

1988

ANNUAL REPORT

of the

WESTERN STATES WATER COUNCIL

Twenty-third Annual Report

**1988 ANNUAL REPORT**  
**OF THE**  
**WESTERN STATES WATER COUNCIL**

**INTRODUCTION**

The first official meeting of the Western States Water Council was held on August 3, 1965, at Stateline (Lake Tahoe), Nevada. The Western Governors' Conference approved the creation of the Western States Water Council during meetings on June 10-13, 1965, in Portland, Oregon. The Governors' resolution explicitly stated: "The future growth and prosperity of the western states depend upon the availability of adequate quantities of water of suitable quality." Further, the governors felt that a fair appraisal of future water needs, and the most equitable means of meeting such needs, demanded a regional effort. Water availability and interbasin transfers of water were important issues. Western states found themselves in an era of rapid federal water resources development, and regional or basinwide planning, without a sufficient voice in the use of their water resources. The Western States Water Council has since provided a unified voice on behalf of western governors on water policy issues.

The emphasis and focus of the Western States Water Council has changed over the years as different water policy problems have evolved. However, the commitment towards reaching a regional consensus on issues of mutual concern has continued. The Council has proven to be a dynamic, flexible institution providing a forum for the free discussion and consideration of many water policies that are vital to the future welfare of the West. As envisioned by the Western Governors' Conference, it has succeeded as a continuing body, serving the governors in an expert advisory capacity. For over twenty years, the Western States Water Council has endeavored to develop a regional consensus on westwide water policy and planning initiatives, particularly federal initiatives. The Council strives to protect western states' water interests, while at the same time serving to coordinate and facilitate efforts to improve western water planning and management.

Originally, Council membership consisted of eleven western states: **ARIZONA, CALIFORNIA, COLORADO, IDAHO, MONTANA, NEVADA, NEW MEXICO, OREGON, UTAH, WASHINGTON and WYOMING.** In 1978, **TEXAS** was admitted to membership, after many years of participation in Council activities in an "observer" status. **ALASKA** requested and received membership in 1984. **NORTH DAKOTA** and **SOUTH DAKOTA** have

been affiliated with the Council for some time, most recently as "associate members," which is a temporary status approved by amendment of the Council's Rules of Organization in 1983. During 1988 both states requested and received full membership. On June 20, South Dakota Governor George Mickelson wrote: "With great pleasure I write you today to request South Dakota's admission to the Western States Water Council. Comity among the states is a must if we are to move this great region of our country into the twenty-first century.... We look forward to a long and productive relationship with the Council." On September 14, North Dakota Governor George Sinner requested full membership stating: "I have felt for some time that the Council is the premier water resource organization in the United States.... We are pleased to be able to be a member...and look forward to participation in the Council." **HAWAII** is also affiliated with the Council, having requested "associate membership" in 1987. Membership is automatically open to all member states of the Western Governors' Association, the successor to the Western Governors' Policy Office (WESTPO) and the Western Governors' Conference, which also includes the **State of Nebraska**.

Each member governor is an ex-officio member of the Western States Water Council. The governor appoints up to three representatives from his or her state, and as many alternates as deemed necessary, to serve on the Council at the governor's pleasure. Council officers, including a Chairperson, Vice-Chairperson, and Secretary-Treasurer, are elected annually from the membership. State representatives are appointed to the working committees, with one representative per state also appointed to the Executive Committee. The Executive Committee attends to internal Council matters with the assistance of the Management Subcommittee. The Council's working committees are the Legal Committee, the Water Quality Committee, and the Water Resources Committee. Each working committee is directed by a committee chairperson and vice-chairperson. Committee chairpersons, in turn, name special subcommittees and designate subcommittee chairpersons to study issues of particular concern.

The Western States Water Council offices are in Salt Lake City, Utah. The staff is headed by D. Craig Bell, Executive Director. Working with Mr. Bell are: Tony Willardson, Associate Director; Norman K. Johnson, Legal Counsel; and a secretarial staff including Pearl Pollick, Cheryl Redding, and Carrie Curvin. During the year, Marjorie Farmer left the Council's employment after seven years to spend more time with her husband and help with his business.

Positions and resolutions adopted at the quarterly meetings of the Council appear in this report. Meetings are held on a rotating basis among the member states, with state representatives acting as hosts to the other Council members and guests. In 1988, meetings were held in: Monterey, California on January 20-22;

Boise, Idaho on April 13-15; Fairbanks, Alaska on July 20-22; and Rapid City, South Dakota on October 13-14. Guest speakers are scheduled according to the relevant subjects to be considered at each meeting. Information regarding future meeting locations and agenda items can be obtained by writing or calling the Council office.

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Midvale, Utah 84047

(801) 561-5300

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1988  
WESTERN STATES WATER COUNCIL  
MEMBERSHIP<sup>1</sup>

**ALASKA**

\*Governor Steve Cowper  
11-86

\*\*Gary Gustafson  
7-88  
Peg Tileston  
2-88  
Daniel Wilkerson  
2-88  
Margaret J. Hayes  
2-88 to 7-88

**ARIZONA**

\*Governor Rose Mofford  
4-88

\*\*C. Laurence Linser  
6-88  
Dr. Alan P. Kleinman  
1-87 to 4-88  
Tom Choules  
4-70 to 7-83  
reappointed 1-87  
Michael F. McNulty  
6-87

\*Ex-Officio Member  
\*\*Executive Committee Member

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<sup>1</sup>The date under each name is the beginning date of tenure. A second date indicates the date that the appointment came to an end during this year.

**CALIFORNIA**

\*Governor George Deukmejian  
1-83

\*\*David Kennedy  
10-83  
Ruben Ayala  
2-78 to 1-83  
reappointed 7-84  
David G. Kelley  
1-83 to 7-83  
reappointed 3-84  
Roderick E. Walston (Alt.)  
1-86  
Robert W. Miller (Alt.)  
5-79 to 1-83  
reappointed 1-86  
Darlene E. Ruiz (Alt.)  
4-87

**COLORADO**

\*Governor Roy Romer  
11-86

\*\*J. William McDonald  
10-79  
Wendy C. Weiss  
4-87  
Paul Ferraro  
2-88  
Gary Broetzman  
9-80 to 1-88  
Jeris A. Danielson (Alt.)  
4-80

**IDAHO**

\*Governor Cecil Andrus  
11-86

\*\*R. Keith Higginson  
10-87  
Herman J. McDevitt (deceased)  
4-72 to 7-83  
reappointed 10-87 to 8-88  
Gene Gray  
10-83  
A. Kenneth Dunn  
5-77  
Wayne T. Haas (Alt.)  
10-83

**MONTANA**

\*Governor Ted Schwinden  
1-81

\*\*Gary Fritz  
10-83  
John E. Acord  
1-72 to 12-88  
Donald D. MacIntyre  
2-85  
Steve Pilcher  
4-88  
Larry Fasbender (Alt.)  
4-88



**NEVADA**

\*Governor Richard Bryan  
1-83

\*\*Roland D. Westergard  
5-68  
Joseph E. Dini, Jr.  
7-83  
Jack L. Stonehocker  
9-83

**NEW MEXICO**

\*Governor Garrey Carruthers  
11-86

\*\*S. E. Reynolds  
6-65  
Charles DuMars  
2-84  
Frank A. DuBois, III  
4-87  
Wayne P. Cunningham (Alt.)  
7-88

**NORTH DAKOTA**

\*Governor George Sinner  
1-85

\*\*Vern Fahy  
9-88  
Francis Schwindt  
9-88

**OREGON**

\*Governor Neil Goldschmidt  
11-86

\*\*William H. Young  
3-79  
William Blosser  
1-88  
Anne Squier  
1-88  
George Proctor (Alt.)  
3-79 to 1-88  
reappointed 7-88  
Kip Lombard  
1-83 to 1-88

**SOUTH DAKOTA**

\*Governor George Mickelson  
1-87

\*\*John J. Smith  
6-88  
Steve Pirner  
6-88  
John Hatch  
6-88  
John Guhin (Alt.)  
6-88  
Marian Gunderson (Alt.)  
6-88  
Reese Peck (Alt.)  
6-88

**TEXAS**

\*Governor William P. Clements, Jr.  
1-79 to 1-83, re-elected 11-86

\*\*John T. Montford  
10-83  
Paul Hopkins  
7-87  
Tom Craddick  
7-87  
Fred Pfeiffer (Alt.)  
10-83  
Terral Smith (Alt.)  
7-87

**UTAH**

\*Governor Norman H. Bangerter  
1-85

\*\*Dee C. Hansen  
3-85  
Thorpe A. Waddingham  
6-65  
D. Larry Anderson  
3-85  
Dallin Jensen (Alt.)  
7-71  
Don A. Ostler (Alt.)  
10-87

**WASHINGTON**

\*Governor Booth Gardner  
1-85

\*\*Hedia Adelsman  
1-87  
Charles B. Roe, Jr.  
4-70  
Carol Jolly (Alt.)  
1-87  
Andrea Beatty Riniker  
2-85 to 4-88

**WYOMING**

\*Governor Mike Sullivan  
1-75

\*\*Gordon W. Fassett  
3-87  
George L. Christopulos  
4-75  
Myron Goodson  
6-65 to 3-83  
reappointed 10-86  
Jennifer Hager (Alt.)  
3-87

COUNCIL MEMBERS  
AT FAIRBANKS, ALASKA, MEETING - July 1988

(Photograph #1)

Back Row: Paul Hopkins, Fred Pfeiffer, Terral Smith, Tom Choules,  
Bill Young, John Hatch, Larry Anderson, Bill McDonald,  
Wayne Cunningham, Larry Linser (Al Utton also pictured)  
Row 2: Herm McDevitt, Dave Kelley, Rod Walston, Ken Dunn,  
Roland Westergard, Myron Goodson, Gene Gray, Gary  
Gustafson, Dave Kennedy  
Front Row: Hedia Adelsman, Jeff Fassett, Manabu Tagomori, Daniel  
Wilkerson, Bob Miller, Anne Squier, Don Ostler, Paul  
Ferraro

**STAFF**

D. Craig Bell . . . . . Executive Director  
Anthony G. Willardson . . . . . Associate Director  
Norman K. Johnson . . . . . Legal Counsel  
Pearl O. Pollick . . . . . Office Manager  
Cheryl Redding . . . . . Secretary  
Carrie Curvin . . . . . Receptionist/Secretary

(Photograph #2)

Back Row: Tony Willardson, Norman K. Johnson, D. Craig Bell  
Front Row: Cheryl Redding, Pearl Pollick, Carrie Curvin

Council offices are located at:

Creekview Plaza, Suite A-201  
942 East 7145 South  
Midvale, Utah 84047  
(801) 561-5300

**PRESENT AND PAST OFFICERS AND EXECUTIVE DIRECTORS**

The following served as officers during 1988:

<b>CHAIRMAN</b>	<b>VICE-CHAIRMAN</b>	<b>SECRETARY/TREASURER</b>
Roland D. Westergard 7/88 - present	William H. Young 7/88 - present	Dee C. Hansen 7/88 - present
J. William McDonald 7/87 - 7/88	Roland D. Westergard 7/87 - 7/88	

Since the Council's inception in 1965, the following individuals have served as officers:

Chairman:	Freeman Holmer	- Oregon	8/65 to 10/66
	Raphael J. Moses	- Colorado	12/66 to 7/69
	William S. Holden	- Idaho	7/69 to 3/71
	William R. Gianelli	- California	7/71 to 7/73
	William A. Groff	- Montana	7/73 to 7/75
	Wesley E. Steiner	- Arizona	7/75 to 7/77
	Chris L. Wheeler	- Oregon	7/77 to 7/78
	Donald L. Paff	- Nevada	7/78 to 7/79
	George Christopulos	- Wyoming	7/79 to 7/80
	Daniel F. Lawrence	- Utah	7/80 to 7/81
	Charles E. Nemir	- Texas	7/81 to 7/82
	Ray W. Rigby	- Idaho	7/82 to 7/83
	John Spencer	- Washington	7/83 to 7/84
	John E. Acord	- Montana	7/84 to 7/86
	J. William McDonald	- Colorado	7/86 to 7/88

Vice/Chairman:

Raphael J. Moses	- Colorado	8/65 to 12/66
William S. Holden	- Idaho	12/66 to 10/68
William R. Gianelli	- California	7/69 to 7/71
William A. Groff	- Montana	7/71 to 7/73
Wesley E. Steiner	- Arizona	7/73 to 7/75
Chris L. Wheeler	- Oregon	7/75 to 7/77
Donald L. Paff	- Nevada	7/77 to 7/78
George Christopulos	- Wyoming	7/78 to 7/79
Daniel F. Lawrence	- Utah	7/79 to 7/80
Charles E. Nemir	- Texas	7/80 to 7/81
Ray W. Rigby	- Idaho	7/81 to 7/82
John Spencer	- Washington	7/82 to 7/83
John E. Acord	- Montana	7/83 to 7/84
J. William McDonald	- Colorado	7/84 to 7/86
Roland D. Westergard	- Nevada	7/86 to 7/88



Secretary-Treasurer:

Donel J. Lane	- Oregon	8/65 to	4/70
Floyd A. Bishop	- Wyoming	4/70 to	7/73
Daniel F. Lawrence	- Utah	7/73 to	7/79
Charles E. Nemir	- Texas	7/79 to	7/80
Roland D. Westergard	- Nevada	7/80 to	7/86
Dee C. Hansen	- Utah	7/86 to	

The following have served as Executive Director:

Wright Hiatt	2/66 to	7/67
Jay R. Bingham	3/68 to	12/69
Thomas Cahill	1/70 to	9/73
Jack A. Barnett	3/74 to	11/80
D. Craig Bell	11/80 to	

## QUARTERLY MEETINGS

Eighty-Ninth Quarterly Meetings  
January 20-22, 1988  
Monterey, California

The eighty-ninth quarterly meetings of the Western States Water Council were held on January 20-22, in Monterey, California. On Wednesday afternoon, the Federal Energy Regulatory Commission (FERC) Subcommittee met and reviewed recent events demonstrating an escalating jurisdictional conflict between FERC and the States.<sup>2</sup> The Subcommittee recommended preparation of an amicus brief supporting the State of California in litigation before the U.S. Ninth Circuit Court of Appeals. The Subcommittee also reviewed an Executive Order on "Federalism,"<sup>3</sup> and directed staff to send a letter to FERC and OMB pointing out past and present conflicts. The Subcommittee reviewed, but took no action on proposed amendments to the Federal Power Act. On Wednesday evening, the Joint Ground Water Subcommittee met and marked up potential legislation outlining federal/state roles with respect to ground water management. Further discussion was scheduled for the next quarterly meetings.

The regular committee meetings began on Thursday morning with the Executive Committee reviewing the Council budget and work plan. Of particular note, by unanimous vote the Executive Committee approved a request by the State of Hawaii for associate membership.<sup>4</sup> The Committee also decided that a subcommittee should be appointed to review the appropriate level of dues for associate member states. Among other matters, the Committee also approved sending a letter from Executive Director Craig Bell to Rep. George Miller (D-CA), Chairman of the House Interior Committee's Water Resources Subcommittee, addressing ground water rights management in general and ground water mining specifically. In part, the letter reads: "There is widespread agreement that states should continue to have exclusive responsibility with regard to the creation and administration of ground water rights.... Determinations with regard to the 'optimal' withdrawal of ground water necessarily involve decisions with regard to existing and future water rights.... I submit that states are in the best

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<sup>2</sup>Western States Water, Issue #706, November 27, 1987,  
Western States Water, Issue #711, December 31, 1987, and  
Western States Water, Issue #712, January 8, 1988.

<sup>3</sup>Western States Water, Issue #707, December 4, 1987.

<sup>4</sup>Western States Water, Issue #705, November 20, 1987.

position to make these kinds of determinations." The letter was prepared in response to a question directed to Mr. Bell during a hearing on H.R. 2320.<sup>5</sup>

Next, during the Three-Committee Informational meeting, a panel of guest speakers addressed the water quality impacts of mining activities. The panel included: Lewis Dodgion, Administrator, Nevada Division of Environmental Protection; Jerry Danni, Regional Manager of Environmental Affairs, Home Stake Mining Company; Rob Walline, Chairman of EPA's National Mining Waste Workgroup; and Dave Shelton, Director of the Colorado Division of Hazardous Materials and Waste Management. Mr. Danni minimized the environmental impact of mining activities, compared to highway construction and urban sprawl. He called for coordination of the numerous federal, state and local mining laws and regulations. He described a strict nondegradation standard with respect to ground water as unworkable. Other panelists referred to the toxic legacy of past mining practices and the present difficulty in addressing water quality related problems. Everyone agreed that many mining abuses have been corrected and that the industry is much more sensitive to environmental concerns.

The Water Resources Committee met on Thursday morning. It considered and approved the FERC Subcommittee report. Gail Greeley, of Henwood Energy Services, addressed the concerns of small hydro developers regarding the state permitting process. She noted complaints over state agency fragmentation, a lack of consistent policies involving the balancing of competing interests, the lack of a national perspective, inadequate and inexperienced staff, and delays. To improve the process and reduce confusion and controversy, she suggested cooperative state/federal review procedures with the states better informed and involved early in the permitting process. She also suggested that states need to improve the quality of data upon which they base their decisions--which takes people, time, and money. She further suggested states centralize permit decisionmaking and employ interdisciplinary project review teams. Among other issues, the Committee also discussed weather modification, drought, the Gramm-Rudman Deficit Reduction Act, reorganization of the Bureau of Reclamation, dam safety, and ground water recharge.

The Water Quality Committee discussed federal ground water legislation,<sup>6</sup> and Gary Broetzman reported on activities of the Joint Ground Water Subcommittee. Jack Barnett described recent activities of the Colorado River Basin Salinity Control Forum.

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<sup>5</sup>Western States Water, Issue #696, September 18, 1987.

<sup>6</sup>Western States Water, Issue #707, December 4, 1987 and Western States Water, Issue #709, December 18, 1987.

Recent guidelines published by EPA to implement the Water Quality Act of 1987 were discussed, including efforts of the Section 518 workgroups (regarding the treatment of Indian tribes as states). A number of those present expressed concern over the relative lack of consultation with the states. Lastly, Gene Gray described a WSWC questionnaire on non-point source pollution control.

The Legal Committee also discussed federal ground water legislation, with Charles Roe reviewing subcommittee activities. Next, the Committee focused on federal reserved water rights. Peter Sly, Director of the Conference of Western Attorneys General (WAG), described a WAG project to study reserved water rights negotiations. The water rights language contained in the El Malpais National Monument bill<sup>7</sup> was also discussed. Rod Walston provided the Committee with an update of FERC litigation in California, particularly concerning the Rock Creek case.<sup>8</sup> The Committee approved the drafting of an amicus brief by the Council staff in support of California. Fred Pfeiffer and Sam Collins described the Waters Bluff Reservoir suit in Texas.<sup>9</sup> The Committee again approved the drafting of an amicus brief, and the Council later approved a related position.

On Friday morning, the full Council met. Two external policy positions were adopted. First, the Council approved a resolution supporting continued funding for the U.S. Bureau of Reclamation's weather modification research and demonstration program at a minimum level of \$3.7M (through at least 1995). Second, the Council approved a position urging the Congress to enact legislation to remedy problems arising from the U.S. Fish and Wildlife Service's acceptance of a permanent non-development easement in Wood County, Texas, creating a federal obstacle to development of the Waters Bluff Reservoir site by the Sabine River Authority.<sup>10</sup> The Council also approved a letter to EPA regarding the lack of meaningful consultation with the states to date on implementation of Section 518, which provides for Indian tribes to be treated as states for certain purposes under the Water Quality Act of 1987. The Council reviewed action by the working committees and approved the 1988 work plan. The Council also unanimously

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<sup>7</sup>Western States Water, Issue #693, August 28, 1987.

<sup>8</sup>Western States Water, Issue #712, January 8, 1988.

<sup>9</sup>Western States Water, Issue #680, May 29, 1987 and  
Western States Water, Issue #681, June 5, 1987.

<sup>10</sup>Western States Water, Issue #654, November 26, 1986.

approved three resolutions of appreciation recognizing the contributions of members George Proctor, Gary Broetzman, and Kip Lombard.<sup>11</sup>

Featured speakers included WSWC member Dave Kennedy, Director of the California Department of Water Resources, and Dave Houston, Regional Director for the Bureau of Reclamation in Sacramento, who addressed the Council on water resource issues in the State of California. Lastly, Bill Gianelli, once Chairman of the Western States Water Council and past Assistant Secretary of the Army (Civil Works), briefly addressed federal water issues and the changing nature of federal/state relations. He reiterated support for implementation of new non-federal cost sharing requirements under the Corps of Engineers construction program (P.L. 99-662). Bill's comments primarily focused on his work as Chairman of the Panama Canal Commission.

Ninetieth Quarterly Meetings  
April 13-15, 1988  
Boise, Idaho

The ninetieth quarterly meetings of the Western States Water Council were held April 13-15, in Boise, Idaho. At the Council meeting on Friday morning, members and guests were privileged to hear from Idaho Governor Cecil Andrus. He focused on the problems Idaho has encountered in dealing with the Federal Energy Regulatory Commission. He noted that FERC continues to claim exclusive authority to determine water use associated with federally licensed hydropower projects, and has been insensitive to state concerns. Of note, the Council staff prepared the initial draft of an amicus brief challenging FERC's claim of exclusive jurisdiction in the Rock Creek case now before the Ninth Circuit Court of Appeals. A final brief, signed by fifteen western states, was filed on April 4, with the assistance of the Idaho Attorney General's Office.

Governor Andrus encouraged the Council to continue its efforts to resolve this problem, including challenging FERC's position in the courts and preparing amendments to the Federal Power Act, if necessary, to reinstitute the proper state role in authorizing water uses for hydropower development. The Governor also reiterated his own commitment to the work of the Council in general, pledging his state's support for cooperative efforts to protect the states' vital interests in water resources. Following the governor's remarks, Keith Higginson, Director of the Water Resources Department, spoke on other current issues.

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<sup>11</sup>WesternStates Water, Issue #713, January 15, 1988.

In conjunction with the regular quarterly meetings, on Wednesday and Thursday morning, the Council co-sponsored a workshop on general water right adjudications with the American Bar Association's Water Resources Committee. Council members and others heard from a distinguished group of lawyers, judges, state water officials, engineers, administrators, and others involved in the very complex process of general stream adjudications. A variety of topics were addressed, including practical aspects of managing a process that often lasts several years and involves several thousand claimants. The workshop replaced the regular Three Committee Meeting.

On Thursday afternoon, the working committees met. The Legal Committee discussed the progress of litigation challenging the position of the Federal Energy Regulatory Commission that federal hydropower project licensees and permit applicants may disregard state water right laws. Council staff prepared a Rock Creek amicus brief, in support of California's position in the case, which was signed by fifteen western states. The Legal Committee also authorized staff preparation of two other amicus briefs. The first involves a Texas case challenging the acceptance of a permanent non-development easement from a private hunting and fishing club by the U.S. Fish and Wildlife Service. As a result, the development of the Waters Bluff reservoir site by the Sabine River Authority, as part of the Texas Water Plan, was effectively precluded. A second brief was authorized involving the Hallett Creek case in California, where California opposes the water right claims of the federal government as a riparian landowner. The Legal Committee felt the potential westwide implications of these cases justified authorizing the staff to prepare amicus briefs for use by the Council's member states. Lastly, the Legal Committee also authorized the preparation of a report on the subject of conflicts between federal environmental statutes and state water laws.

The Water Quality Committee also met on Thursday afternoon, with Larry Jensen, EPA General Counsel, and until recently EPA Assistant Administrator for Water, discussing implementation of the Water Quality Act of 1987. In particular, he addressed Section 518, which provides that Indian tribes will be treated as states for certain purposes under the Act. Council members had earlier conveyed their concern about the lack of appropriate consultation with the states regarding implementation of Section 518. State consultation was explicitly required by Congress in the Act. WSWC Members also discussed with Mr. Jensen the Administration's position with respect to sewage treatment plant construction grant funding and federal ground water legislation. On the former, the Committee authorized writing a letter to Congress and appropriate Administration officials urging adequate funding of the construction grants program.

The increasing number of problems with the Federal Energy Regulatory Commission was a primary topic of discussion at the Water Resources Committee meeting, also on Thursday afternoon. In addition to supporting California's petition in the Rock Creek case, referred to above, the Committee determined to continue to try to build a consensus on amendments to the Federal Power Act. Should litigation prove unsuccessful in reaffirming the states' preeminent position in permitting and regulating water use, including hydropower uses, the Council will pursue a legislative remedy. The Committee discussed Sen. James McClure's recent comments regarding FERC,<sup>12</sup> and approved a letter supporting his views. The Committee also approved a letter to key congressmen reaffirming the Council's support for legislation to overturn the retroactive application of FERC Order No. 464, changing FERC's past interpretation of state water quality certification requirements under Section 401 of the Clean Water Act.<sup>13</sup>

Next, the Water Resources Committee discussed a number of other issues, including the drought situation. Each state gave a report regarding its water supply conditions, as well as state responses to the drought. John Keys, Regional Director of the Bureau of Reclamation, discussed federal reorganization initiatives. He also discussed the Bureau's weather modification program, the ground water recharge demonstration program, and the loan assets sales program. Lastly, the Committee discussed reports prepared by the Department of Interior and Agriculture in response to questions submitted by Rep. George Miller, Chairman of the House Interior Water Resources Subcommittee, following a hearing on H.R. 1443. The bill is aimed at ending the so-called "double subsidy" for crops subject to government price supports.<sup>14</sup>

Ninety-First Quarterly Meetings  
July 20-22, 1988  
Fairbanks, Alaska

On July 20-22, the ninety-first quarterly meetings of the Western States Water Council were held in Fairbanks, Alaska. On Wednesday night, the Federal Energy Regulatory Commission (FERC) Subcommittee met and addressed several continuing state concerns.

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<sup>12</sup>Western States Water, Issue #725, April 8, 1988.

<sup>13</sup>Western States Water, Issue #734, June 10, 1988.

<sup>14</sup>Western States Water, Issue #726, April 15, 1988.

Two specific recommendations were made and later approved by the Water Resources Committee and the Council. First, with respect to proposed FERC relicensing rules and pre-filing consultation requirements, the Subcommittee recommended that WSWC comments be prepared and sent on the need to explicitly include state agencies responsible for issuing water use permits and water rights.<sup>15</sup> Second, the Subcommittee decided to ask the Council to support a motion to intervene in pending relicensing proceedings for the Possum Kingdom Lake Project (No. 1490-003), by the Texas Attorney General, in order to assert that jurisdiction over the surface waters of the State of Texas is properly vested with the Texas Water Commission and not FERC. Lastly, the Subcommittee discussed an order on rehearing revising rules defining state comprehensive plans. FERC has asked each governor to submit or re-submit plans which they believe meet the new policy criteria.<sup>16</sup> Western states were asked to submit a copy of their response to WSWC staff.

On Thursday morning, the Executive Committee met and reviewed the Council budget and continuing work plan items. The Committee approved publication of a history of the organization of the Council drafted in 1985 to commemorate the 25th anniversary.<sup>17</sup> The Committee also approved plans to hold the April 1989 quarterly meetings in Washington, D.C. in conjunction with a third biennial Water Policy Seminar. The dates were tentatively set for April 12-14, 1989. Further, the Committee considered cooperative work items with the Western Governors' Association.<sup>18</sup>

The Three Committee Informational Meeting consisted of a panel discussion of western state efforts to protect the public interest in water resource management. The panelists included: Hedia Adelsman, Washington Department of Ecology; Jeff Fassett, Wyoming State Engineer, Mary Lu Harle, Water Resources Manager, Alaska Division of Land and Water Management; and Bill Young, Director of the Oregon Water Resources Department. WSWC Chairman Bill McDonald, Director of the Colorado Water Conservation Board, was the moderator. A number of key points were raised, such as the difficulty in defining the public interest, usually under a broad legislative mandate, as well as problems related to identifying various impacts related to water use decisions and

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<sup>15</sup>WesternStates Water, Issue #737, July 1, 1988.

<sup>16</sup>WesternStates Water, Issue #732, May 27, 1988.

<sup>17</sup>WesternStates Water, Issue #569, April 15, 1985.

<sup>18</sup>WesternStates Water, Issue #739, July 15, 1988.



balancing divergent public values. Some states have undertaken or are considering extraordinary measures to protect the public interest, while others basically rely on fundamental authority provided by the appropriation doctrine and existing state water codes.

Also on Thursday morning, the Water Resources Committee met. It reviewed and approved the report of the FERC Subcommittee and briefly discussed future actions regarding the Bureau of Reclamation and a Bureau/WSWC groundwater recharge study. Don Paff, former WSWC Chairman and now Chief of the Bureau's Central Valley Operations Coordinating Office, reported on federal activities and response to the drought. The Committee briefly reviewed a state-by-state report on the drought situation and discussed federal drought planning and relief legislation pending in Congress.<sup>19</sup> Lastly, Dr. John Miranowski, with the Department of Agriculture's Economic Research Service, summarized the basic ideas behind the "normalized price model." He suggested that the effect of application of the model to proposed federal irrigation projects would be more predictable and less onerous than implementation of proposed legislation to restrict the delivery of subsidized federal project water to irrigate surplus crops.<sup>20</sup>

The Water Quality Committee addressed pending federal ground water legislation and reviewed pending WSWC Ground Water Subcommittee activities. Don Ostler, Director of Utah's Bureau of Water Pollution Control, described the status of federal funding for EPA's construction grants/state revolving loan fund program. He later reported on the WGA non-fuel mining wastes project. The Committee also discussed the treatment of Indian tribes as states under Section 518 of the Water Quality Act of 1987, and approved further correspondence apprising EPA of dissatisfaction with implementation of the law. The Committee reviewed the issue of non-point source pollution control, including responses to a WSWC questionnaire and preparation of EPA's Section 319 report. Lastly, the Committee discussed western state concerns regarding EPA's consultation efforts in the process of drafting regulations.

On Thursday afternoon the Legal Committee met. The Committee first reviewed the status of amicus briefs, prepared by Council staff,<sup>21</sup> regarding the Sabine River Authority and Hallett Creek cases. The former was being circulated for state comment while seven states had signed the latter. At the request of the State

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<sup>19</sup>WesternStates Water, Issue #739, July 15, 1988.

<sup>20</sup>WesternStates Water, Issue #726, April 15, 1988.

<sup>21</sup>WesternStates Water, Issue #727, April 22, 1988.

of Wyoming, the Committee also approved preparation of another amicus brief asking the U.S. Supreme Court to grant certiorari in the Big Horn River case.<sup>22</sup> The Committee reviewed the progress of Indian water right negotiated settlements, specifically the Salt River Pima-Maricopa (AZ), San Luis Rey (CA), and Animas-La Plata (CO-NM) legislation.<sup>23</sup> The Committee also reviewed recent public interest decisions, the Rock Creek case and FERC litigation in California, and federal ground water legislation. Further, the Committee discussed the work plan items regarding conflicts between federal environmental statutes and state water law.

The Ninety-First Quarterly Meeting was held on Friday morning. Judith M. Brady, Commissioner of the Alaska Department of Natural Resources, welcomed members to Fairbanks. Following her remarks, Dennis Kelso, Commissioner of the Department of Environmental Conservation, addressed current water resource issues in Alaska. They were followed by Robbi Savage, Executive Director of the Association of State and Interstate Water Pollution Control Administrators. She spoke on the role of states in future water quality protection, specific provisions of the Water Quality Act of 1987, and administration activities. She specifically noted the difficulty states face in assuming responsibility for federal water quality protection programs, while at the same time federal funding for state programs has been sharply reduced. Next, members heard reports from the different committees and approved previously described actions. No formal external positions were considered. A proposed position praising recent FERC actions was tabled in the Water Resources Committee.

Lastly, Council members unanimously elected Roland Westergard, Director of the Nevada Department of Conservation and Natural Resources, as the next Chairman of the Western States Water Council. Bill Young, Director of the Oregon Water Resources Department, was elected Vice-Chairman, and Dee Hansen, Director of the Utah Department of Natural Resources, was re-elected as Secretary/Treasurer. Members expressed their appreciation to Bill McDonald for his service as Chairman since July of 1986.

Ninety-Second Quarterly Meetings  
October 12-14, 1988  
Rapid City, South Dakota

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<sup>22</sup>Western States Water, Issue #722, March 18, 1988.

<sup>23</sup>Western States Water, Issue #738, July 8, 1988,  
Western States Water, Issue #736, June 24, 1988, and  
Western States Water, Issue #731, May 20, 1988.

On October 12-14, the ninety-second quarterly meetings of the Western States Water Council were held in Rapid City, South Dakota at the historic Hotel Alex Johnson. It was the first meeting hosted by South Dakota as a member of the Council. Also of note, the Council officially approved the recent request of Governor George Sinner and admitted North Dakota as the fifteenth state member.<sup>24</sup> On Wednesday afternoon, the State of South Dakota sponsored a field trip to the Black Hills to observe open pit and heap leach gold mining operations, with company representatives explaining engineering, economic and environmental issues. The State also provided transportation on Thursday afternoon to visit nearby Mt. Rushmore National Memorial.

On Wednesday evening the Joint Ground Water Subcommittee met, while the regular working committee meetings began on Thursday morning. First, in addition to approving North Dakota's request for full membership, the Executive Committee approved a proposed work plan that includes a review of the Council's current Rules of Organization. Further, as part of the Committee work plan, the Council determined to sponsor a third water policy seminar to be held in Washington, D.C. on April 12-14, 1989. A primary purpose of the seminar is to present western views on key water policy issues to Congressional staff members. The Council decided to also sponsor a sixth water management symposium. The topic will be state water planning. The Committee also approved guidelines for establishing subcommittees to insure maximum participation by all members.

The Three Committee Informational Meeting consisted of a panel presentation on issues related to implementation of Section 518 of the Clean Water Act (and related provisions of the Safe Drinking Water Act) directing that Indian tribes be treated as states for several purposes. The panel included: William Whittington, EPA Acting Deputy Assistant Administrator for Water; Kathy Sisneros, Chief of the New Mexico Surface Water Quality Bureau; Leigh Price, Professor of Law at Arizona State University; and Don MacIntyre, Chief Counsel of the Montana Department of Natural Resources and Conservation. Darlene Ruiz, Vice Chair of the California State Water Resources Control Board, moderated the discussion. Pertinent issues included EPA's efforts to fulfill its statutory requirement to consult with states affected by the regulations implementing Section 518, the difficulty of integrating potentially conflicting standards on adjacent stream reaches under differing jurisdiction of the states or various Indian tribes, the confusion over the validity of EPA-approved state standards and permits on Indian

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<sup>24</sup>Western States Water, Issue #750, September 30, 1988 and Western States Water, Issue #736, June 24, 1988.

reservations, due process and other issues related to checker-board reservations, and the need for states and tribes to cooperate under Section 518 to ensure maximum environmental protection.

The Water Quality Committee also spent a great deal of time discussing the Section 518 issues. The Committee also focused on federal ground water research legislation, state non-point source pollution control programs, and innovative/alternative state clean water funding programs. The Committee decided to hold a workshop in the spring or summer of 1989 on non-point source pollution control, as well as a work session on innovative/alternative clean water funding in conjunction with the January 1989 Council meetings. The Committee approved its 1989 work plan, which will emphasize state responses to proposed federal ground water legislation, ramifications of the Clean Water Act reauthorization (particularly Section 518), non-point source pollution control, state input into EPA decisionmaking, control of water quality impacts of mining activities, and innovative/alternative clean water funding.

During the Water Resources Committee meeting, LaVerne Ausman, Deputy Under Secretary of the Department of Agriculture for Small Community and Rural Development, discussed federal drought response activities. Mr. Ausman previously served as USDA Director of Intergovernmental Affairs, and in that position participated in a workshop sponsored by the Council on preparation of a model state drought response plan. Mr. Ausman also represented the Department of Agriculture on the Interagency Drought Policy Committee created by the President early this past summer. Different member states also reported on the drought situation and state activities.

The Water Resources Committee also discussed briefly other issues. Ray Hagenlock, Deputy Assistant General Counsel for Hydrolicensing with the Federal Energy Regulatory Commission, addressed topics of mutual concern, including WSWC correspondence with FERC, Council comments on proposed rules regarding federal hydropower project relicensing, and efforts to compile state responses to FERC on comprehensive planning. Next, Bruce Glenn, Program Coordinator for the Bureau of Reclamation's Ground Water Recharge Demonstration Program, reviewed its current status. Following the Committee meeting, a Subcommittee met to discuss a draft cooperative agreement with the Bureau to perform a study of the legal, institutional, economic and cost sharing issues associated with ground water recharge projects. Congress under the authorizing legislation, required this study to be performed by the states. A final agreement between the Bureau and the Council will be signed later this year or early next year.

Lastly, the Water Resources Committee discussed and approved a draft 1989 Committee work plan. In addition to the items discussed above, the work plan will include a review of changes in federal water policy (past and prospective), preparation of a

report summarizing the organization and responsibilities of existing western state water management agencies, and a review of state water plans. Of note, given pending litigation on the pivotal question of the bounds of federal and state jurisdiction over hydroelectric licensing and water rights allocation/water resources management (i.e., Rock Creek), the Water Resources Committee deferred further action on this issue to the Legal Committee.

The Legal Committee began its meeting discussing negotiated Indian water right settlements pending in the 100th Congress. Both Houses have approved the Salt River Pima-Maricopa Settlement, whereas the Animas-La Plata and San Luis Rey bills had not passed as of the Committee meeting. Next, the Committee considered FERC litigation in California (i.e., Rock Creek) and the Ninth Circuit Court's recent decision in National Audubon Society v. L.A. Department of Water and Power. The Committee then focused on amicus brief efforts with respect to Wyoming v. United States and Sabine River Authority v. United States, among other matters. The Committee approved its 1989 work plan, emphasizing general water right adjudications, federal reserved water rights, water-legal education, western states amicus briefs in water-related cases, FERC hydrolicensing and state water rights, and conflicts between the implementation of federal environmental statutes and western state water law.

The Ninety-Second Quarterly Meeting was held on Friday morning, October 14. John Smith, Secretary of the Department of Water and Natural Resources, presented an overview on South Dakota and its resources. Following his remarks, Ray Hagenlock of FERC, addressed the Council. He emphasized mutual concerns regarding improving FERC/state relations and efficient and effective hydroelectric licensing and water management. He suggested ways states can work within FERC's existing procedures to influence federal decisions, but left to the courts the current conflict over jurisdiction regarding water rights and water use by hydroelectric facilities. The chair of each working committee reported on activities of the previous day, and individual members highlighted significant state water management events. No formal external positions were considered.

Of note, the Council unanimously adopted a resolution of appreciation in honor of Herman J. McDevitt, who died on August 23, 1988. An attorney, Mr. McDevitt represented the State of Idaho as a member of the Western States Water Council for twelve years. The Council recognized his many contributions to the development and conservation of water throughout his distinguished career, and members expressed their condolences to his family.

## **OTHER IMPORTANT ACTIVITIES**

In addition to the events just described associated with the Council's regular quarterly meetings, and the formal resolutions and position statements adopted by the Council which are described later, several other important activities were undertaken, including the following.

### **ABA/WSWC/WAG Water Law Workshop**

On February 4-5, the Council, along with the Natural Resources Section of the American Bar Association and the Western Attorneys General, co-sponsored a workshop on recent developments in western water law. The seminar was held in San Diego, California. Over 150 participants attended. A number of western water experts spoke, including Joseph Sax, Adolph Moskowitz, and Ray Moses. Council members who participated included Rod Walston, Charles Roe, and Dallin Jensen. Topics discussed included water rights regulation and the taking of property, water transfers and marketing, the future of federal water policy, and a number of selected issues and cases.

### **ABA/WSWC General Adjudications Workshop**

On April 13-14, the Western States Water Council, the American Bar Association and Watershed West, co-sponsored a seminar on general stream adjudications in conjunction with the regularly scheduled WSWC quarterly meetings in Boise, Idaho. The major facets of general stream adjudications were discussed and a number of small-group workshops were held. Council members and others heard from a distinguished group of lawyers, judges, state water officials, engineers, administrators, and others involved in the very complex process of general stream adjudications. A variety of topics were addressed, including practical aspects of managing a process that often lasts several years and involves several thousand claimants. Council member Jeff Fassett and Norman Johnson of the Council staff were among the workshop faculty. Some 120 participants attended.

### **Western Governors' Association Annual Meeting**

The Western Governors' Association held its annual meeting in Seattle on July 10-12. The Governors adopted two resolutions relating to water policy. The first, sponsored by Utah Governor Norman Bangerter, addressed national ground water legislation. It stated, "Any national groundwater policy and any federal legislation must remain faithful to and supportive of the primary role of states in administering ground water protection programs.... The federal role should be designed to be in support

of and in accord with state ground water protection programs." It adds, "Federal research and technical assistance to states should be enhanced." The resolution also says, "All federal agencies should be required to conduct their activities in accordance with state ground water protection programs." The resolution was thus entirely consistent with the Council's positions on ground water.

A resolution on drought response was introduced by North Dakota Governor George Sinner, Chairman of the NGA Committee on Agriculture. It called on states to immediately assess critical water shortages and develop emergency supply plans. Over the long-term, states were encouraged to review their water law and to encourage water conservation and voluntary water transfers. The resolution further called on states to explore the feasibility of state water plans that assess available supplies, provide for moving water to areas of shortage, facilitate transfers, and provide incentives to conserve water and balance instream and offstream needs. Lastly, it called on the federal government to provide necessary funding to activate existing emergency water assistance programs, and to provide incentives for conservation of water through water transfers, water banks, and "intrastate basin management agreements."

The Governors also adopted a WGA work plan. Regarding water policy, they decided to continue to promote negotiated settlement of Indian water right disputes, examine and make recommendations regarding the future role of the Bureau of Reclamation, and prepare to respond to legislation introduced in Congress on ground water quality protection. The plan called for cooperation with the Western States Water Council. Also, during the business portion of the meeting, Craig Bell gave an oral report to the Governors regarding the Council's activities and work plan. Governor George Deukmejian of California was elected as the new WGA Chairman and Governor Sinner was elected as Vice Chairman.

#### **Fifth Annual Water Management Symposium**

The Fifth Annual WSWC Water Management Symposium, was held on September 8-9, 1988 in Whitefish, Montana. Fourteen speakers from ten western states addressed Groundwater Management and Protection. Thursday morning, presentations covered groundwater protection in Colorado, Texas' groundwater protection strategy, mining of groundwater in New Mexico, and administering groundwater quantity while managing water quality. Thursday afternoon, speakers focused on groundwater recharge projects, programs and laws in Arizona, California, Nebraska and Nevada. Also on Thursday, a special presentation covered the Bureau of Reclamation's High Plains States Groundwater Recharge Demonstration Program. Friday morning's presentations covered groundwater management programs and problems in Arizona, Hawaii, Montana and Washington.

The quality of the speakers and papers prepared for this symposium were very good and the meeting provided an excellent opportunity for participating state officials to discuss mutual interests and concerns. The presentations effectively demonstrated that western states are actively involved in groundwater management and protection and addressing new challenges. While groundwater management and protection in recent years have become a national issue, many state and local programs or projects have been active for decades. The symposium proceedings have been published and distributed by the Council. Copies are available.

## Drought

For most of the West, 1988 brought severe to extreme drought conditions. Spring rains raised reservoir levels in the Northwest, which had been substantially below normal. Such reservoir storage and ground water generally helped most states avoid emergency conditions. Serious shortages did occur where these alternatives to surface water supplies were not available or were inadequate. The most serious impacts came in the late spring and through the summer as record high temperatures and prolonged periods without precipitation caused extensive agricultural damage in the Northern Great Plains and Midwest.

WSWC staff actively monitored drought conditions and state responses. Many states utilized the Model for Western State Drought Response and Planning published by the Council the previous year. Almost every western state organized a committee to monitor water supply information and recommend appropriate state actions. Most state task groups met monthly. Western states initiated many notable activities.

California established a drought center, named a drought coordinator, and prepared a 1988 California drought response plan. The state also published urban and agricultural drought guidebooks and held public workshops through May and June to describe their use, as well as the availability of other state and local assistance. Many cities and water purveyors took action early on to encourage water conservation, and California began preparation of a 1989 state drought contingency plan.

The Idaho Water Supply Committee coordinated public and private efforts to disseminate information on water supplies, conservation opportunities and water management techniques while monitoring with special interest agricultural and municipal uses and recreation and fish and wildlife needs. An Upper Snake River water bank facilitated temporary water transfers, primarily between irrigators, and a similar water bank was established for the Boise River.

In Nevada, Lake Tahoe dropped below its natural rim for the first time since 1934, cutting off flows to the Truckee River.



Governor Richard Bryan created a Drought Review and Reporting Committee which analyzed potential impacts of shortages and prepared a report suggesting potential response activities, including water conservation opportunities, for state and local implementation.

The States of North Dakota, Oregon, and South Dakota implemented standing drought response authority, while the State of Utah addressed drought as part of a new draft state water plan.

The State of Washington was active and prepared drought response operating procedures as interim guidelines, while forming an Executive Water Emergency Committee comprised of state agency directors. An initial state drought action program for 1988 was prepared and implemented. The state legislature appropriated some \$3.7M for emergency drought relief, mainly for agricultural programs and fisheries protection.

The State of Wyoming, relying upon the Appropriation Doctrine and well-defined water rights to allocate limited supplies, found even senior pre-1900 rights were affected.

WSWC staff, in addition to monitoring state activities, advised western governors through the Western Governors' Association regarding drought conditions and potential responses utilizing the WSWC Model. Staff also addressed various state and interstate organizations of water users and policymakers regarding drought conditions and related issues, including federal disaster relief legislation passed by Congress and signed by the President in August.

At the end of 1988, water supplies in the West generally showed some improvement. However, many reservoirs had been depleted by two, and in some cases, three consecutive dry years and only above normal precipitation will replenish reservoir and ground water reserves and restore normal streamflows. It appears below normal conditions will continue in the High Plains states, California, and parts of the Upper Colorado River Basin, as well as areas in Arizona and New Mexico which have for the most part escaped the serious shortages affecting other western states in recent years.

#### **Federal Energy Regulatory Commission**

Western state concerns regarding activities of the Federal Energy Regulatory Commission have grown due to continuing conflicts. In January, FERC denied a request for rehearing by the Idaho Department of Water Resources (IDWR) regarding the Horseshoe Bend Project on the Payette River. The project's state water right is subordinate to future upstream uses, but FERC refused to so condition the federal permit. FERC asserted that the burden of proof was on the state, not the Commission, to substantiate the

need to condition the permit so as to allow future upstream diversions. Further, citing First Iowa, FERC asserted the state does not have the authority to permit unlimited future upstream diversions, prompting IDWR Director Keith Higginson to observe: "FERC's control is being asserted over river basins that they have only seen on a map," the names of which they "cannot spell or even pronounce...."<sup>25</sup>

In February 1988, the Council wrote FERC Chairwoman Martha Hesse questioning FERC's assertion of exclusive jurisdiction over any water use related to hydroelectric generation and expressing a sincere interest in resolving the growing number of state/federal conflicts. FERC acknowledged state concerns, adding the Commission is in large measure a reactive body and recent orders regarding western water resource management were merely a result of recent filings challenging the Commission's statutory authority.

In April 1988, FERC issued an order on rehearing revising and expanding its interpretation of comprehensive state water plans to include almost anything. However, the Commission reiterated its exclusive "responsibility to resolve competing demands in the public interest." Further, while the Commission renewed its request for states to submit appropriate plans and promised full consideration of any recommendations made in a licensing proceeding, it made it clear that no recommendation or comprehensive plan would automatically veto a proposed project.<sup>26</sup>

Also in April, the Council wrote key congressmen explaining state concerns regarding continuing conflicts with FERC, and specifically supporting legislation to overturn FERC Order No. 464, which unilaterally and retroactively waived state water quality certification authority under Section 401 of the Clean Water Act in certain circumstances.<sup>27</sup>

In May 1988, the Western States Water Council again wrote Chairwoman Hesse reiterating a sincere interest on the part of western states in "reducing current friction and confusion regarding state/federal jurisdiction over hydropower development and related water resource management." Further, the Council raised continuing concern over the Commission's position on comprehensive plans, asked that FERC reconsider Order No. 464, regarding the waiver of certain state water quality certification requirements, and asking the Commission to designate someone to work with the states on common concerns. Chairwoman Hesse responded by designating Raymond E. Hagenlock, Deputy Assistant

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<sup>25</sup>WesternStates Water, Issue #716, February 5, 1988.

<sup>26</sup>WesternStates Water, Issue #732, May 27, 1988.

<sup>27</sup>WesternStates Water, Issue #734, June 10, 1988.

General Counsel for Hydroelectric Licensing as state liaison. She also noted the Commission (as part of the federal licensing process) would consider any state water plans, prepared by an authorized state agency covering one or more beneficial uses. However, with respect to Order No. 464, she noted that while dissenting on the Commission's decision to apply the order retroactively, she would defer to the majority decision and not again place the matter before the Commission. Under the direction of the Water Resources Committee, Council staff prepared a sample letter to western congressmen highlighting WSWC concerns regarding FERC for use by member states as appropriate.

In June, the Commission published proposed rules governing the relicensing of hydroelectric projects, which included a process for pre-filing consultation with state and federal resource agencies. In part, the proposed changes implement provisions of the Electric Consumer's Protection Act of 1986, and appeared designed to avoid prior federal/state conflicts. The Council submitted comments suggesting pre-filing consultation explicitly include state water right and water management agencies.

In September, the Senate confirmed two new commissioners raising hopes that the new Commission would be more responsive to state interests.

Lastly, legislation requiring FERC to reconsider the retroactive application of Order No. 464, regarding state water quality certification requirements, passed both the House and Senate, but Congress adjourned in October before differences in the two bills could be worked out. Rep. John Dingell (D-MI), Chairman of the House Energy and Commerce Committee wrote FERC Chairwoman Martha Hesse pointing out that the legislation "failed largely because the Congress ran out of time." However, he added that FERC should heed the "message," or face similar legislation in the future. Dingell observed, "I am particularly troubled with the Commission's actions regarding the retroactive application of Order No. 464.... I am also troubled that FERC decided on procedural grounds to dismiss the petitions of some states for reconsideration. Again, I believe the Commission overreacted. I strongly urge the new Commission to quickly re-examine the retroactive issue and its impact." The Council wrote FERC Chairwoman Martha Hesse strongly supporting Rep. Dingell's request that the Commission re-examine this issue.

### **Federal Ground Water Legislation**

In 1988 there were several pieces of legislation pending in Congress to establish new federal ground water law. The Council took no position with respect to any specific bill. However, prior Council position statements emphasize the need for state primacy in the management and protection of ground water resources with federal technical support and assistance. Based on the principles

enunciated in these general policy positions, the Council prepared testimony for presentation at Congressional hearings on ground water legislation. On February 23, Craig Bell presented a statement on behalf of the Council before the Senate Environment Committee. On April 22, Norman Johnson presented a statement on behalf of the Council before the Senate Governmental Affairs Government Efficiency and Federalism Subcommittee.

The Council closely monitored the progress of ground water legislation in the 100th Congress. The House passed a research bill in December of 1987, and after much discussion on a number of bills, the Senate passed a research bill in October of 1988, late in the session. Although an attempt was made to reconcile differences between the measures passed by the House and Senate, the lack of time precluded an agreement and no ground water legislation was passed by the Congress.

### **Amicus Briefs**

During 1988, the Council staff drafted three amicus briefs in important cases involving western water resource issues.

#### **A. State of California ex rel State Water Resources Control Board v. FERC (Rock Creek)**

This case was argued before the Ninth Circuit Court of Appeals in December 1988. California petitioned the Ninth Circuit to enjoin and review a FERC order holding that the establishment of minimum flows for fishery protection or other purposes at federally licensed projects is a matter beyond the reach of state regulation and is within FERC's exclusive jurisdiction. At issue in the case was whether Section 27 of the Federal Power Act obligates a FERC licensee to comply with all aspects of state water right law, including requirements for the protection of instream beneficial uses. The amicus brief prepared by the Council staff, in conjunction with the Idaho Attorney General's Office, argued that the Federal Power Act requires compliance with state water law, unless such law is inconsistent with clear congressional directives regarding the project. The legislative history of Section 27 shows that Congress intended it to be modeled after Section 8 of the Reclamation Act of 1902. The U.S. Supreme Court has interpreted the Section 8 language to require federal reclamation projects to comply with state water right law absent clear congressional directives to the contrary (California v. United States, 438 U.S. 645 (1978)). The following fifteen western states signed the amicus brief: Alaska, Arizona, Hawaii, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, and Wyoming.

#### **B. In Re: Determination of Rights to Water of Hallett Creek Stream System**

In February 1988, the California Supreme Court held that the federal government possesses riparian water rights on national forest lands and that those rights are no more or less defeasible than the riparian rights of other California landowners. California sought to take this decision of first impression to the U.S. Supreme Court for review. The Council staff prepared an amicus brief that argued the federal government does not have the same rights as private landowners because it is a sovereign entity whose powers are delegated to it by the Constitution, that Congress affirmatively relinquished all proprietary claims to waters of the West through the enactment of the Mining Acts of 1866 and 1870, and the Desert Land Act of 1877, and that the Supreme Court's decision in United States v. New Mexico, 438 U.S. 696 (1978), precluded assertion of common law riparian water rights by the United States. Eight western states joined the brief. The U.S. Supreme Court denied California's petition for writ of certiorari on October 3, 1988.

C. Wyoming v. United States (Big Horn Adjudication)

On February 24, 1988, the Wyoming Supreme Court issued an opinion on a portion of the general adjudication of the Big Horn River System dealing with Indian reserved water rights. The litigation began in 1977, and was subsequently divided into three phases: federal Indian reserved water rights, federal non-Indian reserved water rights, and private rights. The Wyoming Supreme Court decided a number of issues in its opinion on the Indian reserved rights portion of the case, and Wyoming sought review of three of those issues by the United States Supreme Court. The Council staff drafted an amicus brief supporting the State's position. The questions presented were: (1) Does a reserved water right impliedly exist for an Indian reservation where Congress has provided that water rights be obtained for the reservation under state law? (2) Assuming the existence of such a right, may a reserved right be implied for all practicably irrigable acres on the reservation in the presence of substantial state water rights obtained pursuant to congressional directive and in the absence of any demonstrated necessity for additional water to fulfill reservation purposes? and (3) What priority date should be accorded a reserved water right for practicably irrigable lands which were seeded by a reservation's tribe and became part of the public domain when such lands are later restored to and made part of the reservation? The following six states joined in the brief: Montana, Nevada, New Mexico, North Dakota, South Dakota, and Washington. Consideration of Wyoming's petition for certiorari to the United States Supreme Court was pending at the end of 1988.

**Newsletter**

In addition to these and other activities, the Council staff maintained its usual workload, which includes publication of the Council's weekly newsletter, Western States Water.

## RESOLUTIONS AND POSITIONS

The following are positions taken and resolutions passed by the Western States Water Council during 1988.

### CONTINUED WEATHER MODIFICATION PROGRAMS

For a number of years, western states have participated in a cooperative weather modification research and demonstration program funded by the U.S. Bureau of Reclamation's Atmospheric Resources Division. However, the Reagan Administration determined that federal weather modification activities had progressed beyond the demonstration program phase. Therefore, weather modification funding was defined as a new program start, precluded by a joint deficit reduction agreement between the Administration and Congress developed in November 1987 and applied with some flexibility and imagination.

Ten western states indicated an intent to cooperate and share in the cost of the Bureau's weather modification program for FY89. These included Arizona, California, Kansas, Montana, North Dakota, Nevada, Oklahoma, Texas, Utah, and Wyoming. The Western States Water Council joined these states and other western interests in urging the Administration to request a minimum of \$3.7M to support current programs.

Weather modification is a water management tool that is consistent with the express goals of the new Bureau of Reclamation, as a cost-effective means of augmenting western water supplies. Related benefits include increased hydropower production, improved streamflows and better water quality. Western states argued that an urgent need remains to maintain and extend our knowledge regarding this important technology and its transfer to practical applications. Despite state pleas, cooperative funds for the program were not requested by the Administration, nor appropriated by Congress. Only a small office remains in the Bureau of Reclamation to complete foreign and some minor domestic work.

**RESOLUTION  
of the  
WESTERN STATES WATER COUNCIL  
Regarding  
Support for  
Continued Weather Modification Programs  
January 22, 1988**

**WHEREAS**, the long-term water supplies of most western rivers are over-committed; and

**WHEREAS**, one of the most cost-effective means of augmentation of river supplies is through weather modification; and

**WHEREAS**, weather modification benefits may enhance water supplies and thereby benefit such secondary factors as increased hydropower, improved instream flows and improvement of water quality; and

**WHEREAS**, ten Western states have indicated intent to perform weather modification programs in cooperation with the Bureau of Reclamation (AZ, CA, KS, MT, ND, NV, OK, TX, UT, WY); and

**WHEREAS**, the Bureau of Reclamation Atmospheric Resources Division is a leader in the science of weather modification and is competent to develop and demonstrate proven technology; and

**WHEREAS**, there is an urgent need to maintain, extend and transfer this important technology from the Bureau of Reclamation to the States and water suppliers through demonstration programs; and

**WHEREAS**, weather modification programs are consistent with the new goals of the Bureau of Reclamation to better manage existing projects to provide more power and water;

**NOW THEREFORE BE IT RESOLVED**, that we urge the Congress and the Administration to support the U.S. Bureau of Reclamation Division of Atmospheric Resources Research with continuing funding at a minimum level of \$3.7 million to support current programs.

**BE IT FURTHER RESOLVED** that the U.S. Bureau of Reclamation Division of Atmospheric Resources continue to provide for operations and transfer of technology through at least 1995 to accommodate programs presently planned.

**BE IT FURTHER RESOLVED** that the U.S. Bureau of Reclamation include weather modification as part of its program priorities.

**CONCERNS REGARDING LACK OF STATE CONSULTATION IN EPA'S  
IMPLEMENTATION OF SECTION 518 OF THE WATER QUALITY ACT OF 1987**

The Water Quality Act of 1987 passed Congress with a provision which has raised considerable state concern. Section 518 allows Indian tribes to be treated as states for certain purposes under the Clean Water Act. The change raised questions regarding Indian tribal authority, the definition of Indian lands, jurisdiction on Indian lands, the appropriate transition from state to Indian regulation, how best to address downstream or adjacent state concerns, and EPA's trust responsibility to Indian tribes.

Under the new law, Indian tribes may receive funding for general water quality administration under Section 106 of the Clean Water Act and sewage treatment construction grant funds under Section 201. The tribes may also assume responsibility or jurisdiction for establishing water quality standards on the reservation and for administering permit programs under Section 404 and the National Pollutant Discharge Elimination System (NPDES).

In the past, state jurisdiction, for example to establish water quality standards and issue NPDES permits, has been recognized within reservation boundaries. Considerable state concern focuses on the current validity of state approved permits and water quality standards on Indian reservations, as well as the difficulty in the future of integrating state and federal water quality management goals with tribal water quality jurisdiction. Many river basins in the West are a checkerboard of varying federal, state, tribal and private lands. Obviously, differing water quality goals and standards must be coordinated.

Recognizing future potential conflicts, Congress explicitly required that EPA "consult affected states" in promulgating regulations specifying how tribes shall be treated as states. Initially, EPA organized four Section 518 work groups addressing various issues with the participation of three state officials on one of the workgroups. The Western States Water Council raised concern, expressed in the letter below to Larry Jensen, EPA Assistant Administrator for Water, and in two other similar letters, that such minimal state participation was insufficient to fulfill the explicit statutory mandate to consult the affected states. Similarly, the states viewed the consultation language to mean something more than the usual opportunity to comment on draft rules proposed in the Federal Register.

In calling for greater state participation in the implementation process, the letter refers to an executive order, issued by President Reagan, which directed federal agencies to closely examine the impact of federal actions in limiting the policymaking discretion of the states, and to the extent practicable, to consult with the states before any such action is implemented. The Executive Order also provided for the preparation



of a "Federalism Assessment" before promulgating or implementing agency policies with significant federalism implications.

Prompted in part by Council concerns, EPA held meetings on June 6-7, in Denver, Colorado, with state and Indian representatives on implementation of Section 518. EPA sent a letter to each governor requesting state participation and comment in the development of five separate regulations covering the treatment of tribes under both the Clean Water Act and the Safe Drinking Water Act Amendments of 1986. Further, as described in the report of the Council's October meetings, EPA Acting Deputy Assistant Administrator for Water, William Whittington, participated in a further discussion of significant issues among western states. EPA/state discussions are continuing.



WESTERN STATES WATER COUNCIL

Creekview Plaza, Suite A-201/942 East 7145 South/Midvale, Utah 84047/(801) 561-5300 / FAX (801) 255-9642

January 22, 1988

Mr. Larry Jensen  
Assistant Administrator for Water  
Environmental Protection Agency  
Waterside East Building, Room 1035  
401 M Street, S.W.  
Washington, D.C. 20460

Dear Larry:

We are writing to reiterate our concerns regarding implementation of the Water Quality Act of 1987 relating to Section 518, which allows Indian tribes to be treated as states for certain purposes under the Act.

While we acknowledge and appreciate your letter of December 30, 1987, we believe that the steps you outlined fall short of the state consultation requirement of Section 518(e) of the Clean Water Act.

As we stated in our previous letter, the Council is concerned with the incongruity between the explicit requirements of Section 518(e) and the relative lack of participation by state officials in the implementation process. The statutory requirement to "consult affected states" in promulgating regulations specifying how tribes shall be treated as states means something more than the participation of three state officials in one of the four Section 518 workgroups. Likewise, it means something more than allowing the states the usual opportunity to comment on draft rules proposed in the Federal Register.

We find support for this point in the Executive Order issued October 28, 1987, entitled "Federalism." We refer specifically to the following sections of this Executive Order: Section 1(a) defined "Policies that have federalism implication" as:

"regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Section 3(a) requires executive departments and agencies to:

"closely examine the constitutional and statutory authority supporting any Federal action that would limit the policymaking discretion of the States, and should carefully assess the necessity for such action. To the extent practicable, the States should be consulted before any such action is implemented."

Section 6 requires the head of each executive department and agency to designate an official to be responsible for assuring the implementation of the federalism order. Section 6(b) specifies that:

"In addition to whatever other actions the designated official may take to ensure implementation of this Order, the designated official shall determine which proposed policies have sufficient federalism implications to warrant the preparation of a Federalism Assessment. With respect to each such policy for which an affirmative determination is made, a Federalism Assessment, as described in subsection (c) of this section, shall be prepared. The department or agency head shall consider any such Assessment in all decisions involved in promulgating and implementing the policy."

Given the specific language of Section 518(e) requiring consultation with affected states and the requirements of the Executive Order on Federalism, we urge you to undertake a Federalism Assessment prior to proceeding with any further efforts to implement Section 518 of the Clean Water Act.

Issues regarding Indian jurisdiction are of vital interest and concern to western state officials. We believe that a Federalism Assessment is not only necessary but desirable in the interest of comity among federal, state, and tribal governments.

We appreciate your consideration of this request and look forward to hearing from you.

Sincerely,

D. Craig Bell  
Executive Director

## U.S. FISH & WILDLIFE SERVICE ACQUISITION OF NON-DEVELOPMENT EASEMENTS

In 1987, the Western States Water Council adopted a position opposing the acquisition of refuge lands by the U.S. Fish and Wildlife Service through the acceptance of non-development easements without full consideration of the impacts of such acquisitions on other federal, state, and local entities. The position was adopted in response to the acceptance of such an easement from the Little Sandy Hunting and Fishing Club on the Sabine River in Wood County, Texas. The nature of the easement created a federal obstacle to development of the Water's Bluff reservoir site by the Sabine River Authority that only Congress can now remove.

The WSWC position prompted an inquiry by Senator Orrin Hatch (R-UT). In an April 7, 1987 response, U.S. Fish and Wildlife Service Director Frank Dunkle explained, "Because of the potential conflict with water development, I considered this matter carefully before accepting the easement.... I do not want the Service to frustrate unnecessarily the water development objectives of Texas or any state." Dunkle added that acceptance of the easement protected over 3800 acres of prime bottomland hardwood wildlife habitat at no cost to the federal government, and that the final environmental assessment found many alternatives were available to development of the Waters Bluff site. Further, should future water demands require construction of the reservoir, Congress could reverse the administrative decision establishing the refuge. Dunkle also minimized the potential for such future conflicts involving water development sites and protection of wildlife habitat.

On May 12, 1987, Rep. Ralph Hall (D-TX) introduced H.R. 2382 and H.R. 2381, to respectively rescind the acceptance of the conservation easement and then outline a general approach for handling future conflicts. H.R. 2381 would limit the Secretary of Interior's ability to accept any conservation easement without first receiving a specific approval by the legislature of the affected state, along with express written guarantees of access by the general public.

The position below essentially restates the Council's previous position, raises concern regarding the potential westwide application of the acceptance of non-development easements and urges Congress to enact legislation to remedy the problem.

**POSITION  
of the  
WESTERN STATES WATER COUNCIL  
Regarding  
U.S. Fish & Wildlife Service Acquisition of  
Non-development Easements  
January 22, 1988**

**WHEREAS**, a private hunting and fishing club in Texas has donated to the U.S. Fish and Wildlife Service a permanent easement to utilize their land as a national wildlife refuge, while retaining exclusive hunting privileges on such land and while continuing to exclude the public from such land; and

**WHEREAS**, the U.S. Fish and Wildlife Service did not coordinate its review of the proposed acquisition under the National Environmental Policy Act with affected federal, state, regional and local entities; and

**WHEREAS**, the draft environmental assessment prepared by the U.S. Fish and Wildlife Service does not adequately consider the effects of the acquisition on the Waters Bluff Reservoir project and future water needs of the State of Texas; and

**WHEREAS**, suitable reservoir sites in the West are limited and the precedent established by this acquisition could have serious effects on other proposed reservoir sites throughout the western states; and

**WHEREAS**, the Fish and Wildlife Service has nevertheless proceeded to acquire the non-development easement at the Waters Bluff Reservoir site and to grant exclusive hunting privileges to the private hunting and fishing club; and

**WHEREAS**, the Western States Water Council is concerned about the potential westwide application of this action by the U.S. Fish and Wildlife Service;

**NOW THEREFORE BE IT RESOLVED** that the Council urge Congress to enact legislation which would remedy the problems raised by the actions of the Fish and Wildlife Service in this matter.

## BUDGET AND FINANCE

At the quarterly meeting held April 14, 1988, in Boise, Idaho, the Executive Committee approved a budget for FY88/89 of \$297,200. A previously approved dues schedule called for a yearly assessment of \$21,000 per state for FY88/89.

The audit report for FY87/88, prepared by the firm of Hansen, Barnett and Maxwell, was presented to the Executive Committee by the Executive Director at the annual meeting in July at Fairbanks, Alaska. The report was accepted unanimously as written. The accounting policies of the Western States Water Council conform to generally accepted accounting principles as applicable to governmental units. The Council utilizes the modified accrual basis of accounting. The auditor's report and the financial statement are reflected on the following pages.

Use Letterhead  
Hansen, Barnett, & Maxwell

Members of the Council  
Western States Water Council  
Salt Lake City, Utah

We have examined the combined balance sheet - general fund and account groups of the Western States Water Council as of June 30, 1988 and the related general fund statement of revenues and expenditures and changes in fund balance - budget and actual for the year then ended. Our examination was made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the financial statements referred to above present fairly the financial position of the Western States Water Council at June 30, 1988 and the results of its operations for the year then ended, in conformity with generally accepted accounting principles applied on a consistent basis.

Our examination was made for the purpose of forming an opinion on the financial statements taken as a whole. The schedule of changes in the general fixed assets is presented for the purpose of additional analysis and is not a required part of the financial statements. Such information has been subjected to the auditing procedures applied in the examination of the financial statements and, in our opinion, is fairly stated in all material respects in relation to the financial statements taken as a whole.

July 15, 1988

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WESTERN STATES WATER COUNCIL  
 COMBINED BALANCE SHEET  
 GENERAL FUND AND ACCOUNT GROUPS  
 JUNE 30, 1988

ASSETS

	<u>Account Groups</u>			<u>Totals</u>	
	<u>General</u>	<u>General</u>	<u>General</u>	<u>(Memorandum only)</u>	
	<u>Fund</u>	<u>Fixed</u>	<u>Long-Term</u>	<u>June 30,</u>	<u>June 30,</u>
		<u>Assets</u>	<u>Debt</u>	<u>1988</u>	<u>1987</u>
CASH - NOTE 2	\$103,665	\$ -	\$ -	\$103,665	\$120,053
PREPAID EXPENSES	918	-	-	918	928
DEPOSITS	150	-	-	150	-
GENERAL FIXED ASSETS	-	66,806	-	66,806	46,871
AMOUNT TO BE PROVIDED FOR PAYMENT OF LONG-TERM DEBT	-	-	19,258	19,258	2,193
AMOUNT TO BE PROVIDED FOR PAYMENT OF COMPENSATED ABSENCES	-	-	16,518	16,518	13,387
TOTAL ASSETS	<u>\$104,733</u>	<u>\$ 66,806</u>	<u>\$35,776</u>	<u>\$207,315</u>	<u>\$183,432</u>

LIABILITIES AND FUND BALANCE

ACCOUNTS PAYABLE	\$ 5,700	\$ -	\$ -	\$ 5,700	\$ 1,681
PAYROLL TAXES PAYABLE	142	-	-	142	133
ASSESSMENTS PREPAID - NOTE 4	-	-	-	-	21,000
INVESTMENT IN FIXED ASSETS	-	66,806	-	66,806	46,871
OBLIGATIONS UNDER CAPITAL LEASE - NOTE 3	-	-	19,258	19,258	2,193
OBLIGATIONS FOR COMPENSATED ABSENCES - NOTE 6	-	-	16,518	16,518	13,387
FUND BALANCE	<u>98,891</u>	<u>-</u>	<u>-</u>	<u>98,891</u>	<u>98,167</u>
TOTAL LIABILITIES AND FUND BALANCE	<u>\$104,733</u>	<u>\$ 66,806</u>	<u>\$35,776</u>	<u>\$207,315</u>	<u>\$183,432</u>

The accompanying notes are an integral part of these financial statements.



WESTERN STATES WATER COUNCIL  
GENERAL FUND  
STATEMENT OF REVENUES AND EXPENDITURES AND  
CHANGES IF FUND BALANCE - BUDGET AND ACTUAL  
FOR THE YEAR ENDED JUNE 30, 1988

	Budget 1988	Actual June 30, 1988	Variance Favorable (Un- Favorable) 1988	Actual June 30, 1987 (For Comparison Only)
<b>REVENUES</b>				
Members States' assessments	\$277,000	\$279,000	\$ 2,000	\$257,500
Newsletter payments	-	5,750	5,750	5,600
Interest income	-	13,244	13,244	12,238
	<u>277,000</u>	<u>297,994</u>	<u>20,994</u>	<u>275,338</u>
<b>EXPENDITURES</b>				
Salaries	155,000	152,486	2,514	153,458
Travel	25,000	26,515	(1,515)	25,912
Payroll taxes and employee benefits	42,000	43,003	(1,003)	36,409
Contract services	-	-	-	36
Printing and reproducing	23,000	20,308	2,692	25,142
Rent	20,500	18,277	2,223	18,390
Freight and postage	6,700	9,518	(2,818)	6,317
Telephone	6,000	5,123	877	4,883
Utilities	-	311	(311)	-
Maintenance Contracts	4,000	3,644	356	3,124
Office furniture, fixtures, and equipment	500	20,105	(19,605)	1,124
Office supplies	4,000	4,329	(329)	4,377
Reports and publications	3,000	2,085	915	2,987
Meetings and arrangements	2,000	2,032	(32)	1,205
Accounting	1,500	1,734	(234)	1,660
Insurance	1,500	634	866	506
Contingencies	2,500	3,451	(951)	2,246
Interest	-	780	(780)	593
	<u>297,200</u>	<u>314,335</u>	<u>(17,135)</u>	<u>288,369</u>
<b>EXCESS (DEFICIENCY) OF REVENUES OVER (UNDER) EXPENDITURES</b>	<b>(20,200)</b>	<b>(16,341)</b>	<b>3,859</b>	<b>(13,031)</b>
<b>OTHER FINANCING SOURCES:</b>				
Capital Lease Obligation - Note 3	-	17,065	17,065	(701)
<b>EXCESS (DEFICIENCY) OF REVENUES AND OTHER SOURCES OVER (UNDER) EXPENDITURES</b>	<b>(20,200)</b>	<b>724</b>	<b>20,924</b>	<b>(13,732)</b>
<b>FUND BALANCE - BEGINNING OF YEAR</b>	<b>98,167</b>	<b>98,167</b>	<b>-</b>	<b>111,899</b>
<b>FUND BALANCE - END OF YEAR</b>	<b>\$ 77,967</b>	<b>\$ 98,891</b>	<b>\$ 20,924</b>	<b>\$ 98,167</b>

The accompanying notes are an integral part of these financial statements.

## NOTE 1 -- SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The accounting policies of the Western States Water Council conform to generally accepted accounting principles as applicable to governmental units. The following is a summary of the significant policies:

### Fund Accounting

The accounts of the Council are organized on the basis of funds and account groups, each of which is considered a separate accounting entity. The operations of each fund are accounted for with a separate set of self-balancing accounts that comprise its assets, liabilities, fund equity, revenues, and expenditures. Resources are allocated to and accounted for in the fund based upon the purposes for which they are to be spent and the means by which spending activities are controlled.

### Governmental Fund

The General Fund is used to account for all financial resources of the Council not accounted for by a separate, specialized fund.

### Account Groups

Account Groups (not "funds") are concerned only with the measurement of financial position. They are not involved with measurement of results of operations. There are two account groups, as follows:

The General Fixed Assets Account Group is used to record the cost of the capital assets owned, or acquired through capital lease obligations, by the Council, and to aid in maintaining physical control over these assets. Cost of assets acquired through a capital lease is the fair market value at the lease inception date. General fixed assets are recorded as expenditures in the governmental fund at the time of purchase or at the time the lease payment is made. These assets are then concurrently recorded, at cost, in the General Fixed Assets Account Group.

The General Long-term Debt Account Group is used to record long-term liabilities expected to be financed from the governmental fund.

### Basis of Accounting

The modified accrual basis of accounting, under which expenditures, other than interest on long-term debt, are recorded when the liability is incurred and revenues are recorded when

received in cash unless susceptible to accrual, (i.e. measurable and available to finance the Council's operations, or of a material amount and not received at the normal time of receipt), is followed for the Maintenance and Operation Fund.

NOTE 2 -- CASH

The Council's major cash funds were held in the Utah Public Treasurer's Investment Fund during the years ended June 30, 1988 and 1987. Deposits and withdrawals may be made at any time and interest payments are added to the investment balance monthly. The balance in the Investment Fund at June 30, 1988 was \$90,497.

NOTE 3 -- LEASE COMMITMENTS

The Council entered into a new lease agreement for its new office location on February 5, 1988. The term of the lease is three years with monthly payments of \$1,504.00. The month of March is rent free for the three years.

On March 31, 1988, the Council entered into a capital lease for the photocopying machine. The lease term is three years with monthly base payments of \$605.28.

On October 29, 1985, the Council entered into a capital lease with a leasing company for their phone system. The lease term is four years, with monthly lease payments of \$107.85. At the end of the lease, the Council has the option of purchasing the phone system for \$1.00. The following is a schedule by years of the future minimum lease payments together with the present value of the minimum lease payments:

	<u>Capital Leases</u>	<u>Office Lease</u>	<u>Total</u>
1989	\$ 8,558	\$16,544	\$25,102
1990	7,479	16,544	24,023
1991	<u>5,448</u>	<u>12,032</u>	<u>17,480</u>
Total minimum payments	21,485	45,120	66,605
Less: Amount representing interest	<u>2,227</u>	<u>-</u>	<u>2,227</u>
Present value of minimum lease payment	<u>\$19,258</u>	<u>\$45,120</u>	<u>\$64,378</u>

NOTE 4 -- ASSESSMENTS PREPAID

During the 1986-87 fiscal year, New Mexico paid its 1987-88 membership assessment fee in advance, creating a \$21,000 balance in "Assessments Prepaid." This amount was reclassified as assessment revenue during the 1987-88 year.

NOTE 5 -- RETIREMENT PLAN

The Council has a defined contribution retirement plan that covers substantially all of its employees. To be a member of the plan the employee must have completed 12 months or 1,000 hours of service in a 12 month period. Vesting accumulates at a rate of 10% a year, until the member is fully vested after 10 years of service.

The Council contributes to the Plan an amount equal to 12% of each plan member's gross wages plus an additional 3% of each member's gross wages in excess of the maximum social taxable wage base, less the total of all amounts to be reallocated during the Taxable Year by reason of recoveries attributable to contributions arising out of termination of employment of members of the Plan prior to full vesting.

The total contribution for the year ended June 30, 1988 was \$16,297.

NOTE 6 -- COMPENSATED ABSENCES

Employees of the Western States Water Council are entitled to compensated absences in the form of paid vacation and paid sick leave. According to policy, the vacation pay accrues at a rate of 1.25 days per full month of service rendered. The number of unused vacation days, up to 40, carries forward to the beginning of the next calendar year. Employees also accumulate sick days at a rate of 1.25 days per month. The unused sick days accumulate without limit, but ordinarily do not vest. However, if an employee meets the retirement requirements of State of Utah employees, the employee's accumulated sick days vest at 25 percent. Currently one employee of the Water Council meets the requirements for this 25 percent vesting.

The Obligation for Compensated Absences has been classified as part of the General Long-Term Debt Account Group because presently the obligation is not expected to be paid in the current year.

## COMMITTEE CHARTERS AND MEMBERS

The committee charters, committee membership and subcommittee assignments follow:

### EXECUTIVE COMMITTEE CHARTER

This Charter of the Executive Committee of the Western States Water Council was adopted by resolution on January 29, 1970, at the meeting in Seattle, Washington and amended on July 26, 1979 at the meeting in Sitka, Alaska, on October 16, 1981 at the meeting in Jackson, Wyoming, and further amended at the Council meeting in Boise, Idaho on April 14, 1988. The Executive Committee is the administrative and steering committee of the Council on matters outlined in this Charter and such other matters as may be related thereto.

#### Objective

The Committee shall assist the Council in carrying out effective cooperation among western states in planning for programs leading to integrated development of water resources by state, federal, and other agencies: by acting as a steering committee; by making sure there is consistency and no overlap of Council liaison with national organizations, including the United States Congress, and federal departments and agencies; and by maintaining liaison with the Western Governors' Association and other western organizations.

#### Authority

The authority of the Executive Committee derives from the Council itself and includes the following powers: (1) to act upon internal and administrative matters between meetings of the Council; (2) to call special meetings of the Council on external matters when prompt action by the Council before the next regular meeting is deemed necessary by a majority of the Executive Committee members; (3) to create working groups and ad hoc groups; (4) to make assignments to committees; (5) to receive committee reports; and (6) to implement actions and programs approved by the Council.

#### Program

The Committee shall correlate the Council's liaison with national and regional agencies, and correlate the Council's efforts to keep abreast of broad-scaled developments as they relate to Council programs. The Committee shall be authorized to initiate recommendations for Council actions at conferences, hearings, and special meetings with national water leaders. The Committee may make assignments to other committees and may give direction as to

the scope and nature of their activities, and may delegate authority it deems appropriate to the Management Subcommittee of the Executive Committee. The Management Subcommittee is composed of the immediate past chairman, the chairman, the vice-chairman, the secretary-treasurer, and the executive director. In the event that one of these positions is vacant, the position on the Management Subcommittee can be filled by a member of the Executive Committee at the discretion of a majority vote of the Management Subcommittee.

#### Organization and Voting

The Executive Committee of the Western States Water Council consists of one representative from each member state in accordance with Article IX - Executive Committee of the "Rules of Organization." The Chairman and Vice Chairman of the Council shall serve as officers of the Executive Committee, but do not necessarily have to be voting members of the Executive Committee. The Council staff furnishes necessary assistance as desired and requested by the Executive Committee.

Each member of the Executive Committee shall have one vote in conducting business. A quorum shall consist of a majority of members. A majority of those voting shall prevail on internal matters. If an external matter comes before the Executive Committee between Council meetings, and the Executive Committee finds an emergency exists, it may take final action by unanimous vote of all members. Except as otherwise provided herein, meetings shall be conducted under Robert's Rules of Order, Revised.

#### Meetings

Regular meetings of the Executive Committee may be held in conjunction with meetings of the Council. Special meetings of the Executive Committee may be called by the Chairman, or by the Vice-Chairman in the event the Chairman is incapacitated, or by any six (6) members, upon five-days notice to all members stating the time and place of the meeting. When all members are present, no notice is required. All meetings may be adjourned to a time certain by majority vote of those present.

#### Reporting

The Committee shall report to the Council at each Council meeting as to any actions it may have taken between meetings.

**EXECUTIVE COMMITTEE MEMBERS**

Roland D. Westergard - Nevada - Chairman  
Gary Gustafson - Alaska            William H. Young - Oregon  
C. Laurence Linser - Arizona        Vice Chairman  
David Kennedy - California        John J. Smith- South Dakota  
J. William McDonald - Colorado    Reese Peck (Alt.) - South Dakota  
R. Keith Higginson - Idaho        John T. Montford - Texas  
Gary Fritz - Montana                Dee C. Hansen - Utah  
S. E. Reynolds - New Mexico        Hedia Adelsman - Washington  
Vern Fahy - North Dakota            Gordon W. Fassett - Wyoming

(Photograph #) <sup>3</sup>

Back Row: Bill McDonald, Bill Young, John Hatch, Larry Linser  
Front Row: Dave Kennedy, Roland Westergard, Hedia Adelsman,  
Gary Gustafson, Jeff Fassett



**Management Subcommittee**

Roland D. Westergard - Nevada - Chairman  
William H. Young - Nevada  
Vice Chairman  
J. William McDonald - Colorado  
Past Chairman  
Dee C. Hansen - Utah  
Secretary/Treasurer  
D. Craig Bell  
Executive Director

(Photograph # <sup>4</sup>~~211~~)

D. Craig Bell, William H. Young, Roland D. Westergard, Dee C. Hansen

**Water Management Symposium Subcommittee**

J. William McDonald - Colorado - Chairman  
Gary Fritz - Montana  
Jack Stonehocker - Nevada  
Vern Fahy - North Dakota  
Steve Pirner - South Dakota  
Myron Goodson - Wyoming

**Water Policy Seminar Subcommittee**

David Kennedy - California - Chairman  
Michael McNulty - Arizona  
A. Kenneth Dunn - Idaho  
Philip Mutz - New Mexico  
William H. Young - Oregon  
Dee C. Hansen - Utah  
Hedia Adelsman - Washington

## LEGAL COMMITTEE CHARTER

### Objective

The Committee shall assist in initiating, establishing and carrying out the objectives of the Council by providing guidance on the social, ethical, legal and political aspects of the programs relating to water resources and water quality.

### Program

To review and develop recommended Council positions on current legislation, laws, administrative rules and activities relating to water resources, water rights, related land use and Indian issues and to examine and keep the Council current on all ongoing pertinent court cases.

### Organization and Voting

Committee membership is by appointment by the states of the Council. One member shall be from each state, but need not be one of the state's delegates to the Council. Any Legal Committee member may designate an alternate to serve in his absence. A quorum shall consist of a majority of members. A majority of those members present and voting is required for Committee action. Each state shall have one vote. Except as otherwise provided herein, meetings shall be conducted under Robert's Rules of Order, Revised.

A Committee chairman shall be appointed by the Chairman of the Council from the Committee membership and serve at his pleasure. The Committee chairman will appoint a vice chairman and subcommittees as needed. The staff of the Council shall furnish such assistance to the Committee as is requested. A member of the staff will serve as secretary.

### Meetings

The Committee shall meet at the call of the Committee chairman.

### Reports

The Committee shall submit reports and/or recommendations to the Council and to the Executive Committee as requested. The Committee shall not issue any public statements or reports except as may be directed by the Council or Executive Committee.

### Charter Adoption

This Charter of the Legal Committee of the Western States Water Council was adopted by resolution on January 16, 1976, at

the meeting of the Council in San Diego, California, and amended on October 16, 1981, in Jackson, Wyoming.

**LEGAL COMMITTEE MEMBERS**

David Kennedy - California - Chairman  
Gary Gustafson - Alaska  
Tom Choules - Arizona  
Roderick E. Walston - California  
Wendy C. Weiss - Colorado  
A. Kenneth Dunn - Idaho  
Donald MacIntyre - Montana  
Roland D. Westergard - Nevada  
Charles DuMars - New Mexico  
Anne Squier - Oregon  
John Hatch - South Dakota  
John Guhin (Alt.) - South Dakota  
Terral Smith - Texas  
Thorpe A. Waddingham - Utah  
Charles B. Roe - Washington  
Myron Goodson - Wyoming  
Jennifer Hager (Alt.) - Wyoming

(Photograph # <sup>5</sup> )

Myron Goodson, Herman McDevitt (ID - deceased), Roland Westergard, Dave Kennedy, Tom Choules, Rod Walston, Anne Squier

**Amicus Brief Subcommittee**

Jennifer Hager - Wyoming - Chairwoman  
Roderick E. Walston - California  
Donald MacIntyre - Montana  
Anne Squier - Oregon  
John Guhin - South Dakota

**Conflicts Between the Implementation of Federal Environmental Statutes and Western State Water Law Subcommittee**

Roderick E. Walston - California - Chairman  
Paul Ferraro - Colorado  
Gene Gray - Idaho  
Charles DuMars - New Mexico  
William H. Young - Oregon

**General Adjudication Procedures and Federal Reserved Water Rights Subcommittee**

Charles B. Roe - Washington - Chairman  
Gary Gustafson - Alaska  
Tom Choules - Arizona  
A. Kenneth Dunn - Idaho  
Charles DuMars - New Mexico  
Anne Squier - Oregon  
John Guhin - South Dakota  
Jeff Fassett - Wyoming

## WATER RESOURCES COMMITTEE CHARTER

### Objective

The Committee shall assist in initiating, establishing and carrying out objectives of the Council by providing guidance on water resources planning, conservation, and developments that are of common interest to the Council.

### Program

To review and develop recommended Council positions on current legislation, regulations, criteria, plans and problems relating to water planning, management and conservation development for all purposes, and utilization.

### Organization and Voting

Committee membership is by appointment by the states of the Council, one member from each state, but not necessarily one of the state's delegates to the Council. Any Water Resource Committee member may designate an alternate to serve in his absence. A quorum shall consist of a majority of members. A majority of those members present and voting is required for Committee action. Each state shall have one vote. Except as otherwise provided herein, meetings shall be conducted under Robert's Rules of Order, Revised.

The Committee chairman shall be appointed by the Chairman of the Council from Committee membership. The Committee chairman will appoint a vice chairman, and subcommittees as needed. The Council staff will furnish necessary assistance as desired and requested by the Committee. A member of the staff will serve as secretary.

### Meetings

The Committee will meet at the call of the Committee chairman.

### Reporting

The Committee shall submit its reports and/or recommendations to the Council and to the Executive Committee if so requested. The Committee shall not issue any public statements or reports except as may be directed by the Council and the Executive Committee.

### Charter Adoption

This Charter of the Water Resources Committee of the Western States Water Council was adopted by resolution on January 16, 1976,

at the meeting of the Council in San Diego, California, and amended on October 16, 1981, in Jackson, Wyoming.

**WATER RESOURCES COMMITTEE MEMBERS**

Hedia Adelsman - Washington - Chairwoman	
Peg Tileston - Alaska	Vern Fahy - North Dakota
N. William Plummer - Arizona	William H. Young - Oregon
Larry Linser (Alt.) - Arizona	John J. Smith - South Dakota
Ruben Ayala - California	Marian Gunderson (Alt.) - South Dakota
J. William McDonald - Colorado	Paul Hopkins - Texas
R. Keith Higginson - Idaho	D. Larry Anderson - Utah
Jack L. Stonehocker - Nevada	Gordon W. Fassett - Wyoming
S. E. Reynolds - New Mexico	

(Photograph # ~~6~~ 6)

Back Row: Ken Dunn, Bill Young, Larry Anderson, Bill McDonald, Larry Linser  
Front Row: Jeff Fassett, Hedia Adelsman, Bob Miller

**Changes in National Water Policy Subcommittee**

R. Keith Higginson - Idaho - Chairman	
Michael McNulty - Arizona	Dee C. Hansen - Utah
David Kennedy - California	Hedia Adelsman - Washington
Gary Fritz - Montana	Gordon W. Fassett - Wyoming
William H. Young - Oregon	

**Federal Ground Water Recharge Demonstration Program Subcommittee**

D. Larry Anderson - Utah - Chairman	
C. Laurence Linser - Arizona	John Hatch - South Dakota
R. Keith Higginson - Idaho	Hedia Adelsman - Washington
Joseph E. Dini - Nevada	

## WATER QUALITY COMMITTEE CHARTER

### Objective

The Committee shall assist in initiating, establishing and carrying out objectives of the Council by providing guidance on the water quality and environmental aspects of all programs of interest to the Council.

### Program

To review and develop recommended Council positions on water quality and environmental standards and problems relating to the water resources of the Western United States.

### Organization and Voting

Committee membership is by appointment by the states of the Council. One member shall be from each state, but need not be one of the state's delegates to the Council. Any Water Quality Committee member may designate an alternate to serve in his absence. A quorum shall consist of a majority of members. A majority of those members present and voting is required for Committee action. Each state shall have one vote. Except as otherwise provided herein, meetings shall be conducted under Robert's Rules of Order, Revised.

A Committee chairman shall be appointed by the Chairman of the Council from the Committee membership and serve at his pleasure. The Committee chairman will appoint a vice chairman and subcommittees as needed. The staff of the Council shall furnish such assistance to the Committee as is requested. A member of the staff will serve as secretary.

### Meetings

The Committee shall meet at the call of the Committee chairman.

### Reports

The Committee shall submit reports and/or recommendations to the Council and to the Executive Committee as requested. The Committee shall not issue any public statements or reports except as may be directed by the Council or the Executive Committee.

### Charter Adoption

This Charter of the Water Quality Committee of the Western States Water Council was adopted by resolution on January 16, 1976, at the meeting of the Council in San Diego, California, and amended on October 16, 1981, in Jackson, Wyoming.

## WATER QUALITY COMMITTEE MEMBERS

Gene Gray - Idaho - Chairman  
Daniel Wilkerson - Alaska  
Michael F. McNulty - Arizona  
David G. Kelley - California  
Paul Ferraro - Colorado  
Steve Pilcher - Montana  
Joseph E. Dini, Jr. - Nevada  
Frank DuBois - New Mexico  
Wayne Cunningham (Alt.) - New Mexico  
Francis Schwindt - North Dakota  
Bill Blosser - Oregon  
Steve Pirner - South Dakota  
Fred Pfeiffer - Texas  
Don A. Ostler - Utah  
Carol Jolly - Washington  
George Christopulos - Wyoming

(Photograph #1)

Dave Kelley, Fred Pfeiffer, Gene Gray, Don Ostler, Paul Ferraro

### Federal Ground Water Legislation Subcommittee

Charles B. Roe - Washington - Chairman  
David G. Kelley - California  
Darlene E. Ruiz - California  
J. William McDonald - Colorado  
A. Kenneth Dunn - Idaho  
Terral Smith - Texas

### Input Into EPA Decisionmaking

Steve Pilcher - Montana - Chairman  
Daniel Wilkerson - Alaska  
Darlene E. Ruiz - California  
Don Ostler - Utah  
George Christopulos - Wyoming

### Non-point Source Pollution Control Subcommittee

Darlene E. Ruiz - California - Chairwoman  
Paul Ferraro - Colorado  
Frank DuBois - New Mexico  
Wayne Cunningham - New Mexico  
Francis Schwindt - North Dakota  
Bill Blosser - Oregon  
Don Ostler - Utah  
Steve Pirner - South Dakota

### Ramifications of the Clean Water Act Reauthorization Subcommittee

Don A. Ostler - Utah - Chairman  
Daniel Wilderson - Alaska  
Paul Ferraro - Colorado  
Joseph E. Dini, Jr. - Nevada  
Fred Pfeiffer - Texas

## RULES OF ORGANIZATION<sup>28</sup>

### Article I - Name

The name of this organization shall be "THE WESTERN STATES WATER COUNCIL."

### Article II - Purpose

The purpose of the Western States Water Council shall be to accomplish effective cooperation among western states in matters relating to the planning, conservation, development, management, and protection of their water resources.

### Article III - Principles

Except as otherwise provided by existing compacts, the planning of western water resources development on a regional basis will be predicated upon the following principles for protection of states of origin:

(1) All water-related needs of the states of origin, including but not limited to irrigation, municipal and industrial water, flood control, power, navigation, recreation, water quality control, and fish and wildlife preservation and enhancement shall be considered in formulating the plan.

(2) The rights of states to water derived from the interbasin transfers shall be subordinate to needs within the states of origin.

(3) The cost of water development to the states of origin shall not be greater, but may be less, than would have been the case had there never been an export from those states under any such plan.

### Article IV - Functions

The functions of the Western States Water Council shall be to:

(1) Undertake continuing review of all large-scale interstate and interbasin plans and projects for development, control or utilization of water resources in the Western States, and submit recommendations to the Governors regarding the compatibility of such projects and plans with an orderly and optimum development of water resources in the Western States.

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<sup>28</sup>The rules incorporate changes that were adopted in January of 1989 at the Council's 93rd quarterly meetings in Las Vegas, Nevada.



(2) Investigate and review water related matters of interest to the Western States.

(3) Express policy positions regarding proposed federal laws, rules and regulations and other matters affecting the planning, conservation, development, management, and protection of water resources in Western States.

(4) Sponsor and encourage activities to enhance exchange of ideas and information and to promote dialogue regarding optimum management of western water resources.

(5) Authorize preparation of amicus briefs to assist western states in presenting positions on issues of common interest in cases before federal and state courts.

#### Article V - Membership

(1) The membership of the Council consists of not more than three representatives of each of the states of Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming appointed by and serving at the pleasure of the respective Governors. Member states of the Western Governors' Association, which are not members of the Council, shall be added to membership if their respective Governors so request. The Executive Committee may, upon unanimous vote, confer membership upon other western states, which are not members of the Western Governors' Association, if their respective Governor so requests.

(2) Member states may name alternate representatives.

(3) Any state may withdraw from membership upon written notice by its Governor.

(4) The Executive Committee of the Council may, by unanimous vote, confer the status of Associate Member of the Council upon states it deems eligible. Associate Membership may be granted for a period of up to three years, during which time the state may appoint two official observers to participate in Council activities and receive all printed material disbursed by the Council. Associate Member states shall have no vote in Council matters. The Executive Committee shall, through regular Council voting procedures, establish the appropriate level of dues for Associate Member states. In addition to determinations concerning Associate Member states, the Executive Committee may, when appropriate, establish fees for participation in Council activities by non-members.

#### Article VI - Ex-Officio Members

The Governors of the member states shall be ex-officio members and shall be in addition to the regularly appointed members from each state.

#### Article VII - Officers

The officers of the Council shall be the Chairman, Vice Chairman and Secretary-Treasurer. They shall be selected in the manner provided in Article VIII.

#### Article VIII - Selection of Officers

The Chairman, Vice Chairman and Secretary-Treasurer, who shall be from different states, shall be elected from the Council by a majority vote at a regular meeting to be held in July of each year. These officers shall serve one-year terms. However, the Chairman and Vice Chairman may not be elected to serve more than two terms consecutively in any one office. In the event that a vacancy occurs in any of these offices, it shall be filled by an election to be held at the next quarterly Council meeting.

#### Article IX - Executive Committee

(1) Each Governor may designate one representative to serve on an Executive Committee which shall have such authority as may be conferred on it by these Rules of Organization, or by action of the Council. In the absence of such a designation by the Governor, representatives of each state shall designate one of their members to serve on the Executive Committee. Any Executive Committee member may designate an alternate to serve in his/her absence.

(2) The Council may establish other committees which shall have such authority as may be conferred upon them by action of the Council.

#### Article X - Voting

Each state represented at a meeting of the Council shall have one vote. A quorum shall consist of a majority of the member states. No external policy matter may be brought before the Council for a vote unless advance notice of such matter has been mailed to each member of the Council at least 30 days prior to a regular meeting and 10 days prior to a special meeting at which such matter is to be considered; provided, that such matters may be added to the agenda at any meeting by unanimous consent of those states represented at the meeting. In any matter put before the Council for a vote, other than election of officers, any member state may upon request obtain one automatic delay in the voting until the next meeting of the Council. Further delays in voting on such matters may be obtained only by majority vote. No recommendation may be issued or external position taken by the Council except by an affirmative vote of at least two-thirds of all

member states; provided that on matters concerning out-of-basin transfers no recommendation may be issued or external position taken by the Council except by a unanimous vote of all member states. On all internal matters; however, action may be taken by a majority vote of all member states.

#### Article XI - Conduct of Meetings

Except as otherwise provided herein, meetings shall be conducted under Robert's Rules of Order, Revised. A ruling by the Chair to the effect that the matter under consideration does not concern an out-of-basin transfer is an appealable ruling, and in the event an appeal is made, such ruling to be effective must be sustained by an affirmative vote of at least 2/3 of the member states.

#### Article XII - Meetings

The Council shall hold regular quarterly meetings at times and places to be decided by the Chairman, upon 30 days written notice. Special meetings may be called by a majority vote of the Executive Committee, upon 10 days written notice.

#### Article XIII - Limitations

The work of the Council shall in no way defer or delay authorization or construction of any projects now before Congress for either authorization or appropriation.

#### Article XIV - Amendment

These articles may be amended at any meeting of the Council by unanimous vote of the member states represented at the meeting. The substance of the proposed amendment shall be included in the call of such meetings.

## PRINCIPLES-GUIDELINES

### Preamble

The Constitution of the United States and the Constitutions of the individual States shall be adhered to in Western regional water planning and development.

This statement of principle reaffirms, expands and clarifies principles set forth in Article III, "Rules of Organization" of the Western States Water Council.

### 1.0 Principles

1.1 Comprehensive regional planning, transcending political boundaries, is a major consideration in the maximum proper utilization of the water and related resources of the West. Development of those resources to meet all reasonable needs as they may arise is essential to the continuing prosperity of the region and each of its economically interdependent parts.

1.1.1 The planning process should include or supplement rather than supersede existing water resource developments; it should complement and strengthen local and state planning activities rather than displace them; it should result from cooperative effort of all agencies concerned.

1.1.2 The planning program should be aimed to achieve a reasonably equitable balance among all existing and potential uses of water, insofar as the supply available or to be developed will permit, consistent with established rights.

1.1.3 Water resources of the region should be put to beneficial use to the fullest practicable extent in an efficient manner in accord with the needs and types of use in the particular area and wasteful and inefficient practices or those that unnecessarily degrade water quality should be eliminated.

1.1.4 New uses of western water resources should make the most practical and efficient use of water resources and should minimize any necessary reductions in the quality of western water resources.

1.1.5 Water resource developments should be implemented when they are well planned, endorsed by local and state governments and provide for maximum social and economic benefits from the use of western water resources and integrate maximum use concepts with conservation, environmental enhancement and the preservation of natural resources.

1.1.6 The States should be the lead governmental body in the administration of water rights and in the preparation of statewide

water plans so that wise use and best conservation practices can be assured.

1.1.7 It is imperative that all States, as expeditiously as possible, make thorough studies of their water needs in accordance with Guidelines and Standards similar to those adopted by the Council.

1.1.8 Long-range water plans should be expeditiously developed which are flexible enough to permit modifications to meet changing long-term needs and advances in technology, yet specific enough to provide solutions for immediate water supply problems.

1.1.9 Water exportation studies shall include a thorough examination of efficiency of water use and cost-price relationships and a comprehensive economic evaluation that considers all costs and benefits accruing to the area of origin and costs and benefits accruing to the area of import. The economic analysis must include similar studies for alternative sources of supply. Aesthetic values shall be considered in over-all project evaluation.

1.1.10 Close cooperation and free-interchange of ideas and reporting of data on a uniform basis among all affected local, State and Federal interests, shall be sought.

1.1.11 Water resource planning shall consider water quality, as well as quantity.

1.2 Regional water planning should be designed to avoid interference with existing rights to the use of water. Any taking of land or water rights shall be governed by law of eminent domain. Interstate compact allocations shall be honored.

1.2.1 Any entity studying transfer of surplus water shall recognize the economic, social, legal, political and ethical implications of the transfer on both the exporting and importing areas. Such entity must plan so as to assure social and economic growth and development, by either:

(a) The return or replacement of the water exported to the area of origin; or

(b) Providing equivalent beneficial programs acceptable to the area.

1.2.2 The rights to water of regions; states or individuals must be recognized and guaranteed through due process of law.

1.3 Except as otherwise provided by existing law, the planning of water resources development in the Western States shall be predicated upon the following principles for protection of and assistance to states of origin.

1.3.1 Interbasin or interregional transfer of water shall contemplate only the transfer from the area of origin of those quantities of water deemed to be surplus. The States shall endeavor to agree upon determination of quantities of water that are surplus.

1.3.2 In making determination of possible surplus water, all water-related needs of the States and areas of origin bearing on environmental protection, economic prosperity and social well being shall be recognized.

1.3.3 All water requirements, present or future, for uses within the drainage area of any river basin, shall have priority and right in perpetuity to the use of the waters of that river basin, for all purposes, as against the uses of water delivered by means of such exportation works, unless otherwise provided by treaty, interstate agreement or compact.

1.3.4 The cost of water development to the States of origin shall not be greater, but may be less, than would have been the case had there never been an export from those States under any such plan.

1.3.5 In the study on interstate diversion, any interstate diversion project shall neither impede nor minimize the development of water resources in the state of origin, and shall result in substantive net advantage to such State over the advantage it could have obtained, by itself or otherwise, without such diversion project.

1.3.6 All plans for interbasin diversion of water shall provide for such financial arrangements with the states of origin as may be necessary to comply with Sections 1.3.4 and 1.3.5 above.

1.3.7 The exportation of water shall not change an area of origin from a water-rich to a water-deficient economy and shall not adversely affect the competitive position of the area of origin.

1.3.8 State or area of origin priority shall be explicitly set forth in all contracts for the use of imported water. Should such priority ever be denied, through subsequent action of the Congress, or otherwise, areas of origin will be entitled to just compensation.

1.3.9 Federal statutes designed to protect areas and states of origin, in any regional interstate plan of water development, should include the consent by the United States for any such state of origin to sue in the Federal Courts, to compel Federal officials to comply with such statutes and for such other relief as deemed equitable.

1.4 This statement of principles shall not be considered as any support or advocacy for the diversion of water from one river basin to another.

1.5 The public should be educated concerning the varied and many uses of water and the wise and prudent management thereof. Sound water resource and related land management concepts and the needs and issues confronting the region and the nation should be disseminated. All means and possibilities of financing, development of, and implementing an education program should be explored.

## 2.0 Guidelines and Procedures for Correlation of Plans and Schedules Among Western States

### 2.1 Interstate Exchange of Information and Data.

2.1.1 When a state publishes reports or takes any action which may affect plans or objectives of other States, the affected States and the Western States Water Council staff should be furnished copies thereof.

Request for basic data and supporting information should be initiated by the state needing the data or information.

2.1.2 The request for the exchange of basic data and supporting information should be coordinated through one state agency.

2.1.3 The name, official position, address and telephone number of the designated state office will be forwarded to the Western States Water Council staff. The staff will prepare a consolidated list of designated offices and distribute copies to all States through the State's member of the Executive Committee, Western States Water Council.

2.1.4 The type of reports and actions which should be sent to other States and the Western States Water Council staff includes, but is not limited to copies of the following:

2.1.4.1 Summaries of current and long-range estimates of various types of water needs and usable water resources.

2.1.4.2 Planning schedules for developments of all large scale interstate and interbasin plans and projects.

2.1.4.3 State evaluation of programs such as weather modification, watershed management, groundwater recharge, desalination, and waste water reclamation.

2.1.4.4 Major legal and administrative decisions pertaining to water resources.

2.1.4.5 State or Federal legislation as proposed by any state materially affecting Western States water planning.

2.2 Correlation of Plans and Schedules.

2.2.1 A master list shall be prepared and maintained at the headquarters of the Western States Water Council of items furnished pursuant to Section 2.1 with copies to be furnished to member States at appropriate intervals.



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