



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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WESTERN STATES WATER COUNCIL **Virtual Fall Meetings**

Due to COVID-19, the WSWC Fall (194th) Meetings were held virtually on October 13-15. The WSWC revised and re-adopted five sunseting positions that: (1) support Indian water rights settlements; (2) support USDA conservation programs, flood protection, and water quality, along with voluntary, incentive-based programs; (3) assert state primacy over protecting groundwater quality; (4) support the Dividing the Waters program for judges; and (5) recommend federal agency actions to help expedite general stream adjudications. See westernstateswater.org.

The Water Quality Committee was co-chaired by Kent Woodmansey (SD) and Erica Gaddis (UT). Roger Gorke, Environmental Protection Agency (EPA), described the new Office of Mountains, Deserts and Plains, created to address abandoned hard rock mine issues, followed by a presentation by the new EPA Municipal Ombudsman, Jamie Piziali, who will be a resource for municipalities in achieving Clean Water Act (CWA) compliance. WSWC staff provided a high-level summary of the results from the WSWC-ACWA Water Reuse Survey, as well as an overview of the State Summit on Water Reuse held in September.

The Committee discussed collaborative state and federal agency efforts facilitated by the Council to develop a Memorandum of Understanding for implementing the new CWA Section 401 Rule. The idea of developing a process for implementing the Rule was raised to ensure state autonomy when issuing certifications.

The Committee also discussed how to move forward with the Water Quality/Quantity Nexus workplan item, and raised a number of issues to consider including a potential survey to understand how states are addressing nexus topics. The meeting concluded with a presentation from Gaddis and Tom Stiles on harmful algal blooms (HAB) in Utah and Kansas this year, and the challenges they have faced in addressing HABs with reduced funding and the onset of the COVID pandemic. Both states are transitioning from monitoring to finding meaningful treatment options.

During the Water Resources Committee, Don Cline, Associate Director of the U.S. Geological Survey's Water Resources Mission Area, addressed their strategy for observing, understanding, predicting and delivering water science, particularly regarding quantity and quality throughout the water cycle at a high temporal and spatial resolution. He addressed ten recommendations from a 2018 National Academies of Science (NAS) report Future Water Priorities for the Nation, as well as USGS Integrated Water Science initiatives: (1) the Next Generation Observing System (NGWOS); (2) Integrated Water Availability Assessments; (3) Integrated Water Prediction; and (4) Modernization of the National Water Information System (NWIS) with a National Water Dashboard.

Amy Duffy, Western Regional Partnership (WRP) Coordinator, described how in 2007 the Department of Defense brought together federal, state and tribal leaders to identify common goals and emerging issues related to protecting natural and cultural resources, while promoting sustainability, homeland security and military readiness, given the high percentage of military reservation in the Southwest. WRP has undertaken a "deep dive" into water security issues in four "buckets" for data, water resource management strategies, water laws and regulations, and policy, planning and implementation. WSWC members and staff have been involved in numerous calls and webinars. A report will be prepared for WRP principals to consider next year.

Chair Mary Verner (WA) and Tom Byler (OR) described the interstate Walla Walla River Basin partnership that is identifying and addressing groundwater and surface water issues together with the Confederated Tribes of the Umatilla Indian Reservation, the U.S. Geological Survey and a watershed basin council. Mary and Tom also led a roundtable discussion of water use, metering, monitoring and reporting that also included comments from Kyle Miller (AZ), Earl Lewis (KS) and Todd Stonely (UT). Jeanine Jones (CA) reported on improving subseasonal to seasonal (S2S) water supply forecasts and work on an air borne snow observatory. Staff updated members on pending federal water infrastructure legislation, and the continuing development and deployment of the WSWC Water Data Exchange (WaDE).

During the Legal Committee, Kenneth Titus (KS) described a problem involving EPA's administration of a Superfund site and a groundwater contamination plume. The clean-up plan involves extraction wells that would withdraw 1,000 acre-feet per year. EPA's position is that CERCLA (42 USC §9621) exempts such activities from the need for a state water rights permits or water quality discharge permits, but several states noted that at other Superfund sites EPA has voluntarily cooperated with state permitting requirements. Compliance seems dependent on the site manager's discretion.

Next, Steve Snyder, Executive Director, outlined the history of the National Judicial College's Dividing the Waters program, with an update on recent activities to educate judges on water issues in the West. Only two states, California and Nevada, currently contribute judicial education funds toward the program, and he recommended that all the western states consider the value provided toward the resolution of adjudications and other complex water issues.

Scott Steinbrecher, Colorado Assistant Deputy Attorney General, provided an update on the *Hill v. Warsewa* case, involving the right of a private citizen (a fisherman) to assert an interest in the state's ownership of riverbeds. The federal court has determined that it does not have jurisdiction, so the case is proceeding through state courts and is expected to eventually reach the Colorado Supreme Court. Micheline Fairbank presented Nevada's perspective on the Public Trust Doctrine and its impact on the Prior Appropriation Doctrine. She described the background of the Walker River Basin water conflicts and the recent Nevada Supreme Court opinion in *Mineral County v. Lyon County* protecting senior water rights (see WSW #2420).

Christopher Carlson, USDA Forest Service (USFS), provided a brief perspective on recent efforts in Idaho to enter into agreements with stock grazing allotment holders. USFS holds many water permits. Idaho law has changed over time to specifically require the federal agency or an agent to put the water to beneficial use. The Forest Service is pursuing voluntary agreements to enlist stockowners acting as agents to put the water to beneficial use and preserve its water rights.

During the Full Council meeting, Pat Lambert, Western States Federal Agency Support Team (WestFAST) Chair, summarized WestFAST activities and provided an overview of recent federal agency webinars, posted on the Council's website. He discussed efforts to facilitate state-federal water infrastructure coordination, and Deborah Lawler, WestFAST Liaison, summarized efforts to develop a database of federal programs that fund water infrastructure. Avra Morgan, Cooperative Watershed

Management Program Coordinator, Bureau of Reclamation, spoke about the upcoming SECURE Water Act report, and the opportunity for states to offer feedback before it is finalized in early 2021. The technical assessment expands on previous work, and looks at how states are responding to the stressors of a changing climate.

The WSWC Spring (195th) meetings scheduled to be held in El Paso, Texas on March 23-26, may be held virtually given continuing uncertainty related to the pandemic and state travel and meeting restrictions.

ADMINISTRATION/WATER RESOURCES **Infrastructure**

On October 13, President Trump issued an Executive Order (EO) on Modernizing America's Water Resource Management and Water Infrastructure. It directs departments and agencies to work together more efficiently and effectively to improve water resource management, modernize our water infrastructure, promote integrated planning, and prioritize the availability of clean, safe, and reliable water supplies.

The EO formally establishes an interagency Water Policy Committee or Water Subcabinet, co- chaired by the Secretary of the Interior and Administrator of the Environmental Protection Agency, and including the Secretaries of Agriculture, Commerce, Energy, and the Army, and others. It calls for improving coordination among State, local, tribal, and territorial governments and rural communities – including farmers, ranchers, and landowners to develop voluntary, market-based water and land management practices and programs that improve conservation efforts, economic viability, and water supply, sustainability and security. Further, it directs the Subcabinet and other federal departments and heads of agencies to provide assistance and technical support to state, local, tribal, and territorial governments in order to enhance the recruitment, training, and retention of water professionals.

The EO identifies actions to: (1) improve water quality, source water protection, and nutrient management; (2) promote restoration activities; and (3) examine water quality challenges facing our Nation's minority and low-income communities. It also calls for actions to improve water and drinking systems, including desalination and water reuse, as well as improve wastewater and flood control systems. Further, it call for improving water data management, research, modeling, and forecasting (together with developing state-of-the-art geospatial data tools). See <https://www.whitehouse.gov/presidential-actions/executive-order-modernizing-americas-water-resource-management-water-infrastructure/>.

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