

**MINUTES  
of the  
194<sup>th</sup> COUNCIL MEETING  
Virtual Fall Meeting  
(due to COVID-19)  
October 15, 2020**

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**MINUTES  
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194<sup>th</sup> COUNCIL MEETING  
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**MEMBERS AND ALTERNATES PRESENT**

<b>ALASKA</b>	--
<b>ARIZONA</b>	Trevor Baggiore Ayesha Vohra Kyle Miller
<b>CALIFORNIA</b>	Jeanine Jones
<b>COLORADO</b>	Rebecca Mitchell
<b>IDAHO</b>	Jerry Rigby
<b>KANSAS</b>	Earl Lewis Tom Stiles Kenneth Titus
<b>MONTANA</b>	Tim Davis Jan Langel
<b>NEBRASKA</b>	--
<b>NEVADA</b>	Jennifer Carr Micheline Fairbank
<b>NEW MEXICO</b>	Greg Ridgley John D'Antonio
<b>NORTH DAKOTA</b>	Jennifer Verleger
<b>OKLAHOMA</b>	Sarah Gibson Julie Cunningham
<b>OREGON</b>	Tom Byler
<b>SOUTH DAKOTA</b>	Kent Woodmansey

**TEXAS**

Jon Niermann

**UTAH**

Erica Gaddis  
Norm Johnson  
Todd Stonely

**WASHINGTON**

Buck Smith

**WYOMING**

Chris Brown  
Kevin Frederick  
Steve Wolff

**GUESTS**

Avra Morgan, Bureau of Reclamation  
Sue Lowry, Interstate Council on Water Policy  
Christopher Estes, Chalk Board Enterprises, LLC  
Subhrendu Gangopadhyay, Bureau of Reclamation  
Kelly Mills, Texas Commission on Environmental Quality  
Catalina Oaida, NASA Western Water Applications Office  
Mark Davidson, NASA Western Water Applications Office  
Kathy Alexander, Texas Commission on Environmental Quality

**WESTFAST**

Mike Eberle, USDA Forest Service  
Patrick Lambert, U.S. Geological Survey  
Lauren Dempsey, United States Air Force  
Deborah Lawler, WestFAST Federal Liaison  
Heather Hofman, USDA Natural Resources Conservation Service

**STAFF**

Tony Willardson  
Michelle Bushman  
Cheryl Redding  
Jessica Reimer  
Adel Abdallah  
James Ryan

## **WELCOME AND INTRODUCTIONS**

WSWC Chair Tim Davis welcomed those in attendance at the meeting. Introductions were not made.

## **APPROVAL OF MINUTES**

The minutes of the virtual meeting held on July 22, 2020 were unanimously approved.

## **COMMITTEE REPORTS**

### **A. Water Resources Committee**

Mary Verner mentioned the committee's proposed changes to Position No. 413, regarding supporting reauthorization of the Farm Bill, and turned time over to Tony Willardson for the details.

Tony explained the committee's discussion to change the title to read "USDA Conservation Programs" rather than "Farm Bill Conservation Programs." Kansas raised some concern that the Department of Agriculture has chosen not to implement some of the authority that they were given in the 2018 Farm Bill related to dryland farming. There is a whereas clause in the current resolution that calls out maintaining sustainable agricultural economy, promoting efficient water use, and achieving net water savings while maintaining production, and it does say in some cases, assisting in the transition from irrigated to dry non farming. Tony thought that language would be sufficient for the Council to address the issue with USDA. He recommended additional language in the last further resolved clause to also include, where it talks about incentive-based conservation programs, including in some cases, assisting in the transition from irrigated to dry land farming. Then in the first Now Therefore be Resolved clause, just emphasizing that the Council urges support for the conservation programs, and urges the Administration and Congress to provide sufficient funding for the 2018 amendments. In the fourth Whereas clause, in addition to the mutual ditch companies, he suggested the addition of "or acequias."

Mary moved the resolution to be approved as amended. There was a second, and hearing no objection, the position 413 was readopted.

Mary summarized the remainder of the meeting. The Committee enjoyed a presentation by Don Klein, Assistant Director, USGS Water Resources Program, who addressed their strategy for observing, understanding, predicting and delivering water science, particularly regarding quantity and quality throughout the water cycle at a high temporal and spatial resolution. He also addressed the ten recommendations from a 2018 National Academies of Science (NAS) report. Tony provided some information about federal water infrastructure legislation. We heard about

bills that have been introduced and advanced by senior leadership in the Senate and House. Amy Duffy, Western Regional Partnership (WRP) Coordinator, described how in 2007 the Department of Defense brought together federal, state and tribal leaders to identify common goals and emerging issues related to protecting natural and cultural resources, while promoting sustainability, homeland security and military readiness, given the high percentage of military reservation in the Southwest. WRP has recently undertaken a “deep dive” into water security issues, dividing them into four “buckets” of data, water resource management strategies, water laws and regulations, and policy, planning and implementation. WSWC members and staff have been involved in numerous WRP calls and webinars. A report will be prepared for WRP principals to consider next year. Tom Byler and Mary described the interstate Walla Walla River Basin partnership that is identifying and addressing groundwater and surface water issues together with the Confederated Tribes of the Umatilla Indian Reservation, USGS and a watershed basin council. Mary and Tom also led a roundtable discussion of water use, metering, monitoring and reporting. Staff updated members on pending federal water infrastructure legislation, and the continuing development and deployment of the WSWC Water Data Exchange (WaDE).

### **B. Water Quality Committee**

Erica Gaddis noted the Water Quality Committee recommended to the Full Council that Sunsetting Position No. 414, Asserting State Primacy on Protecting Ground Water Quality be approved. There was a motion, a second, and without hearing any objection Position No. 414 was readopted.

The Committee heard updates on EPA’s new Office on Mountains, Deserts and Plains, and about the water reuse report. There was a long discussion on the Clean Water Act Section 401 rulemaking, largely with respect to developing an MOU template between states and federal agencies that will now have new authorities. The MOU effort is also an attempt to provide some mechanism to resolve some timeline issues that have arisen as a result of that rulemaking. There was a roundtable discussion on the water quantity-and-quality nexus. New Mexico shared an effort from some of their legislators to explore more formal structure for Integrated Water Resources Management and interest from New Mexico to hear other states that may have gone down that path. There was also some discussion about algal blooms and climate change, and the relationship between the two. Lastly, we had a quick update on hydraulic fracturing and the collaboration with the Groundwater Protection Council. Michelle and Jessica will be working with that Council and with many of our state agencies that oversee oil, gas and mining to collaborate on that issue moving forward.

### **C. Legal Committee**

Chris Brown reviewed the Committee’s proposed changes to three sunseting positions. Position No. 412, which supports Indian Water Rights Settlements, had some language refinement edits that more properly captured the ideas conveyed. Also, the committee struck the portion on land claims to make it applicable to just water rights. The Legal Committee recommended this advanced to the Full Committee for readoption with proposed edits. There

was a motion, a second and without hearing any objection, Position No. 412 with the edits was readopted.

Position No. 415 related to the Diving Waters Program, with several edits made. One change simply reflects that funding is no longer available to the program; one acknowledges that a recession is not necessarily the source of our funding woes as states; and then the last one was the addition of the resolution clause that was added to encourage judges, water masters and referees to actually participate in the program. I would note that a small group was set up to consider some additional language for this resolution into the future, with the potential to encourage state judicial branches or water agencies to consider funding in this program as well. A subgroup will meet to come up with some additional resolution language to provide to the Committee for consideration at the next meeting. With these edits, the Legal Committee recommended that this be forwarded to the Full Council for readoption. There was a motion, a second and without hearing any objection, Position No. 415 with the edits was readopted.

Lastly, Position No. 416 with regard to the federal government's role in expediting state general stream adjudications. There were some minor clarifying edits. One addition notes that it is not just filing fees that the states would be interested in getting from the federal government, but costs as well, due to the extraordinary costs associated with general adjudications. Under the McCarran amendment, it is not required to pay those fees and costs. A resolution clause was added to ask the Congress to enact necessary legislation which require the federal agencies to pay their fair share of those fees and costs associated with general streaming adjudications. The Legal Committee recommended that this be forwarded to the Full Council for readoption. There was a motion, a second and without hearing any objection, Position No. 416 with the edits was readopted.

Lastly, Chris mentioned as part of the Legal Committee workplan, there will be a state survey coming out with regard to a number of different topics related to curtailments, beneficial use, and structure of water agencies, and state engineer offices. The Council staff will be sending out an email to Council members asking for feedback with regard to those questions. We are not asking for answers to the questions at this point in time, just feedback on the questions. Once they get that feedback, Council staff will put it together as a more formal survey, and then send it out to Council members for their responses.

#### **D. Executive Committee**

Tony referred members to the memo under Tab D. He explained some of the budget items. There are some limitations on the way that we use and allocated grant money, which has affected the budget across different fiscal years. We do have some overhead covered by that grant. None of the numbers have actually changed, but the differences are a reallocation showing when the money is received and when it is used. Tony also noted that despite the tough year, all but one state has paid their dues, and a second state that has partially paid their dues and we are encouraged by that.

## **WESTFAST REPORT**

Pat Lambert, Western States Federal Agency Support Team (WestFAST) Chair began by giving an overview of WestFAST for those who were new to the Council. WestFAST facilitates coordination among the federal agencies, but more importantly, between the states and federal agencies to help plan and implement collaborative efforts. Although not always successful, we strive to make that collaboration proactive. We try to get out in front in working with states on issues, policies, and programs, ideally as they emerge rather than after the fact. The Executive Committee steers activities and includes Pat, Kevin Werner, NOAA and Roger Gorke, EPA. They engage in collaborative work facilitated by WestFAST's Liaison, Deb Lawler, USBR.

Pat provided an update on WestFAST activities that have continued through COVID, and the current work plan. They are always looking for pilot/demonstration project opportunities, and exploring what meaningful federal engagement with states looks like for drought resilience and infrastructure, two areas highlighted in the presidential memorandum, "Collaboration Among the Federal Agencies in the States." We are looking at fiscal, policy, and technical support the federal agencies can provide to states to meet regional and local needs. We are working on ways to reconnect with our principles given the cancellation of our meetings back in March. The upcoming election will involve some change regardless of the outcome. One priority for our next liaison will be to reestablish, in some cases, our connections with our principals, the directors, and executives of the divisions that we represent. Deb's detail at the liaison position is coming to an end at the end of the calendar year. The selection committee of WestFAST and the Council have selected the new liaison, but we have not completed our communication on that selection yet. That person will start in time for some overlap with Deb before she departs from the position.

Deb Lawler provided an overview of efforts WestFAST and WSWC have made toward improving state-federal infrastructure partnerships, including efforts to gather state infrastructure proposals and a develop an accessible database of federal programs that can support state infrastructure projects. Back in April of 2019, the WSWC and WestFAST co-hosted a small infrastructure forum in Washington, DC, with the Water Subcabinet. A follow-up meeting occurred in December 2019, where WSWC staff, the WestFAST Executive Team and some state representatives met with the Water Sub-cabinet staff. We explained the difficulty for states as they seek to identify their eligibility for a vast array of federal programs, and proposed establishing a collaborative water infrastructure partnership.

Subsequently, WestFAST worked on a discussion paper that crystallized our asks from that meeting, the WestFAST Water Infrastructure Federal-State Collaborative Action Networks (WIFSCAN) paper. It outlines the challenges states face and the "barriers to adequately leveraging, and synergistically capitalizing on the multitude of programs spread across numerous Federal agencies. There is no 'one-stop-shopping' for assistance with the Federal Government's programs." The paper proposes establishing federal water infrastructure networks that coordinate federal collaboration with states on water infrastructure issues. This ties into the President's recent Executive Order on Modernizing America's Water Resource Management and Water Infrastructure, which states that agencies that engage in water-related matters "must work

together where they have joint or overlapping responsibilities. This order will ensure that agencies do that more efficiently and effectively to improve our country's water resources management, modernize our water infrastructure, and prioritize the availability of clean, safe, and reliable water supplies.”

During 2020, Deb worked to pull together a draft spreadsheet of all the federal programs and resources relating to water infrastructure. The document provides information about the name and description of each federal program, entities eligible for the program, and the website and contact information for the office within the federal agency that hosts the program. It is currently under review by the WestFAST representatives and WSWC staff. Pat noted that these efforts enabled WestFAST to be better prepared in advance of the Presidential Memorandum, as section seven touches on this.

We think we are a little bit of ahead of the game - Section Seven in the Presidential memorandum touches on this. Hopefully this can be of help and WestFAST can play a role in.

Lastly, Pat reviewed recent and upcoming WestFAST webinars:

- July 29, 2020: EPA's Water Infrastructure Finance and Innovation Act (WIFIA) Program
- August 25, 2020: Update on The WSWC Water Data Exchange (WaDE) 2.0
- September 23, 2020: Energy-Water-Emissions Dashboard (Julian Fulton, PhD, California State University, Sacramento, Department of Environmental Studies)
- September 29, 2020: Open ET (Forrest Melton, NASA)
- Wednesday, October 21, 2020, 10:00am MDT: The Bureau of Reclamation's Prize Competitions Program
- Wednesday, November 18, 2020, 10:00am MST: The Bureau of Reclamation's Transportation Program
- Tuesday, December 8, 2020, 1:00pm MST: Salinity in the Western United States

Pat noted that the webinars this year have been well attended, and that Deb has done a great job putting them together. Most of them have been of significant interest to both our internal coordination among our federal family, and to the states.

Tim thanked both Pat and Deb for their services.

## **STATE REPORTS**

Tim asked members to keep their presentations very brief given the limited time remaining, and if states had more information they would like to share, to please submit written reports.

**Montana:** Jan Langel - will be retiring the end of the year. In May, Montana experienced a catastrophic failure in a canal on the St. Mary's project. After a long summer of work on that Bureau of Reclamation project, and a cost of about \$8 million, the diversion is back up and running. Water is flowing again in northern Montana. There will be a change in Governor with the upcoming election, which means a new Administrator for the Division and the Department.

**Utah:** Todd Stonely - did submit a written report to the Council. Utah is hot and dry and in the midst of drought. Other Colorado River Basin states have been upset about Lake Powell pipeline.

**Arizona:** Kyle Miller - also submitted a written report, but went over some highlights. ADWR has participated in two Arizona Reconsultation Committee (ARC) meetings, the new name for the former Arizona Lower Basin Drought Contingency Plan Steering Committee. They are continuing to work with the Central Arizona Project agricultural districts to distribute legislatively approved funds for their groundwater reconstruction programs through the Regional Conservation Partnership Program. The meetings for the Water Conservation Augmentation and Innovation Council, created by Governor Ducey in January of 2018, are continuing but have all moved online. Issues briefs are available on our website (links are included in the written report). ADWR has now adopted 4th Management Plans (4MPs) for three out of the five Active Management Areas (AMAs). They will complete adoption of the plans by the end of the year. The lack of monsoon combined with record temperatures with near-record dryness throughout Arizona was pretty miserable for 2020. The entire state is in moderate to severe drought.

**California:** Jeanine Jones reported a record setting summer with wildfires. There is an increasing trend with wildfire damage to water infrastructure, including facilities of large water projects, as well as the small water systems that typically lose facilities during wildfire conditions. They also saw continuing record numbers of harmful algal blooms. Many reservoirs had some level of warning or hazard statement essentially all summer long. These findings will be highlighted in a mandatory report on the effects of drought that they are submitting to the legislature. One of the things we are highlighting is these emerging impacts to water suppliers and water infrastructure related to wildfire.

**Idaho:** Jerry Rigby reported higher temps than normal. The potato harvest was poor as it was too warm. They had poor air quality due to smoke from neighboring state wildfires. He summed up the salmon summit in the Columbia Basin Partnership with position statements.

**Kansas:** Earl Lewis reported dealing with dry conditions since July. They recently had dust storms. They are dealing with some water rights issues. West central Kansas is in the process of forming another Local Enhanced Management Area (LEMA), and they hope to have that done by the end of the year before the next irrigation season. They have an irrigation community on the Rattlesnake Creek, which flows into Quivira National Wildlife Refuge. The refuge has a very senior water right held by U.S. Fish and Wildlife Service. About a year ago, we had to shut off about 500 or so irrigation wells. The local groundwater major district and FWS came to a temporary agreement in which they are going to look to augment some water to do

some improvements on the refuge and some conservation measures in the irrigation community. We will see how that goes.

**Nevada:** Micheline Fairbank stated the update is pretty much a ditto from the meeting report from July meetings. Litigation is never ending. They are preparing for next legislative session. They plan to reach out to Oregon representatives because they want to put together a similar water conservation and credit program in Nevada. It is different than Oregon's - we are not just looking at surface water conservation credit program, it would be a surface water – groundwater program. We are also looking at Utah's water banking and leasing program and proposing a similar type of program in Nevada. It would be voluntary, but we are just trying to do things a little bit differently.

Jennifer Carr: We are still heavily working through our WOTUS issues and §404 permits.

**New Mexico:** John D'Antonio reported budget challenges. Their legislature had a special session that resulted in a 4% general fund reduction for his agency. FY2022 budget is requiring another 5% cut and a hiring freeze except for key operational positions. Drought has been horrible, with 18 of 21 river basins experiencing below average flow. 80% of the states received less than half its normal rainfall through the monsoon season. They only have an estimated 20% reservoir storage capacity. With La Nina forecasted for 2021, we are in for some really challenging issues in the coming year. Even though we are in litigation with Texas, we've had some good discussions. Both the Texas and Colorado Commissioner agreed to allow for us to release debit water to reduce economic harm to farmers and silvery minnow.

**North Dakota:** Jennifer Verleger stated she did not have anything to add other than what is in the written report under Tab T.

**Oklahoma:** Julie Cunningham reported the state is in a drought and heading into further drought conditions this fall, typically in the western part of Oklahoma. The eastern part is simultaneously in flood conditions due to hurricanes coming up from the Gulf of Mexico. The Oklahoma Flood Resiliency Act (Senate Bill 1269) was passed this year, which directs the Water Board to create a state flood resiliency plan along with providing a funding pot to receive funds, with no funding added. We are pursuing funding through FEMA and BRIC and Department of Commerce and trying to be really creative on that. We are going to pair that with our 10-year statutory update of the Comprehensive Water Plan, which we are making more comprehensive than just a drought plan, turning to a one-water concept. Another piece of legislation that passed was Senate Bill 1875, the Oil and Gas Produced Water and Waste Recycling Reuse Act – to promote the use of produced water for beneficial use rather than injection and deep oil injection and sizes leading to seismicity and those kinds of issues. It clarifies ownership and responsibility for the products that can be used. We are pairing with Oklahoma Conservation Commission and the Oklahoma State University Water Resource Center to launch a master irrigators program. We are involved in a couple of economic studies on soil health. We have a joint principles statement with the state of Arkansas to collaborate on the Illinois River, which runs into

Oklahoma, on addressing phosphorus issues. We are working on a water quality criteria rulemaking right now.

**Texas:** Jon Niermann said he tried to reduce his report to a Haiku form. 1944 Treaty obligations - Mexico doesn't deliver. Brain eating amoeba - rare tragic chlorine burn. NPDES delegation - produced waters request submitted.

**Wyoming:** Kevin Frederick - they issued their first land application permits using produced water. Harmful algal blooms are up this year, with 20 health advisories. Interestingly, one is a high mountain lake, with virtually no anthropogenic potential sources around it. We have had one reported dog death from a veterinarian and we have had a couple anecdotal reports of other livestock and pets becoming sick from algal blooms. We have got one in Grand Teton and on Jackson Lake.

### **FUTURE COUNCIL MEETINGS**

The WSWC Spring (195th) meetings scheduled to be held in El Paso, Texas on March 23-26, may be held virtually given continuing uncertainty related to the pandemic and state travel and meeting restrictions.

### **SUNSETTING POSITIONS FOR FALL 2020 MEETINGS**

Tab XYZ of the briefing materials contains sunsetting positions that will be brought up at the 2021 Spring meetings. There are six sunsetting positions the Council will be considering.

### **OTHER MATTERS**

Tim added an item to the agenda. He introduced Avra Morgan and Subhrendu Gangopadhyay with the Bureau of Reclamation to review the draft 2021 SECURE Water Act Report.

Avra Morgan: Reclamation is working on their 2021 SECURE Water Act report to Congress. Some of you will be familiar with this from prior reports. P.L. 111-11, passed in 2009, included a provision called the SECURE Water Act that authorized Reclamation to implement a climate change program. It also includes a provision that requires us to report to Congress every five years on our activities to assess the impacts of climate change and also to take actions to address potential impacts from climate change. We issued a report in 2011, 2016, and we now have a report due in March 2021. The report describes long-term trends in hydrology and actions to increase the reliability of water and power deliveries. It provides information that we hope can be useful to water managers across the west in future hydrology assessments. It compiles work that has been completed since our last report in 2016, including efforts to be more collaborative with stakeholders to increase the reliability of water deliveries

and hydropower - things we do under the WaterSMART program, or construction projects to build additional storage, and the Drought Contingency Plan in the Colorado River Basin to find creative solutions to water supply problems. A technical assessment is incorporated as part of the report.

Subhrendu Gangopadhyay provided an overview of what is contained in the draft report and technical assessment, with a high-level summary of the risk analysis for future water supply, demand, and management. Past reports focused on future climate projections, but this report incorporates paleohydrology as well as instrumental data collected over several decades for major Reclamation river basins. They completed a fairly comprehensive West-Wide drought analysis, including storage-deficit ratios and risk analysis; and water supply reliability assessment. The report is significantly larger with so much more content, and they hope it is also more informative.

Avra said she will connect with Tony and will let him know when the peer review of the report will be available.

There being no other matters, the meeting was adjourned.