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1989

ANNUAL REPORT

of the

WESTERN STATES WATER COUNCIL

Twenty-fourth Annual Report

1989 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** both

received membership in 1988 after a long association with the Council. In 1987, **HAWAII** became an "associate member," which is a temporary status approved by amendment of the Council's Rules of Organization in 1983. During 1989, **MINNESOTA** became a member of the Western Governors' Association and also received associate membership in the Western States Water Council. Council membership is automatically open to all member states of the Western Governors' Association (which also includes **Nebraska**). Also during 1989, **OKLAHOMA** requested associate membership. Oklahoma's request was later approved in January 1990, bringing Council membership to eighteen states.

In January 1989, some changes to the Council's rules of organization were made to more clearly reflect current practice and address contemporary issues. **Article II - Purpose** was amended to reflect the Council's continuing efforts towards effective cooperation among western states "in matters relating to the 'planning, conservation, development, management, and protection' of their water resources." Minor corresponding changes were made regarding the functions of the Council. With respect to Council membership, **Article V** was updated to include the states of North and South Dakota. It was also amended to allow member states of the Western Governors' Association, which are not members of the Council, to be added to membership at the request of their respective governors. It was further amended to allow the Executive Committee, upon unanimous vote, to confer membership on other western states at the request of their respective governors. A further change clarified member states' ability to name alternate representatives, without limiting alternate members' status to any meeting. Further changes clarified the limited nature of associate member status by limiting it to a period of up to three years. Of note, member states share the financial burden of the Council's budget equally, while the Executive Committee establishes the appropriate level of dues for associate member states.

Other changes included clarification of the status of the Council's Secretary-Treasurer, which is now an elected position with no limit on tenure. In addition, the rules were clarified to recognize the authority of the governors to designate one representative to serve on the Council's Executive Committee. Absent such a designation, the Executive Committee member is to be designated by the governor's appointed representatives. Another change made explicit the longstanding practice of the Council to require special advance notice of proposed external policy positions only, and not of internal matters..

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, which includes the Council officers, immediate past Chairperson, and Executive Director. 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 Craig Bell, Executive Director. Working with Mr. Bell are: Tony Willardson, Associate Director; Norm Johnson, Legal Counsel; and a secretarial staff including Pearl Pollick, Cheryl Redding, and Carrie Curvin.

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 1989, meetings were held in: Las Vegas, Nevada on January 11-13; Washington, D.C. on April 12-14; Jackson, Wyoming on July 12-14; and Vancouver, Washington on October 11-13. 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's office.

Creekview Plaza, Suite A-201
942 East 7145 South
Midvale, Utah 84047

(801) 561-5300

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1989
WESTERN STATES WATER COUNCIL
MEMBERSHIP¹

ALASKA

*Governor Steve Cowper
11-86

**Gary Gustafson
7-88
Peg Tileston
2-88
Daniel Wilkerson
2-88

ARIZONA

*Governor Rose Mofford
4-88

**N. William Plummer
1-89
Tom Choules
4-70 to 7-83
reappointed 1-87
Michael F. McNulty
6-87
C. Laurence Linser (Alt.)
6-88
Randolph Wood (Alt.)
5-89

*Ex-Officio Member
**Executive Committee Member

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 to 12-89
Jeris A. Danielson (Alt.)
4-80

IDAHO

*Governor Cecil Andrus
11-86

**R. Keith Higginson
10-87
Gene Gray
10-83
A. Kenneth Dunn
5-77
Wayne T. Haas (Alt.)
10-83

MONTANA

*Governor Stan Stephens
11-88

**Gary Fritz
10-83
Donald D. MacIntyre
2-85
Steve Pilcher
4-88
Larry Fasbender (Alt.)
4-88 to 12-89

NEVADA

*Governor Robert J. Miller
1-89

**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

**Dave Sprynczynatyk
9-89
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

SOUTH DAKOTA

*Governor George Mickelson
1-87

**John J. Smith
6-88 to 6-89
+Floyd Matthew
6-89
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
Tom Craddick
7-87
John E. Birdwell
10-89
Fred Pfeiffer (Alt.)
10-83
Terral Smith (Alt.)
7-87

+Listed by virtue of position.

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

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

ASSOCIATE MEMBER STATES

HAWAII

*Governor John Waihee
1-86

William W. Paty
2-88
Manabu Tagomori
2-88

MINNESOTA

*Governor Rudy Perpich
1-87

**Joseph N. Alexander
10-89

OKLAHOMA

*Governor Henry Bellmon
1-87

Glenn H. Sullivan
1-90
James R. Barnett
1-90

COUNCIL MEMBERS
AT JACKSON, WYOMING, MEETING - July 1989

(Photograph #1)

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 #12)

Back Row: Tony Willardson, Norm Johnson, 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

**COUNCIL OFFICERS
AND COMMITTEE CHAIRPERSONS**

(Photograph #8)

Left to Right: Gene Gray, William H. Young, David Kennedy, Roland
D. Westergard, Hedia Adelsman, Dee C. Hansen

PRESENT AND PAST OFFICERS AND EXECUTIVE DIRECTORS

The following served as officers during 1989:

CHAIRMAN	VICE-CHAIRMAN	SECRETARY/TREASURER
Roland D. Westergard 7/88 - present	William H. Young 7/88 - present	Dee C. Hansen 7/88 - present

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

Ninety-Third Quarterly Meetings
January 11-13, 1989
Las Vegas, Nevada

On January 11-13, the ninety-third quarterly meetings of the Western States Water Council were held in Las Vegas, Nevada. No external policy positions came before the Council. The Joint Ground Water Subcommittee met to discuss the anticipated congressional agenda regarding national ground water policy and potential Council responses to legislative initiatives. Also a special subcommittee met and reviewed a draft contract for work with the Bureau of Reclamation to analyze the legal and economic feasibility of ground water recharge projects. The Council's working committees met under a new trial format. The committees met consecutively, rather than concurrently, in order to allow all the members to attend each Committee meeting. There was no three-committee meeting.

The Executive Committee reviewed proposed changes to the Council's rules of organization to better reflect current practices, and the Council later approved the recommendations. Briefly, the changes expand the stated purpose of the Council to emphasize the importance of state water planning, conservation and protection, as well as management and development of water resources. Other changes address state membership and clarify provisions regarding the selection and tenure of Council officers and members of the Executive Committee.

The Legal Committee heard state reports on Indian water right settlement legislation approved by the last Congress for various tribes in Arizona, California, and Colorado. Further, the States of Arizona, Idaho, Montana and Wyoming reported on the status of ongoing general stream adjudications. The discussion revolved around the challenge and tediousness inherent in identifying and quantifying thousands of water rights claims. Members also observed that it appears the adjudication of both state and federal water right claims in state courts is working satisfactorily for both state and federal parties.

Also of note, Rod Walston of the California Attorney General's Office, reported that oral arguments in the Rock Creek case, now California v. FERC, were held on December 16, before the Ninth Circuit Court of Appeals. The final outcome of this case could set an important precedent with respect to federal hydropower licensing and the authority of the Federal Energy Regulatory Commission (FERC). The three justices which heard the case appeared to view the U.S. Supreme Court's 1940 First Iowa decision as controlling. However, they raised questions regarding the proprietary nature of

state water rights, as opposed to a state's regulatory and permitting authority, which was successfully challenged in First Iowa.² The Court asked for further briefs on the proprietary questions.

The Water Quality Committee discussed in detail a variety of topics including innovative funding for Clean Water Act (CWA) programs, ground water, CWA Section 401 state water quality certification,³ CWA Section 518 implementation,⁴ and the Western Governors' Association's non-fuel mining waste project. The Committee discussed briefly EPA regulations regarding municipal sludge, underground injection control (Class V wells), and municipal stormwater permitting. The Committee also discussed sponsoring a seminar on non-point source pollution control.

The featured speaker in the Water Resource Committee was Jim Ziglar, former Assistant Secretary of Interior for Water and Science. He described Interior's new western water marketing policy, but emphasized the primary role of the states in approving any water transfers.⁵ Myron Holburt, Assistant General Manager of the Metropolitan Water District, next described a water conservation agreement with the Imperial Irrigation District to provide some 100,000 acre-feet annually of salvaged water for urban use.⁶ While it now appears everyone will benefit from the transfer, it has taken some five years to negotiate a satisfactory compromise agreement. Terry Katzer, representing the Las Vegas Valley Water District, discussed the local area's future water needs and efforts to meet those needs. The Committee also briefly reviewed the current western water supply situation, drought, national water policy issues being considered by the Western Governors' Association, and new water legislation to be addressed by various state legislatures.

On January 13, the ninety-third quarterly meeting of the Western States Water Council began with a welcome by Nevada Secretary of State Frankie Sue del Papa. She briefly described the importance of water to Nevada, the most arid state in the Nation, and the many water management challenges in the interstate Lake Tahoe Basin. Bob Broadbent, former Assistant Secretary of Interior and former Commissioner of the Bureau of Reclamation (now Director of Aviation at McCarran Airport in Las Vegas), spoke about

²Western States Water, Issue #712, January 8, 1988.

³Western States Water, Issue #764, January 6, 1989.

⁴Western States Water, Issue #759, December 2, 1988.

⁵Western States Water, Issue #762, December 23, 1988.

⁶Western States Water, Issue #764, January 6, 1989.

cross-cutting policy issues, particularly the universal environmental protection requirements associated with any major construction project.

During the Council meeting, a special panel on water for federal non-Indian lands included: Ralph Tarr, Department of Interior Solicitor; Pete Morros, Nevada State Engineer; Jeris Danielson, Colorado State Engineer; and John Leshy, an Arizona State University professor and former Associate Solicitor in the Department of Interior. While with Interior, Leshy was actively involved in development of the Krulitz Opinion, outlining theoretical non-reserved federal water right claims associated with federal lands. He noted that the demise of such theoretical claims was "lamented by no one." Jeris Danielson mentioned the Jesse case,⁷ and emphasized the importance of state water management systems fairly providing for federal water rights claims. Solicitor Tarr described his legal opinion, issued last summer, that Congress did not intend to create federal reserved water rights when designating wilderness areas.⁸ Pete Morros described the Nevada Supreme Court's decision in Nevada v. Morros, which upheld his issuance of appropriative water rights to the U.S. Bureau of Land Management and the U.S. Forest Service⁹ for recreation, fishery, stock and wildlife watering purposes. The speakers agreed federal water needs can adequately be met through state forums. However, on a case-by-case basis, Congress may choose to explicitly provide for water whenever approving future reservations of land.¹⁰

Ninety-Fourth Quarterly Meetings
and
Third Biennial Water Policy Seminar
April 12-14, 1989
Washington, D.C.

The ninety-fourth quarterly meetings of the Western States Water Council and the third biennial WSWC Water Policy Seminar were held jointly on April 12-14 in Washington, D.C. The Council chose to meet in Washington, D.C., to facilitate an interchange of views and perspectives with officials of the new Administration and

⁷Western States Water, Issue #717, February 12, 1988.

⁸Western States Water, Issue #742, August 5, 1988.

⁹Western States Water, Issue #764, January 6, 1989.

¹⁰Western States Water, Issue #762, December 23, 1988.

representatives of Congress. The meetings were well received. About 150 people participated.

Rep. George Miller (D-CA), Chairman of the House Interior Subcommittee on Water, Power, and Offshore Energy Resources, was a guest speaker. Having recently returned from Alaska, Mr. Miller spent some time evaluating the devastating impact of the oil spill caused by the wreck of the Exxon Valdez in Prince William Sound. With regard to water resource projects, Mr. Miller promised his Subcommittee would rigorously apply strict benefit-cost criteria to carefully insure any federal investment is appropriate, given the current budget deficit and other pressing domestic needs.

The Legal Committee hosted a roundtable discussion on federal hydropower licensing and state water rights. Fred Springer, Director of the Office of Hydropower Licensing, and Ray Hagenlock, Deputy Assistant General Counsel, represented the Federal Energy Regulatory Commission (FERC). Gary Ellsworth and Bill Conway, Senate Energy and Natural Resource Committee staff, participated along with Richard Lehfeldt of the House Energy Committee. The lively discussion covered various views regarding state and federal roles in hydropower licensing, including the establishment of instream flow requirements, subordination of hydropower water rights to upstream diversions, comprehensive water planning, and balancing competing water use decisions. Following the discussion, the Committee reported a position calling on Congress to redress problems created by the retroactive application of FERC Order No. 464, which waived state authority to grant or deny Section 401 water quality certification under the Clean Water Act for certain projects.¹¹

During the Water Resources Committee meeting, the featured speaker was Dave Gibbons, OMB Deputy Associate Director for Natural Resources. His remarks were sobering, and raised questions regarding the Administration's ability to meet deficit reduction goals based on the following premises. First, there will be no new taxes (though user fees will increase). Second, across the board cuts under the Gramm-Rudman-Hollings Deficit Reduction Act must be avoided. Third, given a \$1 trillion dollar budget, roughly divided in thirds between defense, entitlements and discretionary programs, only discretionary spending can be reduced. Lastly, without economic growth and increased federal revenue, discretionary spending will have to be cut almost in half to meet deficit reduction goals. Mr. Gibbons emphasized the "dramatically increased competition for funds" for all discretionary federal programs, including natural resources. Discretionary program priorities will be based on a clear federal interest and broad appeal, non-federal cost sharing agreements, and presidential priorities, such as the environment.

¹¹Western States Water, Issue #772, March 3, 1989.

Despite the gloomy outlook, the Committee reported a position urging Congress and the Administration to "recognize the vital importance of current federal water resource research and data collection and management programs and provide adequate funding to maintain current capabilities and future opportunities for the continuing use of such critical information." On a related issue, experts from the U.S. Geological Survey, National Weather Service, and Department of Energy discussed research on global warming and its potential implications for western water resource planning and management.

Another special guest, Senator Malcolm Wallop (R-WY) spoke regarding explicit reservations of water (or disclaimers thereof) for federal lands in recent legislation. He challenged Council members to unite in action to protect state water rights, particularly in connection with future federal wilderness designations.

Discussions in the Water Quality Committee focused on national ground water policy and federal legislation. The Administration was represented by Marian Mlay, Director of EPA's Office of Ground Water, David Moody, USGS Hydrologist, and Robert Long, Deputy Assistant Secretary of the Department of Agriculture. Nearly a dozen staff members from the Senate Agriculture, Environment, and Governmental Affairs Committees and House Agriculture, Energy, Interior, and Science Committees also participated. The discussion brought out the difficulty in protecting ground water resources, establishing appropriate standards and management strategies, meeting national environmental concerns, and balancing competing water uses. The Committee reported a position emphasizing primary state control.

On April 14, Senator Tim Wirth (D-CO) addressed the Full Council on the National Energy Policy Act (S. 324), which he has introduced as a vehicle to address the global warming issue by improving energy efficiency and reducing carbon dioxide emissions.¹² Senator Wirth welcomed suggestions from the Council regarding amendments to specifically address the potential impact of global warming on western water resources.

Also on April 14, Senator Mark Hatfield (R-OR) addressed the Water Policy Seminar. As the Ranking Minority Member on the Senate Appropriations Committee, he referred to the great competition for federal funds, but denounced as unfair the description of water projects as "pork barrel" or "budget busters." He noted that water conservation and impoundment, not the six-gun, won the West. The Senator advocates a continuing federal role in developing water storage projects, but emphasized the need to unify varying interests and avoid conflict. He called for a comprehensive

¹²WesternStates Water, Issue #770, February 17, 1989.

national water policy with explicit goals. The Senator intends to introduce legislation creating a national water commission, as a coordinating body utilizing existing federal agency expertise, to formulate policy, resolve interbasin disputes, and insure adequate supplies of good quality water at a reasonable cost.¹³

Rebecca Hanmer, EPA Deputy Administrator for Water, also spoke, addressing Seminar participants on a variety of issues, including ground water, wetlands, toxics, non-point source pollution control, sewage treatment, and infrastructure rehabilitation.

The Seminar concluded with a luncheon on the topic of "Water for Federal Lands and Purposes." WSWC members, Charles DuMars, Professor of Law at the University of New Mexico, and Rod Walston, California Deputy Attorney General, were the featured speakers. Mr. Walston chronicled the history of congressional deference to state water laws and the reasons why such deference should continue. Professor DuMars demonstrated how national interests embodied within federal laws can be accommodated within the framework of state water law.

During the Ninety-Fourth Quarterly Meeting, the Council approved three external positions reported by the working committees regarding: (1) FERC Order No. 464, waiving state water quality certification requirements; (2) federal water resources research, data collection and management programs; and (3) national ground water policy. The text of these positions can be found included hereafter in this report. Also of note, the Council unanimously approved resolutions of appreciation recognizing the service of past members Jack Acord of Montana, Alan Kleinman of Arizona, and Paul Ferraro of Colorado.

Ninety-Fifth Quarterly Meeting
July 12-14, 1989
Jackson Hole, Wyoming

On July 12-14, the ninety-fifth quarterly meetings of the Western States Water Council were held in Jackson, Wyoming. On July 12, the State of Wyoming arranged a special bus tour of Yellowstone National Park. Council members were able to view first-hand the effects of last year's forest fires. Of note, due in part to the fires, runoff and streamflow forecasts for the area have been increased.

¹³Western States Water, Issue #185, December 29, 1989.

The Council's working committees met on July 13. The Executive Committee discussed the Council's interface with the Western Governors Association on issues related to drought, federal water policy, and negotiation of Indian water right settlements. The Committee also considered the Nevada State Legislature's request that the Council study interbasin transfers.¹⁴ Staff was directed to prepare for Committee consideration a work plan proposal. The Committee also considered other work plan items including the Council's upcoming Water Management Symposium on State Water Plans to be held September 7-8 in Reno, Nevada, and the Water Policy Seminar which was held last April in Washington, D.C.¹⁵ The Committee noted that Council members were pleased with the results of the Seminar, and look forward to another in the Spring of 1991.

Next, the Water Resources Committee met and discussed the state-by-state drought situation in the West, including a summary of response activities. Frank Snell, Bureau of Land Management Chief for Cultural, Recreation and Wilderness Resources, presented to the Committee current BLM views on water rights for wilderness areas. He said, among other things, that the agency has no intent to re-examine the Interior Solicitor's opinion concluding that the Wilderness Act created no federal reserved water rights.¹⁶ The Committee also discussed the contract the Council signed in May with the Bureau of Reclamation to study institutional and economic aspects of ground water recharge in the western states. Work on the contract was to begin immediately. The Committee also discussed national water policy and FERC/state water resource and water quality management issues.

The Legal Committee opened its meeting with a speech from Chief John Washakie, Chairman of the Shoshone Indian Tribe Business Council. He discussed current issues regarding Indian reserved water rights and offered a number of interesting personal insights concerning the relationship between state and Indian governments. He noted that the Tribes intend to continue their negotiations with the State of Wyoming concerning water resource issues on the Wind River Indian Reservation. Next, Rod Walston, Deputy California Attorney General, described to the Committee the Ninth Circuit's decision in California v. FERC,¹⁷ and California's intention to have the case reviewed by the U.S. Supreme Court. The Committee recommended to the Council an external resolution encouraging western states to support California's appeal of the decision. The

¹⁴WesternStates Water, Issue #783, May 19, 1989.

¹⁵WesternStates Water, Issue #779, April 21, 1989.

¹⁶WesternStates Water, Issue #742, August 5, 1988.

¹⁷WesternStates Water, Issue #786, June 9, 1989.

Committee also considered the federal government's refusal to pay filing fees in the Idaho general adjudication proceeding, as well as Fredericksburg v. FERC,¹⁸ and a Committee report on conflicts between federal statutes and western water law. Further, the Committee approved the Council's sponsorship of a workshop on state general adjudication proceedings to be held in conjunction with the October Council meetings, and the Council's continuing cosponsorship (with the American Bar Association and the Conference of Western Attorneys General) of a Water Law Workshop to be held January 1990 in Palm Springs, California.

The Water Quality Committee first addressed federal ground water legislation. Two bills had recently been introduced. H.R. 2521, the Reclamation States Ground Water Act, introduced by Rep. George Miller (D-CA), would prohibit the Secretary of Interior from spending Bureau of Reclamation funds in western states with ground water problems (broadly defined) that do not have federally approved ground water protection plans. Also, Rep. James H. Scheuer (D-NY) introduced a bill designed to "inaugurate a comprehensive plan of environmental research, development, and demonstration relating to contamination and depletion of groundwater and ground water resources." The Committee also discussed EPA's biomonitoring program, the implementation of Clean Water Act Section 518, current difficulties related to Clean Water Act Section 106 set aside funds, and pending non-fuel mining waste regulations. Further, the Committee discussed the Council's non-point source pollution control workshop to be held July 26-28 in Irvine, California.¹⁹ Over 150 People attended the workshop.

The Honorable Mike Sullivan, Governor of Wyoming, addressed the ninety-fifth quarterly meeting. He discussed issues relating to last year's forest fires in Yellowstone National Park and a number of water resource matters including drought, the Supreme Court's recent decision in the Big Horn litigation, Wyoming v. United States,²⁰ and recovery of endangered fish species in the Colorado River. He stressed the need for cooperation between states and between the states and the federal government as the key to resolving challenges related to water resource management. Next, the Council heard from Jeff Fassett, Wyoming State Engineer, who described a number of current water issues. He mentioned the difficulties in the state caused by extreme drought conditions, such as the tremendous increase in what the state terms "interference complaints." He also described issues related to five suits challenging administration of the North Platte River, concerns regarding creation of a new Bear River Wildlife Refuge,

¹⁸WesternStates Water, Issue #787, June 16, 1989.

¹⁹WesternStates Water, Issue #794, August 4, 1989.

²⁰WesternStates Water, Issue #789, June 30, 1989.

and the questions which remain after the Supreme Court's Big Horn decision, particularly those related to administration of the water rights granted Indian tribes. The Council also heard from Dave Durham, Special Assistant to EPA Administrator William Reilly, who focused his remarks on EPA's Clean Water Act Section 404 program, specifically the implementation of the Administration's "no net loss" of wetlands policy.

The Council approved one external resolution encouraging "all western states to express their support for California's petition for writ of certiorari in California v. FERC by either endorsing the amicus brief which will be prepared on behalf of the western states, or by preparing an individual state brief." The Council also approved a letter transmitting to other multi-state organizations information relating to state views on federal ground water policy. The Council re-elected Roland Westergard as Chairman, Bill Young as Vice-Chairman, and Dee Hansen as Secretary-Treasurer, with Committee Chairpersons appointed as follows: Dave Kennedy, Legal Committee; Hedia Adelsman, Water Resources Committee; and Gene Gray, Water Quality Committee.

Ninety-Sixth Quarterly Meetings
October 11-13, 1989
Vancouver, Washington

The ninety-sixth quarterly meeting of the Western States Water Council was held in Vancouver, Washington on October 13. North Dakota Governor George Sinner, Chairman of the Western Governors Association, spoke to members via a telephone hookup. He praised the present level of communication and cooperation between both organizations, and stated the Council is by far the most effective of the governors' technical advisory groups. He also urged the Council to use the governors to their benefit in achieving state water resource management goals. As the WGA's Chairman and lead Governor on water, he addressed various issues including drought, Indian water rights, federal ground water regulation, and wetlands.

Governor Sinner referred to climatological projections indicating the drought is not over, and noted its continuing impacts have highlighted problems related to coordination of federal and state management and relief programs. He also referred to the Two Forks Project in Colorado and EPA's pending veto of a Corps 404 permit under the Clean Water Act as another example of the existing obstacles to effective water resource management created by disjointed federal efforts. He referred to continuing WGA efforts towards resolving Indian water right questions, and emphasized the tremendously difficult and complex process of dealing with Indians' unique status as an independent sovereign, as well as citizens of individual states and the United States. Regarding federal ground water legislation, Governor Sinner

expressed his conviction that the federal role should be to establish common standards, goals and guidelines, while leaving the states to implement ground water protection measures and regulate ground water use. Addressing wetlands protection, Governor Sinner referred to North Dakota's "no-net loss" program, which preceded federal policy initiatives. He emphasized the need to compensate landowners and create other incentives for wetlands protection. Finally, Governor Sinner welcomed Minnesota as an associate member of the Western States Water Council. The Western Governors Association earlier admitted Minnesota, thus making the state automatically eligible for Council membership.²¹

Ted Bottiger, Washington State's representative on the Northwest Power Planning Council, presented a history of the Northwest Power Planning Act and the resources of the Columbia River System. He stressed the importance of water resource policy coordination and planning in meeting increasingly competitive water uses. He drew a parallel between power and water conservation, transfer and marketing opportunities in creating win-win situations. He also highlighted the near state veto provided the Northwest Power Planning Council under an interstate compact, which requires consistency between federal agency actions and its power and fish and wildlife plans.

Joe Dini, Speaker of the Nevada State Assembly and a WSWC member, along with Steve Macola, staff to California Senator Ruben Ayala, a WSWC member, provided a state legislative prospective on developing state water policies. Speaker Dini noted over his many years in the legislature the same water issues "keep cropping up." However, water problems are becoming more critical. He specifically referred to water supply planning, water quality, Nevada's ground water recharge law, water use fees, and water transfer studies. Mr. Macola emphasized the necessity of establishing a sufficient political base to support proposed water resource management initiatives. No project, program or policy without public support will succeed, even though it may otherwise be practical and feasible.

By unanimous consent, the Council considered and adopted one resolution reported by the Water Quality Committee regarding state water pollution control programs and federal funding. The resolution emphasizes states' increasing responsibility for implementing both state and federal water pollution control programs, while federal financial support has declined. To implement new federal programs and alleviate existing financial shortfalls would require a federal funding increase of 30%-60%. The Council supported amendment of the Clean Water Act to increase the authorized level of funding for state programs under Section 106 to \$140M annually, and urged the Congress to annually

²¹Western States Water, Issue #801, September 22, 1989.

appropriate the full amount. The resolution also asks for "the flexibility to address unique state and regional priorities based upon state determination of the maximum environmental benefits of the use of the funds."

The Council's standing committees met on October 12. Each discussed and approved its 1990 work plan. The Water Quality Committee discussed wetlands protection, non-point source pollution control, the use of herbicides in canals, federal ground water legislation, biomonitoring, alternative and innovative water quality projects and program funding, the treatment of tribes as states under Section 518 of the Clean Water Act, and non-fuel mining waste problems.

The Legal Committee reviewed negotiations between the State of Idaho and the Shoshone-Bannock Indians, the Truckee-Carson River compact negotiations between Nevada and California, federal hydropower licensing and the current status of the Rock Creek case, now California v. FERC, as well as general adjudications proceedings and the payment of filing fees by federal agencies claiming water rights. In addition, the Committee discussed a draft WSWC report on conflicts between federal environmental statutes and state water law. Howard Shafferman, Deputy Interior Solicitor, addressed members on Interior water policies.

The Water Resources Committee met and discussed the continuing drought, ground water recharge, and water education. The Committee also considered the state and federal listing of the winter run chinook salmon on the Sacramento River under the Endangered Species Act.²² Biologically, the fish is identical to other chinook runs, but its listing could have a major impact on federal and state water project operations. Of note, Kaleen Cottingham, of Washington Governor Booth Gardner's staff, described state tribal fisheries' agreements. Another guest, Bill Werrick, discussed the Corps national drought study.

The National Water Policy Subcommittee met to review proposals by various organizations, and appropriate future WSWC action. The Subcommittee decided to focus on two related issues. First, it will consider state/federal drought response issues in cooperation with the Western Governors Association, and follow the Corps national drought study. The Council will focus on current state programs and recent initiatives, while the WGA will study the availability and recent use of existing federal assistance. A joint state/federal working group will be created. Second, the Subcommittee will continue to review the formulation of national water policy and coordination of federal and state roles to minimize conflicts. Some members observed Congress must act to provide direction and coordination among varying federal statutes.

²²Western States Water, Issue #798, September 1, 1989.

Further, any administrative mechanism to coordinate federal agency actions must have sufficient authority to implement its decisions. Otherwise, one member predicted, it will only become a "bureaucratic paper machine."

On October 11, prior to the regular Council meetings, the State of Washington hosted an informative and exciting tour of the Mount St. Helens National Volcanic Monument. The tour included a film presentation on the devastation created by the volcano's 1980 eruption. A winding journey on steep mountain roads provided a glimpse of the remaining crater, current lava dome, and steam vent. It also provided a spectacular view of the Toutle River Valley, and the surviving and returning flora and fauna. The tour also visited a sediment control dam under construction by the Corps of Engineers and a related fish trap and transfer operation.

On October 10, the Council's General Adjudications/Reserved Rights Subcommittee sponsored a workshop on general adjudication procedures. Approximately 20 individuals from some 10 western states participated. Most were from the offices of state attorneys general. Topics discussed included initiating adjudications, pre-trial procedures, and federal reserved water rights issues.

OTHER IMPORTANT ACTIVITIES AND EVENTS

In addition to the Council's regular quarterly meetings and formal resolutions and position statements, which are described elsewhere, several other important activities and events should be mentioned.

Western States Water

For fifteen years, the Council has published a weekly newsletter, Western States Water, in order to provide members and others with accurate and timely information on various water resources topics. The first issue was published on May 14, 1974, and the 800th issue was distributed during 1989. Also during 1989, the Council acquired a desktop publishing system which allowed the format of the newsletter to be revised to make it more easily read, while actually allowing more space for news.

Council members and others have found the newsletter to be an important source of information on various water resource topics at state, regional, and national levels. The newsletter is provided as a free service to members, governors and their staff, member state water resource agencies, state water users associations, selected multi-state organizations, key congressmen and their staffs, and top federal Administration officials. Other public and private agencies may subscribe for a fee. For information contact the Council office.

Council History

The Western States Water Council: Prologue and Organization, was published in July 1989. Initially, this history was prepared to celebrate the twentieth anniversary of the organization of the Council, and a draft was distributed during a special meeting in Reno, Nevada, on April 11, 1985. The purpose of the history is to document the deliberations and discussions which led up to the formation of the Western States Water Council and to review the purposes for its organization. It highlights the importance of state unity in addressing dynamic water resource needs and changing water policy challenges. The history is also intended to provide background information on early western water development, specific issues and various projects, interstate water conflicts, and political, legislative, and judicial events, in order to better understand current western water resource issues.

Water Law Workshop

On February 4-5, the Council, the Natural Resources Section of the American Bar Association, and the Western Conference of

Attorneys General co-sponsored their seventh annual workshop on recent developments in western water law. The seminar was held in San Diego, California. Over 150 people attended. A number of western water experts spoke, including Joseph Sax, Adolph Moskowitz, and Ray Moses. Council members who spoke included Rod Walston, Charles Roe, and Dallin Jensen. Among the topics discussed were water rights regulation and the taking of property, water transfers and marketing, the future of federal water policy, and a number of other selected issues and cases.

Water Policy Seminar

The Council's third biennial Water Policy Seminar was held in conjunction with the WSWC ninety-fourth quarterly meetings in Washington, D.C. on April 12-14. Special guest speakers included Senator Mark Hatfield (R-OR), former governor of the State of Oregon and one of the cosponsors of the 1965 resolution creating the Western States Water Council, Senators Tim Wirth (D-CO) and Malcolm Wallop (R-WY), and Rep. George Miller (D-CA). Other guests included: Dave Gibbons, OMB, Deputy Associate Director for Natural Resources; Robert Long, Deputy Assistant Secretary of the Department of Agriculture; and Rebecca Hanmer, EPA Deputy Assistant Administrator for Water.

Western Governors' Association Annual Meeting

The annual meeting of the Western Governors' Association (WGA) was held on July 16-18, in Long Beach, California.²³ The governors adopted a work plan that included items related to federal hydropower project licensing, water policy coordination, drought and Indian water rights. The WGA intends to convene a workshop on drought response and work with the White House and several federal agencies to improve the implementation of federal water policy. The WGA will also work with the Western States Water Council "to render assistance to governors in developing policy and positions on legislation and issues which are being raised in the areas of ground and surface water quality."

The governors adopted four resolutions on water policy issues. First, the governors encouraged states to support California's petition for writ of certiorari before the Supreme Court to review the Ninth Circuit's decision upholding the Federal Energy Regulatory Commission's exclusive jurisdiction to set instream flow requirements with regard to hydroelectric projects. The second resolution supports continuing federal assistance to mitigate the impacts of the current drought. The third resolution addresses WGA work with the White House, federal agencies and the Congress on federal water policy coordination generally, and in particular, strategies to respond to drought over the long-term. The WGA will

²³Western States Water, Issue #792, July 21, 1989.

put together a drought working group to address short-term responses to the drought. A fourth resolution reiterates support for negotiated Indian water rights settlements, and calls for full federal funding of settlements once authorized by Congress.

Governor George Sinner of North Dakota, the lead governor for water policy issues, was elected as the new WGA Chairman and Governor George Mickelson of South Dakota was elected Vice-Chairman.

Non-point Source Pollution Control Symposium

On July 25-28, the Western States Water Council held a workshop on technical issues related to non-point source (NPS) pollution control. Over 150 people attended the workshop, which was held in Irvine, California. One objective of the workshop was to identify NPS technical issues related to NPS pollution control and to determine their relationship to EPA's point-source/NPS programs and state water quality issues. A second objective was to report on successful western state projects, programs, and strategies aimed at mitigating NPS pollution. A third objective was to develop recommendations that may be included in future WSWC position papers or policies dealing with NPS pollution control. Separate workshop sessions focused on: (1) agricultural drainage from crop production; (2) agricultural chemicals; (3) grazing/feedlots/dairies; (4) urban runoff, construction and hydrologic modification; (5) silviculture; and (6) resources extraction and land disposal.

State officials moderated the working sessions and then participated in a panel discussion on the final day of the workshop under the direction of the workshop's general chair, WSWC member Darlene Ruiz of California. Recommendations from the panel discussion were presented to the Council. At the workshop, Geoffrey H. Grubbs, Director of EPA's Assessment and Watershed Protection Division, noted: "This is exactly the kind of thing the states should be doing."

Proceedings from the workshop, comprised of some 40 technical papers, can be purchased by contacting the Council office.

Water Management Symposium

The Sixth Annual WSWC Water Management Symposium, State Water Plans, was held on September 7-8, 1989 in Reno, Nevada. Twenty state officials prepared and presented papers on water planning. The meeting drew 75 participants from as far away as Alabama, Alaska, Hawaii, and Minnesota. One state official described the symposium as "a valuable opportunity to exchange information on current programs and pending issues with other states." WSWC Chairman Roland Westergard chaired the meetings. He said, "Our water supplies are finite and the demands are increasing. Our

future is in a large part going to be controlled by the availability of obviously limited resources...."

Joe Dini, Speaker of the Nevada State Assembly and a WSWC member, observed that after 22 years in the Nevada State Legislature, "...there is no subject more important to the Western States, individually and collectively, than water." He noted the considerable interest and concern about local, state, interstate and regional water issues, "In my view it is imperative that the State of Nevada and other Western States be aggressively involved in developing plans for the conservation and use of supplies currently available and for the potential development of additional supplies for future growth." Regarding interstate cooperation, he continued, "I cannot say enough about the effectiveness of the Council in their efforts to address state and federal legislation relating to both water quantity and quality.... The water laws of the western states have served us all well. Although we must be continually cognizant of needs to update and streamline procedures, we must also be protective of the prerogatives of the states to continue control and jurisdiction over these limited resources."

Nevada State Senator Hal Smith also addressed the participants. He expressed satisfaction with the beneficial use of Nevada's water allotment under the Colorado River Compact, while highlighting his frustration with decades of negotiations over a California-Nevada Compact for the waters of the Truckee, Carson and Walker Rivers and Lake Tahoe. "Obviously, existing and prospective water users and planners cannot proceed with certainty when, in fact, water supplies to be made available within the respective states have not been firmly established." He referred to actions by federal agencies to usurp state authority in water planning and administration, and praised the efforts of the Western States Water Council, "...the states have been heard and recognized and have had an impact on federal legislative decisions as well as implementation of agency policies and practices."

Senator Smith further referred to resolutions he sponsored this year that were approved by the Nevada Legislature to urge the Congress and the Western States Water Council to study the interregional transfer of water.²⁴ "I recognize that the contents of these resolutions may be of some concern to some of you, particularly representatives of the states in the Northwest. However, I want to assure you of my sincere intention to emphasize the importance of interstate consideration of processes to address the subject of adequate water quantities of suitable quality for all the regions of this country.... I cannot stress too strongly my views of the importance of interstate cooperation in addressing these common problems."

²⁴Western States Water, Issue #783, May 19, 1989.
Western States Water, Issue #789, June 30, 1989.

Copies of the proceedings are available from the Council office.

General Adjudications Workshop

In conjunction with the regular WSWC quarterly meetings held in Vancouver, Washington, in October, the Council sponsored a workshop on general water right adjudication proceedings in the western states. Representatives from most Council member states accepted an invitation to attend. The objective of the workshop was to promote cost efficiency and general expediency in adjudication proceedings. The states shared ideas and programs and committed to exchange documents dealing with specific matters. The Council staff facilitated the document exchange.

Drought

During 1989, Colorado Governor Roy Romer, North Dakota Governor George Sinner, and Utah Governor Norm Bangertter declared their states drought disaster areas, and five counties in California were so designated. Much of the West continued to suffer from severe to extreme drought conditions, as measured by the Palmer Drought Severity Index, but the intensity of the drought shifted from the Northwest to the Southwest. A persistent pattern was evident along a diagonal band running northeasterly from southern California, through the Colorado River Basin and much of the Great Basin, eastern Idaho, southwest Montana, Wyoming, North Dakota, Nebraska and into the Upper Mississippi River Basin States of Minnesota, Wisconsin, and Iowa.

Generally, below average precipitation and a below normal snowpack that melted early, lead to below to much below average summer streamflows and dry soil and range conditions. Where available, water users turned to reservoir storage and ground water. However, those uses dependent upon rainfall and unregulated streamflows suffered. Dryland agriculture suffered most, although Congress again provided drought relief funds for farmers. Dry forests and rangelands were threatened by wildfire, and the reduced streamflows had a negative impact on fish and wildlife resources and cut hydropower production. Water quality problems also arose due to low streamflows, and municipal water supplies in many areas were stressed.

Extensive western water resource development has helped stabilize water supplies, and reservoir storage carried many areas through their second or third consecutive dry year. However, drought-related demands have left many reservoirs at dangerously low levels. In California, significant reductions in federal and state water project deliveries for major agricultural and municipal uses were narrowly avoided due to a "miracle March," which brought

between 120-150% of average precipitation to northern California and much of the Northwest.

Due to continued low flows in the Mississippi River system, the U.S. Army Corps of Engineers heavily drafted storage in the Upper Missouri River Basin to maintain streamflows for navigation. The precipitous drop in reservoir levels created serious conflicts between downstream navigation and water supply interests, and the Upper Basin States of North and South Dakota, where recreational facilities and rural water supply intakes were nearly dry.

During 1989, western states continued to implement various actions in response to the drought, as appropriate, given existing conditions and resources. Building on previous work, the Western States Water Council, in cooperation with the Western Governors' Association, began a review of state and federal activities in response to the current drought. In May, North Dakota Governor George Sinner met with officials of the White House and various federal agencies to discuss the drought and water policy coordination problems. Governor Sinner and Colorado Governor Roy Romer met with state and federal officials, including WSWC staff in Denver in June. Subsequently, WGA and WSWC staff prepared a work plan to implement resolutions adopted by the western governors at their annual meeting on July 18, in Long Beach, California. WGA staff prepared a draft catalogue of federal response programs. WSWC staff continued to monitor the drought and prepared periodic reports on water supply conditions and state drought response activities. The Council also determined to update its 1986 report, Western State Drought Management, in 1990.

While late summer rains helped, another dry fall across much of the West caused continued water supply concerns. Further, December was one of the driest months on record in some areas of the West, leaving many hoping for above average precipitation in early 1990 to help avoid further water supply problems.

Federal Energy Regulatory Commission

The Western States Water Council continued to pursue legislative, judicial and administrative remedies to jurisdictional problems between the western states and the Federal Energy Regulatory Commission (FERC) over western water management and federal hydropower project licensing. Some important events occurred during 1989 that are discussed in this report as they relate to positions adopted by the Council. Outside of continuing dialogue, little if any progress was made with FERC on issues of major concern to western states.

On a positive note, in June, FERC published a final rule revising relicensing requirements for hydropower projects that addressed specific comments submitted by the Council. The new rule

establishes a pre-filing consultation process that may help avoid many future federal/state regulatory conflicts.

Global Warming

During 1989, global warming became a very visible issue of national concern. The issue was first raised before the Council in the early 1980's by Colorado Governor Richard Lamm. In 1983, some published predictions of changes in annual streamflow estimated reductions of 44% in California, 76% in the Rio Grande River Basin, 64% in the Missouri, 57% in the Lower Colorado, 40% in the Upper Colorado, 54% in the Arkansas-White-Red River Basins, and 50% along the Texas gulf coast.²⁵ While these preliminary projections have since been discounted as over estimating the effect of an increase in temperature on precipitation in the West, concerns remain regarding the impact of global warming on western water supplies and therefore western water planning, development, management and decisionmaking.

In preparation for the WSWC quarterly meetings and Water Policy Seminar in April, staff prepared a briefing paper for members summarizing the major components of the problem. There is general agreement that the accumulation of certain gases is causing a warming of the earth's atmosphere due to a greenhouse effect. However, there is little or no agreement as to how global warming will change regional and local precipitation patterns, given the crude nature of current general circulation models. The magnitude, timing, and even the direction of projected changes remain uncertain. Some of the possible impacts of global warming include: an enlargement of the tropical zones pushing temperate regions further north; greater temperature extremes; lower precipitation and soil moisture levels in the interior of the continents; more frequent and intensive weather events such as drought, floods, heat waves, and hurricanes; decreasing snowpacks, though precipitation may increase, affecting current water storage and distribution systems; and complex mixed impacts on crop production.

Ground Water Recharge

On May 19, the Western States Water Council and U.S. Bureau of Reclamation entered a cooperative agreement to study the economic feasibility of ground water recharge projects and the related institutional framework in western states. Under the High Plains States Ground Water Demonstration Project Act of 1983 (P.L. 98-434) the Bureau of Reclamation undertook the investigation and construction of ground water recharge demonstration projects. A specific statutory directive required the Bureau to "contract with the various High Plains States and other Reclamation Act States to conduct a study to identify and evaluate alternative means by which

²⁵Western States Water, Issue #546, November 2, 1984.

the costs of ground water recharge projects could be allocated among the beneficiaries...within the respective states and identify and evaluate the economic feasibility of and the legal authority for utilizing ground water recharge in water resource development projects." The Bureau requested the Council's assistance in fulfilling this congressional mandate.

With the Bureau's financial support, the Council agreed to evaluate the economic feasibility of ground water recharge projects, identify and evaluate related costs and benefits and alternative means of allocating costs among beneficiaries, and finally, review the current status of western water law as it relates to ground water recharge. Under the cooperative agreement, during 1989 the Council completed planning and scoping activities for the study, established an advisory work group, and completed a review of the literature available on the topic. WSWC staff further prepared and distributed a questionnaire soliciting information on state laws, institutions and economic or financial programs related to ground water recharge, and began compiling and reviewing the responses.

Interbasin Transfers

During 1989, the Nevada State Senate and Assembly adopted a unique concurrent resolution requesting the Western States Water Council study the interregional transfer of water. Interbasin and interregional water transfers were an important issue which generated intense and emotional dialogue during the formative years of the Western States Water Council. During that period of time, Nevada Senator Hal Smith (the sponsor of the concurrent resolution) represented the State of Nevada on the Council.

In 1969, the Western States Water Council published, A Review of Interregional and International Water Transfer Proposals. In the report William R. Gianelli, Director of the California Department of Water Resources and later Chairman of the Western States Water Council, summarized the general state feeling that none of the schemes, many of which were merely "lines on maps," justified study in depth. Rather, inadequate attention had been given to political, legal, institutional and political factors, as well as economic and engineering problems. Mr. Gianelli stated, "We believe realistic projections of future economic demands indicate that even 50 years from now only a small fraction of the yields of suggested continental plans will be needed." Little serious consideration has since been given massive international and interregional transfer plans. Further regional transfers remain an issue as many areas, such as Nevada and southern California, seek dependable future water supplies. Several intrastate transfers have been successful over the years, and local water transfers are increasing.

Senate Concurrent Resolution No. 21

March 20, 1989

*Requesting the Western States Water Council to Study the
Interregional Transfer of Water.*

WHEREAS, The Western States Water Council was created by a resolution of the Western Governors' Conference in June 1965; and

WHEREAS, The future growth and prosperity of the western states depends upon the availability of an adequate quantity of water of suitable quality; and

WHEREAS, The need for an accurate and unbiased appraisal of the present and future requirements of each area of the west and the need for a determination of the most equitable means of providing for meeting these requirements demands a regional effort; and

WHEREAS, The rapid growth of population in the arid southwest is focusing attention on the need for conservation and augmentation of the limited supply of potable water; and

WHEREAS, In some areas, the present demand on the limited supply of water is endangering wildlife habitation and also threatening the existence of established agricultural areas; now, therefore be it

RESOLVED BY THE SENATE OF THE STATE OF NEVADA, THE ASSEMBLY CONCURRING, That the Western States Water Council is requested to study the orderly and optimum development and interregional transfer of water resources in the western states to meet the needs of the wildlife and the people who live in the arid southwest.

In response to the Nevada State Legislature's request, the Western States Water Council revised its work plan to include a study encompassing: (1) current state and federal statutes regarding the interstate transfer and use of water; (2) state statutes and programs governing intrastate water transfers; (3) an analysis of the case law regarding interstate water transfers; (4) a brief description of current major interbasin transfer proposals; and (5) key considerations in evaluating any interbasin transfer. Work on the requested study will begin in 1990.

The Nevada State Senate and Assembly also passed a joint resolution urging Congress to authorize a study of the interregional transfer of water.

Senate Joint Resolution No. 17

Urging Congress to authorize a study of the interregional transfer of water.

WHEREAS, The southwest states are the fastest growing states in the nation, but the future growth and prosperity of these states depends upon the availability of adequate quantities of water of suitable quality; and

WHEREAS, In some areas of the arid southwest states the present demand on the limited supply of water is endangering wildlife habitation and threatening the existence of established agricultural areas; and

WHEREAS, There is considerable flood water, currently returning to the sea in the Pacific northwest, that could be beneficially used in the southwest; and

WHEREAS, There are reservoirs in the Warner Valley, at Pyramid Lake, Walker Lake and the lakes on the Colorado River that could be used to store water which could serve Oregon, Nevada, Arizona and California; and

WHEREAS, In 1964, F.Z. Pirkey proposed the Western Water Project and E. Frank Miller proposed the Sierra-Cascade Project, but the Federal Government has made no study of interregional transfer of water in recent years; and

WHEREAS, The United Western Investigation Report indicates there are large amounts of surplus water flow that could be harnessed to meet the needs of the people and wildlife of the southwest; now, therefore, be it

RESOLVED BY THE SENATE AND ASSEMBLY OF THE STATE OF NEVADA, JOINTLY, That the Nevada Legislature urges the Congress of the United States to authorize an immediate study of interregional transfer of water to meet the municipal, industrial and wildlife requirements of the arid southwest....

National Water Policy

National water policy has been extensively reviewed and discussed over many years by various commissions, working groups and task forces. The Council continues to monitor various calls for administrative or legislative actions. Changes altering past federal/state relationships in the area of water development and management could have a significant impact on western states. Discussions have focused on federal policy and program changes, while neglecting the role of non-federal entities, both public and private. Generally, federal actions have shifted the weight of responsibility for national water policy to the states, which are often in the best position to weigh competing interests and appropriately balance uses. However, too often federal fiscal and regulatory reforms in recent years have resulted in the abdication of federal responsibility. New roles are evolving as a result of changing water needs and uses, new public values, federal fiscal and regulatory reforms, and other trends. Federal and non-federal roles must be balanced in order to accomplish an efficient, equitable and effective allocation of limited national water resources.

During 1989, the Council created a special subcommittee to address various national water policy topics and monitor new initiatives. At the April meetings, Oregon Senator Mark Hatfield, addressed members regarding legislation on water policy coordination. He later introduced the Western Water Policy Review Act of 1989.²⁶ WSWC staff summarized the provisions of Senator

²⁶Western States Water, Issue #815, December 19, 1989.

Hatfield's proposal, as well as earlier proposals regarding federal or national water policy sponsored by Harvard University, the National Water Alliance, and the Western Governors' Association (WGA). The WGA addressed poor coordination of federal water policies among federal agencies, and poor coordination of some federal water programs with state policies. The Western States Water Council assisted the Western Governors' Association in addressing national water policy coordination problems, which for the present focused on national drought response as an example of the broader issues.

Federal Environmental Statutes and State Water Law

Council members continued to discuss, and staff continued to compile information concerning, conflicts between federal environmental statutes and state water law. The Council invited federal officials to attend and participate at Council meetings to discuss related issues. The staff is drafting a report on this topic that will be published in 1990.

Federal Ground Water Legislation

The Council's interest in federal ground water legislation continued during 1989, but relatively little occurred in Congress. While ground water bills were introduced in both houses, no hearings were held in the Senate and only a few were held in the House. The Council accepted the invitation of the Science, Space, and Technology Committee to testify at a hearing held on August 2. Legal Counsel Norman Johnson presented a statement based upon past Council resolutions. The Council will continue to participate in the debate on federal ground water legislation.

RESOLUTIONS AND POSITIONS

The following are positions taken and resolutions passed by the Western States Water Council during 1989, prepared in each case by a discussion of the background for the resolution.

FEDERAL ENERGY REGULATORY COMMISSION ORDER NO. 464

The Federal Energy Regulatory Commission (FERC) policies and procedures continue to be a major federal/state water resource management issue. The 100th Congress adjourned in 1988 before reconciling House and Senate passed bills which would have required that the Commission reconsider its retroactive application of Order No. 464, waiving state water quality certification requirements for many projects. Despite continuing congressional concern and state petitions, in January 1989 the Commission determined following informal discussions that its previous order was "legal," and that there were "no new equities" to be gained by revisiting the issue. U.S. Rep. John Dingell (D-MI), Chairman of the House Energy and Commerce Committee, had asked that FERC reexamine the issue and continued to question the validity of the Commission's informal internal review. FERC specifically replied to a similar call from the Western States Water Council stating that while it would not reconsider Order No. 464, its actions should not be viewed as "any lack of interest in, or commitment to, improving federal-state working relations with respect to hydropower matters."

In April, the Council adopted a position supporting a legislative remedy. Throughout the year, Rep. Dingell provided the Western States Water Council with an opportunity to express its views and concerns regarding FERC Order No. 464. The states' position was strengthened in June, when the Fourth Circuit Court of Appeals upheld a challenge in City of Fredericksburg v. FERC and vacated the license in question. FERC had licensed a project after waiving Virginia's water quality certification requirement because the state had not acted on a related application within the one-year period defined by FERC. However, the court found the applicant had never completed the application form intended to provide the state with the information necessary to determine project impacts related to water quality. Fredericksburg's City Attorney suggested, "This decision will directly affect all hydroelectric licenses issued by FERC and all permits issued by the Corps of Engineers, particularly those involving wetlands. This was a classic case of a federal bureaucracy trampling the rights

of local and state government. They totally ignored our rights at every step of the process."²⁷

**RESOLUTION
of the
WESTERN STATES WATER COUNCIL
Regarding
Federal Energy Regulatory Commission Order No. 464
Waiving State Water Quality Certification Requirements
April 14, 1989**

WHEREAS, FERC Order No. 464 unilaterally and retroactively redefined the period of time within which states must grant or deny water quality certification under Section 401 of the Clean Water Act; and

WHEREAS, FERC provided the states with no notice regarding the retroactive application of Order No. 464 until after the period for timely requests for reconsideration had expired -- then rejected as untimely requests for reconsideration from the State of Alaska, California, and Washington, as well as other state petitions; and

WHEREAS, the Western States Water Council has repeatedly asked the Commission to reconsider this issue, to no avail; and

WHEREAS, the House and Senate respectively approved S. 1792 and H.R. 2020, which in part addressed this problem, but adjourned before being able to reconcile differences in the bills; and

WHEREAS, the Federal Energy Regulatory Commission, despite continuing calls from congressional and state leaders, recently determined no further action was warranted; and

WHEREAS, federal licenses remain pending for a majority of the projects for which FERC waived state water quality certification requirements; and

WHEREAS, the water quality impacts of these projects are of significant concern to many states; and

WHEREAS, the controversy over Order No. 464 continues to hinder improvements in relations between the Federal Energy Regulatory Commission and the states;

²⁷Western States Water, Issue #787, June 16, 1989.

NOW THEREFORE BE IT RESOLVED that the Western States Water Council urge Congress to quickly consider and enact legislation to:

(1) return to the states general authority to grant, deny, or condition water quality certification for all projects where Order No. 464 waived such authority, but which have yet to be licensed by the Federal Energy Regulatory Commission;

(2) where projects have since received a federal license, require the Commission to explain the manner in which state water quality comments were solicited prior to the licensing of each project and the extent to which state recommendations were followed; and

(3) require the Commission, through the states, to document and record the date on which a project applicant files a complete application for state water quality certification; and

(4) clearly define the one-year period within which states must act on water quality certification requests as applying only to a states' initial decision to grant or deny certification, with or without conditions, and that the certification requirement cannot be waived due to an applicant's appeal of the state's initial decision.

**FEDERAL WATER RESOURCES RESEARCH, DATA COLLECTION AND
MANAGEMENT PROGRAMS**

Over the years, western states have raised concerns regarding federal funding priorities and basic water resources research, data collection and management programs. In 1986, the Western States Water Council adopted a resolution opposing the disproportionate impact on USGS federal/state cooperative program funding due to sequestration under the Gramm-Rudman-Hollings Deficit Reduction Act of not only federal funds, but an amount that included state cooperative funds. In 1988, the Council urged Congress and the Administration to continue minimal funding for the Bureau of Reclamation's Division of Atmospheric Resources Research. Continuing Administration proposals for congressional concurrence in eliminating federal funding for basic water resources information programs essential to present and future management decisions led the Council to adopt the following position highlighting specific programs of interest to western states.

**POSITION
of the
WESTERN STATES WATER COUNCIL
Regarding
Federal Water Resources Research, Data Collection
and Management Programs
April 14, 1989**

WHEREAS, the potential adverse effects of global warming have captured national attention; and

WHEREAS, the Administration's current budget request includes almost \$200M dollars for related research; and

WHEREAS, accurate and timely information is essential to present and future water management decisions; and

WHEREAS, the Administration's FY90 Interior Department request proposes an \$8.5M reduction in the USGS' water resource investigations program, which coupled with potential Gramm-Rudman reductions threaten vital data collection activities, especially federal/state cooperative programs; and

WHEREAS, the Administration similarly has not requested funds to continue weather modification research and development activities of the Bureau of Reclamation, which western states have strongly supported and promised some \$4.2M in matching funds; and

WHEREAS, the Administration has failed to request some \$650,000 needed by the National Weather Service to operate and maintain the Colorado River Flood Warning System, which involves a state-of-the-art data collection network and computerized data processing and management system to provide real-time streamflow information, the loss of which threatens the validity of related forecasts that are essential during periods of high and low flows to conserve water and/or prevent flood damage; and

WHEREAS, Congress enacted P.L. 99-662 authorizing the Ogallala Aquifer Research and Development Program and re-established the High Plains Study Council, and while funding was authorized for this important regional water resource development program in 1986, no appropriations have been approved for the research, data collection and demonstration activities that are essential to the eight state region; and

WHEREAS, such reductions are inconsistent with the current continuing needs of myriad federal and non-federal water managers and water users for accurate and timely information; and

WHEREAS, the information and experience gained from such federal expenditures, matched by significant non-federal funding, are of critical national importance in the effective management of our present and future water resources; and

WHEREAS, action is also pending in Congress to reauthorize the Water Research Act of 1984;

NOW THEREFORE BE IT RESOLVED that the Western States Water Council urge Congress and the Administration to recognize the vital importance of current federal water resource research and data collection and management programs and provide adequate funding to maintain current capabilities and future opportunities for the continuing use of such critical information.

FEDERAL GROUND WATER POLICY

The Council has long been interested in national ground water policy, particularly the appropriate role of state governments. Council members view as critical the proper management of ground water resources. Although many federal laws protect ground water from contamination, Congress has traditionally deferred to the states the responsibility for both ground water quantity and quality management.

In the last two or three sessions of Congress, a number of proposals for federal ground water legislation have been considered. These proposals range from federal research to comprehensive federal regulatory measures. The Council has participated in the debate on ground water legislation by testifying at congressional hearings and otherwise informing members of Congress of its views.

In April, Council members felt it appropriate to reaffirm their position regarding federal ground water policy. The position provided a basis from which the Council could continue to participate in the national debate on ground water policy. The position informed members of Congress, Administration officials, and others of the Council's view of the continuing importance of state primacy in federal ground water policy.

**RESOLUTION
of the
WESTERN STATES WATER COUNCIL
Concerning
FEDERAL GROUND WATER POLICY
Washington, DC
April 13, 1989**

WHEREAS, ground water is a critically important natural resource throughout the nation which requires careful stewardship; and

WHEREAS, Congress has recently considered and is now considering a number of bills relating to ground water management, some of which contain elements that would increase the federal role in ground water administration in a fashion that could undermine the primacy of state programs, and

WHEREAS, there has been a long standing policy of deference to the states in the area of water management and protection; and

WHEREAS, the western states, consistent with this historic federal policy, have had the primary responsibility for the development and implementation of ground water management and protection programs; and

WHEREAS, the western states have extensive experience managing ground water resources and recognize the importance of protecting ground water for present and future beneficial uses; and

WHEREAS, some of the most troublesome ground water contamination problems which currently exist in the West are directly the result of federal activities on federal land; and

WHEREAS, the western states are geographically, hydrologically, and economically diverse and their legal institutions for the protection of water quality differ; and

WHEREAS, all western states, consistent with the aforestated historic federal policy of state primacy, already have or are in the process of developing or upgrading ground water quality protection strategies; and

WHEREAS, all western states have a system of law for allocation of ground water rights, and there is a broad consensus within the federal system that states should continue to have the exclusive responsibility to create and administer such rights; and

WHEREAS, site and situation specific ground water management practices are most effective in protecting ground water quality and assuring optimum use of ground water resources, and state and local programs are best able to carry out such practices;

NOW THEREFORE BE IT RESOLVED that the Western States Water Council support the following principles with respect to any federal ground water legislation or policy. Such legislation or policy should:

1. Recognize that ground water protection and management is primarily the responsibility of state and local governments and should be supportive of the role of these governments.
2. Provide flexibility for state and local governments to develop programs appropriate for their own circumstances, including strategies and mechanisms appropriate to assure ground water protection.
3. Enhance federal technical assistance, data gathering, and research developed to support state programs.

4. Require all federal agencies to conduct their activities in accordance with, and without duplication of, state and local ground water protection programs.
5. Make available any federal funds which are provided under new legislation to support all phases of the development and implementation of state ground water quality programs, not just development of programs.
6. Not interfere with the states' prerogative and ability to manage and protect ground water rights.

**NINTH CIRCUIT COURT OF APPEALS' DECISION IN
CALIFORNIA V. FERC**

On June 6, the federal Ninth Circuit Court of Appeals affirmed the Federal Energy Regulatory Commission's (FERC) exclusive jurisdiction to set hydroelectric power project water flow rates as challenged in California v. FERC. 877 F.2d 743 (9th Cir 1989). California had challenged FERC's authority to set minimum streamflows for the Rock Creek Project, and override state water right conditions established by the State Water Resources Control Board. The Board required flows greater than those imposed by FERC, but FERC advised the applicants that they need not comply with state law. The Ninth Circuit's opinion was based largely on the U.S. Supreme Court's decision in First Iowa Hydro-Electric Cooperative v. Federal Power Commission (328 U.S. 152 (1946)). WSWC staff and the State of Idaho jointly prepared an amicus brief later submitted by sixteen states, supporting California's position claiming authority to regulate water use. Of note, regarding Section 27 and state water management authority, the Ninth Circuit Court found:

...one reading would construe the section to limit state authority to the area of property rights involving water for irrigation, municipal use, and related activities. Under this reading, any aspect of operating a hydropower project not implicating these rights would fall under exclusive federal regulation. A second reading would construe the section much more broadly as an anti-preemption clause that gives the states final authority over all issues connected to the control and use of water....

Despite California's argument for the latter interpretation, the Circuit Court determined that the Supreme Court's First Iowa decision convincingly found "...Congress intended to vest regulatory authority in FERC over most aspects of hydropower projects. Only control over certain limited proprietary rights remains in state hands." The Circuit Court's decision was not unexpected, and California petitioned the U.S. Supreme Court to review the ruling.

Because of the Western States Water Council's long-standing interest in this issue, Council members determined to encourage states to support California's effort to urge the U.S. Supreme Court to review the Ninth Circuit's ruling. Council views are explained in the following unique resolution. In an unusual demonstration of support, 43 states endorsed an amicus brief prepared by the State of Idaho urging the U.S. Supreme Court to grant California's petition for writ of certiorari to review the Ninth Circuit decision. The Council was joined by the Western Governors' Association and the Interstate Conference on Water

Policy, which also adopted resolutions urging states to join in the amicus brief effort.

The issue addressed in both California's petition for writ of certiorari and the state amicus brief was: "Whether the Federal Power Act preempts state regulatory water right laws otherwise applicable to hydropower projects licensed by FERC, or instead, whether Section 27 of the Act -- which subjects such projects to state laws relating to control, appropriation, use, or distribution of water -- precludes such preemption?" The only states that did not join the amicus brief effort were Louisiana, Maryland, New York, Ohio, Virginia, and Wisconsin. In December, the U.S. Supreme Court granted review, and all 49 states supported California in a subsequent amicus brief on the merits of the case. The case is pending in the United States Supreme Court.

RESOLUTION
of the
WESTERN STATES WATER COUNCIL
concerning
the
Ninth Circuit Court of Appeals' Decision
in
California v. FERC
July 20, 1989

WHEREAS, the authority to manage and administer water rights is critical to each of the western states; and

WHEREAS, the states have developed intricate and sophisticated water resource management programs; and

WHEREAS, the United States Congress has consistently deferred to those laws and programs; and

WHEREAS, the Federal Energy Regulatory Commission (FERC) has claimed exclusive jurisdiction over water resource management decisions related to hydroelectric power projects; and

WHEREAS, the Ninth Circuit Court of Appeals, in California v. FERC (No. 87-7538), has recently affirmed FERC's finding that it has exclusive jurisdiction to establish hydroelectric power project water flow rates; and

WHEREAS, this decision hampers the efforts of the western states to administer and manage water rights;

NOW THEREFORE BE IT RESOLVED that the Western States Water Council support California's effort to have the Ninth Circuit Court of Appeals decision reviewed by the United States Supreme Court.

BE IT FURTHER RESOLVED that the Council encourage all western states to express their support for California's petition for writ of certiorari in California v. FERC by either endorsing the amicus brief which will be prepared on behalf of the western states, or by preparing an individual state brief.

BE IT FURTHER RESOLVED that the Council staff be instructed to contact the Attorneys General and other appropriate officials of all western states, as well as appropriate contacts in non-western states, and encourage them to support California's effort to have the California v. FERC decision reviewed.

**FEDERAL FUNDING SHARE OF STATE WATER POLLUTION
CONTROL PROGRAMS**

Many programs have been established under both federal and state law to protect the quality of the Nation's waters. Most of these programs are carried out by state governments. Many of the programs are resource-intensive, and their maintenance requires significant levels of funding. The Clean Water Act provided the states with a grant program for construction of required municipal wastewater treatment facilities. In recent years, federal funding for this program has been at over \$2B per year. When the Clean Water Act was reauthorized in 1987, the states agreed to a phase-out of federal funding of the construction grants program, leaving states to shoulder financial responsibility for remaining municipal waste water treatment facility needs. A federal revolving loan fund program was established, but insufficiently funded, to assist with this transition. Further, federal funding for other related program needs is also diminishing. Notwithstanding the phase-out of funding for many federal programs, federal program requirements made of the states under federal law have increased. Many states have also enacted state laws that require the expenditure of an increased amount of money, and rising program costs together with decreasing federal funding have created challenges for the states.

**RESOLUTION
of the
WESTERN STATES WATER COUNCIL
regarding
Federal Funding Share
of
State Water Pollution Control Programs**

October 13, 1989

WHEREAS, the states are responsible for implementing both state and federal water pollution control requirements; and

WHEREAS, the western states recently estimated that their funding levels were 23% less than what was needed to implement the base water quality programs; and

WHEREAS, the Water Quality Act of 1987 imposes many new requirements on states without providing implementation funds; and

WHEREAS, the western states have estimated that a 30%-60% increase in funding will be required to implement these new

programs and alleviate existing funding shortfalls through 1992;
and

WHEREAS, these funding needs are consistent with state needs identified nationally; and

WHEREAS, the western states have demonstrated that they are using alternative/innovative funding techniques to supplement their water pollution control budgets;

NOW THEREFORE BE IT RESOLVED that the Western States Water Council support amendment of Clean Water Act Section 106 to increase the authorized level of funding to \$140M annually; and

BE IT FURTHER RESOLVED that the Council support appropriation of all authorized Clean Water Act Section 106 funds to states in a manner which provides states the flexibility to address unique state and regional priorities based upon state determination of the maximum environmental benefits of the use of the funds.

BUDGET AND FINANCE

At the quarterly meeting held April 14, 1988, in Washington, D. C., the Executive Committee approved a FY89/90 budget of \$317,750.

A previously approved dues schedule called for a yearly assessment of \$21,000 per state for FY89/90.

The audit report for FY89/90, prepared by the firm of Hansen, Barnett and Maxwell, was presented to the Executive Committee by the Executive Director at the annual meetings on July 12-14 in Jackson, Wyoming. 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.

INDEPENDENT ACCOUNTANTS' REPORT

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, 1989 and the related general fund statement of revenues and expenditures and changes in fund balance - budget and actual for the year then ended. These financial statements are the responsibility of the Western States Water Council's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Western States Water Council at June 30, 1989, and the results of its operations for the year then ended in conformity with generally accepted accounting principles.

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 6, 1989

WESTERN STATES WATER COUNCIL
 Combined Balance Sheet
 General Fund and Account Groups
 June 30, 1989

ASSETS

	<u>General Fund</u>	<u>Account Groups</u>		<u>Totals (Memorandum only)</u>	
		<u>General Fixed Assets</u>	<u>General Long-Term Debt</u>	<u>June 30, 1989</u>	<u>June 30, 1988</u>
CASH - NOTE 2	\$142,230	\$ -	\$ -	\$142,230	\$103,665
PREPAID EXPENSES	573	-	-	573	918
DEPOSITS	150	-	-	150	150
GENERAL FIXED ASSETS	-	74,634	-	74,634	66,806
AMOUNT TO BE PROVIDED FOR PAYMENT OF LONG-TERM DEBT	-	-	12,589	12,589	19,258
AMOUNT TO BE PROVIDED FOR PAYMENT OF COMPENSATED ABSENCE	-	-	19,616	19,616	16,518
TOTAL ASSETS	<u>\$142,953</u>	<u>\$74,634</u>	<u>\$32,205</u>	<u>\$249,792</u>	<u>\$207,315</u>

LIABILITIES AND FUND BALANCE

ACCOUNTS PAYABLE	\$ 4,740	\$ -	\$ -	\$ 4,740	\$ 5,700
PAYROLL TAXES PAYABLE	140	-	-	140	142
INVESTMENT IN FIXED ASSETS	-	74,634	-	74,364	66,806
OBLIGATIONS UNDER CAPITAL LEASE - NOTE 3	-	-	12,589	12,589	19,258
OBLIGATIONS FOR COMPENSATED ABSENCES - NOTE 5	-	-	19,616	19,616	16,518
FUND BALANCE	<u>138,073</u>	<u>-</u>	<u>-</u>	<u>138,073</u>	<u>98,891</u>
TOTAL LIABILITIES AND FUND BALANCE	<u>\$142,953</u>	<u>\$74,634</u>	<u>\$32,205</u>	<u>\$249,792</u>	<u>\$207,315</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, 1989

	Budget <u>1989</u>	Actual June 30, <u>1989</u>	Variance Favorable (Un- Favorable) <u>1989</u>	Actual June 30, 1988 (For Comparison Only)
REVENUES				
Members States' assessments	\$309,000	\$327,000	\$ 18,000	\$279,000
Newsletter payments	-	5,800	5,800	5,750
Interest income	-	19,369	19,369	13,244
Miscellaneous income	-	500	500	-
	<u>309,000</u>	<u>352,669</u>	<u>43,669</u>	<u>297,994</u>
EXPENDITURES				
Salaries	153,900	153,879	21	152,486
Travel	28,500	28,292	208	26,515
Payroll taxes and employee benefits	35,400	35,450	(50)	43,003
Printing and reproduction	17,000	19,691	(2,691)	20,308
Rent	16,800	16,786	14	18,277
Freight and postage	8,300	8,404	(104)	9,518
Telephone	5,340	4,144	1,196	5,123
Utilities	1,750	1,568	182	311
Maintenance Contracts	3,900	3,710	190	3,644
Office supplies	5,600	5,197	403	4,329
Reports and publications	3,000	2,989	11	2,085
Meetings and arrangements	4,800	4,760	40	2,032
Accounting	1,800	1,777	23	1,734
Insurance	1,200	695	505	634
Contingencies	3,560	3,304	256	3,451
Interest	-	1,284	(1,284)	780
Bank Charges	-	140	(140)	-
	<u>290,850</u>	<u>292,070</u>	<u>(1,220)</u>	<u>294,230</u>
EXCESS OF REVENUES OVER EXPENDITURES BEFORE CAPITAL ADDITIONS				
	18,150	60,599	42,449	3,764
Expenditures on office furniture, fixtures and equipment	<u>14,250</u>	<u>14,748</u>	<u>(498)</u>	<u>20,105</u>
EXCESS (DEFICIENCY) OF REVENUES OVER (UNDER) EXPENDITURES AFTER CAPITAL ADDITIONS				
	3,900	45,851	41,951	(16,341)
OTHER FINANCING (USES) SOURCES:				
Capital Lease Obligation - Note 3	<u>(6,700)</u>	<u>(6,669)</u>	<u>31</u>	<u>17,065</u>
EXCESS (DEFICIENCY) OF REVENUES AND OTHER SOURCES OVER (UNDER) EXPENDITURES				
	(2,800)	39,182	41,982	724
FUND BALANCE - BEGINNING OF YEAR	<u>98,891</u>	<u>98,891</u>	<u>-</u>	<u>98,167</u>
FUND BALANCE - END OF YEAR	<u>\$ 96,091</u>	<u>\$138,073</u>	<u>\$ 41,982</u>	<u>\$ 98,891</u>

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

NOTE 1 -- SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The Western States Water Council was formed in 1970 as a cooperative endeavor among States in the Western United States. Its purpose is to coordinate programs which will lead to integrated development of water resources by state, federal and other agencies in the region. The Council receives funding through assessments of member states. Each member state is represented on the Council's Executive Committee which comprises the administrative body.

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:

The Reporting Entity

The Western State Water Council is an independent reporting entity and is not a component unit of any other government. The Council's Executive Committee is the governing authority. This determination has been made using the following criteria; The Executive Committee establishes Council policy, approves the annual budget, and appoints those responsible for administrative and fiscal activities.

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.

Total Column on Combined Balance Sheet

The total column on the Combined Balance Sheet is captioned "Memorandum Only" to indicate that it is presented only to facilitate financial analysis. Data in this column does not present financial position, results of operation, or changes in financial position in conformity with generally accepted accounting principles. Neither is such data comparable to a consolidation.

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, 1989 and 1988. 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, 1989 was \$124,867.

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 \$1,594.42. 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>
1990	7,479	17,539	25,018
1991	<u>6,053</u>	<u>12,755</u>	<u>18,808</u>
Total minimum payments	13,532	30,294	43,826
Less: Amount representing interest	<u>943</u>	<u>-</u>	<u>943</u>
Present value of minimum lease payment	<u>\$12,589</u>	<u>\$30,294</u>	<u>\$42,883</u>

NOTE 4 -- 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, 1989 was \$9,513.

NOTE 5 -- 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.

WESTERN STATES WATER COUNCIL
SCHEDULE OF CHANGES IN THE GENERAL FIXED ASSETS
FOR THE YEAR ENDED JUNE 30, 1989

INVESTMENT IN FIXED ASSETS - JUNE 30, 1988	\$66,806
Office equipment additions	14,748
Office equipment sales	<u>(6,920)</u>
 INVESTMENT IN FIXED ASSETS - JUNE 30, 1989	 <u>\$74,634</u>

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
N. William Plummer - Arizona	Vice Chairman
David Kennedy - California	Floyd Matthew - 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
Dave Sprynczynatyk - North Dakota	Gordon W. Fassett - Wyoming

(Photograph #5)

Back Row: Bill McDonald, Bill Young, Bill Plummer, Dave
Sprynczynatyk, Dave Kennedy, Dee Hansen, Keith Higginson
Front Row: Hedia Adelsman, Roland Westergard, Jeff Fassett

Management Subcommittee

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

(Photograph #6)

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

Water Management Symposium Subcommittee

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

Water Policy Seminar Subcommittee

David Kennedy - California - Chairman	
Michael McNulty - Arizona	William H. Young - Oregon
A. Kenneth Dunn - Idaho	Dee C. Hansen - Utah
Philip Mutz - New Mexico	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
Rod Walston (Alt.) - 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 #2)

Back Row: Anne Squier, Ken Dunn, Gary Gustafson, Don MacIntyre,
John Hatch, Tom Choules, Myron Goodson, Jennifer Hager
Front Row: Roland Westergard, Dave Kennedy, Charles Roe, Rod
Walston

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
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 Adjudications 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
Gordon W. 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	Dave Sprynczynatyk - North Dakota
N. William Plummer - Arizona	William H. Young - Oregon
Larry Linser (Alt.) - Arizona	Floyd Matthew - South Dakota
Ruben Ayala - California	Marian Gunderson (Alt.) - South Dakota
J. William McDonald - Colorado	John Birdwell - Texas
R. Keith Higginson - Idaho	Paul Hopkins - Texas (7-87 to 10-89)
Jack L. Stonehocker - Nevada	D. Larry Anderson - Utah
S. E. Reynolds - New Mexico	Gordon W. Fassett - Wyoming

(Photograph #4)

Back Row: Gary Gustafson, Bill McDonald, Jack Stonehocker, Larry Anderson, Wayne Cunningham (NM-Alternate), Paul Hopkins (former TX member), Bill Young, Keith Higginson, Dave Sprynczynatyk
Front Row: Hedia Adelsman, Jeff Fassett, Bob Miller (CA-Alternate), Bill Plummer

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	

Ground Water Recharge Study 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	Wayne Cunningham (Alt) - New Mexico
Michael F. McNulty - Arizona	Francis Schwindt - North Dakota
Randolph Wood (Alt.) - Arizona	Bill Blosser - Oregon
David G. Kelley - California	Steve Pirner - South Dakota
Darlene Ruiz (Alt.) - California	Fred Pfeiffer - Texas
Paul Ferraro - Colorado	Don A. Ostler - Utah
Steve Pilcher - Montana	Carol Jolly - Washington
Joseph E. Dini, Jr. - Nevada	George Christopulos - Wyoming
Frank DuBois - New Mexico	

(Photograph #3)

Back Row: Fred Pfeiffer, George Christopulos, Gene Gray, Bill Blosser, Francis Schwindt, David Kelley
Front Row: Don Ostler, Steve Pilcher, Carol Jolly

Federal Ground Water Legislation Subcommittee

Charles B. Roe - Washington - Chairman

David G. Kelley - California	Steve Pilcher - Montana
Darlene E. Ruiz - California	John J. Smith - South Dakota
J. William McDonald - Colorado	Terral Smith - Texas
A. Kenneth Dunn - Idaho	Don A. Ostler - Utah

Input Into EPA Decisionmaking Subcommittee

Steve Pilcher - Montana - Chairman

Daniel Wilkerson - Alaska	Don A. Ostler - Utah
Darlene E. Ruiz - California	George Christopulos - Wyoming

Non-point Source Pollution Control Subcommittee

Darlene E. Ruiz - California - Chairwoman

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

Ramifications of the Clean Water Act Reauthorization Subcommittee

Don A. Ostler - Utah - Chairman

Daniel Wilkerson - Alaska	Joseph E. Dini, Jr. - Nevada
Paul Ferraro - Colorado	Fred Pfeiffer - Texas

RULES OF ORGANIZATION²⁸

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.

²⁸The 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.

**ADDRESSES AND TELEPHONE NUMBERS
of WSWC Members and Staff**

- ADELSMAN, Hedia (206) 459-6056
Water Resources Program Manager
Department of Ecology
St. Martins College Campus
Mail Stop PV-11
Olympia, Washington 98504-8711
- ALEXANDER, Joseph N. (612) 296-2549
Commissioner
Department of Natural Resources
500 Lafayette Road
St. Paul, Minnesota 55155
- ANDERSON, D. Larry (801) 538-7230
Director
Division of Water Resources
1636 West North Temple
Salt Lake City, Utah 84116
- ANDRUS, Cecil (208) 327-2100
Governor of Idaho
State Capitol
Boise, Idaho 83720
- AYALA, Ruben (916) 445-6868
Senator
California Legislature
State Capitol, Room 2082
Sacramento, California 95814
- BANGERTER, Norman H. (801) 538-1000
Governor of Utah
State Capitol
Salt Lake City, Utah 84114
- BARNETT, James R. (405) 271-2555
Executive Director
Oklahoma Water Resources Board
P. O. Box 53585
1000 N.E. 10th Street
Oklahoma City, Oklahoma 73152

BELL, D. Craig (801) 561-5300
 Executive Director
 Western States Water Council
 Creekview Plaza, Suite A-201
 942 East 7145 South
 Midvale, Utah 84047

BELLMON, Henry (405) 521-2345
 Governor of Oklahoma
 State Capitol
 Oklahoma City, Oklahoma 73152

BIRDWELL, John (512) 463-7909
 Commissioner
 Texas Water Commission
 P. O. Box 13087
 Austin, Texas 78711

BLOSSER, William (503) 864-2282
 Chairman
 Water Resources Commission
 5100 Breyman Orchards Road
 Dayton, OR 97114

CARRUTHERS, Garrey (505) 827-3000
 Governor of New Mexico
 State Capitol
 Santa Fe, New Mexico 87501

CHOULES, Tom (602) 783-8321
 2260 Fourth Avenue, Suite 2000
 Yuma, Arizona 85364

CLEMENTS, Bill (512) 463-2000
 Governor of Texas
 State Capitol
 Austin, Texas 78711

CHRISTOPULOS, George L. (307) 632-7871
 3600 Bent Avenue
 Cheyenne, Wyoming 82001

COWPER, Steve (907) 465-3500
 Governor of Alaska
 Pouch A
 Juneau, Alaska 99811

CRADDICK, Tom (512) 463-0500
 State Representative
 P. O. Box 2910
 Austin, Texas 78769

CUNNINGHAM, Wayne P. (Alt.) (505) 646-2642
New Mexico Department of Agriculture
Division of Agriculture Programs and Resources
Box 30005, Department 5702
Las Cruces, New Mexico 88003-0005

DANIELSON, Jeris (Alt.) (303) 866-3581
Colorado State Engineer
1313 Sherman Street, Room 818
Denver, Colorado 80203

DEUKMEJIAN, George (916) 445-4711
Governor of California
State Capitol
Sacramento, California 95814

DINI, Joseph E., Jr. (702) 463-2868
Speaker, Nevada State Assembly
104 North Mountain View
Yerington, Nevada 89447

DuBOIS, Frank A., III (505) 646-3008
Director/Secretary
New Mexico Department of Agriculture
Box 30005, Department 3189
Las Cruces, New Mexico 88003-0005

DuMARS, Charles (505) 277-3130
Professor of Law
New Mexico State University
2021 Lakeview, S.W.
Albuquerque, New Mexico 87105

DUNN, A. Kenneth (208) 327-0012
11530 Wildrose Court
Boise, Idaho 83704

FASBENDER, Larry (Alt.) (406) 444-6699
Director
Department of Natural Resources & Conservation
1520 East Sixth Avenue
Helena, Montana 59620-2301

FASSETT, Gordon W. (307) 777-7354
Wyoming State Engineer
Herschler Building
Cheyenne, Wyoming 82002

FERRARO, Paul (303) 623-8080
Geraghty & Miller
1391 North Speer, Suite 330
Denver, CO 80204

FRITZ, Gary (406) 444-6605
 Administrator
 Water Resources Division
 Department of Natural Resources & Conservation
 1520 East Sixth Avenue
 Helena, Montana 59620-2301

GARDNER, Booth (206) 753-6780
 Governor of Washington
 State Capitol
 Olympia, Washington 98504

GOLDSCHMIDT, Neil (503) 378-3100
 Governor of Oregon
 State Capitol
 Salem, Oregon 97310

GOODSON, Myron (307) 283-2407
 P.O. Box 429
 Sundance, Wyoming 82729

GRAY, Gene (208) 642-3388
 Route #1, Box 46-A
 Payette, Idaho 83661

GUHIN, John (Alt.) (605) 773-3215
 Assistant Attorney General
 South Dakota Attorney General's Office
 500 East Capitol
 Pierre, South Dakota 57501

GUNDERSON, Marian (Alt.) (605) 352-4950
 Chairwoman
 Board of Water Management
 811 West Third
 Yankton, South Dakota 57078

GUSTAFSON, Gary (907) 561-2020
 Director
 Division of Land and Water Management
 Department of Natural Resources
 3601 C Street
 P. O. Box 107005, Suite 814
 Anchorage, AK 99510-7005

HAAS, Wayne T. (Alt.) (208) 327-7910
 Administrator
 Department of Water Resources
 Statehouse
 Boise, Idaho 83720

HAGER, Jennifer (Alt.) (307) 777-7841
Assistant Attorney General
Attorney General's Office
Capitol Building
Cheyenne, Wyoming 82002

HANSEN, Dee C. (801) 538-7200
Director
Department of Natural Resources
1636 West North Temple
Salt Lake City, Utah 84116

HATCH, John (605) 773-3352
Director
Division of Water Rights
Department of Water & Natural Resources
Joe Foss Building
Pierre, South Dakota 57501-3181

HIGGINSON, R. Keith (208) 327-7910
Director
Idaho Department of Water Resources
Statehouse
Boise, Idaho 83720

HOPKINS, PAUL (512) 463-7909
34 Waterfall Drive
Austin, Texas 78738

JENSEN, Dallin (Alt.) (801) 278-6283
Parsons Behle & Latimer
185 South State Street
Salt Lake City, Utah 84147

JOHNSON, Norman K. (801) 561-5300
Legal Counsel
Western States Water Council
Creekview Plaza, Suite A-201
942 East 7145 South
Midvale, Utah 84047

JOLLY, Carol (Alt.) (206) 438-7494
Assistant Director
Office of Water and Shorelands
Department of Ecology
Mail Stop PV-11, ARH #180
Olympia, Washington 98504-8711

KELLEY, David G. (Alt.) (916) 445-7852
Member of the Assembly
State Capitol, Room 5164
Sacramento, California 95814

KENNEDY, David (916) 445-6582
 Director
 Department of Water Resources
 State of California
 P.O. Box 388
 Sacramento, California 95802

LINSER, C. Laurence (Alt.) (602) 542-1540
 Deputy Director
 Office of Planning and Adjudications
 Department of Water Resources
 15 South 15th Avenue
 Phoenix, Arizona 85007

MacINTYRE, Donald D. (406) 444-6699
 Chief Legal Counsel
 Department of Natural Resources & Conservation
 1520 East 6th Avenue
 Helena, Montana 59620-2301

MATTHEW, Floyd (605) 773-3151
 Secretary
 Department of Water and Natural Resources
 Joe Foss Building
 Pierre, South Dakota 57501-3181

MCDONALD, J. William (303) 866-3441
 Director
 Colorado Water Conservation Board
 1313 Sherman Street, Room 721
 Denver, Colorado 80203

McNULTY, Michael F. (602) 628-1419
 Attorney at Law
 33 North Stone Avenue, Suite 1500
 Tucson, Arizona 85701

MICKELSON, George S. (605) 773-3212
 Governor of South Dakota
 State Capitol
 Pierre, South Dakota 57501

MILLER, Robert J. (702) 885-5670
 Governor of Nevada
 State Capitol
 Carson City, Nevada 89701

MILLER, Robert W. (Alt.) (916) 332-1658
 6218 Conness Way
 Sacramento, California 95842

MOFFORD, Rose (602) 542-4331
 Governor of Arizona
 Statehouse
 Phoenix, Arizona 85007

MONTFORD, John T. (806) 747-0467
 State Senator
 P.O. Box 1709
 Lubbock, Texas 79408

OSTLER, Don A. (Alt.) (801) 538-6146
 Director
 Bureau of Water Pollution Control
 Utah Department of Health
 Division of Environmental Health
 288 North 1460 West
 P. O. Box 16690
 Salt Lake City, Utah 84116-0690

PATY, William W. (808) 548-6550
 Chairperson
 Commission on Water Resources Management
 Department of Land and Natural Resources
 P. O. Box 621
 Honolulu, Hawaii 96809

PECK, Reese (Alt.) (605) 773-3151
 Deputy Secretary
 Department of Water and Natural Resources
 Joe Foss Building
 Pierre, South Dakota 57501-3181

PERPICH, Rudy (612) 296-3391
 Governor of Minnesota
 State Capitol
 St. Paul, Minnesota 55155

PFEIFFER, Fred (Alt.) (512) 227-1373
 General Manager
 San Antonio River Authority
 P.O. Box 830027
 San Antonio, Texas 78283-0027

PILCHER, Steve (406) 444-2406
 Chief
 Water Quality Bureau
 Department of Health and Environmental Sciences
 Room A206, Cogswell Building
 Helena, Montana 59620

PIRNER, Steve (605) 773-3351
 Director
 Division of Enviornmental Quality
 Department of Water and Natural Resources
 Joe Foss Building
 Pierre, South Dakota 57501-3181

PLUMMER, N. William (602) 542-1540
 Director
 Department of Water Resources
 15 South 15th Avenue
 Phoenix, AZ 85007

PROCTOR, George (Alt.) (503) 882-4436
 Proctor & Fairclo
 280 Main Street
 Klamath Falls, Oregon 97601

REYNOLDS, S. E. (505) 827-6175
 New Mexico State Engineer
 101 Bataan Memorial Building
 Santa Fe, New Mexico 87501

ROE, Charles B., Jr. (206) 459-6162
 Senior Assistant Attorney General
 Attorney General's Office
 Ecology Division, Mail Stop PV-11
 Olympia, Washington 98504

ROMER, Roy (303) 866-2471
 Governor of Colorado
 State Capitol
 Denver, Colorado 80203

RUIZ, Darlene E. (Alt.) (916) 445-5471
 Vice Chairwoman
 State Water Resources Control Board
 901 P Street
 Sacramento, California 95814

SCHWINDT, Francis (701) 224-2354
 Division of Water Supply and Pollution Control
 Missouri Office Building
 1200 Missouri Avenue
 P. O. Box 5520
 Bismarck, North Dakota 58502-5520

SINNER, George (701) 224-2200
 Governor of North Dakota
 State Capitol
 Bismarck, North Dakota 58505

SMITH, Terral (Alt.) (512) 463-0700
 Representative
 P. O. Box 2910
 Austin, Texas 78769

SPRYNCZYNATYK, Dave (701) 224-2750
 State Engineer
 State Water Commission
 900 East Boulevard
 Bismarck, North Dakota 58505-0187

SQUIER, Anne (503) 244-1181
 Assistant Professor of Law
 Lewis & Clark
 10015 S.W. Terwilliger Boulevard
 Portland, Oregon 97219

STEPHENS, Stan (406) 444-3111
 Governor of Montana
 State Capitol
 Helena, Montana 59620

STONEHOCKER, Jack L. (702) 486-7060
 Director
 Colorado River Commission of Nevada
 Mailroom Complex
 Las Vegas, Nevada 89158

SULLIVAN, Glenn H. (405) 521-2413
 Secretary
 Department of Natural Resources
 500 Will Rogers Building
 Oklahoma City, Oklahoma 73105

SULLIVAN, Mike (307) 777-7434
 Governor of Wyoming
 State Capitol
 Cheyenne, Wyoming 82001

TAGOMORI, Manabu (808) 548-7533
 Deputy to the Chairperson
 Commission on Water Resources Management
 Department of Land and Natural Resources
 P. O. Box 373
 Honolulu, Hawaii 96809

TILESTON, Peg (907) 561-0540
 Chairman
 Alaska Water Resources Board
 4780 Cambridge Way
 Anchorage, Alaska 99503

WADDINGHAM, Thorpe A. (801) 864-5231
Attorney
P.O. Box 177
Delta, Utah 84642

WAIHEE, John (808) 548-5420
Governor of Hawaii
State Capitol
Honolulu, Hawaii 96809

WALSTON, Roderick E. (Alt.) (415) 557-3920
Deputy Attorney General
6000 State Building
San Francisco, California 94102

WEISS, Wendy C. (303) 866-3611
Colorado Department of Law
1525 Sherman Street
Denver, Colorado 80203

WESTERGARD, Roland D. (702) 885-4360
Director
Department of Conservation and Natural Resources
201 South Fall Street
Carson City, Nevada 89701

WILKERSON, Daniel (907) 563-6529
Resource Planner
Department of Environmental Conservation
Division of Environmental Quality
3601 C Street, Suite 1350
Anchorage, Alaska 99503

WILLARDSON, Anthony G. (801) 561-5300
Associate Director
Western States Water Council
Creekview Plaza, Suite A-201
942 East 7145 South
Midvale, Utah 84047

WOOD, Randolph (Alt.) (602) 257-6917
Director
Arizona Department of Environmental Quality
2005 North Central Avenue
Phoenix, Arizona 85004

YOUNG, William H. (503) 378-2982
Director
Water Resources Department
3850 Portland Rd., N.E.
Salem, Oregon 97310