

**MINUTES
of the
WATER QUALITY COMMITTEE
Artesian Hotel, Casino & Spa
Sulphur, Oklahoma
October 20, 2022**

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MEMBERS AND ALTERNATES PRESENT (**via zoom*)

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

OREGON

SOUTH DAKOTA

Nakaila Steen

TEXAS

Jim Rizk

UTAH

Todd Stonely
Renee Spoonor

WASHINGTON

Mary Verner

WYOMING

Jeff Cowley
Jennifer Zygmunt

GUESTS

Terry Fisk, National Park Service
Tracy Streeter, Burns and McDonnell
Lori Johnson, Oklahoma Water Resources Board
Deirdre Finn, Council of Infrastructure Financing Authorities

WESTFAST

Paula Cutillo, Bureau of Land Management
Roger Gorke, Environmental Protection Agency

STAFF

Tony Willardson
Michelle Bushman
Erica Gaddis
Adel Abdallah
James Ryan

WELCOME AND INTRODUCTIONS

Jennifer Zygmunt, Committee Chair, welcomed members and guests.

APPROVAL OF MINUTES

The minutes of the meeting held on August 4, 2022, in Polson, Montana were moved for approval by Jennifer Carr, and seconded by Nakaila Steen. The minutes were unanimously approved.

PROPOSED POSITION

A new position for the Council's consideration was proposed by the State of Alaska relating to the Environmental Protection Agency's (EPA) use of the Clean Water Act §404(c) veto authority. Emma Pokon, Deputy Commissioner, Alaska Department of Environmental Conservation, and Julie Pack, Assistant Attorney General, Alaska Department of Law, outlined the need for the position to ensure that there are clear standards and fair application of the authority and to ensure that EPA recognizes state authority and capability to manage resources.

Emma and Julie provided the committee with some context for bringing forward the proposed position related to §404(c) veto authority. They described a situation that has developed related to a §404 permit application for a project located north of Iliamna Lake with concerns about impacts to the Bristol Bay fishery. The region includes a lot of protected areas including national wildlife refuges and national parks. The closest fishery to the project is 25 miles away and less than 0.01% of the streams entering Bristol Bay pass through the affected project area.

EPA has indicated that they intend to preemptively veto all §404 permits in an area that is 309 square miles despite the U.S Army Corps of Engineers (Corps) already denying the permit for the project that triggered the review. This is the first time that EPA has proposed to exercise its §404(c) veto authority for a project that has been denied a §404 permit. One of Alaska's main concerns is that the state has a lot of permitting programs aimed at protecting the resources that EPA is expressing concern about. Further, EPA is not following the process outlined in a 1992 MOA with the Corps.

Mary Verner asked whether the preferred resolution was through congressional legislation or agency regulations and guidance. Emma indicated her preference is to put all the options on the table for discussion with EPA and lawmakers.

Tom Stiles pointed out that EPA had only exercised its veto authority 13 times out of the thousands of 404 permits issued throughout the country and that it may be speculative to suggest that this is a big issue for other states. He suggested that the resolution should either focus on the specific project, or be reworked to focus on the broader process concerns.

There was general agreement between Alaska and other states that the position could be shortened and made more concise to reflect the desire to work with EPA to establish a more transparent and consistent process. Emma, Tom and Jennifer Zygmunt agreed to work on the wording of the position and bring it back for the Full Council's consideration on Friday (10/21/22).

OKLAHOMA WATER QUALITY ISSUES

Shellie Chard, Water Quality Division Director, Oklahoma Department of Environmental Quality (OK DEQ) gave an overview of water quality issues in Oklahoma. Most of Oklahoma is experiencing either exceptional or extreme drought, which is also affecting drinking water. There have been issues with disinfection byproducts due to changes in water chemistry associated with the drought, which has resulted in the need for enhanced monitoring of the drinking water supply. Dry soils associated with the drought have caused more broken pipes for both drinking water and wastewater. This affects the ability to provide safe clean drinking water as well as impacting surface water quality due to sanitary sewer overflows.

Oklahoma has identified aquifer storage and recovery as a way to protect both the quantity and quality of water for drinking water and recreational waters.

Two bills affected Oklahoma water agencies during the 2022 state legislative session. HB 3824 and SB 1325 moved the water quality standards function from the Oklahoma Water Resources Board (OWRB) to the OK DEQ. These bills also authorized the issuance of water quality standard variances by OK DEQ. OK DEQ was responsible for drafting 11 chapters of emergency rulemaking to transition the authority from one agency to another which resulted in new scrutiny of existing rules and regulations by some stakeholders. Recently, there was also legislation authorizing OK DEQ to develop a flexible permitting scheme that would allow for the use of “design build” rather than the traditional “design-bid-build” model for implementing new infrastructure projects. OK DEQ is in the process of testing this approach on five pilot projects.

In addition to the significant federal funds available for new water infrastructure, there are several State programs that are providing additional funding. These are already making a difference in the three months since the authorizing legislation went into effect. State funds are able to help leverage some of the federal funding opportunities.

Per- and Polyfluorinated Substances (PFAS) continue to be a big challenge for the State. Oklahoma’s monitoring for PFAS has primarily focused on military facilities. The partnership with the Department of Defense has been good and the State is working collaboratively to address contamination issues, including two of the largest military bases in the state. Generally, the military bases have provided the funding to connect households with contaminated private wells to a nearby public water supply and/or have provided bottled water to households until a long-term resolution can be implemented. Because Oklahoma does not have mandatory PFAS monitoring, OK DEQ relies on municipalities to identify PFAS contamination problems. While there are some areas with potential concerns, the issue of PFAS may not be widespread in the State. This could change depending on EPA’s final drinking water and wastewater regulations.

INFRASTRUCTURE PANEL

Four panelists shared their perspectives on implementation of federal infrastructure funding. Deidre Finn, Director, Council on Infrastructure Financing Authorities, gave an overview of

implementation efforts of the Infrastructure Investment and Jobs Act (IIJA) funds in states across the country. She indicated that some states are having a hard time meeting the match requirements for the funds. She outlined the five separate “pots” of funding and gave specific updates on each. The first two funding categories represent increases to the base budgets for the Clean Water State Revolving Fund (SRF) and Drinking Water SRF. These funds appear to be flowing relatively well with most states having completed the Intended Use Plans for the funds.

The funding dedicated to lead service line replacement is doing well in some states. Especially those that already have inventories and known lead service line replacement project needs. However, several issues are emerging because the IIJA itself does not provide a lot of detail, leaving EPA to interpret many of the detailed requirements. EPA determined that replacement of lead main lines (connecting to private property) is not eligible for funding, which creates the need to find alternative funding sources. Some states, such as California, Colorado and New Mexico, have challenges using public funds for private uses. The restriction of 49% to be used for principal forgiveness and in disadvantaged communities makes some projects unviable because the problem is not large enough in some states and there is not a sufficient incentive for utilities to borrow funds. Deidre recommended that it would be helpful to allow statewide contracts with an engineering firm to conduct inventories, especially for small rural communities. There is a need to revisit the allotment formula for lead after all states have completed lead service line inventories.

Shellie Chard discussed workforce issues (insufficient staff) within state agencies as one of the major hindrances to implementing infrastructure funds. In addition, many small and medium sized engineering firms in the state are 12 – 24 months out before new projects can be designed. Due to the demand for engineers in the private sector, many public sector engineers are leaving state service. Further, inflation is having a real impact on the costs of projects. Oklahoma is taking some creative approaches to overcome some of these challenges including allocating general funds for infrastructure to help with inflation, contracting through Oklahoma Rural Water Association for technical assistance, and establishing criteria for small communities (less than 3,300 people) to obtain funding for planning documents, engineering reports, and environmental assessments to help get them ready for SRF loan applications. In addition, Oklahoma has strong partnerships with tribes to allow them to leverage federal funding dedicated to tribes with those dedicated to states.

Jennifer Carr, Deputy Administrator, Nevada Division of Environmental Protection, agreed with many of the comments made by the previous two panelists. She added that many applicants are confused by the various funding pots and their respective eligibility criteria. She emphasized the need to continue to raise awareness of some of the infrastructure funding issues. In Nevada, staff are being creative in finding solutions to some of the barriers including exploring whether the state could complete Davis-Bacon requirements for borrowers. It is unfortunate that the lead service line inventories will not be completed for another year or two while the funding needs to move now. She also agreed that there was a need to work with EPA headquarters to reinterpret some of the eligibility restrictions on the IIJA funding for lead service lines including allowing lead-coated water tanks to be eligible. Jennifer was interested in hearing about how other states are planning to use funding for emerging contaminants.

Jennifer Zygmunt, Water Quality Division Administrator, Wyoming Department of Environmental Quality, and Committee Chair also reiterated the need to continue state to state

conversations about infrastructure funding and solutions to obstacles. Jennifer reminded the committee that Position No. 446, regarding drinking water and clean water SRFs is scheduled to sunset in Spring 2023 and there would be an opportunity to make amendments to the position to reflect the current infrastructure financing situation.

REPORT OUT ON AML PANEL AND DISCUSSION REGARDING NEXT STEPS

Erica Gaddis, Sr. Policy Advisor, WSWC, gave a brief overview of the Abandoned Mine Lands (AML) panel discussion that took place on October 19, 2022. The discussion addressed current federal efforts to remediate abandoned hardrock mine sites, including new programming and funding authorized through the Infrastructure Investment and Jobs Act (IIJA). There were five presenters.

Shahid Mahmud, Office of Mountains, Deserts, and Plains (OMDP), EPA, gave an update on the new office, which was formed in 2020 to coordinate and convene agency efforts to remediate AML in the west. Holly Fliniau, Environmental Management Division, USDA, represented the Federal Mining Dialogue, which was formed in the mid-1990s to collaborate across federal programs on abandoned mine land clean-ups. The current focus of the group is on critical mineral recovery, Good Samaritan clean-ups, and coordination of any funding that comes from the IIJA. Sarah Martinez, Minerals and Geology Management, USDA Forest Service, outlined efforts to develop a National Programmatic Abandoned Mines Lands Plan of Action. Bill Lodder, Office of Environmental Policy and Compliance, Department of the Interior (DOI), discussed agency efforts to stand up a new program in accordance with §40704 of the IIJA. DOI received \$5 million, of the \$3 billion authorized, in FY22 to build out the program and has been collaborating with states through the Interstate Mining Compact Commission (IMCC) and National Association of Abandoned Mine Land Programs (NAAML). DOI requested \$65 million for implementation of this new program in FY23. Any funding received in FY23 will be divided between the federal program and a grant program. There are also efforts, in collaboration with USGS, to stand-up a national database for abandoned mines that can be used by states and federal agencies. The discussion that followed included several questions and comments from intermountain states and there was broad agreement that we should all continue to collaborate as these new programs move forward.

With an office currently staffed at 2 FTEs, OMDP's primary function is to serve as a convening organization for federal and state agencies working on abandoned mine cleanups. The office is working closely with EPA Regions 6 and 9 and the Navajo Nation to advance clean up with abandoned uranium mine sites. This has resulted in working on a comprehensive long term waste management strategy and disposal options for abandoned mine waste disposal. OMDP is also supporting Executive Order 14017 on American supply chains for critical mineral recovery from Superfund sites. Shahid is also working with administrative tools to provide liability protections for Good Samaritan clean-ups. Holly talked about the importance of a watershed approach to abandoned mine clean-ups and outlined the keys to successful implementation as being (1) taking a state-by-state approach and (2) having a champion for each program and initiative and (3) commitment to monitor efforts to demonstrate success. She gave an overview of the successes that have been seen in Colorado as an example of this approach. There is a desire to coordinate with

states and others to continue building the inventory of abandoned mine features in the national forest system which currently stands at 12,813 features. USFS is conducting a desktop review of inventory to vet and verify the features that should be prioritized for remediation and has interest in collaborating with states, NGOs, and other agencies to accomplish as much remediation as possible under IIIA §40704 and §40804.

DOI has a technical workgroup that includes other federal agencies with MOUs to clarify roles and responsibilities and stand up the new program ahead of additional appropriations from Congress. There is interest in including WSWC as the program moves forward. Based on feedback from states, the current intent is to follow the same model for grants as is used by OSMRE for the abandoned coal mine program. DOI is also considering covering all non-coal mines in this new program to ensure there are not unintended gaps in programs. In terms of prioritizing clean-up efforts, the intent is to mirror the process in the Central Hazardous Materials program that uses a scoring matrix to evaluate risk and apply available funds to the highest ranked sites.

The WSWC will continue to track the Good Samaritan legislation and abandoned mine remediation funding in Congress, as well as continue to coordinate with IMCC and the NAAMLPL.

FY2022-2023 WATER QUALITY COMMITTEE WORK PLAN PROGRESS REPORT

Erica Gaddis gave a brief update on recent staff activities under the FY22-23 workplan, including the workshops and policy whitepaper associated with Waters of the United States (WOTUS) and activities of the new PFAS subcommittee. Details are available in the progress report located under Tab L in the briefing materials.

SUNSETTING POSITIONS FOR SPRING 2023 MEETINGS

Position No. 446, regarding the clean and drinking water state revolving funds and state and tribal assistance grants.

OTHER MATTERS

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