

**MINUTES  
of the  
EXECUTIVE COMMITTEE  
Doubletree Hotel – Washington, DC – Crystal City  
Arlington, Virginia  
April 5, 2022**

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**MEMBERS AND ALTERNATES PRESENT**

Italics indicates virtual attendance.

<b>ALASKA</b>	--
<b>ARIZONA</b>	Tom Buschaztke Amanda Long-Rodriguez
<b>CALIFORNIA</b>	<i>Jeanine Jones</i>
<b>COLORADO</b>	--
<b>IDAHO</b>	Jerry Rigby
<b>KANSAS</b>	Earl Lewis
<b>MONTANA</b>	--
<b>NEBRASKA</b>	<i>Tom Riley</i>
<b>NEVADA</b>	Micheline Fairbank
<b>NEW MEXICO</b>	<i>Mike Hamman</i>
<b>NORTH DAKOTA</b>	Jen Verleger Andrea Travnicek
<b>OKLAHOMA</b>	Julie Cunningham
<b>OREGON</b>	--
<b>SOUTH DAKOTA</b>	Nakaila Steen
<b>TEXAS</b>	Kathy Alexander

**UTAH**

Candice Hasenyager  
Erica Gaddis

**WASHINGTON**

*Mary Verner*

**WYOMING**

Jeff Cowley  
*Chris Brown*

**STAFF**

*Tony Willardson*  
Michelle Bushman  
*Cheryl Redding*

**WELCOME AND INTRODUCTIONS**

Jen Verleger, Chair of the Executive Committee, called the meeting to order and requested self introductions for those attending both in-person and virtually.

**APPROVAL OF MINUTES**

The minutes of the meeting held on September, 2021 in Deadwood, South Dakota were moved for approval and the motion was seconded. The minutes were approved unanimously.

**REPORT ON BUDGET AND FINANCES**

Jen Verleger referred everyone to Tab D in the briefing materials.

**A. FY2021-22 Budget Status Report**

Tony Willardson noted that the financial report is included in the briefing materials under tab D. He reviewed the current pro forma financial reports through March of this year for FY 2022. You'll note that we have received almost all of our state assessments, though one state has not paid half of their dues. I think they are aware of that, but I will follow up. As you know, we had hoped that Alaska would be able to pay their dues, but they have not yet been able to. Tom Barrett has been working towards that goal. Mr. Brooks (AK) commented that he cannot make such a decision though he has no objections.

Tony reviewed current income and expenditures. He noted that we are no longer charging for the newsletter. The newsletter only generated a minor amount from the yearly subscription fees.

The funds received from Council meeting sponsors and from the interest received from the deposits held with the State of Utah's public trust are displayed. Also included are funds from the biennial tribal water rights symposium cosponsored by the Native American Rights Fund. The Moore Foundation revenue of \$195,000 is money that we received for work since the second quarter of the last calendar year. Our receipts are delayed as we submit reimbursement requests for past expenditures under the grants. You'll see that the approved budget, shown in the fourth column, was very conservative. Our final estimates of income are substantially more (about \$200,000 more) than estimated. In part, that's as a result of the Moore Foundation funds we received.

Expenses are set forth for the current fiscal year, and also as projected for the next quarter, April through June. Our final estimates anticipate that we will be in the black overall, roughly \$157,000.

Tony further explained the last two columns of the budget spreadsheet, which split income and expenses out for those related to the WaDE program, and the Council's core programs. The WSWC core revenues come from state dues with some from interest and sponsors. The California Department of Water Resources has sponsored a number of workshops.

The last two items shown under the income section for the Moore Foundation and the BHP Foundation are amounts that the Council receives related to the philanthropic contracts for core staff time for WaDE oversight and support, as well as overhead (which is set at 10%). As shown in the figures, WaDE expenditure covers Adel and Ryan's salaries. A large WaDE expense is payments for our contractor, Don't Panic Labs (DPL), that is building the Western States Water Data Access and Analysis (WestDAAT) dashboard for us. We anticipate that over the next quarter, we will have to pay roughly \$183,000 to DPL.

At present, WaDE expenses nearly equal the expenses for the Council's general operations and functions. Of the \$157,000 that we are currently in the black, about \$50,000 of that is income from the WaDE program for my time, and other staff time. Further, we have not hired anyone to fill the position formerly held by Jessica Reimer to help on the policy side. Lastly, Tony pointed out that the line item for travel is only \$15,000. In the past, pre-COVID, that budgeted amount could be as much as \$60,000.

Tony will be preparing a proposed budget for the Committee to consider at the Summer meetings in August. Tony is seeking continued spending authority from the Committee pending approval of a new budget in August since the fiscal year does begin on July 1. Tony will work with the Management Subcommittee on that budget.

There are a couple of things to consider with respect to the budget going forward. Dues were raised by 10% in FY2019-2020. At that time, as some of you may recall, there was a proposal to raise dues by 20%. Since Jessica's resignation, the number of professional staff has diminished. Moreover, this will be Cheryl's last meeting before she retires (and we want to recognize Cheryl for all of the great work that she's done). As a consequence, we will be looking to replace Cheryl's position at some point as well. In the meantime, we will at least temporarily hire someone to help

work with and provide backup for our current bookkeeper. If we are going to return to the staffing level that we had before, we may need to consider increasing the dues another 10%.

The Executive Committee moved to give the WSWC Executive Director continued spending authority. The motion was seconded and passed unanimously.

Tony commented further that the financial statements, which are provided to the Management Subcommittee, show we currently have about \$360,000 held in reserve. So there are funds to carry us through.

### **B. WaDE Grant Status and Applications**

As is noted in Adel's presentation in the Water Resources Committee, over \$1.3 million have been committed towards the WaDE program through the Internet of Water (IOW) by the BHP, Moore, and Water Foundations (WF). We are also receiving a U.S. Bureau of Reclamation WaterSMART grant, with the WF money serving to meet a matching requirement. These funds will be sufficient to cover expenses for the next two years, and maybe three years, depending on what the final costs are for the build out of the WestDAAT dashboard. We are working with the Internet of Water in exploring a permanent source of funding, hopefully through USGS, that would support the Internet of Water, including WaDE.

### **C. FY2022-23 Budget Discussion / Dues**

Micheline Fairbank asked when the Committee must make a decision about a potential dues increase.

If a dues increase is proposed, it would be on the agenda at the 2022 Summer Meetings in August. If approved, the increase would not take effect until FY2024, which is not this upcoming fiscal year, but the next year.

Micheline further stated that Nevada is in the process of building their budget for the next biennium, so she will budget for a 10% increase. She will need to have some sort of documentation to anticipate an increase of 10%.

Tony remarked that when the dues were increased the last time, they went from \$30,000 to \$33,000. I think the proposal would be to raise them another \$3,000, which would mean they would go from \$33,000 to \$36,000.

Cheryl Redding mentioned that in the upcoming fiscal year dues letter for FY2022-2023, we could add a sentence about increasing the dues by 10%, and hopefully this would provide the documentation states may need to justify their budget increase.

## **SUNSETTING POLICIES**

Position #432 – supporting Rural Water Infrastructure Needs and Projects

Position #433 – supporting Renewable Hydropower Development

Jen Verleger referred members to Tab C in the briefing materials, which includes the staff recommended changes. The positions are considered during the various committee meetings.

### **Other Positions under Review**

Position #472 – regarding Clean Water Act Jurisdiction

Position #470 – regarding Endangered Species and State Water Rights

Jen further noted that Position #472 and Position #470, regarding Clean Water Act jurisdiction and endangered species, respectively, will also be taken up in the upcoming committee meetings. There has been a lot of preparation work done on the Clean Water Act position. Jen gave special thanks to Erica Gaddis for doing so much coordination. It has been quite a challenge. The Executive Committee does not need to do anything else with these positions, but be aware.

## **RULES OF ORGANIZATION CHANGES**

Chair Jen Verleger commented that a memo about a proposed change to the WSWC rules of organization is found under Tab E in the briefing materials. As you may recall from previous WSWC meetings, there have been some issues of concern over handling of our Clean Water Act jurisdiction position. We became aware that a situation may arise where under our bylaws states could request a delay in the voting on positions for one meeting for any reason. Such a delay becomes a problem for sunseting positions because then the policy would arguably sunset and leave the WSWC without a position on the topic(s). That likelihood has led to a proposed change in the rules.

Tony remarked that as background, the “Voting and Policy Development” section of the rules of organization goes back to creation of the Council in 1965. At that point, obviously, there were no adopted positions and we had no sunseting provisions. Any state could ask for an automatic delay on a vote until the next WSWC meeting. Now that the WSWC has numerous positions covering many issue areas, we came up against the possibility that one state could ask to delay a vote on a sunseting position, and in effect, this would have left us with no position as the position sunset with renewal.

There are a couple of alternatives to consider. One is that we make a simple change to add sunseting positions to Article 10 on Voting and Policy, which provides that in matters put before the Council for a vote, other than the election of officers or internal policy matters (or sunseting positions), any member state can request one automatic delay in voting, leaving the policy standing until the next regular meeting. The other alternative is that we could limit the application of Article 10 to only new external policy positions (for which you could ask for a delay in voting). The

difference would be that if a Council Member State chose to ask for a delay on a sunset position, it would not sunset and we would still have that existing position, whatever that might be. Internal matters are handled by the Council anyway.

However, this approach might lead to a question as to what is considered a new external policy position. For example, we're dealing with the Migratory Bird Act at this Council meeting. That could be considered as a new external policy position in which a State could ask for a delay in the voting. Obviously, sunset positions have already been vetted and approved by the Council at one point. So it does raise the question: Should we allow a State to ask for a delay in voting when a policy has already been noticed, and it is already a Council position? I think the first option would be sufficient to ensure that any sunset positions that are delayed would not cease to exist.

Policy coordination with the Western Governors' Association (WGA) led to our Article XI and changes including our sunset position provisions. WGA's positions do sunset and we try to keep on the same schedule as WGA and make sure that our policies are consistent. Waters of the United States (WOTUS) has been a difficult issue in which to obtain consensus from WSWC member states – and is probably the only policy statement where there has been such a concern with it sunset.

As you may know, the WSWC adopted comments on the 2015 WOTUS rule and that was done between meetings in order to meet a federal comment deadline. Therefore, that position was provide to the governors for their review, under our existing coordination policy. We got no response whatsoever. pro or con, from WGA. Thus, the proposed change would also clarify that if objections were raised by the governors, the WSWC would attempt to resolve the concerns, and not distribute the policy position (but only if a majority of the WSWC member state governors object). Otherwise, if one governor raised opposition to a Council resolution, that would essentially be a veto. In past discussions with W GA, the assumption was that it would require a majority of the WGA governors to veto a WSWC position. This rule change would clarify how we would deal with such instances, and would also deal with times when we may be out of phase with WGA positions (meaning when WGA adopts their positions, and when WSWC positions sunset). WSWC positions would not sunset after three years, but only to the extent they were not reconsidered and re-adopted at the closest regularly scheduled meeting. In other words, a position would not actually sunset three years from the exact date it was adopted. Does that make sense? Are there any questions?

### **Questions**

**Jerry Rigby:** I'm clearly in favor of Article 11 as revised. Going back to the other modification of Article 10, I would think that the first option is the easier one and probably less confusing. As to the question of whether or not a state may be able to request a delay in the voting on a sunset position, even though we may think we're for something in particular, until we actually get to the meeting and see all the new provisions and new ideas, I think it's still worthwhile to have the option to wait to the next meeting. I personally am in favor of continuing that. I like your first option on Article 10. That's my take. Thank you.

**Tony Willardson:** I would add for those of you who may not be as familiar with the history of the Council, that at the time of its organization, there was controversy over interbasin and interstate water transfers. I hope I'm retired before we ever get to that discussion, but any Council position taken on moving water from one state to another requires a unanimous vote. I think the first option for Article 10 would be fine with the other changes to clarify our relationship and coordination with WGA.

**Micheline Fairbank:** With respect to Article 10, I support the first revision versus the second alternative. With regards to WGA, from my reading, my question is, why would just a simple majority work for WGA for disapproval of WSWC resolutions, whereas we require a two-thirds majority to pass a policy or position?

**Tony Willardson:** With our regularly noticed positions, we assume that members take those to your respective governor for discussion. There is not a requirement that WGA approve those positions. The only point at which WGA gets involved is if the Executive Committee through an emergency action were to take a position before a regularly scheduled meeting. Which means that not only were members not noticed of that position, but neither were the governors. The governors are noticed 30 days in advance just the same as when Council members receive your notice of the meetings and policy proposals. Jerry makes a good point with respect to the 2015 WOTUS rule. Despite the governors' ambivalence with the WSWC position at that point, the comment period for the 2015 rule was extended beyond our next regularly scheduled meeting. So it was again noticed and shared with the governors as well. The Council took action by a two-thirds majority and it became an official position.

**Mary Verner** asked that the changes be restated.

**Jen Verleger:** In Article 10, we would go with the first alternate, which would add the words "or sunseting positions" to the phrase. Further, in addition, while policy positions will still sunset after three years, that will mean based on the closest regularly scheduled Council meeting. In case we get off sequence a little bit things aren't going to sunset on a particular date.

In Article 11, we will be adding the sentence: "The Council will attempt to resolve any objections through WGA, and will not distribute any position if a majority of WSWC member state governors object."

**Tony Willardson:** The Executive Committee can forward sunseting positions with changes, as we have with the current sunseting positions, with a recommendation that the Council adopt those changes. The other minor change is that any sunseting position will be forwarded to the Council for review. As the rules now read, it could be interpreted to mean that the Executive Committee has to affirmatively send any sunseting positions to the Council for their consideration. This allows that those sunseting positions could go to the Council for review without a recommendation from the Executive Committee.



**Jen Verleger:** So basically then we can agree on the Executive Committee forwarding every sunset position to the Council for consideration. We would vote on these changes in the Executive Committee, and then take that recommendation to the Full Council as well.

A motion was offered to adopt the first alternative for Article 10, and all of the proposed changes in Article 11. The motion was seconded. The proposed changes to the WSWC Rules of Organization were presented to the Full Council meeting.

### **EXECUTIVE DIRECTOR'S REPORT/WSWC ACTIVITIES AND EVENTS**

Tony Willardson reported that since the meeting last September, the Council sent a letter to EPA and the Army Corps of Engineers related to Waters of the United States and expressed our interest in more robust and ongoing consultation with the States.

We also provided written testimony for the House Science Space and Technology Committee related to improving weather forecasting, and building a Weather Ready Nation that included support for the U.S. Weather Research Program. In fact, we have been sending out letters related to appropriations requests. We also continue to express our support for funding to improve seasonal to sub-seasonal (S2S) precipitation projections.

Written testimony was submitted on a number of other bills consistent with the Council's positions. In November, we provided a letter to the U.S. Fish and Wildlife Service regarding the Migratory Bird Treaty Act, and a related position will be discussed by the Legal Committee.

We wrote again to EPA and the Corps requesting that they reach out to the governors specifically to invite participation in future development of a new WOTUS rule, as the states are co-regulators. We suggested this could be patterned after what took place under the Trump Administration when a number of representative states were invited to D.C. to sit down with EPA, prior to any proposed rule. I've remarked that this was the first time in my nearly 40-year career where states had actually been invited to help develop the rule or ask questions before the rule was published. The WGA has particularly emphasized the fact that States are not stakeholders, but that they are sovereigns and coregulators.

Tony noted a congressional briefing was held with the Native American Rights Fund to discuss the need for Indian water rights settlements. The Council continues to be active in support of securing legislation to provide safe drinking water for the tribes.

We've talked a little bit about how we coordinate with WGA. I have attended their annual meetings and participated in workshops which they have held. Specifically, they held a listening session in Salt Lake City last September on working lands. I discussed what the Council is doing with WaDE, as well as drought impacts.

We continue to have regular calls with the WestFAST executive team and work with them in a number of different areas including their webinar series.

Lastly, Tony noted coordination with other organizations in which the WSWC has either participated or presented. Further, there are a number of different steps that have been taken working on the development of WaDE and outreach with other multistate organizations and federal agencies.

### **FUTURE WSWC MEETINGS**

Chair Jen Verleger remarked that the WSWC 2022 Summer Meetings will be held in Polson, Montana on August 2-5.

With respect to the Fall meetings, Julie Cunningham commented that Oklahoma is delighted to host and we are looking at holding the meeting near the Chickasaw wildlife area in southcentral Oklahoma. The dates are a work in progress.

### **COUNCIL MEMBERSHIP UPDATE**

Tony Willardson noted that the list shown on the last page of Tab B in the briefing materials includes folks that are listed on our membership list although we have not yet received a letter of appointment from the governor. As I stated earlier, Alaska is not a full member at this point. However, some Alaska state agency representatives have been and are participating in our meetings. Similarly, with the others listed, such as in Kansas, Matt Unruh; in New Mexico, Mike Hamman, who is new, as well. We expect that we will get a letter in the near future from Governor Lujan Grisham making appointments. For Oklahoma, Sara Gibson is being listed, but we've not received a formal appointment, nor for Shellie Chard, who is the director of the Water Quality Division. In Oregon, Jennifer Wigal, in Utah, Kimberly Shelley, and in Washington, Lauren Watson have not been officially appointed.

Tony requested that Council members help in getting the letters of appointment from their respective governors. One thing that makes the Council unique is that participation on the Council is by appointment of the governors.

### **DRAFT FY2022-2023 EXECUTIVE COMMITTEE WORK PLAN**

Jen Verleger briefly reviewed some of the changes that have been incorporated in the draft work plan for the coming fiscal year. In particular, she pointed out the addition of item #9 which addresses concerns related to state water agency staffing and retention. Jen remarked that in North Dakota, there has been a push to try to hire staff and it has been a real struggle given salaries and compensation issues. The Executive Committee put together a working team to discuss ideas, talk

about how we can recruit better, how we can get job postings out to a wider audience, how we can deal with some of the salary issues or to help people understand that working in the water policy arena is awesome. One Zoom meeting has been held to address this topic and Jen thought it was quite beneficial.

Jen asked the group to review the Committee work plan in preparation of it being adopted at the next meeting.

### **SUNSETTING POSITIONS FOR 2022 SPRING MEETINGS**

Chair Verleger explained that the positions listed below are for informational purposes. These positions will sunset at the 2022 Summer meetings unless they are otherwise revised and readopted.

Position #434 – Preservation of Radio Frequencies for Weather Forecasting/Water Management

Position #435 – Resiliency of Our Nation to the Impacts of Extreme Weather Events

Position #436 – Regarding Hydraulic Fracturing

Position #437 – Supporting Water Research Department of Energy National Laboratories

### **OTHER MATTERS**

There being no other matters, the meeting was adjourned.