

MINUTES
of the
EXECUTIVE COMMITTEE
Virtual Meeting
No Host (Due to COVID-19)
September 28, 2020

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MEMBERS AND ALTERNATES PRESENT

ALASKA	--
ARIZONA	Kyle Miller
CALIFORNIA	Jeanine Jones
COLORADO	Becky Mitchell
IDAHO	Jerry Rigby
KANSAS	Chris Beightel
MONTANA	Tim Davis
NEBRASKA	Jesse Bradley
NEVADA	Micheline Fairbank Brad Crowell
NEW MEXICO	John D'Antonio
NORTH DAKOTA	John Paczkowski Jen Verleger
OKLAHOMA	Julie Cunningham
OREGON	Tom Byler
SOUTH DAKOTA	Kent Woodmansey
TEXAS	Jon Niermann Jim Rizk
UTAH	Todd Adams

Todd Stonely
Erica Gaddis

WASHINGTON

Mary Verner

WYOMING

Steve Wolff
Chris Brown

STAFF

Tony Willardson
Cheryl Redding

WELCOME/ROLL CALL

Tim Davis, Chair called the meeting to order. The roll call was presented by Tony Willardson.

APPROVAL OF MINUTES

The minutes of the meeting held virtually on June 22, 2020 were moved for approval by Jerry Rigby. The motion was seconded by Julie Cunningham. The minutes were approved unanimously.

REPORT ON BUDGET AND FINANCES AND STAFFING

A. FY2020-2021 Budget and Long-Term Outlook

Tony Willardson sent out budget information prior to the meeting. One document included the budget as was approved during our meetings in July. A second document was dated the 24th of September and was a related WSWC WaDE budget comparison. When the budget was initially approved, it did not separate out expenses for WaDE, as compared to our other expenses. The highlighted portion shows the approved budget with anticipated membership assessments at \$561,000. Tony noted that nearly all of the dues have been paid (two and a half states have dues still owing, and we expect to see that money before the end of the fiscal year).

We have entered into an agreement with NASA JPL with respect to a tech transfer workshop. Work has been delayed due to the pandemic, but we will continue to work on that effort and anticipate some revenue. We have budgeted up to \$30,000.

The other good news is that the Internet of Water and Duke University have been working with a corporate sponsor and it's now at the stage they've asked for a detailed proposal, for a grant of \$6 million over five years. Of that amount, we anticipate that the Internet of Water would continue to support WaDE as a major integral IOW hub.

B. Moore Foundation Grants Status Report

Tony remarked with respect to the Moore Foundation, Internet of Water grant, we had budgeted \$308,195 primarily for the WaDE effort. We charge a small amount for overhead (7.5%), which is shown in the budget comparison document at \$19,515. Most of the WaDE funding is committed to salaries and benefits for Adel and Ryan, as well as a portion for contract services and assistance to states. Thus the bulk of the grant money is not available for our regular budget items. Please note in column F, Tony made some reductions in anticipated expenditures, so that it balances with the WaDE overhead revenue. That covers the changes Tony anticipates at this point. The Management Subcommittee was given authorization to make changes to the budget, and Tony will work with them on these and any future changes that are needed.

The third document shows anticipated revenues through the completion of our WaDE agreement. The agreement entered into has different phases. The current contract runs through December 2020 and we have a commitment for another \$326,000. We have asked the grant funders to accelerate expenditure of those funds, in part so we can use funds to pay an outside consultant who is working on the web dashboard. We anticipate this budget request will be approved and the WaDE program will be funded through September 2021.

SUNSETTING POSITIONS

Tony Willardson reviewed the positions due to sunset at the Fall meeting if no action is taken. He noted that with respect to **Position #412** - Supporting Indian water rights settlements, no changes have been submitted or recommended, though the position still has merit.

With respect to **Position #413** – Supporting prompt reauthorization of the Farm Bill in 2018, initially it was felt this position could be allowed to sunset. There is a lot of material in the position that supports different programs under the Farm Bill that could be used in letters to the Appropriations Committee based on this position. Tony included edits that would eliminate references to the reauthorization of the Farm Bill, as well as references that talked about raising acreage limitations. The reauthorization runs for five years, so it will not come up again until 2023. The programs that we support, such as the Environmental Quality Incentives Program (EQIP) and others are still relevant. Tony believes it would be wise to keep this position with the changes as suggested.

Steve Wolff agreed that this position should be retained. Julie Cunningham remarked that she sent this position to her ag folks for review.

No changes are being recommended for **Position #414** – Asserting state primacy on protecting groundwater quality.

Tony commented that with respect to **Position #415** – Supporting the *Dividing the Waters* program for judges, the WSWC continues to support the effort since States agree that judges should know more about water law as they make decisions. A few changes have been suggested to update the position as well as to reflect that they are no longer being funded by the Bechtel Foundation.

Micheline Fairbank: Is there a way to weave into this not only encouraging the *Dividing the Waters* program, but also encouraging participation by the judiciary in the various states? Nevada has had very poor participation in these training efforts. Is there a way to encourage not only the program, but participation?

Tony Willardson: We could amend the position to include that language.

Mary Verner: I want to speak in support of Micheline’s suggestion. Washington State hopes to embark on some new water rights adjudications, if we’re able to secure funding in the next legislative session. It is intimidating to Superior Court judges to take on an area of specialty that’s new to them. I think that our resolution encouraging them to avail themselves of this training would be a nice paragraph to add to the resolution.

Chris Brown: I agree with the idea of endorsing, supporting or encouraging participation by judges in this program. This particular position is referred to the Legal Committee and we can work on some language to incorporate that general idea.

Jon Niermann: I agree that this is an outstanding program and very valuable. I got to attend one of the sessions, which was well attended. But I was just noodling over how we could get greater participation among the judges. Certainly putting a paragraph in our resolution is a great idea. Maybe we then mail a copy of it to each of them. I don't know. But I’m entirely on board with the resolution and the suggestion to encourage judges to participate.

Chris Brown will work with staff on a paragraph to encourage participation by judges in the *Dividing the Waters* program.

Relative to **Position #416** – Federal agency actions to expedite general stream adjudications, Micheline Fairbank introduced some suggestions in particular conforming to fees and costs with one other tweak.

Chris Brown – I have no issues with regard to Micheline’s suggestions on the fees and costs. I suggest the redline changes for the entirety be sent to the committee for review.

Mary Verner: Do we anticipate any feedback from our federal agencies? Do you have contacts

in the federal water community as to how this might be received?

Micheline Fairbank: Steve Bartell may have some comments. Micheline provided some additional explanation stating that the federal government is recognizing, to some degree, how they need to approach their involvement in adjudications. Not that they are necessarily waiving or not pursuing any legitimate claim to invested or pre-statutory or more reserved rights. She continued by saying, “Unfortunately, I think we’re always going to be a little bit at odds with the federal government just in the manner in which we adjudicate our water rights, particularly pre-statutory kinds of stock water rights that we tend to assign to the claimant, not the federal government or the landowner. That’s just the statutory structure.”

Tony Willardson: I would add that we have had discussions on these items in the past. The Legal Committee does have a Non-tribal Federal Water Needs Subcommittee that is looking at other federal water needs and land management agency needs. Some agencies are inclined to help pay some of the costs related to their claims. But obviously, the Supreme Court decision has affected them. It is an ongoing issue that has not yet been resolved. I think this is an attempt to keep it in front of the federal agencies. and point out that it’s a benefit to them to have these rights adjudicated.

Chairman Tim Davis recommended that the WSWC move forward with this position and allow the Legal Committee time to massage the language between now and the Legal Committee meeting in October.

EXECUTIVE DIRECTOR’S REPORT/WSWC ACTIVITIES AND EVENTS

Tony Willardson commented on the summary document contained in Tab E in the briefing materials. We have written letters to the Senate Appropriations Committee expressing support for the USGS Water Resources Research Program, as well as for the OpenET Initiative, which I think you've heard us talk about before. That is an effort to try and gather information on evapotranspiration that can be provided in a user-friendly manner. This has involved teamwork among the federal agencies, including the National Atmospheric and Space Administration (NASA), and the WSWC has been involved.

At the request of the Senate Energy and Natural Resources Committee, Tony recently joined a call to discuss some pending legislation regarding the water and energy efficiency grants under WaterSMART. One provision prohibits an applicant from increasing their irrigated acreage as well as their consumptive use, but that doesn’t prohibit them from putting more water on the land (as long as they don’t increase their consumptive use). That has raised concern among a number of environmental groups who see much of this money going to increase irrigation efficiency, but that the states allow that water to be used for another cutting of hay or for shoring up their water supply in a water short year. A number of these groups would prefer to see more water savings dedicated to instreamflows. He shared the proposed language with WSWC members Tom Byler and John D’Antonio because their senators were part of the effort.

There were many entities included on the call. Those on the call included the minority and the majority staff, as well as a number of environmental groups -- Trout Unlimited, the Theodore Roosevelt Foundation, and others, as well as the Family Farm Alliance and the National Water Resources Association. We've had some good discussions. The environmental groups recognize the limitations that they are under given state law. If there is an intent to try and increase streamflows, there are a number of state programs that can accept donations of water.

Senate Republican staff are very concerned that some of the language could be seen as contrary to state water law. Oregon's water rights are based on reasonable beneficial use, and not on consumptive use, so that language could be problematic. There are some challenges and we continue to participate in discussions with the Senate staff. We may have more to report in October. Tony can circulate the language and states can respond with information that can be shared with the Senate staffers.

A number of bills are pending that would have an impact on water infrastructure. In an earlier WSWC letter to Senate leadership, we expressed support for water infrastructure legislation and for an amendment proposed to the Great American Outdoors Act, which would have set aside \$400 million from the Reclamation fund for aging infrastructure. It would have provided that money without further appropriation, for Interior to upgrade existing Reclamation projects. It would address the financing challenges that local water districts face where they have taken over operation and maintenance of a federal project, so called "transferred works." Districts sometimes face costly rehabilitation and replacements expenses that are beyond their ability to pay upfront. However, they are unable to get a loan, since they do not own the project. Thus, they don't have collateral for the loan even though they're dependent on the project for their operations.

Senator McSally has also introduced a freestanding bill which would provide that these irrigation districts with transferred works could apply to Reclamation for funds for upgrades and then add it to their repayment contract. That could be a solution to what has been a longstanding issue, such as the repair of a leaky siphon on the St. Mary's project in Montana. Another example was the collapse of a canal in Wyoming. To the extent we could support this legislation, the Senate majority staff would appreciate it.

Tony also highlighted the series of WestFAST webinars. A number more are scheduled in September and October. There has been good participation.

We continue to work with the Indian water rights working group. There is work going on with the Navajo, the Kickapoo and the Hualapai settlements. Additionally, we're trying to find a permanent source of funding for Indian water rights settlements, and have supported extending the existing settlement fund authorization for appropriations.

Staff have participated in numerous calls with the Western Regional Partnership on their "Deep Dive" related to water security. They are looking at best management practices, water

conservation areas, water rights and policies, data and a number of other issues. We have lent expertise from our members and staff to their discussions.

Lastly, Tony gave a presentation to state legislators as part of a panel on the Colorado River Basin at a forum as part of the Council of State Governments-West annual meeting.

Tony raised with the Committee a request from David Ross, EPA Assistant Administrator for Water, to make a presentation to the Council on work they are doing on mapping Waters of the United States (WOTUS). They have asked to take some time on Wednesday afternoon, October 14 to share what they have done. This would include members of the Water Subcabinet and senior officials from the Administration. Dwane Young has been working with them on this effort. It is a very interesting discussion, and I believe would be worth our time. With the Chairman's approval, we will try to set up a meeting on October 14.

With the Committee's consent Tim Davis asked Tony to schedule the WOTUS mapping session.

COUNCIL MEMBERSHIP UPDATE

We discussed at our last meeting, representatives who we have included on our membership list by virtue of their position, although we've not received a Governor's appointment letter. Many of you took that to heart, and we have letters from one or two governors appointing members to the Council. A few remain for which we still have not received letters. A list is included under Tab G in the briefing materials for your reference. We do want to get a Governor's letter affirming representation for some of these members.

FUTURE WSWC MEETINGS

2021 Spring – El Paso, Texas – March 23-26, 2021

We have a contract, but we are holding it until we can get a sense from members of who would attend, if they could. Or who would participate virtually.

Jon Niermann stated that he is not confident that we should gather together in El Paso in March. Being allowed to do so is one issue. Whether it would be wise to do so is another issue. We may just need to let it play out a little bit longer.

Discussion

Tom Byler: I concur with Jon's remarks. We're also dealing with budget constraints in Oregon, and we're limiting out-of-state travel right now for my agency. That will continue through the end of our budget biennium, which will end on June 30 next year. So travel is going to be

another consideration for folks just from a fiscal standpoint.

Micheline Forbank: I would echo that. Our water resources agency, as part of our budget cuts for this fiscal year, gave up all of our out-of-state travel. So we're one hundred percent tapped out on our state travel. That being said, if there is an in-person meeting, I don't mean to say that if it's otherwise appropriate and reasonable for travel, that Nevada members wouldn't be willing to fund it one way or another.

Tony related that all of our member states are facing budget constraints. If we signed the hotel's contract, we would immediately be responsible for substantial costs if we were not able to perform. Thus, we'll sit on it for now and see where we're at in a few months.

Tim suggested we discuss this again during the Full Council meeting on October 15. The list below shows the anticipated future meetings schedule.

2021 Summer – Cody, Wyoming – June 23-25, 2021
Fall – South Dakota (last held 10/4/13 in Deadwood)

2022 Spring – Washington, D.C.
Summer – Montana (last held 7/18/14 in Helena)
Fall – Oklahoma (last meeting on 4/17/15 in Tulsa)

SPRING 2021 MEETING SUNSETTING POSITIONS

- WR [Position #417](#) – supporting Forecast Informed Reservoir Operations and Innovations
- WR [Position #418](#) – supporting Weather Station Networks
- WR [Position #419](#) – supporting Water Infrastructure Funding
- WR [Position #420](#) – regarding Integrating Water and Energy Planning and Policy
- WR [Position #421](#) – supporting Federal Research on Climate Adaptation
- L [Position #422](#) – State Primacy over Groundwater

OTHER MATTERS

Tim thanked Tom Byler for his service as the Water Resources Committee Chair for the past couple of years and welcomed Mary Verner as the new Chair. He then mentioned Kevin Frederick will be stepping down as vice chair of the Water Quality Committee. Erica Gaddis from Utah will be joining Kent Woodmansey from South Dakota to serve as joint co-chairs of the Water Quality Committee. Thank you, Erica, for stepping up.

Tony reviewed a powerpoint concerning the WSWC's website metrics. Jeanine Jones encouraged us to look a little bit closer at how our website was being used and to begin discussions of how we might improve it and reach out to others. For the most part, our website

has been a tool to inform our members, and less so as a public portal. It is interesting that the metrics indicate we are getting a number of hits on the WestFAST webinars and on their newsletter.

In the future, we'll need to consider what, if any, investments we want to make and how to make the site more user friendly for the public. At this point, obviously, given the budget situation, Tony is not inclined to spend a lot of money toward that effort. We have inquired about developing a more organized and effective website, though it comes with a hefty price tag.

At this point, we will continue to do what we can in-house with perhaps some minor assistance. We'll likely need to discuss what we want to see in our website and who the target audience is. Do we want to attract and try to educate the public?

Jeanine Jones suggested that we make the website as useful as possible for WSWC members and their member agencies, as well as for our federal partner agencies. However, it was not her intent to necessarily benefit the general public.

Julie Cunningham commented that it may be useful to attract additional users, for example the judges, and perhaps the next generation of water managers.

Tony agreed it may be useful to inquire as to how we can best help members and reach out to those who we would like to visit the website.

With no further matters, a motion to adjourn at 4:30 p.m. was made by Julie Cunningham and seconded by Steve Wolff.

Adjourned.