

1990

ANNUAL REPORT

of the

WESTERN STATES WATER COUNCIL

Twenty-fifth Annual Report

**1990 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-five 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 the **State of Nebraska**). Also during 1989, **OKLAHOMA** requested associate membership. Oklahoma's request was approved in January 1990, bringing Council membership to eighteen states.

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 D. Craig Bell, Executive Director. Working with Mr. Bell are: Tony Willardson, Associate Director; Norman K. Johnson, Legal Counsel; and a secretarial staff including Pearl Pollick, Carrie Curvin, Cheryl Redding, and Lynn Bench. Lynn was hired part-time at the end of the year as part of a job sharing arrangement.

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 1990, meetings were held in: Kona, Hawaii on January 10-12; Houston, Texas on April 18-20; Bismarck, North Dakota on July 11-13; and Denver, Colorado on November 14-16. Guest speakers are scheduled according to the relevant subjects to be considered at each meeting. The Council meetings are open to the public. 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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1990  
WESTERN STATES WATER COUNCIL  
MEMBERSHIP<sup>1</sup>

**ALASKA**

\*Governor Steve Cowper  
11-86

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

**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

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<sup>1</sup>The date under each name is the beginning date of tenure. A second date indicates the date that the appointment came to an end. Alternate (Alt.) members are also listed.

**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  
Jeris A. Danielson  
4-80  
J. David Holm  
1-90  
Wendy C. Weiss (Alt.)  
4-87

**IDAHO**

\*Governor Cecil Andrus  
11-86

\*\*R. Keith Higginson  
10-87  
Gene Gray  
10-83  
A. Kenneth Dunn  
5-77 to 11-90  
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

**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 to 4-90 (deceased)  
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  
Julie Krenz  
11-90  
Michael A. Dwyer (Alt.)  
11-90  
Patrick K. Stevens  
2-90 to 11-90

**OREGON**

\*Governor Neil Goldschmidt  
11-86

\*\*William H. Young  
3-79  
Lorna Stickel  
7-90  
Steve Sanders  
7-90  
George Proctor (Alt.)  
3-79 to 1-88  
reappointed 7-88  
William Blosser  
1-88 to 6-90  
Anne Squier  
1-88 to 6-90

**SOUTH DAKOTA**

\*Governor George Mickelson  
1-87

\*\*Robert E. Roberts  
10-90  
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  
Cliff Johnson (Alt.)  
2-90

**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 to 4-90  
Carol Jolly  
1-87

**WYOMING**

\*Governor Mike Sullivan  
1-75

\*\*Gordon W. Fassett  
3-87  
Myron Goodson  
6-65 to 3-83  
reappointed 10-86  
Jennifer Gimbel  
3-87  
George L. Christopulos (Alt.)  
4-75  
William L. Garland (Alt.)  
10-90

**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

## In Memorium

**Steve Reynolds**, New Mexico State Engineer, passed away April 24, at the age of 73. A highly esteemed friend and colleague, Steve was a charter member of the Western States Water Council, having served since its creation in 1965. He was a model of professional integrity and hard work, modest and straightforward.

Steve was an excellent administrator, and knew the law. Governor Garrey Carruthers once said, "There are few lawyers who are better equipped to argue and debate principles of water law than Steve Reynolds..., and he is not a lawyer." Steve replied, "You damn sure if you are going to be state engineer had better read and understand the law." Steve was known as one of the most powerful water resource officials in the West, and was praised for his knowledge and wisdom. Steve might simply say, "I'm no fool." Sitting as a judge in innumerable administrative hearings allocating New Mexico's scarce water resources, Steve applied the law fairly and consistently. Once in 1959, he even cancelled for non-use two well permits held by then Governor John Burroughs. Though he was criticized at times, his decisions were rarely overturned.

Raised in Illinois, Steve came west to New Mexico in order to study mechanical engineering. He worked for Phillips Petroleum, and then did research at the New Mexico Institute of Mining and Technology. In 1955, Governor John Simms offered him the vacant State Engineer's position, and he turned a two year appointment into a 35-year career. He served under ten different governors. He captained the State Engineer's Office, as he did the 1938 University of New Mexico football team. According to a friend, "He gave a lot, and he expected a lot."

Steve was resilient and remained cheerful despite considerable personal adversity. He cared for his wife Jane, who suffered from Alzheimer's disease, for 15 years until she died. He endured diabetes and its effects for over 30 years. He recently lost part of one leg due to a blood clot and poor circulation, and was eventually overcome by complications related to the surgery, including respiratory and kidney failure. Over the years, he suffered a broken heel that healed only slowly, a broken hop which required replacement surgery, and a broken shoulder in an auto accident. Someone once called him practically indestructible.

Respected and admired, he will be missed.

**Scott Matheson**, former Governor of the State of Utah, died of cancer on October 7. He was 61. Dubbed the "water governor," he was a strong supporter of the work of the Western States Water Council. He was known for his wisdom, leadership, fairness, warmth, and charm.

Governor Matheson was born in 1929, and raised in Cedar City and Salt Lake City, Utah. After graduating from the Stanford University Law School, he joined his father's Cedar City law practice in 1952, and was later elected Parowan City Attorney. He served as a law clerk to federal district court Judge Willis Ritter. He was later appointed Assistant General Counsel of the Anaconda Mining Company, and then Solicitor General for the Union Pacific Railroad Company.

After campaigning as a "citizen's" candidate, he was elected in 1976 as Utah's governor. He served until 1984, at which time his popularity rating was the highest of any governor in state history. His administration was filled with attention to environmental and natural resource matters, as well as emphasis on improving federal/state relations.

Governor Matheson served as Vice-Chairman of the Western Governors' Association and its lead governor on water. He also chaired the National Governors' Association's Water Management Subcommittee and Task Force on American Indian Policy. He was once named Water Statesman of the Year by the National Water Resources Association, and was appointed to the President's Intergovernmental Task Force on Water Policy.

Always a statesman, Governor Matheson's influence at the state and national level continued long after he left office. His leadership will be greatly missed. He showed great courage in a battle with the cancer that finally took his life. Ironically, he fought long and hard to win compensation for victims of the same form of cancer, which has been associated with federal open air nuclear testing in southern Utah during the 1950's and 60's.

COUNCIL MEMBERS  
AT BISMARCK, NORTH DAKOTA, MEETING - July 1990

(Photograph #)

Seated: Ken Dunn, Bob Miller, Dee Hansen, Dave Kennedy, Myron Goodson, Roland Westergard, Bill Young, Don Ostler

Second Row: John Guhin, Jennifer Gimbel (Hager), Gary Gustafson, Mike McNulty, Pat Stevens, Frank DuBois, Fred Pfeiffer, Joe Dini, Keith Higginson, Tom Choules, Francis Schwindt

Third Row: Steve Pilcher, Dean Couch, Steve Pirner, John Hatch, Wayne Cunningham, Ron Miller, Ron Nargang, Dave Sprynczynatyk, Larry Anderson, Gary Fritz, Reese Peck



**STAFF**

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

(Photograph #\_\_\_)

Council offices are located at:

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

**PRESENT AND PAST OFFICERS AND EXECUTIVE DIRECTORS**

The following served as officers during 1990:

<b>CHAIR</b>	<b>VICE-CHAIR</b>	<b>SECRETARY/TREASURER</b>
William H. Young 7/90 - present	David N. Kennedy 7/90 - present	Dee C. Hansen 7/86 - present
Roland D. Westergard 7/88 - 7/90	William H. Young 7/88 - 7/90	

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

Chair: →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-Chair:

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-Seventh Quarterly Meetings  
January 10-12, 1990  
Kona, Hawaii

The State of Hawaii hosted its first quarterly meeting of the Western States Water Council (WSWC) in Kona. An associate member, Hawaii has expressed an intent to become a full member. Also of note, the Council's Executive Committee unanimously approved a request by Oklahoma Governor Henry Bellmon for associate membership, making Oklahoma the eighteenth state affiliated with the Council<sup>2</sup>.

The Council considered one external position regarding the Bush Administration's "no-net loss" wetlands protection policy. The Council unanimously waived the 30-day notice requirement to discuss the resolution, sponsored by the State of Alaska, which addresses a recent Environmental Protection Agency (EPA)/Corps of Engineers Memorandum of Agreement.<sup>3</sup> The resolution pointed out "unique conditions in each state must be considered as they relate to effective mitigation of wetlands loss..." and specifically referred to the need to balance competing environmental and public health needs, as well as economic well being, when addressing wetland issues. Finally, it would have urged the Administration to provide sufficient flexibility in implementing the no-net loss policy to recognize unique conditions nationwide.

~~There was no opposition to the substance of the resolution.~~  
However, At the request of the State of Colorado, the Council tabled action on the resolution in order to allow members to specifically present the issue to their governors. Under the Council's rules of organization, the Executive Committee may adopt external policy positions between meetings. In February, the Executive Committee was polled to determine the disposition of the resolution. Only the State of Washington could not support the resolution, but it was decided the Council would defer any further action as the issue was to be raised before the Western Governors' Association. The Council did summarize for the WGA its discussion of the wetlands problem.

Several special guests participated in the Council meetings. Dr. Robert Hirsch, Assistant U.S. Geological Survey Chief

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<sup>2</sup> Western States Water, Issue #810, November 22, 1989.

<sup>3</sup> Western States Water, Issue #815, December 29, 1989,  
Western States Water, Issue #813, December 15, 1989, and  
Western States Water, Issue #812, December 8, 1989.

Hydrologist, addressed members at the Ninety-Seventh Quarterly Meeting. He spoke about the current state of global warming research and its potential impacts on western water resources management. There is general scientific agreement with respect to the greenhouse effect. Carbon dioxide levels are increasing, which results in the warming of the earth's atmosphere. However, given the current crude state of general circulation models, used to monitor global warming and project climatological impacts, at present there is no scientific consensus regarding potential regional effects, and little guidance for western water policy and management.

The National Research Council's (NRC) Committee on Irrigation-Induced Water Quality Problems presented the results of its work and discussed a number of water quality related resource management questions. Professor Charles DuMars, a member of the Committee and WSWC representative from New Mexico, moderated the discussion between NRC Committee members: Jan Van Schilfgaarde, Albert L. Page, Rolf Hartung, Wilford R. Gardner, Ernest E. Angino, Daniel E. Willard, Edwin H. Clark, L. Douglas James, and Merilyn B. Reeves; as well as Edgar A. Imhoff, of the Department of Interior. These experts provided a variety of views with respect to the future of irrigated agriculture in the West, and changing social values. Copies of their report, Irrigation-Induced Water Quality Problems: What Can Be Learned from the San Joaquin Valley Experience, are available from the National Academy Press, 2101 Constitution Avenue, N.W., Washington, D.C. 20418.

The Council's working committees met and addressed many issues. The Water Resources Committee discussed the seriousness of the continuing drought in the West. Council members had previously met with the Western Governor's Association staff, Deputy Commissioner Joe Hall and Tom Phillips of the Bureau of Reclamation, Kyle Schilling of the Corps of Engineers, and Agricultural Stabilization and Conservation Service (ASCS) and Farmers Home Administration (FmHA) officials to discuss state and federal drought response. The Water Resources Committee also discussed state responses to a questionnaire related to a study of ground water recharge projects. Other topics included the recent trend towards the application of federal environmental impact statements to evaluate ongoing project operations, funding for the Central Utah Project, the Resource Conservation Group's water marketing proposal in the Colorado River Basin, and U.S. Senator Mark Hatfield's (R-OR) proposed Western Water Policy Review Act.

The Legal Committee heard William Paty, Chairman of the Hawaii Commission on Water Resources Management, describe Hawaiian water law and policy issues. He was accompanied by William Tam, of the Attorney General's Office, and together they discussed Robison v. Aryoshi, a lawsuit related to Hawaiian water rights and the state's

authority to control water use.<sup>4</sup> Other cases discussed involved the adjudication of the Snake River Basin in Idaho and U.S. objections to paying the state filing fees, and South Dakota v. EPA, involving federal water quality mandates. Other topics discussed included water rights provisions of the Nevada Wilderness Act,<sup>5</sup> the potential implications of a proposed American Indian Religious Freedom Act,<sup>6</sup> and California-Nevada interstate water management negotiations. Of particular interest, the Committee discussed California v. FERC, the Rock Creek case regarding the jurisdiction of the states and the Federal Energy Regulatory Commission over hydropower project licensing. The State of Idaho has filed a brief, supporting California, before the U.S. Supreme Court, which has been signed by all the remaining 49 states.<sup>7</sup> Oral arguments are anticipated this spring.

The Water Quality Committee continued its review on federal ground water legislation and efforts to develop a consensus on a concept paper by various interstate organizations. The Committee reviewed the EPA/Corps wetlands mitigation memorandum of agreement, as well as alternative water quality funding mechanisms, the water quality impacts of non-fuel mining wastes, and canal herbicides. The Committee also discussed coastal state water quality issues and various state approaches to addressing the relationship between water quality and quantity management.

The Executive Committee, as noted, unanimously approved Oklahoma's request for associate membership after some discussion. The Committee also reviewed continuing work with the Western Governors' Association (WGA) and the Council's own work plan items. The Committee decided Arizona would host the next water management symposium on the general topic of resolving interstate water management conflicts. The Committee also approved a change allowing the State of North Dakota to host the July 1990 meetings, with the Fall meetings to be held in Colorado.

Prior to the regular meetings, the State of Hawaii arranged for a field trip which included a bus tour of the Big Island of Hawaii. The island offers many contrasts. It is a rural area with extensive agricultural interests in macadamia nut groves, cattle ranching, sugar cane, and other crops. The northeast coast is adorned with tropical rain forests and as much as 100 inches of rain annually. On the west coast, where most resort development is growing, precipitation averages only 10 inches or less. Much

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<sup>4</sup> Western States Water, Issue #806, October 27, 1989.

<sup>5</sup> Western States Water, Issue #813, December 15, 1989.

<sup>6</sup> Western States Water, Issue #806, October 27, 1989.

<sup>7</sup> Western States Water, Issue #811, December 1, 1989.

of the island is dominated by rugged lava flows, evidence of its active volcanoes. Of particular interest, in the rural southwestern portion of the island, there is no public water or sewer system. Further, ground and surface waters are either nonexistent or so expensive that residents must rely on catchment and gray water systems, and hauling water to meet their needs during some parts of the year.

Due to the work of our Hawaiian hosts, Bill Paty, Manabu Tagomori and their staff, our January meetings were most enjoyable and productive. Mahalo!

Ninety-Eighth Quarterly Meetings  
April 18-20, 1990  
Houston, Texas

The State of Texas hosted the Ninety-Eighth Quarterly Meetings of the Western States Water Council in Houston. Prior to the meetings, Texas arranged a bus and boat tour of National Aeronautics and Space Administration (NASA) facilities and the Houston Ship Channel. Also, prior to the meetings, the Council and the Western Governors' Association sponsored a federal/state workshop on drought response. Thirteen states and several federal agencies were represented. The WGA staff presented an inventory of federal drought-related emergency response programs, and a draft WSWC matrix displaying western state drought response capabilities was circulated. The group formulated several recommendations to improve governmental response to drought.

The Executive Committee meeting opened with a presentation by John Sayre, Assistant Interior Secretary for Water and Science. Among other things, he described Interior's position on drought management, Indian water rights settlements, environmental compliance, and water rights for wilderness areas. He said the Administration favors negotiated settlements of Indian water claims, with adequate non-federal cost sharing, and referred to the criteria and procedures for such settlements published recently by the Departments of Interior and Justice and the Office of Management and Budget,<sup>8</sup> which will be followed carefully in future negotiation proceedings. He also said that Interior's position on water rights for BLM and Forest Service wilderness areas is to defer to state water law. The Executive Committee also discussed the Council's semi-annual water policy seminar, annual water management symposium, and cosponsorship of a conference on global warming and weather modification. The Committee also approved a

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<sup>8</sup> Western States Water, Issue #825, March 9, 1990.

budget for FY91. Dues for FY92 were set at \$21,000 for member states.

The Legal Committee's featured speaker was Bureau of Reclamation Commissioner Dennis Underwood. Among other things, he discussed Bureau efforts regarding water conservation, environmental protection, water resource research, drought mitigation, water education, and rural water supply. He stressed the natural evolution of the role of the Bureau from a water development agency to a management and conservation agency. He stressed the need to keep the lines of communication open between the Bureau and state and local governments. He also expressed a desire to make the Bureau of Reclamation a national leader in project management.

The Legal Committee heard from Idaho Deputy Attorney General Clive Strong on western states' need to be proactive to maintain the primacy of state water law. He described issues related to administration of federal reserved water rights and the current Department of Justice position that the states have no authority to administer such rights, but only to adjudicate them under the McCarran Act. He also noted that it appears the State of Idaho, the federal government, and the Shoshone-Bannock Indian Tribes have reached a negotiated settlement of the tribes' reserved water rights claims.

The Legal Committee also considered the reserved rights language in the Arizona Bureau of Land Management (BLM) wilderness legislation, and the American Indian Religious Freedom Act (S. 1979), a suit by South Dakota challenging EPA's delegation of Safe Drinking Water Act primacy to the Standing Rock Sioux Tribe. The latter may be dismissed without prejudice in the near future on ripeness grounds. The Committee was also briefed on the staff report, "State Water Laws and Federal Water Uses: The History of Conflict, the Prospects for Accommodation," published in Environmental Law, the Journal of the Northwestern School of Law. Further, California Deputy Attorney General Rod Walston described oral arguments before the U.S. Supreme Court in California v. FERC.<sup>9</sup>

David Barrows, Assistant for Regulatory Affairs, U.S. Army Corps of Engineers, addressed the Water Resources Committee on the Corps/EPA Memorandum of Agreement (MOA) regarding Clean Water Act (CWA) Section 404 mitigation<sup>10</sup>. He stressed that the MOA was intended to achieve consistency in the permitting actions of some

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<sup>9</sup> Western States Water, Issue #827, March 23, 1990.

<sup>10</sup> Western States Water, Issue #813, December 13, 1989.  
Western States Water, Issue #815, December 29, 1989.  
Western States Water, Issue #823, February 23, 1990.



150 Corps field offices. It did not create any new regulatory requirements. Thus, in the Corps' view, the MOA was not subject to the Administrative Procedures Act and was not promulgated with public review. Mr. Barrows noted that some 10,000 Section 404 permits are processed annually. On average, 800-900 are "controversial," and 500 or so are denied. He noted that the Domestic Policy Council's Wetlands Task Force is developing the Administration's "no-net loss" wetlands policy. Later, the Water Resources Committee considered and approved a position urging support of the Bureau of Reclamation's weather modification program. The Committee also discussed drought conditions westwide and the WGA/WSWC drought workshop held earlier in the week. The Committee received a report on the status of the ground water recharge study being prepared by the Council staff for the Bureau of Reclamation. Further, the Committee discussed an environmental impact statement being prepared on the operation of Glen Canyon Dam.

The Water Quality Committee's featured speaker was LaJuana Wilcher, EPA Assistant Administrator for Water. She spoke on the mitigation of wetland losses and the EPA/Corps MOA. She stressed the role of the Domestic Policy Council's Wetlands Task Force in defining the Administration's "no-net loss" policy, but said that it is not clear whether the policy will take the form of a national strategy, a national goal, or something else. A policy may be established by the end of this year. Ms. Wilcher also discussed briefly with the Committee CWA Section 518 regulations and biomonitoring. The Committee considered a proposed resolution on the EPA/Corps wetlands MOA, which was tabled in favor of a letter with recommendations to western governors on this subject. Other issues considered included federal ground water legislation, state standard setting under CWA Section 303, and alternative water quality funding.

Houston Mayor Katherine Whitmire opened the Ninety-Eighth Quarterly Meeting with an exciting welcome. Thereafter, Texas Senator John T. Montford described state water policy issues, including water conservation, water quality concerns related to non-point source pollution and abandoned oil wells, and the recent approval of \$500M in water development bonds. Marian Mlay, Director of EPA's Office of Ground Water, also addressed the Council. She described the progress states have made since the EPA's 1984 Ground Water Strategy was published, and the recent work of EPA's ground water task force to close gaps in protection under current state and federal programs. She also discussed two documents EPA was circulating for review and comment, entitled "EPA Statement of Ground Water Principles," and "State/Federal Relationship Options Paper."<sup>11</sup>

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<sup>11</sup>Western States Water, Issue #831, April 24, 1990.

Lastly, the Council approved a policy resolution continuing its support for the Bureau of Reclamation's weather modification program. The resolution notes the need to maintain, extend and transfer technology related to weather modification. Further, it supports minimum federal funding for the program of \$3.2M. The Council also approved a letter, as recommended by the Water Quality Committee, to North Dakota Governor George Sinner, Chairman of the Western Governors' Association, concerning the national "no-net loss" wetlands policy.

Ninety-Ninth Quarterly Meeting  
July 11-13, 1990  
Bismarck, North Dakota

The WSWC marked its twenty-fifth anniversary during quarterly meetings on July 11 - 13 in Bismarck, North Dakota. Governor George Sinner, Chairman of the Western Governors' Association, spoke on various topics including ground water, wetlands and drought. The Governor warned, "We will have chaos if we run short of water in some...areas of the United States and we can't let that happen." The Governor emphasized the states must take the lead in resolving water problems. With respect to wisely managing our water resources, the Governor emphasized, "We can't get it done unless we work together." Referring to his personal management style, the Governor observed, "I know where the experts are...and I rely on them." He specifically thanked the Council for its "superb cooperation."

Governor Sinner serves on the Federal Advisory Commission on Intergovernmental Relations, and expressed his concern with respect to state and federal water management. He noted the exasperation of the Upper Basin States over the Corps' operation of the Missouri River during the present drought, which has left the state's recreation industry literally high and dry. He also cited federal hydropower permitting decisions and California v. FERC as examples of where the states aren't even consulted, adding, "The Governors are angry, and they are going to fight on this one."

Twenty-five years ago, Nevada Governor Grant Sawyer, Chairman-elect of the Western Governors' Conference, addressed the first WSWC meeting at Lake Tahoe, Nevada. Governor Sawyer also emphasized the necessity of cooperative state action to "solve our own problems rather than looking elsewhere for their solutions." He hoped the Council would be stable, long-lasting and vigorous. He stated, "If we cannot work together as combined states, we certainly cannot complain if someone else, specifically the federal government, resolves our problems for us. We cannot complain about federal control when it is invited by our own inaction. We must act as fast as we can, for I guarantee, if we cannot get this

moving among the states, it is going to be done, and it may be done at a level which may not take into account public interest as we see it."<sup>12</sup>

Myron Goodson of Wyoming and John Russell of New Mexico were in the audience when Governor Sawyer spoke. As charter WSWC members they were also in attendance to hear Governor Sinner's remarks. Myron remains an active member of the Council. Other past members attending the meeting included Don Paff of Nevada and Charles Nemir of Texas, a former Council Chair, as well as Vern Fahy, who was instrumental in North Dakota joining the Council. Since its first meeting in 1965, the Council has grown from its original eleven members to represent eighteen western states.

The Council's working committees met and addressed many varied issues. The Water Quality Committee discussed federal legislation regarding ground water, Section 404 of the Clean Water Act, and water quality in coastal states. The Committee also discussed alternative funding for water quality programs, state standard setting, and EPA recommendations to regulate mine waste.

The Legal Committee discussed California v. FERC, in which the U.S. Supreme Court upheld federal authority to regulate bypass flows for federally licensed hydropower projects. The Committee also discussed wilderness water rights. Four states reported on Indian water right settlement negotiations, court decisions, and challenges related to the administration of quantified Indian water rights. The Committee also discussed EPA's treatment of Indian tribes as states under the Safe Drinking Water and Clean Water Acts.

The Water Resources Committee discussed ground water recharge, wetlands policy, the drought, state water conservation programs, recent Federal Energy Regulatory Commission (FERC) orders, and legislation to overturn the U.S. Supreme Court decision in California v. FERC. Regarding the latter, the Committee endorsed a resolution supporting amendments to the Federal Power Act, such as S. 2805 and H.R. 5194, introduced by Idaho's congressmen. Joe Hall, Deputy Commissioner of the Bureau of Reclamation, addressed members on recent Bureau activities. He emphasized his commitment to work through the states to resolve regional water management problems.

City Councilwoman Connie Sprynczynatyk welcomed members to Bismarck for the Ninety-Ninth Quarterly Meeting. Earlier she and her husband Dave, the North Dakota State Engineer and a WSWC member, were gracious hosts during a tour of Garrison Dam and related "re-created" wetland areas. Members also visited Fort

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<sup>12</sup>Anthony G. Willardson, The Western States Water Council: Prologue and Organization, July 1989, p. 28.

Lincoln and General George Armstrong Custer's home, followed by a dinner and a lovely evening along the banks of the Missouri River. The tour and warm welcome set the stage for a special panel discussion of the challenges and opportunities surrounding changing values and the operation of the Missouri River system. The panel included Dave Sprynczynatyk, John Guhin, South Dakota Assistant Attorney General, Ed Lone Fight, Chairman of the Three Affiliated Tribes of the Fort Berthold Reservation, Dr. Ed Dickey, Deputy Assistant Secretary of the Army for Civil Works, and Arvid Thomsen of the Corps of Engineers' Missouri River Division.

These speakers emphasized the conflicting expectations that surround management of the Missouri River, and the costs and benefits associated with past development. While providing tremendous flood control and navigation benefits, irrigation facilities promised upstream states have never been built. A reformulated Garrison Project plan to provide some compensation for the thousands of acres of rich bottomland lost by Upper Basin States and the tribes has yet to be implemented. Ironically, Chairman Lone Fight noted that when the Army "negotiated" the "taking" of Indian lands for Missouri River development, his father was serving in the Philippines in World War II (as were many of the men of the tribes). The Corps pointed out the unprecedented nature of the current drought, which has caused increasing conflicts among competing river uses. In light of existing realities, the Corps is reviewing its operation of the system. Dr. Dickey, an economist, emphasized the need to find ways for those who benefit from the Corps' current operation of the system to pay for future programs and compensate those that have suffered losses associated with the project or have yet to realize promised benefits.

The Council adopted one position supporting amendments to the Federal Power Act to assure applicants for a hydropower license must comply with state water law, both substantive and procedural, thus restoring "...Congress' intent that state law govern water use associated with a hydropower project." The position states that the Federal Energy Regulatory Commission does not have the ability, experience or resources to regulate hydropower and water rights in a manner that will maintain the balance that each state has struck between various uses. In the past, states have conditioned hydropower water rights in order to balance the benefits of hydropower against the other beneficial uses that may be made of the water. Congress has consistently deferred to state regulation. FERC limits its review of a project to the record before it and does not perform a comprehensive analysis of existing and future uses of water within a river basin when issuing a license.

The Council unanimously elected Bill Young, Director of the Oregon Department of Water Resources, as its new Chair, with Dave Kennedy, Director of the California Department of Water Resources as Vice-Chair, and Dee Hansen, Director of the Utah Department of Natural Resources as Secretary-Treasurer. The Council recognized

and applauded retiring Chair Roland Westergard for his dedicated service.

One Hundredth Quarterly Meetings  
November 14-16, 1990  
Denver, Colorado

The One Hundredth Quarterly Meeting of the Western States Water Council was held in Denver, Colorado. Several special guests addressed Council members. Bureau of Reclamation Commissioner Dennis Underwood focused on the new challenges facing the Reclamation states as public demand grows for more non-traditional, non-consumptive uses of western waters. While future infrastructure needs must be met, no new major Bureau construction projects are likely in the foreseeable future. The Commissioner warned that Congress and the courts are playing an increasingly greater role in determining water use priorities, often without understanding western water law. He stressed the need for active state participation to educate and influence Congress. The Western States Water Council is an important advisory group, and he has asked Bill McDonald, Assistant Commissioner for Resources Management and a former WSWC Chair, to serve as liaison. He also hopes to have the Bureau's draft strategic plan completed for public review before the next WSWC quarterly meetings.

Hamlet (Chips) Barry, Director of the Colorado Department of Natural Resources, also addressed the Council. A former attorney representing Indians, he decried the U.S. Fish and Wildlife Service's action that has halted the Animas-La Plata Project in southwest Colorado, which is part of the Southern Ute Indian water rights settlement, as breaking yet another federal treaty.<sup>13</sup> The Service believes the project might jeopardize the continued existence of a San Juan River population of the Colorado River squawfish, an endangered species. Mr. Barry suggested that the Ute Indians, on a reservation still without running water, were at least as important as the fish. He added that much of the social tension surrounding western water use is due to our "institutional schizophrenia," which treats water as a private commodity to be bought and sold in a free market, but also as a public good subject to political allocation. He discussed other Colorado water issues, including EPA's veto of the Two Forks project, interstate compacts, out-of-basin water transfers, and state water policy and planning.

Interior Solicitor Tom Sansonetti advised members there are sometimes heated disputes among Interior's agencies, and he outlined the process by which conflicts are resolved. He suggested states make their views known on important water policy issues.

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<sup>13</sup>Western States Water, Issue #835, May 18, 1990.

He called the Endangered Species Act an environmental trump card, and said recent disputes demonstrate the need to allow the exemption process, now rarely used, to balance environmental and economic interests. Despite recent legislation, the Solicitor suggested that further progress on Indian water right settlements will be slow due to the limited number of staff in his office.<sup>14</sup> He suggested future agreements be administered by the State Engineer, as part of a comprehensive state water management system, and any disputes regarding implementation be resolved in state courts. However, given the controversy over administration of decreed water rights on the Wind River Reservation in Wyoming, the Department of Justice has said settlement waters should be administered by someone other than the State Engineer.

In the Water Quality Committee, Bill McDonald reported on the Bureau of Reclamation's irrigated agriculture/water quality study. Four new site-specific planning studies have been funded for the Salton Sea in California, the Stillwater National Wildlife Refuge in Nevada, the Middle Green River in Utah, and the Kendrick Project in Wyoming. Next, Dale Vodehnal, EPA Region VIII, described state allotment formulas for funds disbursed under Clean Water Act Section 106 and 319 programs. Now based generally on population, proposed changes would take into account other factors and would result in greater funding for many western states. The Committee also discussed a WSWC water quality funding survey designed to help states deal with federal funding cuts. Chair Don Ostler noted that most states are considering plans for reducing programs and staff and/or generating additional revenues through permit and other fees. Limited state general funds cannot entirely replace the loss of federal funds. Lastly, the Committee discussed water quality standards for toxics, ground water issues, and the reauthorization of the Clean Water Act.

The Legal Committee meeting focused on federal reserved water rights issues. Jeff Fassett described the contentious situation concerning implementation and administration of the reserved rights awarded in the Big Horn litigation.<sup>15</sup> Keith Higginson and Bill Plummer discussed successful efforts to negotiate Indian reserved rights claims in Idaho and Arizona. Lois Witte, Colorado Deputy Attorney General, described the federal government's reserved rights claims for instream flows in Colorado national forests using the "flushing flows" theory.<sup>16</sup> She also spoke on efforts to revive the Southern Ute Indian reserved rights settlement and the Animas-La Plata Project. The Committee also heard reports on

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<sup>14</sup> Western States Water, Issue #859, November 2, 1990.

<sup>15</sup> Western States Water, Issue #856, October 15, 1990.

<sup>16</sup> Western States Water, Issue #850, Sierra Club v. Yeutter, August 31, 1990.

Nevada/California interstate issues, South Dakota v. Hazen,<sup>17</sup> and the Council's report, "State Water Laws and Federal Water Uses: The History of Conflict, the Prospects for Accommodation."

In the Water Resources Committee, Mike Brennan, Executive Assistant to the Director of the U.S. Fish and Wildlife Service, described the purposes of the Endangered Species Act as maintaining natural habitat and ecosystems, and conserving endangered species, while recognizing water resources management and other needs. He suggested the Act has fulfilled Congress' intent and provides sufficient flexibility. Early planning and informal consultation are important. He noted only 5-10% of the thousands of opinions issued by the Service under the Section 7 consultation process find any jeopardy to a threatened or endangered species. Jeopardy opinions may be issued with or without reasonable and prudent alternatives, and may result in project modification or termination. Only five exemption petitions have been considered under the Act. Three were withdrawn, Congress mandated construction of the Tellico Dam in Tennessee, and the Grayrocks Dam in Wyoming was built after establishing a trust fund to mitigate its impacts. The Service is now negotiating with the Bureau of Reclamation and other interests in an attempt to find some reasonable and prudent alternative to the Animas-La Plata Project. There may be future conflicts as more species are listed, but the U.S. Fish and Wildlife Service is committed to working with state and local governments to anticipate and avoid conflicts.

The Water Resources Committee also discussed efforts to resolve jurisdictional conflicts between state agencies and the Federal Energy Regulatory Commission over federal hydropower licensing. Several legislative options will be further explored. The Committee discussed a joint effort with the Western Governors' Association to improve federal/state water policy coordination. Members also briefly, reported extreme drought conditions continue overmuch, but not all of the West. Over the past four years, drought impacts have gradually become more serious. Only above average precipitation will relieve the current stress. Lastly, the Council has completed a study of ground water recharge projects in the West under a contract with the Bureau of Reclamation. This has been a significant effort addressing economic efficiency, financial feasibility as it relates to cost sharing, and legal and institutional issues. Copies of the report are available.

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<sup>17</sup> Western States Water, Issue #834, May 11, 1990.

## OTHER IMPORTANT MATTERS

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

### Western States Water

In addition to these and other activities, the Council staff maintained its usual workload, which includes publication of the Council's weekly newsletter, Western States Water. 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 water officials. Other public and private agencies may subscribe for a fee. For information contact the Council office.

### Water Law Workshop

An eighth annual Water Law Conference entitled "Recent Trends and Developments," cosponsored by the American Bar Association, Western States Water Council, and the Conference of Western Attorneys General was held January 18-19 in Palm Springs, California. Some 180 people attended. Council member Rod Walston chaired and planned the program. Council members Charles Roe and Charles DuMars also helped plan and moderate the program. Speakers included Richard Stewart, Justice Department Assistant Attorney General for Land and Natural Resources, Bureau of Reclamation Commissioner Dennis Underwood, law professors Charles Wilkinson and George Gould, and Gary Ellsworth, Chief Minority Counsel, Senate Energy and Natural Resources Committee. Among other issues discussed were water supply, reserved water rights, federal-state relations, Bureau of Reclamation contract renewals and the National Environmental Policy Act, water rights transfers, and instream flow laws.

### Western Governors' Association

The governors of twelve western states and two U.S. territories, and the premiers of two Canadian provinces, attended the Western Governors' Association's (WGA) annual meeting on July 15-17 in Fargo, North Dakota. WGA Chairman Governor George Sinner of North Dakota hosted the meetings. Governor George Mickelson of South Dakota was elected as the new WGA Chairman, and Governor Mike Sullivan of Wyoming was elected Vice-Chairman.



Hodding Carter III, former Assistant Secretary of State for Public Affairs, addressed contemporary issues, and a discussion with the Canadian premiers included issues such as trade, the environment, energy and regional development. Interior Secretary Manuel Lujan and Deputy Energy Secretary Henson Moore also addressed the governors about several western concerns.

The WGA adopted a resolution calling on Congress to amend the Federal Power Act "to clarify the respective roles of state and federal governments." It supports S. 2805 and H.R. 5194, introduced by Idaho's delegation, stating: "The Governors believe that these amendments will accomplish the goal of assuring that state water law is not preempted by FERC license conditions and that FERC's licensees comply with the procedural and substantive requirements of state law."

A second resolution, entitled "Western Water: Changing Governance Because of New Realities," calls on states to "reestablish genuine primacy by clearly demonstrating they have the capacity to refine, identify, and respond to current and future needs...." It makes several specific suggestions. The resolution also asks the White House to direct federal agencies to work with states to improve water management. It asks Congress to help, "by providing states the opportunity to develop their own programs to reach national objectives."

The resolution concludes by directing WGA to work with the Western States Water Council and others to begin "to assess states' use of strategic planning processes to respond to the new realities facing states as a result of changing values in water and demands for reallocation." The WGA and the WSWC are also asked to work with the White House and federal agencies, "...to develop a mechanism for effectively enhancing state and federal water coordination." Further, WGA and WSWC are to initiate discussions with the Department of Interior and the Corps of Engineers, "to consider basin coordination for dealing with the demands on western rivers which are not currently incorporated in the prior appropriation system and compacts."

~~The governors also adopted a resolution, sponsored by Governor Rudy Perpich of Minnesota, endorsing the concept of an environmental compact of the states. Several previous resolutions were reaffirmed, including one addressing national ground water legislation, another concerning Indian water rights, and one originally adopted in 1987, entitled "Water Efficiency: Opportunities for Action." The governors adopted a work plan to continue their work, under Governor Sullivan's leadership, to encourage negotiated settlement of Indian water right disputes. Further, the governors' work plan directs the WGA and WSWC to set up a working group to develop a model strategic planning process for state drought response.~~

WSWC Executive Director Craig Bell and newly elected WSWC Chair Bill Young reported on current Council activities. Governor Sinner praised WGA/WSWC cooperation, calling it a model for other organizations. Also, Governor Garrey Carruthers of New Mexico recommended the WSWC send federal agencies and Congress a copy of its recent report entitled, "State Water Law and Federal Water Uses: The History of Conflict, the Prospects for Accommodation."

### **Water Management Symposium**

The Seventh Annual WSWC Water Management Symposium, Western Water Management and Use and Interregional Water Transfers, was held on October 10-12, in Scottsdale, Arizona. The meeting began with a keynote speech by former Arizona Governor Bruce Babbitt. He addressed some of the issues surrounding water transfers, and focused on protecting rural areas' economies threatened by the rapidly growing municipal and industrial water demands of urban areas in the West.

Other special guest speakers included: Professor Frank Gregg of the University of Arizona (and former head of the New England River Basins Commission and Bureau of Land Management); Gary Weatherford, an attorney (and author on water issues); Leo Eisel, a consulting engineer and former Director of the U.S. Water Resources Council; and Dr. N.W. Snyder, with the Ralph M. Parsons Company. Dr. Gregg and Mr. Weatherford addressed the topic of regional water governance. Both discussed the arbitrary nature of artificial political boundaries and natural watersheds in addressing regional water management issues. Mr. Eisel discussed prior federal water planning activities and their successes and failures. He emphasized the continuing need for a strong state role in water resources planning and management. Lastly, Dr. Snyder outlined a North American continental water transfer plan and its potential benefits. Parsons and others are seeking private funds to conduct a new feasibility study of such a proposal.

In addition to these guest speakers, nineteen representatives from fourteen western states discussed many major water management issues and current conflicts in the Colorado, Columbia and Missouri River Basins, as well as the Great Basin, the Southwest, and California. Moreover, the participants and speakers were divided into groups which met separately to identify and rank western water management problems, as well as potential solutions and future actions. The results of this strategic planning exercise were later summarized and distributed to participants and WSWC members.

From the group discussions, some things were readily apparent. Many speakers and other comments focused on the growing need to carefully consider environmental issues in water resources planning, development and management. The Endangered Species Act and other federal mandates were mentioned, along with many

opportunities for environmental enhancement, and the need to accommodate all the varied interests affected by water management and use decisions. Some emphasized the need for states to continue to increase their efforts to take into account and fairly provide for past, present and new water uses. Considerable support was expressed for negotiated agreements or consensus solutions to the many varied and complex water issues now facing the West.

Among the important issues identified were the environmental impacts of current projects and future water supply needs, the protection of endangered species, the growing number of transfers between uses within states, institutional reforms and changes, and intergovernmental coordination. Some of the more important potential solutions that were mentioned were negotiated settlements, public education and involvement, better state water planning, legislative reforms, and water conservation and reuse. The proceedings are available through the Council office.

### **Drought**

As the drought continued, WSWC staff monitored conditions in member states. Moreover, in conjunction with the regular quarterly meetings in Houston, the Council and the Western Governors' Association cosponsored a drought response workshop to discuss ways to better improve and better coordinate state and federal activities. North Dakota Governor George Sinner, WGA Chairman and lead governor for water, continued to direct efforts to evaluate state and federal drought response capabilities, clarify intergovernmental responsibilities, and identify any gaps in response authority. As part of this effort, the WGA staff completed an inventory of federal drought related assistance programs and WSWC staff updated earlier work on state drought response and completed a matrix summarizing state capabilities. Both of these documents were presented and discussed at the workshop.

Those attending the workshop represented thirteen states and six federal agencies, as well as one local water utility. Among the areas discussed were defining and monitoring drought, triggering drought response and mitigation, assessing impacts of the drought, state institutional organization and intergovernmental coordination, balancing competing demands, and media involvement. First, some of the recommendations developed at the workshop covered, accommodating environmental and recreational uses, which generate considerable economic benefits to western states, under the appropriation doctrine. Second, states should prepare comprehensive strategic contingency plans designed to identify critical water needs and prioritize uses in an emergency. Directed by the governor's office, this contingency plan should include appropriate local, state, tribal, regional, and federal involvement. Third, intergovernmental roles, responsibilities, and expectations should be defined and incorporated in contingency

plans. Fourth, water conservation and efficiency are important management tools in responding to drought. Fifth, drought should be considered as part of an overall western water management program, in addition to emergency response plans. The Council and WGA will continue cooperative activities relating to drought response, and the broader question of intergovernmental water management relationships.

### **Federal Energy Regulatory Commission**

In January, FERC revised on rehearing its regulations governing the relicensing of hydroelectric projects.<sup>18</sup> The rule established a three-stage resource agency consultation process for the filing of new license applications. FERC extended the time limits for consulting agencies to comment and modified a dispute resolution process stating, "We believe that we have fashioned a reasonable process whereby applicants will have ample opportunity to conduct the meaningful intensive consultation they need to prepare their applications, while still affording the governmental entities and the consultative process a reasonable opportunity to derive the information they need in a timely manner that enables them to carry out their own responsibilities...." In response to WSWC comments, the Commission explicitly added state water resource agencies to their list of resource agencies to be consulted.

Also in January, the new FERC Chairman, Martin Allday, wrote regarding WSWC positions and disagreement with the Commission with regard to the states' authority in a letter to House Energy and Commerce Committee Chairman John Dingell. Chairman Allday declared the Commission believed its position to be correct, and referring to California v. FERC, pending before the U.S. Supreme Court, stated: "Whatever may be the outcome of that proceeding, I hope that it will pave the way for improved relations between the Council and the Commission as both bodies deal with important and difficult water resources issues." While continuing to review FERC actions and statements, the Council anxiously followed the proceedings before the Supreme Court, hoping for a decision favorable to the states. Unfortunately, on May 21, the Court unanimously decided against the states, and affirmed a prior appeals court decision.<sup>19</sup> The Court's decision is explained in more detail later in a preface to a position adopted by the Council at its July meetings in support of legislation to amend the Federal Power Act.

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<sup>18</sup> FERC Order No. 513-A; 55 F.R. 4, January 2, 1990.

<sup>19</sup> Western States Water, Issue #836, May 25, 1990.

## **Federal Environmental Statutes and State Water Law**

Environmental Law, the law review journal of the Northwestern School of Law, accepted for publication an article by the Council's Executive Director Craig Bell and Norman Johnson, Legal Counsel, entitled, "State Water Laws and Federal Water Uses: The History of Conflict, the Prospects for Accommodation," (21 Env't'l L. 1 (1991)). The article was initially prepared as a report to the WSWC Legal Committee on conflicts between federal environmental laws and western state water law, together with suggestions for reducing conflicts. The major sections of the article are: (1) Water Law in the West; (2) State Water Law versus Federal Water Uses: The History of Conflict; and (3) Methods to Reduce Conflicts: The Prospects for Accommodation. The article concludes, "Neither federal nor state domination of water to the exclusion of the other should be necessary. Abundant opportunities exist whereby the interests of both can be protected and enhanced. This should be the goal of both federal representatives and state water managers. To do otherwise would ignore important lessons from the history of federal-state relationships in water resources."

## **Federal Ground Water Legislation**

The Council's interest in federal ground water legislation continued during 1990. There was little activity in Congress with respect to such legislation, but the Environmental Protection Agency did appoint a task force to refine its position on state and federal roles. Also, other legislation passed by Congress, including the 1990 Farm Bill, will affect ground water management. The Council will continue to participate in the national debate on federal ground water legislation.

## **Ground Water Recharge**

In October, the Council completed for publication by the Bureau of Reclamation an extensive report entitled, Ground Water Recharge Projects in the Western United States - Economic Efficiency, Financial Feasibility, and Legal/Institutional Issues. The report was written by Tony Willardson, Associate Director, and Norman Johnson, Legal Counsel. It was prepared under an agreement with the Bureau and pursuant to the High Plains States Ground Water Demonstration Project Act of 1983 (P.L. 98-434), which required the Bureau to "contract with various High Plains States and other Reclamation Act States to conduct a study to identify and evaluate alternative means by which 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 Council and the Bureau entered a cooperative agreement to fulfill this Congressional mandate.

During 1989 the Council completed planning and scoping activities for the study, established an advisory work group, completed a review of literature, and distributed a questionnaire soliciting information on state laws, institutions, and economic or financial programs related to ground water recharge. During 1990 the staff reviewed and compiled the responses and prepared a draft of the report, which was then circulated among Council members for comment and review. Subsequently, the report was put into final form and submitted to the Bureau, which formally accepted and later published the document. It will be used in preparing a final program report to Congress on implementation of the ground water recharge project demonstration program.

### **Interregional Transfer Report**

In 1989, the Nevada legislature adopted a concurrent resolution requesting that the Western States Water Council 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, the Council included in its 1990 work plan a study of legal and institutional issues related to interregional transfer proposals, together with key considerations to be used in evaluating such transfers. During 1990, the staff performed a literature search on issues related to interregional transfers and requested related information from member states. A draft report was prepared for review by a Council subcommittee, and the report is expected to be finished early in 1991.

## RESOLUTIONS AND POSITIONS

Under the Council's rules of organization, its functions include the investigation and review of water-related matters of interest to the western states. Moreover, from time to time, the Council adopts express policy positions regarding proposed federal laws, rules and regulations and other matters affecting the planning, conservation, development, management and protection of western water resources. The following are positions taken and resolutions passed by the Western States Water Council during 1990.

### WEATHER MODIFICATION PROGRAMS

The Western States Water Council has in the past supported continued federal funding for the U.S. Bureau of Reclamation's Cooperative Weather Modification Research and Demonstration Program.<sup>20</sup>

However, given deficit reduction concerns, The Council considers weather modification an effective water management tool which is consistent with the express mission of the new Bureau of Reclamation. It is a means to increase snowpacks and streamflows, improve water quality, raise hydropower production, and augment water supplies for other uses. The Council continues to support federal funding for this program, given the many and diverse potential benefits. Moreover, member states have pledged millions of dollars in non-federal matching funds.

Since it was cut by the Reagan administration, it has been difficult to restore program funding. The Bush administration again did not request FY91 funds for this program. For the first time, the House Energy and Water Appropriations Bill did include \$3.2M, but the Senate version did not and no money was included in the conference committee report.

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<sup>20</sup>Western States Water Council Annual Report, 1988, p. 30.

**RESOLUTION  
of the  
WESTERN STATES WATER COUNCIL  
regarding  
Support for Continued Weather Modification Programs  
April 20, 1990**

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

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

**WHEREAS**, weather modification benefits may enhance water supplies, increase hydropower production, improve instream flows and fishery and wildlife habitat and improve water quality; and

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

**WHEREAS**, other states have expressed an interest in weather modification programs; and

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

**WHEREAS**, the President's 1991 budget contains no funds to support the Atmospheric Resources Research Program; and

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

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

**NOW THEREFORE BE IT RESOLVED** that the WSWC urge the Congress and the Administration to support the U.S. Bureau of Reclamation Division of Atmospheric Resources Research with continuing funding at a minimum level of \$3.2 million in the 1991 fiscal year to support current programs.

**BE IT FURTHER RESOLVED** that the Bureau of Reclamation's Division of Atmospheric Resources continue to provide for operations and transfer of technology through at least 2000 to accommodate programs presently planned.



## AMENDMENT OF THE FEDERAL POWER ACT

On May 21, the U.S. Supreme Court unanimously affirmed the Ninth Circuit Court of Appeals decision that the Federal Energy Regulatory Commission (FERC) has exclusive jurisdiction to determine minimum bypass flow rates for hydropower projects to protect fish and wildlife.<sup>21</sup> The California State Water Resources Control Board had issued a state water permit for the Rock Creek project with minimum flow rates exceeding FERC requirements. The Court held, "The California requirements for minimum streamflows cannot be given effect and allowed to supplement the federal flow requirements."<sup>22</sup>

The Supreme Court found the dispute turned principally on the meaning of Section 27 of the Federal Power Act: "Nothing contained in this chapter shall be construed as affecting or intending to affect or in any way to interfere with the laws of the respective states relating to the control, appropriation, use, or distribution of water used in irrigation or for municipal or other uses or any vested right acquired therein." (16 U.S.C. 821)

The Court said, "Were this a case of first impression, petitioner's argument based on the statute's language could be said to present a close question.... But the meaning of section 27 and the pre-emptive effect of the FPA are not matters of first impression. Forty-four years ago, this Court in First Iowa construed the section and provided the understanding of the FPA that has since guided the allocation of state and federal regulatory authority over hydroelectric projects.... We decline at this late date to revisit and disturb the understanding of section 27 set forth in First Iowa.... Adherence to precedent is, in the usual case, a cardinal and guiding principle of adjudication.... There has been no...intervening change in the law, or indication that First Iowa has proved unworkable or has fostered confusion and inconsistency in the law, that warrants our departure from established precedent."

The Court found the discussion of section 27 in First Iowa was not dictum. "Like this case, First Iowa involved a state permit requirement that related to the control of water for particular uses but that did not relate to or establish proprietary rights.... Only the Court's narrow reading of section 27 allowed it to sustain [its] interpretation of section 9(b)." The Court added, "Given...the interest supporting adherence to First Iowa, we decline to parse again the legislative history to determine whether

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<sup>21</sup>Western States Water Council Annual Report, 1989, p. 40.

<sup>22</sup>California v. Federal Energy Regulatory Commission, 110 S. Ct. 2024, (1990).

the Court in First Iowa erred in its understanding of the development as well as the meaning of the statute."

The Court continued, "Petitioner asks this Court fundamentally to restructure a highly complex and long-enduring regulatory regime, implicating considerable reliance interests of licensees and other participants in the regulatory process. That departure would be inconsistent with the measured and considered change that marks appropriate adjudication of such statutory issues." The Court quoted itself saying, "It is more important that the applicable rule of law be settled than that it be settled right.... This is commonly true, even where the error is a matter of serious concern, provided correction can be had by legislation." The Court added, "...Congress remains free to alter what we have done."

Western state water interests were disappointed by the Supreme Court's unanimous decision, and shortly thereafter, Idaho's congressional delegation introduced legislation to restore states' primary authority for regulating water use related to hydropower projects (S. 2805 and H.R. 5194).<sup>23</sup> The Western States Water Council adopted the following position.

**POLICY STATEMENT**  
of the  
**WESTERN STATES WATER COUNCIL**  
concerning  
**AMENDMENT OF THE FEDERAL POWER ACT**  
July 13, 1990

**WHEREAS**, water is scarce in the western states and the states have taken extraordinary steps to protect this critical natural resource; and

**WHEREAS**, each of the member states has tailored its regulation of water to the unique physiographic, hydrologic, and climatic conditions found within that state; and

**WHEREAS**, Congress has consistently deferred to state regulation of water because of the need for a unitary system of regulation; and

**WHEREAS**, water allocation decisions directly affect a state's environment and its economic development; and

**WHEREAS**, water flow regimes associated with hydropower development have a profound impact on a state's ability to fairly

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<sup>23</sup> Western States Water, Issue #842, July 6, 1990.

allocate its limited water resources among many competing beneficial uses; and

**WHEREAS**, states have conditioned hydropower water rights in order to balance the benefits of hydropower against the other beneficial uses that may be made of the water; and

**WHEREAS**, the Federal Energy Regulatory Commission (FERC) limits its review of a project to the record before it and does not perform a comprehensive review of existing and future uses of water resources within a river basin when issuing a project license; and

**WHEREAS**, only the member states have sufficient records of water rights, water resource records, and development data to fairly balance the use of its limited water resources; and

**WHEREAS**, FERC does not have the ability, experience or resources to regulate hydropower water rights in a manner that will maintain the balance that each state has struck between the various uses of water; and

**WHEREAS**, Congress envisioned that state water law would govern water uses associated with hydropower development, but in First Iowa Hydro-Electric Cooperative v. FPC the United States Supreme Court unnecessarily stated its belief that the Federal Power Act preempted state regulation of water use for hydropower projects, while addressing a licensing requirement unrelated to the issue of state authority; and

**WHEREAS**, in California v. FERC the Court recently upheld the decision in First Iowa on the principles of stare decisis while admitting that in a case of first impression there would be substantial reason to hold that Congress did not intend to preempt state regulation of hydropower water rights when enacting the Federal Power Act;

**NOW THEREFORE BE IT RESOLVED** that the Western States Water Council supports amendment of the Federal Power Act, such as S. 2805 and H.R. 5914, to assure that applicants for hydropower licenses comply with state substantive and procedural water law, thus restoring to the Act Congress' intent that state law govern water use associated with a hydropower project.

## BUDGET AND FINANCE

At the quarterly meeting held April 20, in Houston, Texas, the Executive Committee approved a budget for FY90/91 of \$325,431.24. A previously approved dues schedule calls for a FY90/91 assessment of \$21,000 per state.

The audit report for FY90/91, prepared by the firm of Hansen, Barnett and Maxwell, was presented to the Executive Committee by the Executive Director at the annual meeting on July 13, in Bismarck, North Dakota. 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.

REPORT OF INDEPENDENT ACCOUNTANTS

To the Executive Committee  
Western States Water Council

We have audited the accompanying combined balance sheet of general fund and account groups of Western States Water Council as of June 30, 1990, 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 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 and Government Auditing Standards issued by the Comptroller General of the United States. 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 Western States Water Council as of June 30, 1990, 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 basic 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.

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July 3, 1990

WESTERN STATES WATER COUNCIL  
 Combined Balance Sheet  
 General Fund and Account Groups  
 June 30, 1990

**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, 1990</u>	<u>June 30, 1989</u>
<b>Assets</b>					
Cash - Note 2	\$234,361	\$ -	\$ -	\$234,361	\$142,230
Interest Receivable	1,407	-	-	1,407	-
Prepaid Expenses	1,046	-	-	1,046	573
Deposits	150	-	-	150	150
General Fixed Assets	-	62,695	-	62,695	74,634
<b>Other Debits</b>					
Amount to be Provided for Payment of Long-Term Debt	-	-	5,844	5,844	12,589
Amount for Payment of Compensated Absence	-	-	22,772	22,772	19,616
<b>Total Assets</b>	<u>\$236,964</u>	<u>\$62,695</u>	<u>\$28,616</u>	<u>\$328,275</u>	<u>\$249,792</u>

**LIABILITIES AND EQUITY**

<b>Liabilities</b>					
Accounts Payable	\$ 1,220	\$ -	\$ -	\$ 1,220	\$ 4,740
Payroll Taxes Payable	228	-	-	228	140
Prepaid Assessments	47,000	-	-	47,000	-
Obligations Under Capital Lease - Note 3	-	-	5,844	5,844	12,589
Obligations For Compensated Absences - Note 5	-	-	22,772	22,772	19,616
<b>Equity</b>					
Investment in Fixed Assets	-	62,695	-	62,695	74,634
Fund Balance	<u>188,516</u>	<u>-</u>	<u>-</u>	<u>188,516</u>	<u>138,073</u>
<b>Total Liabilities and Equity</b>	<u>\$236,964</u>	<u>\$62,695</u>	<u>\$28,616</u>	<u>\$328,275</u>	<u>\$249,792</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 IN FUND BALANCE - BUDGET AND ACTUAL  
FOR THE YEAR ENDED JUNE 30, 1990**

	Budget 1990	Actual June 30, 1990	Variance Favorable (Un- Favorable) 1990	Actual June 30, 1989 (For Comparison Only)
<b>REVENUES</b>				
Members States' assessments	\$330,000	\$334,000	\$ 4,000	\$327,000
Bureau of Reclamation's contract	-	18,292	18,292	-
Newsletter payments	-	5,350	5,350	5,800
Interest income	-	22,723	22,723	19,369
Miscellaneous income	-	-	-	500
<b>Total Revenues</b>	<u>330,000</u>	<u>380,365</u>	<u>50,365</u>	<u>352,669</u>
<b>EXPENDITURES</b>				
Current				
Salaries	163,800	166,052	(2,252)	153,879
Travel	36,681	44,856	(8,175)	28,292
Payroll taxes and employee benefits	46,000	46,906	(906)	35,450
Printing and reproduction	16,000	12,828	3,172	19,691
Rent	16,750	17,991	(1,241)	16,786
Freight and postage	9,500	9,891	(391)	8,404
Telephone	6,400	4,240	2,160	4,144
Utilities	1,700	2,117	(417)	1,568
Maintenance Contracts	1,000	728	272	3,710
Office supplies	5,000	4,868	132	5,197
Reports and publications	3,500	4,319	(819)	2,989
Meetings and arrangements	2,500	255	2,245	4,760
Accounting	1,800	1,750	50	1,777
Insurance	1,500	759	741	695
Contingencies	4,000	4,141	(141)	3,304
Interest	-	728	(728)	1,284
Contract services	-	49	(49)	-
Bank Charges	-	4	(4)	140
Capital Outlay	2,000	904	1,096	14,748
Debt Service - Note 3	7,300	6,536	764	6,669
<b>Total Expenditures</b>	<u>325,431</u>	<u>329,922</u>	<u>(4,491)</u>	<u>313,487</u>
<b>Excess of Revenues Over Expenditures</b>	4,569	50,443	45,874	39,182
<b>Fund Balance - Beginning of Year</b>	<u>138,073</u>	<u>138,073</u>	<u>-</u>	<u>98,891</u>
<b>Fund Balance - End of Year</b>	<u>\$142,642</u>	<u>\$188,516</u>	<u>\$ 45,874</u>	<u>\$138,073</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 totals 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, 1990 and 1989. 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, 1990 was \$201,183.

#### **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. Effective monthly payments were \$1,461.55 from April

1989 through March of 1990. The Effective monthly payments increased to \$1,549.25 beginning with the April 1990 payment.

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.

	<u>Capital Leases</u>	<u>Office Lease</u>
1991 minimum payments	<u>6,053</u>	<u>12,755</u>
Less: Amount representing interest	<u>209</u>	<u>-</u>
Present value of minimum lease payments	<u>\$ 5,844</u>	<u>\$13,521</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 security 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, 1990 was \$16,001.

**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.

Dept. of Water and Natural Resources  
Foss Building, 2552 East Capitol  
Pierre  
SD  
57501-3182  
1^R  
^E

~~=====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  
Staff Member

Congressman Jim McDermott  
1707 Longworth House Office Building  
Washington  
D.C.  
20515  
waived  
1^R  
^E

Steve  
Johnson  
Staff Member

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## 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 chair, the chair, the vice-chair, 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 Chair and Vice Chair 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 Chair, or by the Vice-Chair in the event the Chair 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**

William H. Young - Oregon - Chair	
Gary Gustafson - Alaska	Carl Slingerland - New Mexico
N. William Plummer - Arizona	Dave Sprynczynatyk - No. Dakota
David Kennedy - California	Reese Peck (Alt.) - South Dakota
Vice-Chair	John T. Montford - Texas
J. William McDonald - Colorado	Dee C. Hansen - Utah
R. Keith Higginson - Idaho	Hedia Adelsman - Washington
Gary Fritz - Montana	Gordon W. Fassett - Wyoming
Roland Westergard - Nevada	

(Photograph #4)

Back Row: Dave Sprynczynatyk, Bill Young, Gary Fritz, Dee Hansen  
Front Row: Dave Kennedy, Roland Westergard, Keith Higginson

**Management Subcommittee**

William H. Young - Oregon - ChairL\SEMINAR\REGISTR.ANT

David Kennedy - California  
Vice-Chair  
Roland D. Westergard - Nevada  
Past Chair

Dee C. Hansen - Utah  
Secretary/Treasurer  
D. Craig Bell  
Executive Director

(Photograph #5)

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

**Water Policy Seminar Subcommittee**

David Kennedy - California - Chair  
Michael McNulty - Arizona  
William H. Young - Oregon  
Dee C. Hansen - Utah  
Hedia Adelsman - Washington



## LEGAL COMMITTEE CHARTER

### Objective

The Committee shall assist in initiating, establishing and carrying out the objectives of the Council by providing guidance on the social, ethical, legal and political aspects of 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 chair shall be appointed by the Chair of the Council from the Committee membership and serve at his pleasure. The Committee chair will appoint a vice-chair 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 chair.

### 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**

Jennifer Gimbel - Wyoming - Chair	
Gary Gustafson - Alaska	Julie Krenz - North Dakota
Tom Choules - Arizona	Steve Sanders - Oregon
Dave Kennedy - California	John Hatch - South Dakota
Rod Walston (Alt.) - California	John Guhin (Alt.) - South Dakota
Bill McDonald - Colorado	Terral Smith - Texas
Donald MacIntyre - Montana	Thorpe A. Waddingham - Utah
Roland D. Westergard - Nevada	Myron Goodson - Wyoming
Charles DuMars - New Mexico	

(Photograph #15)

Seated: Pat Stevens, Dave Kennedy, Roland Westergard, Myron Goodson

Back Row: Jennifer Hager, John Guhin, John Hatch, Gary Gustafson, Tom Choules

**Amicus Brief Subcommittee**

Jennifer Gimbel - Wyoming - Chair  
Roderick E. Walston - California      John Guhin - South Dakota  
Donald MacIntyre - Montana

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

Roderick E. Walston - California - Chair  
Gene Gray - Idaho      William H. Young - Oregon  
Charles DuMars - New Mexico

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

Tom Choules - Arizona - Chair  
Gary Gustafson - Alaska      John Guhin - South Dakota  
Charles DuMars - New Mexico      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 chair shall be appointed by the Chair of the Council from Committee membership. The Committee chair will appoint a vice-chair, 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 chair.

### 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**

Gary Fritz - Montana - Chair	
Peg Tileston - Alaska	Dave Sprynczynatyk - North Dakota
N. William Plummer - Arizona	William H. Young - Oregon
Larry Linser (Alt.) - Arizona	Marian Gunderson (Alt.) - South Dakota
Ruben Ayala - California	John E. Birdwell, Jr. - Texas
Bob Miller (Alt.) - California	D. Larry Anderson - Utah
Jeris Danielson - Colorado	Hedia Adelsman - Washington
R. Keith Higginson - Idaho	Gordon W. Fassett - Wyoming
Jack L. Stonehocker - Nevada	

(Photograph #2)

Left to Right: Gary Fritz, Bill Young, Bob Miller, Larry Anderson, Dave Sprynczynatyk, Keith Higginson

**National Water Policy Subcommittee**

R. Keith Higginson - Idaho - Chair	
Dick LeFebvre - Alaska	James R. Barnett - Oklahoma
N. William Plummer - Arizona	William H. Young - Oregon
Michael McNulty - Arizona	John E. Birdwell, Jr. - Texas
David Kennedy - California	Dee C. Hansen - Utah
J. David Holm - Colorado	Hedia Adelsman - Washington
Gary Fritz - Montana	Gordon W. Fassett - Wyoming
Dave Sprynczynatyk - North Dakota	

**Drought Working Group**

Dave Sprynczynatyk - Chair - North Dakota	
N. William Plummer - Arizona	William H. Young - Oregon
R. Keith Higginson - Idaho	D. Larry Anderson - Utah
Gary Fritz - Montana	Hedia Adelsman - Washington
Pete Morros - Nevada	

**FERC Subcommittee**

Gary Fritz - Chair - Montana	
R. Keith Higginson - Idaho	Hedia Adelsman - Washington
William H. Young - Oregon	

**Interregional Water Transfers Subcommittee**

N. William Plummer - Arizona	Jack L. Stonehocker - Nevada
Larry Linser (Alt.) - Arizona	D. Larry Anderson - Utah
Robert Miller - California	Jennifer Gimbel - Wyoming
R. Keith Higginson - Idaho	

## 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 chair shall be appointed by the Chair of the Council from the Committee membership and serve at his pleasure. The Committee chair will appoint a vice-chair 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 chair.

### 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**

Don A. Ostler - Utah - Chair

Daniel Wilkerson - Alaska	Frank DuBois - New Mexico
Michael F. McNulty - Arizona	Wayne Cunningham (Alt) - New Mexico
Randolph Wood (Alt.) - Arizona	Francis Schwindt - North Dakota
David G. Kelley - California	Lorna Stickel - Oregon
Darlene Ruiz (Alt.) - California	Steve Pirner - South Dakota
J. David Holm - Colorado	Fred Pfeiffer - Texas
Gene Gray - Idaho	Carol Jolly - Washington
Steve Pilcher - Montana	William Garland (Alt.) - Wyoming
Joseph E. Dini, Jr. - Nevada	George Christopoulos (Alt) - Wyoming

(Photograph #17)

Seated: Steve Pirner, Don Ostler, Francis Schwindt, Wayne Cunningham

Back Row: Steve Pilcher, Joe Dini, Fred Pfeiffer, Frank DuBois, Ron Miller

### **Federal Ground Water Legislation Subcommittee**

Steve Pilcher - Montana - Chair

David G. Kelley - California	Terral Smith - Texas
Darlene E. Ruiz - California	Don A. Ostler - Utah

### **Non-point Source Pollution Control Subcommittee**

Darlene E. Ruiz - California - Chair

Frank DuBois - New Mexico	Steve Pirner - South Dakota
Wayne Cunningham - New Mexico	Don A. Ostler - Utah
Francis Schwindt - North Dakota	

### **Clean Water Act Reauthorization Subcommittee**

Randolph Wood - Arizona - Chair

Daniel Wilkerson - Alaska	Fred Pfeiffer - Texas
Joseph E. Dini, Jr. - Nevada	Don A. Ostler - Utah

### **Coastal State Water Quality Legislation Subcommittee**

Darlene Ruiz - California - Chair

Daniel Wilkerson - Alaska	Lorna Stickel - Oregon
Manabu Tagomori - Hawaii	Fred Pfeiffer - Texas

## RULES OF ORGANIZATION<sup>24</sup>

### Article I - Name

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

### Article II - Purpose

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

### Article III - Principles

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

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

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

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

### Article IV - Functions

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

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

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<sup>24</sup>The rules incorporate changes that were adopted in January of 1989 at the Council's 93rd quarterly meetings in Las Vegas, Nevada.

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

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

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

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

#### Article V - Membership

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

(2) Member states may name alternate representatives.

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

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

#### Article VI - Ex-Officio Members



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

#### Article VII - Officers

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

#### Article VIII - Selection of Officers

The Chair, Vice-Chair 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 Chair and Vice-Chair 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 Chair, 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
- 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
- BELL, D. Craig . . . . . (801) 561-5300  
 Executive Director  
 Western States Water Council  
 Creekview Plaza, Suite A-201  
 942 East 7145 South  
 Midvale, Utah 84047
- BIRDWELL, John E., Jr. . . . . (512) 463-7909  
 Commissioner  
 Texas Water Commission  
 P. O. Box 13087  
 Austin, Texas 78711
- CHOULES, Tom . . . . . (602) 783-8321  
 2260 Fourth Avenue, Suite 2000  
 Yuma, Arizona 85364



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

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

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

DWYER, Michael A. (Alt.) . . . . . (701) 223-4615  
North Dakota Water Users Association  
P. O. Box 2599  
Bismarck, North Dakota 58502

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

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

GARLAND, William L. (Alt.) . . . . . (307) 777-7072  
 Administrator  
 Water Quality Division  
 Herschler Building, 4th Floor  
 122 West 25th  
 Cheyenne, Wyoming 82002

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

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

HANSEN, Dee C. . . . . (801) 538-7200  
 Executive 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

HICKEL, Walter, J. . . . . (907) 465-3500  
 Governor [Elect] of Alaska  
 Pouch A  
 Juneau, Alaska 99811

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

HOLM, J. David . . . . . (303) 331-4534  
 Director  
 Water Quality Control Division  
 Colorado Department of Health  
 4210 East 11th Avenue  
 Denver, Colorado 80220

JENSEN, Dallin (Alt.) . . . . . (801) 532-1234  
 Parsons Behle & Latimer  
 185 South State Street  
 Salt Lake City, Utah 84147

JOHNSON, Cliff . . . . . (512) 463-7909  
 Commissioner  
 Texas Water Commission  
 P. O. Box 13087, Capitol Station  
 Austin, Texas 78711

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

KING, Bruce . . . . . (505) 827-3000  
 Governor [Elect] of New Mexico  
 State Capitol  
 Santa Fe, New Mexico 87501

KRENZ, Julie . . . . . (701) 224-4944  
 Assistant Attorney General  
 State Water Commission  
 900 East Boulevard  
 Bismarck, ND 58505

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

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

MARTINEZ, Eluid L. . . . . (505) 827-6175  
 New Mexico State Engineer  
 101 Bataan Memorial Building  
 Santa Fe, New Mexico 87504-5102

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

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

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

PILCHER, Steve . . . . . (406) 444-5264  
 Administrator of the Environmental Sciences Division  
 Department of Health and Environmental Sciences  
 Room A206, Cogswell Building  
 Helena, Montana 59620

PIRNER, Steve . . . . . (605) 773-3351  
 Director  
 Division of Environmental 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

RICHARDS, Ann . . . . . (512) 463-2000  
 Governor [Elect] of Texas  
 State Capitol  
 Austin, Texas 78711

ROBERTS, Barbara . . . . . (503) 378-3100  
 Governor [Elect] of Oregon  
 State Capitol  
 Salem, Oregon 97310

ROBERTS, Robert E. . . . . (605) 773-3151  
 Secretary  
 Department of Water and Nautral Resources  
 Joe Foss Building  
 Pierre, South Dakota 57501-3181

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

SANDERS, Steve . . . . . (503) 378-6986  
Assistant Attorney General  
Oregon Department of Justice  
100 Justice Building  
Salem, Oregon 97310

SCHWINDT, Francis . . . . . (701) 224-2374  
Chief  
Environmental Health Section  
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) 224-4940  
State Engineer  
State Water Commission  
900 East Boulevard  
Bismarck, North Dakota 58505-0187

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

STEVENS, Patrick K. . . . . (701) 224-4944  
Assistant Attorney General  
State Water Commission  
900 East Boulevard  
Bismarck, ND 58505

STICKEL, Lorna . . . . . (503) 248-3182  
Chair  
Water Resources Commission  
% 14439 S.E. Tenino  
Portland, OR 97236

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

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

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

WALKER, David W. . . . . (303) 866-3441  
 Director  
 Colorado Water Conservation Board  
 1313 Sherman Street, Room 721  
 Denver, Colorado 80203

WALSTON, Roderick E. (Alt.) . . . . . (415) 557-3920  
 Deputy Attorney General  
 455 Golden Gate Avenue, Room 6000  
 San Francisco, California 94102

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

WESTERGARD, Roland D. . . . . (702)  
 207 Carville Circle  
 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

WILSON, Pete . . . . . (916) 445-4711  
 Governor [Elect] of California  
 State Capitol  
 Sacramento, California 95814

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 Road, N.E.  
 Salem, Oregon 97310