

**MINUTES
of the
WATER QUALITY COMMITTEE
KwaTaqNuk Resort-Casino
Polson, Montana
August 4, 2022**

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MEMBERS AND ALTERNATES PRESENT (**via zoom*)

ALASKA	Emma Pokon Julie Pack
ARIZONA	Amanda Long-Rodriguez <i>Ayesha Vohra</i>
CALIFORNIA	<i>Jeanine Jones</i> <i>Joaquin Esquivel</i>
COLORADO	Jeremy Neustifter
IDAHO	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

Erin Huang

Clare Ols, University of Montana

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

Katie Durham, Western Kansas Groundwater Management District No. 1

Renee Spooner, Utah Attorney General's Office, Division of Water Rights

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

Jennifer Zygmunt, Committee Chair welcomed members and guests.

APPROVAL OF MINUTES

The minutes of the meeting held on April 6, 2022, in Washington DC, were moved for approval by Jeremy Neustifter (CO) and seconded by John Niermann (TX). The minutes were unanimously approved.

SUNSETTING POSITION

Position No. 436, regarding Hydraulic Fracturing was presented to the committee by Chair Jennifer Zygmunt (WY). The Executive Committee reviewed the position and agreed it should be renewed without any revisions. There was some discussion about the value of the position reflecting current state positions and the need for deferring to States. The committee unanimously approved recommending renewal of the position by the full Council.

ABANDONED HARDROCK MINES UPDATE

Erica Gaddis, Sr. Policy Advisor, WSWC, provided an update on several activities related to abandoned hardrock mines. The Council approved a new Position No. 477 on this topic in September 2021. There are several sections of the Infrastructure Investment and Jobs Act (IIJA) that include funding for abandoned hardrock mine reclamation. The WSWC sent a letter to the Secretary of the Interior, Secretary of Agriculture, and EPA Administrator on July 28, 2022, that provided several recommendations for these agencies to engage with states as funding and programs for abandoned mine reclamation activities move forward.

Erica Gaddis also provided an update on the Good Samaritan Remediation of Abandoned Hardrock Mines Act (S. 3571). This bill establishes a Good Samaritan pilot permitting program (15 projects) administered by EPA to provide for protection from Clean Water Act and CERCLA liability. The legislation is sponsored by Senator Heinrich (NM) and co-sponsored by a bipartisan group of 15 other Senators from western states. The bill represents significant changes since the 2018 Good Samaritan legislation was generally supported by States. The WSWC sent a letter to the co-sponsors of this bill on July 28, 2022, expressing overall support for the bill and providing several recommendations for effectively engaging states in the roll-out of the pilot permitting program, as well as suggestions to enhance federal and state partnerships in a permanent program. The WSWC plans to send a letter to the Environment and Public Works committee requesting a hearing in the coming weeks.

The WSWC has been coordinating activities on this topic with the Interstate Mining Compact Commission and Trout Unlimited.

DISCUSSION: PROPOSED CWA §401 RULE AND DRAFTCOMMENT LETTER

Jennifer Zygmunt outlined the contents of a draft WSWC letter to EPA regarding their 2022 Draft CWA §401 Rule. Jennifer Zygmunt requested an edit to the language related to cooperative federalism as follows: “*draft 2022 401 rule proposes some revisions that represent some substantial improvements to the 2021 rule with respect to cooperative federalism.*” Jennifer Carr (NV) and Julie Pack (AK) agreed with these changes. No other changes were recommended, and the committee supported the Council sending the letter with the recommended changes by the due date on August 8, 2022.

REPORT ON WSWC WORKSHOPS ON REGIONAL WOTUS APPROACH

Erica Gaddis provided an overview of the summer workshop series hosted by the WSWC related to exploring a regional approach to WOTUS. The WSWC adopted a new WOTUS position (#481) at the April 2022 meeting that included a recommendation that regional approaches be considered. Two technical pre-workshops (virtual) preceded a full day policy-oriented workshop (hybrid) that coincided with the Western States Water Council Summer meeting. A draft technical white paper has been circulated to workshop participants and will be finalized following the receipt of comments from state participants. In addition, participants asked for WSWC staff to prepare a policy memo that reflects the discussion at the policy workshop. This will be a separate document from the technical white-paper. The participants also asked that the WSWC convene one more half-day workshop for further discussion of the policy considerations of a regional WOTUS approach. In addition, participants asked the WSWC to invite EPA and USACE to report out on roundtable discussions to determine what they learned. WSWC staff agreed to work on organizing these events either before or during the Fall meeting.

EPA UPDATE

Roger Gorke provided an update from EPA on several topics. He noted that the comment period on the §401 rule ends on Monday August 8, 2022.

The letter sent from the WSWC on abandoned mines was received by the agencies including EPA’s Office of Mountains, Deserts, and Plains. The federal partners are interested in convening a panel including EPA, USDA, and Interior to talk about the elements outlined in the WSWC’s letter. It was also suggested that the Federal Mining Dialog¹ may want to participate in this discussion. WSWC staff agreed to work on organizing this for the Water Quality Committee meeting in Oklahoma in October.

¹ The Federal Mining Dialog is an interagency organization comprised of federal agencies with environment and land management responsibilities. Agencies include: Bureau of Indian Affairs, Bureau of Land Management, Department of Energy, Department of the Interior, Department of Justice, Environmental Protection Agency, Forest Service, Fish and Wildlife Service, Mine Safety & Health Administration, National Park Service, Office of Surface Mining, Army Corps of Engineers, Department of Agriculture, U.S. Geological Survey. See www.abandonedmines.gov

There have been some good examples of collaboration between states and utilizing the federal Hazard Mitigation funding opportunities. EPA continues collaboration with New Mexico on Hazard mitigation funding and aligning the state water plan language with federal requirements to fund drought hazard mitigation through FEMA. Nevada also has submitted an amendment to FEMA for their grant, which has been approved.

EPA is working on a response to WSWC, Interstate Council on Water Policy (ICWP) and National Water Supply Alliance (NWSA) regarding the request for regular meetings with the Water Subcabinet, and in principle would like to meet to discuss the various water issues, especially concerning drought. Jennifer Carr offered to provide an overview at the fall meeting of the success Nevada has seen in working with the WestFAST team as a resource to leverage various funding opportunities. There was general discussion about the need to help applicants, including states, identify the best funding opportunities for various state needs, leveraging several federal programs that may be difficult for states to navigate and coordinate.

DRAFT FY2022-2023 WATER QUALITY COMMITTEE WORK PLAN

Jennifer Zygmunt presented the Water Quality Work Plan to the committee and solicited feedback on proposed changes. She also indicated that working through the new SRF infrastructure funding has become somewhat overwhelming and there may be value in having the WSWC work on success stories of states to help put money to good use. Jennifer Carr (NV) supported this suggestion and indicated that WQ committee members have been communicating on an ad hoc basis by sharing letters when they are submitted to Congress. Sara Gibson (OK) also supported the idea of providing an opportunity for states to learn from one another how to leverage funds and especially how to address PFAS and lead service line funding constraints. This could be a good topic for further discussion at the fall meeting.

There was discussion about the hydraulic fracturing component of the work plan nearing completion. Jennifer Zygmunt will work with WSWC staff to prepare a summary for the group with the goal of removing that item from the workplan at a future meeting.

There was also discussion amongst several members regarding EPA's new interim health advisory for PFAS compounds. States are especially struggling with communication on public health messaging. It was suggested that a subcommittee would be beneficial to focus on how to jointly message the new advisories as well as consider providing feedback to EPA and DOD. Colorado, Alaska, Wyoming, and Washington volunteered to participate in this subcommittee. The WSWC agreed to reach out to ACWA and ECOS to coordinate work on this item.

There was some discussion of the nutrient element of the workplan. Several states were interested in learning more about nutrient water quality trading or credit programs. WSWC staff agreed to explore this for an upcoming committee agenda.

The committee approved the work plan with edits to the PFAS tasks. Roger agreed to review the workplan and provide suggestions on where there could be meaningful collaboration with WestFAST.

SUNSETTING POSITIONS FOR FALL 2022 MEETINGS

There are none.

OTHER MATTERS

There being no other matters, the Water Quality Committee was adjourned.