

MINUTES
of the
174th COUNCIL MEETING
Crystal Gateway Marriott
Washington, DC
April 3, 2014

Table of Contents

| | |
|--|---|
| Welcome and Introductions | 3 |
| Approval of Minutes | 3 |
| NASA Missions and Water Resources Programs | 4 |
| WestFAST Report..... | 4 |
| Committee Reports | 4 |
| A. Water Resources Committee..... | 4 |
| B. Executive Committee | 4 |
| C. Water Quality Committee | 5 |
| D. Legal Committee..... | 5 |
| State Reports | 5 |
| Future Council Meetings..... | 8 |
| Other Matters | 8 |

**MINUTES
of the
173rd COUNCIL MEETING
Crystal Gateway Marriott
Washington, DC
April 3, 2014**

MEMBERS AND ALTERNATES PRESENT

| | |
|---------------------|---|
| ALASKA | -- |
| ARIZONA | -- |
| CALIFORNIA | -- |
| COLORADO | Trish Oeth Dick Wolfe |
| IDAHO | Jerry Rigby |
| KANSAS | David Barfield |
| MONTANA | John Tubbs |
| NEBRASKA | Jim Schneider |
| NEVADA | -- |
| NEW MEXICO | DL Sanders Scott Verhines |
| NORTH DAKOTA | Todd Sando Michelle Klose |
| OKLAHOMA | J.D. Strong |
| OREGON | Phil Ward |
| SOUTH DAKOTA | Kent Woodmansey |
| TEXAS | Todd Chenoweth |
| UTAH | Eric Millis Norm Johnson Walt Baker |

WASHINGTON

WYOMING

Pat Tyrrell
Sue Lowry

GUESTS

Dru Buntin, UMBRA/ICWP, St. Paul, MN
Josh McClintock, McClintock Associates, Edmond, OK
Robert Mace, Texas Water Development Board, Austin, TX
Carlee Brown, Western Governors' Association, Denver, CO
Bruno Bowles, Southern Nevada Water Authority, Las Vegas, NV
Peter Evans, Interstate Council on Water Policy, Washington, DC
Lauren Sturgeon, Oklahoma Water Resources Board, Oklahoma City, OK
Herman Settemeyer, Texas Commission on Environmental Quality, Austin, TX
Dr. Michael Freilich, National Aeronautics and Space Administration, Washington, DC

WESTFAST

Eric Stevens, Federal Liaison, Salt Lake City, UT
Pixie Hamilton, U.S. Geological Survey, Reston, VA
Lee Koss, Bureau of Land Management, Washington, DC
Becky Fulkerson, Bureau of Reclamation, Washington, DC
Bradley Doorn, National Aeronautics and Space Administration, Washington, DC

STAFF

Tony Willardson
Nathan Bracken
Cheryl Redding

WELCOME AND INTRODUCTIONS

WSWC Chair Phil Ward welcomed those in attendance at the meeting.

APPROVAL OF MINUTES

The minutes of the meeting held in Deadwood, South Dakota in October 2013, were moved for approval by J.D. Strong. The motion was seconded by David Barfield. The minutes were unanimously approved as presented.

NASA MISSIONS AND WATER RESOURCES PROGRAMS

Dr. Michael Freilich, Director of the Earth Science Division within the National Aeronautics and Space Administration, described the Division's water-related efforts, including Landsat. Among other things, he said the Administration is committed to a sustained national land imaging system, not just a single mission.

WESTFAST REPORT

WestFAST Chair Becky Fulkerson of Reclamation discussed the organization's recent activities, including the formation of four workgroups consisting of officials from the WestFAST agencies to address drought, data needs, infrastructure, and the energy-water nexus. The workgroups will first develop a consensus among the WestFAST members on these issues, and will ultimately identify ways to assist the states.

The collaboration between the federal agencies has been very useful, particularly the points of contacts with federal partners, and point of contacts with the states. Becky asked members to let others know about WestFAST.

COMMITTEE REPORTS

A. Water Resources Committee:

Scott Verhines reported on the Committee's recommendations that the WSWC re-adopt Policy #329, supporting the development of a national program of safety standards for levees and flood water conveyance canals but specifying that such a program should not apply to water supply canals. A motion to re-adopt the position was made, a second was offered, and the motion passed unanimously.

Next, Scott reported that the Committee recommends the adoption of three new positions: (1) supporting reauthorization of "such sums as may be necessary" for the Bureau of Reclamation to carry out the Reclamation Safety of Dams Act of 1978; (2) requesting "careful evaluation" of efforts to transfer title of federal water and power assets to non-federal ownership, and to establish a process for title transfer proposals with "strong state involvement and protections for state water laws and water rights;" and (3) supporting development of a process to provide information on Reclamation's maintenance, repair, and replacement needs, and to ensure that such information is "readily accessible and easy to understand." Motions to adopt each resolution were made, seconded, and approved unanimously.

B. Executive Committee

Pat Tyrrell reported that the Committee has approved a budget for the coming year, thanking staff and WSWC members for their efforts to manage the WSWC's finances.

The Committee also discussed the possibility of the WSWC adopting a policy regarding endorsements for Presidential nominees and had agreed to table the issue until the WSWC's summer meetings in Helena, Montana. After further discussion and consideration among the full WSWC, Pat moved that the WSWC table the issue and not take further action to develop a position for now. A second was offered and the motion passed unanimously.

C. Water Quality Committee

J.D. Strong reported that his Committee recommends re-adoption of position #330, which seeks stable and continuing federal appropriations for the Clean Water and Drinking Water State Revolving Funds (SRF). The position also urges more flexibility and less restriction on state SRF management and includes revised language stating that new water and wastewater financing efforts should not come at the expense of the SRFs. A motion to re-adopt the position as revised was made, a second was offered, and the motion passed unanimously.

Next, J.D. reported that the Committee recommends that the WSWC request a 60-day extension of the public comment period for the proposed Clean Water Act (CWA) rule. The purpose of the request would be to give the WSWC and the western states more time to review the proposed rule before the WSWC's summer meetings on July 16-18. A motion to send such a request was made, a second was offered, and the motion passed unanimously.

In addition, J.D. said EPA Region 8 has reached out to the WSWC and has offered to help facilitate conference calls between the WSWC and EPA and the Corps, including EPA's regional offices in the West.

Note: After the Committee's meeting, the WGA issued a letter on May 10, requesting a 180-day extension of the public comment period. EPA also subsequently extended the public comment period for the rule by 91 days, so that comments are now due on October 20, 2014.

D. Legal Committee

Norm Johnson discussed the results of the Legal Committee's meeting, which did not include consideration of new or sunseting positions. He noted that the Committee heard a presentation from the Department of Defense on its water-related efforts and discussed possible work items for the Committee's 2014-2015 workplan.

STATE REPORTS

New Mexico: DL Sanders discussed his state's perspective regarding litigation with Texas in the Rio Grande. DL said the Bureau of Reclamation is claiming that groundwater is part of the federal Rio Grande Project's supply and requires a contract with Reclamation. The agency further claims that New Mexico has the duty to curtail diversion by groundwater rights, even if New Mexico recognizes them as legal appropriations under state law. Scott Verhines also noted that DL will be retiring after 20 years of service with the state, and that President Obama has nominated Estevan López, the Director of New Mexico's Interstate Stream Commission, to serve

as the next Commissioner of the Bureau of Reclamation. If confirmed, Estevan would succeed Mike Connor, who was recently confirmed as the Deputy Secretary of Interior.

Texas: Todd Chenoweth provided Texas' perspective on the litigation with New Mexico in the Rio Grande. He explained that Texas has a different interpretation of the federal claims in the litigation. Specifically, he said the federal claims focus on the authorization and permitting of diversions of Rio Grande Project return flow and seepage water, underflow, and surface water, as well as the management of groundwater basins that has diminished flows to the project or to Texas as provided for in the 1938 Rio Grande Compact. Thus, Todd said it is Texas' position that the U.S. has not claimed ownership of percolating groundwater in New Mexico. Todd also said the state is awaiting the 5th Circuit Court of Appeals' decision in *The Aransas Project v. Shaw*, which involves a federal district court decision that found the Texas Commission on Environmental Quality's (TCEQ) to be liable for causing the unlawful take "take" of 23 endangered whooping cranes in violation of the Endangered Species Act (ESA). The court reached this decision by finding that Texas' surface water permit system did not ensure sufficient in-stream flows into two river systems, which the court found led to a reduction in freshwater inflows during a severe drought to estuaries where the birds make their winter home. As a result, the lower court issued an injunction prohibiting TCEQ from issuing new permits to withdraw water from rivers that feed the estuary. The injunction further required TCEQ to seek an incidental-take permit from the U.S. Fish and Wildlife Service.

Nebraska: Jim Schneider reported on the status of litigation involving the Republican River Compact with Kansas and Colorado. He said the Special Master has submitted a recommendation to the U. S. Supreme Court and that a decision is expected shortly. Jim also discussed two water funding bills that have been introduced in the Nebraska Legislature.

Montana: John Tubbs reported on the status of the Confederated Salish and Kootenai Tribes (CSKT) water rights compact, which has proven to be quite divisive. Much of the dispute focuses on whether Indian irrigation project water belongs to irrigators, who have never proved up their claims. Montana would generally recognize the project owner, and the water users have filed suit, asking the court to name the individual owners within the project. Most of the users are not tribal members. CSKT has also filed in U.S. District Court to secure what the tribe believes is a narrow finding – the ownership of the water right. If Montana's water court gets directly involved, it will ultimately have to adjudicate the project's water. Next, John said Montana is developing programs to prevent the intrusion of invasive mussels, which are not currently found within the state.

Idaho: Jerry Rigby reported on litigation in Idaho regarding whether the state is a one-fill or multiple fill state. A lower court ruled that there is one fill, which has been appealed to the Supreme Court. Jerry said it looks like a 2-2 vote with the 5th vote being uncertain, which has prompted negotiation. The case may be resolved in the next month. Jerry also briefly mentioned the possible renegotiation of the Columbia River Treaty, noting that the outcome could result in Idaho reservoirs being made to bear obligations carried by Canada.

Colorado: James Eklund reported on his state's efforts to develop a water plan. The state has held over 800 meetings and is pursuing a grassroots approach. One objective is to address the water quantity-quality nexus, and James said the Colorado Water Conservation Board is working with the Department of Public Health and Environment on this issue. The state is also engaged in contingency planning in the Colorado River with the other basin states to influence the levels in Lake Mead and Powell.

Wyoming: Pat Tyrrell said his state has a "pretty healthy" statewide snowpack, which will ease some problems this summer. The budget for the Wyoming State Engineer's Office also survived intact and the state's budget appears to have turned a corner. Pat also reported that he has a new Deputy, Philip Stuckert to succeed Greg Lanning, who has taken a position with Grand Junction, Colorado. Wyoming and Montana have completed a trial regarding their dispute over the Yellowstone River Compact and both states have submitted briefs. Lastly, Pat discussed the case of Andrew Johnson, who obtained a permit from his office to build a six acre-foot stock pond but did so without checking with the Corps, which believes the water in question is jurisdictional and that Johnson's activities requires a 404 permit. Johnson is now facing possible fines from EPA. Pat said the pond is located on a creek that is comprised of agricultural return flows and there is a question as to whether the CWA's agricultural exemption applies. John Shields, Wyoming's Interstate Streams Engineer, has also retired from state service and has accepted a position as the Agricultural Engineer within the Bureau of Reclamation's Water Conservation and Accounting Group at its Boulder Canyon Operations Office of the Lower Colorado Region.

North Dakota: Todd Sando reported that his state has been "very wet" and that last year was the highest in terms of precipitation. Soil moisture is high as well. While the moisture is appreciated, flooding is a concern. The state's largest concerns pertain to the growth generated by the state's oil boom, and Todd noted that many of the nation's fastest growing communities are located in North Dakota, which is generating tremendous needs for infrastructure. Financial conditions are good and the state is expecting to see an increase in oil production. At the same time, North Dakota is experiencing an increase in water sales and there are 340 industrial depot sites that are selling water. In some cases, the parties selling water are making more money than the parties with the mineral rights.

Kansas: Dave Barfield said his Governor has requested the development of a 50-year vision for the Ogallala Aquifer and for how to maintain the state's reservoirs. An active legislative year in 2012 created local management plans that Dave said will likely be a tool that "will have some use." Dave's agency, the Department of Agriculture, will be moving to Manhattan, Kansas in June. About 40% of the staff has left. Dave indicated that they have hired some good people, but have lost some "good folks" as well.

South Dakota: Kent Woodmansey discussed state legislation intended to handle applications for aquifers. He also noted that South Dakota submitted its integrated reports under the CWA by April 1.

Utah: Walt Baker introduced Eric Millis, who has succeeded Dennis Strong as Utah's new Water Resources Division Director. Walt reported that Utah has invasive mussels in Lake Powell. At the same time, EPA has developed new ammonia criteria to protect mussels. This will be

difficult for Utah where the state does not have the benefit of dilution. The governor has also put together an advisory committee to address the various issues associated with the state's growth, including water. Lastly, Walt mentioned that Utah recently negotiated an oil spill with Chevron, the third in three years. Eric reported that the Governor is interested in water strategy needs for new projects and replacement projects. "We think that we'll be able to get the good word out," he said, while also noting that it "still isn't a good time to talk about money."

Oklahoma: J.D. Strong reported that Oklahoma and Texas have developed a memorandum of understanding (MOU) regarding the location of some intake pumps on the Oklahoma side of the border. The MOU came together very quickly, due in part to the relationship J.D. and Carlos have developed through the WSWC. Oklahoma continues to implement the 2012 update to its state water plan and is trying to identify future funds. There is continued debate within the state about how to address in-stream flows. In addition, Oklahoma continues to work with its 39 recognized tribes, including those tribes that are interested in water. Federal litigation has been stayed regarding the water claims of the Choctaw and Chickasaw nations to allow for mediation. The coming year is expected to be "big" in terms of drought and there are a number of proposals to move water. The state continues to focus on water conservation, reuse, recycling, and the maximization of the freshwater resources they do have. Lastly, the state has adopted a plan to consume no more water in 2060 than is consumed now.

Oregon: Phil Ward reported that his office recently completed a 38-year-old adjudication in the Klamath Basin. This led to a call from the Klamath Tribe that curtailed 300 ranchers in the Upper Klamath Basin. The call created a difficult situation, due in part to the fact that the users who were curtailed had not settled with the tribe. Other farmers who had reached an agreement were not curtailed. As a result, the call motivated ranchers and farmers in the Upper Basin to reach a settlement, which has been completed and will be signed later in April. Oregon also completed an integrated water resources plan in 2012, which resulted in the legislature giving the Oregon Department of Water Resources a 15% increase in its budget with 20 new staff positions.

FUTURE COUNCIL MEETINGS

The next Council meeting will take place on July 16-18 in Helena, Montana at the Holiday Inn Conference Center Downtown. The WSWC and WestFAST are sponsoring a pre-meeting workshop on Federal Non-Tribal Water Rights Claims, which will be held prior on July 15-16 at the Holiday Inn Conference Center Downtown in Helena.

OTHER MATTERS

During a reception on April 2, Phil presented WSWC Executive Director Tony Willardson with an award to honor his 35 years of "distinguished and exemplary service" with the WSWC.

There being no further matters, the meeting was adjourned.