**MINUTES**

**of the**

**EXECUTIVE COMMITTEE**

**Virtual Meeting (Due to COVID-19)**

**Host State - Texas**

**March 5, 2021**

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**MEMBERS AND ALTERNATES PRESENT**

**ALASKA --**

**ARIZONA** Tom Buschatzke

**CALIFORNIA** Jeanine Jones

**COLORADO** Becky Mitchell

**IDAHO** Jerry Rigby

**KANSAS** Earl Lewis

**MONTANA** --

**NEBRASKA** Jim Macy

**NEVADA** Micheline Fairbank

Brad Crowell

**NEW MEXICO** John D’Antonio

**NORTH DAKOTA** John Paczkowski

Jen Verleger

**OKLAHOMA** Julie Cunningham

**OREGON** Tom Byler

**SOUTH DAKOTA** Kent Woodmansey

Nakaila Steen

**TEXAS** Jon Niermann

Jim Rizk

**UTAH** Todd Adams

Todd Stonely

Erica Gaddis

**WASHINGTON** Mary Verner

**WYOMING** Steve Wolff

Chris Brown

**STAFF**

Tony Willardson

Cheryl Redding

**WELCOME/INTRODUCTIONS**

Jen Verleger, Acting Chair called the meeting to order. The roll call was presented by Tony Willardson.

**APPROVAL OF MINUTES**

The minutes of the meeting held virtually on September 28, 2020 were moved for approval and the motion was seconded. The minutes were approved unanimously.

**Report on Budget, Financing and Staffing**

A. FY2020-2021 Budget and Long-Term Outlook

Tony Willardson sent out budget information prior to the meeting. He noted that budgeting has become a little more complicated with the growth of the Water Data Exchange (WaDE) program, trying to keep funds separate under different contracts and grant agreements.

All things considered, we anticipate a small surplus in this year’s budget. The proposed budget for our next fiscal year will see a small decrease in revenue and expenditures. There are a couple of areas of uncertainty relative to the WaDE progam work.

B. Moore Foundation Grants Status Report

Tony commented on the Moore Foundation, Internet of Water (IOW) grant, noting we will be completing the current grant work in September 2021. The funds come in on a reimbursable basis, so receipts will extend through the third quarter and into the the fourth quarter of the calendar year. We have reached a tentative agreement for continued funding from theIOW, based on a another corporate grant that they expect to receive. The details of their new arrangement should be completed by April 2021.

We're looking to receive $150,000 per year in continued support for WaDE as a IOW hub. That amount is about half of what we have been spending over the last year or two. Some of you may recall that the Water Foundation gave us a grant upfront of $390,000 and we spent that down before using the IOW/Moore Foundation funding.

In our next fiscal year, beginning July 1, we expect to receive about $75,000 in IOW grants funds in our 3rd and 4th quarters (December-June). We are working to try and fill the remaining gap. I've conservatively estimated that gap at about $50,000.

The WSWC is part of the State of Utah’s Public Employees Health Program (PEHP). At this point, we have not yet received the PEHP insurance increases, so that’s again a bit uncertain.

Regarding past and projected expenditures, payroll salaries and benefits, as well as employment taxes have been lumped together. Those figures are highlighted in yellow.

We have saved a lot of money this year on travel since we’re hold aonly virtual meetings as are all of you. I think that travel is going to continue to be a challenge. Some states this current fiscal year have canceled all out of state travel. Only two meetings will fall within the next fiscal year since our Summer meetings will take place in the current fiscal year. Next Spring the meetings are scheduled for Washington, D.C. as has been done every other year. While budgeting only a littel for travel, we have a $5,600 credit with Delta Airlines, which will help offset some of our travel expenses going forward.

Generally, what we've asked for from the Executive Committee is provisional approval on the fiscal year budget. A more precise budget including current expenditures will be prepared for the Summer meetings.

I should add that we discussed with Reclamation representatives our eligibility as a “state” for future WaterSMART grants. The WSWC is a unique entity, an instrumentality of each of our member states. Their conclusion is that the WSWC is a “state,” under their definition, as is any other subdivision of a state. We will be applying for a Reclamation Applied Science WaterSMART Grant to support WaDE. Similarly, we’ve discuss with a number of our states the possibility of packaging a request for a Water Use Data Research (WUDR) grant available from U.S. Geological Survey (USGS).

Tony remarked further that the Internet of Water is looking for a new home. They are also looking for funding and are approaching USGS about a significant cooperative agreement of about $500,000 a year. We have been encouraged to talk to USGS about a similar type of a commitment to move forward with some of the water data initiatives that we have underway with the WaDE program. This would also benefit the federal agencies.

**Julie Cunningham**: Are you looking to take on the Internet of Water? That sounds like a big job.

**Tony Willardson**: Due to their location at Duke University right now, it creates some challenges. The Internet of Water (IOW) is looking for more independence. They are looking at possibly a think tank to allow them to carry out their mission. At this point, I believe for about the next five years, during a growth phase, the IOW will have funding through a corporate sponsor. It will in the future be moving towards bifurcating its function, with research done at Duke and the Nicholas Institute continuing on water data, but organizational management and operations moving to sopme new entity. IOW would still have an advisory board, and I sit on that board. Some other board members include Dwane Young from EPA, who was our former WestFAST federal liaison, Sam Hermitte from Texas, and Greg Gearhart from California.

**John D’Antonio**: I have a question on the Internet of Water budgeting. In the very last column, you have Western States Water Council overhead expenses at 7.5%. Then for the new agreement, it’s at 10%. That’s the cost to your organization that you’re offsetting, and I’m just wondering if 7.5% was not enough, and they’re going up to 10%? Or how did that work?

**Tony Willardson**: Yes, 7.5% is pretty lean. One of the reasons the IOW wants to move out of Duke is that for any federal grants, Duke received overhead of 60%. We’re estimating overhead of about 10%, and really that is the only contribution from WaDE outside of salaries. It does fund both Adel and Ryan, our WaDE IT folks. About 12% of my time goes into managing the program. In the past, we’ve had a much larger overhead expense allowance. It depends on the agency and grant. Many of you may be familiar with OMB guidelines that set what can be charged as indirect expenses, and 10% is an amount that requires no justification.

**Jen Verleger**: Would anyone like to make a motion?

John D’Antonio offered a motion to approve the proposed FY2022 budget. Julie Cunningham seconded the motion. The Committee unanimously approved the motion.

**PROPOSED & Sunsetting Positions**

Tony Willardson reviewed the proposed and revisions to the sunsetting positions. He turned to Jeanine Jones to speak to the position regarding Probable Maximum Precipitation (PMP) standards. Jeanine reported that the proposed position does not deal with a new subject for us. Historically, the National Oceanic and Atmospheric Administration (NOAA) has updated PMP standards, but NOAA has had little funding for such updates for a couple of decades. There is an interest in trying to get them motivated and funded again. PMP updates are used for dam safety review and design.

Tony commented that this issue has been raised by Colorado and the Association of State Dam Safety Officials (ASDSO).

John D’Antonio moved approval for the position to go forward. Micheline Fairbank seconded the motion.

Steve Wolff noted that Wyomig is supportive of the position, but Chris Brown has a couple of changes he’ll send in after the call.

The position was approved, noting that Wyoming will send some minor editorial changes.

A second proposed position deals with support for universal access to clean drinking water for federally recognized Indian tribes and Alaska Native Communities. Becky Mitchell of Colorado provided some background. There has been some movement through Colorado’s Senators and a subgroup has been working on different tribal issues. One of the issues that came about since the COVID pandemic is the availability of clean drinking water on tribal lands or reservations. Some of the other states are showing interest as well. I know that Chris Brown of Wyoming sent out some comments on the position.

**John D’Antonio**: New Mexico made a few more changes to the edits that Chris Brown suggested. I think this makes the document even stronger. All of the changes are in track changes. Thank you for spearheading this effot Becky.

**Tom Buschatzke**: The resolution talks about moving forward without adjudication or settlement. The way it is written, it mentions infrastructure, but not supply. That is critical for Arizona because we have a specific situation in which infrastructure is being built, while there is no water supply yet available for the pipeline that’s being built. There is federal legislation that sets aside some water for the Navajo Nation, but not until they settle their tribal claims with the State of Arizona. They won’t be getting a water supply absent a settlement. I think it’s okay as long as it is read carefully.

**Becky Mitchell**: If there is a way to phrase that so it doesn’t take a careful read, we are happy to help relieve some of those concerns.

**Tom Byler**: I’m fully supportive of the concept, but Chris raised some interesting questions with respect to compliance with state law. Does anyone have any observations around that?

**Chris Brown**: Part of the problem is identifying what quantity and what source and the other particulars with regard to the tribal reserved water right. Until it’s quantified, we can’t know for sure where it fits in the schedule along with state-based water rights. If it’s not based on the Federal reserved water right, then, to my knowledge, the only other option is to go under state law. By not explicitly pointing that out here, my concern was, especially with a whole of government approach (depending on what that means), perhaps advocating for something else. Leaving it vague concerns me. As Tom raised concern, it’s fine to talk about the pipes and the pumps, but when we talk about what streams or what aquifer this water is coming from, then we’ve got a different kind of discussion. Tribes may balk a little. Maybe we could massage it to say complying with applicable law. This is not a huge problem in Wyoming. The tribal reserved water rights in Wyoming have been quantified. It just causes me concern.

**Tom Byler**: It’s a germaine issue in Oregon. Not all tribal water rights have been adjudicated and we occasionally find ourselves in a situation working with a tribe to resolve a water issue and encouraging them to comply with state law. Sometimes they’re willing to do that, without waiving their claims, but it’s a delicate issue for sure.

**Tony Willardson**: My familiarity with the Navajo reservation is that there are some communities and individual households where it would be very difficult to connect to a municipal water system. In many of those cases, I assume that the source of water is going to be groundwater. And if there is not an adjudicated right, I’m assuming that the the individual tribal member would have a right to groundwater just like anyone else, if it’s for domestic use. Montana has recognized groundwater use by the tribes in their settlements. But even outside of that, if we’re looking to get water to some of these isolated single households, I assume that would primarily be groundwater and would be treated like any other domestic use. We can work to clean up the resolution as it will be on the agenda for the Legal Committee meeting.

**Micheline Fairbank**: I echo Chris Brown’s and Tom Byler’s concerns. I haven’t really reviewed this resolution before now, and I may be able to propose some language to address some of concerns.

**Becky Mitchell**: I will be fine working with others to make this position workable. We have settlement concerns in Colorado also.

**Jennifer Verleger**: Should we make a motion to accept all of the changes and we can work on some language between now and the meeting date to take to the Legal Committee?

**Tony Willardson**: It can go to the Legal Committee with or without a recommendation from the Executive Committee.

The committee next reviewed the positions scheduled to sunset if no action is taken.

***Position #417*** – Supporting Forecast Informed Reservoir Operations and Innovations

**Tony Willardson**: Two additional “Whereas” clauses have been added to the draft position. The first recognizes that the Corps of Engineers was directed to develop a list of water control manuals on Corps projects, including those where Reclamation projects are involved. The first clause call for the Corps to look at different pilots for forecast informed reservoir operations (FIRO). The second added clause directs that one year after the date of completion of the FIRO research pilot program at Coyote Valley Dam in California, the Secretary shall issue a report.

**Todd Adams**: We should define the aconym FIRO in the text of the position.

**Jeanine Jones**: The two additions are statements of existing law.

**Steve Wolff**: I suggest we work with congressional staff to get some of the FIRO language in the latest WRDA bill.

***Position #418*** – No proposed changes to the position on Weather Station Networks. Tony briefly reviewed WSWC’s support for the programs.

***Position #419*** – On Water Infrastructure Funding, no proposed changes.

**Steve Wolff**: Is there a reason that municipal and industrial water is not included? Is there a reason? Or do yo think it’s already captured?

**Tony Willardson**: I’m not sure, Steve. We’ll take a look at that and see. If it’s not included, we can add it.

**Chris Brown**: In that same whereas clause, we probably need to separate out the tribal and the international treaty needs. The way it reads it sounds like they’re one and the same somehow. Put a comma in and take an “and” out.

**Jerry Rigby**: Keeping with Robert’s Rules of Order Madam Chair, you need a motion to approve 418 and 419 with the proposed modifications.

**Jen Verleger**: Yes. Let’s take them both together.

A motion and second to approve positions #418 and #419 with the proposed modifications were offered. With no opposition, the positions were approved by the committee.

***Position #420*** – No proposed changes on the Integrating Water and Energy Planning and Policy.

**Chris Brown**: Why do we have all of the acronyms listed for all of the different entities? We never refer to them again.

Jen Verleger accepted a motion to forward this position with the amendments Chris suggested. Micheline Fairbanks seconded the motion to remove the acronyms. The Committee approved the position.

***Position #421*** – No changes were offered to the position supporting federal research on climate adaptation.

Jeanine Jones moved approval for the committee to move this position forward. The motion was seconded by Earl Lewis. With no opposition, the position was approved to be forwarded to the Water Resources Committee.

***Position #422*** – State Primacy over Groundwater

Tony reviewed suggested staff changes to the position. A discussion followed on the language and it was decided that Tony would work with Earl Lewis, Chris Brown, Micheline Fairbank and others to edit the document.

With no further discussion, Earl Lewis recommended the Executive Committee should move this position forward with the idea that there will be some additional language changes. The motion was seconded and approved.

***Position #457*** – Dividing the Waters

**Micheline Fairbank**: Following the Fall meeting, a subcommittee was formed to work through the language of this position. The language that has been proposed to be stricken was drafted by that subcommittee. I would like to find some middle ground on the language. Nevada has been hit tremendously hard by the economic conditions we are facing due to the pandemic since Nevada is a tourism dependent state. This is a very worthwhile program and it is incredibly unique. We are dealing with incredibly specific groundwater models, etc.

From Nevada’s point of view, having an educated judiciary is very important and the Dividing the Waters program is unique in that it provides that kind of technical information. I sit in on some of the training sessions and they talk about recent developments and state law as well as how things could intersect across state boundaries and influence decisions. They do provide technical training for judges. Not that we expect the judges to become scientific experts, but it helps to at least have sufficient exposure to make sense of the terminology and scientific theories. Ensuring that judges are able to conceptualize where things fit is really important. We have proposed some language to try to do that, but it is just Nevada’s point of view.

**Chris Brown**: The subgroup reviewd this position between meetings. I certainly understand Kent’s concerns regarding state funding for this particular program. Wyoming is supportive of the program. I would ask Steve to chime in, but I think we’re willing to support this.

**Steve Wolff**: We’re fine.

**Earl Lewis**: We have not had as much judicial need, if you will, but we support the program.

**Mary Verner**: I fully support this, Micheline. Washington is going to need more judicial education if we’re going to be successful in one of our legislative requests, which is to fund some adjudications. My reluctance regarding the language about encouraging states to fund the program is strictly based on a protocol issue here in Washington. We dance carefully around waiting for the governor to establish the budget priorities. The way the resolution is stated may or may not get me in hot water with my governor’s office. However, I fully support the resolution’s intent to encourage funding for the Dividing the Waters program.

**Jen Verleger**: We will keep working on this language. Please send us your changes before March 10th.

**Chris Brown**: Is there a strong feeling that we should encourage “states’ funding?”

**Micheline Fairbank**: If we can encourage states to consider funding, whether direct or in-kind types of efforts, that would be Nevada’s preference. We are willing to have that dialogue.

**Jen Verleger**: We’ll keep working on the language of this resolution for the meeting.

**Executive Director’s Report**

Tony Willardson commented on the summary document on WSWC activities and events contained in Tab E in the briefing materials which is pretty extensive and provides information on the interactions we’ve had with other interests.

Tony highlighted continuing work with the Western Governors’ Association and also with Congress and the Administration. The WSWC has sent a number of letters to Congress with respect to appropriations and the upcoming budget. At Jeanine Jones’ request, Tony has been working to send letters regarding the recommended pilot projects for subseasonal to seasonal (S2S) precipitation prediction. As these kinds of letters and positions are sent to your congressional representatives, Tony tries to ensure he runs them by WSWC members before the letters are sent.

A lot of work has been done with WestFAST. Many of you have participated in a number of WestFAST special topic webinars.

Similarly, many of you have participaqted in an effort that has been more extensive than anticipated, and that is working with the Western Regional Partnership. They are performing a deep dive on water security and how it might affect military bases as far as military readiness.

There has also been a lot of outreach to many of your staff on the Water Data Exchange.

**Council Membership update**

We have included a one-sheet summary in the briefing materials that shows by state member representatives who have been included on our membership list by virtue of their position, although we’ve not received a Governor’s appointment letter.

This is just a reminder that we would ask you to review the list and ensure those representing your state are listed appropriately. Further, please follow up with your respective Governor’s office and request they provide us a letter to formalize their WSWC appointments.

**Future WSWC Meetings**

**2021 Summer Meetings**

Steve Wolff reported that Wyoming is officially in COVID telework through June under the Governor’s directives. That could change, but they have not heard anything more from the Governor’s office at this point. Steve will call Tony to discuss further.

**2021 Fall Meetings**

Jon Niermann and others briefly discussed calendars and optimal dates for scheduling the Fall meetings in South Dakota.

**2022 Meetings Projections**

Spring – Washington, D.C.

Summer – Montana (last held 7/18/14 in Helena)

Fall – Oklahoma (last meeting on 4/17/15 in Tulsa)

**DRAFT FY2021-2022 EXECUTIVE COMMITTEE WORKPLAN**

Tony asked Committee members to contact him if they have any changes to suggest.

**SUMMER 2021 Meeting Sunsetting Positions**

Position #423 regarding rural water supply project/infrastructure needs is scheduled to sunset at the 2021 Summer meetings. Please look at the positions and let us know if you wish to have any revisions considered at the Summer meetings.

**Other Matters**

There were no other matters of business and the meeting was adjourned at 11:30 a.m.