

1997

ANNUAL REPORT

of the

WESTERN STATES WATER COUNCIL

Thirty-First Annual Report

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Council membership and associate membership status is determined based on a request from the governor. Each member state's governor is an ex-officio Western States Water Council member. The governor may appoint up to three Council members or representatives, and as many alternate members as deemed necessary. They serve at the governor's pleasure. (Associate member states are limited to two representatives and two alternates.)

Council officers, including the Chair, Vice-Chair, and Secretary-Treasurer, are elected annually from the membership. State representatives are appointed to working committees, with one representative per state also appointed to an Executive Committee. The Executive Committee attends to internal Council matters with the assistance of a 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.

Meetings of the Council are held on a regular basis, rotating among the member states, with state representatives hosting Council members and guests. In 1997, meetings were held in: Portland, Oregon on March 12-14; Cedar City, Utah on August 21-22; and Carlsbad, New Mexico on November 12-14. 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 contacting the Council's office. Included herein are reports on each of the Council meetings, positions and resolutions adopted by the Council, and a discussion of other important activities and events.

The Council staff during 1997 included: D. Craig Bell, Executive Director; Anthony G. (Tony) Willardson, Associate Director; James P. Alder, Legal Counsel; and a secretarial staff including Cheryl Redding, Lynn Bench, and Julie Stam.

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1997 ANNUAL REPORT

OF THE

WESTERN STATES WATER COUNCIL

INTRODUCTION

The first official meeting of the Western States Water Council was held near Lake Tahoe, at Stateline, Nevada on 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. Over the years, the Western States Water Council has sought to develop a regional consensus on westwide water policy and planning issues, particularly federal initiatives. The Council strives to protect western states' interests in water, while at the same time serving to coordinate and facilitate efforts to improve western water 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**). Other states may be admitted by a unanimous vote of the member states.

Associate membership has also been granted states exploring the benefits of membership, experiencing financial hardship, or otherwise temporarily unable to maintain full membership. In 1997, associate membership included Alaska, Montana, and Washington. Council membership (full and associate) stands at sixteen states.

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Lew Dodgion - Nevada

Don A. Ostler - Utah

Non-Point Source (NPS) Pollution Subcommittee

Mark Charles - Arizona

Don Shroyer - Arizona

Greg Parsons - Colorado

Wallace N. Cory - Idaho

Jim Smitherman - Nevada

Francis Schwindt - North Dakota

Martha Pagel - Oregon

Jack Barnett - Utah

Safe Drinking Water Act Subcommittee

Francis Schwindt - North Dakota

Steve Pirner - South Dakota

LEGAL COMMITTEE

Christopher Estes - Alaska (Associate)
Michael Brophy - Arizona
David Kennedy - California
Roderick E. Walston - California
(Alternate)
Thomas Maddock - California
(Alternate)
Daries (Chuck) Lile - Colorado
Karl Dreher - Idaho
Donald MacIntyre - Montana (Associate)
Harley Harris - Montana (Associate)
(Alternate)
Roland Westergard - Nevada
Charles DuMars - New Mexico
Julie Krenz - North Dakota
Steve Sanders - Oregon
Martha Pagel - Oregon
(Vice-Chair) (Alternate)
John Hatch - South Dakota
(Chair)
John Guhin - South Dakota
(Alternate)
J.E. (Buster) Brown - Texas
Fred N. Pfeiffer - Texas
(Alternate)
Thorpe Waddingham - Utah
Larry Anderson - Utah
(Alternate)
Tom McDonald - Washington (Associate)
Tom Davidson - Wyoming
(Alternate)

General Adjudication Fees Subcommittee

Steve Sanders - (Chair) - Oregon
Karl Dreher - Idaho
Donald MacIntyre - Montana (Associate)
Peter Morros - Nevada
Roland Westergard - Nevada
Chuck DuMars - New Mexico
Larry Anderson - Utah

Federal Reserved Water Rights Subcommittee

Michael Brophy - (Chair) - Arizona
Harley Harris - Montana (Associate)
Charles DuMars - New Mexico
Susan Cottingham - Montana
Steve Sanders - Oregon
John Hatch - South Dakota
Gordon W. Fassett - Wyoming

Endangered Species Act Subcommittee

Dee C. Hansen - (Chair) - Utah
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Charles DuMars - New Mexico
Francis Schwindt - North Dakota
Steve Sanders - Oregon
Marth Pagel - Oregon
John Hatch - South Dakota
Larry Anderson - Utah
Tom McDonald - Washington (Associate)
Gordon W. Fassett - Wyoming

Legal Education Subcommittee

Rod Walston - (Chair) - California
Mike Brophy - Arizona

Amicus Brief Subcommittee

Rod Walston - California
Donald MacIntyre - Montana (Associate)
John Guhin - South Dakota

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EXECUTIVE COMMITTEE

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C. Laurence Linser - Arizona
(Alternate)
David Kennedy - California
Daries (Chuck) Lile - Colorado
Michael D. Wilson - Hawaii
Karl Dreher - Idaho
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Roland Westergard - Nevada
Thomas C. Turney - New Mexico
Dave Sprynczynatyk - North Dakota
Francis Schwindt - North Dakota
(Vice-Chair) (Alternate)
Martha Pagel - Oregon
Nettie Myers - South Dakota
William B. Madden - Texas
John Baker - Texas
(Alternate)
D. Larry Anderson - Utah
Tom Fitzsimmons - Washington (Associate)
Gordon W. Fassett - Wyoming
(Chair)

Management Subcommittee

Gordon W. Fassett - Wyoming
(Chair)
Francis Schwindt - North Dakota
(Vice-Chair)
Michael Brophy - Arizona
(Secretary/Treasurer)
D. Larry Anderson - Utah
(Past Chair)
D. Craig Bell
(Executive Director)

WSWC Water Policy Seminar Subcommittee

Roland Westergard - (Chair) - Nevada
David Kennedy - California
Francis Schwindt - North Dakota
Steve Sanders - Oregon
Dee C. Hansen - Utah
Gordon W. Fassett - Wyoming

Steering Group/National Water Policy Subcommittee

Dave Sprynczynatyk - (Chair) - North Dakota
David Kennedy - California
J. David Holm - Colorado
Peter Morros - Nevada
D. Larry Anderson - Utah
Dee C. Hansen - Utah
Gordon W. Fassett - Wyoming

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 - Policy Coordination and Deactivation

With regard to external positions adopted after being added to the agenda of the meeting by unanimous consent, such external policy positions shall be communicated to the member governors of the Western Governors' Association (WGA) and the WGA Executive Director for review. If after 10 days no objection is raised by the governors, then the policy position may be distributed to appropriate parties. In extraordinary cases, these procedures may be suspended by the Executive Director of the WGA, who will consult with the appropriate WGA lead governors before doing so.

Policy positions will be deactivated three years after their adoption. The Executive Committee will review prior to each regular meeting those policy statements or positions due for sunseting. If a majority of the Executive Committee members recommend that the position be readopted by the Council, then such position shall be subject to the same rules and procedures with regard to new positions that are proposed for Council adoption.

Article XII - Conduct of Meetings

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

Article XIII - Meetings

The Council shall hold regular meetings three times each year 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 XIV - 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 XV - 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.

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

- (3) Express policy positions regarding proposed federal laws, rules and regulations and other matters affecting the planning, conservation, development, management, and protection of water resources in Western States.
- (4) Sponsor and encourage activities to enhance exchange of ideas and information and to promote dialogue regarding optimum management of western water resources.
- (5) Authorize preparation of amicus briefs to assist western states in presenting positions on issues of common interest in cases before federal and state courts.

Article V - Membership

- (1) The membership of the Council consists of not more than three representatives of each of the states of Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming appointed by and serving at the pleasure of the respective Governors. Member states of the Western Governors' Association, which are not members of the Council, shall be added to membership if their respective Governors so request. The Executive Committee may, upon unanimous vote, confer membership upon other western states, which are not members of the Western Governors' Association, if their respective Governor so requests.
- (2) Member states may name alternate representatives.
- (3) Any state may withdraw from membership upon written notice by its Governor.
- (4) The Executive Committee of the Council may, by unanimous vote, confer the status of Associate Member of the Council upon states it deems eligible. Associate Membership may be granted for a period of up to three years, during which time the state may appoint two official observers to participate in Council activities and receive all printed material disbursed by the Council. Associate Member states shall have no vote in Council matters. The Executive Committee shall, through regular Council voting procedures, establish the appropriate level of dues for Associate Member states. In addition to determinations concerning Associate Member states, the Executive Committee may, when appropriate, establish fees for participation in Council activities by non-members.
- (5) If any state fails to pay the appropriate level of dues established by the Executive Committee of the Council, the privilege afforded by virtue of its membership to participate in Council activities and to receive all printed materials dispersed by the Council shall be withheld pending the payment of dues, beginning at the start of the fiscal year following the delinquency.

RULES OF ORGANIZATION⁵

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.

⁵The rules incorporate changes that were adopted in November 1997 at the Council's 125th meetings in Carlsbad, New Mexico.

RULES OF ORGANIZATION CHANGES

The Rules of Organization were changed at the November meeting in Carlsbad, New Mexico to amend Article V - Membership and add paragraph (5) to withhold membership benefits where a state fails to pay the appropriate level of dues established by the Executive Committee.

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REPORT OF INDEPENDENT ACCOUNTANTS ON COMPLIANCE WITH LAWS AND REGULATIONS BASED 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

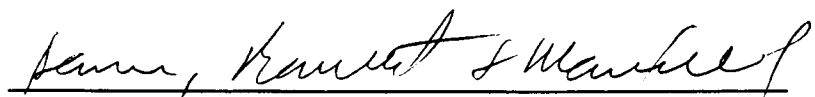
We have audited the financial statements of Western States Water Council as of and for the year ended June 30, 1997, and have issued our report thereon dated August 5, 1997.

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, the objective of our audit of the general-purpose financial statements was not to provide an opinion on overall compliance with such provisions. Accordingly, we do not express such an opinion.

The results of our tests disclosed no instances of noncompliance that are required to be reported herein under *Government Auditing Standards*.

This report is intended for the information of the executive committee and management. However, this report is a matter of public record and its distribution is not limited.

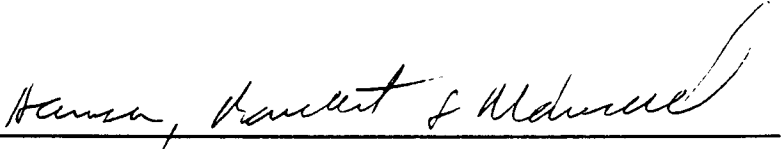


August 5, 1997

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 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 operations that we consider to be material weaknesses as defined above.

We also noted other matters involving the internal control structure and its operation that we have reported to the management of Western States Water Council, in a separate letter dated August 5, 1997.

This report is intended for the information of the executive committee and management. However, this report is a matter of public record, and its distribution is not limited.



August 5, 1997

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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, 1997, and have issued our report thereon dated August 5, 1997.

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.

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.

In planning and performing our audit of the general-purpose financial statements of Western States Water Council, for the year ended June 30, 1997, we obtained an understanding of the internal control structure. With respect to the internal control structure, 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 in order to determine our auditing procedures for the purpose of expressing our opinion on the general-purpose financial statements and not to provide an opinion on the internal control structure. Accordingly, we do not express such an opinion.

**WESTERN STATES WATER COUNCIL
SCHEDULE OF CHANGES IN GENERAL FIXED ASSETS
FOR THE YEAR ENDED JUNE 30, 1997**

	<u>1997</u>
Investment in General Fixed Assets - June 30, 1996	\$ 95,261
Office equipment additions	1,225
Office equipment retirements	<u>(2,528)</u>
Investment in General Fixed Assets - June 30, 1997	<u><u>\$ 93,958</u></u>

ACCOMPANYING INFORMATION

NOTE 3--LEASE COMMITMENTS

The lease agreement for the Council's office expired March 1, 1997. Monthly payments were \$1,982. The Council signed a new lease expiring March 1, 2000. Monthly payments are \$1,693.

The following is a schedule of future lease payments at June 30, 1997.

1998	\$ 20,321
1999	20,321
2000	<u>13,547</u>
	<u>\$ 54,189</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 20% a year, beginning with the second full year of service until the member is fully vested after 6 years of service.

The Council contributes to the Plan an amount equal to 17% of each plan member's gross wages 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, 1997 and 1996, were \$26,010 and \$27,531, 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 8.5 hours per full month of service rendered for the first 5 years. The next 5 years accrues at the rate of 11 hours per month and for years thereafter the rate is 13 hours per month. The number of unused vacation days, up to 40, carries forward to the beginning of the next calendar year.

Since sick leave is not paid upon termination, it is not accrued.

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.

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.

Use of Estimates — The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Actual results could differ from those estimates.

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.

Designated Fund Balance — The council has designated funds to replace office equipment as needed. See Note 2.

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, 1997 and 1996. 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, 1997 and 1996, was \$75,582 and \$87,923, 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 Investment Fund and accrues interest at the same rate as the Investment Fund. The balance in the Equipment Replacement Fund at June 30, 1997 and 1996 was \$25,759, and \$19,428, respectively.

At year end, the carrying amount of the Council's bank deposits was \$10,990 and the bank balance was \$21,295. All of the bank balance was covered by federal depository insurance. Collateralization of deposits is not required by state statute.

**WESTERN STATES WATER COUNCIL
NOTES TO FINANCIAL STATEMENTS
JUNE 30, 1997**

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 States 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. The Executive Committee establishes Council policy, approves the annual budget, and appoints those responsible for administrative and fiscal activities.

Generally accepted accounting principles require that the reporting entity include the primary government, all organizations for which the primary government is financially accountable, and other organizations which by the nature and significance of their relationship with the primary government would cause the financial statements to be incomplete or misleading if excluded. Based on these criteria, there are no component units requiring inclusion in these financial statements.

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

**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, 1997**

	Budget	Actual	Variance	Actual
	1997	1997	Favorable (Unfavorable)	1996 (For Comparison Only)
			1997	
Revenues				
Member states' assessments	\$ 271,500	\$ 269,500	\$ (2,000)	\$ 272,000
Bureau of Reclamations contract	8,000	1,591	(6,409)	15,855
Newsletter receipts	7,025	6,466	(559)	5,275
Symposium fees	—	—	—	8,376
Miscellaneous income	52,000	44,450	(7,550)	7,761
Interest income	<u>12,228</u>	<u>10,928</u>	<u>(1,300)</u>	<u>11,743</u>
Total Revenues	<u>350,753</u>	<u>332,935</u>	<u>(17,818)</u>	<u>321,010</u>
Expenditures				
Current				
Salaries	185,126	176,528	8,598	177,747
Travel	22,613	14,948	7,665	23,321
Payroll taxes and employee benefits	73,078	64,347	8,731	68,126
Printing and reproduction	10,987	15,180	(4,193)	13,341
Rent	24,879	23,472	1,407	24,166
Freight and postage	11,936	10,148	1,788	10,823
Telephone	5,370	4,617	753	5,500
Utilities	2,613	2,364	249	2,386
Maintenance contracts	2,001	3,673	(1,672)	4,322
Contract expenses	—	2,576	(2,576)	—
Office supplies	5,117	1,976	3,141	5,661
Reports and publications	3,194	2,456	738	3,383
Meetings and arrangements	3,700	3,795	(95)	1,700
Accounting	2,428	2,500	(72)	2,300
Insurance	1,141	1,076	65	1,108
Contingencies	5,230	2,097	3,133	2,808
Pension management	1,244	1,134	110	1,158
Net symposium expenses	—	468	(468)	—
Capital outlay	<u>8,528</u>	<u>1,227</u>	<u>7,301</u>	<u>7,899</u>
Total Expenditures	<u>369,185</u>	<u>334,582</u>	<u>34,603</u>	<u>355,749</u>
Excess of Expenditures Over Revenues	(18,432)	(1,647)	16,785	(34,739)
Fund Balance - Beginning of Year	<u>120,061</u>	<u>120,061</u>	<u>—</u>	<u>154,800</u>
Fund Balance - End of Year	<u>\$ 101,629</u>	<u>\$ 118,414</u>	<u>\$ 16,785</u>	<u>\$ 120,061</u>

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

**WESTERN STATES WATER COUNCIL
COMBINED BALANCE SHEET
JUNE 30, 1997**

ASSETS

	<u>General Fund</u>	<u>Account Groups</u>		<u>Totals (Memorandum Only)</u>	
		<u>General Fixed Assets</u>	<u>General Long-Term Debt</u>	<u>June 30, 1997</u>	<u>June 30, 1996</u>
Assets					
Cash	\$ 112,407	\$ —	\$ —	\$ 112,407	\$ 114,208
Account receivable	5,478	—	—	5,478	4,842
Prepaid expenditures	1,824	—	—	1,824	1,563
Deposits	1,501	—	—	1,501	1,501
General fixed assets (office equipment)	—	93,958	—	93,958	95,261
Other Debits					
Amount to be provided for payment of compensated absences	<u>—</u>	<u>—</u>	<u>16,811</u>	<u>16,811</u>	<u>15,792</u>
Total Assets	<u>\$ 121,210</u>	<u>\$ 93,958</u>	<u>\$ 16,811</u>	<u>\$ 231,979</u>	<u>\$ 233,167</u>

LIABILITIES AND FUND BALANCE

Liabilities					
Accounts payable	\$ 2,796	\$ —	\$ —	\$ 2,796	\$ 2,053
Obligations for compensated absences	<u>—</u>	<u>—</u>	<u>16,811</u>	<u>16,811</u>	<u>15,792</u>
Total Liabilities	<u>2,796</u>	<u>—</u>	<u>16,811</u>	<u>19,607</u>	<u>17,845</u>
Fund Balance					
Investment in general fixed assets	—	93,958	—	93,958	95,261
Designated fund balance - equipment replacement	25,759	—	—	25,759	19,428
Undesignated fund balance	<u>92,655</u>	<u>—</u>	<u>—</u>	<u>92,655</u>	<u>100,633</u>
Total Fund Balance	<u>118,414</u>	<u>93,958</u>	<u>—</u>	<u>212,372</u>	<u>215,322</u>
Total Liabilities And Fund Balance	<u>\$ 121,210</u>	<u>\$ 93,958</u>	<u>\$ 16,811</u>	<u>\$ 231,979</u>	<u>\$ 233,167</u>

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

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REPORT OF INDEPENDENT ACCOUNTANTS

To the Executive Committee
Western States Water Council

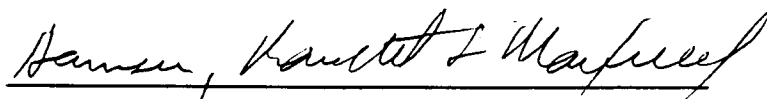
We have audited the accompanying combined balance sheet of Western States Water Council as of June 30, 1997, and the related general fund statement of revenues and expenditures and changes in fund balance - budget and actual for the year then ended. These financial statements are the responsibility of 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, 1997, 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.

In accordance with Government Auditing Standards, we have also issued a report dated August 5, 1997 on our consideration of Western States Water Council's internal control structure and a report dated August 5, 1997 on its compliance with laws and regulations.



Salt Lake City, Utah
August 5, 1997

WESTERN STATES WATER COUNCIL

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WESTERN STATES WATER COUNCIL

**REPORT OF INDEPENDENT ACCOUNTANTS
AND
FINANCIAL STATEMENTS**

June 30, 1997

HANSEN, BARNETT & MAXWELL
A Professional Corporation
CERTIFIED PUBLIC ACCOUNTANTS

RESOLUTION
of the
WESTERN STATES WATER COUNCIL
regarding
FEDERAL NON-TRIBAL FEES IN GENERAL ADJUDICATIONS
Carlsbad, New Mexico
November 14, 1997

WHEREAS, states must conduct lengthy, complicated and expensive proceedings to establish the relative rights to water in water rights adjudications; and

WHEREAS, Congress recognized the necessity and benefit of requiring the United States' claims to be adjudicated in these state adjudications by adoption of the McCarran Amendment; and

WHEREAS, those claiming and establishing their right to water, including federal agencies, are the primary beneficiaries of adjudication proceedings by having the states officially quantify and record these water rights; and

WHEREAS, the courts have determined that under the McCarran Amendment the United States need not pay fees for processing federal claims; and

WHEREAS, the federal claims are typically the most complicated and largest of claims in state adjudications; and

WHEREAS, if the United States does not pay a proportionate share of the costs associated with adjudications, the burden of funding the proceedings unfairly shifts to the state and other water users and often delays completion of the adjudications by depriving the states of the resources necessary to complete them; and

WHEREAS, delays in completing adjudications result in inability to protect private and public property interests or determine how much unappropriated water may remain to satisfy important environmental and economic development priorities.

NOW THEREFORE BE IT RESOLVED that the Western States Water Council ask the Congress to consider that requiring states and private users to fund processing of federal, non-tribal claims in water rights adjudications unfairly shifts the burden of funding these proceedings away from the parties who derive the greatest benefit from the proceeding and effectively establishes an unfunded mandate; and

BE IT FURTHER RESOLVED that the Council urge Congress to pass legislation narrowly tailored to establishing that the United States, when a party to a general adjudication shall be subject to fees and costs imposed by the state to conduct the proceedings to the same extent as private users.

FEDERAL NON-TRIBAL FEES IN GENERAL ADJUDICATIONS

Most Council member states have pending general adjudication proceedings. These large, complicated lawsuits typically involve thousands of water rights holders. Several issues of importance to the region have arisen in these proceedings, including how to finance them. In 1994, a General Adjudication Fee Subcommittee was established under the Legal Committee of the Council, to explore ways to finance general adjudications, including compensation for processing federal claims. In 1996, the Subcommittee was expanded to coverage of all general adjudications issues and federal reserved water rights.

One key issue is who should pay the filing fees for general adjudications. The U.S. Supreme Court has held that the United States is not subject to filing fees in state general adjudications proceedings (*United States v. Idaho*, 113 S. Ct. 1893 (1993)). The State of Idaho in 1994 published a comprehensive reform of its water code attempting to require federal claimants to file directly with the court, give notice to other parties, and prove the validity of any water rights they claim, averting the hardship of the Supreme Court's ruling. A subsequent state supreme court ruling on the amendments specifically avoided deciding whether the comprehensive amendments removed the adjudication from the McCarran Amendment.

An attempt by Oregon to require the United States to pay filing fees in the state's general adjudication was defeated by a Ninth Circuit ruling that the McCarran Amendment prohibited assessing such costs to the United States (*United States v. Oregon*, 1994 WL 715102 (9th Cir. 1994)). The U.S. Supreme Court denied *certiorari*. In response to these rulings, the Council in 1995 adopted a resolution (Position No. 208) supporting the United States' payment of fees incurred in general adjudications proceedings.

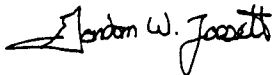
Senator Bob Smith (R-OR) proposed legislation to require the federal government and its agencies to pay filing fees associated with general adjudications and sought input and support for this legislation from the Council. Council members discussed this issue during Council meetings in Carlsbad, New Mexico, and the Council adopted the following position to lend support to the Senator's legislative efforts.

Secretary Babbitt
November 14, 1997
Page 2

recognize the individual States' interest and, very often, the regional interest with respect to water allocation. The policy statement contained in this amendment recognizes that most of the potential conflicts between species conservation and water resource development can be avoided through close cooperation between local, State and Federal authorities. The Committee amendment to the Subcommittee version of this amendment was not based upon agreement or disagreement with the issues addressed therein. Rather, the provision adopted by the Committee more accurately reflects the intent of the original amendment to provide a statement of policy and not an interpretation of law. (Report No. 97-418; page 25-26)

We would hope to be able to work together towards a mutually beneficial approach to implement any amendments to the Endangered Species Act in a way that recognizes the importance of water and water rights to the past, present and future of the West and its people.

Sincerely,

A handwritten signature in black ink, appearing to read "Gordon W. Fassett". The signature is stylized with a large initial 'G' and a cursive 'F'.

Gordon W. "Jeff" Fassett, Chair
Western States Water Council



WESTERN STATES WATER COUNCIL

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

Web Page: www.westgov.org/wswc

November 14, 1997

Position No. 218

Secretary Bruce Babbitt
Department of the Interior
Interior Building
1849 C Street, N.W.
Washington, D.C. 20240

Dear Secretary Babbitt:

On behalf of the Western States Water Council, I am writing to express our interest and concern with respect to changes being proposed in Congress regarding administration and implementation of the Endangered Species Act (ESA). We are encouraged by the recognition of the need to provide landowners and water users more certainty and greater incentives to support species protection and conservation efforts through amendments affecting implementation of the recovery plans, safe harbor agreements and the no surprises provision. As western states' water rights administrators and water managers, we have supported such actions in the past, and we hope to be able to work together toward their effective use in the future.

As you are fully aware, water management and use issues are critical in the West. Friction is created by competing water resource management goals, state and federal, and when individual property rights are not adequately addressed. It appears Congress can not or will not address some of these water law concerns through amendments to the Endangered Species Act. Therefore, we will continue to work pursuant to the policy set out in the ESA towards the resolution of water resource needs and issues in concert with the conservation of endangered species. That policy, enacted fifteen years ago, provides:

It is further declared to be the policy of Congress that Federal agencies shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of endangered species. (16 U.S.C. 1531)

The accompanying Report of the Committee on Environment and Public Works, United States Senate, read:

Subsection 10(d) of S. 2309 adds a new paragraph to subsection 2(c) of the Act, the statement of congressional policy. This amendment is not intended to and does not change the substantive or procedural requirements of the Act with respect to the conservation of endangered or threatened species, nor is the amendment intended to alter in any way any provision of State law, regulation, or rule of law, or of any, interstate compact covering the appropriation, use, or diversion of water. Rather, the purpose of the amendment is to

ADMINISTRATION AND IMPLEMENTATION of the ENDANGERED SPECIES ACT

The Council has monitored the implementation of the Endangered Species Act (ESA) at the state and federal level since the early 1980s. The Council has also taken an active interest in monitoring and contributing to efforts to reauthorize the ESA.

The ESA originally came up for reauthorization in 1992. Legislation to reauthorize the ESA was introduced in 1992, 1993 and 1994, but no serious debate occurred. In 1995, four bills on ESA were introduced before the House. Although numerous bills were introduced in 1996, efforts were again unsuccessful. Work is continuing to develop a consensus bill which may offer a potential for enactment. While reauthorization efforts have not been successful, ongoing implementation funding must be reauthorized periodically. Congress has continued to fund implementation of the Act through appropriations bills.

Due to perceived problems with prior implementation and the lack of fruitful reauthorization efforts, the Clinton Administration and federal agencies involved in ESA implementation have promulgated changes in implementation under the existing Act to deal with problem areas. The new policies are attempting to work more closely in partnership with states and affected parties to implement the ESA. Other key policy changes include: an exemption from ESA requirements for de minimis land holdings; the "no surprises" policy (otherwise known as "a deal is a deal") to provide flexibility and certainty for landowners involved in habitat conservation plans (HCPs); a greater use of negotiated HCPs; an effort to institute county-wide or area-wide plans, multiple-species or habitat-based plans for preserving all listed species at once rather than separately; providing technical assistance in endangered and threatened species planning; and streamlining other ESA requirements.

The Council approved an update version of an earlier letter expressing support for these reforms to provide greater certainty for landowners and water right holders, and urging greater cooperation towards the resolution of water resource needs and issues in concert with the conservation of endangered species.

Ms. Fort
November 14, 1997
Page 2

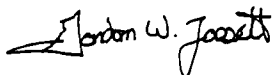
and expedited regulatory action. While enhanced federal policy and budget coordination, as well as expedited regulatory reviews and decisions, are commendable objectives, the prospect for their attainment is dim. The proposal for federally created and operated top-down river basin commissions is unworkable and unacceptable.

We also have serious concerns with other recommendations in the report which either directly conflict with existing state water law and policy, or fail to provide for adequate partnerships between the state and federal agencies on key policy issues. For example, while the report states an intention to "respect" state water law, the report also recommends changes in state management of ground water and allocation of conserved water which are contrary to current state laws.

Recommendations relative to the review of authority and operations of existing dams and hydroelectric facilities, would promote federal objectives without adequately addressing concomitant state interests. Other recommendations would condition distribution of federal funds based solely on federal policy considerations without adequate state and stakeholder input. Such undertakings will require effective partnerships between state and federal agencies, as well as affected stakeholders.

In summary, the federal government's preemption of state authority is not the way to address these complex issues. The report, if implemented, moves us in the wrong direction, adversely affecting states' abilities to efficiently address our water resource problems. The federal role creates more problems than it resolves. The recommendations regarding state authority are placed in the context of the report's conclusion that federal policy toward state water allocation law should change to "respect" rather than the long-established congressional policy of "deference." The Western States Water Council strongly opposes this and similar recommendations in the draft report. More detailed review comments on the report will be provided by many of our member states.

Sincerely,



Gordon W. "Jeff" Fassett, Chair
Western States Water Council

cc: Commission Members
Ex-Officio Members and their reps
Staff



WESTERN STATES WATER COUNCIL

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

Web Page: www.westgov.org/wswc

November 14, 1997

Position No. 216

Ms. Denise Fort, Chair
Western Water Policy Review Advisory Commission
Associate Professor of Law
University of New Mexico Law School
1117 Stanford NE
Albuquerque, NM 87131-1216

RE: Western Water Policy Review Advisory Commission Report

Dear Ms. Fort:

On behalf of the Western States Water Council, representing sixteen states, I extend the Council's appreciation for the time spent and commitment made by the Commission and its staff in preparation of the report to the President on "Federal activities in the nineteen Western States which directly or indirectly affect the allocation and use of water resources...." We appreciate the difficulty of the task undertaken by the Commission.

However, we are disappointed with the draft final report and its primary recommendations related to "fundamental changes in institutional structure and government process...." We cannot support another top-down approach to water management by federal river basin commissions, which have been tried and failed in the past. Such an approach is the antithesis of the local bottom-up watershed approaches to identifying and solving water-related problems, which have gained favor and momentum westwide. The report's overall reliance on federal action and authority contrasts with existing interstate compacts and the growing recognition of the pivotal role states must play if we are to successfully deal with the complex challenges we face in water resources. In order to effectively carry out this role, flexibility and innovation at the state level is necessary. This emerging model for water governance moves away from federal mandates and institutional structures.

The draft report states an intention to support such local initiatives. However, the suggested use of federal basinwide governance pilot projects ignores the success of many innovative state and local efforts undertaken without the need for federal direction or federal leadership, and threatens further successes by the imposition of the proposed governance structure.

Importantly, the draft report fails to define the problem or problems that require a federal solution in the form of a federal river basin plan to be developed by a federal river basin commission. Local watershed councils or groups should be allowed to define and resolve problems without forced federal solutions as a condition of priority federal financial assistance

WESTERN WATER POLICY REVIEW ADVISORY COMMISSION

The Council provided the following position in response to the draft final report of the Western Water Policy Review Advisory Commission. The Council had worked to provide information to the Commission the previous year, in the form of a report on water problems and challenges from the perspective of western states, as well as innovative responses to those challenges. The Commission was established by the Congress to report on "federal activities in the nineteen western states which directly or indirectly affect the allocation and use of water resources...." The following letter expresses disappointment with the draft final report in several respects. Council members expressed the view that the proposed recommendations either directly or indirectly conflict with existing state water law and policy and that the new governance recommendations proposed by the Commission would be unworkable and unacceptable. The Commission is due to submit its final report in 1998.

POSITION
of the
WESTERN STATES WATER COUNCIL
on
PROTECTING GROUND WATER QUALITY
March 14, 1997
(revised and reaffirmed)

Position No. 215
(Originally No. 194)
adopted 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;

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 urges the U.S. Environmental Protection Agency that its ground water strategy 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.

PROTECTING GROUND WATER QUALITY

The Western States Water Council revised and reaffirmed a position originally adopted July 10, 1992 in response to the release of EPA's final report, "Protecting the Nation's Groundwater: EPA's Strategy for the 1990s." The position highlighted the federal government's longstanding policy of deferring to the states to manage and protect groundwater, and objected to EPA's policy of requiring states to develop comprehensive groundwater protection plans for EPA's approval. The Council called on EPA to modify its groundwater strategy to recognize a true state-federal partnership, consistent with current statutory authority, and urged adequate federal financial assistance for state groundwater pollution control programs.

**RESOLUTION
of the
WESTERN STATES WATER COUNCIL
concerning
PIPES AND OTHER CONVEYANCES PROVISION
of the
SAFE DRINKING WATER ACT AMENDMENTS OF 1996
Carlsbad, New Mexico
November 14, 1997**

WHEREAS, on August 6, 1996, the United States Congress enacted the Safe Drinking Water Act Amendments of 1996 finding that the definition of a "public water system" should, with some exemptions, include water districts which provide primarily agricultural water with incidental domestic use; and,

WHEREAS, implementation of the 1996 amendments would place a heavy financial burden on both rural canal water users, growers, low-income farm workers and irrigation districts; and,

WHEREAS, the 1996 amendments provide that irrigation districts would be exempt from the definition of a "public water system" if the Administrator of the U.S. Environmental Protection Agency and/or relevant state official determines that alternate potable water is provided for drinking and cooking; and,

WHEREAS, other water delivery organizations would be exempt if the supplied irrigation water is intended to be used for purposes other than bathing, cooking and drinking; and,

WHEREAS, the various states have been given primacy by the U.S. EPA to conform their respective state Safe Drinking Water laws with the 1996 amendments;

NOW THEREFORE BE IT RESOLVED that the Western States Water Council urges that the Administrator of the Environmental Protection Agency develop guidelines for the states in implementing the new definition of a "public water system" that consider the purpose of the water supply systems;

BE IT FURTHER RESOLVED that the Western States Water Council urges the various states to take into account the potential negative financial impacts of Section 1401(4) (42 U.S.C. 300f(4)) on largely rural communities.

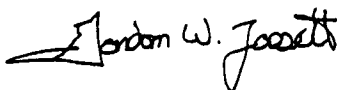
We are aware, of course, that Section 134 is written in the permissive. It provides that states *may* require a public water system to submit a water conservation plan as a condition to the receipt of state revolving funds, but we are concerned that this language may be misinterpreted in practice. For example, some of the states undoubtedly will require public water systems to have effective conservation plans in place as a condition on state revolving funds, but that conservation plan may not be consistent with all aspects of the EPA guidelines. If not, a conflict may arise whether the EPA guideline, or the regional plan, should prevail. Obviously, we are very concerned that the regional plan, often developed upon significant investments of time and study, must prevail in these circumstances.

We are also concerned that there will be conflict between conservation requirements proposed by the United States Bureau of Reclamation (BOR) and the guidelines adopted by the EPA Administrator. The BOR has proposed that conservation measures be implemented for all recipients of water from BOR projects. In the western states, this includes many of the large public water systems. If BOR and EPA are both adopting conservation guidelines that will apply to these public water systems, the potential for conflict between the federal regulations, and particularly between the federal regulations and state regulations, is apparent.

For these reasons, we urge that the Administrator adopt a simple, but expedient approach to these conservation guidelines that will alleviate the problems addressed here. We ask that the guidelines, when drafted, allow the states to adopt their own conservation guidelines for public water systems and, when so adopted, provide that those guidelines shall be deemed to be consistent with the guidelines adopted by the Administrator. This would allow states to adopt the EPA guidelines wherever local guidelines do not exist, while at the same time giving true meaning to the permissive wording of Section 134 by allowing the states to adopt conservation plans of their own choosing.

The Western States Water Council would be pleased to assist members of your staff in drafting the precise wording of a state-based conservation plan exemption. If you are amenable to the inclusion of such a desirable provision in your guidelines, please contact either of the undersigned and we will arrange prompt assistance in incorporating our ideas into your guidelines.

Sincerely,

A handwritten signature in black ink, appearing to read "Gordon W. Fassett". The signature is stylized with a large, sweeping initial 'G' and a cursive 'F'.

Gordon W. (Jeff) Fassett
Chairman



WESTERN STATES WATER COUNCIL

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

Web Page: www.westgov.org/wswc

March 18, 1997

Position No. 214

The Honorable Carol M. Browner
Administrator
Environmental Protection Agency
401 M Street, SW
Washington, D.C. 20460

Dear Administrator Browner:

On behalf of the Western States Water Council, we are writing to express our concern over a potential conflict between the 1996 amendments to the Safe Drinking Water Act (Pub. L. No. 104-182) and current water conservation policy in the western states. We believe that through early communication of our concerns to your office, this conflict can be resolved to the mutual satisfaction of all concerned, and we request your cooperation to that end.

As you are aware, Section 134 of the Safe Drinking Water Act, as amended, (SDWA) provides:

(a) Not later than two years after the date of enactment of the Safe Drinking Water Act Amendments of 1996, the Administrator shall publish in the *Federal Register* guidelines for water conservation plans for public water systems serving fewer than 3,300 persons, public water systems serving between 3,300 and 10,000 persons, and public water systems serving more than 10,000 persons, taking into consideration such factors as water availability and climate.

(b) Loans or Grants. -- Within one year after publication of the guidelines under subsection (a), a State exercising primary enforcement responsibility for public water systems may require a public water system, as a condition of receiving a loan or grant from a state loan fund under section 1452, to submit with its application for such loan or grant a water conservation plan *consistent with such guidelines*.

42 U.S.C. §1455 (emphasis added).

Because water resources in the West are scarce and valuable, most of the western states have aggressive water conservation programs already in place for public water systems, as that term is defined in the SDWA. The adoption of EPA guidelines for water conservation that are compatible with these existing plans will either require considerable research and analytical effort by the Administrator, or will pose the potential for conflict between generic conservation guidelines and these highly regionalized plans. With only two years to develop the guidelines, we believe that the Administrator will be unable to expend the research time necessary for true compatibility, and the result will be inevitable conflict between the guidelines and actual practice in many states.

WHEREAS, “a State exercising primary enforcement responsibility for public water systems may require a public water system, as a condition of receiving a loan or grant from a State loan fund..., to submit with its application for such loan or grant a water conservation plan”⁴ consistent with the Administrator’s water conservation plan guidelines; and

WHEREAS, the statutory language providing for a water conservation plan consistent with federal guidelines is strictly voluntary; and

WHEREAS, longstanding federal policy emphasizes the primacy of states in matters of water resource administration; and

WHEREAS, western states already administer water conservation plans and programs that take into account local hydrologic, climatic, economic, and environmental factors; and

WHEREAS, it has been the experience of the western states that executive implementation of federal water law and policy in areas in which the states have already assumed leadership responsibility has often resulted in an unauthorized, overly-burdensome, duplicative, conflicting, inflexible, and inappropriate intrusion on western state water resource administration; and

WHEREAS, it has also been the experience of the western states that laws drafted with apparently permissive opportunities for states to adopt federal policies have often been later interpreted to require compliance with those permissive policies before the states can take advantage of the intended benefits of the federal law;

NOW THEREFORE BE IT RESOLVED, that the Western States Water Council desires that the Administrator of the Environmental Protection Agency develop water conservation plan guidelines under the Safe Drinking Water Act Amendments of 1996 that recognize and support state primacy in matters of water resource administration; further, that the Administrator implement the water conservation plan provision of the Safe Drinking Water Act Amendments of 1996 in a manner consistent with the provision’s voluntary and limited objectives; and that the water conservation plan guidelines construe, not supplement, the Safe Drinking Water Act Amendments of 1996 and are drafted to allow states a simple and flexible approach to water conservation planning;

BE IT FURTHER RESOLVED, that to communicate the message of the resolution to the Administrator of the Environmental Protection Agency, the Western States Water Council, through its Chairman and Executive Director, shall execute and deliver the attached letter to the Administrator, expressing the concerns and recommendations reflected in this resolution.

⁴Pub. L. No. 104-182, §134, 110 Stat. 1613, 1679 (1996).

RESOLUTION
of the
WESTERN STATES WATER COUNCIL
regarding
IMPLEMENTATION OF THE WATER CONSERVATION PLAN PROVISION
of the
SAFE DRINKING WATER ACT AMENDMENTS OF 1996
Portland, Oregon
March 14, 1997

WHEREAS, on August 6, 1996 the United States Congress enacted the Safe Drinking Water Act Amendments of 1996 finding that the federal government needed to provide assistance to local communities to meet federal drinking water requirements; and

WHEREAS, the Congress also found that “the Federal government commits to maintaining and improving its partnership with the States in the administration and implementation of the Safe Drinking Water Act”¹ and that “States play a central role in the implementation of safe drinking water programs, and States need increased financial resources and appropriate flexibility to ensure the prompt and effective development and implementation of drinking water programs”² and that “more effective protection of public health requires maximizing the value of the different and complimentary strengths and responsibilities of the Federal and State governments in those States that have primary enforcement responsibility for the Safe Drinking Water Act;”³ and,

WHEREAS, the Safe Drinking Water Act Amendments of 1996 provide for federal grants to states that establish state revolving loan funds for the purpose of providing financial assistance to community water systems to facilitate compliance with national drinking water standards and otherwise further the public health protection objectives of the Safe Drinking Water Act; and

WHEREAS, the Safe Drinking Water Act Amendments of 1996 further provide for the development and publication by the Administrator of the Environmental Protection Agency of guidelines for water conservation plans for public water systems; and

WHEREAS, upon developing water conservation plan guidelines, the Administrator must consider such locally-determined factors as water availability and climate; and

¹Pub. L. No. 104-182, §3(3), 110 Stat. 1613, 1615 (1996).

²Pub. L. No. 104-182, §3(4), 110 Stat. 1613, 1615 (1996).

³Pub. L. No. 104-182, §3(8)(B), 110 Stat. 1613, 1615 (1996).

**RESOLUTION
of the
WESTERN STATES WATER COUNCIL
concerning
FINANCIAL ASSISTANCE
from
SAFE DRINKING WATER STATE REVOLVING FUNDS
Portland, Oregon
March 14, 1997**

WHEREAS, the Safe Drinking Water Act Amendments of 1996 authorized a drinking water state revolving fund program to assist public water systems in financing the costs of infrastructure needed to achieve or maintain compliance with federal requirements and to protect the public health; and

WHEREAS, section 1452 authorized the Administrator of the United States Environmental Protection Agency (EPA) to award capitalization grants to the states, which in turn can provide low-cost loans and other types of financial assistance to eligible projects; and

WHEREAS, the EPA has developed draft Final Guidance for the administration of drinking water state revolving funds; and

WHEREAS, the draft Final Guidance prohibits states from providing financial assistance for the construction of dams or reservoirs, or the acquisition of land and water rights; and

WHEREAS, a subsequent EPA proposal to allow limited financial assistance for such projects for small systems is unnecessarily restrictive; and

WHEREAS, dams and reservoirs are an integral component of many drinking water systems in western states; and

WHEREAS, water rights are also an integral component, and a legal requirement under state law, for drinking water systems in the West; and

WHEREAS, the acquisition and development of water rights may be necessary and the most cost-effective alternative to improve the safety and reliability of drinking water systems in many of the arid western states; and

WHEREAS, such actions may also be the most environmentally sound solution to a specific problem, consistent with state and federal environmental laws;

NOW, THEREFORE, BE IT RESOLVED that the Western States Water Council urges EPA to accord the states appropriate flexibility in administering their drinking water state revolving funds and allow financial assistance to be provided for the construction and rehabilitation of dams or reservoirs, the purchase of necessary land, and the purchase or acquisition of required water rights, when such actions have been determined to be the most cost-effective alternative and environmentally sound solution for providing a safe and reliable supply of drinking water.

**SAFE DRINKING WATER STATE REVOLVING FUNDS;
IMPLEMENTATION OF THE WATER CONSERVATION PLAN PROVISION
of the
SAFE DRINKING WATER ACT AMENDMENTS OF 1996;
and,
PIPES AND OTHER CONVEYANCES PROVISION
of the
SAFE DRINKING WATER ACT AMENDMENTS OF 1996**

The Safe Drinking Water Act (SDWA), as reauthorized and amended in 1996, was the subject of three separate positions adopted by the Council during 1997. The first of these, position No. 213, deals with the operation and management of the state revolving loan funds (SRFs) created by the 1996 amendments. It urges the Environmental Protection Agency to reverse the guidance it originally published, and to adopt a position that would allow states the flexibility to provide financial assistance "for the construction and rehabilitation of dams or reservoirs, the purchase of necessary land, and the purchase or acquisition of required water rights, when such actions have been determined to be the most cost-effective alternative and environmentally sound solution for providing a safe and reliable supply of drinking water."

The second position adopted by the Council relating to the Safe Drinking Water Act deals with implementation of the Act. The 1996 amendments directed that the Administrator of the EPA develop conservation guidelines, with which the local state environmental director can require compliance in order for water providers to qualify for SRF funding. Therefore, these guidelines could potentially become mandatory for water providers. Position No. 214 was adopted during the March, 1997 Council meetings and urges EPA to develop required guidelines for water conservation plans that "recognize and support state primacy in matters of water resource administration; ...implement the water conservation plan provisions...in a manner consistent with the...voluntary and limited objectives (of the Act); and that the water conservation plan guidelines...are drafted to allow states a simple and flexible approach to water conservation planning." A letter was also drafted and sent to the EPA Administrator highlighting these important issues.

Position No. 217 was adopted in response to the problems arising from the attempted enforcement of SDWA requirements against irrigation water distribution systems. The problem originated in the Imperial Valley of California, where homeowners without any other source of water had resorted to taking water out of irrigation canals for domestic purposes. Position No. 217 calls on the EPA Administrator to develop guidelines for states in implementing the new definition of a "public water system" that consider the purpose of water supply systems, so as to avoid placing a heavy financial burden on rural canal users, growers, low-income farm workers and irrigation districts.

POSITIONS AND RESOLUTIONS

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 policy positions and resolutions, many of which address proposed federal laws, rules and regulations and other matters affecting the planning, conservation, development, management, and protection of western water resources. The following were adopted by the Western States Water Council in 1997.

Western Water Law - Forfeiture and Abandonment Report

Originally a workplan item from 1996, a survey of state forfeiture, abandonment or lack of perfection laws was completed by Council staff during 1997. Copies of the survey results were made available for members review and comment and the finished product delivered to selected representatives of each state. Prompted by increased application of these laws due to ever-increasing competition for limited project water supplies, as in the case of the Newlands Reclamation Project in Nevada, the survey hopefully provides an important reference resource for member states in an area where relatively few cases are reported that have actually sought to apply these laws.

Schwindt, WSWC Vice-Chair and Chief of North Dakota's Environmental Health Section, was named to the subcommittee.

Watershed Planning and Management

Local watershed initiatives have multiplied across the West over the past several years. A lot of work has been done by various groups examining various aspects of local watershed initiatives. Many of these initiatives deal primarily with water quality. EPA, Region VIII, asked the Western Governors' Association (WGA) to prepare a report on how interested states can encourage watershed efforts, including sources available to states to assist them. The WGA and WSWC began considering the watershed initiative phenomenon in the early 1990s in connection with a series of workshops, and the WGA requested the Council prepare the report for EPA. Numerous programs and approaches were reviewed. A draft report, the State Watershed Strategy Guidebook, was completed by the end of 1997 and distributed for comment. These comments will be incorporated by the staff in the final report to be completed in 1998.

Water Quantity and Water Quality Interrelationships

As a follow up to the workshop that was held on this subject in Portland, on March 14, 1997, WSWC and WGA staff met with representatives of EPA who agreed that it would be useful for them to participate in a forum with state representatives to examine how to better resolve issues that arise between EPA and the states when matters of water quality come into conflict with allocation considerations. It is anticipated that this opportunity will present itself in the course of a series of workshops being held under the auspices of the WGA to examine state implementation of the Clean Water Act regarding total maximum daily loads (TMDLs).

Western Water Policy Review Advisory Commission

Congress enacted the Western Water Policy Review Act in 1992, and directed the President, "...to undertake a comprehensive review of Federal activities in the nineteen Western States which directly or indirectly affect the allocation and use of water resources." The Act also authorized creation of the Western Water Policy Review Advisory Commission, composed on twenty-one members, including specific key Congressmen and others appointed by the President. However, its federal advisory commission charter was not granted until September 1995, so the deadline for a report was extended to the end of 1997. With an expansive mandate, but relatively little time and money to accomplish its tasks, the Commission looked for cooperation from states in completing many of the Commission's tasks. The Commission asked the Council to provide it with information drawn from member states. During 1996, this information was gathered and compiled in a draft report, together with an appendix consisting of the individual state responses. A draft report, Water in the West Today: A States' Perspective, was distributed prior to the meeting of the Council with members of the Commission in November 1996. The final report was presented to the Commission in February of 1997. The Commission is expected to publish the Council's report, together with other studies in connection with its own final report in the summer of 1998.

water conservation, water transfers, data collection and management, ground water management areas, aquifer storage and recovery, and many other topics.¹⁷

On the House side, the bill was sponsored by Rep. Ron Lewis, a WSWC member. The outline for the original bill was largely the product of years of study and work by the Texas Parks and Wildlife Department, Texas Natural Resources Conservation Commission and Texas Water Development Board (TWDB). Craig Pedersen, TWDB Executive Administrator, and a WSWC member, called the bill "a major, major step forward for state water policy." The legislature approved \$34M over two years to implement the bill. Governor George W. Bush signed it.

In March, WSWC Associate Director Tony Willardson was invited to testify on the bill before the Texas State Senate's Natural Resources Committee and answered members questions for an hour on comparable laws, programs and policies in other western states.

Water Conservation

The Bureau of Reclamation's final water conservation and acreage limitation rules were published on December 18, 1996 and most took effect on January 1, 1997.¹⁸ The new rules replace prior rules for administration of the Reclamation Reform Act of 1982 (RRA). In a letter to WSWC Executive Director Craig Bell, Commissioner Eluid Martinez wrote, "These new RRA rules are an important step toward better water management in the West.... I look forward to working with you to implement the new water conservation program."

The Council played a key role in soliciting state's comments and urging adoption of the preferred alternative, identified in a final environmental impact statement (EIS), that favored voluntary incentives to promote conservation. While others similarly supported such action, some environmental groups were strongly opposed to voluntary guidelines and favored mandatory rules. The Council and WGA continue to encourage water conservation through voluntary and flexible incentives to meet reasonable goals, as opposed to penalties for non-compliance with rigid mandates. Council staff supported implementation of the new rules by reviewing a number of related water conservation planning guidebooks for Reclamation, while Bureau officials kept WSWC members up to date on progress with a new field services water conservation program..

Amendments in 1996 to the Safe Drinking Water Act directed the Environmental Protection Agency (EPA) to develop water conservation guidelines for municipalities. EPA's Office of Ground Water and Drinking Water and the American Water Works Association sponsored a Water Conservation Guidelines Workshop on September 22, with WSWC participation. This was the first opportunity for interest groups to provide input into the development of these guidelines. State and federal officials attended, along with water utilities and environmental groups. A separate but related EPA subcommittee meeting was held on the morning of September 23. Of note, Francis (Fritz)

¹⁷Western States Water, Issue # 1194, April 4, 1997 and Issue #1204, June 13, 1997.

¹⁸ 61 Federal Register 66754.

The WGA report emphasizes reducing risks and losses by avoiding development and redevelopment in floodplain areas. Great importance is placed on improving floodplain mapping and creating a high level of local ownership and confidence as a key to implementing many recommendations in the report. Another key is the recommendation that states consider establishing a "state trust fund" for cost sharing flood risk reduction and mitigation programs, as well as buying out properties using this fund to bridge the difference between losses covered by flood insurance and fair market value. The report states, "Western leaders must recognize the factors that compel local jurisdictions to redevelop areas that are prone to flooding. To break the cycle of repetitive loss, creative and innovative tools must be developed...that enable sound flood plain management.... State and local governments are now facing the reality that the federal government is shifting away from its traditional strategy of using structural measures to reduce flood damages and is placing ever greater emphasis on non-structural measures.... It is the responsibility of all levels of government, businesses and industry, as well as citizens -- particularly those located in a floodplain -- to reduce flood damages and the soaring flood-related disaster costs."

The report presents 21 recommendations for improving future floodplain management and flood issues coordination and communication. Some of these include identification of areas at risk and development of proactive flood mitigation plans, creation of a state task force and designation of a lead state cabinet-level official responsible for development and implementation of state plans and flood-loss reduction strategies, prioritizing floodplain delineation studies, encouraging communities to join the National Flood Insurance Program, establishing and maintaining a permanent interagency hazard-mitigation team, encouraging public/private development of flood-warning systems, and increasing education, training and technical support. It calls on the President to form a federal task force comprised of all agencies having disaster relief programs to review and revise policies, rules and regulations to eliminate gaps in delivery of services and duplication, as well as insure consistency in funding, cost sharing and priority setting. It specifically asks the Army Corps of Engineers and Fish and Wildlife Service to review standards for levee maintenance and repair to address and/or eliminate conflicting aquatic species protection rules.

Ground Water Recharge Demonstration Program

Council staff continued to work on a report for the Bureau of Reclamation on its ground water recharge demonstration program. A draft was circulated at the November Council meetings, while an additional case study was to be completed. The final draft will be circulated for members comment, and the final report submitted for Reclamation's use in preparing its final program report to the Congress.

Texas Senate Bill One

"God Bless Texas!" declared Lieutenant Governor Bob Bullock as his gavel fell, closing the 75th session of the Texas Legislature on June 2. He declared that the "very heart of our legacy," and the most critical piece of legislation passed was Senate Bill 1, which he called "milestone legislation," that will significantly change water resources management in Texas. "We have designated a blueprint for a comprehensive plan to protect the resource most vital to future generations of Texans." SB1 authorizes various activities covering state water planning, drought preparedness,

Elsewhere in the West, in Nevada the Truckee River over-topped its banks and flooded downtown Reno, closing businesses, casinos and the airport. In Seattle, Washington two major bridges were damaged by mudslides and were closed indefinitely. Many homes were also threatened by mudslides. A damaged water treatment plant in Ashland, Oregon left thousands dependent on water hauled in by the National Guard. In Idaho, roads and hundreds of homes were damaged. Devastating flooding along the Red River in North Dakota displaced thousands and required extensive emergency relief and federal aid.

The Governors of California, Idaho, Nevada, Oregon, and Washington declared 70 counties disaster areas. Lawmakers in California introduced bills to provide financial help and tax relief to local governments and residents affected by the floods. The federal government pledged help, with Vice President Al Gore visiting disaster sites. Gore promised \$9M towards flood-fighting costs in California, and \$10M in aid for Idaho. He announced the release of \$42M in emergency federal funds for road repairs in five states, and the U. S. Department of Labor set aside \$25M for temporary flood cleanup jobs. California, Idaho and Nevada were declared federal disaster areas, and later Washington was added. The designation of major disaster areas by the President made federal aid available. The Federal Emergency Management Agency working with officials in the affected states to determine how much federal help was needed.

The Western Governors' Association organized a Flood Working Group to address western flood management issues, and WSWC staff participated in an initial meeting on April 22, in Las Vegas, Nevada. WGA Staff Council and state emergency managers discussed federal agency policies developed after the 1993 Midwest floods, disaster declarations, public and private levee problems, cumulative impacts, worst case scenarios and needs for assistance, and improving communication and collaboration between state and federal agencies. In December, WGA released, *An Action Plan for Reducing Flood Risk in the West*, which was approved by the governors at their winter meeting in Seattle, Washington on December 4-5. Suggestions for implementing the plan will be sought. Given extensive changes in federal flood management policies in response to the 1993-97 events, a number of recommendations focus on actions needed at the state level to bring state programs "up to speed." Individual governors were asked to review their state flood management and risk reduction programs and make appropriate changes suggested in the report.

The report points out that there was significant loss of life and property damage from the 1996-97 flood season across much of the West and Northern Plains, particularly in California, Colorado, Idaho, Montana, Nevada, North and South Dakota, Oregon and Washington. "It is estimated that over \$5 billion in federal, state and local funds will be spent helping Western communities and agricultural interests recover." The report continues, "All too often, after floodwaters have subsided, the emphasis has been placed on rebuilding structures and trying to restore flood victims' lives back to normal as quickly as possible.... There is a growing societal impatience with continually 'bailing out' those who choose to live at risk."¹⁶

¹⁶Western States Water, Issue #1228, November 28, 1997.

report, the majority concluded that the U.S. Forest Service lacked legal and constitutional authority to require bypass flows. The report concludes that: (1) the Congress has not delegated to the Forest Service the authority necessary to allow it to require that water users give up a part of their existing supply or transfer their water rights to the United States as a condition of the grant or renewal of federal permits; (2) decrees entered into in McCarran Amendment water rights adjudications are intended by Congress to result in a binding allocation of the rights to the use of water for federal and non-federal purposes, including the use of water to attain the secondary purposes of the National Forests; and (3) the Forest Service can attain the secondary purposes of the National Forests by obtaining and exercising water rights in accordance with state and federal law and by working with owners of non-federal water rights to achieve USFS purposes without interfering with the diversion, storage, and use of water for nonfederal uses.

Flooding

New Year's storms brought a deluge that inundated many parts of the Northwest and California. While rivers receded, the losses continued to rise. The worst storms and flooding in decades caused at least 29 deaths and billions of dollars in damage. Estimates top \$2B in California, with the Department of Food and Agriculture listing losses of \$155M: \$68M in farm buildings and infrastructure; \$51M in crop losses; and \$22M in drown or lost livestock and milk production. San Francisco alone estimated property damaged at \$3.5M, plus another \$2M to clean up debris and repair damage at the city's Hetch Hetchy Dam, just outside Yosemite National Park, that cut off water for the first time since deliveries began in 1934. In the Central Valley, the rushing waters breached some 30 levees. Ironically, given multiple years of drought, levee maintenance hadn't been a high priority. Eleven rivers were at flood stage. Thousands of homes and businesses were swamped. In Yosemite National Park, flooding closed park roads, stranded tourists, over-whelmed the sewage treatment plant and tainted potable water supplies. Winter wheat, fruit trees, vineyards and other crops, tons of fertile topsoil, livestock and farm equipment have been washed away.¹⁴

Without existing water projects, damages would have been much worse. For example, in California, at the height of the storms, Folsom Dam on the American River recorded inflows of 252,000 cubic feet of water per second, compared to the normal 10,000 cfs. Without the dam, downstream floodwaters would have risen ten feet above Sacramento's levees. To the north, Oroville Dam on the Feather River, and to the south, Don Pedro Dam on the Tuolumne River, Pardee and Camanche Reservoirs on the Mokelumne River and New Melones Dam on the Stanislaus River, all helped protect major urban areas and avert even more loss of life and millions of dollars in flood damages. A levee failure forced the evacuation of Marysville and Yuba City. After the massive flooding, one interest group devoted to river protection, urged Congress to stop putting money into flood control projects and instead discourage building in flood-prone areas. Ironically, after the flooding in California and resulting emergency releases, major multipurpose reservoirs such as Folsom, above Sacramento, were not expected to fill.¹⁵

¹⁴Western States Water, Issue #1183, January 17, 1997.

¹⁵Western States Water, Issue #1182, January 10, 1997.

and South Dakota were declared federal disaster areas. Many deaths were caused by the bitter cold weather. In Montana, ice jams on the Yellowstone River threatened flooding around Billings. Elsewhere, heavy mountain snows led to a number of avalanches in Utah, closing canyons roads and leading to the deaths of three experienced outdoorsmen. Blowing snows closed I-80 in Wyoming. In the South and Southwest, freezing rains also disrupted traffic and closed roads in Arizona, Texas, and Louisiana. The Navajo Nation declared an emergency due to deep snow and sent help to reach isolated reservation homes and stranded livestock. Many people across the West suffered periods without access to either water or food or power. Warmer spring weather brought flooding.

Federal Water Rights Task Force

The 1996 Farm Bill created a water rights task force to address several issues resulting from conflicts due to the U.S. Forest Service's (USFS) practice of requiring minimum bypass flows before issuing easements and permits for existing non-federal water development facilities on federal lands. Many western water users, farms, cities and towns, depend upon water supplies originating in watersheds that are largely comprised of USFS managed federal lands. Colorado Senator Hank Brown (R-CO) successfully sponsored a compromise provision establishing the task force and creating an 18-month moratorium prohibiting USFS from requiring any "relinquishment of the unimpaired use of a decreed water right as a condition of renewal or reissuance of a land use authorization permit."¹² While it was created in response to a controversy involving bypass flow requirements on existing water use facilities on National Forest lands, a letter to every governor made it clear that the issues to be addressed are much broader, involving a number of existing problems and potential solutions in dealing with rights to waters arising on Forest Service lands.

The Federal Water Rights Task Force met a number of times in 1997 and explored issues related to the acquisition of waters for federal environmental protection purposes, as well as the use of federal authority over easements, rights-of-way and permits to influence or prohibit the exercise of non-federal vested property rights under state law. It also explored measures to resolve or avoid conflicts. Chairman Bennett Raley wrote asking governors for comments on the work of the Task Force, important issues and "any actual controversies in your State relating to water issues on National Forest lands, and any information you might have on the nature and scope of potential conflicts over water in or derived from national Forest lands in the future." The letter also asks for information on: "(i) whether and how instream or minimum flow water rights are obtained and protected within national Forests in your State; and (ii) whether water can be obtained for these purposes through purchase or exchange from willing sellers under State law." Interested governors were also invited to designate someone to work with and advise the Task Force.

Sherl Chapman, a WSWC member, was appointed to the Task Force, which held a special joint meeting and public hearing in conjunction with the WSWC meetings in Portland in March. The Task Force released a draft report in August, followed shortly by its final report.¹³ In the final

¹²Western States Water, Issue #1179, December 20, 1996.

¹³Western States Water, Issue # 1215, August 29, 1997 and Issue #1217, September 12, 1997.

El Niño/Climate

El Niño, a warming of equatorial sea surface temperatures that changes usual weather patterns and the frequency and severity of storm events, had a much publicized effect on the weather. It was the subject of congressional hearings and used to market everything from snow tires to cheese. The National Oceanic and Atmospheric Agency's (NOAA) Climate Prediction Center released a summary of weather conditions frequently observed during El Niño events in terms of significant departures from normal (using the 102-year historical record, 1895-1996) for specific periods. The generalizations projected warmer temperatures across the eastern states for November-December, as well as the northern tier states from December-February. Colder temperatures were expected from southern New Mexico and Texas to Florida and the mid-Atlantic states.

Drier than normal conditions were projected for northern and eastern Idaho, Montana, Wyoming and adjacent areas in other states from December-March, as well as the Ohio River Basin and adjacent states from January-March. Wetter weather was expected from October-December in the Southwest and much of the Mississippi River System, and continuing across much of California, Arizona, New Mexico, southern Utah and Colorado, Texas and the central plains, as well as Gulf Coast states through January-March.

Climate Prediction Center products and services can be accessed over the internet at <http://nic.fb4.noaa.gov> and include climate monitoring and prediction of variations, development of databases and their use for determining current global and regional anomalies and trends, as well as analysis of linkages to the complete climate system. State-specific summaries of possible El Niño weather conditions, by climate divisions, are also available. Additional information can be accessed through links to Regional Climate Centers, the National Weather Service, U.S. Department of Agriculture and Natural Resources Conservation Service.

The House Resources Water and Power Subcommittee held a hearing on preparedness for the "El Nino" weather phenomenon. Chairman John Doolittle (R-CA) in commencing the hearing said: "It is very possible that even with one of the wettest seasons in recent years, there could be water supply shortages in the West." There is so much uncertainty about the potential impacts of this phenomenon, that I believe it is imperative the Congress hear from the top U.S. scientists involved in El Nino predictions, as well as from water and emergency response managers who must prepare for these events." After hearing from such experts he concluded: "It is clear that we have made significant improvements in our ability to forecast longer range weather patterns such as El Nino events, as well as specific storm systems. However, the hearing revealed gaps in modeling capabilities, communications among agencies and especially data collection."¹¹

WSWC staff monitored and kept members apprised of weather and water supply developments. New Year's storms led to catastrophic flooding in the Northwest and California. Weather extremes also battered the Midwest and Northern Plains, where continuing blizzards dropped "wind chill" temperatures to 80 degrees below zero and drifting snows closed roads and stranded many. North

¹¹Western States Water, Issue #1225, October 31, 1997 and Issue #1228, November 28, 1997.

and coordinating council be created. The National Governors Association also considered and approved a resolution by Governor Johnson specifically calling on federal agencies to support a regional drought policy and coordinating council.

At a White House meeting on February 3, a memorandum of understanding regarding future management of drought in the West was signed by Governor Schafer and U.S. Department of Agriculture (USDA) Secretary Dan Glickman. Other signatories include Governor Johnson and Colorado Governor Roy Romer, WGA Vice-Chair, together with Interior Secretary Bruce Babbitt, Small Business Administrator Philip Lader, and James Lee Witt, Director of the Federal Emergency Management Agency. Other federal agencies were encouraged to join and sign, including the Department of Commerce and Army Corps of Engineers.

Governor Schafer opined, "Many may wonder why we're focusing on droughts when today's headlines are filled with stories about flooding, but the best time to plan for and reduce the impacts of future droughts is when we are not in the middle of a crisis. This coordination council will provide the forum to develop thoughtful solutions." Governor Johnson added, "There is general agreement among states and federal agencies that the institutional response to drought is not well organized and could be more proactive. The MOU gives the relevant governmental entities at all levels the needed direction and the charge to be more proactive and responsive to future droughts. We have the opportunity to build off the experiences and lessons learned from this past year's drought." Secretary Glickman observed that the federal government does an outstanding job dealing with disasters such as flooding and fires, but added, "We can do better when it comes to drought."¹⁰

Federal and state representatives and other interest groups, including WSWC staff, met in Denver on February 24, to define the mission and objectives of the proposed coordinating council, determine its membership and appropriate organizational structure, discuss necessary administrative support, and set a June date for its first meeting. Of note, it was suggested that the new council would assume future responsibility for implementing many of the recommendations in the WGA's Drought Response Action Plan. WSWC staff serve at a working group level.

Separately, the Bureau of Reclamation and National Drought Mitigation Center sponsored a series of workshops on "Planning for the *Next* Drought." A workshop held in Salt Lake City, Utah on November 17-19, was cosponsored by the Western States Water Council. The workshops were designed to benefit natural resource, water utility and emergency managers and planners, and federal, state, tribal and local officials with special interests in drought and its effects on agriculture, energy, recreation, transportation, and water supplies. Topics included definitions and concepts, planning methods, impacts, environmental issues, internet resources, vulnerability assessments, municipal and urban drought planning, state and tribal planning, involving stakeholders, drought and climate indices, monitoring, and sources of federal assistance. For information contact the National Drought Mitigation Center, University of Nebraska, P.O. Box 830749, Lincoln, NE 68583-0749; (402) 472-6707; fax 472-6614; or ndmc@enso.unl.edu.

¹⁰Western States Water, Issue #1186, February 7, 1997.

Some Congressional Representatives were very critical of the Initiative, and some state officials suggested that without concrete details it sounded a lot like "Trust me!" Ms. Karen Hobbs, CEQ, speaking before the WSWC meetings in Carlsbad, New Mexico stated, "With this program, we are trying to show that the [federal] government can be responsive and that we can change the way we deliver services. We can work better with state and local governments on a range of issues.... We have to get our act together in the federal family.... We have to support local efforts along rivers, and we have to do that better...."⁹ WSWC staff continued to monitor implementation of the Initiative, and a number of western rivers were nominated.

Clean Water Act

The Western States Water Council has had a long-standing interest in many Clean Water Act (CWA) issues. The Committee worked to influence the national debate when the CWA was reauthorized in 1987, and since then, has monitored its implementation in matters of interest to western states. The CWA was again due for reauthorization in 1992. Intense national debate through 1996 failed to achieve consensus, and the Council has continued to be involved in discussions with federal officials and other states and organizations concerning reauthorization.

Working together with WGA representatives, the Council has engaged in extensive discussions on legislative proposals addressing western concerns. Among these concerns are the inclusion of arid states provisions for ephemeral and intermittent streams (Arid Area provisions) and abandoned mine provisions ("Good Samaritan" provisions). Other subjects of discussion were Total Maximum Daily Loads (TMDLs), "Treatment as a State" under section 518, performance partnership agreements, watershed-based water quality management strategies and non-point source pollution control provisions and funding issues.

Computer Infobases and the Internet

The Council staff has accomplished several tasks related to "computerizing" Council documents over the past year. They have created a Folio infobase containing Western States Water newsletters for the past six years and have also created a Folio infobase for the library index. These developments will facilitate electronic access to Council documents for Council members and other interested persons. Internet and e-mail access for the Council staff have also been developed. A web site has been created for the Council, and went online in February 1997.

Drought

A final WGA Drought Response Action Plan, which WSWC staff helped prepare, was released with a cover letter signed by North Dakota Governor Ed Schafer, WGA Chairman, and New Mexico Governor Gary Johnson, WGA's Lead Governor on Drought. The letter points out that there have been frequent droughts of national significance, but there is no forum at the national level for addressing and resolving related issues. The report includes many recommendations for improving governmental drought planning and response and suggested that a western regional drought policy

⁹Western States Water, Issue #1186, February 7, 1997 and Issue #1230, December 12, 1997.

take, or in other words, a balancing of claims, as well as a rational relationship between the claims and the settlement, if it is to ever come about.

Susan Williams provided a conference summary, claiming that tribes hold both a club and a carrot. The club being the ability to call for the water, because the reserved right is vested, even if not quantified. The carrot is the funding that she believes will build the necessary projects to fulfill the tribes' water claims. Ms. Williams argued that all agencies should share the costs of settlements, not just the DOI or the Department of Indian Affairs, because water claims affect all aspects of western life. She also stressed that the PIA standard cannot be abandoned, as no other method exists to quantify the reserved right, although she invited attendees to look for ways to improve it.

American Heritage Rivers

During the President's State of the Union Address, he announced a new American Heritage Rivers initiative to help protect and restore outstanding stretches of rivers. "Tonight, I announce that this year I will designate 10 American Heritage Rivers, to help communities alongside them revitalize their waterfronts and clean up pollution." River reaches will be selected from a list of nominations submitted by communities based on their importance given the nation's culture and history, as well as past and future economic development, public health and environmental quality. President Clinton instructed his Cabinet to prepare recommendations for actions to make it easier for communities to access federal programs, resources and expertise to support restoration, protection and revitalization efforts, and an interagency task force developed what is now known as the American Rivers Initiative. The President also called on state, local and tribal governments, private companies and nonprofit organizations for help.

The Council on Environmental Quality (CEQ) later published a related notice in the Federal Register on May 19, further explaining the initiative. Designated rivers will receive special recognition and focused federal support. They will also serve as models of the most innovative and successful approaches to river restoration and protection. No new state or local regulatory requirements are created. Also, no new funding sources have been identified or created. Rather, the Cabinet has been asked to look at existing programs and services that communities engaged in a variety of river restoration efforts can utilize. The goal of the initiative is to provide communities with better access to information, tools and resources, and to help encourage private funding of local efforts deserving special recognition. River nominations were due by December 10.

The proposed benefits of designation as an American Heritage River include appointment of a "River Navigator," or "caseworker," to act as a liaison for all federal resources, and an interagency task force will identify technical and funding needs, and coordinate the delivery of federal services, including training, economic modeling, and planning assistance. A federal "good neighbor policy" will also ensure agency actions have a positive effect on the resources of communities. The Administration will also encourage private sector partnerships/cooperation. Services that will also be available to all river communities include an improved delivery of existing federal services and programs, information on river conditions and demographics via the internet, a "talent bank" to share knowledge and techniques about community river restoration and revitalization efforts, and a catalog of available federal support.

The Thursday morning session centered on the management of water rights and water quality issues in Indian Country. The first speaker was Jeff Fassett, Wyoming State Engineer, who told participants that the Big Horn settlement in Wyoming was an example of what not to do in settling Indian reserved water rights claims. He stressed that many important issues may be addressed in negotiations, such as implementation and day-to-day operations of a water system, which are not before the courts. He urged the creation of systems that are responsive to individuals' concerns. Stan Pollack, of the Navajo Department of Justice, spoke of the difficulties that the Endangered Species Act is creating for southwestern tribes currently negotiating their reserved water rights. Susan Williams, of the law firm of Gover, Williams & Janov, addressed Walton rights, stating that a non-Indian successor-in-interest to an Indian allottee receives only a vested and transferable right to use water for irrigation. She also stated that any water not continuously used by the non-Indian successor reverts to the tribe for reallocation. John Weldon, of Salmon, Lewis & Weldon, addressed the marketing of tribal water rights, and concluded that water marketing is not looked upon favorably by Congress, especially if it involves an interstate transfer.

Verna Teller, a Council Member of the Isleta Pueblo, related the difficulties faced by her community in enforcing Clean Water Act (CWA) regulations against the City of Albuquerque, New Mexico. Albuquerque has filed a writ of certiorari with the U.S. Supreme Court and a decision in that case was expected by late November. Don Bach, of DeWitt, Ross & Stevens, illustrated the situation existing in Wisconsin where three tribes have been denied "Treatment as a State" (TAS) status under § 518 of the CWA. He argued that the Environmental Protection Agency's (EPA) trust responsibilities conflict with its decisionmaking responsibilities. He urged that a cross-section of stakeholders should meet to resolve problems before TAS litigation occurs across the U.S. Harley Harris, Montana Assistant Attorney General, suggested that WSWC, NARF and the EPA co-sponsor a conference on TAS issues. He stressed that implementation of § 518 issues won't be through the application of case law, but must result from working together. Leigh Price, EPA Region VIII Attorney, agreed that dialogue between all parties is very important. He stated that EPA invites individuals to make comments, through their respective states, and that tribes are becoming better at opening the door to input from citizens.

During the Friday morning session of the symposium, the participants heard about the prospects for getting settlement legislation through Congress. Michael Jackson, Minority Professional Staff Member to the Senate Committee on Indian Affairs, described the prospects for getting bills through Congress as cloudy, but added that this might be a lull before the storm. Tim Glidden, Majority Counsel to the House Resources Committee, sees the 2-3 year outlook as promising, due to the booming economy. Jim Bush, a representative of the Western Regional Council (WRC), stated that the WRC supports the idea that tribes should be able to market their water. Robert Pelcyger, of Fredericks, Pelcyger, Hester & White, said that he believes the settlement negotiation process cannot be separated from the political process. Martha Pagel, representing Oregon Governor Kitzhaber, who is the co-lead Governor for Lands and Water in the Western Governors' Association, offered Oregon's perspective on dealing with tribal water issues, and particularly, Oregon's commitment to using the watershed approach and creating partnerships with the tribes to solve water problems.

Senator Jon Kyl (R-AZ), addressed the conference. He stated that while settlements are better than litigation, the era of big settlements is over. Senator Kyl also argued that there must be give and

American Rights Fund (NARF) and the Western States Water Council (WSWC). Held at the Crowne Plaza in downtown Phoenix, the symposium drew 300 participants representing tribes, states, and federal agencies. During the opening day, participants heard discussions on gathering background information, the role of technicians in negotiations, identifying parties and issues, and how negotiations bind larger groups. Joe Ely, Project Coordinator for Stetson Engineering, urged tribes to use their water to assist in establishing "practicably irrigable acreage" (PIA). Lonnie Schardt, Managing Engineer for Boyle Engineering Corporation, stated that PIA is an outdated standard that should be avoided. Rather, he urged that each tribe's needs, desires and specific situation be given greater consideration when attempting to establish a reserved water right.

Next, Chris Kenney, Director of the Office of Native American Affairs, Bureau of Reclamation, spoke of the dynamics existing in the federal Administration, and what part the individual agencies play in creating a settlement. Craig Sommers, President of ERO Resources Corporation, expressed the idea that there are no standard answers to problems in Indian water rights claims. The only good answer is one that all the parties can agree upon. Rodney Lewis, General Counsel for the Gila River Indian Community, related some of the difficulties his tribe has experienced in negotiating. Peter Monson, Department of Justice (DOJ) Trial Attorney, stressed the importance of obtaining a final decree as the end product of a negotiation. Terry Uhling, General Counsel for J. R. Simplot Corporation, contrasted the differences in technical and legal requirements involved in the Fort Hall Reservation and the Nez Perce settlement negotiations.

The Wednesday afternoon session focused on the Clinton Administration's settlement policy and the implementation of settlements. The first speaker was David Hayes, Counselor to the Secretary of the Interior and Chairman of the Working Group on Indian Water Rights. Mr. Hayes listed some of the problems currently facing Indian water rights settlements. He also stressed the increasing importance of partnerships in settlement negotiations. John Lange, Assistant Chief of the Indian Resources Section, DOJ, explained the role that DOJ plays in settlement negotiations. He indicated that DOJ is looking for finality, certainty, and for a release of claims in settlement negotiations.

Clive Strong, Idaho Assistant Attorney General, agreed that the traditional negotiations model is breaking down and that flexibility and creativity is needed, as well as a streamlining of the federal process. He also expressed concern that states are being forced to put all their claims on the table, thus causing alternative claims to become tribal expectations. Clement Frost, Chairman of the Southern Ute Tribe, stressed that negotiation is incomplete without implementation. Mr. Frost argued that the Secretary of the Interior should support the tribes' decision to use resources under the law. Paul Russette, Jr., of the Chippewa Cree Tribe, agreed that a new negotiating model is needed. He urged that tribes focus on the idea of a "sustainable homeland," and argued that water development needs to take place regardless of the status of the quantification process. Chuck DuMars, of the law firm of Sheehan, Sheehan & Stelzner, stated that political power today is with the environmental concerns and that this has tended to thwart settlements. He proposed working at the watershed level with individual stakeholders will result in more success. He also argued that the mindset of DOJ regarding certainty and finality can be damaging to development and to settlement negotiations.

states could share experiences, compare strategies and identify opportunities to more efficiently and effectively establish and implement state TMDL plans.

The governors also adopted a resolution on flood mitigation and recovery issues. The governors strongly supported the goal of reducing flood vulnerability through effective flood plain management and flood mitigation planning and urged the adoption of consistent and cost-effective federal policies that promote mitigation and enhance the disaster recovery process. The governors also concluded that state flood disaster recovery policy must also be examined to ensure compatibility and cost-effectiveness. The governors urged that the states be proactively involved in the development of new federal policy to assure that flood recovery costs are not simply shifted to state and local government, but that the policies empower states and locals to more effectively and efficiently respond to, and devise ways to reduce future flood damages. The governors directed the WGA staff to establish a task force of states to work with appropriate federal agencies to develop recommendations to reduce flood damages in the West. The task force was to submit a report to WGA at the WGA winter meeting in 1997. As a final matter of business, the governors elected Tony Knowles, Governor of Alaska, as Chair and Jim Geringer, Governor of Wyoming, as Vice-Chair for the coming year.

Winter Meeting

The State of Washington hosted the Winter Meeting of the Western Governors' Association in Seattle, on December 4-5. Governor Gary Locke first welcomed everyone stating, "Washington is pleased to host the governors of our neighboring states which share so many issues in common with us," adding that they would consider "...regional and national issues that affect the everyday lives of people in Western states." State and congressional efforts to amend the Endangered Species Act (ESA) and improve its implementation were at the top of the agenda. The governors are also expected to approve a task force report on reducing flood risks.⁷

The governors supported adoption of S. 1180, introduced by Senators Dirk Kempthorne (R-ID) and John Chafee (R-RI), to amend the Endangered Species Act. It incorporates many WGA recommendations presented to the Congress in 1995.⁸ WGA Chairman, Alaska Governor Tony Knowles, focused on strengthening the integrity of the Act. "Our goal is to incorporate three basic principles: sound science involving the best technologies; prudent management with a focus on conservation and sustainability; and involving stakeholders in a responsive, public process. Doing development and recovery right means protecting our air, water and wildlife for present and future generations."

Water Management Symposium - Settlement of Indian Reserved Water Rights Claims

The Fifth Symposium on the Settlement of Indian Reserved Water Rights Claims was held in Phoenix, Arizona on October 8-10, 1997. The Symposium was co-sponsored by the Native

⁷Western States Water, Issue #1228, November 28, 1997.

⁸Western States Water, Issue # 1220, October 3, 1997.

approved reports from WGA affiliated organizations, including the WSWC, and a list of recommended projects and initiatives for the WGA for FY98.

The first plenary session focused on the subject: "National Interests, States' Rights, Local Control: Western Communities Brace for the 21st Century." Guests included: the U.S. Deputy Secretary of Agriculture, Richard E. Rominger; Rueben Miller, former mayor of Fairfield, Idaho and former chair of the national Small Town Task Force; and Roger Chinn, Commissioner for McKenzie County, North Dakota. They discussed with the governors needed policy and program changes to provide communities with the flexibility to both protect natural resources and develop sustainable economies.

A second plenary session provided an opportunity for governors to discuss issues and strategies to use information technologies to serve citizens more efficiently and cost effectively. The discussion focused on issues of welfare reform, privacy, and telecommunications deregulation.

On June 24, a final plenary session focused on states' capacity to deal with natural disasters. Special guests included James Lee Witt, Director of the Federal Emergency Management Agency; Doug Wheeler, California Resources Agency Secretary and the state's Flood Task Force Chair; and Tom Clifford, Chairman of the Task Force on Business Redevelopment for Grand Forks, North Dakota. Noting that the West has experienced a series of extreme weather related disasters, most notably floods and droughts, the discussion focused on ways to enhance the ability of the West to respond to these and other emergencies. In connection with the drought in particular, the WGA efforts in establishing a regional drought council to facilitate a coordinated regional response were reviewed. Damage prevention was also a focus of much of the discussion.

Several policy resolutions were unanimously approved. One dealt with state implementation of Total Maximum Daily Load programs (TMDLs) under the Clean Water Act. The Clean Water Act requires states to identify and list lakes, rivers and streams that do not meet water quality standards and to establish a TMDL for each non-attainment pollutant, at a level necessary to ensure that applicable water quality standards can be attained. States have primary responsibility for establishing TMDLs, but the Environmental Protection Agency (EPA) is charged with ensuring that states comply with the law. The resolution notes that the development of state plans to implement the TMDL requirements have been slowed for a number of reasons, including limited resources. As a result, there are approximately 30 lawsuits pending against EPA charging that the agency has not been enforcing the law with regard to the states. EPA is currently developing new policy guidance for states that would set an 8-13 year time frame for state completion of TMDLs. Given this time frame, the resolution notes that "states and EPA may not have the resources necessary to conduct the extensive field measurements and computations needed to establish scientifically-defensible TMDLs on each applicable water body." Therefore, while supporting the goals of the Clean Water Act, the Governors urged the EPA to work cooperatively with the states to develop and implement a comprehensive TMDL program that provides enough flexibility to accommodate state and local conditions, addresses funding needs in a realistic manner, recognizes a watershed-based approach to establishing TMDLs, and encourages incentive-based approaches for all sources and voluntary compliance for non-point sources. The Governors further directed that a forum be convened where

Bureau of Reclamation representatives outlined work on the Snake River Resources Review (SR3), which is a cooperative partnership involving Idaho, Oregon and Wyoming, other federal agencies, watershed councils, water users, environmental and industry organizations, tribes and others. The objective is to develop a decision support system, or "toolbox" with databases and models linked together to provide reliable and timely information about the river and its resources, in order to facilitate and improve river operation and management decisions. There are twelve technical working groups addressing issues related to fisheries, wildlife and vegetation, economics, recreation, cultural resources, hydropower, water quality, endangered species, Indian trust assets, river and reservoir systems and modeling, and geographic information systems (GIS). Reclamation staff also described available technology for measuring and controlling water diversions and deliveries better.

Dr. Ethan T. (Tim) Smith, a USGS hydrologist and Executive Secretary of the federal Advisory Committee on Water Information, reported on the first meeting of the committee in Washington, D.C. on May 7. Roddy Seekins, Director of Natural Resources Information for the Texas Water Development Board was named to the advisory committee, representing the Western States Water Council, at the invitation of Interior Secretary Bruce Babbitt.

Other USGS representatives addressed the workshop on cooperative state/federal streamflow data program issues and work under the National Water Quality Assessment Program in the Great Basin. The latter includes the collection and evaluation of different databases on the Bear River, which rises in Utah, then flows north, meandering through Utah, Wyoming and Idaho, before ending its journey in the Great Salt Lake. This illustrates the need for reliable and consistent data across state lines.

Similarly, staff from the Wyoming State Engineer's Office described GIS work in the Bear River Basin to identify and map interstate diversions and uses in order to improve decisionmaking. Other state presentations covered water rights and water resources data conversion in Arizona and California, use of the Internet for data and information sharing and public involvement, measuring lake sedimentation in Texas, and addressing flooding in California and South Dakota. The latter highlighted the increasing demand for real-time data for both public information and decision making.

In closing, a brief facilitated discussion identified a number of needs or objectives and potential future actions for WSWC consideration in order to help promote the need for basic data, disseminate and share information, and avoid duplication of effort and mistakes.

Western Governors' Association

Annual Meeting

The Western Governors' Association (WGA) held its annual meeting June 22-24, in Medora, North Dakota, under the leadership of WGA Chairman, Ed Schafer, Governor of North Dakota. The meetings followed an enjoyable trip on Burlington Northern-Santa Fe private rail cars from Bismarck/Mandan to Medora, and social activities on June 22. The meeting officially began with the eight Governors attending a WGA Board of Directors meeting on June 23. The governors

The breakout session on relicensing procedures of the Federal Energy Regulatory Commission (FERC) raised controversial project decommissioning and state water quality certification issues. FERC and the hydropower industry have entirely opposite views with regard to project decommissioning. Regarding the scope of state water quality certification authority under Section 401 of the Clean Water Act, as determined by the Supreme Court,⁶ an industry representative expressed several concerns. State perspectives were also shared with respect to a recent FERC policy to the effect that it may review state certification decisions and refuse to incorporate into its licenses conditions that either reserve state jurisdiction or set implementation and enforcement schedules. FERC contends "once a state has issued certification and the federal license has been issued in reliance thereon, Section 401 gives the state no further role." According to one state representative, if FERC's view prevails in the current litigation, a state's conditions might be included in the license, but never implemented.

Other speakers addressed recent cases. Some involved the Public Trust Doctrine and "takings" of private property, how administrators in certain incidences are clarifying the doctrine in California, in the absence of judicial developments, and Idaho's legislative efforts to define and expressly declare the limits of the Public Trust Doctrine within the state. With regard to Indian water rights, several emerging issues were addressed. Many are associated with the administration and marketing of reserved rights for tribes. An Endangered Species Act discussion focused on its citizen suit provisions and standing, multi-species planning, and recent cases interpreting key provisions of the Act. Commissioner Eluid Martinez, Bureau of Reclamation, provided his perspective on several of the issues raised at the conference at the beginning of the final session, which also included a concluding "practice skills session," that focused on a general overview of water marketing in the West, and examined case studies in California and Colorado.

Water Information Management Systems Workshop

The Idaho Department of Water Resources (IDWR) hosted the WSWC's 4th annual Water Information Management Systems Workshop in Boise, on May 28-30. There were over 60 participants from sixteen western states, as well as the U.S. Geological Survey (USGS), U.S. Forest Service and U.S. Bureau of Reclamation. Karl Dreher, IDWR Director and a WSWC member, welcomed those in attendance. An informal roundtable discussion of recent state activities followed his remarks. Highlights included IDWR's use of spatial data technology in its Snake River Basin adjudication, and its usefulness in verifying claims by integrating information and data layers to create shape files, or polygons of land use and ownership. Some of the different types of information used include a geographic coordination database, infra-red imagery, public lands surveys, county parcels and tax data, as well as state water rights information. Of note, much of this data is approximate and not precise, particularly with respect to acreage and boundaries. The adjudication covers just under 160,000 water right claims for domestic, stock water, irrigation and other uses, encompassing nearly the entire state (with the exception of the Idaho Panhandle and Bear River Basin). IDWR staff also addressed development and integration of data with a hydrologic model of surface and ground water resources in the Treasure Valley, surrounding Boise.

⁶Western States Water, Issue #1046, June 3, 1994; *PUD No. 1 of Jefferson County v. Washington*, the Tacoma case.

Governor Bob Miller of Nevada appointed **Richard Bunker**, Chairman of the Colorado River Commission of Nevada, as an alternate WSWC member in October replacing **Janet Rogers**, who is no longer with the Commission. He was appointed to the Commission in 1993. Mr. Bunker's career includes local government offices and hotel management positions in Las Vegas.

Western States Water

Since the first issue in 1974, the Council's weekly newsletter, Western States Water, has been one of its most visible and well received products. Its primary purpose is to provide governors, members, and others with accurate and timely information with respect to important events and trends, in order 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. Further, it covers meetings, changes in Council membership, and other Council business. 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 fee.

Water Law Workshop

The American Bar Association, in cooperation with the Western States Water Council and the Conference of Western Attorneys General, held its 15th Annual Water Law Conference February 20-21, in San Diego, California. General session presentations were focused on issues associated with general stream adjudications and ground water management, with a special focus on the Rio Grande River system. Also, for the first time, breakout sessions were held. These dealt with federal hydropower relicensing issues, tribal water rights, the evolution of the Public Trust Doctrine, and developments associated with the Endangered Species Act.

Various perspectives were presented regarding general stream adjudications, including that of the state of Arizona, the Navajo Nation, a private party involved in the Snake River adjudication in Idaho, and the Indian Resources Section of the U.S. Department of Justice. An historical perspective was provided on passage of the McCarran Amendment, which waived the sovereign immunity of the United States in the context of general water rights adjudications. Speakers recognized that such adjudications are expensive and time consuming, and advocated taking advantage of opportunities for negotiating a settlement among the parties, while still recognizing that some issues might need to be litigated.

A session on ground water management included a presentation on Arizona's water banking authority, emerging issues under various state laws, and efforts by the state of Colorado to conjunctively use surface and ground waters in the Arkansas River Basin.

The discussion of the issues in the Rio Grande basin focused on the transition from agricultural to municipal and industrial uses and related Rio Grande Compact, state adjudication, and federal policy implications.

OTHER IMPORTANT EVENTS AND ACTIVITIES

Council Membership and Staff News and Changes

George Christopulos, a former WSWC Chairman and Wyoming State Engineer, died August 3rd at age 71. He was beloved by many and his passing is a great loss. George was a graduate and spirited football fan of the University of Wyoming, where he often lectured on Wyoming water law and engineering. He coauthored *Wyoming Water and Irrigation Laws*. He was often recognized for his distinguished service to many water organizations. George and his wife Esther are the proud parents of four children and eight grandchildren. He was an avid outdoors man, and devoted churchman, serving in various offices in the Greek Orthodox Church.

Jim Alder, a graduate of the J. Reuben Clark School of Law at Brigham Young University, was hired in May as a law clerk and later, upon successful completion of the Utah Bar Exam, as WSWC Legal Counsel. His interests in law include natural resources and alternative dispute resolution. He holds undergraduate degrees in German and International Relations from Utah State University. Jim is a native of Logan, Utah. He grew up with an intimate involvement in water issues, including irrigating the family farm. Jim has also clerked for the Utah First District Court and the Provo City Attorney's Office.

In February, **Jeanine Jones**, Chief, Statewide Planning Branch, California Department of Water Resource, was officially appointed as an alternate WSWC member by Governor Pete Wilson. Jeanine has been an active representative at WSWC meetings for some time, and was named as the new Vice-Chair of the WSWC's Water Resources Committee.

Gary Fritz retired in June as Administrator of the Montana State Water Resources Division in order to pursue his interests as a fishing guide. Gary had served as a WSWC member since 1983, and chaired the Water Resources Committee. His pleasant manner and valuable contributions will be missed. You can call him at Osprey Expeditions 1-800-315-8502. Good fishing!

In July, **Jennifer Gimbel** was appointed as an alternate WSWC member by Colorado Governor Roy Romer. She is an Assistant Attorney General. Jennifer formerly was an active WSWC member from Wyoming, serving from 1987-1991 and chairing the Legal Committee.

In August, Texas Governor George W. Bush appointed three new WSWC members: the **Honorable J.E. (Buster) Brown**, a Texas State Senator and Chair of the Natural Resources Committee, **William B. Madden**, Chair, Texas Water Development Board, and **John M. Baker, Jr.**, a member of the Texas Natural Resource Conservation Commission.

Norman K. Johnson, an Assistant Attorney General for the State of Utah, was appointed as an alternate WSWC member in October by Governor Mike Leavitt. Norm served as the WSWC's Legal Counsel for fourteen years prior to leaving to assume his current position.

The Committee then listened as a group of panelists discussed water-related issues faced by states bordering Mexico, primarily pollution problems encountered in their respective states due to explosions in Mexican growth and a lack of regulation. Management of border water resources tests both federal and state agencies.

The Executive Committee considered the financial condition of the Council, and approved an amendment to the by-laws to deal with a state that is delinquent in payment of dues.

The Water Resources Committee refined the position, that the Council later adopted, regarding the report of the Western Water Policy Review Advisory Commission. It then heard from Bill McDonald, Bureau of Reclamation, on efforts to update the Department of Interior's 1988 policy statement on water transfers in the West. He asked members for comments on the past policy. Doug Yoder, also with Reclamation, described legislative efforts to update and revitalize the Small Reclamation Projects Loan Program. He also manages Reclamation's Ground Water Recharge Demonstration Program. A WSWC staff draft report on related economic and institutional issues was passed around. Reclamation's water conservation field services program was also mentioned. Then there were reports on a number of other activities, including the status of the Animas-La Plata Project in Colorado and New Mexico, operation of Arizona's water banking program, Utah's perspective on proposals related to the future of Lake Powell, an emerging consensus on federal project operations in the Missouri River Basin, watershed restoration activities in Oregon and related listing decisions under the Endangered Species Act, and Western Governors' Association reports and activities addressing flood control and drought planning and mitigation.

position expresses disappointment with the draft final report and its primary recommendations related to "fundamental changes in institutional structure and government process...."

The position reads in part: "We cannot support another top-down approach to water management by federal river basin commissions, which have been tried and failed in the past. Such an approach is the antithesis of the local bottom-up watershed approaches to identifying and solving water-related problems, which have gained favor and momentum westwide. The report's overall reliance on federal action and authority contrasts with existing interstate compacts and the growing recognition of the pivotal role states must play if we are to successfully deal with the complex challenges we face in water resources...."

"Local watershed councils or groups should be allowed to define and resolve problems without forced federal solutions as a condition of priority federal financial assistance and expedited regulatory action.... The proposal for federally created and operated top-down river basin commissions is unworkable and unacceptable...."

"We also have serious concerns with other recommendations in the report which either directly conflict with existing state water law and policy, or fail to provide for adequate partnerships between the state and federal agencies on key policy issues.... [T]he federal government's preemption of state authority is not the way to address these complex issues. The report, if implemented, moves us in the wrong direction, adversely affecting states' abilities to efficiently address our water resource problems.... The recommendations regarding state authority are placed in the context of the report's conclusion that federal policy toward state water allocation law should change to "respect" rather than the long-established congressional policy of "deference...." The Western States Water Council strongly opposes this and similar recommendations in the draft report."

The Council meeting was preceded by Committee meetings on November 13. The Legal Committee heard a report from Sherl Chapman of Idaho on the status of the Federal Water Rights Task Force Report. That was followed by a discussion of proposed legislation dealing with federal fees in general adjudications that led to adoption of language for the Council position. Reports on the progress of Endangered Species Act (ESA) legislation were heard. Norman James, of Ryley, Carlock & Applewhite, Phoenix, Arizona, addressed the committee on the recent and numerous ESA-based legal activities of the Southwest Center for Biological Diversity, and suggested that the Council act as a clearinghouse for ESA litigation initiated by this group. The Committee was also briefed on last month's Indian Water Rights Settlement Symposium, held in Phoenix, Arizona. Steve Sanders and Martha Pagel, of Oregon, described the alternative dispute resolution process being implemented in the Klamath Basin adjudication process to address a broader range of water concerns than just quantification of water rights.

The Water Quality Committee first heard reports on WGA activities involving the Clean Water Act, including "Good Samaritan" provisions, total maximum daily loads (TMDLs), and Section 518, which provides for treatment of Indian tribes as states for various programs under the Clean Water Act. Committee members agreed that TMDLs and Section 518 were subjects of great concern for the states that might warrant further treatment in a workshop or symposium. A letter was also drafted expressing concern over development, without state input, of a memorandum of agreement among federal agencies regarding implementation of the ESA under the Clean Water Act.

**125th Council Meetings
November 12-14, 1997
Carlsbad, New Mexico**

The 125th meeting of the Western States Water Council was held on November 12-14, in Carlsbad, New Mexico. The Full Council meeting, on November 14, featured a special guest, Karen Hobbs, of the Council on Environmental Quality and Director of the American Heritage Rivers Program. Following a brief summary, she answered many questions from members regarding the purpose of the program and details as it relates to state water management. She tried to assure members that the program was strictly voluntary, noting there were no new regulatory requirements, nor new money, and that it was intended strictly as a means to coordinate federal support for community-based programs.

A panel of experts also addressed members on water resource and related legal issues in New Mexico. Gregory Smith, an Assistant City Attorney for the City of Albuquerque, spoke on litigation and negotiations with the Isleta Pueblo over tribal water quality standards recognized under the Clean Water Act. The Pueblo is located a few miles downstream from the outfall of the City's wastewater treatment plant. Next, Norman Gaume, Interstate Stream Engineer, New Mexico Interstate Stream Commission, addressed issues in the Pecos and Middle Rio Grande River Basins and regional water planning in New Mexico. He also spent some time enumerating the State Engineer's strategic goals. Lastly, Charles DuMars, a longtime Council member and professor at the University of New Mexico Law School, addressed some legal issues and cases involving title and ownership of waters related to Elephant Butte Dam, the Rio Chama in northern New Mexico, pueblo surface and ground water rights, and protection of the silvery minnow as an endangered species.

The Council adopted a number of policy positions. The first position addressed federal, non-tribal, fees in general adjudications. The purpose of this position is to urge Congress to pass legislation requiring the United States to be subject to court fees and costs, when it is a party to a general water rights adjudication.

The Council adopted a position regarding a provision of the Safe Drinking Water Act dealing with pipes and other conveyances. This position urges the EPA Administrator to develop guidelines for states in implementing the new definition of a "public water system" that consider the purpose of water supply systems, so as to avoid placing a heavy financial burden on rural canal companies and water users, growers, low-income farm workers and irrigation districts.

The Endangered Species Act (ESA) was the focus of another position. The Council approved an update of an earlier letter expressing support for reforms to provide greater certainty for landowners and water right holders, and urging greater cooperation towards the resolution of water resource needs and issues in concert with the conservation of endangered species.

The Council also adopted a position in response to the public review draft of the Western Water Policy Review Advisory Commission. While extending the Council's appreciation for the time spent and commitment made by the Commission and its staff in preparation of the report, the

(TMDL) program. Lastly, litigation involving TMDLs, grazing and non-point source pollution and water quality certification, and quantity/quality issues were discussed.

The Water Resources Committee listened as Don Glaser, Executive Director of the Western Water Policy Review Advisory Commission (WWPRAC), described the history of the Commission and its role in raising awareness of western water issues in this Administration and this Congress. He reviewed some of the Commission's principle findings, emphasizing the tremendous demographic changes that have displaced traditional uses, economies and communities. He also highlighted the need for sustainable development and greater coordination of water-related federal activities, as well as the need to manage water within hydrologic units and to encourage basin and/or watershed initiatives. A draft final report should be available soon, and will be presented to the President by October 31. However, a 90-day public comment period will follow, along with public meetings, and the Commission will then revise and resubmit a final report to the President.

Next, members discussed a few activities of the Bureau of Reclamation, including its water reuse initiative, project transfers legislation, and policy related to transfers of project water. With respect to the latter, a subcommittee headed by Nevada State Engineer Mike Turnipseed will begin work with Reclamation on a joint federal-state study. Other topics included updates on proposed changes to the Animas-La Plata Project in Colorado by Indian tribes and environmental groups, management of the Edwards Aquifer in Texas, the President's American Heritage Rivers Program, the Aquatic Nuisance Species Task Force, and the National Drought Coordinating Council. Other matters raised included Reclamation's water conservation field services program, border water issues, and cooperative funding for U.S. Geological Survey streamflow gaging stations. Concern over the latter involves declining federal funds and changing USGS priorities.

The Executive Committee examined the Council's budget report and FY98 outlook, as well as a number of cooperative studies with various federal agencies. The Committee also discussed upcoming meetings.

At the full Council meeting, Cedar City Mayor Harold Shirley provided an entertaining account of the history of the area and its water problems, which were further discussed by City Manager Joe Melling. Thereafter, Larry Anderson, Director of the Utah Division of Water Resources, described regional basin planning efforts in both the Colorado River and Great Basins. He noted a pipeline from Lake Powell to the rapidly growing southwest corner of the state may be a practical means of meeting growing water demands, while using a part of Utah's unused Colorado River entitlement.

Bureau of Reclamation Commissioner Eluid Martinez was a special guest. He addressed a wide range of issues and programs regarding federal/state relations, water transfers, different water projects, water service contracts, Reclamation's strategic plan, water reuse, Indian issues and international initiatives. Of particular note, he invited states to join Reclamation in promoting an interpersonnel exchange program to allow state and federal water managers an opportunity to gain practical experience from another point of view and improve decisionmaking and policymaking.

Lastly, the Council re-elected Jeff Fassett of Wyoming as Chair, Francis Schwindt of North Dakota as Vice-Chair, and Mike Brophy of Arizona as Secretary/Treasurer. Also, the various working committees reported on their activities, and different states reported on water-related issues and events.

summarize state and federal statutes and identify important issues related to both changes in the purpose of use and transfers of conserved waters. The second reviewed plans for a WSWC water policy seminar in Washington, D.C. with the Interstate Council on Water Policy as cosponsor. The dates have been set for March 4-6, 1998 at the Hyatt Regency Washington, near Capitol Hill. A preliminary discussion identified endangered species and water quality related issues as potential topics.

The Legal Committee meeting included a summary of the activities and the draft final report of the Federal Water Rights Task Force, created to review issues related to the exercise of private water rights in national forests.⁵ WSWC member Sherl Chapman of Idaho, a member of the task force, asked for comments on the draft report, noting that it represented the views of the majority. A minority report was also expected. Other topics on the agenda included a review of a draft bill by Rep. Robert Smith (R-OR) to subject the United States to administrative fees, claiming fees and judicial costs related to water right adjudications, as well as a briefing on the *Hillis v. Washington Department of Ecology* lawsuit, related to the state's priorities for the processing of water right claims in order of their filing, by geographic region, and appropriate administrative procedures.

Rich Bechtel, Western Governors' Association (WGA) staff, also provided the Legal Committee with a summary of the status of federal legislation related to the Endangered Species Act (ESA). He noted that the introduction of a bipartisan Kempthorne/Chafee Senate bill was imminent, and that it incorporated several provisions supported by the WGA. It changes the listing process and requires peer review. It strengthens the partnership role of states in implementing the ESA. It focuses resources on recovery activities and streamlines efforts to address multiple species needs. It incorporates many administrative tools to create more incentives and provide certainty to encourage private landowners to participate in conservation efforts. It does not address WGA priorities related to state initiated conservation agreements, more steady funding, a less costly and more effective delisting process, and a renewed management distinction between threatened and endangered species. WGA has no consensus position on provisions in the bill narrowing the definition of "harm," increasing "action" agencies' discretion under the Section 7 consultation process, or protecting state water rights. The latter is one point upon which Senator Dirk Kempthorne (R-ID) and Senator John Chafee (R-RI) have been unable to reach agreement.

The Water Quality Committee took advantage of a teleconference link to simultaneously discuss two subjects with EPA Headquarters and regional staff. First, John Flowers, in Washington, D.C., reviewed Safe Drinking Water Act directives to develop guidelines to encourage water conservation planning and invited a WSWC representative to sit on a related advisory group. Then Ellen Haffa, EPA Headquarters, Office of Water, Joan Brown, EPA Region VI, and Patrick Bustos, EPA Region VIII, discussed the development and use of performance partnership agreements. Wally Cory, Idaho Division of Environmental Quality, provided a state view.

Shaun McGrath, WGA staff, also led a discussion of various proposed legislative changes and the outlook for reauthorization of the Clean Water Act. He noted invited state and EPA officials would meet at a WGA workshop on September 30-October 1, in Jackson, Wyoming to address CWA issues important to the West, including state implementation of the Total Maximum Daily Load

⁵P.L. 104-127, Section 389 (d)(3).

the Arizona Department of Water Resources, provided a summary of Arizona's ground water bank program and answered questions. The bank is already storing water for local interests and in the future will be available for interstate water deposits, transfers and withdrawals. Lastly, member states briefly described the current water supply situation and recent flooding.

The Executive Committee handled a number of matters, including approval of the Council's FY98 budget. The Committee also received a report by Executive Director Craig Bell on the completion of a WSWC report for the WWPRAC entitled, "Water in the West Today." It summarizes western state water problems and potential solutions. The Commission's work will apparently be completed by its October deadline.

The Legal Committee meeting consisted of a number of state-by-state reports on litigation and legal developments, followed by a joint meeting/hearing with the Federal Water Rights Task Force, which was created as part of last year's Farm Bill to address concerns related to the acquisition and exercise of past and present federal water rights, primarily on U.S. Forest Service (USFS) lands. Task Force Chair Bennett Raley, of Colorado, provided a review of the group's activities and other Task Force and WSWC members and guests discussed related issues. Task Force members are seeking to identify appropriate means to meet federal water needs on USFS lands, and protect private water rights. A central issue is the reliability of state water laws as a means to protect instream flows and meet USFS needs.

Lastly, as part of the meetings, the WGA and WSWC convened a workshop on the interrelationships between water rights administration and water quality protection. Members discussed related issues and challenges, and coordination of state programs. Problems and solutions were listed and discussed. These will be summarized as part of the product of the meeting. Some of the topics raised included the role of dilution in pollution control (and related issues involving water rights, diversions and instream flow protections), water rights and water quality related permitting procedures, formal and informal state agency coordination, releases related to dam safety and downstream sedimentation, and other issues.

**124th Council Meetings
August 21-22, 1997
Cedar City, Utah**

The 124th meetings of the Western States Water Council were held August 20-22, in Cedar City, Utah. The meetings included a full-day tour of southern Utah communities, which are experiencing some of the highest growth rates in the nation, and related water development facilities. It also included a presentation on the Zion National Park water rights settlement issues.⁴ This landmark 1996 agreement protects instream flows and other non-consumptive uses, as well as administrative uses, while also protecting water users and circumscribing future water development.

Two subcommittees met. The first reviewed issues surrounding the transfer of water and water rights associated with Bureau of Reclamation projects, and discussed a draft work plan that would

⁴Western States Water, Issue #1171, October 25, 1996.

cost-effective alternative and environmentally sound solution for providing a safe and reliable supply of drinking water.”

The second position asks that EPA develop required guidelines for water conservation plans that “...recognize and support state primacy in matters of water resource administration; ...implement the water conservation plan provisions...in a manner consistent with the...voluntary and limited objectives [of the Act]; and that the water conservation plan guidelines...are drafted to allow states a simple and flexible approach to water conservation planning.” The position also highlights language in the 1996 Amendments stating that “the Federal government commits to maintaining and improving its partnership with the States...,” and that the “States play a central role” in the administration and implementation of the Safe Drinking Water Act. Further, the Amendments say, “States need increased financial resources and appropriate flexibility to ensure the prompt and effective development and implementation of drinking water programs” and that “more effective protection of public health requires maximizing the value of the different and complimentary strengths and responsibilities of the Federal and State governments....”

A third issue was raised relating to the treatment of irrigation districts and their facilities under the Safe Drinking Water Act, where raw water is incidentally or unintentionally supplied or used for drinking purposes, as no other water supplies are available. EPA has suggested all related irrigation facilities might be subject to SDWA regulations and standards. A proposed position may be considered at the next Council meeting.

In addition to the two positions on implementation of the Safe Drinking Water Act, the Water Quality Committee moved, with minor amendments, and the Council reaffirmed, a position first adopted in July 1992, relating to protecting ground water quality and “EPA’s Strategy for the 1990’s.” The Committee also listened to a report by Shaun McGrath on various initiatives under the Clean Water Act, but it does not appear the Congress will reauthorize the Act this year. Non-point source pollution control programs were also discussed, along with related developments with the Idaho Sportsmen and Oregon Natural Desert Association lawsuits. Wally Cory, Administrator of Idaho’s Division of Environmental Quality, and Steve Sanders, Oregon Assistant Attorney General, addressed the cases, which have significant implications for the states.

The Water Resources Committee considered a number of issues. The Committee listened as Allen Powers, Water Conservation Field Services Program Manager, U.S. Bureau of Reclamation and Bill McDonald, U.S. Department of Interior, Regional Solicitor’s Office, described present water conservation and other Reclamation activities.² Jeanine Jones noted present and future water use projections that have been prepared for the Western Water Policy Review Advisory Commission (WWPRAC), show demands growing at only a fraction of the projected population increase. A number of members expressed interest in several draft river basin studies prepared for WWPRAC by private consultants. Draft reports are available for the Colorado, Platte and Rio Grande River Basins. Next, Shaun McGrath, Western Governors’ Association (WGA), spoke about drought activities and the organization of a regional coordination council.³ Also, Rita Pearson, Director of

²Western States Water, Issue #1190, March 7, 1997.

³Western States Water, Issue #1186, February 7, 1997.

COUNCIL MEETINGS

123rd Western States Water Council Meetings March 12-14, 1997 Portland, Oregon

The 123rd WSWC meetings were held in Portland, Oregon on March 13-14. They were preceded by a day-long field trip up the Colombia River Gorge hosted by the Oregon Department of Water Resources. In addition to visits to Bonneville Dam and Multnomah Falls, a concise description of the issues surrounding salmon recovery efforts in the basin was presented by Roy Hemingway, Oregon Governor John Kitzhaber's Salmon Policy Advisor and Karl Dreher, a WSWC member and Director of the Idaho Department of Water Resources. The regular committee meetings were held on March 13, as was a special joint meeting and public hearing with the Federal Water Rights Task Force. The Task Force heard and answered questions from WSWC members and took testimony from others, including the Natural Resources Defense Council and Oregon Water Watch. On March 14, the full Council met briefly, and then convened a workshop on Water Quantity and Water Quality Interrelationships from a Western States' Perspective.

The full Council meeting began with a welcome to Oregon and brief introduction and summary of Governor Kitzhaber's Coastal Salmon Initiative by Martha Pagel, a WSWC member and Director of the Oregon Department of Water Resources. She introduced Jim Martin, a life-long fisheries biologist and lead staff for the Initiative, which is an effort to establish a state salmon recovery program as a credible alternative to listings under the Endangered Species Act (ESA). The coastal salmon recovery efforts are focused on the coho salmon runs, which have dropped to a fraction of their historic "turn-of-the-century" numbers. Unlike the rebuilding chinook salmon, the coho have different spawning habitat needs, nesting in shallow meandering valley streams and wintering in the same areas before beginning their journey to the sea. As a result, they are particularly vulnerable to farming and stream channelization practices that have removed trees shading streams in the summer and increased the velocity of wintertime flows, both to the detriment of their survival. The Initiative is aimed at restoring watershed health through many joint actions undertaken with landowners under public/private partnership agreements. Such voluntary "grassroots" or "ground up" arrangements are expected to be more effective over the long-term than stringent regulatory ESA actions as some 95% of the coho's spawning habitat is on private lands. The state has committed \$30M for the Initiative over two years, despite being faced this year with a projected \$100M overall state budget shortfall.

The working committees of the Council reported on a number of actions. The Water Quality Committee proposed two positions that were adopted by the Council related to the operation and management of state revolving loan funds (SRFs) created by the Safe Drinking Water Act amendments of 1996. The first urges EPA to reverse its recently published guidance and adopt a position that would allow states' the flexibility to provide financial assistance "for the construction and rehabilitation of dams or reservoirs, the purchase of necessary land, and the purchase or acquisition of required water rights, when such actions have been determined to be the most

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