reclamation system. The Columbia is an Army Corps of Engineers system.

Chris Brown: Our interest in Wyoming is for Jackson Lake.

Jim Davenport: Should they be given more money (than in the 1960s?)

Jerry: Idaho's primary concerns are (1) Lowering of the reservoirs, (2) power production at a more reasonable cost.

WSWC/WESTFAST FEDERAL NON-TRIBAL WATER RIGHTS WORKGROUP

Deborah Lawler, WestFAST Liaison, provided an update on the Federal Non-Tribal Water Rights Workgroup. A summary of the workgroup's recent conference call discussion is under Tab P. She said there will be a user friendly page on the website available for the Clearinghouse of state-federal documents soon. The group felt there is additional work that could be done on grazing water rights, so we are planning to hold a workshop at the Fall WSWC meeting in Colorado. The work group has worked through a list of additional topics. The State of Washington raised the issue of the Wild & Scenic Rivers Act. Most states have designated river segments.

WSWC/NARF TRIBAL WATER RIGHTS AD HOC GROUP AND SYMPOSIUM

Michelle Bushman noted that the agenda for the symposium is under Tab Q. Michelle mentioned a few of the speakers who would be on the agenda. She testified for her first time last April, before the House Natural Resources Committee regarding the Reclamation Water Settlement Fund in PL 111-11. H.R. 1904 proposes to make a permanent extension to the RWSF. She got some interesting questions about the purposes of Reclamation Fund, and about water rights. Tony will be testifying next week. Tanya mentioned there was a mark-up of the bill on the Senate side today.

LEGISLATION AND LITIGATION UPDATE

Michelle Bushman provided a brief update on the numerous PFAS bills that have been introduced in recent weeks, as well as a summary of the Senate Indian Affairs Committee changes to S. 886 (which includes Aamodt and Kickapoo, as well as addressing some of Arizona's concerns about the Navajo Nation-Arizona settlement priority funds in the event there is no completed settlement.) She also discussed the Supreme Court's recent decision in *Kisor* and the impact on *Auer*/*Seminole Rock* precedent.

DRAFT FY2019-2020 COMMITTEE WORK PLAN

Chris Brown gave a brief overview of topics and proposed changes and updates to the work plan, which is under Tab K in the briefing materials. There was a motion to approve. Second, and approved.

SUNSETTING POSTIONS FOR Fall 2019 MEETINGS

Chris noted that we will be considering Position No. 398 – Federal Payment of State Filing Fees in General Stream Adjudications.

OTHER MATTERS

There being no other matters, the meeting was adjourned.