MINUTES
of the
191st COUNCIL MEETING
Beaver Run Resort & Conference Center
Breckenridge, Colorado
October 18, 2019

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MEMBERS AND ALTERNATES PRESENT

ALASKA	David Schade
ARIZONA	
CALIFORNIA	Jeanine Jones
COLORADO	Pat Pfaltzgraff
IDAHO	Jerry Rigby John Simpson
KANSAS	David Barfield
MONTANA	
NEBRASKA	
NEVADA	
NEW MEXICO	John D'Antonio Greg Ridgley
NORTH DAKOTA	Garland Erbele Jennifer Verleger
OKLAHOMA	Sara Gibson
OREGON	
SOUTH DAKOTA	Kent Woodmansey
TEXAS	Jon Niermann
UTAH	Todd Stonely

WASHINGTON	Buck Smith Mary Verner
WYOMING	Chris Brown Steve Wolff Kevin Frederick

GUESTS

Joan Card, Culp & Kelly, LLP, Boulder, CO
Ward Scott, Western Governors' Association, Denver, CO
Dave Tuthill, Recharge and Development Corporation, Boise, ID
Kyle Miller, Arizona Department of Water Resources, Phoenix, AZ
Scott Steinbrecker, Colorado Attorney General's Office, Denver, CO
Micheline Fairbank, Nevada Division of Water Resources, Carson City, NV
Kathy Alexander, Texas Commission on Environmental Quality, Austin, TX
Jennifer Carr, Nevada Department of Environmental Protection, Carson City, NV

WESTFAST

Deborah Lawler, Federal Liaison, Murray, UT
Scott Ludwig, U.S. Forest Service, Denver, CO
Chris Carlson, USDA Forest Service, Washington, DC
Jenelle Stefanic, Bureau of Reclamation, Leadville, CO
Mike Woodside, U.S. Geological Survey, Nashville, TN
Katie Walton-Day, U.S. Geological Survey, Golden, CO
Pat Lambert, U.S. Geological Survey, Salt Lake City, UT
Dee Lloyd, Bureau of Land Management, Washington, DC
Doug Curtis, Bureau of Land Management, Washington, DC
Stephen Bartell, U.S. Department of Justice, Washington, DC
Amy Frantz, U.S. Army Corps of Engineers, Washington, DC
Victor Ketellapper, Environmental Protection Agency, Denver, CO
Steve Wallander, USDA Economic Research Service, Washington, DC
Pat Lambert, WestFast Chair, U.S. Geological Survey, Salt Lake City, UT

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 Leavenworth, Washington on July 18, 2019, were unanimously approved.

COMMITTEE REPORTS

A. Water Resources Committee

David Barfield summarized the proceedings of the Water Resources Committee. The Committee reviewed two sunsetting positions. Position No. 396, urges NASA to enhance focus on water resources applications had a few punctuation corrections. Position No. 397, regarding continuing support for implementation of the SECURE Water Act. He clarified the intent of the edits in the second to last Whereas clause. With the Committee's recommendation Dave moved to approve the positions, the motion was seconded, and both positions were unanimously approved.

Also during the Committee meeting, Tony Willardson walked through several infrastructure bills introduced in Congress. The draft letter summarizing our pertinent positions should be finalized and sent to the appropriate Congressional committees to let them know of our support for the relevant provisions of those bills.

Major General Spellmon called in during the meeting and discussed the concerns states and others have expressed about the Water Supply Rule. He acknowledged how broad the rule is and that maybe it is trying to do too much. He made it clear that he has heard our concerns, and while he wasn't willing to withdraw the rule, the Army will take a step back and engage with states to better understand their concerns and how to address them. Amy Frantz followed up on his discussion and advised that states should contact her about scheduling consultations.

There were updates on the U.S. Geological Survey NextGen program and the selection of basins for their next pilot project. The USDA is updating their irrigation survey for the first time in 40 years and asked for help in identifying updated irrigation entities that should receive the survey. There was an update on WaDE, as it moves into the next phase, and funds are available to help states get their data into the WaDE platform. The WIMS workgroup continues to improve water information and there is a grant program to help states improve their water data collection. Jeanine talked about the workshops focused on how to take over management of technology from NASA to continue the beneficial programs.

Tony asked folks to provide information about potential demonstration projects related to water infrastructure in furtherance of our efforts to find ways for federal agencies to work together to accomplish mutual state and federal goals using existing programs.

B. Water Quality Committee

Kent Woodmansey stated that a comment letter on EPA's proposed CWA §401 rule will go out on Monday, but will be limited to a transmittal letter referencing our previous comments already on the docket. Ward Scott discussed the report on WGA's Biosecurity and Invasive Species Management Initiative under Governor David Ige's Chairmanship. Ward will put together some notes and share them with members. Michelle will send out a draft survey on state water reuse policies and programs, seeking input to update the survey questions. She will also send a comment letter related to the Water Reuse Action Plan. There was a discussion on the repeal of the 2015 WOTUS rule and the WOTUS 2.0 proposed rule, and how states are handling the potential impacts. The Committee had no action items.

C. Legal Committee

Chris Brown noted that there was one sunsetting position, Position No. 398, relating to Payment of Filing Fees in General Stream Adjudications. Micheline Fairbank provided an overview of what has been happening in Nevada. Some states have had similar experiences, where others have had no trouble with federal agencies paying fees. The Committee added the word "often" in the next to last Whereas clause. Chris moved approval. The motion was seconded and unanimously approved. In Colorado, there is ongoing litigation with a fisherman wanting access to public lands, asserting the state's title to the bed of the river, and the state disputes his right to do so on its behalf. Lauren Leuck talked about the three objectives of the Revolutionize USACE initiative. There will be a report prepared on the Grazing Water Rights Workshop that was held on October 15, 2019, which Deb Lawler summarized for the Committee. Michelle provided a summary of the Indian Water Rights Symposium. Stephen Bartell reviewed the Department of Justice handling of water adjudications in the U.S. Federal filing fees, and provided an update on water litigation in the western states where the federal agencies are involved.

D. Executive Committee

Jennifer Verleger stated that the Committee spent a good portion of the meeting discussing the USACE and the Water Supply Rule. A letter will be sent to the Corps, but it does not require any action. Jennifer asked members to look membership list and have the Governors notify WSWC on appointments.

ABANDONED MINES IN THE WEST DICUSSION

Pat Lambert, Associate Regional Director, U.S. Geological Survey (USGS), talked about the field trip earlier in the week when we visited mines and talked about issues related to abandoned mines. He introduced a panel of federal representatives from agencies tackling the issues in Colorado and other states, to talk about programs that impact or are impacted by abandoned mines.

Katie Walton-Day, Research Hydrologist, USGS, provided a powerpoint presentation on Acid-Mine and Acid-Rock Drainage in Colorado: Mining and Natural Sources. She talked about

acid rock drainage (ARD) and the differences in remediation depending on whether it is natural (slow), such as volcanic calderas, or due to mining (fast). Colorado has a mineral belt that is the source of much natural and mining ARD. During volcanic activity there is not only hot lava, but there is hot water. This makes the rock more erosive. It is called hydrothermal alteration, which creates a distinctive yellowish, orange color. It matters to know what the drainage source is before approaching remediation efforts so they can be effective. It doesn't make much sense to try to clean up an area with geology containing high concentrations of natural background metals. She talked about the USGS Mineral Deposit Database Project (USMIN), which has topographic maps with mining features counted and recorded, compiled by the agency. She provided specific examples in the field of natural and mining ARDs, and techniques used to separate them and identify how to treat them.

Victor Ketellapper, CERCLA Site Assessment Team Leader, EPA Region 8 Superfund and Emergency Management Division, gave a powerpoint presentation on Good Samaritan Abandoned Mine Cleanups. He began with an overview of water quality impacts from mining. Historic mining occurred prior to enactment of environmental laws. There are limited resources to reclaim abandoned mines. Releases of metals have contaminated sediments and created acidic water. In Colorado there are over 17,000 abandoned mine features, but only about 1,500 of them are located on streams and rivers. Most of the mines are not an active environmental risk. EPA is using a multi-stakeholder approach to find these sites and clean them up, to assess, prioritize and cleanup abandoned mines in Colorado and Montana at the watershed level. Stakeholders include: federal agencies (EPA, BLM, Forest Service, National Park Service), state agencies, and local non-profit groups. Each stakeholder brings resources to the table. They are collecting data electronically with iPads in the field and sharing information with each other. The assessments identify the high-risk sites suitable for CERCLA clean-ups, and lower risk sites that are Good Samaritan candidates.

In 2007, EPA established some CERCLA liability management tools (Administrative Order on Consent, Comfort Letter) under the oversight of federal on-scene coordinator. This works well on sites that are "dirt projects." It's harder where there are clean water concerns, or an adit that may require a discharge permit. In 2012, EPA issued its Good Samaritan Memorandum, which states that the Good Samaritan would not be the entity expected to obtain a CWA permit for any remaining discharges at mine site. We have been evaluating other liability management approaches such as Voluntary Cleanup Programs and the Brownfields Program. One concern is acid treatment that reduces the load but can't treat to the high water quality standard; how do we encourage small steps? A court case, Committee to Save Mokelumne River v. East Bay Municipal Utility District (1993, 9th Cir.), found a CWA violation for efforts to reduce the threat of continued toxic runoff, because some of the water passed over a reservoir spillway and discharged into the river without a permit. The EBMUD was not a Good Sam, they owned and operated the discharge and rightfully should have obtained an NPDES permit. But similar concerns have prevented Good Samaritan cleanups. This requires a legislative fix to address the problem.

Ketellapper described a multi stakeholder watershed assessment in the Illinois Gulch (Breckenridge, Colorado), looking at the environmental issues at Willard Mine (complex puzzle) and Mountain Pride Mine (Good Sam candidate). Trout Unlimited was awarded a CWA 319 non-

point source grant toward cleaning up the latter. EPA issued a Comfort Letter. It included private and U.S. Forest Service property with a large mine waste pile adjacent to a stream. The waste was consolidated and a portion of the land was revegetated. Another stakeholder group, the Fourmile Watershed Coalition, was able to obtain disaster recovery funds through the HUD Community Development Block Grants following the 2013 floods in Colorado, and work was completed at the Black Swan site with an Administrative Order on Consent.

Scott Ludwig, Minerals and Geology Management, U.S. Forest Service (USFS) gave a presentation on abandoned mine lands (AML). The USFS and AML Safety Closure Program is tied to President Clinton's Clean Water Action Plan and EPA's efforts to require land management agencies to mitigate discharges from abandoned mines. In the late 1990s, the USFS received approximately $10 million to address environmental impacts at abandoned mine sites. USDA also provided funds under HWHW (?). In the early 2000's, AML Safety Funding Earmark was established as a result of fatalities associated with physical safety hazards such as open adits, vertical shafts, dilapidated structures, etc. Funds were also used to begin inventory efforts. Also funded out of the National Forest Vegetation and Watershed Management (NFVW) Budget Line Item (BLI). We don't know how many abandoned mines we have. Every time we have fires we find more mining features. We know it is in the tens of thousands, but it's an ongoing effort.

Under the 1972 Mining Act, we have to consider whether there are any active claim activities, whether they are actually abandoned. An abandoned mine is a mine that: shows no evidence of an active claim or claimant activity; mine activities have ceased with no indication that the mine operator or any identified successor, claimant, operator, or other third party intends to resume any mining related activity; a mine located on or affecting public lands; and where persons or entities outside of the Federal government conducted exploration, development, mineral extraction, processing, reclamation, maintenance, or any other operations.

The Minerals and Geology Program administers the AML Safety Program. AML Safety Program Managers plan/conduct Non-CERCLA mitigation of physical hazards, inventories of abandoned mines, NEPA, RCRA, compliance with 228 regulations, oversee construction of safety closures, getting a notice of intent from the claimant if it's an active mining claim and get the operator's plan, etc. The Engineering Program administers the Environmental Compliance and Protection (ECAP) Program. The Regional Environmental Engineers and OSC's plan/conduct CERCLA Non-Time Critical-Removal Actions (under EO & NCP), Environmental Compliance Audits, Resource Conservation and Recovery Act Compliance, etc. In 2017 funding for both AML and ECAP were combined into the Safety and Environmental Restoration (SER) Program. It is very important that we remediate these sites and their physical hazards for public safety, including actions such as placing grates across the opening to prevent further access into the mines.

The USFS Region Two AML Safety program partners with Colorado (DRMS) and the State of Wyoming (WYAML) to leverage funding and coordinate efforts: Master Participating and Non-Funded Participating Agreements. ECAP participates in the Colorado Agreement, but not in the Wyoming Agreement. USFS leverages congressional appropriations and States leverage OSM funds to complete project work on NFS. In Wyoming alone, in FY19 WYAML identified $2.7 million in AML Safety project work on NFS lands and the USFS contributed $52,000. Both

programs are currently funded out of Safety and Environmental Restoration (SER) in the NFMG BLI. In 2017, WO AML Safety & ECAP Earmarks were eliminated. Subsequently, Regions were funded based on a 5-year average of WO AML Safety & ECAP Allocations. There are ongoing efforts pushing for Good Samaritan legislation, and we're hoping this can be achieved one day. Slide 12 in the powerpoint presentation shows USFS SER combined program funding for FY2020. Regions with larger numbers of abandoned mines get a larger portion of the funds.

Chris Deblar, Bureau of Land Management (BLM) Project Manager for Bonita Peak, gave a powerpoint presentation on behalf of Dee Lloyd, HazMat , AML Program Lead, on BLM's Abandoned Mine Land Program. BLM manages more than 247 million surface acres, and approximately 700 million subsurface acres, primarily in the western states of Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. BLM is regionalizing, moving its headquarters to Grand Junction. There are over 80 million people now that live in the west. Approximately 30 million live within 25 miles of Federally managed public lands (BLM and USFS). The ever expanding urban-wilderness interface means more pressure on water resources, recreation areas, and the environment.

The BLM AML program addresses mine sites that were abandoned prior to January 1, 1981, the effective date of BLM's surface management regulations (43 CFR 3809). Specifically, they implement the "unnecessary or undue degradation" provision of the Federal Land Policy and Management Act (FLPMA) of 1976. BLM initiated AML inventory activities during the 1980s in an effort to quantify the issue, heading out with backpacks and topographic maps to check out sites with pick ax symbols. Funding for water quality-related AML projects across the BLM began in 1999. AML watershed projects are prioritized based on state impaired watershed listings. Their main strategic programmatic objectives are to protect and restore watersheds through a risk-based approach, using partnerships to leverage funding and facilitate projects. They also protect public safety and reduce liabilities and reduce environmental degradation to ensure compliance with applicable soil, water and air quality standards and laws.

The AML watershed approach is a State-identified high priority watershed or watershed segment. The AML site must be causing, contributing to, or could contribute to 1) an impairment of one or more water quality standards, 2) a violation of Federal or state water quality law or regulation, 3) a threat to public health or safety, or 4) a threat to the environment. They look at partnerships available within the watershed. The mining site must be on public land, or a mixed ownership site where BLM can work solely on public land. BLM estimates that there are over 300,000 AML features located on BLM-managed land throughout the west yet to be inventoried. Currently, there are 57,533 AML sites with over 80,000 features in the BLM Abandoned Mine Database. The inventory is a higher priority now than closures. Draining adits are a bit of an issue. We can't ignore terrestrial sites. We can move quickly when we have to.

Jenelle Stefanic, Water Treatment Plant Supervisor, Bureau of Reclamation gave a powerpoint presentation titled Leadville Mine Drainage Tunnel (LMDT) - An American Legacy. The LMDT was built during WWII by the U.S. Bureau of Mines for removing groundwater and accessing minerals for war efforts. Most of the tunnel sections have collapsed. Located east of Leadville, Colorado, the 2-mile LMDT drains contaminated water from abandoned historic mines

including a portion of the Environmental Protection Agency's California Gulch Superfund Site known as Operable Unit 6. Reclamation constructed a Water Treatment Plant in 1992 to remove heavy metals and neutralize pH from LMDT water prior to discharge to the East Fork of the Arkansas River. Contamination concerns include zinc and other metals, particularly cadmium which is toxic for fish. The upper reaches of the LMDT collect contaminated water from multiple abandoned mine shafts and adits. Mine drainage is eventually diluted by clean groundwater just past the Pendery Fault as it travels downstream to the tunnel portal. In early 2000s, EPA was installing some retention ponds to contain abandoned mines run-off. In 2001, Operable Unite 6 retention ponds reached their capacity. In 2002, a treatability study of surface pond water and dye tracing was done. We have an interagency agreement to treat surface water during spring runoff.

Studies suggest approximately half of water treated by Reclamation is clean groundwater, and recommendations to plug the tunnel date back to the 1970s. Reclamation is studying construction of a hydraulic tunnel plug which is a concept that has been under review by EPA since the 1970's. The field cost is $15.5 Million. A hydraulic tunnel plug will allow Reclamation to treat highly concentrated mine water before it mixes with clean ground water in the tunnel, limiting the amount of water that has to be treated. Treating less water will result in lower equipment replacement costs. In addition, an engineered plug will contain the mine pool above collapsed zones. There are cost-share opportunities. We are deferring the plug construction until water treatment plant (WTP) is complete – so we are not requesting construction funding at this time.

The WTP is within 4-years of its 30-year expected service life. Acidic metal-rich wastewater is corrosive and limits the life span of WTP components. Safety and health is a driving factor behind the need for a new WTP. Non-compliance with 2012 International Fire Code for personnel and community safety and health requirements related to sulfuric acid storage is a concern. Reclamation is subject to a stringent discharge permit enforced by EPA. Failure to meet this permit subjects Reclamation to tens of thousands of dollars per day in fines. Developing a proactive plan to replace the aging WTP supports Reclamation's long-term commitment to the public. The new plant will be built right next door and use efficiencies learned from operating the old plant.

Reclamation screened various water treatment plant treatment alternatives and validated alternatives with onsite pilot testing. Value Planning activities concentrated on developing functional components to meet project objectives. Overhead power lines have been relocated in preparation for the new building footprint. Geotechnical and topographical survey investigations are complete. The draft feasibility level designs have been received and will be finalized this month. Over 40 TSC staff are assigned to this project.

Questions:

Pat Pfaltzgraff: Department of Health held a Good Sam workshop a couple of months ago. I'm curious what the response will be following the workshop. The "comfort letter" does not provide much comfort. The agency promises to talk and provide information if needed. We talked about the potential kinds of orders from the court, but it is expensive. CWA §319 Program funds can be

used more readily for agriculture than for mines. I would like to be able to move forward with many more abandoned mine projects, but I need an MOU or the framework of an MOU to spell out the responsibilities and potential liabilities for everyone doing the work, including for state agencies. What was the outcome of that or are we stuck in the status quo?

Victor Ketellapper: EPA action items were discussed and looked at. We are struggling with how to deal with the water aspects without legislation.

Pat Pfaltzgraff: That may be the answer. You need legislation for Good Samaritan issues, to deal with CWA liabilities.

Victor Ketellapper: The State of Pennsylvania has passed a Good Samaritan law.

Pat Pfaltzgraff: That law is over 10 years old and it provides false protection to a watershed group, because it doesn't provide any relief from CERCLA or CWA. All it takes is a citizen lawsuit and there is no protection for those multi-stakeholder efforts from federal law. As a regulator, I'm not going to take the chance of getting stuck with the liability.

Victor Ketellapper: EPA is looking at providing federal liability protection for CWA projects.

Pat Pfaltzgraff: Colorado is happy to engage, but the MOU needs to be updated. The MOU spelled things out. With limited §319 funds I have, I'm channeling them to agriculture projects.

Tony: The WSWC has worked on Good Samaritan for a number of years. Congress has been reluctant to open the CWA. We have spent quite a bit of time in Senator Boxer's office talking to her staff about changing the law.

Mary Verner: I'm grateful for the coordination among the federal agencies. How many of these agencies are working with the DOJ to get reimbursement or contribution from the original mining companies?

Dee Lloyd: BLM is doing Potentially Responsible Party (PRP) searches and giving those PRPs the opportunity to be part of the solution. We have to pursue a parallel path, cleaning/remediating while also pursuing recovery for those costs. We are required to do cost recoveries and have a cost tracking tool. The Department of Interior solicitors do not litigate, but they work with us and DOJ. It is a lot of work.

Scott Ludwig: Yes, we utilize PRP searches, but those can take a few years. Over the last 20 years, we have changed our policy. We are more adamant about our PRP searches now.
Victor Ketellapper: I would echo that for EPA. PRP searches are complex; some of the sites have a long history, companies have merged, etc. We could improve on the federal agencies working together when the area has mixed responsibilities/ownership.

Scott Ludwig: The authorities and liabilities really complicate things. We are all protective of our own piece of the pie. I'm constantly frustrated by the fact we can get so much done working

together as land management agencies, but then something like Gold King Mine happens. That event drew us all back into our corners. It puts us all in a different posture when catastrophe hits the nightly news and the lawsuits hit. Until we get some kind of legislation, it will be difficult to engage.

Greg Ridgley: Thank you all for your informative presentations. Has anyone attempted to do an estimate of the economic benefits of mining versus the estimated cost of the cleanups?

Katie Walton-Day: There has been some analysis more locally, but I don't know if there is a collective region-wide estimate.

Tony: Have there been any positive impacts due to Gold King Mine?

Dee Lloyd: I can get funding now, so that may be a positive aspect. But everyone retreated to their corners after that.

Victor Ketellapper: EPA is taking a closer look at these kinds of projects with a different eye. We are looking at CO draining adits. Resources have come to light because of the Gold King Mine issue. There is greater awareness, more inventory work.

Scott Ludwig: In DC, the House Committee on Natural Resources held a hearing where I testified on partnerships and placed a direct emphasis on Good Samaritan. I believe they were looking at authorizing 4 pilot projects. So there is some greater awareness in DC, taking a hard look at how to get some movement in a positive direction based on Gold King.

Dee Lloyd: A project is supposed to have an end. A program should go on as long as needed, but we become wedded to our projects, and as scientists and engineers, we want to do more. Sometimes getting 80% of the contamination is as good as it gets, because that last 20% is too cost prohibitive.

Tony: How do we more effectively communicate the risks to the public?

Katie Walton-Day: I don't think we do a good job of communicating the risks effectively. We need to repackage our messages - at all levels.

Pat Pfaltzgraff: We had the best results by using NGOs who had a little better street cred. We know that what happened at Gold King was the equivalent of 3 days of discharge. The same levels of contamination are happening every three days over the course of decades, but we can't see it. Sometimes we're just dealing with an irate public, and there's no way to really get ahead of that; government at all levels struggle with this.

Katie Walton-Day: Scientists can sometimes be dismissed summarily.

Tony: Rep Napolitano helped move some legislation. We know that dilution is not the solution.

Garland Erbele: With the price of gold, are you seeing folks wanting to rework some of these mines? Does that affect cleanup efforts?

Scott Ludwig: Yes. We have agreements with mining organizations who want to reprocess some sites. The regulations and authorities are complicated. When you look at the feasibility of reworking these economically, any work they do may require a bond, a plan of operation, and that complicates the discussion. We haven't gotten very far, even where there is an economic interest in the abandoned sites. We do talk to industry about reworking the sites, but we have to bring in attorneys to talk about the potential liabilities going into it. We want to be very upfront about the liabilities.

Dee Lloyd: We had 3,000 new mining claims at the beginning of the year, looking mostly for lithium and vanadium.

Jennifer Carr: About two years ago we created a new position to handle our publications, to make them more user friendly for the public. We wanted an English major on the staff with a personal love for the environment who could turn our outward facing public communication into tools people enjoy reading. He has turned many of our publications into a tool. He has reworked the website and it has met with tremendous success with the public. For a long time we only talked to the public when bad things happened. We want to be out in front by building up the good things that happen so that when something does go wrong, we have greater street credibility and so there is some trust already in place.

WESTFAST REPORT

Patrick Lambert, WestFAST Chair provided an update on the WestFAST. New WestFAST Members include: USFWS - Mike Higgins, Water Resources Coordinator National Wildlife Refuge System; USACE - Jeff Arnold, Lead Climate Scientist, Climate Preparedness and Resilience Program; NOAA - Ed Clark, Director, National Water Center & Deputy Director Office of Water Prediction; and USGS - Timothy McHale, Senior Science Advisor, Office of the Associate Director for Water. We have 19 members across 12 agencies with significant responsibilities related to water in the West. Some agencies have more than one representative, as we like to have one located in the West and another in touch with headquarters operations

He shared the highlights of the 2019 WestFAST Report. Concerning goals of proactive collaboration, it turns out our federal agencies and states have many of the same goals, but we are still trying to improve communications up front instead of after the fact or not at all. Despite efforts to meet the agreed-upon needs and described goals for collaboration, gaps persist between expected and actual engagement. Both State and Federal entities, including member agencies of WestFAST, are interested in strategies to improve the effectiveness of Federal/State working relations and meet collaboration requirements and expectations.

WestFAST Priorities are: (1) to continue to develop and enhance lines of communication, increase awareness of the need for and opportunities for proactive collaboration, and to develop effective working relationships; (2) work on open and integrated water data and facilitate state

activities headed that direction; (3) drought resilience and infrastructure, facilitating workplans from Presidential Memorandum on Water in the West (and previous NDRP action plans); (4) enhanced communication from State partners to WestFAST to WestFAST Agency Principals; and (5) taking a closer look at WestFAST governance and identifying sustainable funding model, to reduce the amount of time the liaison spends tracking down funds and reimbursements, because the liaison position is key to helping members who are busy with our day jobs.

The WestFAST Webinars Series is starting again. Dates will be posted online on the WSWC WestFAST page. We love to hear from Council members what they are interested in, even between WSWC meetings. Upcoming topics include:

- Presidential Memorandum on Promoting the Reliable Supply and Delivery of Water in the West – The Federal Response (Multiple Agencies)
- New USGS Observation and Water Assessment Programs in the West (USGS)
- August 24-Month Study & Projection Triggering Lower Basin DCP Contributions (Reclamation)
- Federal Permitting Improvement Steering Council (Fall 2019)
- WRP DOD Water Challenges, Threats, and Recommendations - Building Resilience thru Military Readiness and Disaster Preparedness (DOD)
- Water Emissions Dashboard (Julian Fulton)
- Water Infrastructure and Resiliency Finance Center - WIFIA and SRF
- Coordinated Federal activities on snowpack - Improving S2S (Seasonal to Sub-seasonal) Precipitation Forecasting (NASA, NOAA and NRCS)

He also provided an update on efforts to engage with the federal agencies in a collaborative way to meet water infrastructure needs of the states.

- Engagement with Water Policy Committee (formerly Water Subcabinet), states, and others
- April 2019 - Water Infrastructure Forum, Washington, DC
- Feedback - good first step. More substantive dialogue and planning desired
- Forum, Part II, December 17, 2019, Washington, DC
- Forum, Part III, April 1, 2020, Washington, DC

STATE REPORTS

North Dakota: Garland Erbele - Our legislature meets every other year, and met this past Spring, worked on the budget. The economy is driven by energy, and the Baaken is in good shape. The agriculture sector is struggling a bit with the tariffs with China and recent wet weather. We are set to meet record run-off in the Missouri River. The Corps is continuing to draw down Lake Sakakawea Reservoir in anticipation of wet conditions next Spring. We just received 16-30" of snow, aggravating the already wet conditions. It was interesting to hear Colorado talk about not managing their sovereign lands during the Legal Committee yesterday. Sovereign lands are managed in North Dakota, and we have legislation requiring the State Water Commission to reevaluate and redetermine the designation of sovereign lands and water bodies. We've done 14-

16(?) determinations over the past several decades, and we make the determination in house. Water bodies in the state are determined to be sovereign lands. Sovereign land designations are based on whether it was used or susceptible to being used for navigation at the beginning of statehood in 1889. There is a general lack of understanding on sovereign lands. Property owners think they own the bed of the river or lake, when they do not. This new legislation requires a public input process into the overall designation determination, so that will be interesting. Aquatic nuisance species – zebra mussels were found in an inland waterbody in a Corps-operated reservoir on the Cheyenne River, on the eastern side of the state. We suspect it started with boat traffic from Minnesota. We're keeping a close eye on this. Our Water Quality Programs are now under the newly created Department of Environmental Quality.

Idaho: John Simpson – The Snake River Basin Adjudication was completed with the exception of the reservoirs refill issue, and we think we have resolved that problem. Legislation was passed in 2019 to address this in the Boise River Basin. We reached an agreement among the water users and hopefully with the state. We will open up the decrees for the base storage rights to begin filling October 1st, which is historically what had happened before. This accelerates the reservoir fill. Treaty rights were brought into the process, and the Shoshone Bannock Tribe seems to be in agreement on that issue, which is significant. Ten years ago, Southern Idaho developed its Comprehensive Aquifer Management Plan – a long term plan for the aquifer, identifying issues and restoring levels to ensure existing and developing water rights are protected. We've been using conjunctive management to sustain groundwater levels so new development could occur, cloud seeding, agreements between water users. It was time for a ten year "check in" with the legislature. The water budget change has been reached and exceeded ten years ahead of schedule, but we've had several good water years. Whether or not that can be sustained is questionable, but the state is moving forward. $5 million per year to facilitate that program. Boise valley has seen substantial growth and applications for permits for new water use and storage and water transfers. One is for a Boise transfer of water to the Mountain Home area for recharge and supplemental irrigation. There is a proposed private development of storage for multiple uses (power, municipal, etc.) The State is trying to interface between existing rights and new growth. The State is also thinking ahead, trying to identify new storage programs and potential funding programs to assist. There is a collaborative process along the Snake River (Southern Idaho Water Quality Coalition) trying to get ahead of the TMDL loading issue for point and non-point sources for the City of Twin Falls. Compliance with load allocation requires an expensive treatment facility on top of the one they have, and this may not even address the issue. The point sources are working with irrigation facilities to implement programs to reduce sediment loading and benefit the TMDLs. The legislature has provided some funding. Working on NRCS sprinkler conversions in that area.

John D'Antonio asked about funding for groundwater management. John Simpson said the legislature set it up as a grant funding process the Boards use, and they also try to find matching federal funds.

Kansas: David Barfield – The Ogallala aquifer has been in decline, and we've been grappling with how to extend the life of the aquifer. It has been a problem for decades, but we've been making inroads with new tools. In 2012 Kansas created the Local Enhanced Management Areas (LEMA) to enable local districts to reduce pumping and accomplish specific goals. We have two LEMAs

in place currently, and while they have only accomplished modest cuts, it's a start. In 2017, a new tool was created to facilitate water conservation areas, to allow temporary flexibility in the application of water right priority dates to enable the greatest economic gain in conservation areas. That new tool was contested as unconstitutional, but the District Court ruled in our favor. Use of the tools started slowly, but it has ramped up to extend the life of their aquifer through better management. In South Central Kansas, the groundwater system highly connected to surface water. Rattlesnake Basin. Quivera Wildlife Refuge has an interference claim, local pumping affecting their water right for the benefit of the wildlife. The local community spent 3 years trying to remedy this using the LEMA tool – trying to resolve the impairment. They are using the water conservation tool to provide flexibility to move water around, but they failed to propose a plan that could be moved forward. They want the problem to go away. My retirement will be in the first half of next year, so this will be my last Council meeting as a member. I plan to continue to participate and listen in during retirement as I will have a part-time consulting practice.

Arizona: Kyle Miller – ADWR launched a stakeholder process (previously delayed by budget cuts) to complete the statutorily required 4th management plans for the Phoenix, Pinal, and Tucson Active Management Areas (AMAs), as well as the 5th management plans for all five AMAs. The plans should increase conservation requirements for municipal, industrial and agricultural water users. Water users are participating in workgroups to provide input into the respective plans. The 5th plan is the last required in the 1980 Groundwater Management Act. ADWR's recent audit identified failure to complete the management plans according to statutory deadlines as the main deficiency, spurring this process forward. On January 31, 2019, as a corollary to the Drought Contingency Plan legislation, Governor Ducey signed an Executive Order creating a Water Conservation Augmentation and Innovation Council. Membership includes legislators, as well as water managers and stakeholders participating on four committees: Desalination, Augmentation, Groundwater outside Active Management Areas, and Post-2025 Active Management Areas. Statutory, policy and program recommendations are all on the table for that Council.

Nevada: Micheline Fairbank - SB 140 is a directive to identify available groundwater (10%) to be held in reserve for sustainable yield in areas that are not fully appropriated (about half of their 250 groundwater basins). Implementation is proving to be more complicated and convoluted than the legislature anticipated given the uncertainties of climate change and other factors. Developers have to have water for their development plans, but once the plans have been signed off, developers coming back and want to stretch the water for more development; we've been able to establish guidelines to require that amount be used for sustainable use (the developer can still ask, but it's in the state's discretion.) Nevada does not really have enforceable priority dates for domestic wells. The date the well is drilled is the priority date, which is usually junior to surface rights, but domestic wells are guaranteed to be able to withdraw up to ½ acre-foot per year even though they are junior water rights. That right comes with the condition of installing a meter. Enforcing this will be challenging. AB51 contained a directive to conjunctively manage water, but there were inconsistencies in the statute. A bill was introduced to provide better guidance, but after the hearing it was painful. After the SNWA pipeline project, the term mitigation has become a four-letter word associated with that project. Another challenge has been restraints on extensions of time to file proof of beneficial use. When we try to cancel a water right, the courts use their equitable authority to give the water rights back. We wanted to better define and put timeframes on that, but what

ended up happening instead was a directive to craft regulations to tighten the belt. We are writing a letter to other states with a survey request to see how other states are handling this. Nevada is looking at updating its 1999 water plan, consolidating water conservation plans and flooding programs, planning for the future, improving drought resiliency. There is a lot of distrust of the State Engineer's Office in the State Legislature. Diamond Valley critical groundwater management area, with pumping that exceeds annual yield. They were given a deadline get a plan approved to reduce pumping, otherwise the State Engineer would regulate strictly by priority dates. The majority of groundwater users put together a groundwater management plan, which was approved in January 2019. The users converted their rights into shares. It is a shared sacrifice, with a nod to priority dates but allows them greater flexibility. We believe it is consistent with what the legislature intended. There are11,000 domestic wells in the Pahrump Basin, which already exceed the perennial yield, and the State Engineer prohibited any new drilling. The court held that the SE has no authority to regulate domestic wells (Happy Creek case). We have a stakeholder process dealing with development along the White River, where pumping almost instantaneously impacts over a 100 miles (carbonate aquifer just north of Las Vegas), endangered species are a consideration, along with protecting existing water rights. Question of whether pumping can be moved to an alluvial aquifer.

Wyoming: Chris Brown - the new State Engineer will be announced Monday.

FUTURE COUNCIL MEETINGS

The WSWC Spring (192nd) Meetings will be held in Arlington, Virginia on March 31 – April 3, 2020 at the Doubletree Crystal City. The Spring meetings will include a Washington, D.C. Roundtable with the Interstate Council on Water Policy (ICWP) and the National Water Supply Alliance (NWSA). A WestFAST principals' meeting is also being planned.

SUNSETTING POSTIONS FOR SUMMER 2020 MEETINGS

Tab XYZ of the briefing materials contains sunsetting positions that will be brought up at the 2020 Spring meetings. There are seven sunsetting positions the Council will be considering.

OTHER MATTERS

There being no other matters, the meeting was adjourned.