

**MINUTES
of the
WATER QUALITY COMMITTEE
Bluemont Hotel
Manhattan, Kansas
October 8, 2015**

Table of Contents

Welcome and Introductions	3
Approval of Minutes	4
Environmental Protection Agency Clean Water Act Update	4
Wichita & the Little Arkansas Watershed Group: Financing Rural Sedimentation BMPs with Urban Stormwater Fees	8
Water Quality Issues in Kansas	10
Water Quality/Water Quantity Nexus Workshop.....	10
Other Matters	10

**MINUTES
of the
WATER QUALITY COMMITTEE
Bluemont Hotel
Manhattan, Kansas
October 8, 2015**

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

MEMBERS AND ALTERNATES PRESENT

ALASKA	David Schade
ARIZONA	--
CALIFORNIA	Jeanine Jones
COLORADO	Trisha Oeth
IDAHO	John Simpson
KANSAS	Tracy Streeter Tom Stiles David Barfield Earl Lewis
MONTANA	--
NEBRASKA	Jeff Fassett Jim Macy
NEVADA	--
NEW MEXICO	Greg Ridgley John Longworth
NORTH DAKOTA	Jennifer Verleger
OKLAHOMA	JD Strong
OREGON	--
SOUTH DAKOTA	Kent Woodmansey
TEXAS	Robert Mace

UTAH

Eric Millis
Walt Baker
Norm Johnson

WASHINGTON

--

WYOMING

Pat Tyrrell
Chris Brown
Kevin Frederick

WESTFAST

Patrick Lambert, WestFAST Liaison, Salt Lake City, UT
Anita Thompkins, U.S. Forest Service, Washington, DC
Jean Thomas, U.S. Forest Service, Washington, DC

GUESTS

Ron Graber, Kansas State University
Trisha Moore, Kansas State University
Ginger Harper, Kansas Water Office, Topeka, KS
Andy Ziegler, U.S. Geological Survey, Lawrence, KS
Carmel Walters, U.S. Forest Service, Washington, DC
Jason Armbruster, U.S. Forest Service, Washington, DC
Dave Mitamura, U.S. Army Corps of Engineers, Austin, TX
Laura Chartrand, Western Governors' Association, Denver, CO
Kathy Flanagan, Southern Nevada Water Authority, Las Vegas, NV
Shaun McGrath, U.S. Environmental Protection Agency, Denver, CO

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 Stateline, Nevada on July 9, 2015 were moved for approval by Walt Baker, seconded by Kent Woodmansey and passed unanimously.

EPA CLEAN WATER ACT UPDATE

Shaun McGrath, EPA Regional Administrator stated that it was great to be back with the WSWC, particularly in his home town where he received his undergraduate degree. He further stated that tomorrow, during the Full Council meeting, he will focus on the Clean Water Rule, drought work in Montana and the Gold King mine. In regards to water transfers litigation, there is nothing really new. Oral arguments in the Catskills case in the 2nd Circuit are scheduled for December. Shaun opened the floor to questions from the Committee.

Walt Baker: EPA has recently held some webinars on the Clean Water Rule. The cartoons and drawings, as raw as they were, have been very helpful, and I recommend adding them to EPA's website, as they are better than operating in a vacuum. Is EPA going to be releasing a little more guidance and communicating to those who may be regulated under the rule what is in and what is out?

Shaun: We did training within the agency to make sure we all know what is involved. A similar request has come about whether we can share the material with the agricultural community and others. We want to make sure that what we send out is accurate.

JD Strong: I believe they said they want to make all of the info from the webinars available on the website.

Walt: Don't wait for it to be perfect. You can always amend things or add things.

Kevin Frederick: What about lessons learned from the WOTUS process? Is there anything that EPA would consider doing differently?

Shaun: Speaking off the cuff, we were criticized by you all on the initial outreach to states. There is more that we could have done. Before we proposed a rule on the Clean Power Plan rule, we asked for extensive input, and we probably could have handled it more like the CPP. Some of the criticisms we received were not fair. We really did try to do extensive outreach. We got a ton of input and the rule changed based on the input we received.

In terms of lessons learned, I thought we had a pretty good process from the internal workings of EPA. A lot of times things are developed in Washington, DC and it's a DC-based process. This time, the EPA regions had a lot of input in the process, and I provided your input from the states into the DC process. The EPA regions and states have so much experience in implementing the CWA, so it worked well. With the Clean Power Plan, it is brand new, so we still have things to learn.

Tom Stiles: In the Water Quality Standard Rule, the process with side sessions with the states was really good. I echo Walt's statement that the webinars with EPA have been really good. We are hearing that some groups still feel disenfranchised, folks from the Farm Bureau and others, because they cannot be engaged. Do you have plans to make these available to others?

Shaun: My guess is that we will be able to respond fairly quickly to do the educational forums. My team is available, and they go out with our experts on the Clean Water Rule, and with others that you want to bring in and we provide a presentation. I would offer that to all the Region 8 states. I have some wonderful experts, and they can educate them. I can also get with my counterparts in other regions.

Tom: As state people, sometimes we bypass the regions, and go straight to HQs. What would you advise the states on appropriate channels of communication to get the process going?

Shaun: Having sat on your side of the table, I understand, and I would advise you to communicate to both and build relationships with both. The expertise of each region is different, and talking to HQ is not a bad thing. Inform your regional administrator to carry your message. We could talk about how things work in the states in our regions, and educate the regional EPA about the states' needs. Don't bypass your regions entirely.

JD: Obviously the Corps has to implement the Clean Water Rule. I think that's where the rubber really meets the road. When we reach out to our district offices, they basically say they are waiting on HQs, for guidance from EPA before they implement section 404 under the new rule. Maybe Region 6 was not as plugged in. Have you heard from the Corps side?

Shaun: Yes. We also heard a consistent theme of criticism that there is a lot of diversity in jurisdictional determinations in various regions across the country, and the question of how we are going to manage that. We're focused on the internal training of Corps' people on the ground, providing a consistent message so that everyone across the country is getting the same information about how to implement the rule. As JD's are issued they will be posted on a national website. It will allow transparency, and consistency. We are putting a lot of stock in that as a way to respond.

Trisha Oeth: Regarding the water quality standards rule, I would agree that it has been successful with one exception that I just learned about. A provision in the final rule is concerning to us, and it was not included in the previous discussion. The states have to reevaluate variances every five years, and submit the reevaluation in 30 days or the variance becomes void.

Shaun: Let me look into that. I can understand why you would be concerned.

Kent Woodmansey: Regarding the Treatment as States, South Dakota will be submitting a comment letter on the Treatment as States rule.

Shaun: I got it from Steve Pirner this week.

Kent: We are getting feedback from our tribes that they believe it will give them more authority than we understand they will have. Our understanding is that tribes will still have to go through the process to ensure that they have the capacity to implement the program. Whatever you can do to get that word out will be good. Maybe it is tribal members and not tribal leadership – I'm not sure.

Shaun: This reinterpretation simply changes our interpretation of the CWA and TAS and how it fits in with the Clean Air Act, whether tribes have a similar inherent right to apply for authority to administer CWA programs. All of the same requirements that are needed for a demonstration, those do not change.

JD: Walt and I were just talking about this before we began the meeting. We were discussing the geographic status, and whether or not they even have the authority to exercise TAS. In Utah, South Dakota and Oklahoma, the geographical scope of jurisdiction is an issue of major debate between the states and the tribes. We may then have a lot less concern. We want to make sure it is more than just the last step toward granting authority, when the geographic scope of their jurisdiction is not clear.

Shaun: We are doing nothing to change boundaries of tribes. That said, with tribes, those issues around boundaries are not always decided very well. We ran into this in Wyoming with the Wind River Tribes and the Clean Air Act, where it took EPA five years to say what it thought the boundary was. The states and tribes have been at odds for 100 years on this. When the EPA's identification of boundaries went to court, it forced the disagreement to come to a head. If this is challenged and goes to court, that is the proper place. Hopefully it will be resolved one way or the other.

Walt: Kudos to EPA for making the determination that there should be a single point person for water instead of three in Region 8.

Shaun: Thank you. That hasn't been officially announced yet. They divided the water program into pieces in the 1990s, and having distinct water programs didn't make sense. We have been having a conversation and to have just one office of water. With that said, it requires congressional approval.

Trisha Oeth: Gold King has brought ideas forward to coalesce and decide if this is a CERCLA issue or a CWA issue. Folks seem to feel it is CERCLA. We're convening meetings and starting to put pen to paper.

Shaun: Some are holding out that Good Sam is the tool to fix problems like the Gold King Mine, but we're not seeing that example as the best connection to Good Sam legislation. In a Good Sam, in the way that we all developed the Udall bill, we recognized that entities would not have the resources to get all of the pollution, but improve the discharge by maybe 50%. Another part of the concept is that we structured the bill to anticipate blow-outs, with a workplan structure developed by WGA and WSWC that would have to be approved so that if there was a blowout there would be no ongoing liabilities for the entity. What we were doing up there at

Gold King very well fits in line with the bill that was contemplated. If we do a Good Sam bill, and a blow-out is created, the millions of dollars in remediation would fall to the states and EPA, because the Good Sam entity would be protected from that liability. It is a good tool, but it has its own limitations.

Tom Stiles: I will play out a doomsday scenario. There is tension between EPA and the states. We are seeing more rhetoric of political forces saying, just give it back to EPA. How well positioned are you in the region, or EPA in general, to take back some of these delegated programs?

Shaun: I'm not going to answer your question directly. It is in no one's interest to give the programs back. If there are problems between the states and EPA, let's work out those problems. The programs aren't one-size-fits-all.

Tom: If that kicks up on us, what counterpunches can states provide to put out that fire?

Shaun: We will have differences at times. That is inherent in our government. It does not mean we are entirely dysfunctional. On some things we work quite well together. The brownfields program comes to mind. No one disagrees that abandoned local places drag down the local economy, and the toxic waste needs to be cleaned up. There is plenty of good to keep in mind. The media and politics always focus on our disagreements.

Walt: This question is for Tom. Well, what do we give back? Independent of the NPDES program, I'd like to give stormwater back, or pesticides. But we are obligated to do these things under our state programs.

Tom: I don't have a counter. We could quit doing standards, but then EPA would have to step in. No one wants to do that. There is always someone out there that is trying to generate the idea that EPA could handle these programs.

Shaun: It is really all a part of throwing the baby out with the bath water. It just goes to the underlying problems. People just go to the extremes, but it is becoming more of a reality in conversations. When the EPA funding gets cut, it hurts the states.

Kent Woodmansey: I have a CAFO facilities and permitting comment. Some states would like EPA to take over the program, but what will the difference be?

WICHITA & THE LITTLE ARKANSAS WATERSHED GROUP: FINANCING RURAL SEDIMENTATION BMPs WITH URBAN STORMWATER FEES

Tom Stiles, Chief, Office of Watershed Planning, Kansas Department of Health and Environment (KDHE) provided an introduction to Kansas' program to use off-site BMP implementation as an alternative stormwater offsite pollution reduction program. In Kansas we have urban islands in a sea of corn, with rural land use and agriculture the dominant sources of

pollution in the watersheds. Urban wastewater is a distant third in Kansas' list of water quality concerns. Having offsite programs is much cheaper, and the load reductions improve much better with the focus on offsite BMPs. The city of Wichita and the developers bought into the program, and for the past couple of years we've been working out how that looks. The MS4 annual reporting requirements give us a way to evaluate how the program is doing.

Ron Graber, Watershed Specialist, Kansas State University, described how the program got started from a "boots on the ground" perspective. He noted that they are careful to label the program as "off-site BMP implementations" rather than "stormwater trading." Changes to the MS4 permits in 2014 allowed the off-site program, opening the option to cities like Wichita. He explained the KDHE perspective, how urban stormwater comes in third after wastewater management and NPS management, and how they looked at the numbers and realized it was much more cost effective to build BMPs outside the MS4 jurisdiction. The cropland BMPs were (overall) highly effective and cost less, on the order of \$10/ton, compared to the urban BMPs that were less effective and cost more around \$5,000/ton

They needed a rural broker to put the MS4 money into the hands of rural landowners to make the program effective, so they created the Watershed Restoration and Protection Strategy (WRAPS). They also needed an agreement, and a method of tracking which practices were implemented using MS4 funds. They needed assurance that the practice would remain in place and function over a set period of time, and the ability to report annual activities to KDHE. They developed guidance for the program rules, including eligibility, runoff management requirements, administrative framework, and establishing sediment as the program "currency," with a sediment credit ratio and payment rate.

There are 36 WRAPS projects throughout the state, with HUC-8 or HUC-12 watersheds. For each project it is a process to bring local stakeholders together, to look at the available data and collect more data, to walk through TMDLs and other things that need to be addressed in that watershed, and developing management plans to address watershed priorities. He provided some examples in the Little Arkansas

Next, Trisha Moore, Assistant Professor from Biological and Agricultural Engineering, Kansas State University, explained how they "won the day" with developers with this new approach. We knew from the numbers that there was great potential cost savings by addressing the water quality problems up in the watershed rather than in the urban areas, but we didn't know how to make that work. We were most concerned about sediment control and removal. The economic incentives for program participation had to benefit the developers, even if they were larger developers, to have the off-site option. The Storm Water Advisory Board (SWAB) was uneasy about using a no-till program, pouring money year after year into the same practice. It was a long educational process for them to see the value of sediment and nutrient reduction, and that it was much greater than the value of a stream bank project. Over time their confidence in the project increased, and we've seen additional benefits.

We made a great effort to make the sediment credit payment rate as transparent as possible, but it was built on many assumptions. We provided the spreadsheet to the city so they

could adjust those assumptions based on various scenarios. The payment rate is based on the cost for the producer to adopt and maintain the practices, the cost to replace offsite BMPs should they be discontinued, and administrative costs to enroll and track offsite BMPs. They would have to control flooding, and trash, and the city has made some accommodations for this as well.

It was tough to get everyone on board. There were deal breakers for various stakeholders for the different options presented. Getting the stakeholders involved, though, meant that everyone was on board and familiar with the plan.

Where we are now: The Wichita Stormwater Advisory Board has submitted a final plan framework to the Director of Public Works & Utilities for approval. There were several options that were initially deal breakers, but they are now built-in to the program. The City Council will look at this proposal and make suggestions, after which it will go to EPA for approval. Then it still needs to go for a final vote. They believe they are close to having something that folks can sign off on at this point.

The developers are interested from an economic standpoint, because this is a revenue stream. We have a relationship with the City of Wichita that we've enjoyed now for about 10 years. We have incentivized corn growing to keep atrazine out of the water system. They have also stepped up on other products entering into the stream. A commercial lab would be much more expensive, so there are added benefits to implementing their offsite BMP program.

Question/Answers:

Pat Lambert: How do you come up with targets for time reduction? A you monitoring and collecting data for average erosion rates?

Ron Graber: The short answer is No. We had an NRCS innovation grant to get as much modeling and mapping of sediment contributions as we could. We knocked on doors. Through ground truthing and mapping, we got a pretty good idea of our erosion rates, extrapolated across the watershed. It is not exact, but it is fairly close. We have tried to document our practices and monitoring the sub-watersheds for atrazine, bacteria, etc. We have done a fair amount of monitoring in the watershed for over ten years.

WATER QUALITY ISSUES IN KANSAS

Tom Stiles discussed water quality issues in Kansas. Nutrients are the number one priority. Milford Reservoir's blue-green algae is the most visible, public expression of the nutrient problem they have. It is spilling into property value issues. Our relationship with downstream states is very important. Nearly all rivers and streams end up in Oklahoma. We are cognizant of the quality of the water we are dumping into Oklahoma. In Eastern Kansas streams the problem is phosphorous.

Second issue is nitrates. Public water supplies are butting up against standards for SDWA. We're working with the Department of Agriculture to develop a BMP action plan. We're looking at how to adopt the 2013 ammonia criteria. Looking at the face value, we have 120 point sources, and most meet the criteria. We have about 20 that need upgrades, and they are aware. Small town lagoons do a good job of knocking down the sources. We're using multi-discharge variances to get by, and it works as long as they don't grow unexpectedly or add industries, and as long as others comply. With our Quid pro quo arrangement, 98% of lagoons will comply with the criteria.

The significant issue of sediment we have delegated to the Kansas Water Office. There is a quality aspect to it in the stream systems, but there is also infrastructure integrity that needs to be protected, and currently nutrients are our highest priority.

Question/Answers:

Walt: On your multi-discharge variance, is it too costly to upgrade the lagoons?

Tom: It is about affordability. The cost of the upgrade doesn't fit within the household income and would wipe out small towns

Walt: If it is too costly to do everything, is doing nothing the only alternative? Is there some middle ground of upgrades than can be pursued?

Tom: We are talking about towns of 400 or less. They are dying, so we don't expect any increase in loading from these small town systems. We're employing attrition. We see a greater benefit in adopting the criteria and applying it to the larger systems with heavier waste loads.

WATER QUALITY/WATER QUANTITY NEXUS WORKSHOP

Walt Baker reported on the Water Quality/Water Quantity Workshop. He said that there was great discussion on the W2Q nexus. It was interesting going through the notes from the workshop. He read through a few of the problems that were raised, albeit they were from the 1997 report. The things that were brought up 18 years ago are still with us in spades. We want to figure out a path forward and some take away messages.

In Wyoming, interesting things have gone on. States can stay out of the mix, and some of the folks can agree on how to work things out amongst themselves.

It is important to review the 1997 paper and figure out if there is a way to make improvements. Communication seems to be the key. There are some common goals we can achieve between the water quality and water quantity agencies. We looked at the example of a Michigan-like cooperative agriculture program. We talked about developing MOUs between agencies within a state or between state-federal agencies to help the agencies know how to conduct business with other agencies. Overcome the perception of the use of wastewater. An

example was in Texas and the use of wastewater. We think of toilet to tap - - but that is not the situation usually. A lot of us live downstream from wastewater treatment plants. We need to be able to work through the tensions as we manage water resources and water quality. We need to memorialize these concepts and perhaps put them on the WSWC website so that as the next generation of water leaders come to the fore, they can see the work that has been done, and continue and carry on. There are other stakeholders that can help us in developing these tools, and we should take advantage of opportunities to work with partners hosting workshops and other helpful programs and events. Water quality is not the enemy. We need to have a concept of “one water,” and we need to get out of our silos. The stakeholders and citizens can’t tell the difference between different state agencies, or sometimes even between state and federal agencies.

J.D. Strong added that a couple of take home messages were: defining the public interest, whether through statute, case law, or administratively. Maybe it would be useful to look at how we as states handle the public interest. Each state or even different agencies within the same state may handle public interest differently. Explaining it to each other or to federal agencies forces us to find some common ground on water quality/water quantity issues.

We talked about holding brown bag breakfasts, and the need to communicate early and often with federal agencies, before the levee breaks. It is important to develop partnerships and focus on an issue that is important to the western states that has water quality/water quantity connotations and friction. Maybe we can look at managed aquifer recharge, and look at examples across the West, look at how we can work with local stakeholders to get projects off the ground. Take a look at how entities in the state, across the state, and with federal agencies are dealing with this issue.

Walt noted the 303(d) vision that was spearheaded by Tom Stiles and offered kudos to Tom for leading that national effort.

OTHER MATTERS

There being no other matters, the meeting was adjourned.