

**MINUTES
of the
200th COUNCIL MEETING
Artesian Hotel, Casino & Spa
Sulphur, Oklahoma
October 21, 2022**

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MEMBERS AND ALTERNATES PRESENT (*via zoom)

ALASKA	Julie Pack Emma Pokon
ARIZONA	Amanda Long-Rodriguez <i>Trevor Baggione</i> <i>Ayesha Vohra</i>
CALIFORNIA	<i>Joaquin Esquivel</i>
COLORADO	<i>Jeremy Neustifter</i> <i>Kevin Rein</i> <i>Scott Steinbrecher</i>
IDAHO	<i>Jerry Rigby</i>
KANSAS	Tom Stiles Matt Unruh <i>Connie Owen</i>
MONTANA	--
NEBRASKA	Tom Riley <i>Jim Macy</i>
NEVADA	Jennifer Carr <i>Andrea Travnicek</i>
NEW MEXICO	--
NORTH DAKOTA	Jen Verleger
OKLAHOMA	Julie Cunningham Sara Gibson

OREGON

--

SOUTH DAKOTA

Nakaila Steen

TEXAS

Jim Rizk
Jon Niermann

UTAH

Renee Spooner
Todd Stonely
John Mackey
Teresa Wilhelmsen

WASHINGTON

Mary Verner

WYOMING

Jennifer Zygmunt
Jeff Cowley
Chris Brown

GUESTS

Caroline Nash, CK Blueshift
Roy Jemison, U.S. Forest Service
Elizabeth Ossowski, NOAA/NIDIS
Robyn Colosimo, Army Civil Works
Jaron Ming, U.S. Fish and Wildlife Service
Kim Harriz, U.S. Department of Agriculture
Toney Ott, Environmental Protection Agency
Sage Park, Washington Department of Ecology
Indrani Graczyk, NASA Jet Propulsion Laboratory
Tom Bassista, Idaho Department of Fish and Game
Brittany Duarte, Washington Department of Ecology
Dean Couch, University of Oklahoma College of Law
Doug Woodcock, Oregon Water Resources Department
John Rhoderick, New Mexico Environment Department
Henry Brooks, Alaska Department of Natural Resources
Jill Csekitz, Texas Commission on Environmental Quality
Erin Jordan, Arizona Department of Environmental Quality
Kathy Alexander, Texas Commission on Environmental Quality
Mary Anne Nelson, Idaho Department of Environmental Quality
David Pendleton, Wyoming Department of Environmental Quality
Jojo La, Colorado Department of Public Health and Environment
Charley Palmer, Alaska Department of Environmental Conservation
Lindsey Krywaruchka, Montana Department of Environmental Quality
Shannon Minerich, South Dakota Department of Agriculture and Natural Resources

WESTFAST

Chris Carlson, U.S. Forest Service
Lauren Dempsey, U.S. Air Force
Travis Yonts, U.S. Bureau of Reclamation
Heather Hofman, NRCS/WestFAST Liaison
Paula Cutillo, Bureau of Land Management
Roger Gorke, Environmental Protection Agency, Office of Water

STAFF

Tony Willardson
Michelle Bushman
Erica Gaddis
Adel Abdallah
Ryan James

WELCOME AND INTRODUCTIONS

WSWC Chair Jennifer Verleger welcomed everyone.

APPROVAL OF MINUTES

Jon Niermann moved to approve the minutes of the meeting held on September 16, 2021, in Deadwood, South Dakota. Norm Johnson seconded, and the minutes were unanimously approved.

COMMITTEE REPORTS

A. Water Resources Committee

Mary Verner, Committee Chair, reported that the Water Resources Committee recommended reapproval of two sunseting policies. She noted that the Committee heard a presentation from Robyn Colosimo, Director for Policy and Legislation at the Army Corps of Engineers (Corps). Tony Willardson provided an update on the Water Resources Development Act. Roger Gorke gave a presentation on the Southwest Oklahoma Water Plan. Indrani Graczyk, a representative of the NASA Jet Propulsion Laboratory, spoke to us about NASA's Western Water Applications Office. NASA has been a great partner. We had a panel on pumped storage developments, with representatives from Washington and Wyoming, addressing some of the challenges they are facing with the increasing use of pumped storage as "water batteries" to supplement green energy sources such as wind and solar. Continuing in the clean energy future,

another agenda topic addressed HydroGEN and the HALO Hydrogen Hub. Oklahoma shared with us some of the challenges of using water to convert natural gas into hydrogen fuel. Adel Abdallah gave an update on WaDE and WestDAAT. It is inspirational that there is so much available to us now in terms of technology. Again, NASA has been a great partner, as have the other federal agencies. In Washington, we are certainly taking advantage of OpenET and looking forward to taking advantage of more of the technology that has been made available to us through WaDE.

The Water Resources Committee considered and recommends that we readapt two sunseting policies, Position 438, which urges the administration and NASA to enhance focus on research for water resources, and Position 439 expressing support for implementation of the SECURE Water Act. Chair Verner moved that the full body readopt those sunseting positions. Jim Rizk seconded the motion. The motion was unanimously approved.

B. Water Quality Committee

Jennifer Zygmunt, Committee Chair, noted that the Water Quality Committee also had a packed agenda with a lot of good discussion. She thanked Oklahoma for hosting and commented that this has been a great meeting

Shellie Chard of Oklahoma's Department of Environmental Quality gave a great presentation about their water quality issues and perspectives on challenges that all of our states are dealing with. Erica Gaddis organized a great panel on infrastructure funding. Specifically, we talked about challenges for states to administer those funds and some solutions. Deidre Finn, Council of Infrastructure Financing Authorities, talked about recommendations CIFA is making to EPA to address some of those challenges regarding state matching funds and increasing the eligible projects. Oklahoma and Nevada provided state perspectives on those same issues. This will be an ongoing discussion, and we will continue looking for opportunities to share information. This is good information as we consider the WSWC's sunseting position for the Spring meeting, which has to do with Clean Water and Drinking Water State Revolving Funds.

Erica reported on Wednesday's Abandoned Mine Lands (AML) panel. We heard from all of the federal agencies working on AML abandoned hardrock mining programs and funding opportunities. Some next steps were captured for that effort. We also briefly talked about the PFAS subcommittee that was formed after the 2022 Summer meeting, and ongoing work to share state information and consider whether this WSWC may propose a resolution on per-and polyfluoroalkyl substances (PFAS) issues. Finally, we briefly talked about WOTUS and the outcomes from regional workshops that were held this past summer. We heard an update on Wednesday's panel discussion from the Corps and EPA.

Alaska presented concerns about Clean Water Act § 404(c) permitting for a project in Alaska where EPA has preemptively exercised its veto authority under 404(c) before the Corps has completed its review. The Committee reviewed a new draft position (Tab C) on that issue, and there was quite a bit of discussion. States agreed that the intent and concept of the position was good. States agreed on that. However, there was discussion about the need to revise the language to make sure that it accurately conveys the intent. Several states worked with Alaska

over the evening to revise the position, and that modified version was handed out this morning for review. Chair Zygmunt moved the revised position to the Council for consideration and adoption. The motion was seconded. The motion passed without opposition.

C. Legal Committee

Jerry Rigby reported on behalf of the Legal Committee. The Committee considered sunseting Position #440, to support legislation requiring the federal government to pay filing fees in McCarran adjudications. The position has long been adopted and readopted. Idaho brought this position initially after we took a case on this issue to the Supreme Court, and our argument was denied. The State still believes the ruling was unjust because of the 17,000 federal claims filed in the Idaho adjudication, where they ended up with only 17 water rights after all the time spent in depositions in Roanoke, Virginia, in Sacramento, and elsewhere to deal with their experts. Idaho has a new reason to support this position. We thought the Snake River adjudication was finally completed after 24 years. Unfortunately, the Department of Justice (DOJ) has recently taken the position that the State's deferred claims for *de minimis* domestic and stock watering claims were not part of the adjudication. The State's Department of Water Resources has estimated it may take another 20 years to handle those claims. The DOJ says it is not a true McCarran adjudication until all of those claims have been completed. Jerry moved for the readoption of Position #440. Mary Verner seconded the motion. There was no opposition, so the position was unanimously adopted.

Sara Gibson and others addressed a lot of legal issues in the development of Oklahoma water law, including the intent to drill rules for wells and defining comprehensive "waters of the state." We also heard about the Arbuckle-Simpson aquifer, which underlies more than 500 square miles in south central Oklahoma and is the principal water source for approximately 39,000 people in the region. It was very interesting.

Kevin Rein reported on speculation in water in Colorado and discussed whether or not purchasing for the purpose of investment is okay. How do you define that to draw meaningful lines and get to the true intent? The argument in Colorado was that if you purchase and then sell outside of a big city like Denver to a subdivision or a new part of the city, is that speculation? If that's okay, then what is not okay? John Simpson mentioned that in Idaho the Director can consider two things in any kind of application. The first is the intent, and speculation can be addressed at that particular time. Second is the financial means and wherewithal to take care of the project. If one is applying for something and has no financial ability to really deal with it, then one could argue that that must be simply speculation. This is not just a problem in Colorado. Many states face similar problems.

Kansas talked about recent legislative efforts to deal with reorganization of state agencies, groundwater management districts, the state water plan, and how to address fees for water.

The Committee heard from the Bureau of Land Management regarding watershed restoration project funding and water rights. There is a unique idea of taking watersheds and for example, putting in man-made beaver dams to help the watershed, rather than simply allowing the

creek or the river to actually degrade the bed itself. The other issue they have to address is water rights. You need to make sure that you're not hurting someone else's water rights.

D. Executive Committee

Jennifer Verleger reported on behalf of John Niermann, who was not able to attend the meetings. The Executive Committee reviewed the WSWC budget, which Jen noted is in good shape. There will be some accounting changes from the estimates that are included in the briefing materials.

Three resolutions of appreciation were offered for the Full Council's consideration. Tom Byler of Oregon is retiring. Congratulations to Tom. Kenny Titus from Kansas is moving on to private practice and will be a representative in the State legislature. Mary Werner from Washington was also recognized for her tenure as a Council representative and as Chair of the Water Resources Committee. Mary is also retiring. The resolutions of appreciation were adopted by acclamation.

WESTFAST REPORT

Roger Gorke provided an update on WestFAST. He noted that he is currently the WestFAST Chair, Chris Carlson from the Forest Service is the Vice Chair, and Heather Hofman is currently the WestFAST Liaison.

As most of you know, WestFAST is a collaboration between thirteen federal agencies with water management oversight in the West. WestFAST has 22 members, even though it is comprised of 13 agencies. We try to have a representative from headquarters and a regional representative so that we can provide direct contact to senior leadership in headquarters, and also someone on the ground that can provide that perspective. The list of representatives is included in your briefing materials.

WestFAST promotes and facilitates coordination among federal agencies and between the federal agencies and states. We have seen great benefits through the enhanced collaboration between the federal agencies, and through partnerships with the states.

WestFAST has held 13 webinars on wildfire and water resources. In December, we will hold a workshop on western states' perspectives on wildfire management and water resources. Heather is reaching out to Montana and a few other states to participate on a panel. The panel will cover what we have learned during the course of the webinars, and then address how we can make things more helpful for the states as they deal with wildfire and the impacts to water resources. We are planning an upcoming webinar on abandoned mine lands, which was discussed this past Wednesday. Additionally, we are planning a webinar on pumped storage that was discussed yesterday.

I have been talking to many of the western states individually, as well as the WSWC staff about how we could build state level/basin scale engagement between federal and state agencies for drought. This is something that the WestFAST team itself cannot do in each of the 18 states. But we can and should be helping drive our colleagues at the regional and district levels to work to build relationships with each other, and work together to support the needs on the ground in the state. We heard several examples of that kind of effort yesterday with the Southwest Water Action Plan – where we worked with the folks in Altus to support the work there. Another example is in Nevada, we have been working with Jennifer Carr and Micheline Fairbank and their staffs, and with their Office of Emergency Services. We would like to build on this kind of work. In California, we are working on small and medium sized systems, and we will be replicating such efforts in Colorado.

Another area in which we are collaborating on drought is addressing issues with water rights and water reuse. There appears to be some concern by some users that reusing water could have an impact on water rights, depending on the state's laws.

At the end of this year Heather's liaison term will end. She has done a wonderful job, and her home agency is the Natural Resources Conservation Service. We will announce our new liaison within the next month. I can tell you the individual will be from Reclamation because the three candidates were all women from Reclamation. We plan on a soft start overlap between Heather and the new liaison during the months of November and December so that Heather can do some training and the liaison can get up to speed quickly with the responsibilities. Having the liaison from Reclamation is a great way to continuing WestFAST's collaborative relationship, particularly with respect to drought and the issues in the Colorado River Basin and other states that are dealing with severe drought, as we have seen here in Oklahoma.

WestFAST will be continuing efforts to engage with our federal agency principals who are senior executives, also known as the Water Subcabinet. Most of them are the WestFAST principals and National Drought Resiliency Partnership principals, and also participate on the White House Interagency Working Group. We want to make sure that we are providing information to all of those groups through the WestFAST team.

Questions

Jen Verleger: I want to give a special thanks to Roger and Heather for their efforts in getting folks to participate in the panels we held this past Wednesday.

Roger Gorke: You're very welcome.

Jen Verleger: Thank you. I just want you all to know that regarding the Water Subcabinet meetings, as Roger indicated, we're going to start trying to hold more of those meetings. I know it came out very last minute, so some may not have been able to attend. We also may have been a little unprepared for much interaction. It is very hard to get these folks together, so such meetings will probably continue to be last minute. But know that they are meant to be interactive.

Roger Gorke: Yeah, and one idea, and we haven't confirmed this yet, but the Water Subcabinet meets quarterly. An approach may be that one of the meetings that is already calendared for them could become opportunity to meet with this group. It is difficult to get meetings with an Assistant Secretary or Assistant Administrator, and then to get their calendars to line up. Then we have to hope nothing conflicts or that they get pulled somewhere else. We might be able to use one of the third Thursday of the quarter subcabinet meetings as an engagement opportunity. You may wish to keep that in mind as you plan your meetings.

STATE REPORTS

Idaho

Jerry Rigby said the settlement of our Snake River Adjudication was dependent upon a settlement with the Nez Perce tribe and, of course, the United States government. With respect to the waters held in our reservoirs in that settlement agreement, it allowed for the government to take what they call the power head portion, which is kind of a fictitious water right because unless you pump it out, you won't get water below what the power will produce. The State gave the water right to them, and it can be used in times of drought, but one condition is that it will be the last to fill in the system. It seems to me that is pretty clear. "Last to fill in the system" means that every other water right in that system has to be filled before they can refill. In other words, if they use the water, they don't get it back until all the water fills. Well, they understand it differently. They are defining it as the last to fill in the drainage of a particular reservoir. So we are in negotiations. The problem occurred back in 2004.

Another drought related issue is that the provisions of the Snake River settlement agreement between the groundwater pumpers and the surface water users has not been met, so we're back in negotiations attempting to work something out. The Water Resources Director granted a curtailment to protect the surface water priorities. A settlement for the end of this year was worked out, but the problem is how much is owed as a result of past water use, and then how to handle future water use.

Arizona

Amanda Long commented that the Bureau of Reclamation announced the Lower Colorado River Basin will operate under a tier two shortage in 2023. This means that Arizona will forego an additional 3% from tier two for a total reduction of 21% and almost 600,000 acre-feet. Arizona is supportive of implementation of federal actions that implement equitable sharing of the burden to protect the Colorado River system. At the end of last month, Arizona hit a major milestone by holding the final hearing for the fifth and currently final management plans. These plans include the regulatory conservation programs for groundwater in Active Management Areas. The plans are on track to be adopted by the end of the year. However, the Department of Water Resources may not be done with the plan quite yet. For the first time since the Groundwater Management Act in 1980, there are three additional management areas under consideration which are on the November ballot, and if passed, would require the development of additional plans. Staff is

currently working with these areas of the state to provide information to stakeholders that may be impacted.

In the last legislative session, in a historic bill, the legislature provided \$1 billion to the Water Infrastructure Finance Authority to expand and provide funding for water augmentation and conservation projects across the state. So along with this funding comes a responsibility for the Department of Water Resources to develop water supply demand assessments for each of Arizona's 51 groundwater basins. The results of these assessments may be used to inform the board in their allocation of the funds. We expect a lot of attention to these assessments. The first ones are due in December 2023. If any other state has assessments analysis, our staff would be very happy and eager to speak with your staff.

Trevor Baggiore reported additionally that Arizona has almost completed the state's Surface Water Protection Program. This is a state program that was developed in response to EPA's 2020 Navigable Waters Protection Rule. The NWPR was tossed out in Arizona, but the State has proceeded forward with their own program because we're trying to get off of the WOTUS roller coaster. The public comment period ended for those rules just last week. We are responding to comments and expect the rules to be finalized by the end of the calendar year. This will be Arizona's first ever state specific surface water protection program. We have always relied on the Clean Water Act.

Another priority is total maximum daily loads (TMDLs). As part of our agency review last year, we had an audit and found that we weren't doing TMDLs, or were not doing them systematically, which has resulted in us being behind on statutory and Clean Water Act requirements. Thus, we are investing quite heavily into our TMDL program. Although TMDLs have not been a focus of the EPA, or many of the states for several years, it is our focus right now to respond to the audit findings. Those are two of the high priority things that we're working on right now.

Washington

Mary Werner noted that at a previous WSWC meeting, there was a presentation regarding evaluation of the Lower Snake River dam removal. Washington's Governor and our senior senator have decided not to proceed with the implementation of any plans to remove those dams at this time. The impacts of removal were considered to be very significant.

We are preparing for two adjudications in two separate watersheds in the state of Washington. "Preparing" meaning that we are asking our legislature for the funding to proceed. We are ready to go and have worked with our court systems to implement modern technology to make those adjudications more user friendly. We have yet to receive the requested funding of approximately \$4 million. Others are also asking for money to participate however, so the price tag continues to go up. We will see what the legislature decides to do when they convene in January.

Outside of adjudicating water rights, we have ongoing tension with our 29 federally recognized tribes in the state. They would like for the State to recognize their senior time immemorial water rights without an adjudication. Currently, the State feels that we do not have the authority to do so under the law absent a court determining the priority date and quantity of the tribes' rights.

The State legislature is also considering establishing new standards for mitigation of new water uses. Right now, the standards pretty much defer to the agency's discretion. They are considering something called "net ecological benefit," which we at the Water Program are calling NEB. We are not sure that the legislation would actually improve things. It would still leave it up to the agency's discretion to determine the ecological benefits. Thus, it might be much ado about nothing, although the legislators may not think so. We could end up with a net ecological benefit standard for mitigation of new uses. Most of our basins are closed and have instream flow rules that do not allow any new uses without mitigation.

Thank you all very much for the resolution of appreciation. I have certainly enjoyed working with you. It has been a real pleasure working with Tony and the Western States Water Council. I will miss all of you. Thank you.

Nebraska

Tom Riley reported that the State legislature gave the Department of Natural Resources a big pot of money, which enabled them to do a lot of things this year. We have been busy executing some projects. Some of the most interesting include \$50 million for surplus water critical infrastructure that goes to about 60 irrigation districts across the state. It is a grant program that gives \$9 for every \$1 that they put in for enhancing some of their infrastructure. As you might expect, there is a lot of interest in the grant funding. We have been able to start projects where some districts were already ready to get infrastructure put back together. This is the kind of infrastructure that often fails. When the infrastructure fails, the areas that can't be irrigated may impact more than the irrigation district.

We have been charged with looking at a lake located between Lincoln and Omaha and is alongside the Platte River. There is a very highly motivated political interest in this project, which stemmed from LB406, the Statewide Tourism and Recreation Water Access and Resource Sustainability bill brought by special committee, also known as "STAR WARS." The Speaker is a big fan the movie. A group of legislators looked across the state to find ways to enhance projects related to water and tourism. Following this bill, the legislators introduced LB1023, which provided \$100 million to look at this lake – and it is known as the Jobs and Economic Development Initiative Act, or JEDI. It is an interesting, long-term project which involves recreation access on the eastern side of the state, which lacks access to those resources. One of the first things we have to assess is any impacts to the water supply in Omaha, which takes their water out of the Platte River through pumping along that river stretch.

We have also issued a couple of instream flow orders on the Loup River. That took a lot of time and effort to put together. Just last week we issued a transfer order on the Spencer Dam and

Niobrara River. Some of you might recall that particular dam suffered a catastrophic loss in 2019 resulting in some big floods. That water right transfer process had been ongoing, from the power district to a group of natural resource districts and our Game and Parks Commission to take over that water right, but that that order has now been issued, and we'll see where that goes in the future. One last thing, we continue to deal with some of the staffing issues, but recently we've been able to really make a dent in our staffing. And we'll continue to do that. One of the things that I'm doing now is talking to the university system to help with a curriculum basis change to get more interest in water resources and natural resources moving forward. That's just on the kind of a leading edge and I'm really excited about maybe creating some opportunities for some public service out of that program.

Alaska

Julie Pack addressed the Department of Environmental Conservation's attempts to convince the legislature to provide funding to file an application for CWA §404 primacy. In the previous legislative session, we received \$1 million to do a feasibility study, which is currently ongoing. Alaska has been coordinating with Nebraska, Florida and Oregon in this effort.

Emma Pokon stated that at the last WSWC meeting she reported that human health criteria was becoming an issue. The State received notification from EPA that they had received citizen petitions requesting EPA to step in and use their authority under the Clean Water Act to revise State water quality standards. This is EPA Region 10, and we do have a good relationship with them. We have heard there have been other states with similar petitions pending in their states. We are aware of Florida and maybe Delaware. We sent communication back to EPA Region 10, with a schedule for updating our human health criteria related to fish consumption. We will be working on that over the next couple of years. We are also starting to see matters come through where we are applying the *Maui* standard for determining whether or not facilities need a state or federal discharge permit, including the Palmer Mine. The Division has issued their determination, but we expect that there may be some more dialogue with stakeholders. Finally, over the last couple of years we have been investing a lot more in using technology that we had not necessarily had access to in the past. We have been working to get drones deployed to help our folks do their jobs better. We have a flare camera for our air folks to detect methane leaks at oil and gas facilities, that sort of thing. We are finding applications for the technology across different programs from solid waste to drinking water. If other states have initiatives for deploying this technology, I would love to have a conversation.

Nevada

Jennifer Carr remarked that the State legislature approved \$100 million of the ARPA funds for infrastructure grants. They are leveraging our knowledge and ability to move money for infrastructure through our State Revolving Fund program. We are working together with Micheline and her team because the ARPA funded projects must have a component related to water conservation or mitigating drought. We hope to be able to report more on this at the Spring 2023 meeting

We continue working on a number of regulation changes to our anti-degradation rules in the NPDES program, and this will continue for the next five or six years. Several out-of-state non-governmental organizations (NGOs) had approached us about our process for nominating the Nevada equivalent of the Outstanding Natural Resource Waters (ONRW) that are defined in federal rule, which we call Extraordinary Aesthetic Waters (EAWs). We started to work on defining the EAW nomination process as part of our antidegradation rule amendment. Ironically, we embarked on that at the request of the NGOs, but in the regions they come from that ONRW process is largely based on water quality. In Nevada, we added other criteria we care about deeply, such as water rights, agriculture, and land use. Now the NGOs are in opposition to adopting the rule due to the additional criteria. This will be heard by our State Environmental Commission in January. We hope it will pass in some form, because it complements our anti-degradation petition nicely.

We are also proposing a number of fee packages. The State's economy was in a different position when these packages were put together. They will be brought for hearing before the state legislature at the end of the year. The Governor's reelection position is for no new taxes, thus, we are in a bit of conflict right now. As you all know, there is no difference between a fee and a tax, so the proposed fee schedule will be controversial. We're keeping fingers crossed as we really need the funding. Some fee programs have not been increased in 10-20 years.

We are working to improve the enabling law for our State Revolving Fund program, because Congress is changing the SRF laws. There are certain pieces of the SRF program that we can't avail ourselves of because Nevada law is too specific, so we are having to broaden it, as well as update our definition of disadvantaged communities.

Lastly, with respect to the economy, Nevada has not yet recovered. We are still suffering with employee vacancy issues. The vacancy rate is at 20% and growing. Nevada's cost of housing has increased so much that people can't afford to live on the state salaries. They are leaving for city and counties as has been mentioned before. We are hopeful that our legislature steps up next spring and gives us a good, literally 15 percent increase across the board in order to stay competitive with the other local governments. Given the economic stressors employees are facing and inflation, a number of people are in mental health crises. People are imploding. These are interesting times, and we're trying to do the work of 200 people with 20% fewer employees. It is challenging.

Kansas

Matt Unruh echoed that the Kansas Water Office and other state agencies are in a similar position as Nevada relative to employment. It seems these stressors are being seen across the Nation. Earl Lewis and Connie Owens provided a good overview yesterday of the recent legislative attention that has been placed on water resources in Kansas. One of the big positives to come out of the 2022 legislative session was action taken to provide an \$80 million appropriation to pay down reservoir water supply storage on three Corps of Engineers reservoirs in the state, Big Hill, Clinton, and Hillsdale. Legislative action was taken to help alleviate some of the State's debt obligations to the Corps of Engineers' water supply storage.

Kansas is deep into drought currently. Yesterday's drought monitor is pretty telling regarding the chronic and flash drought we're currently experiencing. 58% percent of the state of Kansas is in D3 extreme to D4 exceptional drought. Over the last three months, D4 areas have degraded from covering about 2.8% of the state to now covering roughly 30% of the state. We have received little to no precipitation since April of this year. It has been very hot and dry for a good chunk of the warm weather season. In central and southwest Kansas, this has been the driest period on record in the state. Given the drought conditions, Governor Laura Kelly issued a new drought Executive Order declaration which placed 67 of our 105 counties into drought emergency, which opens up the opportunity for emergency water supply for livestock and domestic use. As a result of this declaration, we are starting to get some requests for emergency water, particularly in Southeast Kansas. That part of the state is reliant upon surface water flows for water supply purposes. Forage conditions are really limited in several parts of the state as well. If conditions do not change, there could be extreme livestock impacts over the coming months and into next year.

Kansas has developed a statewide infrastructure hub which includes the Water Office and Department of Agriculture. The emphasis or objective of the hub is to position Kansas communities to maximize Big Oil opportunities. The coordination focuses on different sectors: (1) water and sewer; (2) transportation, (3) energy and power; (4) broadband resilience in cybersecurity. Our agencies continue to coordinate with the other participating state agencies, as well as advisors to the infrastructure hubs.

We recently had our updated water plan approved. There are five key tenets or guiding principles that serve as a foundation for our updated water plan which include: (1) improving the state's water quality; (2) conserving and extending the life of the High Plains Aquifer; (3) securing, protecting and restoring Kansas reservoirs; (4) reducing our vulnerability to extreme events; and (5) increasing awareness of Kansas water resources. We are engaging with a number of partner agencies and stakeholders to transition from the planning phase into the implementation phase.

Tom Stiles talked about Kansas water quality. This week we celebrated the 50th anniversary of the Clean Water Act and Governor Kelly issued a proclamation. We put forth social media and videos extolling successes in cleaning up Kansas waters, and outlined where the remaining challenges are, which is mostly nonpoint source, and typical for an agricultural state. Last week, we received a ceremonial check from EPA for our first year's Bipartisan Infrastructure Law money which totaled about \$80 million across all five of the categories. The bulk of that money has already been spent based on the immediate projects lined up through our intended use plan, with the exception of the lead service line. Finding money to find where lead might be is an ongoing challenge.

Per- and Polyfluorinated Substances (PFAS) is an issue in Kansas as it is for everyone else. It seems like the level of awareness and getting on top of the problem is more acute on the West and East Coasts and northern tier states where the compounds were originally produced, such as in Minnesota and Michigan. The Association of Clean Water Agencies (ACWA), the Association of State Drinking Water Administrators (ASDWA), and the solid waste people held a joint

workshop a few weeks ago in Washington, D.C., to compare notes with one another on how they are grappling with PFAS. Everyone is wondering how to resolve the source control. Landfills are probably the favored means of repository. EPA is pushing research on destruction and are fairly optimistic that we might be able to do that. There are 12,000 of these compounds and they all have varying degrees of unknown health risks. The wastewater people are wondering why they are tasked with doing something to remove it. Biosolids application is confounding the issue. The State of Maine is banning biosolids application because of impacts to groundwater, public water supply, and groundwater wells.

It seems that everyone in the “outside world” has lost patience with State agencies which are short staffed. Everyone is trying to kick start the economy and want their permits yesterday. There are many small start-up projects such as meat processing shops in small rural communities as a means to invoke some economic development there. They do not understand why they have to wait for a permit for a lagoon to place their waste streams, and so forth. There has not been a lot of patience on the part of the small businesses. Panasonic announced they are coming to Kansas. That tends to have a heightened level of urgency at the Statehouse to make sure that we are covering their water and sewer needs. The key has always been to talk to us early and often. We can get you what you need quickly so you can get on your way to conducting economic development.

Texas

Jim Rizk followed on the drought story related by Kansas and said that Texas is in a similar situation with a similar weather pattern. 73% of Texas is now in some level of drought. A disaster declaration was issued in July. Drought conditions have been exacerbated in the Rio Grande Valley, along the Mexico border, due to under deliveries of water from Mexico. Under treaty, Mexico is required to make deliveries to Texas in a five-year cycle. There has been a recurring pattern of Mexico not delivering much water in the first three or four years of the cycle, and waiting for/hoping for some kind of storm event. Because of that, Texas had to employ a negative allocation rules to the operating reserve at the reservoir. This is the first time the State has had to use that.

In March 2022, we received a petition for rulemaking from another environmental group seeking to ban wastewater discharges on 22 streams in the hill country of Texas. The streams had very low phosphorus levels. The petitioners argued that almost any contribution to phosphorus to the streams can cause algal growth. The petition was denied. There is merit to the concerns that were raised. We are evaluating the science to determine the appropriate discharge limits. We are in the process of revising our rules to allow for concurrent reuse authorization. This issue was triggered as a result of explosive growth in Austin and San Antonio.

South Dakota

Nakaila Steen reported that South Dakota continues to experience drought conditions statewide. Most recently northeastern South Dakota, having been relatively drought free for most of the summer, has had a rapid worsening of drought conditions. With harvest season nearing the

end, crop yields vary drastically, and this is as a result of localized areas having either received timely precipitation or not during the growing season.

A sponsor is proposing a pumped storage hydroelectric project utilizing water from the Missouri River. The project is currently undergoing preliminary FERC requirements. While the project is far from becoming a reality, the project location is in Gregory County. The water is requested to be withdrawn from the reservoir at Fort Randall Dam where it would be pumped uphill about 700 feet and stored in Lake Francis Case Reservoir, which is approximately 100,000 acre-feet. The pumped amount is about 3% of the volume currently stored in Lake Francis Case Reservoir. They are planning to begin construction in 2025 and enter commercial operation in 2029. The project is anticipated to have enough water storage for around 26 to 46 hours of operation. Sponsors for the Gregory County pump storage project are Missouri River Energy Services and Mid-American Energy Company. This is not the first time a pumped storage project has been investigated in this location. The project concept dates back to the 1970s when the Army Corps of Engineers completed a study of resources along the Missouri River with the Gregory County site having been identified as the best location for a pumped storage project in 2004. The feasibility study concluded that the economic conditions were not favorable at that time.

Three regional water system projects plan to utilize Missouri River water in South Dakota received funding this year. Approximately \$8 million was granted through ARPA funding for the Western Dakota Regional Water System study phase. The Western Dakota Regional Water System was formed in 2021 with the intent to serve much of western South Dakota with water from the Missouri River. The study phase will be used to determine the feasibility of transporting nearly 60 million gallons per day from the Missouri River at a project cost estimated to be over \$2 billion. Recently, two water distribution system entities near Rapid City, South Dakota filed and received future use permits reserving collectively around 8,000 acre-feet per year from the Missouri River for future municipal and water distribution supplies.

Wyoming

Jennifer Zygmunt Wyoming touched on Department of Environmental Quality (DEQ) legislative issues. First is a carbon sequestration and Class VI UIC permitting. Wyoming has primacy, and interest in carbon sequestration has been very high, with potential projects in many parts of the state, some of which involve direct air capture facilities. We have received four applications requesting six wells to date, and we expect another six to seven by the end of the calendar year. We are watching this program closely to make sure that we have sufficient staff resources to keep up with the permitting demand and economic development. We continue to talk to our joint minerals committee about this as it is a high priority for them. This past year legislation was introduced regarding long-term stewardship and liability being transferred to the state. That is an ongoing discussion about how that process works and what our expectations are for site closure, and responding to questions from environmental groups who are concerned about the liability transfer and making sure that robust procedures are in place. The carbon sequestration legislation we anticipate this year has more to do with mineral rights and pore space and the process. In Wyoming, we have a requirement to show that an injector has control over the area where they are putting the carbon dioxide.

Secondly, we have areas undergoing a lot of new development, and new houses being built, people want to build their own recreational and aesthetic ponds. That has some water quality and water quantity implications. For example, in Teton County, they estimated that just in the past few years, they have seen 1,300 new ponds in residential areas. A concern for the residents in the area is how the ponds affect hydrology and water quality. DEQ is working with our select water committee to provide input on that subject. This activity ties into the ongoing issue with rapid growth in some parts of the state, which results in a lot of interest in water and wastewater, as well as stormwater construction permitting. Similar to what Kansas is experiencing, there is an expectation for rapid turnaround with permits.

Jeff Cowley gave a quick update from the State Engineer's Office. As most of you probably realize, there is a linear relationship between drought severity and the number of meetings being held, particularly dealing with the Colorado River. It's the river that keeps on giving, and we constantly hold meetings. With respect to staffing in the State Engineer's Office, we are experiencing the same issues as other states. A position in the Attorney General's Office was filled and will allow Chris Brown to take a breath. The Deputy State Engineer position is open. It has been open for about two months, and we've only received two applications. Last year we received funding to hire another Green River hydrologic modeler, but have received only a few applicants.

In regard to water development, we received \$50 million in ARPA funds for aging infrastructure. However, we received about \$250 million in requests. The legislature gave the Wyoming Water Development Office about \$73 million in funds, after which they received about \$112 million in requests. Therefore, the Water Development Office has hired a consultant. Currently, they are holding public meetings around the state to try and figure out how big the infrastructure needs are. The plan is to work through the lists, and prioritize and evaluate the projects and present them to the Wyoming Water Development Commission and the legislature so the projects can be given a priority ranking order.

Wyoming is facing issues with inflation or running over budget because of supply chain problems. In the eastern portion of the state, we're seeing about 30 to 50% overruns on projects, and about 50 to 70% overruns on the west side of the state. An example is Leavitt Reservoir, which was initially bid at \$46 million. Recently, they submitted a change order for \$48 million to finish this project, which consists of an enlargement for 6,000 acre-feet. So that's pretty expensive water!

Utah

Todd Stonely noted that the State of Utah has had a monumental year. We're calling this the Year of Water in the Utah legislature. And this may continue with the next legislative session. There has been unprecedented federal and state expenditures for water infrastructure and resource protection. The Division of Water Resources and other agencies have several new programs to implement and literally hundreds of millions of dollars to spend. The Division of Water Resources we received \$250 million in ARPA funds earmarked by our legislature for secondary water meters namely for untreated water for irrigation. In the first application period, we received 70 project

applications with requests for \$190 million. The remaining funds are likely to be authorized later this year. Early next year, the Department of Agriculture and Food is working towards \$70 million in funding to be made available for agriculture optimization projects throughout the state.

There is a big effort to preserve and save the Great Salt Lake, which reached record lows this last summer and fall. There is concern that the terminal saline lake will dry up causing dust problems similar to those experienced at Owens Lake in California. We are trying to prevent that from happening. The Great Salt Lake is 15 times larger than Owens Lake. It will be an ecological disaster to have the lake dry up. The State has invested \$40 million in a Great Salt Lake Water Trust. \$30 million of that will go towards direct purchase of water rights to get more water to the lake. Given new legislation, the lake has received the designation to receive beneficial use of instream flows. \$10 million will go to habitat improvements, which will be a joint venture overseen by the Audubon Society and The Nature Conservancy. The State is expanding its turf replacement program statewide with \$5 million in seed money, also from ARPA. This funding will supplement what the local Water Conservancy District has been doing for several years. There has been great interest in that program. The legislature asked the Division to investigate different water scenarios for the Great Salt Lake and what needs to be done to help provide water to increase lake levels and elevations to help preserve and maintain this precious resource. We have applied for a Bureau of Reclamation WaterSMART Basin Study Grant. We believe there is a good chance that we will receive that funding, which would help make the \$5 million of the State's money go much further.

As far as the water conditions in the state, the entire state is currently experiencing drought in one of the drought categories. Approximately 56% of the state is experiencing extreme or exceptional drought conditions. Conditions slowly improved over the course of the summer, which is much better than last year when 57% of the state experienced exceptional drought. Over the last ten years, 100% of the state has been in drought conditions. Although conditions have improved, reservoir storage is about the same. Statewide our current reservoir capacity is only 42%. Despite improvements to drought conditions, this remains a significant concern, particularly if we do not get a good snowpack again this winter. In the past year, we had a little less than normal snowpack at 80%, though the streamflow was less than 40%.

John Mackey reported on behalf of the Division of Water Quality. He remarked that it has been a very busy water year in Utah. There is a lot of growth in the state with projections for continuing growth. As a result, all of our wastewater treatment plants are undergoing or have recently completed a major upgrade and expansion of their facilities to accommodate new phosphorus regulations and future growth needs. The State's Infrastructure Investment and Jobs Act (IIJA) funds are essentially all committed through the next two years. We received an allocation of funds to cover the additional match for a supplemental bill, and are hoping to be able to cover this match for the next three years. Construction projects are suffering due to a limited workforce and increasing materials costs, so we are struggling to make sure that our projects are being funded and being kept on time. As Todd mentioned, the Great Salt Lake is on everyone's mind with low levels and increasing salinity levels. Salinity levels are threatening the lifecycle of brine shrimp and brine flies, which are of major concern to the ecosystem. Local birds, regional birds, and international flocks are at risk if we lose that food chain. Utah Lake is undergoing major

water quality studies with respect to nutrient requirements and criteria for the lake. The science portion of the study is wrapping up and we are developing implementation strategies for the restoration of Utah Lake.

There has been a lot of interest in building new meat harvesting facilities in rural areas, which is putting some pressure on the Division to get permits out. Concerning PFAS, we just finished a round of bird and fish tissue sampling and have those samples off to the labs. This is the second phase of our initial monitoring program to assess PFAS distribution in the environment in the state. Staffing and turnover continues to be a challenge. We tend to hire the best, get them trained, and then they leave. It seems that everyone is facing that challenge. The drinking water program received a large amount of funds for their lead program and it went out the door immediately.

Renee Spooner from the Utah Attorney General's office reported there is ongoing litigation with the Ute Indian tribe. The magistrate judge decided that the merit should really be decided on the motion to dismiss, and allowed a third amended complaint. We anticipate filing a motion to dismiss in November of this year. With the signing of the confirmed settlement agreement with the Navajo Nation, we are proceeding into the water rights adjudication. It is anticipated that the hydrographic survey will be completed in 2023, and also our proposed determination will be submitted to the district court. We are discussing Federal Reserved rights with the Ute Mountain Ute and the Confederated Tribes. We in discussions regarding non-point source issues in Capitol Reef National Park, as well as Wild and Scenic Rivers issues.

During the last legislative session, that Division of Water Rights received \$380,000 for installation of water diversion measurements with telemetry. The Division is actively working to purchase and install these devices. The Division is continuing to build the water distribution accounting models and enhance the existing accounting tools in the distribution systems. The data collected from the measuring will lead directly to the accounting models. Further, the Division has partnered with the Colorado River Authority of Utah to conduct a gap analysis of needed measurements in the Colorado River Basin. The work is beginning to create a comprehensive UCRAF model that will be used by both agencies as a state of the art management tool.

North Dakota

Jen Verleger remarked that North Dakota was in severe drought last year. During the Spring, the drought eased somewhat, and by late summer we headed back into it. The Water Commission has a drought disaster livestock program that is currently deactivated, although at our last Commission meeting we discussed the potential for reactivating it. This is a program where we help livestock producers put in more permanent water supplies, so that hopefully they are not impacted by future droughts. The Commission is working on revising their cost share policy with respect to the percentages they are willing to give project sponsors for completing their projects.

Regarding staffing, we are close to being fully staffed again. We are still understaffed in the sense that we could use additional full-time employees to do about 20% more work. As the budget in North Dakota has grown, the FTE level has stayed fairly steady or declined over the

course of the last 15-20 years. Thus, we're doing a lot more with the same number of employees, and definitely seeing more burnout and mental health issues. There has been a lot of turnover. I have heard some division directors complaints that the younger generation of employees are a little more laissez-faire about things. There may be a cultural, generational employment shift in the workplace. We held a consortium with the universities and professors to start talking about fields that students can go into, and not specifically in the water arena, but including public service jobs. Working for a State agency is sometimes a little different than what students have prepared for.

It was recently discovered that there was mold in a State office building, so the building had to be vacated. As a result, some employees have gone back to working from home, and some have moved to other offices in the state office complex. Since the end of August, the agency has been looking for a new, quasi permanent home. Moving is difficult, and our Information Technology staff has done a great job. The moves have caused disruption, but all things considered, it has been relatively minor.

The State's real-time operating stations have been really helpful. The sensors measure precipitation, wind speed, soil moisture, water levels, and so on, and send the data back to the Water Commission via satellite or cell phone, depending on the location. These stations have been enabled us to get real-time data without the need to send people out to monitor groundwater wells in remote areas every four to six months. They will be installing the 300th unit, with plans to increase the system to several thousand units over the next few years. The system was built by our in-house IT staff, and is an internally run program. It has almost become too large to manage.

The State is currently undergoing administrative code changes as a result of the agency's structure reorganization and name change from the State Water Commission to the Department of Water Resources. The Administrative Code used referred to the State Engineer in many instances. Formerly, there was an Office of the State Engineer. That has now changed to the Department of Water Resources. This change resulted in the need to go through the entire Administrative Code and make a determination as to whether the reference was to the State Engineer as a person, or if it was referring to the State Engineer as an agency. The task was much more difficult than was anticipated. Another administrative code change being made is to define dam classifications to bring them more in line with the way the feds define high hazard dams. A hearing should be at the end of this year.

The Northwest Area Water Supply (NAWS) water treatment plant is finally being constructed. It will take water from the Missouri River to the northcentral part of the state. Lawsuits between Missouri and Manitoba delayed the project for 16 years. Basically, a treatment plant is being built to pump water from the Missouri River to the treatment plant where it is treated to near drinking water quality standards (even though it is not officially drinking water quality). The water is then pumped over the Continental Divide to another treatment plant where it is treated again before it can be distributed. The result of the litigation requires us to build the water treatment plant in order to move the water over the Continental Divide.

Another big water project is the Southwest Pipeline Project. They are attempting to build a new intake under Lake Sakakawea. This is the third attempt to build the intake. The first two

attempts used microtunneling. \$2 million of equipment is now buried under the lake, as there were collapses in both of those efforts. For the third effort, they are attempting a horizontal directional drilling method. There have been all sorts of problems, including sinkholes that have recently developed on a neighboring farmstead. This is a very difficult project which is now four years behind schedule. Hopefully, this third attempt will be successful.

With respect to ballot initiatives, there is an initiative to legalize recreational marijuana. There has not been much discussion about what that would mean from a water perspective. This is either the second or third time the initiative has been on the ballot, and it will be interesting to see if it passes this time.

As far as litigation goes, the schedule has been heavy dealing with sovereign lands and who owns the minerals under State-owned waterbodies. The *Missouri v. North Dakota* lawsuit is over 20 CFS being taken out of the Missouri River. The case will be argued before the Eighth Circuit Court of Appeals in the next couple of weeks. We've also been in litigation over who owns the Missouri riverbed through the Mandan, Hidatsa, and Arikara Nation (MHA) Reservation. This is driven solely by minerals and oil revenues. Obviously, both the Tribes and the State want that revenue. An opinion came from the Department of the Interior's Solicitor's Office that initially said the Tribe owned the riverbed. Under the Trump Administration, they later said the State owned it. Depending on which political party leads the White House, the opinion has changed. The Tribe sued the Federal Government stating that they own the land. The State intervened on one of the counts and was a party on another count. The Biden Administration issued a new opinion, stating that the Tribe was the owner. As a result, the count that the State intervened on was mooted, and thus, the State was basically kicked out of the lawsuit. However, the Tribes did not dismiss all of their claims, because they want an accounting of the oil revenues. The State is still trying still intervene on those counts saying that there has not been a determination of title -- and before you do an accounting and start handing out money, there needs to be a final adjudication of title. The district court judge denied the State's motion to intervene, and the State is now appealing. The underlying case is still proceeding.

Colorado

Jeremy Neustifter remarked that the Colorado Water Quality Control Commission passed its first regulatory structure for direct potable reuse. This was in advance of any municipalities actually building on any sort of any of that infrastructure. This was the result of a seven-year stakeholder process that went very well. The State is pretty excited and trying to get the public over the "ick" factor.

Colorado is looking to implement nutrient standards for lakes and are hoping to do a rulemaking process in November. Many stakeholders are concerned that the proposed nutrient standards for lakes are so low that it might actually cause issues concerning water rights. Colorado's statute, the Colorado Water Quality Control Act, specifically states that the Water Quality Control Commission cannot adopt any rules that might infringe on anyone's water rights.

With respect to the IIA, or the Bipartisan Infrastructure Law, Colorado is one of the first 18 states to receive grants. Given our proactive approach, we are in a good position to potentially get additional funding if other states don't utilize their allotted funds. Our applications have been submitted and we expect to start receiving funds this month, if we have not already. We remain in a good position to move forward with helping communities in Colorado to improve their infrastructure, particularly with respect to removing lead service lines and addressing emerging contaminants.

Lastly, regarding staffing, similar to other states, we are struggling to hire. We have a clean water permits program manager position that is open. Since the last WSWC meeting, that position has not been filled because we just have not had the right applicant pool. Now we have begun to waive the typical Colorado resident requirement, and will be announcing the position nationwide. So if folks that you know might be looking to move to Colorado, that's a great opportunity. It is a relatively high paying position. If anybody knows someone looking to be the permanent manager in Colorado, I encourage you to pay attention to the Colorado government jobs website, and the announcement should be coming out by the end of the month.

FUTURE COUNCIL MEETINGS

With respect to future Council meetings, Chair Jen Verleger announced that the Spring meetings will be held in Nevada. For next summer we're considering holding the meetings in Alaska. The Fall meetings are currently being scheduled to be held in Kansas.

The Executive Committee also discussed the fact that with eighteen member states, it is difficult to avoid each state's board meetings and other similar conflicts. For planning purposes, the WSWC will try to plan our meetings as far in advance as possible to allow for you to have some flexibility to move meetings. If you hold your board meetings, for example, on the third Thursday of every month, please let us know. That will help us as we plan WSWC meetings.

SUNSETTING POSITIONS FOR SUMMER 2022 MEETINGS

Tab XYZ of the briefing materials contains sunseting positions for the 2023 Spring meetings, Positions # 471 - #477. Please review them and get any proposed changes to staff.

OTHER MATTERS

There being no other matters, the meeting was adjourned.