

**MINUTES
of the
172ND COUNCIL MEETING
Hilton Garden Inn
Casper, WY
June 26, 2013**

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Those in attendance at the 172nd Council meeting were as follows:

MEMBERS AND ALTERNATES PRESENT

ALASKA	--
ARIZONA	--
CALIFORNIA	Jeanine Jones Betty Olson
COLORADO	Dick Wolfe John Stulp
IDAHO	Jerry Rigby John Simpson
KANSAS	Tracy Streeter
MONTANA	--
NEBRASKA	Brian Dunnigan
NEVADA	--
NEW MEXICO	Scott Verhines
NORTH DAKOTA	--
OKLAHOMA	J.D. Strong
OREGON	Phil Ward
SOUTH DAKOTA	Kent Woodmansey
TEXAS	Carlos Rubinstein
UTAH	Dennis Strong Norm Johnson

WASHINGTON

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WYOMING

Pat Tyrrell
Sue Lowry
Chris Brown

GUESTS

Anne Castle, U.S. Department of the Interior, Washington, DC
Lisa Vjota, Government Accountability Office, Washington, DC (via phone)
Scott Leedom, Southern Nevada Water Authority, Las Vegas, NV
Greg Ridgley, Office of the New Mexico State Engineer, Santa Fe, NM
Dave Mitamura, Texas Water Development Board, Austin, TX
Curtis Seaton, Texas Commission on Environmental Quality, Austin, TX
Herman Settemeyer, Texas Commission on Environmental Quality, Austin, TX
Kevin Frederick, Wyoming Department of Environmental Quality, Cheyenne, WY
John Shields, Wyoming State Engineer's Office, Cheyenne, WY
Greg Lanning, Wyoming State Engineer's Office, Cheyenne, WY
Steve Wolff, Wyoming State Engineer's Office, Cheyenne, WY
Jeff Fassett, HDR Engineering, Cheyenne, WY
Coleman Smith, Bureau of Reclamation, Mills, WY

WestFAST MEMBERS

Jean Thomas, USDA Forest Service, Washington, DC
Becky Fulkerson, U.S. Bureau of Reclamation, Washington, DC
Eric Stevens, Federal Liaison

STAFF

Tony Willardson
Nathan Bracken
Sara Larsen
Cheryl Redding

WELCOME AND INTRODUCTIONS

Council Chair Phil Ward called the meeting to order.

APPROVAL OF MINUTES

The minutes of the meeting held in Denver, Colorado in April 2013 were presented for approval. Carlos Rubinstein moved to approve the minutes, Pat Tyrrell seconded, and the motion passed unanimously.

WYOMING WATER RESOURCES ISSUES

Steve Wolff, the Colorado River Coordinator within the Wyoming State Engineer's Office, gave a presentation on how his state uses Landsat imagery for consumptive use estimates. In particular, he described efforts in Wyoming's Green River Basin to map water rights and irrigated lands. Steve said Wyoming has started a five-year program in the area and will assess consumptive use across the basin.

Next, John Shields, Interstate Streams Engineer within the Wyoming State Engineer's Office, gave a presentation on the history of the office, which is celebrating its 125th anniversary this year. John discussed the achievements of Elwood Mead, the first State Engineer, and his successors, including former Council member Jeff Fassett and current State Engineer and Council Vice-Chair Pat Tyrrell. Among other things, he noted that Elwood Mead, who later served as the Commissioner of the Bureau of Reclamation, believed that there should be a connection between land and water policy. John further noted that Mead did not like speculation, preferring order instead.

U.S. DEPARTMENT OF THE INTERIOR WATER RESOURCES ACTIVITIES

Assistant Secretary of the Interior for Water and Science Anne Castle discussed Interior's water resources activities, including: (1) President Obama's recently announced climate change action plan, which focuses on reducing carbon emissions; (2) Interior's drought efforts; (3) the future of the Landsat program; (4) the U.S. Geological Survey's (USGS) streamgaging programs; (5) forthcoming changes to Bureau of Reclamation policies regarding how the agency defines the use of project water for "irrigation;" (6) revisions to the Bureau of Land Management's proposed hydraulic fracturing rule; and (7) a memorandum of understanding between Interior and the U.S. Department of Agriculture.

Among other things, Castle thanked the Council for its efforts in ensuring that Landsat 8 included a thermal infrared sensor and noted that the Office of Management and Budget has directed USGS and the National Aeronautics and Space Administration to develop a 20-year plan for how to sustain the Landsat program. She also said the concept of simply cloning Landsat 8 for the next satellite in the series may be feasible since the new technology that the Administration would like to use in a successor satellite is not as developed as "we would like."

Anne also noted that she has hired Jennifer Gimbel, former Director of the Colorado Water Conservation Board and a prior member of the Council, as her Counselor. She also hired

former Western Governors' Association Water Program Director Tom Iseman as her Deputy. Tom will focus on Bureau of Reclamation issues, while her other Deputy, Lori Caramanian, will focus on the U.S. Geological Survey.

In response to questions from Phil about the Klamath Basin Restoration Agreement (KBRA), Anne said the Administration "strongly supports" the KBRA, but noted that securing Congressional authorization has been a challenge.

J.D. also asked about the National Blueways Initiative, which Anne said was intended to be a "recognition" program to acknowledge collaborative river restoration efforts. She said it is not intended to be a "back door" to a Wild and Scenic Rivers designation and that a Blueways designation will not happen without a state's permission.

WESTFAST REPORT

WestFAST Chair Jean Thomas reported that she has completed her term as Chair, and that Becky Fulkerson of Reclamation was selected to succeed her. Roger Gorke of the Environmental Protection Agency (EPA) will serve as Vice-Chair.

Jean noted that WestFAST is completing its fifth year and that the group is working to develop a better understanding of "who they are and where they are going." One area that WestFAST has been discussing is how to involve better the principals from their respective agencies. They are also working to identify the "big issues" that require improved collaboration between federal and state agencies, and are looking at becoming more of an action group. There is a difference in authority between the various WestFAST members.

NOMINATING SUBCOMMITTEE REPORT

Dennis Strong reported on behalf of Roland Westergard, noting that the Subcommittee recommended that the Council retain its current leadership for one more year. Dennis moved to approve the recommendation, J.D. Strong seconded, and the motion passed unanimously.

COMMITTEE REPORTS

A. Water Resources Committee

Dennis reported that his Committee recommended that the Council adopt two new positions. The first position supports federal efforts to prepare for and respond to extreme weather impacts, including an expanded and enhanced west-wide extreme precipitation monitoring system. The position also supports legislation to: "(1) [minimize] the loss of life and property and economic, environmental and social cost from extreme weather events; (2) [improve] collaboration and coordination among agencies and organizations at all levels; (3) [increase] consultation with state, local and tribal governments; (4) [maintain] and [enhance]

data gathering and monitoring, as well as communication capabilities, identifying and addressing gaps and overlap; (5) [identify] and [address] federal agency responsibilities, as well as regulatory and other preparedness and response barriers; (6) [recognize] and [address] regional differences; and (7) [avoid] unfunded mandates....”

Greg Ridgley proposed a change for one of the subjects of the last “resolved” clause to clarify the verb tenses. Dennis moved to adopt the position as amended by Greg, Jeanine Jones seconded, and the motion passed unanimously.

The second position was a letter to House Water Resources and Environment Subcommittee leaders in opposition to H.R. 1460, which would remove “fish and wildlife” as an authorized purpose for which the U.S. Army Corps can manage the Missouri River Mainstem Reservoir System. Among other things, the letter notes that fish and wildlife provide substantial economic and recreation benefits in the basin, and that “...river management and states in the System may be better served by a comprehensive, simultaneous, and transparent review of all eight authorized purposes to develop a plan for the sustainable future management of the System.” Dennis moved to approve the resolution subject to changes proposed during the Executive Committee call prior to the meeting. Sue Lowry seconded, and the motion passed unanimously.

The Committee also reviewed position #324, which was scheduled to sunset and supports water research and development programs at the Department of Energy’s (DOE) national laboratories. Dennis said the Committee recommended re-adopting the position subject to a number of amendments, including language urging Congress and the Administration to “...recognize the primary role of the States in allocating water for energy and the value of [DOE] hosted energy-water programs and research conducted at National Laboratories undertaken in collaboration with state water resources agencies...” Dennis moved to re-adopt the position, J.D. seconded, and the motion passed unanimously.

B. Executive Committee

Pat Tyrrell reported that the Council’s finances are “fine” and “healthy,” noting that the organization has 2/3 of its annual budget in reserve. A greater number of states are now paying full dues, including Washington and Nevada.

With respect to action items, Pat said the Committee recommended that Position #323 regarding a “Shared Water Vision” be allowed to sunset in light of new Council positions. Pat moved to allow the position to sunset, Carlos seconded, and the motion passed unanimously.

C. Water Quality Committee

J.D. said the Committee recommended that the Council adopt a proposed position on hydraulic fracturing. The position states that federal hydraulic fracturing efforts “...should leverage state knowledge, expertise, policies, and regulations.” It also says such efforts “...should be limited in scope, based upon sound science, and driven by states....” Lastly, the position notes that the Council “...opposes any and all efforts that would diminish the primary

and exclusive authority of states over the allocation of water resources used in hydraulic fracturing.” J.D. moved to approve the position, Carlos seconded, and the motion passed unanimously.

J.D. also said the Committee adopted a work plan for 2013-2014.

E. Legal Committee

Norm Johnson reported on behalf of Committee Chair Maria O’Brien. He explained that the Committee did not have any action items, but did adopt a work plan for 2013-2014. He also reported that Pat Tyrrell discussed water rights permitting for hydraulic fracturing in Wyoming, and that Carlos discussed a federal district court decision in *The Aransas Project v. Shaw*, which found that the Texas Commission of Environmental Quality’s operation of the state’s surface water permit system caused an unlawful “take” of 23 endangered whooping cranes in violation of the Endangered Species Act. Ramsey Kropf, a partner with Patrick, Miller, Kropf, and Noto, discussed the Dividing the Waters initiative, an effort affiliated with the National Judicial College that is working to help train judges and other decision makers regarding water disputes.

STATE REPORTS

Kansas: Tracy Streeter reported that eastern Kansas has received some drought relief. Reservoir levels have also recovered in most Corps reservoirs, including John Redmond Reservoir. The reservoir serves as a backup for the Wolf Creek nuclear plant and there had been some concerns about its declining water levels. Sediment accumulation continues to be an issue, and Kansas is engaging in a number of dredging operations to address the problem.

Idaho: John Simpson said his state is “struggling a little bit with drought” but is carrying out the Fort Hall agreement with the Shoshone Tribe. The agreement is 20 years old and the excess water that existed in the past is no longer available. There is a sense that the two parties are coming to agreement.

Jerry Rigby said that he and John are collaborating on some legislation regarding recharge for credits (e.g., some type of banking credit). He is also working with other Council members to figure out how to accomplish this effort and hopes to present something to the Idaho Legislature in the next session. Idaho has almost finished the Snake Valley General Stream Adjudication but issues remain regarding a second fill on a major reservoir. The question is whether there is a one fill policy, or if there is not.

Nebraska: Brian Dunnigan reported that his state is “improving a bit” with respect to drought, although western Nebraska remains very dry. The Legislature passed a new bill (L.B. 517), which creates a 34-member task force to develop a report on priorities for water funding. The purpose of the bill is to provide the backdrop for proposed legislation (L.B. 516), which would provide a permanent funding source for these projects. L.B. 516 has not passed but will likely be re-introduced in the next session.

Colorado: Dick Wolfe said drought is impacting a large majority of southern Colorado, and is “stressing supplies tremendously.” Governor John Hickenlooper has appointed James Eklund to succeed former Council member Jennifer Gimbel as the next Director of the Colorado Water Conservation Board. James is a former Senior Deputy Legal Counsel for the Governor.

John Stulp said Governor Hickenlooper has issued an order asking the water community to develop a state plan. It is expected to take a year to prepare a draft and another year to review it.

Utah: Dennis said Utah has “fairly good” reservoir storage, due in part to hold over supplies from 2011. However, the state is still dry and some municipal suppliers are beginning to ration water and are concerned about next year. Dennis further noted that Utah is seeing an increase in “back to back” dry years, causing ranchers to see very dry conditions on their ranges. Governor Gary Herbert has also asked Dennis for recommendations for him to use in creating a water policy. They will hold a series of eight public meetings around the state to invite the public to comment on possible solutions in six general areas. The meetings will consist of public comments organized by a facilitator and break out groups where the public can comment on specific issues. The meetings will consist entirely of dialogue and will not include any presentations. A final water summit will take place on October 30 to discuss the results of the previous meetings. Dennis hopes the effort will be a “first step.”

California: Jeanine said California is in the midst of its second dry year and is seeing a variety of impacts due to dry conditions and environmental reallocations. Although a “very wet start” to the water year replenished storage, issues involving fish species listed under the Endangered Species Act have impacted the movement of water through the California Bay-Delta. A court-mandated settlement for re-watering parts of the San Joaquin Delta is now being implemented. Governor Jerry Brown supports a proposal that would construct two tunnels under the Delta and restore over 100,000 acres of habitat. An environmental impact statement is expected to be released by the end of November and will likely be litigated.

Betty Olson said water suppliers and agencies that are dependent upon imports from the Delta have been impacted by curtailed deliveries. Notably, some smaller water agencies have begun to question the reliability of the Metropolitan Water District of Southern California and are looking for alternative sources of water.

Texas: Carlos reported that his state is suffering from “man-made” drought due to Mexican non-compliance on the Rio Grande and *The Aransas Project v. Shaw* decision. The legislative session just ended and was by all accounts a “water session,” with a lot of focus on infrastructure. The Legislature passed legislation that alters the leadership structure of the Texas Water Development Board, changing it from a six person board to a paid, full-time board consisting of three members. The Board will also have a new Executive Director. Another piece of legislation will transfer \$2 billion from the state’s rainy day fund to support water development. The funding is intended to be a revolving fund and is estimated to leverage about \$20 billion in total funding. On the regulatory front, Carlos said EPA Region 6 has become more cooperative, which has improved its relationship with Texas. Lastly, Carlos said administering prior appropriation during a drought continues to be a challenge, especially in areas where such administration has not taken place before.

Oklahoma: J.D. said drought has ended in three quarters of Oklahoma due to the wettest May on record. Central Oklahoma received its average rainfall in one month, compared to western Oklahoma which is still experiencing exceptional to extreme drought. Oklahoma continues to implement its water plan update, and has seated its “Water for 2060” advisory council. The group will develop a blueprint on how to achieve the state’s new goal of not consuming any more freshwater in 2060 than it does today. Next, J.D. reported that the U.S. Supreme Court ruled unanimously in Oklahoma’s favor in *Tarrant v. Herrmann*, finding that the Red River Compact does not authorize a regional water district in Texas to appropriate water in Oklahoma. He noted that the Court focused mostly on interpreting the Compact and “didn’t really touch on” the dormant commerce clause issue, which was a “relief to Oklahoma and probably most other states.” Oklahoma is still negotiating with the Chickasaw and Choctaw tribes to address their water rights claims.

New Mexico: Scott Verhines said New Mexico and the Texas panhandle are the “bullseye of drought.” Among other drought-related impacts, Scott said dominant bears are expanding their range, which is pushing smaller bears into urban areas. Drought is also impacting endangered species efforts, making it difficult to meet flow targets under biological opinions. This is prompting water users as well as federal and state agencies to look at areas to dry up to meet flow projections. In addition, New Mexico has experienced some of the largest and most destructive fires in the last few years, generating a lot of discussion. Lastly, Scott proposed a WestFAST effort to look at new ways to address fire concerns.

Greg said New Mexico is concerned about a position the Department of Justice (DOJ) is taking in the lower Rio Grande. The Court is addressing Reclamation’s interest and the proceeding is focusing on the amount and priority of Reclamation’s water for the project. DOJ was going to argue that its priority date referred to the date the U.S. acquired the New Mexico territory, but has since backed off this position and is now asserting a 1903 priority. The 1903 date is based on the date Reclamation first started looking into the feasibility of the reservoir. The areas served in Texas were not eligible until 1905, and the state is arguing that 1906 should be the date based on state law.

Wyoming: Drought is an issue in Wyoming but not as bad as in other states. Pat also thanked his staff for their efforts in putting together the Council’s meetings.

Oregon: Phil said western Oregon has a lot of streamflow and snowpack (120%), but eastern Oregon is at 25% to 50% of normal. The state just completed its administrative adjudication of the Klamath Tribe’s priority date, which is “time immemorial.” The tribe has placed a call that has led to six water masters shutting off families that have been irrigating for 150 years without seeing a water master before. Some people have flashed weapons, but there has not been any violence so far. Phil said his staff is working as hard as possible to be diplomatic in their efforts to work with water users to shut off head gates.

FUTURE COUNCIL MEETINGS

The next Council meeting will take place on October 2-4 in Deadwood, South Dakota, at the Lodge at Deadwood. The Council will request a meeting with the Corps to discuss its surplus water rulemaking during the meeting. South Dakota will also host a field trip that will include a tour of Spearfish Canyon, the City of Spearfish's hydropower plant, and the DC Booth National Fish Hatchery, among other stops.

The Council and the Native American Rights Fund will also hold their next biennial Symposium on the Settlement of Indian Reserved Water Rights Claims on August 13-15 at the Buffalo Thunder Resort, near Santa Fe, New Mexico. The four pueblos involved in the Aamodt settlement will host the event.

OTHER MATTERS

There being no other matters, the meeting was adjourned.