

**MINUTES
of the
199th COUNCIL MEETING
KwaTaqNuk Resort-Casino
Polson, Montana
August 5, 2022**

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KwaTaqNuk Resort-Casino
Polson, Montana
August 5, 2022**

MEMBERS AND ALTERNATES PRESENT (**via zoom*)

| | |
|---------------------|---|
| ALASKA | Emma Pokon Julie Pack |
| ARIZONA | Amanda Long-Rodriguez <i>Ayesha Vohra</i> |
| CALIFORNIA | <i>E. Joaquin Esquivel</i> <i>Jeanine Jones</i> |
| COLORADO | Jeremy Neustifter |
| IDAHO | John Simpson Jerry Rigby |
| KANSAS | <i>Connie Owen</i> <i>Kenneth Titus</i> <i>Matt Unruh</i> |
| MONTANA | Anna Pakenham Stevenson |
| NEBRASKA | Jim Macy Tom Riley |
| NEVADA | Jennifer Carr Micheline Fairbank |
| NEW MEXICO | <i>Nathaniel Chakeres</i> <i>Mike Hamman</i> |
| NORTH DAKOTA | Andrea Travnicek Jennifer Verleger |
| OKLAHOMA | Sara Gibson <i>Julie Cunningham</i> |

OREGON

SOUTH DAKOTA

Nakaila Steen

TEXAS

Jon Niermann

UTAH

Candice Hasenyager

WASHINGTON

Mary Verner
Buck Smith

WYOMING

Jennifer Zygmunt
Jeff Cowley
Chris Brown

GUESTS

Emilie Henry

Rich Janssen

Erin Huang

Clare Ols, University of Montana

Casey Lewis, Flathead Basin Commission

Cassidy Bender, Flathead Basin Commission

Renee Spooner, Utah Division of Water Rights

Newsha Ajami, Lawrence Berkeley National Lab

Justin Lavene, Nebraska Attorney General's Office

Kathy Alexander, Texas Commission on Environmental Quality

Jojo La, Colorado Department of Public Health and Environment

Kate Wilson, Montana Dept. of Natural Resources and Conservation

Katie Durham, Western Kansas Groundwater Management District No. 1

WESTFAST

Heather Hofman, Federal Liaison

Lauren Dempsey, US Air Force

Mindi Dalton, U.S. Geological Survey

Roger Gorke, Environmental Protection Agency

STAFF

Tony Willardson

Michelle Bushman

Erica Gaddis
Adel Abdallah
Ariel O’Callaghan
James Ryan

WELCOME AND INTRODUCTIONS

WSWC Chair Jennifer Verleger welcomed everyone.

APPROVAL OF MINUTES

The minutes of the meeting held on April 7, 2022 in Arlington, Virginia were moved, seconded, and the minutes were unanimously approved.

COMMITTEE REPORTS

A. Water Resources Committee

Mary Verner reported on the Water Resources Committee’s very full agenda. The Committee heard a presentation on the Lower Snake River Dams Benefit Replacement Report by Heather Bartlett, Deputy Director, Washington Department of Ecology. The Washington governor’s office did a study on the benefits and analysis of the Lower Snake River dams. That study was prepared on behalf of our Governor and our Senior Senator to analyze amendments that were moved, and what benefits of the dams would need to be replaced. Jerry Rigby (ID) then gave the perspective of the State of Idaho. Several representatives of the Department of Energy (DOE) National Labs gave a presentation on some fascinating information about the studies that have been conducted and the new technology that’s been used. Jeanine Jones (CA) spoke about the importance of maintaining sub-seasonal to seasonal (S2S) forecasting and the challenges securing a long-term commitment of funding. Tony gave a presentation on the Spectrum Coordination, Management and Valuation Legislation. Because we had an entire day devoted to WaDE and WestDAAT, that part of the agenda was a very brief summary. Members have committed to our work plan for the upcoming year. Ariel gave a brief overview of legislative items in both the House and the Senate. We had a roundtable discussion on drought management from the States, especially the dire conditions in Colorado River Basin and the challenges and success stories around the bipartisan infrastructure law.

We do have positions for the Full Council to consider. Position No. 435 is regarding strengthening the resiliency of our nation to the impacts of extreme weather events. In addition to the edits you see under Tab C, we also have some edits in the sixth Whereas clause: “extreme prolonged drought has led to the cooperative development of Drought Contingency Plans (DCPs) by the Seven Colorado River Basin States...” In that paragraph, we also need to edit ? so it reads “Whereas, extreme prolonged drought has led to the cooperative development and implementation

of the Drought Contingency Plans (DCPs) by the Seven Colorado River Basin States, the United States and Mexico and calls by the Department of the Interior for further reductions in water use.” Mary moved that Position No. 435, as amended, be approved by the Full Council. There was a second. Without further discussion, the motion was unanimously approved.

Position No. 434 is regarding radio frequencies for weather forecasting and water management. Mary moved that Position No. 434, as amended be approved by the Full Council. There was a second. With no further discussion, the motion was unanimously approved.

Position No. 437 is supporting water research Department of Energy National Laboratories. Mary moved that Position No. 437, as amended, be approved by the Full Council. There was a second. Without further discussion, the motion was unanimously approved.

B. Water Quality Committee

Jennifer Zygmunt reported the Water Quality Committee had a very productive meeting as well. One of the first topics discussed was an update on abandoned hardrock mines. Erica gave us an overview of the two letters that were drafted and sent in July regarding support for a Good Samaritan bill, which is similar to legislation that’s been proposed in the past, as well as letter supporting infrastructure plans for abandoned hardrock mining. Those letters did a good job advocating for state involvement in those processes, particularly with the Good Samaritan legislation. That’s been a long time coming. This is the furthest that we’ve seen this legislation forward. We also discussed a draft CWA §401 Rule comment letter that will be sent by the Council. This was drafted by Erica and we appreciate your efforts to put that together. There were only minor revisions to that letter so the Committee supported getting that letter sent to EPA before the deadline of next Monday.

Erica also gave us a report on the two Regional Approach Workshops to WOTUS that were held this summer. The two pre technical workshops where technical folks from the states that got together to discuss classification schemes and analytical tools that could use for regional approach. Then that was followed up by Tuesday’s policy workgroup discussion where the outcome of those technical workgroups were reviewed, and evaluated whether the regional approach was possible and if there’s value to it. It was a good, challenging discussion, but provided a good opportunity to brainstorm and identify some further action items and questions that we’ll continue discussing. We will need to have a work session at the fall meetings to decide to present an regional approach, or take a closer look at that time.

Roger Gorke provided an EPA update. The Water Quality Committee Work Plan was approved with a few minor edits. We want to acknowledge that we need to have communication between the states to share information related to the SRF infrastructure funding that states will be receiving. We also added a task related to PFAS. There’s interest from the states and having a subcommittee to decide if the Council needs to start brainstorming a policy resolution. If we do that, we need to make sure that we are coordinating with other national groups such as ECOS, and

AQUA. Finally, with the work plan, we will look for better ways to coordinate with WestFAST so they can contribute to some of the goals in our work plan.

We had one sunseting resolution, Position No. 436, regarding hydraulic fracturing. You can find it under Tab C. The Committee unanimously voted to move that position to the Full Council for approval without any edits. Jennifer moved that Position No. 436, be approved by the Full Council and was seconded. Without further discussion, the motion was unanimously approved.

C. Legal Committee

Chris Brown stated that the Legal Committee did not have any sunseting positions. Jay Weiner and Anna Pakenham Stevenson provided a presentation with regard to Montana's legal issues. They discussed their stakeholder process and how that's resulting in some potential legislative efforts to make changes and focused on the role of the water courts after the adjudications are completed. They are also looking into oversight of water commissioners in water regulation, whether that should be in the district courts or an executive function. Next we had a brief presentation by Jen on Western Water Cooperative Committee for Corps of Engineers Projects. If the bill passes, it would require the Corps to meet with Western states regarding the operation of Corps projects. WSWC Executive Committee members will be the default representatives of their states unless their governor appoints somebody different to that Committee.

We had some state Supreme Court case updates from John in Texas, and Micheline in Nevada. In Texas, the *Pape Partners, Ltd. et al. v. DRR Family Properties, LP, et al.* case held that TCEQ lacks jurisdiction to decide conflicting claims of ownership to surface water rights, and reversed the court of appeals, remanding to the trial court for further proceedings. Micheline gave a couple of updates, one with regard to the Diamond Valley Groundwater Management Plan. After it was approved by the State of Nevada, it went to the Nevada Supreme Court, which ultimately upheld that plan. Interestingly, because Wyoming dealt with something very similar in its statutes, a plan in Nevada can deviate from the prior preparation doctrine. It's up to their community to determine each of those grandfathered rights. She also talked about a activities in the lower White River Flow System. That sounds like a conjunctive management issue similar to what we're seeing, where upstream groundwater pumping is depleting surface water supplies, and the Nevada State Engineer tried to regulate there and lost in the District Court for lack of authority.

Nathan Bracken gave an update on the very busy Utah Legislative Session on water. I think most of us that work in water would be very concerned to see 28 water bills flying in the legislature. But from the sounds of it, it was pretty positive. I think the focus generally is motivations, not driven by the shrinking Great Salt Lake, which is actually a very interesting nexus between the Salt Lake and the Salton Sea in California that we're trying to wrestle with too. It's actually an interesting nexus. Michelle then gave updates on the various legislative/litigation. The draft Legal Committee Work Plan was approved by the Committee with some changes that had been made. I will just mention again, with regard to the surveys that are part of that plan. The

states that have not yet had an opportunity to respond to the surveys, please get those in because staff is diligently putting those together.

C. Executive Committee

Jennifer Verleger reported that Alaska is now a full member of the Council. Tony gave an update on the budget. The Council is in pretty good shape, with the flexibility to hire another policy person, whether that be full time or on a contract basis. The other major issue we talked about was raising the dues. We voted to raise the dues \$3,000 in FY2025. That delay is to give states some breathing room or visibility for their legislatures, to include that into their upcoming budgets. We also talked about future water meetings. Our next meeting will be held in Sulphur, Oklahoma in October. We also read through the Executive Committee Work Plan. That is under Tab G if you would like to look at it. There's going to be some sunseting positions coming up at the next meeting: Position No. 438, regarding research for water resources applications; Position No. 439, supporting implementation of the SECURE Water Act; and Position No. 440, regarding state filing fees in State General Stream Adjudications.

NOMINATING SUBCOMMITTEE/ELECTION OF OFFICERS

Jerry Rigby reported that the Council needs a new Secretary. The Nominating Subcommittee recommended that Julie Cunningham from Oklahoma be nominated. On behalf of the Subcommittee, Jerry moved that she be elected as Secretary of the WSWC. Jon Nierman seconded the motion. The Council approved the nomination.

WESTFAST REPORT

Roger Gorke, WestFAST Chair provided an update on recent WestFAST activities. WestFAST is recruiting for a liaison. Heather will only be with us for another 4-5 months. Chris Carlson with the Forest Service and current Vice Chair wasn't able to join us, but he'll be taking over as Chair sometime in the near future. Our main goal is to facilitate coordination among federal agencies, and between the states and federal agencies. Together, we plan and implement collaborative efforts.

Back in March, we had a strategy session and spent several hours trying to figure out what we should be doing, what our current priorities were, where should we be focusing our work, and what are collaborative opportunities between the Western Governors and the WSWC and the committee work that you all have underway. We came up with several focus areas, which can be found under the WestFAST Work Plan under Tab G. They include: data, drought, wildfire, infrastructure, and other areas of mutual interest and need. We're happy to take any comments or any questions on it. There not set in stone. We hope you guys take a look and make sure we're on the same page with you in trying to get the work done.

We have regular meetings and information-sharing among our federal agencies. We work with other cross agency groups, whether it's the NDRP, working on the workshops with the Council, we're working with Western Regional Partnership. Other outreach activities include webinars, are WestFAST website. Then federal-state partnerships, specific efforts with individual states and looking for opportunities to help leverage funding and the specific efforts with individual states. A great example of that is the work that we were doing with the State of Nevada on their hazard mitigation planning and looking for opportunities for FEMA funding.

I asked at the end of the Water Quality Committee about looking for opportunities within the committee work plans where we could leverage efforts with WestFAST. Within our work plan, there's many different bullets under each one of these, probably at least six to ten under each, whether it's a Water Resources Committee or Water Quality Committee, to look for specific opportunities under each one of the Committee's work plan, that could be an area for the Council to look to see where WestFAST could really support and work collaboratively with the Council. Not just working with EPA on 401 certification or on WOTUS, but if there are any other opportunities for us to work together collectively.

One of the things that I think has been really successful is the webinar series we've been doing on water resources and wildfire in the West. You kind of put them into three different categories: Why does it matter? What are the consequences of not recognizing the impacts of water resources pre and post fire? And then, Where are we now? We're planning a workshop at the next meeting in Oklahoma in October. We're going to be pulling different panelists from the webinars that we've done to have a discussion. We don't want it to just be a WestFAST thing, we to have states involved and so we're looking for volunteers to help work with us on the workshop planning. If we could get some states to participate with us, I think that would be the most ideal. If anybody has any question or comments on our work plan, get them to Heather, to me or to Chris, and then we can answer your questions and make comments. Tony has reviewed it. But we also want to get your input as well.

Mary Verner: You were looking for items potentially past multiple agencies. We had a discussion during the Water Quality Committee about PFAS and I think it would be a very helpful if we could have DOD or DOT participate in those conversations. In the State of Washington, we have military facilities and transportation issues around PFAS.

Chris Brown: I'm interested to understand a little better what WestFAST is thinking about with regard to state collaboration in the Colorado River Basin, we have a very close relationship with Reclamation, but I haven't really seen a lot of additional coordination with other federal agencies.

Roger Gorke: I think that's one of the questions I would flip back towards you. What can we do to help? I realized that Reclamation is really active in the Colorado River Basin, but as you know, the basin is in a world of hurt. What can we do to help? EPA can't direct you on each individual project, but there is an opportunity to sit down to discuss funding, such as SRF, WaterSMART and EQUIP - using funding together than just each program individually going into different areas, as an idea. Maybe even bring in FEMA as well. I think WestFAST is a great opportunity to see where there might be ideas to leverage different funding opportunities, different programs, or

resources to be able to work collaboratively to reach that goal of really saving the system. Does that help?

Chris Brown: We actually might have some ideas for you also. We'll probably be getting a hold of you to see if we can't put something together.

Roger Gorke: That would be great.

Tony: Roger, do you want to mention just briefly some of the efforts, and you and I have talked about, I believe it is in the NDRP, or it's the Water Sub-cabinet that we'll be meeting again later this month, and would provide an opportunity for us to bring some suggestions related to drought. Maybe you could also just briefly mention the White House Interagency Committee and their different efforts that are ongoing.

Roger: We do have the letter that Tony, Sue (or Beth Callaway), and Dave Mitamura signed. There is an interest by the principals to begin that dialogue in that conversation. The Water Sub-cabinet (deputy level) meets monthly and the principals meet quarterly. The next meeting is coming up in a few weeks. On the agenda is, how do we want to facilitate this kind of collaboration and discussions with the Council? Not merely talking points for the principles to provide to you, but make it a two way street, which I think is exactly what the point is. Also on the agenda is going to be coordination between the Water Sub-cabinet, Interagency Drought Working Group, and the NDRP, which they all have a slightly different focus. The NDRP is predominantly focused on longer term resilience. With the Interagency Drought Working Group, it's more of a focus on what can they do to provide relief, kind of in the moment? Then with the Water Sub-cabinet, it kind of touches on all of those, but goes even broader.

Tony: For those of you who are not aware, the Water Sub-cabinet, as Roger said, is the Assistant Secretary level. After the last Council meeting in Washington, D.C., you may recall that we didn't have as much Q&A time with the folks that were participating as we would have liked. So we sent a letter from the Council, ICWP and NWSA, asking for a regular meeting that's semiannual, or whatever. Roger actually had a chance at the governor's conference to talk with Tanya Trujillo, Assistant Secretary of Interior for Water and Science, and a former Council member. She was more than willing to meet with us on a regular basis. There's also Mike Connor, Assistant Secretary for Civil Works and Gloria Montañó Greene, Deputy Under Secretary for Farm Production and Conservation, USDA, and also Homer Willis, Undersecretary of the Natural Environment and Natural Resources, USDA. I also had a chance to speak with Randy Moore, Chief of the USDA Forest Service about participating in WestFAST, which they currently do not.

Roger: They're in WestFAST, just not on the Water Sub-cabinet.

Tony: We are working to strengthen those ties and to have regular conversations so that we can bring issues to them and as Roger said, not just their talking points. So thanks, Roger.

Jennifer Carr asked a question.

Roger Gorke: It was a little a little hard to hear Jennifer. I think she was asking, or confirming about having someone from our Mountains, Deserts and Plains Office at the next Council meeting. Having a panel with them, Bureau of Land Management and the Forest Service together. We've been really trying to create that. I think now with the IJA funding, and with having a specific office focused on mining in the West, I think there's a really good opportunity to just enhance that cross-agency collaboration. There were also some programs authorized but not funded. I think it would be good to hear their plans, what other kinds of appropriations they could get. We'll definitely work on getting them to the next Council meeting. If there's anything else specifically you want them to talk about that may not be in the letter, or in the Council's position, please reach out and we can make sure they touch on that.

Tony: Roger, you mentioned the Western Regional Partnership. I think there's probably a number of folks out there that do not know what that is. Would you talk about some of the work that's been going on there?

Roger: The Western Regional Partnership (WRP) was established when the Department of Defense partnered together with representatives of Federal agencies, State and Tribal leadership in the States of Arizona, California, Colorado, Nevada, New Mexico and Utah. WRP was expanded in 2015 to include the State of Colorado. They do a broad range of things. One example is airspace. How do you connect airspace between military bases so they can fly the planes and test stuff like that. They also have a focus on natural resources - they do restorations and work around bases that are either contiguous with a base or are in the general area of a base. Starting with the 2019 Principal's meeting, they were asking for new areas of focus, and then doing what they call a deep dive. One of them was on water security, which we've been working on the last couple of years. Something we have worked on for a while, but with COVID and everything, it's kind of messed with their meetings and being able to get together and officially approve it, etc. We can probably share the document that was developed. I think it's a really good document in terms of the definition of water security and their four buckets water security strategies. Not only has it been good substantively to write that document, it's also created an opportunity to better engage with folks. The short presentation that Jennifer, Micheline and I presented at the last Council meeting on how we're helping Nevada with working on FEMA funding and updating their hazard mitigation plan, that's where I met Bunny. Bunny mentioned the groups that Nevada had at the state level and that just got me thinking with some other colleagues about how we can help the work that they're doing. There's a lot of things that overlap and how different efforts can work together. WRP has been very, in my mind, very useful in terms of creating a more of a network on water security issues, but again also substantively seeing how different other agencies, different states or tribes, how they view water security and the programs that they have, or want to have, or need, to get to water security.

Tony: Thanks Roger. I would just note that the Western Regional Partnership actually came to the Council recognizing our expertise in the water arena, rather than forming their own Subcommittee on Water. We've been involved for more than a year now. As Roger says, the focus for DOD is actually on maintaining the resources for the bases and military readiness. Obviously, we have a number of bases where water is an issue. They are also looking to what the military has for many of their bases to be self-sustaining both energy and water wise, and how

they're going to get there. I know in Idaho, they have actually acquired rights in the Snake River to maintain Mountain Home Air Force Base, should that need arise and given the economic importance of the base to the State. I believe it was mentioned in the Legal Committee that China Lake Naval Base in California raised concerns about securing reserved groundwater rights in California. As a landowner, they have a right to use water related to the base, but they're also concerned about declining aquifer levels, and the adjacent communities that support the base.

STATE REPORTS

Utah: Renee Spooner - We already had Nathan talk about the bills that were passed and so I won't go into details because they have already been covered. We had the signing of Navajo Nation settlements agreement in Monument Valley, which was a great event. We had a good turnout. The entire State of Utah is currently experiencing drought. Approximately 83% of the State is shown by the U.S. Drought Monitor to be experiencing extreme or exceptional drought, and it has slowly worsened. Both the governor's office and the legislature actively supported and invested in water quality contract projects, and other planning initiatives. Details on those can be found under Tab U in our State Report. We have some pending litigation with the Ute Indian Tribe of the Uintah and Ouray Indian Reservation. They wanted to amend their complaint a third time. You're welcome to look at our report for further details.

South Dakota: Nakaila Steen - South Dakota has fared much better than anticipated having received moisture in the late spring and early summer, reducing the extent and severity of drought across the state. However, we are now in August when moisture for crops is critical for finishing crop development prior to harvest. The agriculture sector continues to be faced with high input costs - most notably fuel, chemical, and fertilizer costs. For legislation, the South Dakota Geological Survey received \$675,000 during the 2022 legislative session to purchase a new drill rig (replace an existing rig), purchase new hollow stem augers to be compatible, have one new water tank constructed and mounted, and to remount an existing water tank. The Survey opened bids for the new rig on July 20th and now it will take several months before a new one is built and delivered, with an anticipated start date at the beginning of the 2023 drilling season if all goes well. The transmission just went out on our older 1984 drill rig last month, so while we try to maintain two operating rigs, we currently only have one while that transmission is repaired. At the spring meeting South Dakota reported legislation being enacted (Senate Bill 62) providing a \$600 million infrastructure investment for the American Recovery and Reinvestment Act (ARPA) funds. The State of South Dakota made a historic investment by dedicating this funding for local water and wastewater grants. Of the \$600 million, only approximately \$7 million of the ARPA funds remain unobligated. This money has leverage approximately \$15B in total project funding when combined with grants and loans awarded from the South Dakota's Drinking Water State Revolving Fund Program, Clean Water State Revolving Fund Program, Consolidated Water Facilities Construction Program, and Solid Waste Management Program.

North Dakota: Andrea Travnicek - I mentioned at the last meeting changes with the structure of our agency to become a Department of Water Resources to be led by a director that oversees the state engineering agency, but is also one cabinet member and still reports to a commission. Jen and I have been working really hard at our admin code rules that clarifies laws for that. We've got

those out for public comment until August 22, and we have a public meeting coming up this Thursday in Bismarck. Along with the policy changes, we decided to clean it up. The agency has been having some discussions related to definitions to high hazard, medium hazard dams. We're looking forward to making updates based on what FEMA has out there and what other states have done so far. Dam Safety continues to be extremely important. We had concerns this spring with the Bourbanis Dam. There was an extreme amount of rainfall and snowmelt that happened at the northeast part of the State. Members of the National Guard used two Black Hawk helicopters to place one-ton sandbags to help fortify the dam. We are also having some discussions with NRCS.

We are working really hard on our cost share policy. We have a Resources Trust Fund that exists because of our 20.5% Oil Abstraction Tax that comes into that. North Dakota is very fortunate to have hundreds of millions of dollars to go towards water infrastructure projects. This policy has been updated. The last time that it was really updated was in 2013 with some small updates in 2015 and 2017. When I came on board, our Division Director for Planning and Education had 16-17 clarifying questions that just continued to come up and so I said, "Well, let's rip the band aid and do it all at once." We're in the thick of looking at our cost share policy associated with percentages, whether that's rural water, water supply, expanding level, larger projects, flood protection, or watershed studies. That is out now and public comment closes on August 15. We'll be giving an update to our commissioners this week. There's a lot of politics associated with our cost share policy, but good discussions continue to clarify based on where things exist today.

We are working on our budget. I know there's been a lot of discussion related to workforce as well. We are looking to probably add some full time employees to our permitting side related to outreach and education. We also have our first policy person. They're tracking everything that's happening at the federal level, and also in the different statewide committees in the legislature. We have been doing some coordinating with North Dakota State University and hope to continue to coordinate with some of the others across the state. We're going to be doing a workforce roundtable - bringing ourselves and some of the other team members that lead our divisions and sitting down with the different departments to see how their course work lines up with what we're looking for and then making sure that we've got the right internships in place. I'm looking forward to being able to report back to you on that. We've been working really hard this summer to continue trying to get people in and be creative on our recruiting. Of course, we're all in the same boat. The governor's office sent out a survey to all statewide employees on what they find is their highest priority. Are they looking for more vacation time; tuition reimbursement; looking for more recognition, etc. It will be really interesting to see if the governor comes back to the table on that.

North Dakota is out of the drought right now, but we know how quickly that can change. Even with the Yellowstone River flooding our rivers went up eight feet with the amount of water that came into that. At the beginning of the summer we were having concerns about access and then all of a sudden, we got it back up to where it needed to be. At the same time, you've got drought and flooding concerns, so we continue to try to fill the gap with USGS streamgages. We know that the readily available information data is extremely important so we continue to work on remote sensors, getting more of that technology out into the field.

I did have to have a conversation with Earl yesterday because of an article on what Arizona is doing in regard to infrastructure and the desalination project.

Wyoming: Chris Brown - couple of quick things. Jeff and I spoke a little bit yesterday about the bigger upper basin or at least Colorado River issues that we wanted to bring to the state level. We're learning very quickly in the current circumstances that we're more popular than we should be. We're getting all kinds of questions and public interest. Last year, at this time, our governor set up the Colorado River Work Group and appointed folks from all of our different water sectors in the basin to try to gather and disseminate - both get in and put out information to our local water users with what's going on. The reality really is that the State's been extremely plugged into these issues for a very long time. For the most part, our water users aren't affected by the Colorado River Compact. Having this sort of effect by the compact and just trying to get accurate information on all these news articles, people wondering what's going on and how it may affect them. We've had pretty robust public outreach, public meetings, the past four or five years just trying to get people to show up. I spoke in a small town in southwest Wyoming with just 1,000 people, and over 100 people showed up to learn about Colorado River 101. That's something that's going to capture more of our time to ensure folks are kept up to speed on current events. There are 10 diversions that make up 95% of use in the Lower Colorado River Basin. Wyoming alone has over 2,500 individual diversions with over 6000 individual waterways. Trying to get all that information out to folks is hard.

The other thing I just wanted to bring up really quick, we had a WSWC presentation with regard to localized weather radar and how that might be used for water supply forecasting in watersheds. We've talked about looking into that and right now it looks like in partnership with our friends in Montana, the Yellowstone Compact perhaps is pursuing that for the Tongue River Basin, which was the subject of the *Montana v. Wyoming* litigation and using Yellowstone Compact Commission and the States to try to pursue that tool to improve our water supply forecasts.

Jeff Cowley - To add to what Chris was saying, we did get a call from the State of Montana on April 1, regarding the reservoir. I thought it was joke. That's how their new forecasting system came up.

We are currently under the North Platte Decree. We're under the summer call, which limits people pumping directly from the river to 6,600 acre feet every two weeks. We haven't broken that cap yet, although it is really, really dry out there. We hold a monthly webinar to help educate the public. We have the USBR discussing their operations of rivers and reservoirs; USGS talking about their streamgages; the BLM talking about fire fuels and how those fuels change throughout the year; NOAA gives us updates on forecasting out for temperatures, and the possibility of rain; and then State Engineers Office letting everyone know where the water is. It's good that the river is full, but it really is that dry out. Every single drop of that water is counted under that reservoir. There is no natural flow.

One last thing to add, Chris was able to add a new key position to help him take a breath on the Colorado River. We just authorized to fill our deputy state engineer. It's been quite a while

since we've had the extra help. Our state engineer was doing everything. The State Engineer's Office had the position added to help us model the Green River Basin and the Colorado. It's the gift that keeps on giving.

Jennifer Zygmunt noted that Wyoming continues to have high interest in carbon sequestration projects within the state. This is the class six underground production control wells. Wyoming is the second state nation to have primacy. We have one application under review in the southwest part of the state. Tentatively we expect to receive three more by the end of the quarter and then maybe another five by the end of year. That's a lot of interest. It's an exciting time to be a geologist in Wyoming. We did see some legislation this past year on long-term liability, long-term stewardship. We've had some interesting conversations and interim legislation right now. We've got lots of coordination we're putting into gas. There's a conservation commission on that. I will note, I hear about other states that are interested in seeking primacy. If we can help answer any questions, please don't hesitate to call. If you're not aware, the bill funds include \$50 million to support states that have primacy or are seeking primacy. So again, if we can help speak from our experience about that process, we're happy to do that.

Alaska: Emma Pokon - Our big news this spring was getting some funding from the legislature to begin looking at 404 primacy. We're pretty excited about picking up that project. We are dealing with EPA's proposed 404 (c) veto of a mining permit on state lands. Alaska is a beautiful place to live and work. If you all have engineers you want to send our way, we're hiring. We've got a little bit of health criteria with water quality folks and EPA is wanting to resolve it. As far as I know it's pretty Alaska specific.

Nebraska: Tom Riley - On the water quality side in Nebraska, there was an organizational change about two years ago. We were moving into a new building space and looked at our organizational structure from an integrated approach to how we actually work. We do permits in engineering, extractions and compliance, monitoring and remediation and so we changed divisionally to where all of those functions are under a division manager. We're trying to work together on projects. When we have a new project, or an existing permit project coming in for review, we're looking at the whole nine yards. It does help us in providing training for our teammates to expand our horizons. We have vacancies, and those are more readily filled by existing structure. People that know pretty much what's going on. It's working pretty good for us right now. We're an agency about 265 people and we're running about an 11% vacancy right now. That's pretty much been our vacancy rate for a long time. We tend to be a bit of a transitory agency where new people come in for about five years, get trained up and then the really bright ones tend to hit the door and go elsewhere. Or we have really passionate people that just love state government, love the service and are equally as bright who may stay. It's an interesting discussion on what accommodations you can do to entice people to stay longer.

We have three pieces of significant legislation. Last year, we incorporated a drinking water team into the agency so now we have all of water in the agency. With that came authorization to act on 404 authority. We are starting a program to try to do that right now, working with several states. We didn't have the administrative authority to issue cease and desist orders - really dumb things were going on in the State. We asked for that authority, and it came with the ability to

impose a \$5,000 per day fine. I have a \$300,000 cleanup fund and the authority to clean up sites if responsible parties don't do that on their own.

We have probably about \$65 million total new bill money with the SRF. We are booked now in SRFs on both sides (clean water and drinking water) through 2025. We're waiting on about \$70 million in federal money that went out for the 2019 flood from FEMA. When we get that money, we'll have just opened about \$40 million on the clean water side and about \$30 million on the drinking water side of existing capacity. Our recycled money is out. We offered last year a 0% administration and 0% interest rates for \$340 million, with a capacity on recycled money that went out the door in about two and a half months. We're booked in SRF projects. So we're hopeful that engineers can come up with their plans and specs and project managers come up with components and steel waivers to make those projects fly. On the carbon sequestration side, our oil and gas commission have had the authority on that side and there's about 8 to 10 projects actively being reviewed. Core wells being are being drilled for capacity. There are two in Nebraska and so it's going to be exciting to see how carbon sequestration flows. We have direct injection activity work going on. There's a couple of projects that involve several states with a pipeline or two. Stage one is probably going to be pretty exciting to watch. We are approaching the billion dollar mark of the money that has gone out and come back in the SRF program.

Finally, the agency's been very busy in a legal case against a facility that did some pretty egregious waste for several years. That project also involves a pretty intense cleanup through our voluntary cleanup program. Six seed companies have taken ownership of basically the site control, the inner ventures and working on a pilot to clean up wastewater, groundwater and waste material on the site. Very interesting project. Probably the most complex project that I've been involved with personally over 35 years of service. Justin's team has really been helpful on coordinating the effort.

Jim Macy - It's more compliance on my side in Nebraska. There's certainly a lot of exciting things that have happened for my department. There is a new space. We joined the Department of Agriculture, the Department of Economic Development. It's a brand new, fabulous facility. We've been looking for years for a new space and so it's been a great addition for us.

We just completed a couple of really big projects. The State Flood Hazard Mitigation Plan update took about a year to do. My department has about seven times the amount of budget it did just a year ago to perform some operations and water initiatives from the governor and the legislature. It really hit securing our existing future water, tourism and development, supporting our aging infrastructure, and a lot more. On the aging infrastructure piece, the legislature gave us \$50 million to help out our irrigation districts - about 60 in Nebraska. We're trying to get that going. Trying to do all the new initiatives has proven to be difficult as we are short staffed, which we are working on - trying to get people interested in water issues to stay. We're trying to run the whole show, but it's like picking up a whole new department. It's been a challenge, but also really exciting too.

Washington: Mary Verner - same for us as far as staff. During the COVID budget cuts, we were holding 15 new positions. We are gradually trying to build those, but we have attrition and others

leaving. The recruitment and retention issues are challenging. I'm able to engage in fewer administrative functions and participate more for the WSWC. As mentioned yesterday, we are not suffering drought conditions this year, which is unusual for us.

Buck Smith - One of the adjudications that Mary mentioned, the Nooksack River Watershed that's in the far northwest quarter of the state just south of a border. I'm excited to get this adjudication going. It involves 115,000 acres of farmland. It's in Walken County, which is one of the top 3% (in the nation) for farm production. There's 1,700 farms in the county, and more than 100 dairies. It's one of the largest red raspberry producing regions in the world. We produce 65% of all the frozen red raspberries used in the United States. When you go to Costco and buy red raspberries, most likely it's from Walken County. The county is also a major producer of blueberries and sweet potatoes too. There's two tribes in the basin - Lummi Nation and the Nooksack.

Texas: Jon Niermann - Much of the state is in exceptional drought. We have a handful of communities that are within 180 days of running out of water. Probably the most dire situation is on the Lower Rio Grande, which relies on treaty deliveries from Mexico. Mexico simply has not been delivering water. Amistad reservoir is at historic levels. We're having to curtail rights, which we've never had to do before. It's pretty dire, especially in that part of the state. Our agency is going through a sunset process right now. The sunset commission staff has given us their recommendations. We've got a hearing on that, as it relates to water. The staff has asked the commission to direct us to cancel unused water rights that have not been used in 10 years. They read our statute is being mandatory allocation. We see it as discretionary, the statutes ambiguous. I think the legislation will probably iron that out and clarify it as discretionary. Cancellation really would not make a difference in our availability models. The other topic is environmental flows. We have implemented an environmental flows regime, but they're recommending some statutory updates just to improve our adaptive management practices. The final point I want to make is kind of around personnel staff. We have a 14% vacancy right now. The director of our Office of Water just retired and so if anybody's interested in that position, I think the posting is up right now or will be soon.

Colorado: Jeremy Neustifter - the State of Colorado and the Colorado Water Conservation Board is currently updating the Colorado Water Plan. We are in the same boat as everybody else in regard to staffing issues. We do have a position open right now for a permit section manager from at the Water Quality Control Division. If we can't find the right person, will probably open that up for other states. We are also dealing with a lot of issues concerning communication around PFAS, which we're all probably going to be dealing with that at some point. Basically any water system we have that's tested is finding levels that are in the new advisory. There's a lot of scared people out there and so communications is key and we're still working on that now. We had the new House Bill 1322, which has created a significant focus for the Department of Public Health and Environment. This is a new and very significant priority for our governor. And I think that we're going to be doing a lot more analysis around disproportionately impacted communities, more making decisions as they relate to water quality in particular. We're still dealing with the effects of Colorado's wildfire season. In particular, the Grizzly Creek Fire, which is right in Glenwood Canyon. We've also had a really wet year, which is great, but at the same time, it creates new water quality concerns on the Colorado River. A lot of new mitigation projects are going into place

between the Department of Transportation, National Forest Service, and then also the municipality, trying to figure out ways to make sure that those burn scars aren't having a significant impact on the Colorado River.

Oklahoma: Sara Gibson - We did pretty good through the spring with drought. Our lake levels were holding, but through July, drought expanded. Now some of the most extreme drought is in the southwest and northeast portions of the state, which is a very different situation. A lot of work has started on the 2025 update of our comprehensive water plan as well as our new statewide flood plan. We're looking forward to hearing what people around the State have to say about building some new plans for the future. It's a legislative year. The Oklahoma Water Resources Board (OWRB) was able to get a bill through that provided administrative enforcement for the use of water without a permit. We've only been able to say, please don't do that anymore. Now we have penalties of up to \$5,000 per day. The legislature passed a bill to transfer water quality standards from the OWRB to the Department of Environmental Quality (DEQ) so now DEQ has control over the standards and permitting. One of my projects this year through administrative regulations was to create an attempt to drill system on for our permitted wells. Now instead of telling us 90 days after the well has been drilled, you need to get approval for a permitted well. We're working with our governor on education to get everybody on the same page. We receive \$95M in American Rescue Plan Funds and \$20M of that is for tribal cooperation projects, especially in our settlement area. We received \$25M to help our irrigation district and southwest convert from open ditches to pipeline.

Idaho: John Simpson - A little bit of history, which I think puts into perspective. We have the Idaho Water Resources Board, which is really kind of a State statutory board. Fifty-sixty years ago, it was created to respond to pressure from other states coming into Idaho and attempting to take water and move it. The intent was to create a volunteer board to manage Idaho's unappropriated water. They meet two full days and they deal with water supplies. The list goes on and on. It's kind of a point where that work needs to be done by full time employees. That board is now tasked with the responsibility of distributing funds and the surplus money the State has. How you do that is critical. We've got about \$275 million to distribute to either loans or credit programs.

Jerry Rigby - I have to acknowledge that when I first came on in 1994, compared to 16 years later, it was night and day as far as responsibilities to the water board. John's correct is that the water board really has grown up and that its a full time job. The current chairman, who works with me all the time, I don't know how he does it. I don't know what's going to happen in the future.

We actually had a full adjudication done, but apparently, the Department of Justice (DOJ) believed that it wasn't. Their argument is that we always had the domestic exemptions, and stock water is voluntary, it was not required to be included in the adjudication, and therefore there was not a full streamwide adjudication. Many chose to but many did not. DOJ maintains the McCarran Amendment means all water rights and they emphasize all. They're saying that we haven't completed the McCarran Amendment adjudication, which would take at least another 20 years to deal with all of these very *de minimus* uses. To us, it's not so important as it is to them. They just want it done - to check that box. Now, their argument - and we've said, if you're talking about

stock water on federal lands, let's do that - you got a right to ask for that. That's not good enough for them. They want all that plus the *de minimus* uses outside of the federal lands that don't even impact federal lands, but they want to check that box. It's almost in retaliation of them filling 17,000 claims and ending up with 18 water rights.

As far as *de minimis* is concerned, we do have some issues that are going on legislatively that we're dealing with. Developers are taking over these farms and digging wells, and we're dealing with legislatively whether or not we want to change our domestic use. And in fact, I had Council staff pull the report we did back in 2009 by the WSWC where we had every state put their *de minimis* use or their exempt well statutes so that we can take a closer look at it. The Idaho Water Users Association legislatively is looking at that now and are trying to come up with something that would work. Our problem has been that people would actually take the water from the farm, develop it into a subdivision, and move it. Of course, that causes problems downstream and they protest. We're trying to get our commissioners, title companies and closing agents to make sure that when there is a closing, that the water is retained on the ground that hasn't been put to some other use. Therefore, you're doubling down on the burden of water, which is a problem.

I reported last time that we found in our Sun Valley case that the director had curtailed a bunch of wells in the Sun Valley area because the clients I represented down below (senior surplus users) were being impacted substantially in the Little Wood River. They've now worked out an assignment for the next several years. We're going to see how that works. Interestingly enough, this year with all the drought that particular basin got a little more than usual. So I think we're going to make it through at least this year.

Arizona: Amanda Long-Rodriguez - Arizona has been very busy. We did an assessment this year and the department tracked over 90 ____ (?). The legislature provided over a billion dollars to the Water Infrastructure Finance Authority to work on water supply augmentation and conservation projects. Arizona has been participating with other basin states in response to additional 2 to 4 million acre-feet of water conservation needed. The Director of ADWR has participated in emergency negotiations with the other basin states. ADWR also has begun the legal promulgation and adoption process for the 5th Management Plans, which contain the mandatory groundwater conservation programs for the Arizona Active Management Areas. We are on track to adopt all five of these plans by the end of 2022.

Nevada: Jennifer Carr - In our 2021 legislative session we had a legislator that thought it would be a great idea if Nevada wrote its own PFAS MCLs. We nixed that as fast as we could, with a fiscal note, multi-millions of dollars to implement and we aren't going to do the work. What did come out of it is Nevada finally has a PFAS Action Plan, which we committed to doing because we already have EPA grant money to do it. That was a kind of a win-win. He got a bill, we got some action and support for the legislature to have a really robust working group. We've got our action plan now and funding to start sampling. We also have environmental sampling dollars for a different program. It's going to be an interesting year. I assume the legislator is going to come back and want to do some next step. Guess we'll see what happens next spring.

In regard to vacancies, one of the things that we're actively doing is having more conversation about mental health. The vacancy rate that we have is really overburdening the people that are left. I have people that are taking voluntary demotions because they just don't want to manage anymore. They just want to come in and do some really great work and then leave to go back to their kids and not worry about it. So we're supporting that. We can't afford to lose the people that we have left. We don't want to bring in new people into this difficult work environment either. We're really trying to actively look at ways to truly recognize what our key mission goals are. We'll see how things improve over the course of the next year.

Micheline - Like Jennifer said, we're in the process of doing our budget. In water resources, we've been critically underfunded and understaffed for about 20 to 23 years. During the last great recession, we lost positions and still haven't regained ourselves to our full capacity. This budget cycle, we're actually asking for about 17 new positions, which is a huge ask, and we don't expect to get them all. If we don't ask, we can't demonstrate the fact that we can't keep up with the work that's being asked as it is. Jennifer referenced our staff too is just overwhelmed with work. We do have a lot of support internally from other state agencies recognizing that our lack of capacity is serving as an impediment to economic growth in the state because we just simply can't move through water applications and get them processed in a timely fashion. So vacancies and low pay has been a huge issue.

On the legislative side, besides just budget, we're anticipating some legislation, to address the issues that have come up with a recent court decision. The statute requires us to consider the best available science, but relying on it to make the informed decision regarding the hydrologic impacts of pumping was not part of our jurisdiction. So we're expecting some legislative corrections on that aspect and some other components of that relate to our authority for conjunctive management of water resources. So stay tuned, it might be interesting.

We've also have a Nevada Supreme Court Commission to consider doing something relating to the water courts. We got started about April of last year. Utah actually did exactly what we're contemplating doing or pretty darn close to it. Instead of creating a political water court, Nevada's Supreme Court Commission is taking sitting district court judges that are elected, establishing criteria for judicial continuing education to become qualified as a water judge. Then those sitting district court judges would be part of a water judge panel or water judge pool, and then any water dispute case that was filed within the state, would be assigned to one of those judges. In Nevada, any sitting district court judge can sit in any other district. We're still working through it. The Commission needs to have another meeting and so we'll see where that goes. We're also looking at doing some reorganization in our office. Particularly, looking through some reclassification to try to support pathways for promotion. On the litigation front, we issued order 1329 to address contempt of management on the Humboldt River system that's being challenged. We were in the process of trying to develop or finalize a groundwater capture model for the entire Humboldt River System that we can really pinpoint down to a particular well location, the degree of surface water capture that groundwater wells uses, and we want that to inform management decisions and change applications. The change applications are based upon our conflict analysis. This was an initial framework to really kind of set the stage of how we were going to go through that process once the capture model was approved. Nevada hasn't received any ARPA funds to date.

Roger Gorke inquired if any states were seeing or experiencing any social impacts surrounding drought - folks picking up and moving to where the water is. Related social impacts might include dealing with mental health issues, drug abuse and alcohol issues in communities where there were no jobs because of the drought? The WSWC members were unaware of their states experiencing or tracking that type of social impact.

FUTURE COUNCIL MEETINGS

The WSWC Fall Meetings (200th) are scheduled to be held in Sulphur, Oklahoma on October 19-21, 2022 at the Artesian Hotel, Casino and Spa.

SUNSETTING POSITIONS FOR SUMMER 2022 MEETINGS

Tab XYZ of the briefing materials contains sunseting positions for the 2022 spring meetings. Please review them and send any changes to staff.

OTHER MATTERS

Jen Verleger presented a Resolution of Appreciation for Erica Gaddis, thanking her for her service as an appointed member. Erica has done a really great job both while she was with the State of Utah serving as the Water Quality Committee Chair, and now that she's transitioned to be a contractor with the WSWC. The Council especially appreciates her assistance through the WOTUS issue. Thank you, Erica.

There being no other matters, the meeting was adjourned.