



# Western States Water

## Addressing Water Needs and Strategies for a Sustainable Future

682 East Vine Street / Suite 7 / Murray, UT 84107 / (801) 685-2555 / Fax 685-2559 / [www.westernstateswater.org](http://www.westernstateswater.org)

Chair - Jennifer Verleger; Executive Director - Tony Willardson; Editor - Michelle Bushman; Subscriptions - Julie Groat

### **WESTERN STATES WATER COUNCIL** **Summer Meetings**

The WSWC Summer Meetings (199th) were hosted by the State of Montana on August 2-5, in Polson. Participants joined both virtually and in person. Julie Cunningham, Executive Director, Oklahoma Water Resources Board (OWRB), was nominated and elected as the new Secretary-Treasurer, replacing Erica Gaddis, former Director of the Utah Division of Water Quality. Jen Verleger, North Dakota Assistant Attorney General, Chair, and Jon Niermann, Commissioner, Texas Commission on Environmental Quality (TCEQ), Vice Chair, continue to serve in their respective positions.

The WSWC revised and re-adopted four sunseting positions that: (1) support efforts to preserve radio and broadband spectrum frequencies needed for weather forecasting, streamgaging, and related water and emergency management information needs; (2) support appropriate federal appropriations and actions to plan, prepare for and avoid, minimize or mitigate the impacts of extreme weather events; (3) regarding hydraulic fracturing; and (4) support water research by Department of Energy National Laboratories. See <https://westernstateswater.org/resolutions/>.

Rob McDonald, Tribal Communications Director, Confederated Salish and Kootenai Tribes (CSKT) Compact Implementation Office, gave an overview of the history of the water rights compact and progress on implementation, including the establishment of the Flathead Reservation Water Management Board to administer and manage all aspects of water use and water rights within the Flathead Reservation. Two members of the Board are appointed by the Governor of the State of Montana, and two by the Tribes, with a fifth chosen by the other four. The Secretary of the Department of the Interior appoints a sixth, non-voting ex officio, member. They are developing trust and functioning as a group. The CSKT Natural Resources Department's Water Resources Program includes several ongoing projects, and similar to other water projects, they have encountered obstacles related to increasing material costs, getting equipment, and finding qualified workers. See Water Resources Program at [csktnrd.org](http://csktnrd.org).

Anna Pakenham Stevenson, Administrator of the Water Resources Division of the Montana Department of Natural Resources and Conservation (DNRC), talked about several water challenges, involving post-decree administration of water rights, refining the role of water courts, and recent efforts of working groups to update the State's drought management plan to be more interactive, user friendly, and offer real-time information for management. DNRC is also working on increasing its transparency and access to water rights data by developing a new query system.

During the Water Resources Committee, Heather Bartlett, Deputy Director, Washington Department of Ecology (WDOE), provided an overview of the 140-page Lower Snake River Dams Benefit Replacement Report, noting the impact of the dams on migrating salmon, habitat, and tribal cultural values. She talked about the current hydropower benefits of the dams, the need to diversify the energy portfolio, and what it would take to mitigate those losses if the dams were removed, in particular, to ensure that the burden is not placed on vulnerable populations. Jerry Rigby, Rigby, Andrus and Rigby Law, PLLC, offered another perspective, noting the substantial costs of hydropower energy replacement, particularly taking into consideration the need to build new energy facilities.

Peter Fiske, Executive Director, Erica Siirila-Woodburn, and Craig Ulrich, Lawrence Berkeley National Laboratory presented on Department of Energy (DOE) National Labs and Water Resources Research. Erica noted that water in the West is managed based on an assumption of a reliable snowpack, but the snowpack has been declining (23%) since the mid-1950s. Craig spoke about basin-wide groundwater recharge and developing a roadmap to greater water resiliency. Peter talked about the desalination of seawater, brackish water, wastewater, and other sources of impaired quality, and encouraged States to engage in DOE research efforts and pilot programs.

Jeanine Jones, Interstate Resources Manager, California Department of Water Resources (CDWR), gave an overview of the Council's Sub-seasonal-to-Seasonal (S2S) and Runoff Forecasting workshops.

She noted that CDWR and National Aeronautics and Space Administration (NASA) have funded much of the S2S research to date, and a primary purpose of the S2S workshops in recent years has been to build momentum for National Oceanic and Atmospheric Administration (NOAA) to enhance their longer-term forecasting research under the 2017 Weather Research Act. She noted that the shift toward commercially available airborne snow observatory data for forecasting runoff has significantly increased costs for California, from historically \$1M/year to \$11M/year, which covers only 11 of their 18 watersheds. They are looking to expand such data collection, increasing their annual costs to \$25M.

The members engaged in a roundtable discussion on various responses to drought, including: reductions in water use; funding for data, monitoring, and forecasting programs; limiting new domestic well construction; and maximizing water reuse.

The new chair of the Water Quality Committee is Jennifer Zygmunt, Administrator of the Water Quality Division, Wyoming Department of Environmental Quality. The committee discussed a draft comment letter to the Environmental Protection Agency (EPA) on the new proposed Clean Water Act (CWA) State §401 Certification rulemaking. Erica Gaddis, Senior Policy Advisor, WSWC, provided updates on funding and pending legislation to address the cleanup of abandoned hardrock mines. Roger Gorke, EPA, provided an update on WestFAST and Nevada coordination on federal programs to meet state needs.

During the Legal Committee, Jen Verleger, provided an update on the proposed Western Water Cooperative Committee for Corps of Engineers Projects included in the Senate version of the Water Resources Development Act. She noted that the WSWC Executive Committee members would be the default membership of this new cooperative federalism committee, unless and until their respective governors appointed someone else.

Jay Weiner, Administrative Law Judge, Montana DNRC, and Anna Pakenham Stevenson provided an overview of Montana legal water issues. They noted the current differences between the thorough administrative water claim process at DNRC and the relatively simpler experience for those filing with the water court. Further, they added that the Montana State Legislature is grappling with questions of continuing jurisdiction as Montana completes their statewide adjudication process.

Micheline Fairbank, Water Rights Deputy Administrator, Nevada Division of Water Resources (NDWR), and Jon Niermann, TCEQ Chairman, discussed the outcome of their respective recent state supreme court cases with water rights implications: *Diamond Natural Resources Protection & Conservation*

*Assn., et al. v. Diamond Valley Ranch, et al.*; and *Pape Partners, Ltd. et al. v. DRR Family Properties, LP, et al.*

Nathan Bracken, Partner, Smith Hartvigsen, PLLC, provided an overview of the 28 water bills passed during 2022 Utah's state legislative session, as well as the considerable work of many people in the water community over several years that led up to so many bills making it through the legislature on topics such as water banking.

In conjunction with the meetings, on August 2, the WSWC hosted a full-day WOTUS regional concept policy workshop, which was built on two virtual technical pre-workshops that were held on June 21 and July 11, 2022. This final workshop integrated technical recommendations with policy considerations regarding approaches to using a regional approach for WOTUS definitions. A draft white paper, Applicability of Regional Classification Schemes and Analytical Tools for Regional Definitions of Waters of the United States summarizing the earlier workshops was presented.

On the morning of August 3, WaDE staff invited WSWC members, particularly state engineers and other state water rights administrators, to participate in a demonstration and feedback workshop on our Western States Water Data Access and Analysis Tool (WestDAAT). The intent of the workshop was to familiarize members and others with the tool and encourage hands-on practice with possible applications and get members' feedback.

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

## **ADMINISTRATION/CONGRESS** **Abandoned Mines**

On July 28, WSWC sent two letters on abandoned mines. The first letter was addressed to Secretary Deb Haaland, Department of the Interior; Secretary Tom Vilsak, Department of Agriculture; and Administrator Michael Regan, EPA. It requested collaboration and coordination of resources, programs, and funding to prioritize sites with environmental and physical hazards, including impaired waters. The second letter was sent to Senators Martin Heinrich (D-NM) and James Risch (R-ID) in support of various provisions of the Good Samaritan Remediation of Abandoned Hardrock Mines Act (S. 2371). It requests that states be protected from cleanup CERCLA liability alongside federal agencies, and recommends a formal state-federal consultation process for pilot projects and an opportunity for states, particularly as co-regulators, to help shape the program selection criteria, with permit issuance, and oversight. See <https://westernstateswater.org/policy-letters/>.

---

**The WESTERN STATES WATER COUNCIL is a government entity of representatives appointed by the Governors of Alaska, Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming.**