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**WESTERN**

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**STATES**

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**WATER**

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**COUNCIL**

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**ANNUAL REPORT**  
**1992**





**1992**  
**ANNUAL REPORT**  
**of the**  
**WESTERN STATES**  
**WATER COUNCIL**

*Twenty-seventh Annual Report*

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# 1992 ANNUAL REPORT OF THE WESTERN STATES WATER COUNCIL

## INTRODUCTION

The first official meeting of the Western States Water Council was held on at Stateline (Lake Tahoe), Nevada August 3, 1965. The Western Governors' Conference approved the creation of the Western States Water Council during meetings in Portland, Oregon on June 10-13, 1965. 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 1991, **HAWAII** requested and received membership. Council membership is automatically open to all member states of the Western Governors' Association (which also includes the State of **Nebraska**). **OKLAHOMA** was admitted as an associate member in January 1990. Council membership stands at seventeen states. Other states may be admitted by a unanimous vote of the member 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 Chair, Vice-Chair, 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 Chair, 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 chair and vice-chair. Committee chairs, in turn,

name special subcommittees and designate subcommittee chairs to study issues of particular concern.

The Western States Water Council offices are in Midvale, 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, Lynn Bench, and Jaymi Lloyd.

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 1992, meetings were held in: Newport Beach, California on January 8-10; Portland, Oregon on April 8-10; Salt Lake City, Utah on July 8-10; and Albuquerque, New Mexico on October 7-9. 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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1992  
**WESTERN STATES WATER COUNCIL  
 MEMBERSHIP†**

**ALASKA**

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



**\*Governor Walter J. Hickel**  
 1-91

- \*\*Ric Davidge**  
7-91
- Mike Menge**  
10-91
- Mead Treadwell (Alt.)**  
10-91
- Margaret Tileston**  
2-88 to 12-92

**ARIZONA**



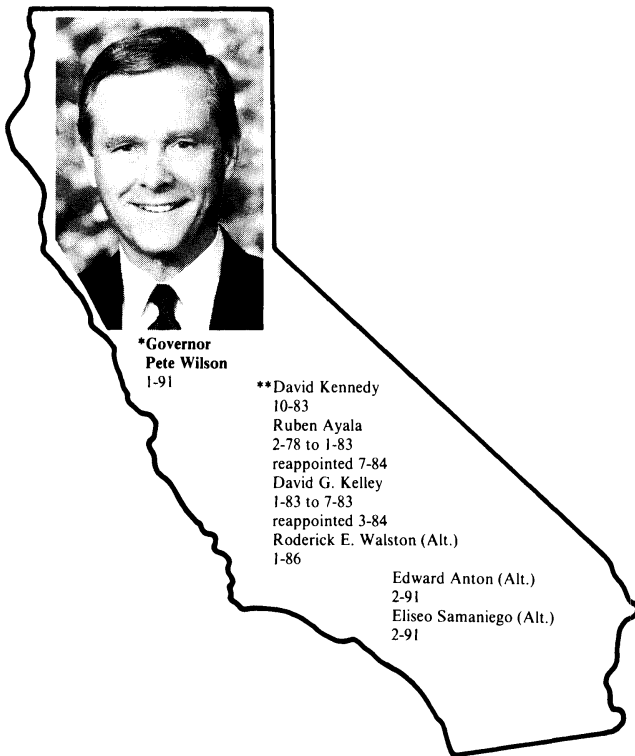
**\*Governor Fife Symington**  
 1-91

- \*\*Betsy Rieke**  
6-91
- Michael Brophy**  
6-91
- Edward Z. Fox**  
7-91
- C. Laurence Linser (Alt.)**  
6-88
- Rita Pearson (Alt.)**  
6-91

†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

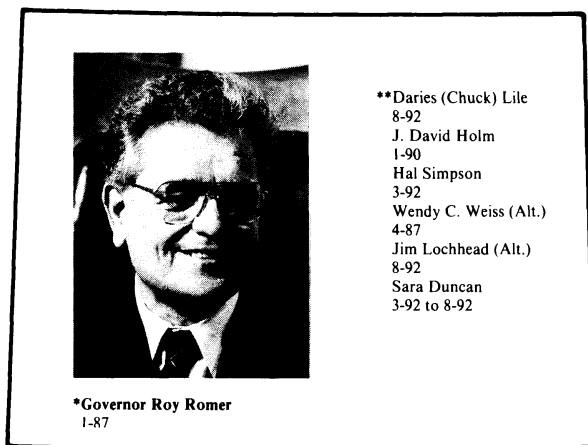


**\*Governor  
Pete Wilson  
1-91**

**\*\*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**

Edward Anton (Alt.)  
2-91  
Eliseo Samaniego (Alt.)  
2-91

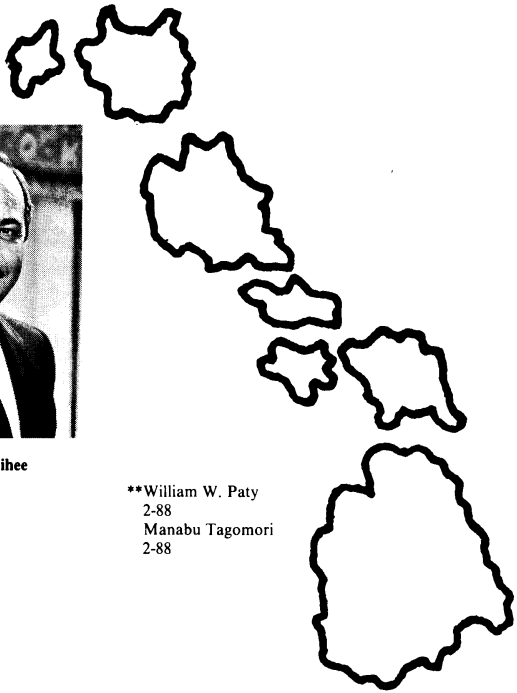
## COLORADO



**\*Governor Roy Romer  
1-87**

**\*\*Daries (Chuck) Lile  
8-92  
J. David Holm  
1-90  
Hal Simpson  
3-92  
Wendy C. Weiss (Alt.)  
4-87  
Jim Lochhead (Alt.)  
8-92  
Sara Duncan  
3-92 to 8-92**

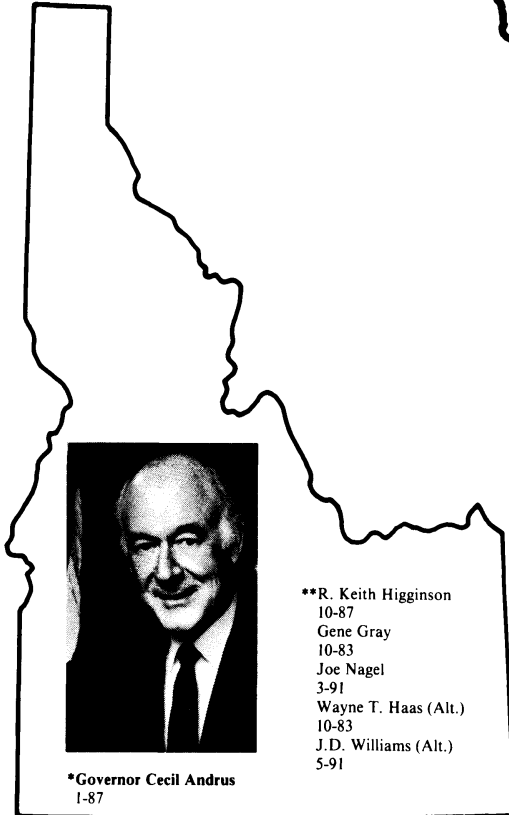
**HAWAII**



**\*Governor John Waihee**  
1-86

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

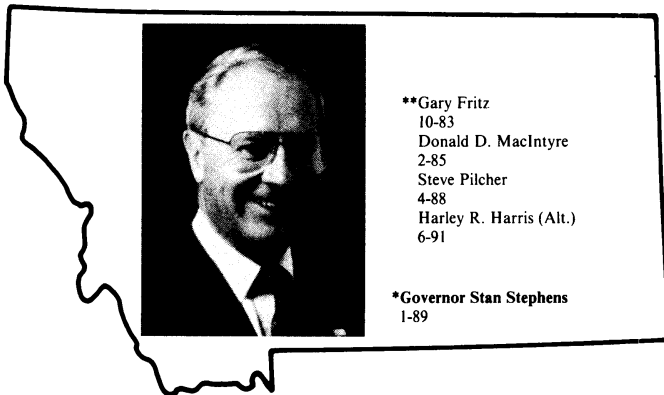
**IDAHO**



**\*Governor Cecil Andrus**  
1-87

**\*\*R. Keith Higginson**  
10-87  
**Gene Gray**  
10-83  
**Joe Nagel**  
3-91  
**Wayne T. Haas (Alt.)**  
10-83  
**J.D. Williams (Alt.)**  
5-91

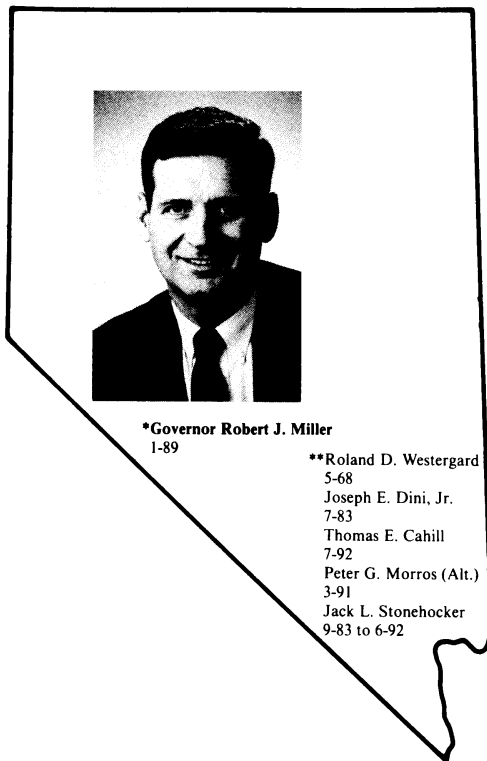
## MONTANA



**\*\*Gary Fritz**  
10-83  
Donald D. MacIntyre  
2-85  
Steve Pilcher  
4-88  
Harley R. Harris (Alt.)  
6-91

**\*Governor Stan Stephens**  
1-89

## NEVADA



**\*Governor Robert J. Miller**  
1-89

**\*\*Roland D. Westergard**  
5-68  
Joseph E. Dini, Jr.  
7-83  
Thomas E. Cahill  
7-92  
Peter G. Morros (Alt.)  
3-91  
Jack L. Stonehocker  
9-83 to 6-92

## NEW MEXICO



**\*Governor Bruce King**  
1-91

**\*\*Eluid Martinez**  
4-91  
Charles DuMars  
2-84  
Frank A. DuBois  
4-87  
Wayne P. Cunningham (Alt.)  
7-88  
Richard A. Simms (Alt.)  
10-82 to 2-84  
reappointed 4-91

## 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

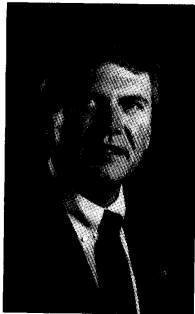
## OREGON



**\*Governor Barbara Roberts**  
1-91

**\*\*Martha O. Pagel**  
6-92  
**Steve Sanders**  
7-90  
**Lorna Stickel**  
7-90  
**William H. Young**  
3-79 to 7-92

## SOUTH DAKOTA



**\*Governor George Mickelson**  
1-87

**\*\*Robert E. Roberts**  
10-90  
**John Hatch**  
6-88  
**Steve Pirner**  
6-88  
**John Guhin (Alt.)**  
6-88  
**Marian Gunderson (Alt.)**  
6-88  
**Reese Peck (Alt.)**  
6-88

TEXAS



**\*\*John T. Montford**  
10-83  
Charles W. Jenness  
7-91  
Ron Lewis  
7-91  
Fred Pfeiffer (Alt.)  
10-83  
Terral Smith (Alt.)  
7-87  
Pam Reed (Alt.)  
11-91

**\*Governor Ann Richards**  
1-91

James D. Montagne (Alt.)  
9-92


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



**\*\*Hedia Adelsman**  
1-87  
Tom McDonald  
11-91  
Michael Llewelyn (Alt.)  
11-91

**\*Governor Booth Gardner**  
1-85

## WYOMING



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

**\*Governor Mike Sullivan**  
1-87



## ASSOCIATE MEMBER STATES

### OKLAHOMA

Patricia P. Eaton (Alt.)  
10-91  
Glenn H. Sullivan  
1-90  
James R. Barnett  
1-90 to 1-91

\*Governor Dave Walters  
1-91



**COUNCIL MEMBERS  
AT FAIRMONT HOT SPRINGS, MONTANA MEETING — July 1991**



**Bottom Row:** Mike Menge, Betsy Rieke, Martha Pagel, Steve Sanders, Lorna Stickel, Dee Hansen, Pam Reed, Fred Pfeiffer  
**Second Row:** Brian Munson, Myron Goodson, Gene Gray, Larry Anderson, Jeff Fassett, Roland Westergard  
**Third Row:** Tom Cahill, Wayne Cunningham, Dave Kennedy, Ric Davidge, Francis Schwindt, Manabu Tagomori  
**Fourth Row:** Larry Linser, Thorpe Waddingham, Joe Nagel, Keith Higginson, Don Ostler  
**Top Row:** Gerhard Knudsen, John Hatch

## STAFF

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



Left to Right: Craig Bell, Lynn Bench, Carrie Curvin, Pearl Pollick, Jaymi Lloyd,  
Norm Johnson, Cheryl Redding, and Tony Willardson.

**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 1992:

CHAIR	VICE-CHAIR	SECRETARY/TREASURER
David N. Kennedy	R. Keith Higginson	Dee C. Hansen
7/92 - present	7/92 - present	7/86 - present
William H. Young	David N. Kennedy	
7/90 - 7/92	7/90 - 7/92	

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
	Roland D. Westergard	- Nevada	7/88 to 7/90
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
	William H. Young	- Oregon	7/88 to 7/90
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	3/74 to 11/80
Jack A. Barnett	3/74 to 11/80
D. Craig Bell	11/80 to

## QUARTERLY MEETINGS

### 105th Quarterly Meetings

January 8-10, 1992  
Newport Beach, California

The Western States Water Council held its 105th quarterly meetings on January 8-10, in Newport Beach, California. The Orange County Water District (OCWD) hosted a tour of its facilities for wastewater treatment and the conjunctive use of surface and ground waters. OCWD holds the rights to all water in the Santa Anna River, and over the years has recharged over three million acre-feet (Maf) of river water using T-levees, spreading basins and recharge pits to speed infiltration. Another 2.5 Maf of imported water has been recharged. Dewatering has in the past left up to 700,000 acre-feet of aquifer storage capacity available, and growing water demands may lead to drawing down the aquifer by up to 1.5 Maf during future drought periods.

OCWD also operates one of the world's most advanced wastewater treatment plants. Water Factory 21 uses both a reverse osmosis system and an activated carbon filtration process to produce some 15,000 acre-feet/year of high quality water from wastewater. This water is injected underground to form a hydraulic barrier to sea water intrusion that threatens the areas fresh coastal aquifer, which extends to a depth of more than 3,000 feet below sea level and supplies drinking water for some two million people in Orange County. OCWD's Green Acres project reclaims 7,000 acre-feet of wastewater per year using tertiary treatment. This water irrigates parks, golf courses, green belts. It is also used for industrial purposes. Other water quality concerns include color, selenium, synthetic organic contaminants, total dissolved solids, and nitrates. OCWD's Tustin project removes nitrates from well water by reverse osmosis and ion exchange processes.

Following the tour, two subcommittees met. The Clean Water Act Reauthorization subcommittee revised a proposed position to address a new Senate Environment committee print of S. 1081.<sup>2</sup> It was later revised further by the Water Quality Committee. The Federal Energy Regulatory Commission (FERC) subcommittee and Western Governors' Association (WGA) staff also met. Fred Springer, FERC Director of Hydropower Licensing, discussed a variety of state concerns. Eventually, the Subcommittee hopes to develop a memorandum of agreement between FERC and western states for use in recognizing and accommodating state-granted water rights in the federal hydropower licensing process. For the present, there appears to be a growing recognition of the need for cooperative federal/state action in order to increase hydropower production, while protecting other water uses and environmental values.

The Council's working committees met next. The Water Quality Committee first heard Allan Stokes, President of the Association of State and Interstate Water Pollution Control Administrators, describe recent ASIWPCA activities and opportunities for cooperative actions on issues of mutual concern to ASIWPCA and the Council. Next, Robbi Savage, ASIWPCA's Executive Director and the President of America's Clean Water Foundation, explained her efforts to educate the public on water quality issues while celebrating the 20th anniversary of enactment of the Clean Water Act (CWA). The Committee then discussed the CWA reauthorization, related western issues, and a WGA, WSWC, and Western Senate Coalition meeting with the Environmental Protection Agency (EPA) to discuss these issues. Next, Dr. David Carlson of California's State Water

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<sup>2</sup>*Western States Water, Issue #914, November 22, 1991.*

Resources Control Board addressed EPA's toxics standards enforcement. Lastly, the Committee adopted a new 1992 work plan.

The Legal Committee began with presentations on continuing general water rights adjudications in Idaho, Oregon, Washington and Wyoming. The Committee also discussed Endangered Species Act issues, recent developments, and possible Council actions. The discussion focused on endangered Pacific salmon and native Colorado River fishes, and the future of the Animas-La Plata project in Colorado and New Mexico. Next, Paul Elliot of the Texas Attorney General's Office discussed a recent opinion that determined the state has authority to regulate ground water use and overturned a 1941 opinion to the contrary.<sup>3</sup> The Committee also reviewed the agenda for the next annual American Bar Association Water Law Conference in San Diego,<sup>4</sup> and decided to follow up the successful WSWC/Native American Rights Fund Indian Water Rights Settlement Symposium with a similar symposium next fall.<sup>5</sup> The Legal Committee amended and adopted its 1992 work plan.

The Executive Committee welcomed Hawaii to its first meetings as the 16th WSWC member state!<sup>6</sup> The Committee also reviewed the current budget report, approved a Committee work plan, and discussed future Council meetings. The Committee also reviewed plans for the next in a series of WGA/WSWC workshops to be held in Park City, Utah. The workshop would focus on institutional improvements at all levels of government that manage and regulate water resources/uses.

The Water Resources Committee amended and approved a resolution opposing the unilateral imposition of new federal water use permit requirements under the San Luis Valley Water Resources Protection Act (S. 1812). The Committee also spent some time reviewing the Bureau of Reclamation's draft strategic plan with Deputy Commissioner Joe Hall. The Bureau has asked that states submit comments on the draft plan. The Committee also reviewed pending emergency drought response legislation, the status of omnibus reclamation legislation, and activities and legislation related to national water policy. At the request of the State of Alaska, member states submitted and discussed information regarding their water management agencies' organization, and responsibilities. The Committee next reviewed the ongoing efforts of the FERC subcommittee, and heard that there has been no movement towards markup of amendments to the Federal Power Act (S. 106) supported by the Council. Next, members reviewed a questionnaire to be distributed on state water conservation programs. It was also reported that the Council is close to signing an agreement with the Bureau of Reclamation to continue work evaluating ground water recharge projects in the West. Lastly, the Committee adopted an ambitious 1992 work plan.

At the 105th WSWC Quarterly Meeting, each committee reported on its activities to the full Council, and Vice-Chairman Dave Kennedy, Director of the California Department of Water Resources, reviewed current issues in the state. The Council also adopted, as amended, the proposed positions on S. 1081, to reauthorize the Clean Water Act, and S. 1812, the San Luis Valley Water Resources Protection Act.

Lastly, the Council listened to a panel presentation on national wetlands policy by Michael Davis, Assistant Secretary of the Army (Civil Works) for Regulatory Affairs; John Meagher, Director, Wetlands Division, EPA Office of Wetlands; and Dave Sprynczynatyk, North Dakota State Engineer. Mr. Davis described ongoing efforts to define wetlands and

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<sup>3</sup>*Western States Water, Issue #914, November 22, 1991.*

<sup>4</sup>*Western States Water, Issue #919, December 27, 1991.*

<sup>5</sup>*Western States Water, Issue #906, September 27, 1991.*

<sup>6</sup>*Western States Water, Issue #911, November 1, 1991.*

promulgate a wetlands delineation manual.<sup>7</sup> Considerable controversy surrounds the development and implementation of the manual and its impact on the Administration's no-net loss of wetlands preservation goal. Mr. Meagher reviewed EPA's role in the 404 permitting process. While avoiding specific reference to Colorado's Two Forks Project, he noted EPA vetoes only about one out of several thousand proposed permits per year under its Section 404(b)(1) authority. He suggested states take the initiative and mentioned several ways for states to take responsibility for wetlands protection within the framework of federal law. Mr. Sprynczynatyk described North Dakota's progressive wetlands protection program. It provides incentives to encourage preservation, but allows continued development. It balances wetlands values and other potential land uses. North Dakota has gained wetland acreage, without the regulatory uncertainty and conflict now hindering development of a national program, by rehabilitating degraded wetlands using revenue from charges assessed to developers through the state's wetlands bank.

## **106th Quarterly Meetings**

**April 8-10, 1992**

**Portland, Oregon**

The Western States Water Council held its 106th quarterly meetings in Portland, Oregon on April 8-10. The state of Oregon and U.S. Army Corps of Engineers hosted a tour of Bonneville Dam, including its second powerhouse and upstream and downstream fish passage facilities. The tour prefaced later discussions on the Columbia River system and the listing of some salmon as endangered species.

Later, a subcommittee met and reviewed federal legislation on national energy policy, as well as continuing discussions with the Federal Energy Regulatory Commission (FERC) regarding federal hydropower licensing and state water management and water rights administration processes. An effort to draft a memorandum of agreement between FERC and states was discussed. Also, the Water Policy Seminar Subcommittee reviewed plans for an April 1993 meeting in Washington, D.C.

The Water Resources Committee met and addressed many issues. It recommended a Council position on dam safety that was later adopted. The committee next addressed various water policy initiatives, including Senator Mark Hatfield's (R-OR) bill on western water policy review (S. 1228),<sup>8</sup> an ICWP roundtable,<sup>9</sup> a series of WGA/WSWC workshops, and activities of the Advisory Commission on Intergovernmental Relations. The Committee also reviewed the status of omnibus reclamation legislation,<sup>10</sup> including Senator Tim Wirth's (D-CO) successful amendment adding S. 1812, the San Luis Valley Protection Act,<sup>11</sup> which the Council opposes. The committee also heard a report on FERC subcommittee activities, discussed an ongoing state water conservation program study, and noted a new contract has been signed with the Bureau of Reclamation to review its ground water recharge demonstration program. The Committee then reviewed state water use fees, including proposed legislation in Alaska and a draft policy report from Oregon.

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<sup>7</sup>*Western States Water*, Issue #916, December 6, 1991, and  
*Western States Water*, Issue #920, January 3, 1992.

<sup>8</sup>*Western States Water*, Issue #931, March 20, 1992.

<sup>9</sup>*Western States Water*, Issue #928, March 6, 1992.

<sup>10</sup>*Western States Water*, Issue #933, April 3, 1992.

<sup>11</sup>*Western States Water*, Issue #921, January 13, 1992.

Two special guests addressed the Committee. Dave Johnson, Soil Conservation Service, presented the Committee with the most recent westwide information regarding precipitation, snowpack, reservoir storage, and streamflow forecasts. Much of the West continues to suffer through a sixth year of drought, with some exceptions in Arizona, Colorado, New Mexico and Texas. Bill McDonald, Assistant Commissioner of the Bureau of Reclamation for Resources Management, discussed new federal authorities under the Reclamation States Emergency Drought Relief Act (H.R. 355; P.L. 102-250), which provides the Secretary of Interior with greater flexibility in operating federal projects to meet critical needs during drought. It also creates a long-term drought contingency planning program.<sup>12</sup> Of note, the bill directs the Secretary of Interior to conduct a precipitation management technology transfer program. The Council supports the program, and recently wrote House and Senate appropriation committees requesting funding.

The Water Quality Committee began by discussing the celebration of 1992 as the Year of Clean Water, with Jay Pitkin, Utah Division of Water Quality, leading an interchange of ideas regarding appropriate state activities. Next, Gary Hanson, Washington Department of Ecology, recommended a related resolution for the Council's approval. The Committee also discussed watershed protection, with Lydia Taylor, Oregon Division of Water Quality, describing the watershed protection initiative of the Association of State and Interstate Water Pollution Control Administrators, and Lorna Stickel, Chair of the Oregon Water Resources Board, outlining a draft watershed management bill being circulated by Rep. Les AuCoin (D-OR). The Committee also heard an update on Clean Water Act (CWA) reauthorization matters, and a description of a related meeting on western water quality issues.<sup>13</sup> Further, EPA's efforts to define comprehensive state ground water protection plans were discussed.

The Executive Committee met to review the current budget report and other matters. Of particular note, with the addition of Hawaii as a full member this past year, the Council determined it could maintain the existing level of dues unchanged through fiscal year 1994/95. Dues have not increased since 1987/88.

The Legal Committee addressed general water right adjudications in Arizona, Idaho, Oregon, Washington, and Wyoming, and some recent court decisions. Members also heard presentations on Oklahoma v. EPA,<sup>14</sup> Nebraska v. Wyoming,<sup>15</sup> and South Dakota v. Needham.<sup>16</sup> Council staff reported working on a summary of western state water right permitting procedures, and preparations for a second WSWC/Native American Rights Fund Symposium on Indian Water Right Settlements that was held on September 1-3, in Albuquerque, New Mexico. Finally, the committee held a provocative and in-depth discussion on the Endangered Species Act. A panel of experts included: Steve Sanders, Oregon Attorney General's Office (moderator); Elizabeth Holmes Gaar, National Marine Fisheries Service; Frank Dunkle, Nationwide Public Project Coalition; Anne Squier, Northwestern School of Law; Gail Achterman, Attorney; Rob Lothrop, Columbia River Intertribal Fish Commission; and John Volkmann, Northwest Power Planning Council.

The 106th WSWC Quarterly Meeting began with brief reports by the working committees. The Council adopted two policy positions. The first, on dam safety, urges the Administration and Congress to restore funding for the Federal Emergency Management

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<sup>12</sup>*Western States Water*, Issue #927, February 21, 1992.

<sup>13</sup>*Western States Water*, Issue #926, February 14, 1992.

<sup>14</sup>*Western States Water*, Issue #930, March 13, 1992.

<sup>15</sup>*Western States Water*, Issue #929, March 6, 1992.

<sup>16</sup>*Western States Water*, Issue #892, June 31, 1991; and *Western States Water*, Issue #878, February 8, 1991.



Agency's dam safety work, reauthorize and update the Dam Safety Act of 1986, and provide appropriate federal financial assistance. The second position marks the 20th Anniversary of the Clean Water Act and urges states to proclaim 1992 as the "Year of Clean Water" and October 1992 as "Clean Water Month."

Most of the meeting was dedicated to a discussion of the Columbia River System in an era of change. Various issues were addressed by a panel including: WSWC Chairman Bill Young, Director of the Oregon Department of Water Resources (moderator); Robert Flannagan, Corps of Engineers; Ken Pedde, Bureau of Reclamation; John Palensky, Bonneville Power Administration; Bob Turner, Special Assistant to Washington Governor Booth Gardner; and Andy Brunelle, Special Assistant to Idaho Governor Cecil Andrus. The panel described the hydrology and development of the Columbia River system and efforts to improve operations to meet the demands placed on the resource for water, power, recreation, navigation and fish and wildlife protection and enhancement.

Concern is focused on restoration of depleted salmon stocks. Several stocks have been proposed for protection under the Endangered Species Act. The many federal and non-federal dams within the system provide enormous water and power benefits, as well as a gauntlet of obstacles challenging both upstream and downstream migration of anadromous fish. The complexity of the system and varying public values result in difficult intergovernmental and interagency management problems that can be confusing and frustrating. The precipitous decline of certain salmon stocks is creating pressure for change. Several separate, but related, reviews are underway, and various actions are being considered and implemented. Last year, BPA committed \$100 million to fish conservation. Some Corps and Bureau dams are storing water for release, while the pool at others is being lowered up to 40 feet to increase the velocity of downstream flows to aid fish migration. Idaho has enacted new legislation to allow the necessary water transfers. Flexibility and innovation will be needed to resolve system problems, and tradeoffs are inevitable.

Lastly, the Council adopted two resolutions of appreciation recognizing the contributions of outgoing-members Jeris Danielson and Dave Walker, from Colorado. Jeris represented Colorado for twelve years.<sup>17</sup>

## **107th Quarterly Meetings**

**July 8-10, 1992  
Salt Lake City, Utah**

The 107th quarterly meetings of the Western States Water Council were held in Salt Lake City, Utah, on July 8-10. The State of Utah hosted a tour of the Jordanelle Dam construction site, part of the federal Central Utah Project, including a presentation on environmental mitigation and enhancement as part of the operation of the project. The tour also included a stop at the winter sports park being constructed to further Utah's bid to host the 2002 Winter Olympics, and a look at the Little Dell Dam site, a Corps of Engineers' flood control project being built east of Salt Lake City.

Later, a subcommittee met and reviewed federal legislation on national energy policy, and the Council's continuing interaction with the Federal Energy Regulatory Commission

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<sup>17</sup>*Western States Water, Issue #933, April 3, 1992; and Western States Water, Issue #929, March 6, 1992.*

(FERC) regarding the licensing of hydropower projects and state water management. The subcommittee determined to continue to pursue preparation of a model memorandum of understanding, or statement of principles, concerning FERC hydropower licensing and western state concerns. The Council also hopes to soon complete a report on state water right permitting procedures, which will be sent to FERC to help explain state processes.

The Water Resources Committee met and began by addressing FERC matters and the omnibus Reclamation legislation. Next, the committee considered omnibus Corps legislation and dam safety issues, and heard from Dan Lawrence, President of the Association of State Dam Safety Officials. He commended the Council for its April resolution on dam safety.<sup>18</sup> Staff then explained that work on a report to update a previous Council publication on state water conservation and water use efficiency programs was continuing. The Committee also heard from Jack Stonehocker, Bureau of Reclamation, on implementation of the Emergency Drought Relief Act.<sup>19</sup> California was the first state to request relief under the Act, followed by Idaho, Nevada, Oregon, and Utah. Mr. Stonehocker mentioned the Bureau continues to be interested in responses by the western states to the Act, particularly Title II. The committee decided to reorganize its drought subcommittee to consider this matter. The committee also heard reports on an EPA workshop to discuss water use efficiency, principally in the municipal arena. Next, Amy Mathew-Amos described a study by the General Accounting Office on water transfers, focusing on federal law and policy and removing impediments created by them. Lastly, Don Christiansen, General Manager of the Central Utah Water Conservation District discussed the Central Utah Project water management studies and environmental mitigation policies.

The Legal Committee began its meeting with a presentation on the recent book "Water Transfers in the West: Efficiency, Equity, and the Environment."<sup>20</sup> The work was published by the National Research Council, and Dan Tarlock, Chair of it's Committee on Western Water Management, along with Susan Williams, a committee member, led the discussion. Mr. Tarlock noted that the book's findings, if adopted, would make the work of western water managers "more difficult...and more interesting." Most of the work regarding transfers, he said, promotes them, whereas this report explains the parties and interests likely to be adversely affected by transfers. It urges these interests should be considered even if the effect is to make water transfers more difficult. Ms. Williams stressed the need to consider the role of tribal governments in the transfer process, and the tribes' role as water rights holders. Next, the committee discussed the Symposium on the Settlement of Indian Water Rights Disputes being cosponsored by the Council and the Native American Rights Fund, and the Wyoming Supreme Court's recent decision in the Big Horn River System case.<sup>21</sup>

The Legal Committee also considered the Endangered Species Act (ESA), and decided to organize an ESA Subcommittee to determine how the Council can best participate in the upcoming reauthorization process. The committee heard reports on legal issues related to the Edwards Aquifer in Texas and the Umatilla River Exchange Project in Oregon. Regarding H.R. 918 and H.R. 450, bills to revise federal mining law which contain provisions on water resource management that could preempt state water law, committee members Dallin Jensen and Roland Westergard recommended that each state study the provisions and consider informing Congressional staff of the need to maintain the integrity of the western water management process as it relates to mining operations. The committee also considered a recent federal court decision in Nevada involving the Newlands Reclamation Project.

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<sup>18</sup> *Western States Water*, Issue #934, April 13, 1992.

<sup>19</sup> *Western States Water*, Issue #940, May 22, 1992.

<sup>20</sup> *Western States Water*, Issue #944, June 19, 1992.

<sup>21</sup> *Western States Water*, Issue #944, June 19, 1992.

The Executive Committee met to review the Council's budget and other matters. The committee discussed the Council's proposed 1993 Water Policy Seminar to be held in Washington, D.C. Further, the committee considered water policy activities of the Council and the Western Governors' Association (WGA).

The Water Quality Committee began its meeting with a presentation by Glenn Eugster, EPA Office of Wetlands Strategy, on state assumption of the Clean Water Act (CWA) Section 404 permitting program. He circulated EPA's Office of Regulatory Management and Evaluation's Final Report. While some states, including North Dakota, are pursuing assumption, most states find assumption unattractive. Mr. Eugster described some of the reasons for this, including problems with the status of the program, particularly the lack of a clear definition of wetlands, lack of federal financial support, and the interests of states in pursuing wetland protection measures unrelated to Section 404. Mr. Eugster also noted that many states are doing "exciting things" to protect wetlands, and that enhancing EPA's ability to help build states' capacity in protecting wetland resources is a major agency goal. The next topic was EPA's effort to define comprehensive state ground water protection plans. The committee recommended to the Council a policy position commenting on EPA's efforts. The committee also heard an update on the CWA reauthorization and a presentation on the Western Governors' Forum on Environmental Management.

The 107th WSWC Quarterly Meeting began with a welcome by Utah Lieutenant Governor Val Oveson. Next, Utah State Senator Fred Finlinson described the need for creative partnerships in meeting the water policy challenges of the 1990's. The Council also viewed portions of a videotape prepared by the State of Utah to promote its bid for the 2002 Winter Olympic games.

The Council adopted two policy positions. The first is on the "Miller amendments" to the omnibus energy bill.<sup>22</sup> In harmony with the WGA,<sup>23</sup> the Council supported enactment of Sections 3103 and 3104 of H.R. 776, which would give states the authority to protect certain river segments from hydropower development and to restrict the ability of federal licensees to condemn state and local parklands and wildlife refuges for hydropower projects. The second resolution was on protecting ground water quality. It notes that EPA's policy direction in implementing its ground water strategy would require states to develop comprehensive ground water protection plans subject to EPA approval, which is in conflict with the traditional deference by the federal government to state authority in ground water management. The resolution also asserts that EPA's ground water strategy does not adequately address the changes within the federal government necessary to coordinate federal ground water law and programs. It resolves that the Council urge EPA to modify its strategy to "reflect a true federal-state partnership, consistent with...current statutory authority."

Of special note, the Council unanimously elected Dave Kennedy, Director of the California Department of Water Resources, as its new Chair, and Keith Higginson, Director of the Idaho Department of Water Resources, as Vice-Chair. Dee Hansen, Executive Director of the Utah Department of Natural Resources, was re-elected as Secretary-Treasurer. Special recognition was given Bill Young for his exemplary service as Chairman over the past two years. Outgoing-member Jack Stonehocker also received a resolution of appreciation.

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<sup>22</sup>*Western States Water, Issue #941, May 29, 1992.*

<sup>23</sup>*Western States Water, Issue #945, June 26, 1992.*

## 108th Quarterly Meetings

October 7-9, 1991

Albuquerque, New Mexico

The Western States Water Council held its 108th quarterly meetings in Albuquerque, New Mexico, on October 7-9. A special WSWC/Western Governors' Association (WGA) Steering Group met, and Lorna Stickel of Oregon provided a review of the WGA/WSWC Park City workshops. She also discussed the resulting Park City Principles, which suggest strengthening the role of the states in resolving water-related problems. Council members participated in an exercise designed to prioritize areas for potential change to improve state water governance. These possibilities, as well as obstacles to achieving them, will be explored further in a fourth WGA/WSWC workshop to be held in Newport Beach, California on February 18-19, 1993.

The Council's Federal Energy Regulatory Commission (FERC) Subcommittee also met and discussed recent correspondence concerning a potential memorandum of agreement (MOA) between FERC and the states on federal hydropower permitting procedures and state water resources administration. The subcommittee will proceed towards drafting, executing and implementing a MOA.

The Council's Legal Committee began its meeting with a discussion of Coeur d'Alene Tribe of Idaho v. Idaho<sup>24</sup> and the Big Horn River System general adjudication proceeding.<sup>25</sup> With respect to the latter, Wyoming State Engineer Jeff Fassett noted that the Shoshone and Northern Arapaho Indian tribes have decided not to appeal the Wyoming Supreme Court's most recent ruling. The committee also discussed the symposium the Council cosponsored with the Native American Rights Fund (NARF) on the settlement of Indian reserved water rights claims held in September.<sup>26</sup> The committee decided to again cosponsor this event in the Fall of 1993. A panel discussion followed on improving efficiency in state general water right adjudication proceedings. Officials from Arizona, Idaho, and Washington, shared their views. The ensuing discussion pointed out the complexity of large-scale general adjudications. Some committee members questioned the efficacy of such proceedings, given current budgetary constraints. The committee also discussed FERC proceedings on the lower Mokelumne project,<sup>27</sup> in California where the East Bay Municipal Utility District is faced with parallel demands related to FERC's reopening their federal license to review the environmental effects of project operations and similar proceedings of the California Water Resources Control Board with respect to the exercise of their water rights. Lastly, the committee discussed its 1993 work plan.

The Water Quality Committee began its meeting with a presentation on EPA's ground water strategy and implementation of draft guidelines on comprehensive state ground water protection programs. Ramona Trovato, Director of EPA's Ground Water Protection Division, described EPA's ongoing efforts, and provided a brief summary of comments the agency has received on its draft guidelines. She noted that another draft will be prepared in the near future for internal EPA use and for review by the Office of Management and Budget. She encouraged western state officials to remain involved in implementation of EPA's strategy. Next, the committee reviewed Safe Drinking Water Act (SDWA) issues, including a new requirement that EPA prepare reports for Congress on SDWA

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<sup>24</sup>*Western States Water*, Issue #951, August 7, 1992.

<sup>25</sup>*Western States Water*, Issue #944, June 19, 1992.

<sup>26</sup>*Western States Water*, Issue #956, September 11, 1992.

<sup>27</sup>*Western States Water*, Issue #955, September 4, 1992.

implementation and on a risk assessment of radon contamination. The committee proposed to the Council a related policy position. The committee also heard reports on efforts to integrate water quality and water quantity management in the Montana State Water Plan, and on an update on the Clean Water Act reauthorization. Lastly, the committee discussed its 1993 work plan.

The Executive Committee met Thursday afternoon to review the Council's budget and discuss other matters, including a water policy seminar to be held in Washington, D.C. on April 21-23. The committee discussed future Council meetings, and its 1993 work plan.

The Water Resources Committee began its meeting with Bill McDonald, Assistant Commissioner for Resources Management, Bureau of Reclamation, describing implementation of the Emergency Drought Relief Act. He noted that interim guidance on the expenditure of drought relief funds would be issued soon, and encouraged Council members to follow this issue closely. The committee then heard reports on a recent water conservation conference cosponsored by EPA and the National Governors' Association, and the Council staff's preliminary efforts to compile the results of its states' water conservation program survey. The committee heard a report on federal legislation and discussed H.R. 429, the omnibus Reclamation package.<sup>28</sup> The bill passed both the House and Senate, but because of concerns over provisions ordering the reallocation of water from the Central Valley Project in California, it faced a potential veto. The committee also considered its 1993 work plan. Lastly, a thoughtful and well-received discussion addressed major river basin governance. It began with an historical overview by Frank Gregg, University of Arizona. A panel presentation followed, with a description of the current institutional arrangements and challenges facing the Columbia, Rio Grande, Colorado and Missouri River Basins. With respect to all but the latter, Council members provided both upper and lower basin perspectives.

The 108th WSWC Quarterly Meeting began with a presentation by Daniel Sanchez, Secretary/Treasurer and Executive Director of the All Indian Pueblo Council. He described how Indian tribes can work with state agencies on water and environmental issues. He began by explaining his Council's views on the priority Indian claims have over other resource and environmental claims. He then noted the current "honest efforts to deal with Indians on a win-win basis" by some states, and said that "we must sit around the table at arms length and talk to each other more."

After hearing committee reports, the Council adopted one policy position concerning implementation of the Safe Drinking Water Act (SDWA). It notes the increasing disparity between drinking water requirements the federal government places on states and localities, and the federal assistance provided to meet those demands. It asserts that some requirements are not justified based on an understanding of existing health risks. It, therefore, resolves that the Council urge Congress to expeditiously pursue SDWA reauthorization and give states and public water systems more flexibility in providing safe, dependable drinking water. It also resolves that Congress appropriate \$100M to help states meet federal regulation's costs, as well as 75% of the cost for any new federal requirements. It calls for state and local governments to raise the revenue necessary to close the remaining resource gap and provide safe drinking water. It also resolves that the Council support the National Implementation Work Group in its efforts to recommend SDWA changes, and encourages EPA to develop clear and simple drinking water standards and regulations.

The Council meeting also included a very interesting panel discussion on water user fees. Representatives from Alaska, Utah and Oregon discussed water quantity and water

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<sup>28</sup>*Western States Water, Issue #951, August 7, 1992.*

quality-related fee issues. Ric Davidge explained the Alaska Division of Water Resources' proposal to establish a new fee program, under existing legislative authority, and require a \$1 per acre-foot annual assessment (with some exceptions) for water used over and above 50 acre-feet per year. The proposed fee could generate some \$3.4M annually. Fred Pehrson described the various water quality fees charged by Utah under state and federally-delegated programs, as well as the associated benefits and difficulties. Martha Pagel told of Oregon's interest in exploring water use fees, and her department's preparation of scoping documents and discussions with legislative committees concerning the issue. Her experience indicates a need to first establish clear goals and identify the purposes for water use fees, as well as consider fairness. There is a need for a broad consensus in favor of fees. She emphasized that this takes time, and Oregon is now only in the goal-setting stage.

For 1993, the Council's quarterly meetings have been scheduled as follows: January 13-15, in Las Vegas, Nevada; April 21-23, in Washington, D.C. in conjunction with the next WSWC Water Policy Seminar; July 14-16, in Anchorage, Alaska; and October 6-8, in Coeur d'Alene, Idaho.

## **OTHER IMPORTANT ACTIVITIES AND EVENTS**

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

### **Western States Water**

Since 1974, the Council has published a weekly newsletter, Western States Water, which is one of its most visible and well received products. The primary purpose of this activity is to provide governors, members, and others with accurate and timely information with respect to important events and trends. The newsletter is a tool to promote better federal, state, and local decisionmaking and problemsolving. It is intended as an aid to help achieve better water management, improve intergovernmental relations, promote western states' rights and interests, and point out policy trade-offs. In addition, it covers Council meetings, changes in Council membership, and other business and notices.

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 or individuals may subscribe for a \$75 fee. For information contact the Council office.

### **Water Quality Workshop**

On February 7, about 65 people attended a policy workshop in Washington, D.C. to discuss water quality protection in arid areas of western states. The Western Governors' Association (WGA), Environmental Protection Agency, Western States Water Council, and Western Senate Coalition/Western States Foundation cosponsored the meeting. A roundtable discussion was jointly moderated by Martha Prothro, Deputy Assistant EPA Administrator for Water, and John Kelley, Special Assistant to Arizona Governor Fife Symington. The roundtable idea surfaced after a WSWC meeting, attended by WGA staff and EPA officials, where western water quality issues were discussed. The idea was furthered by an interchange between a number of western governors and EPA Administrator Bill Reilly at the WGA's 1991 annual meeting.

New Mexico Law Professor Chuck DuMars began the workshop by reviewing recent changes in western state water law, policy and management that enhance states' ability to protect water quality. Next, a group discussion covered quantity/quality issues, including wetlands, minimum streamflow standards, ephemeral and intermittent streams, non-point source pollution, stormwater quality permits, water reuse and water efficiency.

There were brief introductory remarks by state and local officials. With respect to minimum flow standards, Ed Anton, California State Water Resources Control Board, stressed the complexity of water use patterns in the arid West, along with the need to eradicate pollutant sources. There seemed to be consensus that toxics questions have raised concerns in the West, but that there are likely areas where reduced water quality may have to be acceptable in order to maintain certain ecosystems.

On wetlands, Dick Gross, North Dakota Governor's Office and chair of the National Governors' Association Energy and Environment Committee, pointed out that there is striking consensus among a number of organizations on national wetlands policy issues such as striving for no-net-loss as a program goal and the need to encourage state primacy in wetlands protection.

Regarding ephemeral and intermittent streams, Bill Wiley, Arizona Department of Environmental Quality, described the difficulty his state faces in adopting and implementing water quality standards when 83% of the water bodies in the state are ephemeral. He noted that EPA Region IX has tried to work with Arizona and other states, but that movement at the national level is toward treating all waters as fishable/swimmable. The lack of fish in the vast majority of waters of the U.S. in Arizona and other parts of the Southwest complicates the implementation of a program based on the presumption of attaining fishable/swimmable water quality.

On non-point source pollution (NPSP) control, Gayle Hutton, Nebraska Department of Environmental Control, noted that many programs established under the Clean Water Act of 1987 are just beginning to show positive results, and it is premature to contemplate wholesale changes in the federal NPSP program. He also stressed the need for state primacy and flexibility in NPSP control. Federal officials stated they are trying to facilitate more and regulate less in the NPSP arena. There seemed to be a consensus that strict command and control strategies are ineffective to control NPSP.

Regarding water use and water efficiency, Lorna Stickel, Oregon Water Resources Commission, stressed that scarcity and competition for western water resources have caused states to modify their legal, policy, and administrative systems to enhance water management practices. She noted that establishment of national conservation standards would reduce the flexibility states need to deal with the diverse nature of western water management, and that related wetlands ground water recharge losses must be balanced against water efficiency and conservation gains. There seemed to be consensus that there are areas of mutual concern with respect to efficient water use where partnerships between state and federal agencies would be advantageous.

Next, concerning stormwater, Dan Sagramoso of Pima County, Arizona, asserted that state and local officials are committed to cleaning up problems associated with stormwater runoff, but that stormwater is not a point source of pollution and should not be regulated as such. He noted further that money spent on stormwater pollution control should be directed to produce the greatest positive environmental effect, and that care must be taken concerning the unintended effects of some efforts to reduce stormwater pollution.

The roundtable helped participants develop a common understanding of how western geography, hydrology, climate, terrain, economics, and demographics influence the implementation of Clean Water Act programs. Roundtable participants were generally favorable in their views of what the meeting had accomplished. In summing up major themes from the meeting, Martha Prothro stressed: (1) the need for flexibility to address local conditions and different types of ecosystems in the West while protecting water quality; (2) the need for resources, including research, to look at local and regional conditions and needs; and (3) the fact that people are longing for a less adversarial process, including the opportunity to identify concerns and issues early in decisionmaking processes, while implementing national water quality programs. Chuck DuMars noted, in summary, that: (1) more sensitivity is needed to prevent perverse and unintended results of some efforts aimed at water quality protection; (2) expansion or modification of the Clean Water Act is not an



appropriate method to deal with streamflow issues; and (3) there is a need for more coordinated planning of water resource use and management among state, federal, and local entities.

### **Water Law Workshop**

The ninth 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 February 6-7 in San Diego, California. Council member Rod Walston was instrumental in planning the program. Over 200 individuals attended.

### **Water Policy and Management Workshops**

The third in a series of workshops sponsored by the Western Governors' Association and the Western States Water Council was held April 30-May 2, 1992 in Park City, Utah. North Dakota Governor George Sinner provided the keynote address. He cited the recent achievements of his state in dealing with water issues, noting for example that his was the first state to adopt a policy of no-net loss of wetlands. Further, North Dakota recently established a ground water task force to provide an integrated approach to resolving related problems. He discussed several challenges facing the nation, underscored the importance of the role of government in addressing these challenges, and encouraged workshop participants to help in this process. Participants represented a broad range of interests involved in water management in the West, including federal, interstate, state, tribal and local governments, as well as public and private interest groups.

David Getches, Professor at the University of Colorado School of Law and former Director of the Colorado Department of Water Resources, served as the meeting facilitator. Professor Getches summarized the previous two workshops and the "Park City Principles." He then divided participants into five groups that were given the assignment of working through hypothetical problem situations, illustrating water management issues, by "applying the universe of current management tools and instruction to resolve them." If the group found that current tools were inadequate, they were to propose new ones. Later, each group presented its approach to solving the hypotheticals.

A plenary session was held to identify and discuss obstacles to potential solutions. These were divided into "threshold obstacles," which "keep a critical mass of participants from seriously engaging in an attempt to solve the problem;" "acceptance obstacles," which "keep committed people from formulating solutions;" and "implementation obstacles," which "keep people from implementing solutions that have been agreed upon." All participants discussed ways the obstacles could be overcome, and then revisited the "Park City Principles." A discussion ensued on possible new initiatives and forums to implement the Park City Principles.

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

Western governors attending the annual meeting on June 20-23, in Jackson Hole, Wyoming, considered several environmental issues. The Governors' Forum on Environmental Management met with EPA Administrator William Reilly to discuss the Safe Drinking Water Act. The governors also met with Interior Secretary Manuel Lujan to consider public land and Indian gaming issues. Mike Hayden, Interior Assistant Secretary for Fish and Wildlife, described the "Great Plains Project," designed as a proactive program to protect migratory species and their habitat, while avoiding Endangered Species Act problems and other sanctions. Sponsors and others hope the project will serve as a model for multi-interest, multi-state, and international cooperation.

EPA Administrator Reilly pledged support for a WGA initiative that proposes bringing states and federal agencies together with other concerned entities and individuals "to create a new framework for meeting the special environmental challenges faced in the West." It will be managed by WGA cooperatively with EPA Regional Administrators, serving as a design test for policy innovations such as: (1) ecosystem management/geographic targeting; (2) cooperative risk analysis; (3) employment of effective combinations of alternative strategies to address top priority environmental risks; and (4) building consensus partnerships.

The governors' workplan contemplated continued efforts in water policy programs based on the consensus-oriented principles developed at the WGA/WSWC Park City Workshops. The workplan envisioned that WGA will cosponsor with WSWC a two-day workshop to examine the capacity of states to play "the pivotal role" in water management envisioned by the "Park City Principles."

The work plan also contemplates seeking opportunities to inform and improve federal agencies' plans and processes. Examples include continuing efforts to develop an MOA with the Federal Energy Regulatory Commission, assessing the circumstances necessary for state assumption of Section 404 permitting, and issues related to administration of water rights within the boundaries of Indian reservations. Other possibilities were mentioned, based on recommendations from the Park City workshops.

The governors also adopted several resolutions on environmental issues, including position statements that: (1) endorse the "Park City Paradigm;" (2) support funding for Indian Water Rights Settlements and urge that such appropriations not be offset by cutting funding for other Bureau of Indian Affairs' programs; (3) recommend reauthorization of the Clean Water Act with sensitivity to western concerns; (4) urge Congress to appropriate adequate funding to the states for Safe Drinking Water Act program implementation, and address the need to make the program affordable for small supply systems; and (5) support the Miller amendments to the House Energy bill (H.R. 776) that would prohibit the licensing of hydroprojects on river segments protected from hydropower development by state law.

At the governors' business meeting, WSWC Executive Director, Craig Bell, reported on the Council's activities and workplan, along with representatives from the Western Interstate Energy Board and the Western Interstate Commission on Higher Education. Governors Norm Bangerter (UT), Booth Gardner (WA), Stan Stephens (MT), and George Sinner (ND), WGA's lead governor on water issues, had announced that they would not run for election. A panel discussion provided them an opportunity to share their views on key issues in the region and "unfinished business." Governor Fife Symington of Arizona was elected (to succeed Governor Mike Sullivan of Wyoming) as WGA's Chair, and Governor Bob Miller of Nevada was elected Vice-Chair.

### **Water Management Symposium - Indian Reserved Rights**

Over 300 people gathered in Albuquerque, New Mexico on September 1-3, to attend the second Symposium on the Settlement of Indian Reserved Water Rights Claims cosponsored by the Western States Water Council and the Native American Rights Fund. The symposium was attended by numerous state, Indian, and local government officials, together with water users, other interest groups and industry representatives.

The initial day was spent discussing how to prepare to negotiate and the negotiation process. The first panel, comprised of state and tribal representatives, focused on gathering background information and the role of technicians in negotiations. The next panel discussed identifying parties and issues and how negotiators act on behalf of larger groups. A highlight of the meeting was the first-day luncheon speaker, Assistant Secretary for Indian

Affairs, Eddie F. Brown. He expressed the Department of Interior's support for the negotiated settlement of Indian water right claims, and described the work of the negotiating teams that have been organized around the West. Later, a panel that included Tim Glidden, Counsel to Interior Secretary Lujan, and John Bushman, Special Assistant to Assistant Secretary Brown, focused on improving communication in the negotiation process. Another presentation described what Indian water right negotiators can learn from other types of dispute resolution.

On the second day, panels discussed administrative issues. The first panel included Justice Department Deputy Assistant Attorney General Myles Flint, and dealt with water rights management in Indian country, including jurisdictional issues on checkerboarded reservations. This thoughtful and well-received presentation stressed the need for achieving water management decisions that efficiently and equitably protect all proprietary and governmental interests in water resources. Next, a panel on off-reservation sales and leases of reserved water rights included a discussion of the potential for Colorado River Indian tribes to lease a portion of their water rights to water users in the Colorado River Basin. Ute Mountain Ute Tribal Council member, Gerald Peabody, a spokesman for the group, noted the tribes' intention to carry out such an arrangement without injury to other water right holders in the basin. The afternoon was spent at the Pueblo of Acoma at the annual Harvest Feast honoring the Pueblo's patron saint.

On the final day, a panel focused on getting bills through Congress. It included Pat Zell, the Senate Select Committee on Indian Affairs' Chief Counsel, and Dave Gibbons, formerly with the Office of Management and Budget. The obstacles to congressional approval of water right settlements, and success stories of how such obstacles can be overcome, were described. Mike Clinton of Bookman-Edmonston Engineering provided wrap-up remarks for the symposium.

### **General Stream Adjudication Filing Fees**

Ten member states joined in an amicus brief supporting the state of Idaho's contention in United States v. Idaho, before the U.S. Supreme Court, that the United States should be required to pay filing fees in Idaho's general stream adjudication. In previous litigation on the issue, Idaho had prevailed in its state district and supreme courts. The amicus brief was prepared by the Council staff and the Oregon Attorney General's office. The case was scheduled for argument in the Supreme Court in the spring of 1993.

### **Drought**

As the drought continued, WSWC staff monitored and reported on conditions and activities in member states, as well as federal response activities. On February 19, the U.S. House of Representatives passed the Reclamation States Emergency Drought Relief Act (H.R. 355), after the Senate agreed to its amendments. On March 5, the President signed the bill (P.L. 102-250), authorizing the Department of Interior to undertake various short-term actions in response to the current drought, in its sixth year, as well as prepare comprehensive drought management plans for the future. The bill authorized construction of temporary facilities, allowed the Secretary to purchase water from willing sellers, approved non-financial assistance for willing buyers, and authorized temporary federal water service contracts. The bill also allowed the use of Reclamation facilities to assist in the transportation of water for use outside the project service area. It also authorized loans to assist in ameliorating drought impacts. Unfortunately, federal financial assistance was delayed until September, when Congress approved a supplemental appropriation of \$30M as part of a broad disaster relief bill. The Act also authorized creation of water banks to facilitate transfers among users and between uses.

Many of the new programs and authorities established under the Act became effective only following a request for temporary drought assistance by a governor, and the Secretary's determination that such assistance was merited. Some states acted quickly to request assistance. Of note, Bureau of Reclamation Commissioner Dennis Underwood appointed Jack Stonehocker, a former WSWC member from Nevada, to serve as liaison with the states with respect to drought assistance. Council members and staff met with Jack to review and discuss state needs, and western states responded to Reclamation's request for drought relief project proposals. In October, Reclamation released guidelines regarding financial assistance, and funds began to flow to the states. Of note, after six years of drought, state and local governments had already identified and implemented many measures to better balance demands and water supplies. For example, the state of California created its own water bank and assisted in the transfer of hundreds of thousands of acre-feet of water to critical uses. Other states similarly took appropriate actions. However, fish and wildlife resources continued to suffer from the effects of the drought, particularly in the Sacramento and San Joaquin River basins in California and the Columbia River basin in the Northwest. Notably, many of the requests for federal financial assistance came from state fish and wildlife agencies.

### **Bureau of Reclamation's Strategic Plan**

In June, the Department of Interior released a strategic plan for the Bureau of Reclamation. It is a long-term framework for water resources management, development and protection. It sets forth broad goals and strategies that will be supplemented by more detailed implementation plans covering specific tasks and priorities. The Bureau's first implementation plan, entitled Hydropower 2000, was released in January 1992.

The strategic plan was developed in response to a 1987 assessment of Reclamation's programs and a key 1989 management objective of the Bush Administration "to improve the use and management of the Nation's water resources." The plan consists of 25 program elements, each with a guiding principle, goals and strategies. Program elements are grouped into five sections: (1) managing and developing resources; (2) protecting the environment; (3) safeguarding the investment; (4) building partnerships; and (5) fostering quality management. An annual program evaluation will cover performance, accomplishments and effectiveness. It will also provide policy guidance and establish priorities for budget and funding requests to the Congress.

The Bureau of Reclamation provided members of the Western States Water Council with a draft copy of the strategic plan, and Council staff prepared an extensive list of questions and comments. Commissioner Dennis Underwood met with members during the Council's January quarterly meetings in Newport Beach to discuss the draft plan and personally requested comments from WSWC member states. He was accompanied by Deputy Commissioner Joe Hall.

### **Endangered Species Act**

During 1992, the National Marine Fisheries Service (NMFS) listed the Snake River spring/summer and fall chinook salmon as endangered species.<sup>29</sup> Earlier, NMFS listed the Snake River sockeye salmon as endangered. Both listings add to the controversy in the Northwest surrounding the conflict between environmental protection and protecting the region's economy and jobs. The listing of the northern spotted owl by the Fish and Wildlife Service had stopped logging in many areas and led Interior Secretary Manuel Lujan to convene the Endangered Species Committee, which ultimately recommended an exemption

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<sup>29</sup>*Western States Water, Issue #937, May 1, 1992.*

allowing certain timber sales to proceed while prohibiting others. The decision satisfied neither environmentalists, nor the timber industry, but fueled debate over changes to the Endangered Species Act.<sup>30</sup>

With respect to the salmon, Senator Mark Hatfield (R-OR) had suggested that “a decision to list even one of those salmon runs as threatened or endangered could send an economic and social tidal wave throughout this region.”<sup>31</sup> Even before the listings, in an attempt to minimize potential negative economic impacts, Senator Hatfield, the Bonneville Power Administration, and many other regional leaders and organizations began to explore potential actions to help restore threatened salmon runs. The final listings led to formal efforts to develop a recovery plan.

The salmon listings have had a significant impact on state and federal water management. The Bureau of Reclamation, Bonneville Power Administration (BPA), and Northwest Power Planning Council began work to augment Columbia River fish flows. Of note, the Bureau filed three applications with the Idaho Department of Water Resources (IDWR) to change the nature of use for some 427,000 acre-feet of water in several reservoirs in the Snake River Basin to be stored and released to help salmon smolts migrate downstream.<sup>32</sup> Given the continuing drought, Snake River run-off was expected to be only 65% of average. IDWR received 650 protests to the change applications covering major conflicts with agricultural and other uses.

BPA determined to store up to three million acre-feet more water for fish than in previous years. Because the commitment coincided with a dry year, BPA spent close to \$40M to purchase power that might otherwise have been generated by reservoir releases. The Army Corps of Engineers also proposed reallocating water stored behind Dworshak Dam and increasing the fish flows by drawing down the two million acre-foot reservoir by nearly half each year, alarming many Idaho water users faced with a serious and continuing drought.<sup>33</sup>

Lastly of note, in a discussion paper NMFS raised the possibility that Section 9(a) of the Endangered Species Act, which makes it unlawful to “take” a listed species, might be used to regulate “state authorized irrigation diversions and water appropriations” by requiring an incidental take permit under Section 10. Moreover, any federal actions require Section 7 consultation. The potential impact on state water managers and water users would be tremendous.<sup>34</sup>

Indeed, a federal district court judge in California ordered irrigation diversions from the Sacramento River stopped from July 15 to November 20 to protect the winter-run chinook salmon, listed as threatened. The judge found a defective fish screen inadvertently killed chinook salmon smolts contrary to the Section 9 “taking” prohibition. The judge also found he had no power to mediate a dispute between NMFS, the California Department of Fish and Game, and the Glenn-Colusa Irrigation District over responsibility for repair of the screen. He could only order enforcement of the provisions of the Act.<sup>35</sup> The proposed and final listing of the Delta smelt added to California water users concerns, and the State Water Resources Control Board substantially reduced approved diversions from the Sacramento-San Joaquin River Delta by the California State Water Project and federal

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<sup>30</sup>*Western States Water*, Issue #908, October 11, 1991.

<sup>31</sup>*Western States Water*, Issue #884, April 26, 1991.

<sup>32</sup>*Western States Water*, Issue #928, February 28, 1992.

<sup>33</sup>*Western States Water*, Issue #928, February 28, 1992.

<sup>34</sup>*Western States Water*, Issue #930, March 13, 1992.

<sup>35</sup>*Western States Water*, Issue #920, January 3, 1992.

Central Valley Project (CVP).<sup>36</sup> Ultimately, concern over fish and wildlife losses in the Delta, due to diversions and the unprecedented duration of the current drought in California, also led Congress to modify the CVP authorization and mandate the release of up to 800,000 acre-feet of water for fish and wildlife purposes. In normal years, the CVP yields about 7M acre-feet of water.<sup>37</sup>

A number of bills were introduced, in the 102nd Congress to reauthorize the Endangered Species Act (ESA), but little debate followed.<sup>38</sup> Authority for spending was provided under a continuing resolution. Among other issues, proposed bills suggested requiring consideration of economic factors in the decision to list a species, requiring preparation of an economic impact analysis of implementation of the Act, and requiring compensation where the Act led to the taking of private property. The Endangered Species Act and the controversy between environmental protection and local economic impacts became an important issue during the presidential elections. In addition to apprising members of important issues and actions related to the Endangered Species Act, in conjunction with the April quarterly meetings, the Legal Committee held a provocative and in-depth discussion led by the following panel: Steve Sanders, Oregon (moderator); Elizabeth Holmes Gaar, National Marine Fisheries Service; Frank Dunkle, Nationwide Public Project Coalition; Anne Squier, Northwestern School of Law (currently with the Oregon Governor's Office); Gail Achterman, attorney; Rob Lothrop, Columbia River Intertribal Fish Commission; and John Volkmann, Northwest Power Planning Council. The Committee's discussion helped define the issues and views of various parties that will play a role in the implementation of the Act and its reauthorization in Congress.

### **Federal Energy Regulatory Commission**

The Western States Water Council continued discussions with the Federal Energy Regulatory Commission over federal hydropower project licensing procedures and the administration of state water rights. As Congress considered legislation defining a new national energy policy and provisions redefining state and federal roles, the Federal Energy Regulatory Commission, Western States Water Council and Western Governors' Association began to define potential issues that might be resolved through the negotiation of a memorandum of agreement (MOA).

WSWC staff outlined issues for an MOA, which was discussed with WGA staff and Fred Springer, Director of FERC's Office of Hydropower Licensing at a meeting held in conjunction with the Council's quarterly meetings in Newport Beach, California on January 8. All the parties endorsed the idea of an MOA as a means of resolving federal and state jurisdictional and other issues. The suggested MOA would cover state and federal water planning, gathering information to support state/federal decisionmaking, state participation in FERC's pre-filing consultation process, the acquisition of state water rights by FERC licensees, hydropower water use subordination criteria, enforcement of license conditions, reopening and amending FERC licenses, and dam safety. Section 401 water quality certification requirements were also mentioned.

Discussions continued throughout the year with state and FERC staff meeting in Washington, D.C. on February 20 and Park City, Utah on April 29. Moreover, the Council's FERC Subcommittee met regularly during the quarterly meetings. The State of Idaho, under the direction of Keith Higginson, accepted responsibility for drafting an MOA

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<sup>36</sup> *Western States Water*, Issue #935, April 17, 1992.

<sup>37</sup> *Western States Water*, Issue #961, October 16, 1992.

<sup>38</sup> *Western States Water*, Issue #962, October 23, 1992.

and began corresponding with FERC. While sometimes sharp and direct, a series of letters led to a better understanding of the issues and each party's preliminary views on specific matters.

In addition to the discussion of an MOA, and national energy policy, the Council continued its dialogue with FERC with regard to various issues, including FERC ex parte rules and efforts to promote negotiated rulemaking and alternative dispute resolution. The Council also reviewed FERC rules establishing an extensive pre-filing consultation process and procedural requirements for seeking and adopting suggested license conditions. State water quality certification requirements was another important topic.

Other efforts to resolve conflicts administratively included a Council produced report briefly summarizing the water rights application process, particularly for hydropower projects, in each member state. Several copies were sent to FERC for their use. WSWC staff also provided FERC with an updated list of state water rights agencies, and suggested information license applicants should provide FERC regarding the acquisition of state water rights for both hydropower generation and by-pass flows. Concerns regarding several individual projects in different states were also raised.

### **Federal Ground Water Legislation**

The Council's interest in federal ground water legislation continued during 1992, with the Council participating in the national debate over federal ground water legislation, working both with the Administration and Congress on occasion. The Council will continue to work on ground water issues with other multistate organizations, as appropriate.

### **Ground Water Recharge Demonstration Program**

In April, the Council entered a cooperative agreement with the U.S. Bureau of Reclamation to continue a study of ground water recharge projects in the West. In 1990, the Council completed a report for the Bureau under an earlier cooperative agreement pursuant to the High Plains States Ground Water Demonstration Project Act of 1983 (P.L. 98-434). That Act 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's initial report presented a general decisionmaking framework related to ground water recharge projects and a state-by-state discussion of legal and institutional issues. The new cooperative agreement is designed to study the existing program and projects, and then prepare recommendations for future improvements.

During 1992, Bureau and Council staff visited several sites including: the Washoe County Project near Reno, Nevada; the Rillito Creek Project in Tucson, Arizona; the York and Wood River Projects in Nebraska; the Blaine-Gypsum Project near Altus, Oklahoma; the City of Seattle's Highline Wellfield Project in the state of Washington; the Hueco-Bolson Project in El Paso, Texas; and the Denver Basin Project in Colorado, as well as a small recharge project near Julesburg sponsored by the State of Colorado and a local conservancy district. A paper and audio-visual presentation were given summarizing work under the study at the annual symposium of the American Water Resources Association. The final report will include a summary of the projects visited, and should provide a useful picture of the appropriate use of ground water recharge technology as a solution to the efficient and effective management of precious ground and surface water resources in the West.

Through the cooperative agreement, the Bureau of Reclamation reimburses the Council for study expenses, including salaries and benefits, indirect costs, and travel expenses. Through calendar year 1992, the federal obligation for the Council's work totaled just over \$20,000.

### **National Energy Policy**

On October 8, the Senate approved and cleared for the President the Conference Report on H.R. 776, the national Energy Policy Act of 1992. He signed the bill on October 24 (P.L. 102-486). The final bill includes several provisions related to hydropower development and licensing procedures of the Federal Energy Regulatory Commission (FERC). Title XVII amends the Federal Power Act to authorize annual charges to cover "any reasonable and necessary costs incurred by federal and state fish and wildlife agencies and other natural and cultural resource agencies in connection with studies or other reviews carried out...for purposes of administering their responsibilities..." This title also clarifies and redefines the term "fishway," requiring FERC to promulgate a new definition requiring the concurrence of the Secretaries of Interior and Commerce. The bill specifically states that fishways required at federally licensed projects include facilities for the "safe and timely upstream and downstream passage of fish," and further clarifies that such "shall be limited to physical structures, facilities, or devices...in project operations..." During a colloquy on the Senate floor, it was noted that the intent of the amendment is not to include "regulated flows or assuming control over the operation of project works..."<sup>39</sup>

An important remnant of the House's "Miller amendments" was included, amending Section 21 to provide that "no licenses may use the right of eminent domain under this section to acquire any lands or other property that, prior to the date of enactment of the Energy Policy Act of 1992, were owned by a state or political subdivision thereof and were part of or included within any public park, recreation area or wildlife refuge established under state or local law." However, in the future, the right of eminent domain may be used by licensees if there has been a public hearing held in the affected community and FERC determines, after due consideration of expressed public views and the recommendations of the state or political subdivision that owns the property, that the license will not interfere or be inconsistent with the purposes for which such property is owned.

Title XXIV relates to hydropower provisions not related to the Federal Power Act. Section 2401 amends the Federal Land Policy and Management Act to clarify the respective jurisdiction between FERC and the federal land management agencies. Any project licensed prior to enactment of the bill cannot be required to obtain any permit, right-of-way or other approval "for continued operation," unless FERC determines that the project involves the use of some additional public lands or national forest lands not reserved under Section 24 of the Federal Power Act. Section 2402 prohibits FERC from issuing an original license for any "new hydroelectric power project located within the boundaries of any unit of the national park system that would have a direct adverse effect on federal lands..." On the House floor, Rep. Bruce Vento (D-MN) noted that the language overturns a Ninth Circuit court decision that misread the Federal Land Policy and Management Act's plain language and returns to the Forest Service and Bureau of Land Management authority and responsibility for issuing rights-of-way or special use permits for new FERC-licensed projects and clarifies that FERC in the future cannot ignore conditions imposed by the land managing agencies.

Other provisions of this title relate to authorization for studies of opportunities to increase hydroelectric generation at existing federal facilities (Section 2404); feasibility

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<sup>39</sup>*Western States Water*, Issue #962, October 23, 1992.



studies of opportunities to increase hydroelectric energy "from a reduction in the consumptive use of such power for federal reclamation project purposes or as a result of an increase in the amount of water available for such generation because of water conservation efforts on federal reclamation projects or a combination thereof" (Section 2405); and authority for the Secretaries of Interior and Army to plan, design, construct, operate and maintain generation additions, improvements and replacements at federal projects in the Pacific Northwest, "without further appropriation and without fiscal year limitation," with the concurrence of the Bonneville Power Administration, beginning October 1, 1993 (Section 2406). Section 2407 relates to the exemption of certain projects in Alaska, and Section 2408 requires a study of transferring licensing authority for hydroelectric projects to the state of Hawaii.<sup>40</sup>

### **Omnibus Reclamation Legislation**

On October 30, President George Bush signed (P.L. 102-575) the Reclamation Projects Authorization and Adjustment Act of 1992, H.R. 429, authorizing projects, making important policy changes, and establishing landmark environmental protections. There are 40 titles (affecting various western states): Title I-Buffalo Bill Dam (WY); II-VI Central Utah Project; VII-Leadville Mine Drainage (CO); VIII-Lake Meredith (TX and NM); IX-Cedar Bluff (KS); X-South Dakota Water Planning; XI-Salton Sea Research (CA); XII-Sabine River Compact (TX and LA); XIII-Salt/Gila Aqueduct (AZ); XIV-Vermejo Project (NM); XV-San Luis Valley Protection (CO); XVI-Reclamation Wastewater and Ground Water Studies (AZ and CA); XVII-Standing Rock Indian Irrigation (ND); XVIII-Grand Canyon Protection Act; XIX-Mid-Dakota Rural Water System (SD); XX-Lake Andes-Wagner/Marty II (SD); XXI-Rio Grande Floodway (NM); XXII-Sunnyside Valley Irrigation District (WA); XXIII-Platoro Reservoir (CO); XXIV-Redwood County Water District (CA); XXV-United Water Conservation District (CA); XXVI-High Plains Ground Water Recharge Demonstration Program; XXVII-Montana Irrigation Projects; XXVIII-Reclamation Recreation Management Act; XXIX-San Juan Suburban Water District (CA); XXX-Western Water Policy Review Act; XXXI-Mountain Park Master Conservancy District (OK); XXXII-South Dakota Biological Diversity Trust; XXXIII-Elephant Butte Irrigation District (NM); XXXIV-CVP Improvement Act; XXXV-North Dakota Tribes Compensation Program; XXXVI-Sonoma Baylands/Wetlands Demonstration Project (CA); XXXVII-San Carlos Apache Tribe Water Rights Settlement (AZ); XXXVIII-San Francisco Water Reclamation and Reuse Demonstration; XXXIX-CAP Siphon Repair and Replacement; and XL-National Historic Preservation Act Amendments.

The Western States Water Council did not take a position on individual projects, but did address certain issues. The Council opposed a new federal public interest review imposed on private water development in the San Luis Valley in Colorado under Title XV.<sup>41</sup> Regarding Title XXX, joint WSWC/Western Governors' Association testimony before the Senate Energy and Natural Resources Committee led to changes giving western states a greater voice in the proposed water policy review.<sup>42</sup> The Council supports the Bureau of Reclamation's Ground Water Recharge Demonstration Program, extended under Title XXVI. Lastly, the Council carefully followed other projects and programs with a potential impact on westwide water management.

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<sup>40</sup>*Ibid.*

<sup>41</sup>*Western States Water, Issue #921, January 10, 1992.*

<sup>42</sup>*Statement by North Dakota Governor George Sinner and WSWC Chairman William H. Young, before the Senate Committee on Energy and Natural Resources, Water and Power Subcommittee, on September 19, 1991.*

Every state in the West had a stake in the bill, but particularly California. Governor Pete Wilson urged the President to veto the bill.<sup>43</sup> The Governor opposed H.R. 429 because Title XXXIV adds fish and wildlife as a specific CVP purpose, and allocates the first 800,000 annually out of about 7M acre-feet of CVP water, for fish and wildlife (in normal years, reduced by up to 25% in dryer years). As a former Senator, Governor Wilson once helped killed similar legislation. His successor, Senator John Seymour did everything in his power to stop the bill, saying it would cost California \$4.5B and tens of thousands of jobs. He helped incorporate 22 environmental mitigation and enhancement measures into H.R. 429, but added, "I put people and jobs first.... If you do not have a job, and you cannot feed your family, do you really care about the Delta smelt?"<sup>44</sup>

CVP water in excess of fish and wildlife needs may be used for irrigation, and the Secretary of Interior is charged with developing a comprehensive plan to increase CVP's yield. A broad savings clause was added applying to final judicial decrees involving CVP water rights, and the Secretary of Interior is directed to comply with California water law and the Coordinated Operating Agreement governing the federal CVP and state water projects. The bill establishes a \$50M fish and wildlife restoration fund, financed by surcharges on water and power. The bill imposes a \$25 surcharge per acre-foot of water transferred. The bill also addresses water metering, water conservation standards and tiered pricing. The bill does not deal with other reclamation reform issues regarding interlocking land ownerships and the double benefit of subsidized water used to grow subsidized crops.

The compromise extends current federal water service contracts for 25 years, upon request, and allows the Secretary of Interior to successively renew contracts for periods of up to 25 years. However, renewals will require preparation of an environmental impact statement. Otherwise, contracts may only be renewed for an interim period not to exceed three years, and thereafter successive interim periods of not more than two years. The cost of preparing a programmatic EIS will be considered a capital expense. The bill allows water to be transferred off the Central Valley Project for other uses, but CVP contractors have a right of first refusal. No more than 20% of the water can be removed from any water district without the district's approval, and water transfers must be consistent with state law.

On the House side, 25 California representatives voted against the conference report, writing other House members, "We are not opposed to reforming the CVP to make it more responsive to the needs of the environment, agriculture and California's growing cities, but the Conference report doesn't do that. It seeks to solve environmental problems by severely and arbitrarily reducing CVP water deliveries to Central Valley farmers and urban areas.... If H.R. 429 were law, farms and cities in the southern part of the Central Valley would have received no water at all from the CVP during 1990, 1991 and 1992."<sup>45</sup>

However, California Senator Alan Cranston (D-CA) and 18 House members supported the Conference agreement, along with the Metropolitan Water District of Southern California (serving 15 million people), the Cities of Eureka, Oakland and San Francisco, the Sacramento Municipal Utility District, the Western Urban Water Coalition, several water districts, various environmental organizations, and many businesses. Supporters estimate potential lost gross farm income of \$262M, and a potential loss of 570,000 acres of land, mostly low or medium-value crops, including cotton, alfalfa, hay, rice and wheat. California's estimated 1992 economic product is projected to be \$752B, with agriculture accounting for about \$16B, while using 80-85% of the available water supply.

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<sup>43</sup>*Western States Water*, Issue #961, October 16, 1992.

<sup>44</sup>*Western States Water*, Issue #961, October 16, 1992.

<sup>45</sup>*Ibid.*

With respect to states' rights issues, Senator Bill Bradley (D-NJ) declared, "My fundamental objective in sponsoring CVP reform legislation has been to eliminate or modify federal policies and practices which have left the Central Valley Project strikingly out of step with California water law and policy.... It has become like some sort of federal preserve, insulated against state law.... The clearest case of federal interference in California affairs can be seen in...Interior's ongoing effort to renew CVP contracts for another 40 years...[and] lock all of the CVP's flaws into place.... Those water contracts parcel out 20% of California's water supply to several thousand lucky landholders, who are largely out of the reach of state regulators or policymakers." Senator Bradley added, "It is a question of whether the water of the Central Valley should be for the many, or for the few."<sup>46</sup>

Senator Bradley also projected what might be on the horizon if the bill is not passed, or if it is vetoed. He suggested the Delta smelt could become to California what the spotted owl has become to Oregon and Washington, and state and federal courts would soon be running the Central Valley Project, the State Water Project, and San Francisco's water system. "California cities unable to get ready access to new water through voluntary transfer will...spend billions of dollars on polluting expensive desalination plants, or...the construction of the Peripheral Canal or the Auburn Dam, or diversion of wild north coast rivers." He also suggested, "To the extent California is unable to use its own water to meet its growing urban needs...the state will be obliged to try to find water somewhere...from Arizona, Colorado, Wyoming, Utah, New Mexico, and elsewhere...."<sup>47</sup>

### **Water Conservation**

Given increasing water demands for various uses and limited opportunities to develop new supplies, Council member states continue to promote and encourage appropriate conservation activities. The Council determined it would update a 1983 report entitled Water Conservation in Western Water Resource Management, and during 1992, a draft questionnaire was prepared and distributed to each member state. The responses were reviewed, and the information was summarized at an October workshop sponsored by the National Governors' Association and funded by the Environmental Protection Agency. A brief summary and matrix comparing state programs was also developed.

### **Water Right Permitting Procedures Report**

In November, the Council published a report entitled Western State Water Right Permitting Procedures. It describes the mechanics of state water right permitting processes. While each system follows a similar pattern, there are many differences. The report was compiled "with the hope that a better understanding of permitting procedures in the West will lead to better compliance with state water law, particularly in the context of federal programs...." The state-by-state permitting summaries were based on input from state officials. The Council provided some twenty copies of the report to the Federal Energy Regulatory Commission's Office of Hydropower Licensing at FERC's request.

### **Water Use/User Fees**

State legislative and administrative agencies are faced with maintaining and expanding water resource related services in the face of state budget cuts and dwindling federal support. As federal and other financial resources become more and more scarce, many states are evaluating various potential fees related to water use. The state of Alaska, with WSWC staff assistance, compiled some information on state fees, and a panel of Council member states

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<sup>46</sup>*Ibid.*

<sup>47</sup>*Ibid.*

addressed the issue at the October quarterly meetings in Albuquerque. Available information regarding state water use fees was distributed to member states upon request.

### **Western Water Policy Review Act**

The Western Water Policy Review Act of 1992 (S. 1228), was enacted as Title XXX of the omnibus Reclamation legislation. It establishes a commission to study and evaluate federal and state water policies in the seventeen reclamation states, plus Alaska and Hawaii, and recommend appropriate changes.<sup>48</sup>

In introducing the bill, Oregon Senator Mark Hatfield specifically referred to a WGA White Paper on Federal Water Policy Coordination that concluded: "Federal Water Policy lacks a unifying vision or even a set of guiding principles...." The bill directs the Secretary of Interior to undertake a comprehensive review of federal activities, in nineteen western states, as they relate to the allocation and use of surface and ground water. The Secretary must also submit a report on his findings with recommendations to the President and Congress.<sup>49</sup>

The new law creates a 22-member Western Water Review Commission to advise and assist the Secretary. It would be composed of several leading congressmen, the Secretaries of Interior and the Army, and six Presidential appointees, with a chairman elected by the members. The chair will invite each governor to designate a representative to work with the Commission, and may at its discretion invite appropriate public or private interest groups to participate. The bill authorizes \$18M over 5 years to complete the work.

The Commission is to address present and anticipated water problems and potential solutions, examine and recommend changes to current federal water programs, look at the need for additional storage or other means of augmenting water supplies, consider the effectiveness of past institutional arrangements, including the Water Resources Council, review state and federal law as it relates to the development and use of water, and review the responsibilities of various federal agencies and the impact of their decisions on water management. Senator Hatfield wants a more coherent decisionmaking process with respect to water policy.

Among other things, the bill states that Congress finds the federal government has recognized and continues to recognize the jurisdiction of the several states over the allocation, priority, and use of water resources of the states, and that the federal government will, in exercising its authorities, comply with state laws..." Senator Hatfield notes that water policy issues vary greatly between the western and eastern states, but both suffer the "inefficiencies of our current national water policy..."<sup>50</sup>

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<sup>48</sup>*Western States Water*, Issue #936, April 24, 1992.

<sup>49</sup>*Western States Water*, Issue #815, December 29, 1989.

<sup>50</sup>*Western States Water*, Issue #893, June 28, 1992.

## **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 1992.

### **CLEAN WATER ACT REAUTHORIZATION**

Reauthorization of the Clean Water Act continued to be an issue of importance to western states. In 1991, the Council adopted a position in response to legislation introduced by Montana Senator Max Baucus (S. 1081). In response to revisions to the legislation, the Council wrote Senator Baucus with additional comments directed mainly at provisions in the draft legislation that remained unchanged and with which the Council expressed continuing reservations. The Council notes any federal legislation must be flexible to recognize regional differences and allow states to pursue the integrated management of their water resources. The 102nd Congress adjourned without a new Clean Water Act authorization.

The following letter to Senator Baucus from Council Chairman Bill Young, is a comprehensive position expressing western state concerns. The letter first addresses the purpose of the Clean Water Act and methodologies for integrating principles of antidegradation into permitting processes while recognizing states' unique experience in allocating and managing water rights. Particular concern is raised over concepts of ecological integrity and hydromodification that might lead to federal regulation of stream flows. With respect to federal funding, the position states proposed levels are inadequate and provide insufficient flexibility to target limited funds to areas of the greatest need. The position addresses the proposed Clean Water Fund, Section 106 grants, permit fees, and Title IV set-asides. Other important topics addressed in the position are water quality standards and criteria, toxics, non-point source pollution, sediment standards, and wastewater treatment facility operator training and certification.

*RESOLUTION*  
*of the*  
*WESTERN STATES WATER COUNCIL*  
*regarding*  
*REAUTHORIZATION OF THE CLEAN WATER ACT*  
January 10, 1992

Senator Max Baucus  
United States Senate  
706 Senate Hart Office Building  
Washington, D.C. 20510-2602

Dear Senator Baucus,

The Western States Water Council appreciates your efforts to reauthorize the Clean Water Act (CWA) through development of S. 1081. We believe the bill represents a useful vehicle for seeking a national consensus in the reauthorization process. We support the emphasis on pollution prevention, improved science, and coordination of federal activities, but we are concerned that the bill not become a vehicle to supplant existing state efforts in water allocation and protection of ecological systems. States need continued flexibility to pursue the integrated management of their water resources as regional conditions require.

We have just received late revisions to S. 1081 and note that new provisions have been added to it. Our comments in this letter, however, are directed mainly at provisions in the former draft that appear to be substantially the same in the most recent draft. We have a number of reservations with respect to several provisions of the bill. Our concerns are outlined below. We will provide further comments on the revised version of S. 1081 as appropriate.

**I. Clean Water Act Purpose**

In the arid West, water is a precious resource that must be managed to obtain the maximum use of the limited amount available. There is no doubt that states have a profound interest in ensuring that private water users continue to beneficially use water resources, while at the same time protecting the ecological integrity of existing stream systems. Methodologies for integrating principles of antidegradation into permitting processes under state law have been the subject of a great deal of study and effort at the state level. Numerous state laws currently function in this area, and function well. The WSWC supports efforts by EPA to join with the states in continuing this process for integration, but the CWA should not be modified to usurp state primacy to address these fundamental issues.

Because of their unique experience with and understanding of these needs, states are best able to manage the water within their borders, particularly the allocation of rights to use quantities of water. To assure that states continue with this important primary responsibility, the CWA should not be expanded, construed, or applied to create a national program that supercedes or impairs state water allocation systems and rights. The purpose of the act should remain the regulation of water quality impacts of point and non-point source discharges of pollutants to protect designated uses through the setting of water quality standards and management controls to meet those standards.

Some provisions of S. 1081 have the potential to change this emphasis and thus conflict with state water management and allocation programs and inherent legal authorities. Addition of "savings clause" language to some provisions of the revised version of S. 1081 is a step in the right direction. This language, however, appears to be in direct conflict with other provisions of the bill and is insufficient to alleviate the Council's concern that the bill could impair state water resource management authority. The Council is particularly concerned with the following:

1. Ecological Integrity: S. 1081's proposed shift in emphasis in its "PURPOSES" section to assuring that the CWA "more comprehensively protect(s) the ecological integrity of water bodies, including the maintenance and restoration of aquatic habitat,..." would significantly change the existing focus of federal law. Substituting an "ecological integrity" program for the existing emphasis on clean water would make natural conditions of water bodies of paramount importance. While it is unclear what the result of such a shift would be, the potential for harm to western water management systems is great because the exercise of appropriative water rights usually involves diversion of water from streams and lakes, thus affecting the natural conditions of water bodies. Such a CWA "purpose" could, if improperly implemented, turn the CWA into an infeasible and unworkable national instream flow protection program, and conflict with existing state efforts in this area.

2. Hydromodification: S. 1081's section on "WATER QUALITY STANDARDS" would require EPA to include restoration and maintenance of the chemical, physical, and biological integrity of water bodies in developing criteria documents and would include "hydromodification" as a conventional pollutant to be regulated. Establishment of water quality criteria lays the ground work for water quality standards. Where such criteria rely on maintenance of the physical integrity of a water source, the potential is great that water allocation and management systems will be affected. Hydromodification, which may be considered the alteration of water flows, such as by diversions or storage facilities, impacts water bodies. Restrictions on water management generally, and of water diversions and storage specifically, could result from regulating hydromodification as a CWA pollutant, especially considering that the goal of the CWA is to eliminate pollutants. Again, the potential for conflict with water allocation and management systems is significant. Such conflict could produce the untenable situation where the CWA, which contains no provisions for balancing competing water needs and uses, could override the complex legal and institutional water management systems of the western states.

3. Antidegradation: S. 1081's section on "ANTIDEGRADATION" goes well beyond the intent of the CWA apparently in an effort to regulate streamflow, is inconsistent with other provisions of the act, and could restrict state ability to manage water resources. For example, diversion and storage projects that impact downstream water quality or which, under new S. 1081 concepts, affect "ecological integrity," may be unable to obtain certain certifications and approvals, such as under CWA Sections 401 or 404. Further, existing water diversion activities could potentially be impacted where, as required for some waters by S. 1081, it is necessary to "roll-back" stream conditions to those existing in 1975.

## **II. Funding**

S. 1081 lacks adequate program funding levels and provides insufficient flexibility to states in allocating limited funds. Funding for state implementation should be increased. The state revolving loan fund (SRF) should be fully capitalized to provide for the new requirements placed on state and local governments by the CWA of 1987. More funds should be provided to states under Section 106. While S. 1081 would make progress in some of these areas, a number of changes are needed.

1. Clean Water Fund (CWF): It appears that the S. 1081 CWF is merely a conveyance mechanism to direct funds to specific federal program priorities (i.e., SRF, non-point source pollution control, combined sewer overflows) and small community loans and grants. The bill provides no flexibility to states to switch funds according to state priorities and does not include as eligible many 1987 CWA programs (e.g., those dealing with toxics, standards, and stormwater). The operation of the CWF is of particular concern to the western states, for example, with respect to the set-aside for the correction of combined sewer overflow problems where funding that would otherwise be available to all 50 states will be targeted in a more focused way to eastern and Great Lakes states. If a CWF is to be established, states must have the ability to use the fund for programs they determine to be most important. This flexibility would allow a widely variable mix of programs over time and enhance overall water quality protection.

2. Section 106: The 25% set aside for EPA discretionary grants should be eliminated. The state work plan negotiation process should be the preferred mechanism for Congress to assure clean water priorities are expeditiously addressed. Also, sanctions should be eliminated. Further, S. 1081 proposes to change mandatory water quality planning pass-through funding that is currently received by local, designated planning agencies (Councils of Governments) from a Title II set-aside to the Section 106 base water quality management grant. This approach could impact state agencies' ability to conduct basic water quality monitoring and permitting programs, unless Section 106 funding is increased.

3. Permit Fees: The fee program should not lead to decreased funding from existing sources. More than two years will be needed for states to institute a program. States need maximum flexibility in deciding fee levels and determining where to use collected fees in support of point-source program elements and other water quality management activities states deem appropriate. Fees collected should be considered state funds that qualify for the Section 106 match.

4. Title VI Set-Asides: S. 1081 would change the Title VI set-aside for water quality management activities under Sections 303 and 205(j) from a mandatory set-aside to an optional one. The funding impact of an optional Title VI set-aside may affect water quality programs to an extent that is unintended by S. 1081. A mandatory planning obligation is consistent with the purpose of the CWA.

### **III. Water Quality Standards and Criteria**

The following changes in water quality standards and criteria are needed:

1. The act should not require that all waters be designated fishable/swimmable as envisioned by S. 1081. In some areas it will be impossible or infeasible to achieve such a goal because of natural conditions, water use patterns, or technical or economic realities.

2. States should be consulted in the development of Section 304(a) criteria to assure that state needs are met. Further, such criteria should cover all waters, with attention to lake, estuarine, and marine habitats, and special attention to habitats in arid areas.

3. Section 304(a) criteria should define methods to determine the portion of toxic metals in ambient water and effluent that could affect aquatic life and should explain how water quality standards should address these concerns.

4. S. 1081 requirements that outstanding national resource waters not be degraded may preclude any human activity in national forests and in or upstream from all wild and scenic river systems. Where this happens, the result is impractical. Additionally, the definition of



outstanding national resource waters must be developed so that states can decide which waters are truly high quality.

5. States must have the flexibility to incorporate biological assessment into regulatory programs as they see fit.

6. S. 1081's goal of biological integrity in all water bodies, if measured against the species diversity, productivity and ecological structure found in unimpaired waters, may not be achievable in arid states where there has been intensive historical water resource development to serve municipal, industrial and agricultural needs. In fact, it is extremely difficult to find unimpaired reference waters for the water bodies and habitat types that are commonly affected by point sources in some areas. While site-specific approaches may allow the existing levels of water resource development on a water body to be factored into a biocriterion, there is a legitimate concern that future water development could be deemed inconsistent with bioassessment-based water quality standards. If the eco-regional approach for establishing biocriteria is required, where the basis for choosing reference sites depends on classifying the habitat type and locating unimpaired waters, then even the existing level of water resource development (i.e., hydromodification) could be viewed as inconsistent with such standards.

7. The development of total maximum daily loads should be according to a realistic schedule set by states and based on state priorities and available resources.

8. Water quality standards should recognize the unique nature of the constructed drains sometimes used in western agriculture. Such recognition would allow protection of receiving waters for all beneficial uses. The goals of the act calling for full protection of aquatic life may never be met in these constructed drains. Implementation of best management practices assures water quality protection. S. 1081 should be amended to recognize the unique nature of these constructed drains and allow establishment of water quality standards that take into account the beneficial nature of agricultural operations, together with their ability to minimize pollution.

#### **IV. Toxics**

S. 1081 establishes admirable goals to eliminate harmful substances from the environment, address waters impacted by toxics, encourage municipal pollution prevention, and refine pretreatment requirements. These provisions, however, are too prescriptive. S. 1081 needs to give EPA and the states the flexibility to focus on the most important toxic problems and approach them in the most effective way to minimize critical pollutants.

Major compliance problems with water quality standards for toxic pollutants are expected to arise where municipal wastewater treatment plants or stormwater systems discharge to water bodies with limited dilution or where the receiving water already carries a significant load of pollutants, especially where the streams are needed to facilitate wastewater reuse in arid areas. S. 1081 should be amended as follows:

1. The national goal for stormwater management should be realistic. Stormwater systems should implement best management practices to the maximum extent practical with the goal of meeting water quality standards. End-of-pipe treatment should be required only when economically and scientifically feasible.

2. Ammonia should not be added to the CWA list of toxic pollutants. The inclusion of waters adversely affected by ammonia on future 304(l) short lists, and the subsequent requirements upon dischargers for individual control strategies, may result in diminished "in-stream flows," particularly in arid western states, where advanced treatment

requirements to protect effluent-dominated streams carry an exorbitant price tag. Removing the effluent from the stream may be more cost-effective. With caution to protect water quality as appropriate, the concept of "net environmental benefit" should be included in the reauthorized CWA.

3. Toxic pollutants as defined in the current CWA should be eliminated from wastewater generating processes through effective pollution prevention programs, but cannot be banned entirely from all discharges because of their occurrence in nature and background in the environment and water supplies.

#### **V. Non-Point Source Pollution**

S. 1081's provisions on non-point source pollution (NPSP) need to recognize that a heavy-handed approach, backed with sanctions such as loss of highway funds, is unworkable. Instead, a more carefully considered and flexible program is needed as states continue to implement the 1987 CWA NPSP requirements. States need to be able to focus NPSP control efforts where violation of water quality standards occurs. Given the tremendous variety of agricultural practices nationwide, however, EPA should not define national best management practices (BMPs) to control agricultural runoff, or other forms of NPSP. Both NPSP BMPs and the specific waters to be protected from NPSP should be defined by states. A voluntary approach to NPSP control should be acceptable if states have authority to enforce mandatory requirements where water quality standards violations occur. The irrigation return flow exemption from the National Pollution Discharge Elimination System should be retained. However, BMPs should be employed to the maximum extent practicable.

#### **VI. Sediment Standards**

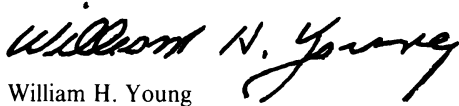
S. 1081 provides basic authorizations for and includes numerous reference to establishing sediment standards. While there is no doubt that in some circumstances contaminated sediment adversely impacts aquatic life, and in those instances the establishment of sediment standards may be necessary to control water pollution, creating an across-the-board, national program of sediment standards would be a difficult and expensive undertaking. There is currently little basic scientific understanding of the relationship between water quality and sediment chemistry, or bioaccumulation of pollutants from sediment through the food chain. There is a paucity of sediment quality data. Establishing sediment quality standards at this time would result in a tremendous investment in sediment sampling and quality analyses without an adequate technical framework for interpretation of results or even proper collection of samples. Adequate additional funding should be provided in S. 1081 to assist states in this effort. S. 1081 should provide authority for a more targeted approach to address the needed basic research and funding for intensive monitoring of the particular, identifiable sediment quality problem areas.

#### **VII. Operator Training and Certification**

The wastewater treatment facility operator training and certification program proposed in S. 1081 is inappropriate and unnecessary. The vast majority of states already have programs in place. These provisions should be eliminated from the bill.

In summary, S. 1081 provides a useful basis from which to begin debate on the CWA reauthorization. The Western States Water Council, however, has serious reservations about some provisions of the bill. These sections should be modified as explained above. It is particularly important that limited federal financial resources be wisely used so that program momentum may be sustained and enhanced to the end that optimum water quality improvements can be obtained within the context of overall state water resource management and administration. Likewise, it is critical that the reauthorization process does not take from western states their primary authority to carry out such management and administration.

Sincerely,

A handwritten signature in black ink that reads "William H. Young". The signature is written in a cursive style with a prominent loop at the end of the last name.

William H. Young  
WSWC Chairman

## SAN LUIS VALLEY WATER RESOURCES PROTECTION ACT

On October 4, 1991 Colorado Senator Tim Wirth introduced the San Luis Valley Water Resources Protection Act (S. 1812) to significantly restrain the development and possible export of up to 200,000 acre-feet of water per year by American Water Development, Inc. AWDI owns the 100,000-acre Luis Maria Baca cattle ranch in the remote San Luis Valley in southwest Colorado. In 1986, AWDI filed applications in Colorado's water court in Alamosa to drill 100 wells and develop 200,000 acre-feet of water. The Bureau of Reclamation's Closed Basin project now pumps about 100,000 acre-feet of water per year from the basin, in order to assure the State of Colorado meets its Rio Grande Compact requirements. Farmers feared the proposed private withdrawals and possible exports would lower the water table in the entire northern portion of the San Luis Valley, deplete flows in surface streams including the Conejos and Rio Grande rivers, and totally dewater other streams.

Environmental concerns were also raised over the impact of the withdrawals on confined and unconfined aquifers that sustain wetlands throughout the valley and a number of national and other wildlife refuges and management areas that support thousands of migratory birds, including the endangered whooping crane. Further, questions were raised regarding the interrelationship between streams arising in the Sangre de Cristo Mountains and shallow ground water and the stability of the Great Sand Dunes National Monument. These and other potential negative impacts led many, including Senator Wirth, to oppose AWDI's water right applications.

While the Council took no position regarding the merits of the project, it did oppose imposition of a unilateral federal mandate that ignored Colorado's authority to review the impact of the project. Indeed, eventually the water rights were denied as the applicant was unable to demonstrate that the amount of water requested was available for appropriation. Still, Senator Wirth prevailed, and the legislation was enacted as Title XV of the Reclamation Projects Authorization and Adjustment Act of 1992. However, as passed, the bill was different from that originally introduced. The bill requires full consideration of all findings by the Colorado Water Conservation Board. The bill also provides, "Nothing in this title shall be construed to alter, amend or limit any provisions of federal or state law...", or "limit any agency's authority or responsibility to reject, limit or condition any such project...." It also states that, "Nothing in this title shall constitute either an expressed or implied reservation of water or water rights."

*POSITION*  
*of the*  
*WESTERN STATES WATER COUNCIL*  
*regarding*  
*THE SAN LUIS VALLEY WATER RESOURCES*  
*PROTECTION ACT*  
*January 10, 1992*

*WHEREAS, S. 1812 has been introduced to prohibit any federal agency from issuing any permit, license, right-of-way, grant, loan or other authorization or assistance for any project to withdraw water from the San Luis Valley for export to another basin without the Secretary of Interior's approval; and*

*WHEREAS, all western states now have legislative and administrative authority to consider and address adverse impacts of private water development on other public and private water users; and*

*WHEREAS, the legislation establishes a number of conditions for the Secretary's approval, and places the burden of proof on project proponents to demonstrate there will be no negative impact on the Bureau of Reclamation's Closed Basin project, on interstate compact entitlements, national wildlife refuges or national monuments; and*

*WHEREAS, the bill appears to propose the imposition of an unprecedented federal public interest review and federal approval for private water development; and*

*WHEREAS, federal regulatory programs already exists under various statutes that require the issuance of a number of permits, rights-of-way and other authorizations for the project;*

*NOW THEREFORE BE IT RESOLVED that the Western States Water Council opposes unilateral federal mandates, such as the San Luis Valley Water Resources Protection Act (S. 1812), that limit state water management options and fail to give due recognition to existing state water development and protection policies and programs.*

## NATIONAL DAM SAFETY PROGRAM

The Congress enacted the omnibus Water Resources Development Act of 1992 to authorize new projects and programs of the U.S. Army Corps of Engineers. Council staff kept members apprised of important provisions in the proposed bill. Among other things, the legislation reauthorized without change the current non-federal dam safety program. Unfortunately, the present program has never been funded. The following position which was sent to all western delegations and key Congressional staff and Administration officials.

*POSITION*  
*of the*  
**WESTERN STATES WATER COUNCIL**  
*on the*  
**NATIONAL DAM SAFETY PROGRAM**  
*April 10, 1992*

*WHEREAS, the Council in the past has called for federal support for non-federal dam safety programs; and*

*WHEREAS, the Council has also in the past identified hundreds of non-federal dams in western states with safety problems; and*

*WHEREAS, in recognition of such needs Congress enacted the Dam Safety Act of 1986, which is due to expire this year; and*

*WHEREAS, the Administration and the Congress have failed to provide needed funding; and*

*WHEREAS, the Administration's FY93 budget proposal cuts funds earmarked for the Federal Emergency Management Agency's (FEMA) dam safety program thereby eliminating the program; and*

*WHEREAS, dam failures threaten lives, and private and public property, including federal facilities; and*

*WHEREAS, the nation's dams are aging more rapidly than appropriate rehabilitation is taking place; and*

*WHEREAS, prompt preventative measures can prevent devastating disasters and thereby limit federal emergency expenditures;*

*NOW THEREFORE BE IT RESOLVED that the Western States Water Council urges Congress and the Administration to: (1) restore funding for FEMA's dam safety program; (2) reauthorize and update the Dam Safety Act of 1986 to help avert future dam failures and potentially catastrophic loss of life and property; and (3) provide appropriate federal financial assistance for the repair, replacement or removal of unsafe non-federal dams.*

**YEAR OF CLEAN WATER and CLEAN WATER MONTH**

*POSITION  
of the  
WESTERN STATES WATER COUNCIL  
To establish 1992 as the "Year of Clean Water"  
and October 1992 as "Clean Water Month"  
April 10, 1992*

*WHEREAS, clean water is a natural resource of tremendous value and importance, especially in the western states; and*

*WHEREAS, given the scarcity of water in most of the West, there is strong public support for protecting and enhancing the quality of rivers, lakes, ground water, wetlands, and marine waters; and*

*WHEREAS, maintaining and improving water quality is essential to protect public health, preserve fish and wildlife habitat, assure public recreation opportunities, and provide for other beneficial uses of water; and*

*WHEREAS, it is the responsibility of the states, along with every American citizen, to assure clean water as a legacy for future generations; and*

*WHEREAS, substantial progress has been made in protecting and enhancing water quality since passage of the 1972 Federal Water Pollution Control Act (Clean Water Act) due to efforts by Federal, State, and local governments, the private sector, and the public; and*

*WHEREAS, significant water pollution problems persist throughout the nation and significant challenges lie ahead, particularly in the mostly arid West, in the effort to protect water resources from point and non-point sources of conventional and toxic pollution; and*

*WHEREAS, further development of water pollution control programs and advancements of water pollution control research, technology, and education are necessary and desirable; and*

*WHEREAS, October of 1992 is the twentieth anniversary of the enactment of the Clean Water Act;*

*NOW THEREFORE BE IT RESOLVED that the Western States Water Council work with each of its member states to proclaim 1992 as the "Year of Clean Water" and October 1992 as "Clean Water Month" in commemoration of the Council's commitment to the goals of the Clean Water Act.*

**NATIONAL ENERGY POLICY,  
FEDERAL HYDROPOWER PROJECT LICENSING  
and  
WESTERN STATES WATER MANAGEMENT**

The Western States Water Council carefully followed federal efforts to enact a national energy policy, particularly provisions related to federal hydropower project licensing, as described earlier in this report. In response to proposed House and Senate legislation, the Council adopted the following position.

The Council strongly supported sections amending the Federal Power Act and the Land and Water Conservation Fund Act to recognize state and local resource management decisions, reduce unproductive intergovernmental jurisdictional conflicts, and promote the wise and balanced development and protection of water and related land resources. The Council opposed any efforts to preempt state and local water resources management decisions in the siting of energy projects, particularly as it relates to federally licensed hydropower projects and nuclear waste management repository site characterization activities.

*POSITION  
of the  
WESTERN STATES WATER COUNCIL  
concerning  
NATIONAL ENERGY POLICY,  
FEDERAL HYDROPOWER PROJECT LICENSING  
and  
WESTERN STATES WATER MANAGEMENT  
Salt Lake City, Utah  
July 10, 1992*

*WHEREAS, the House and Senate have passed legislation to establish a new national energy policy, respectively H.R. 776 and S. 2166; and*

*WHEREAS, several provisions in both bills address water development, management and protection; and*

*WHEREAS, western states support and encourage the enactment of a balanced national energy policy, which recognizes legitimate state water planning and management authority; and*

*WHEREAS, western state water law and federal energy policy must be integrated to achieve the optimal development, management and protection of western water and energy resources; and*

*WHEREAS, several states have enacted laws protecting designated river segments; and*

*WHEREAS, state and local governments have acquired and set aside or otherwise protected certain lands and waters for public purposes, including parks and wildlife refuges; and*



*WHEREAS, under existing law, the Federal Energy Regulatory Commission is only required to consider and not defer to such state and local decisions in its hydropower project licensing process; and*

*WHEREAS, under existing law, the potential exists for public lands and waters to be taken for private gain (by exercising the eminent domain powers under Section 21 of the Federal Power Act); and*

*WHEREAS, the so-called "Miller amendments" to H.R. 776 exempt state and local government lands from the possible exercise of eminent domain authority and prohibit the licensing of new hydroelectric power projects on state protected river segments except projects of the Corps of Engineers and Soil Conservation Service specifically authorized by the Congress; and*

*WHEREAS, the Congressional Research Service reports that the Nation's estimated undeveloped hydroelectric capacity is about 22 gigawatts, that the Miller amendments would remove approximately 75 megawatts of potential new capacity, and that such a loss could easily be achieved with efficiency improvements at existing hydroelectric facilities;*

*NOW THEREFORE BE IT RESOLVED the Western States Water Council strongly supports enactment of Sections 3103 and 3104 of H.R. 776 amending the Federal Power Act and the Land and Water Conservation Fund Act to explicitly recognize state and local resource management decisions, reduce unproductive intergovernmental jurisdictional conflicts, and promote the wise and balanced development and protection of water and related land resources.*

*BE IT FURTHER RESOLVED that the Western States Water Council continue to work with the Western Governors' Association, the Federal Energy Regulatory Commission, other federal agencies, and the Congress to forge a cooperative state and federal working relationship to optimize the beneficial use of our water and power resources under the federal hydropower licensing process.*

*BE IT FURTHER RESOLVED that the Western States Water Council opposes Section 804 of H.R. 776 and any efforts to preempt state and local water resources management decisions in the citing of energy projects, particularly as it relates to federally licensed hydropower projects and nuclear waste management repository site characterization activities.*

## PROTECTING GROUND WATER QUALITY

In response to the release of EPA's final report, "Protecting the Nation's Ground Water: EPA's Strategy for the 1990's," the Council adopted the following position. It highlights the federal government's longstanding policy of deferring to the states to manage and protect ground water, and objects to EPA requiring states to develop comprehensive ground water protection plans for EPA's approval. The Council called on EPA to modify its ground water strategy to recognize a true state-federal partnership, consistent with current statutory authority, and urged adequate federal financial assistance for state ground water pollution control programs.

*POSITION*  
*of the*  
*WESTERN STATES WATER COUNCIL*  
*on*  
*PROTECTING GROUND WATER QUALITY*  
*July 10, 1992*

*WHEREAS, ground water is a critically important natural resource, especially in the mostly arid West; and*

*WHEREAS, ground water management - the protection of its quality and its orderly, rational allocation and withdrawal for beneficial use - requires cooperation among all levels of government; and*

*WHEREAS, states recognize the importance and role of comprehensive ground water planning in overall water management; and*

*WHEREAS, the federal government has a longstanding policy of deferring to the states to develop and implement ground water management and protection programs; and*

*WHEREAS, western states have legal systems to allocate ground water rights and further have the responsibility for ground water quality protection; and*

*WHEREAS, EPA has prepared its final report, "Protecting the Nation's Ground Water: EPA's Strategy for the 1990's," which establishes ground water policy direction for EPA; and*

*WHEREAS, the policy direction would require states to develop comprehensive ground water protection plans, the content and substance of which are subject to review and approval by EPA, which is in conflict with the traditional deference by the federal government to states' authority in the administration of ground water quality and quantity regulation; and*

*WHEREAS, EPA is formulating funding allocation policies, particularly with respect to the "set-aside" of certain Clean Water Act Section 106 monies, that also indicate a shift away from the traditional federal role of deference to state authority in ground water management; and*

*WHEREAS, EPA lacks statutory authority to impose ground water program requirements on states, as the approvals and sanctions in the strategy contemplate; and*

*WHEREAS, EPA's strategy and draft guidance document do not adequately address the changes within EPA and other federal agencies necessary to coordinate federal ground water programs;*

*NOW THEREFORE BE IT RESOLVED that the Western States Water Council urge the U.S. Environmental Protection Agency to modify its ground water strategy to reflect a true state-federal partnership, consistent with its current statutory authority, and supported by an adequate level of grant funding for states that does not simply re-direct funds that would otherwise be available to state water pollution control programs.*

## SAFE DRINKING WATER ACT IMPLEMENTATION

Continuing concern over the growing costs of meeting federal safe drinking water standards, led the Western Governors' Association, National Governors' Association, and others to endorse statutory changes. EPA established a national implementation workgroup to review safe drinking water regulations. The Council encouraged EPA to develop clear and simple standards and regulations that leave states maximum implementation flexibility. Further, the Council urges Congress to help cover more of the costs of new regulatory mandates.

*POSITION*  
*of the*  
*WESTERN STATES WATER COUNCIL*  
*concerning*  
*SAFE DRINKING WATER ACT IMPLEMENTATION*  
*Albuquerque, New Mexico*  
*October 9, 1992*

*WHEREAS, states and public water supply systems have made substantial progress in protecting drinking water and America has the safest drinking water in the world; and*

*WHEREAS, there is an increasing disparity between demands the federal government places on states and localities and the resources it provides to meet those demands; and*

*WHEREAS, some drinking water requirements are not justified based on the risks posed to the public, and the costs to implement these requirements sometimes outweigh their benefits; and*

*WHEREAS, the National Governors' Association has adopted an eight point plan for improving the nation's drinking water program that recommends statutory changes, improving program efficiency and increasing the availability of resources; and*

*WHEREAS, the Western Governors' Association and the Governors' Forum on Environmental Management have endorsed similar plans; and*

*WHEREAS, EPA has established a National Implementation Work Group to review Phases I, II, and V of the federal drinking water rules;*

*NOW THEREFORE BE IT RESOLVED that the Western States Water Council urge Congress to expeditiously pursue reauthorization of the Safe Drinking Water Act to provide flexibility to states and public water supply systems to provide a safe, dependable drinking water supply.*

*BE IT FURTHER RESOLVED that the Western States Water Council urge Congress to appropriate \$100,000,000 to help states meet mandated regulatory costs and to provide 75% of the costs for any additional new requirements. State and local units of governments should commit themselves to seeking additional resources to help close the remaining resource gap.*

*BE IT FURTHER RESOLVED that the Western States Water Council support the National Implementation Work Group in their effort to examine and recommend changes to the Safe Drinking Water Regulations. EPA is encouraged to develop clear and simple drinking water standards and regulations that provide maximum flexibility to states as the regulations are implemented.*

## **BUDGET AND FINANCE**

At the quarterly meeting held April 9, in Portland, Oregon, the Executive Committee approved a budget for FY92/93 of \$377,728.00. A previously approved dues schedule calls for a FY92/93 assessment of \$21,000 per state.

The audit report for FY92/93, prepared by the firm of Hansen, Barnett and Maxwell, was presented to the Executive Committee by the Executive Director at the quarterly meeting on October 9, in Albuquerque, New Mexico. 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.

# HANSEN, BARNETT & MAXWELL

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CERTIFIED PUBLIC ACCOUNTANTS

Member of AICPA Division of Firms  
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Salt Lake City, Utah 84111-2693

## REPORT OF INDEPENDENT ACCOUNTANTS

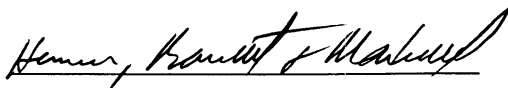
To the Executive Committee  
Western States Water Council

We have audited the accompanying combined balance sheet of the Western States Water Council as of June 30, 1992, 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, 1992, 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.



July 31, 1992

**WESTERN STATES WATER COUNCIL**

**Combined Balance Sheet  
General Fund and Account Groups  
June 30, 1992**

ASSETS

	Account Groups			Totals	
	General Fund	General Fixed Assets	General Long- Term Debt	(Memorandum only)	
				June 30, 1992	June 30, 1991
<b>ASSETS</b>					
CASH - NOTE 2	\$236,922	\$ —	\$ —	236,922	\$232,456
PREPAID EXPENSES	1,549	—	—	1,549	1,733
DEPOSITS	1,649	—	—	1,649	1,649
GENERAL FIXED ASSETS	—	72,507	—	72,507	67,359
<b>OTHER DEBTS</b>					
AMOUNT TO BE PROVIDED FOR PAYMENT OF LONG- TERM DEBT	—	—	1,956	1,956	3,209
AMOUNT FOR PAYMENT OF COMPENSATED ABSENCES	—	—	28,628	28,628	24,762
<b>TOTAL ASSETS</b>	<u>\$240,120</u>	<u>\$72,507</u>	<u>\$30,584</u>	<u>\$343,211</u>	<u>\$331,168</u>

LIABILITIES AND EQUITY

<b>LIABILITIES</b>					
ACCOUNTS PAYABLE	\$ —	\$ —	\$ —	\$ —	\$ 6,348
PAYROLL TAXES PAYABLE	236	—	—	236	287
OBLIGATIONS UNDER CAPITAL LEASE - NOTE 3	—	—	1,956	1,956	3,209
OBLIGATIONS FOR COMPENSATED ABSENCES - NOTE 5	—	—	28,628	28,628	24,762
<b>EQUITY</b>					
INVESTMENT IN FIXED ASSETS	—	72,507	—	72,507	67,359
DESIGNATED FUND BALANCE - EQUIPMENT REPLACEMENT	13,719	—	—	13,719	6,678
UNDESIGNATED FUND BALANCE	<u>226,165</u>	—	—	<u>226,165</u>	<u>222,525</u>
<b>TOTAL LIABILITIES AND EQUITY</b>	<u>\$240,120</u>	<u>\$ 72,507</u>	<u>\$30,584</u>	<u>\$343,211</u>	<u>\$331,168</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, 1992**

	<b>Budget 1992</b>	<b>Actual June 30, 1992</b>	<b>Variance Favorable (Un- Favorable) 1992</b>	<b>Actual June 30, 1990 (For Comparison Only)</b>
<b>REVENUES</b>				
Member States' assessments .....	\$351,000	\$352,350	\$ 1,350	\$340,000
Bureau of Reclamation's contract .....	—	—	—	22,972
Newsletter payments .....	—	—	—	4,600
Interest income .....	—	16,242	16,242	24,509
<b>Total Revenues</b> .....	<u>351,000</u>	<u>368,592</u>	<u>17,592</u>	<u>392,081</u>
<b>EXPENDITURES</b>				
<b>Current</b>				
Salaries .....	189,900	186,103	3,797	174,623
Travel .....	34,000	34,716	(716)	33,185
Payroll taxes and employee benefits .....	59,000	62,114	(3,114)	55,169
Printing and reproduction .....	11,700	12,358	(658)	14,927
Rent .....	18,700	20,864	(2,164)	18,624
Freight and postage .....	12,400	8,703	3,697	11,768
Telephone .....	4,400	4,400	—	5,289
Utilities .....	3,000	1,971	1,029	2,912
Maintenance contracts .....	2,500	1,400	1,100	1,582
Office supplies .....	5,800	5,273	527	8,913
Reports and publications .....	4,500	4,423	77	3,553
Meetings and arrangements .....	5,900	1,352	4,548	5,348
Accounting .....	2,000	2,000	—	2,000
Insurance .....	1,500	1,011	489	802
Contingencies .....	4,500	4,175	325	4,225
Interest .....	—	527	(527)	781
Bank charges .....	—	—	—	139
Capital Outlay .....	1,500	5,268	(3,768)	919
Debt Service - Note 3 .....	6,600	1,253	5,347	6,635
<b>Total Expenditures</b> .....	<u>367,900</u>	<u>357,911</u>	<u>9,989</u>	<u>351,394</u>
<b>EXCESS OF REVENUES OVER EXPENDITURES</b> .....	(16,900)	10,681	27,581	40,687
<b>FUND BALANCE - BEGINNING OF YEAR</b> .....	<u>229,203</u>	<u>229,203</u>	<u>—</u>	<u>188,516</u>
<b>FUND BALANCE - END OF YEAR</b> .....	<u>\$212,303</u>	<u>\$239,884</u>	<u>\$27,581</u>	<u>\$229,203</u>

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



# WESTERN STATES WATER COUNCIL

## Notes to Financial Statements

June 30, 1992

### NOTE 1 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The Western States Water Council was formed in 1965 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. Purchased general fixed assets are recorded as expenditures in the governmental fund at the time of purchase. 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 General Fund.

## Totals 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, 1992 and 1991. 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, 1992 and 1991, was \$217,649 and \$201,923, respectively.

During the fiscal year ended June 30, 1991, the Council established an office equipment replacement fund. This fund will be used to purchase new equipment as it is needed. Deposits into this fund are made monthly in the amount of \$544. The fund is also held by the Utah Public Treasurer's Office and will accrue interest at the same rate as the Investment Fund. The balance in the Equipment Replacement Fund at June 30, 1992 and 1991 was \$13,719 and \$6,678, respectively.

### **NOTE 3 — LEASE COMMITMENTS**

The Council entered into a new lease agreement for its new office location on February 12, 1991. The term of the lease is 3 years. Effective monthly payments are \$1,810.58.

The Council entered into a capital lease for a printer on October 2, 1990. The printer is included in the General Fixed Assets Account at the original cost of \$4,000. The lease term is three years with monthly payments of \$148.32. Interest expense on the capital leases for the years ended June 30, 1992 and 1991 was \$527 and \$781, respectively.

The following is a schedule by years of future minimum lease payments at June 30, 1992:

	<u>Capital Lease</u>	<u>Operating Lease</u>
1993	\$1,780	\$21,727
1994	445	16,295
	2,225	38,022
Less: Amount representing interest	(269)	
Present value of minimum lease payments	<u>\$1,956</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 years ended June 30, 1992 and 1991, was \$21,775 and \$21,409, respectively.

#### **NOTE 5 — COMPENSATED ABSENCES**

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

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

**WESTERN STATES WATER COUNCIL**  
**Schedule of Changes in General Fixed Assets**  
**For The Year Ended June 30, 1992**

	<u>1992</u>
<b>Investment in General Fixed Assets - June 30, 1991</b>	\$67,359
Office equipment additions	5,148
Office equipment retirements	<u>—</u>
<b>Investment in General Fixed Assets - June 30, 1992</b>	<u><u>\$72,507</u></u>

# HANSEN, BARNETT & MAXWELL

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Salt Lake City, Utah 84111-2693

## REPORT OF INDEPENDENT ACCOUNTANTS ON INTERNAL CONTROL STRUCTURE RELATED MATTERS NOTED IN A FINANCIAL STATEMENT AUDIT CONDUCTED IN ACCORDANCE WITH GOVERNMENT AUDITING STANDARDS

To the Executive Committee  
Western States Water Council

We have audited the financial statements of Western States Water Council for the year ended June 30, 1992, and have issued our report thereon dated July 31, 1992.

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.

In planning and performing our audit of the financial statements of Western States Water Council for the the year ended June 30, 1992, we considered its internal control structure in order to determine our auditing procedures for the purpose of expressing our opinion on the financial statements and not to provide assurance on the internal control structure.

The management of Western States Water Council is responsible for establishing and maintaining an internal control structure. In fulfilling this responsibility, estimates and judgments by management are required to assess the expected benefits and related costs of internal control structure policies and procedures. The objectives of an internal control structure are to provide management with reasonable, but not absolute, assurance that assets are safeguarded against loss from unauthorized use or disposition, and that transactions are executed in accordance with management's authorization and recorded properly to permit the preparation of financial statements in accordance with generally accepted accounting principles. Because of inherent limitations in any internal control structure, errors or irregularities may nevertheless occur and not be detected. Also, projection of any evaluation of the structure to future periods is subject to the risk that procedures may become inadequate because of changes in conditions or that the effectiveness of the design and operation of policies and procedures may deteriorate.

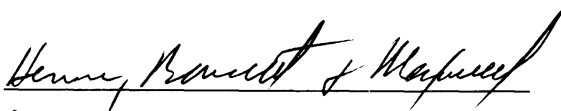
For the purpose of this report, we have classified the significant internal control structure policies and procedures in the following categories.

- Cash
- Prepaid Expenses
- General Fixed Assets
- Liabilities
- Equity
- Revenue
- Expenditures

For all of the control categories listed above, we obtained an understanding of the design of relevant policies and procedures and whether they have been placed in operation, and we assessed control risk.

Our consideration of the internal control structure would not necessarily disclose all matters in the internal control structure that might be material weaknesses under standards established by the American Institute of Certified Public Accountants. A material weakness is a reportable condition in which the design or operation of one or more of the specific internal control structure elements does not reduce to a relatively low level the risk that errors or irregularities in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. We noted no matters involving the internal control structure and its operation that we consider to be material weaknesses as defined above.

This report is intended for the information of the executive committee and management. This restriction is not intended to limit the distribution of this report, which is a matter of public record.

A handwritten signature in cursive script, reading "Henry Brantlett & Associates", written over a horizontal line.

July 31, 1992

# HANSEN, BARNETT & MAXWELL

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## REPORT OF INDEPENDENT ACCOUNTANTS ON COMPLIANCE WITH LAWS AND REGULATIONS BASES ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE WITH GOVERNMENT AUDITING STANDARDS ISSUED BY THE GAO

To the Executive Committee  
Western States Water Council

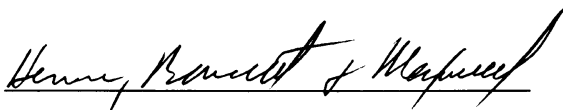
We have audited the financial statements of Western States Water Council as of and for the year ended June 30, 1992.

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.

Compliance with laws, regulations, contracts, and grants applicable to Western States Water Council is the responsibility of the Council's management. As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we performed tests of the Council's compliance with certain provisions of laws, regulations, contracts, and grants. However, it should be noted that our objective was not to provide an opinion on overall compliance with such provisions.

The results of our tests indicate that, with respect to the items tested, Western States Water Council complied, in all material respects, with the provisions referred to in the preceding paragraph. With respect to items not tested, nothing came to our attention that caused us to believe that Western States Water Council had not complied, in all material respects, with those provisions.

This report is intended for the information of the executive committee and management. This restriction is not intended to limit the distribution of this report, which is a matter of public record.



July 31, 1992

## COMMITTEE CHARTERS AND MEMBERS

The committee charters, committee membership and subcommittee assignments follow:

### EXECUTIVE COMMITTEE CHARTER

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.<sup>51</sup>

#### 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.

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<sup>51</sup>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.



## **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

David N. Kennedy - California - Chair

Ric Davidge - Alaska

Betsy Rieke - Arizona

Larry Linser (Alt.) - Arizona

Charles (Chuck) Lile - Colorado

William W. Paty - Hawaii

R. Keith Higginson - Idaho

Vice-Chair

Gary Fritz - Montana

Roland Westergard - Nevada

Eluid Martinez - New Mexico

Dave Sprynczynatyk - No. Dakota

Martha Pagel - Oregon

Robert E. Roberts - South Dakota

Reese Peck (Alt.) - South Dakota

John T. Montford - Texas

Charles Jenness (Alt.) - Texas

Dee C. Hansen - Utah

Hedia Adelman - Washington

Gordon W. Fassett - Wyoming



Back Row: Larry Linser and Keith Higginson

Front Row: Ric Davidge, Martha Pagel, Betsy Rieke, Jeff Fassett,  
Roland Westergard, Dave Kennedy, and Dee Hansen

### **Management Subcommittee**

David N. Kennedy - California - Chair	
R. Keith Higginson - Idaho	Dee C. Hansen - Utah
Vice-Chair	Secretary/Treasurer
Roland D. Westergard - Nevada	D. Craig Bell
Past Chair	Executive Director



D. Craig Bell, Roland D. Westergard, David N. Kennedy, and Dee C. Hansen

### **Water Policy Seminar Subcommittee**

David Kennedy - California - Chairman	
Ric Davidge - Alaska	Steve Sanders - Oregon
R. Keith Higginson - Idaho	Dee C. Hansen - Utah
Roland D. Westergard - Nevada	Hedia Adelman - Washington
Francis Schwindt - North Dakota	Gordon W. Fassett - Wyoming

### **WGA/WSWC Steering Group/National Water Policy Subcommittee**

Dave Sprynczynatyk - North Dakota - Chair	
Betsy Rieke - Arizona	Peter Morros - Nevada
David Kennedy - California	D. Larry Anderson - Utah
J. David Holm - Colorado	Dee C. Hansen - Utah
R. Keith Higginson - Idaho	Hedia Adelman - Washington
Gary Fritz - Montana	Gordon W. Fassett - Wyoming

## 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

R. Keith Higginson - Idaho - Chair

Ric Davidge - Alaska

Michael Brophy - Arizona

David N. Kennedy - California

Rod Walston (Alt.) - California

Daries (Chuck) Lile - Colorado

R. Keith Higginson - Idaho

Donald MacIntyre - Montana

Harley Harris (Alt.) - Montana

Roland D. Westergard - Nevada

Charles DuMars - New Mexico

Richard Simms (Alt.) - New Mexico

Julie Krenz - North Dakota

John Hatch - South Dakota

John Guhin (Alt.) - South Dakota

Pam Reed - Texas

Fred N. Pfeiffer (Alt.) - Texas

Thorpe A. Waddingham - Utah

Tom McDonald - Washington

Myron Goodson - Wyoming



Row One: Roland Westergard, Fred Pfeiffer, Steve Sanders, Dave Kennedy, Ric Davidge, Myron Goodson

Back Row: Keith Higginson, Thorpe Waddingham, John Hatch

### Federal Reserved Water Rights Subcommittee

Mike Brophy - Arizona - Chair

Ric Davidge - Alaska

Harley Harris - Montana

Charles DuMars - New Mexico

Eluid Martinez - New Mexico

Richard A. Simms - New Mexico

Steve Sanders - Oregon

John Hatch - South Dakota

Gordon W. Fassett - Wyoming

### Endangered Species Act Subcommittee

Dee C. Hansen - Utah - Chair

Ric Davidge - Alaska

David Kennedy - California

R. Keith Higginson - Idaho

Roland Westergard - Nevada

Francis Schwindt - North Dakota

Martha Pagel - Oregon

Steve Sanders - Oregon

John Hatch - South Dakota

Hedia Adelman - Washington

Tom McDonald - Washington

Gordon W. Fassett - Wyoming

### Amicus Brief Subcommittee

Roderick E. Walston - California

Donald MacIntyre - Montana

Richard A. Simms - New Mexico

John Guhin - South Dakota

### Legal Education Subcommittee

Roderick E. Walston - California - Chair

Ric Davidge - Alaska

Michael Brophy - Arizona

Richard Simms - New Mexico

## **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

Gordon W. Fassett - Wyoming - Chair

Ric Davidge - Alaska

Betsy Rieke - Arizona

Laurence Linser (Alt.) - Arizona

Harold D. Simpson - Colorado

Ruben Ayala - California

Manabu Tagomori - Hawaii

Gene Gray - Idaho

Gary Fritz - Montana

Thomas E. Cahill - Nevada

Peter Morros (Alt.) - Nevada

Eluid Martinez - New Mexico

Dave Sprynczynatyk - North Dakota

Martha Pagel - Oregon

Marian Gunderson (Alt.) - South Dakota

Charles W. Jenness - Texas

D. Larry Anderson - Utah

Hedia Adelman - Washington

George Christopoulos (Alt.) - Wyoming



Left to Right: Gerhard Knudsen, Ric Davidge, Betsy Rieke, Jeff Fassett, Larry Anderson, Gene Gray, Manabu Tagomori, Larry Linser, Martha Pagel, Tom Cahill

### Ground Water Recharge Study Subcommittee

D. Larry Anderson - Utah - Chair

Laurence Linser - Arizona

R. Keith Higginson - Idaho

Joseph E. Dini, Jr. - Nevada

John Hatch - South Dakota

Hedia Adelman - Washington

### Drought Subcommittee

Ric Davidge - Alaska

David Kennedy - California

R. Keith Higginson - Idaho

Peter Morros - Nevada

Martha Pagel - Oregon

D. Larry Anderson - Utah

Gordon W. Fassett - Wyoming

### FERC Subcommittee

Gary Fritz - Chair - Montana

Ric Davidge - Alaska

Brent Petrie - Alaska

R. Keith Higginson - Idaho

Hedia Adelman - Washington

# 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

Francis Schwindt - North Dakota - Chair	
Mike Menge - Alaska (Vice Chair)	Frank DuBois - New Mexico
Mead Treadwell (Alt.) - Alaska	Wayne Cunningham (Alt.) - New Mexico
Edward Z. Fox - Arizona	Lorna Stickel - Oregon
David G. Kelley - California	Steve Pirner - South Dakota
J. David Holm - Colorado	Ron Lewis - Texas
Joe Nagel - Idaho	Don A. Ostler - Utah
Steve Pilcher - Montana	Mike Llewelyn - Washington
Joseph E. Dini, Jr. - Nevada	William L. Garland - Wyoming



Left to Right: Brian Munson, Wayne Cunningham, Mike Menge, Lorna Stickel, Francis Schwindt, Joe Nagel, Don Ostler

### Clean Water Act Reauthorization Subcommittee

Edward Z. Fox - Arizona - Chair	
Ric Davidge - Alaska	Charles DuMars - New Mexico
Gary Fritz - Montana	Fred N. Pfeiffer - Texas
Joseph E. Dini, Jr. - Nevada	Don A. Ostler - Utah

### Federal Ground Water Policy Subcommittee

Steve Pilcher - Montana - Chair	
David G. Kelley - California	Terral Smith - Texas
Lew Dodgion - Nevada	Don A. Ostler - Utah

### Non-point Source Pollution Control Subcommittee

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

## RULES OF ORGANIZATION<sup>52</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.
- (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,

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<sup>52</sup> The rules incorporate changes that were adopted in January of 1989 at the Council's 93rd quarterly meetings in Las Vegas, Nevada.

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 two-thirds 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.

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