

MINUTES
of the
WATER QUALITY COMMITTEE
Hard Rock Hotel & Casino Lake Tahoe
Stateline, Nevada
July 9, 2015

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Those in attendance at the Water Quality Committee meeting were as follows:

MEMBERS AND ALTERNATES PRESENT

ALASKA	David Schade
ARIZONA	--
CALIFORNIA	Betty Olson Tom Howard
COLORADO	Trisha Oeth
IDAHO	--
KANSAS	Tracy Streeter
MONTANA	--
NEBRASKA	--
NEVADA	Jason King Roland Westergard
NEW MEXICO	Tom Blaine Greg Ridgley
NORTH DAKOTA	Michelle Klose Andrea Travnicek Jennifer Verleger
OKLAHOMA	J.D. Strong
OREGON	--
SOUTH DAKOTA	Kent Woodmansey

TEXAS

Robert Mace
Stephen Tatum

UTAH

Norm Johnson
Eric Millis
Walt Baker

WASHINGTON

Buck Smith

WYOMING

Chris Brown

WESTFAST

Patrick Lambert, WestFAST Liaison, Salt Lake City, UT

GUESTS

Jim Davenport, Buena, WA
Alexandra Davis, Denver, CO
David Moon, The Water Report, Eugene, OR
Carlee Brown, Western Governors' Association, Denver, CO
Joan Card, U.S. Environmental Protection Agency, Denver, CO
Christopher Estes, Chalk Board Enterprise, LLC, Anchorage, AK
Jordan Bunker, Southern Nevada Water Authority, Las Vegas, NV
Susan Metzger, Kansas Department of Agriculture, Manhattan, KS
Jackie McClasky, Kansas Department of Agriculture, Manhattan, KS
Kathy Sertic, Nevada Division of Environmental Protection, Carson City, NV
Jason Kuchnicki, Nevada Division of Environmental Protection, Carson City, NV

STAFF

Tony Willardson
Michelle Bushman
Sara Larsen
Cheryl Redding

WELCOME AND INTRODUCTIONS

J.D. Strong, Chair of the Water Quality Committee, called the meeting to order.

APPROVAL OF MINUTES

The minutes of the meeting held in Tulsa, Oklahoma on April 16, 2015 were moved for approval, the motion was seconded and the minutes were approved unanimously.

SUNSETTING POSITION

#342 – Regarding water transfers and National Pollution Discharge Elimination System (NPDES) discharge permits.

J.D. Strong: Recommend updating the old reference to the Federal Register for the June 2008 final amendment to the Clean Water Act that excludes water transfers from regulation under the NPDES permitting program, to reflect the correct regulation, 40 C.F.R. 122.3(i). J.D. also asked if we need to update the reference to the 11th Circuit court case of Friends of the Everglades v. South Florida Water Management District, or if we still prefer this as the best representation of deference to EPA’s interpretation of the Clean Water Act. No alternative cases were presented.

With the noted revision to reference 40 C.F.R. 122.3(i), Position #342 was moved for approval, the motion was seconded and Position #342 was unanimously reaffirmed by the Committee.

ENVIRONMENTAL PROTECTION AGENCY UPDATE

A. EPA Hydraulic Fracturing Study

Jeanne Briskin, Hydraulic Fracturing Research Coordinator, EPA, provided an update via phone on the EPA’s recently released draft report on the relatively low impacts of hydraulic fracturing on drinking water. The report identified vulnerabilities to consider such as flowback of produced water, inadequately treated wastewater, and areas with poorly constructed wells. The assessment is heavily based on peer-reviewed work and can assist state, tribal and local decision-making. The Science Advisory Board will have a teleconference in September to frame the issues for peer review, with a discussion held in October.

Note: The Science Advisory Board will hold public teleconferences from 12 p.m. to 5 p.m. (Eastern Time) on the following dates: Wednesday September 30, 2015; Thursday October 1, 2015; and Monday October 19, 2015. The public face-to-face meeting will be held on Wednesday October 28, 2015 from 9 a.m. to 5:30 p.m., Thursday October 29, 2015 from 8:30 a.m. to 5:30 p.m., and Friday October 30, 2015 from 8:30 a.m. to 3 p.m. (Eastern Time).

B. Waters of the U.S. Rule

Joan Card, Senior Policy Advisor, EPA Region 8, noted that she has enjoyed her time working with the WSWC and appreciated being at this meeting. She provided an update on the

Waters of the United States (WOTUS) final rule, which was finalized in the *Federal Register* on June 29 with an effective date of August 28, 2015.

Before the rule was finalized, EPA engaged in 400 outreach meetings to various parties. Joan thanked WSWC in particular for their comments to the docket. EPA was responsive to the comments provided as it finalized the rule.

In addressing the substance of the WOTUS rule, Joan asserted that it honors state authority to allocate water. It excludes groundwater, with references to subsurface flow removed. Language concerning ditches now focuses on ditches as tributaries. Case-specific nexus analyses have been reduced to a narrower class of waters. States can develop more stringent water quality standards

The agencies are looking at state technical workgroups for meaningful consultation on the implementation of the WOTUS rule.

Question/Answers:

J.D. Strong: There was a lack of meaningful state consultation, a failure to involve the states as co-regulators in the development of the rule. Ken Kopocis and others have mentioned that there will be more meaningful consultation in the implementation of the rule, which will hopefully involve something more than informational webinars. Can you enlighten us on what that may look like?

Joan: They are talking about consultation right now at the highest levels of the agencies, and they are discussing state technical workgroups. Another thing to consider is that the TSD and preamble are quite specific. I don't have specifics on the agency process to involve states, but hope to figure that out soon.

Walt Baker: I sent out a questionnaire to ACWA asking two questions: Under this new finalized rule, will your CWA §402 program be affected? If so, how? I really only received 5 states responses. I got silence for the most part. Can someone articulate what changes in how you administer your §402 program?

Tom Howard: I don't think it [§402] will have any affect in CA.

J.D.: It could be that some have entered into litigation, and thus don't want to say anything.

Walt: Utah looks like it may be affected more than any others and not in ways you may think. 16% of Utah's waters that were assumed to be jurisdictional under the old rule will now be deemed to be non-jurisdictional under the new rule. The Sevier River system flows into a playa lake, which is not navigable, and doesn't connect to anything navigable. We have over 70 NPDES permits in the Sevier River system issued under federal authority. We may need to have a state program to append to any existing federal permit. We don't currently have any state statutory authority, so the effect in Utah could be significant.

J.D.: Silence does not mean there is no impact. In some cases it just takes more time to figure it out.

Trisha Oeth: We are expecting no §402 impacts in CO.

J.D.: For us [OK], Waters of the U.S. have been more confusing in the §404 program. It is odd that the Corps is not saying much and they seem ambivalent about it. As you talk about the implementation roll out, it will be critically important for the Corps to assert themselves and take a leadership role in making sure that states know how to comply with the new rule.

Joan: The Corps has been very involved in this. EPA has been far more visible, and we acknowledge that.

C. Section 518 and TMDL “Treatment as States” Rulemaking Efforts

Joan Card also provided an update on Section 518 and tribal “treatment as states” rulemaking efforts. The language of CWA §518 provides that eligible tribes may seek treatment as a state (TAS) for the Water Quality Standards Program (CWA §303(c)), and for the CWA §402 program. In the past, EPA treated applications from tribes under the Clean Air Act differently than under the Clean Water Act, requiring tribes to demonstrate on a case-by-case basis their inherent jurisdiction to regulate under the CWA, rather than viewing the CWA as an express congressional delegation of authority to tribes to regulate their reservations under the statute. Tribes have asked why? Is there a reason for a different requirement? We intend to issue a proposal to bring the CWA TAS process in line with what we do under the Clean Air Act. The proposed interpretation will be a draft rather than final, and we are interested in your comments.

The second piece of the puzzle is that tribes have some authority, but we don’t have any process for tribes to obtain Treatment as States for CWA §303(d) and the TMDL programs. We expect to issue a proposed process for obtaining that TAS. We are looking at the same kind of process for both.

Question/Answers:

Kent Woodmansey: Did the Department of the Interior just issue some rules on federal recognition of tribes?

Joan: We rely on DOI’s process. Our requirement is that they be a federally recognized tribe.

J.D.: 518 establishes authority, but there’s some debate over geographic boundaries of tribes in states like Oklahoma. We did hear from EPA headquarters that tribes would have to have water quality standards established before they could promulgate TMDLs.

David Schade: When you say tribes with reservations, that worries some of our states. The definition of a tribe is amorphous in some cases.

Joan: We hear what you are saying, but please also be sure to make your comments in writing during the comment period.

D. Water Transfers Litigation

Joan Card also provided an update on the *Catskills* water transfers litigation in the 2nd Circuit. She gave a brief overview of the TMDL exemptions for transfers from the waters of the U.S. back to waters of the U.S., the path of litigation to this point, and explained that the parties are waiting for the court to schedule oral arguments.

FOREST SERVICE BEST MANAGEMENT PRACTICES PROGRAM

Anita Thompkins, Assistant Director, U.S. Forest Service, gave a presentation on the development of best practices for Forest Service activities. The adaptable guidelines reduce legal risks, improve accountability and credibility, and allow the Forest Service to monitor and evaluate protocols and data collection. The technical guide covers best management practices for all resource activities in 11 resource areas (general planning, aquatic ecosystem management, chemical use, facilities and non-recreation special uses, wildland fire management, minerals, grazing, recreation, roads, mechanical vegetation management, and water uses.) There are 42 activity-based monitoring protocols to objectively assess the implementation and effectiveness of the best management practices, which are based not only on previous Forest Service guidance, but also on existing state, tribal, and industry best management practices. Monitoring the implementation of these practices with a two-year reporting cycle allows the Forest Service to see statistically valid trends at multiple scales (local/regional/nationwide) and adapt to needs where appropriate while still complying with legal and administrative obligations. The final draft of the National Best Management Practices Monitoring Technical Guide, Vol. 2, will be sent out by July 31, 2015 for a 120-day informal, external, substantive, management-level review with federal, state, tribal and other partners. Following that will be a 90-day period of formal internal management review.

WATER QUALITY ISSUES IN NEVADA

Jason Kuchnicki, Lake Tahoe Watershed Program Manager, talked about the Lake Tahoe program to restore historic clarity. Inter-local agreements have been key to reducing pollution, particularly small particles, urban stormwater, phosphorus and nitrogen.

Lake Tahoe is the second deepest lake in the U.S., and is the 6th largest lake by volume in the U.S. behind the Great Lakes, holding 39 trillion gallons of water. Lake Tahoe is a huge economic driver of the area with its astonishing clarity and striking blue color in its alpine setting. The lake water is drinkable, and would have enormous value if it was bottled and sold,

but its real value resides in its ecological status as one of the few, large, ultra-oligotrophic lakes in the world.

The Tahoe TMDL water quality restoration plan is to restore historic lake clarity. The program is administered jointly by NDEP and CA Lahontan Regional Water Board, and was approved by EPA in 2011. There has been extensive urban and non-urban stakeholder participation throughout the process, with maximizing the acceptance and successful implementation of the plan. Since the late 1960s, about 1/3 of the lake's clarity has been lost. The lake's clarity was at its worst in the late 1990s, when President Clinton visited the area and the EIP was created. Particles of very small size (less than 16 μm) are a problem (since they scatter light and resist settling to the lake bottom), as well as phosphorous and nitrogen, which fuel algae growth. The program objective is to get the lake back to the SECCHI measurement to a depth of 97.4 feet. This is an ambitious goal, and is the average of the levels measured between 1967-1971. Over the past decade, the lake clarity seems to be stabilizing, but it's difficult to determine whether this is due to restoration efforts or the effects of the drier climate. The current five-year average annual clarity is 71 feet. The interim goal is to reach 80 feet for 5 years by the year 2131 ("Clarity Challenge"). Urban stormwater is the major contributor to the number of fine particles in the lake, with additional contributions from atmospheric, forest, and stream particles.

Implementation of the TMDL has some unique program elements, with interlocal agreements in a collaborative approach in consultation with Nevada urban implementing partners. It offers flexibility and efficiency, especially in terms of financing and limiting operational costs. The Lake Clarity Crediting Program is a standardized accounting system that allows urban jurisdictions to gain "credit" for effective load reduction actions. The first step in the crediting process is to estimate the pollutant load reduction model. The online credit program allows participants to register, inspect, declare, and report on the platform. The inspection process is not to penalize, but allows them to know if they are hitting their targets.

A coordinated set of operational procedures is necessary to effectively manage the TMDL program over time. To ensure implementation proceeds efficiently, it is essential that the Lake Tahoe TMDL Program has a formal process to enable programmatic and/or policy adjustments. Adjustments may be triggered by changing political or economic environments, new scientific findings, input from TMDL stakeholders, or an unforeseen future condition caused by climatic, geologic or wildfire events. An annual call to the stakeholders addresses any program adjustments that need to be made, with reliance on findings from the scientific community, and all decisions, objectives and priorities are documented in the annual strategy

The Tahoe TMDL is still in its infancy. A lot of teamwork, coordination and resources—including funding—will be required to evolve and improve. You can keep tabs on their progress and accomplishment at the TMDL online interface on the website, <https://www.enviroaccounting.com/TahoeTMDL/Program/Home>.

Question/Answers:

Walt Baker asked about the clarity and standards that pertain to the TMDL.

Jason: CA has their standard at 97.4 feet, and we agreed to follow their standard.

Betty Olson asked a question about copper and particulates.

Jason: There are some streams in NV that are treated for iron.

WATER QUALITY/WATER QUANTITY NEXUS WORKSHOP

Walt Baker provided some overview information about the purpose of the workshop and presented some ideas about what could go into the workshop. He asked for volunteers for the planning committee

David Schade: this is a list of the questions I've had for 2.5 years. I'm on board with this. This challenge of not only communication within the state, but also with federal areas, and the whole interconnection and how to open up the lines of communication.

Betty Olson: Interested in assisting pulling together the workshop.

Tracy Streeter: would like to see something on how it pertains to reservoir storage - - something that affects sedimentation.

Walt: Bear River and the diversion of water that typically flows into the shrinking footprint of the Great Salt Lake.

HARD ROCK MINE REMEDIATION/GOOD SAMARITAN WORKGROUP

Trisha Oeth provided background information on this issue and the potential for forming a workgroup and initial meeting Fall 2015.

Carlee Brown: Inasmuch as WGA has this in their policy, she believes it would be productive to move this effort forward.

Trisha Oeth: There may be a window open now with respect to legislation. Senator Michael Bennett's staff is drafting legislation that is site specific. Looking at CERCLA codification of EPA guidance.

2015-2016 DRAFT COMMITTEE WORKPLAN

Walt Baker motioned to approve the proposed changes to the workplan. Betty Olson seconded the motion. The Committee approved to bring the workplan before the full Council.

OTHER MATTERS

Betty Olson briefly reviewed regulations impacting aquifer recharge with reclaimed water in CA (Orange County Water District) and other states. J.D. Strong said this is also an area of interest in OK.

J.D. Strong passed around a draft document from the EPA, Integrated Reporting Guidance, a document to assist states in preparing their 2016 Integrated Reports (CWA 303(d), 305(b), 314), and passed on EPAs invitation for comments from the states in coordination with each state's ACWA representative

There being no other matters, the meeting was adjourned.