



# Western States Water

## Addressing Water Needs and Strategies for a Sustainable Future

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### **WESTERN STATES WATER COUNCIL Fall Meetings**

On October 19-21, the State of Oklahoma hosted meetings of the Western States Water Council (WSWC) in Sulphur. Oklahoma's Speaker of the House Charles McCall welcomed WSWC members and guests via video. Sara Gibson, General Counsel, and Christopher Neel, Water Rights Division Chief, with the Oklahoma Water Resources Board (OWRB), described the challenges of managing the areas surface and groundwater resources, while Shellie Chard, Director of the Department of Environmental Quality's (DEQ) Division of Water Quality addressed efforts to protect water quality.

The WSWC revised and re-adopted three sunseting positions that: (1) urge the National Aeronautics and Space Administration (NASA) to enhance its focus on moving research towards water resources management applications, and promoting long-term engagement with western states; (2) support reauthorization, appropriations for and implementation of the SECURE Water Act and related federal programs; and (3) reiterates support for legislation requiring the federal government to pay state filing fees in state general stream adjudications. One new position was approved calling for limiting the Environmental Protection Agency's (EPA) preemptive exercise of its Clean Water Act (CWA) §404(c) veto power to the time period between the U.S. Army Corps of Engineers (USACE) indication of its intent to issue a permit, and final issuance of that permit. In Alaska, EPA has in effect preemptively designated large area in the Bristol Bay watershed as off limits to mining despite the absence of any §404 permit applications, and even vetoing a permit the Corps had already denied, preempting any possible appeal and mitigation proposals.

The Council's committee meetings involved a number of guests addressing several important topics. Indrani Graczyk, Director of NASA's Western Water Application Office (WWAO) described efforts to provide water managers with better information to make better decisions. Robyn Colosimo, Office of the Assistant Secretary of the Army (Civil Works), updated members

on the Corps Water Infrastructure Financing (CWIF) Program, which for the first time authorizes Corps to leverage federal and state funds to address non-federal infrastructure needs, initially non-federal dam safety work. Colosimo and Brian Frazer, Acting Director, EPA Office of Wetlands, Oceans and Watersheds, also reported on a series of regional roundtables designed to discuss implications of any new definition of Waters of the United States (WOTUS).

WSWC staff presented two related documents prepared following its own series of WOTUS workshops addressing the "Applicability of Regional Classification Schemes and Analytical Tools to Regional Definitions of WOTUS." One is a technical document and the second an internal policy memo. Both present options, without recommendations. Copies are available from WSWC.

Roger Gorke, Sr. Water Policy Advisor, Office of Water, EPA and Anna Hoag, Civil Engineer, Bureau of Reclamation, talked about federal efforts under the National Drought Resiliency Partnership (NDRP) to help implement the Southwest Oklahoma Water Plan with strong local leadership, diverse stakeholders, and many contributions of data and tools to enable early detection of drought, with hydrologic indicators triggering adaptation strategies. A related study addressed state water rights and the impact of diversions, particularly groundwater pumping, on inflows to Tom Steed Reservoir, the main feature of Reclamation's Mountain Park Project which provides water for municipal and industrial use and a wildlife management area. Meaningful curtailment scenarios to protect reservoir levels were considered that may guide water management during drought.

A robust panel on permitting pumped storage projects involved Sage Park, Washington State Department of Ecology, discussing a proposed Goldendale facility near the Columbia River. Pacificorp alone has proposed eleven projects in the West. Several states provided insights into the challenges they are facing. Wyoming has five open-loop and closed-loop system proposals. Closed systems may be preferable from a water quality and fish and wildlife perspective, while open systems using existing reservoirs are easier

to manage from a water rights perspective. Idaho has a proposed project in the Boise Basin in the state permitting process that also requires a license from the Federal Energy Regulatory Commission (FERC). Senior water right holders are asserting injury and filing objections. The Committee also discussed: the impacts on water from a proposed hydrogen production hub for Arkansas, Louisiana and Oklahoma (HALO).

Julie Pack, Assistant Attorney General, Alaska Department of Law, and Emma Pokon, Deputy Commissioner, Alaska DEQ Conservation, briefed members on CWA §404 permit uncertainties due to vague definitions and EPA's inconsistent application of guidance. Shellie Chard, Director, Oklahoma DEQ described various state water quality issues, including efforts to monitor per- and polyfluoroalkyl substances (PFAs) and concerns with handling contaminated biosolids from wastewater treatment plants. Shellie also participated on an infrastructure panel along with Deirdre Finn, Executive Director, Council of Infrastructure Financing Authorities (CIFA), and Jennifer Carr, Nevada Department of Environmental Protection, regarding the complexities of ensuring states are positioned to receive and distribute federal Infrastructure Investment and Jobs Act (IIJA) funds, particularly with understaffed agencies, short timelines, and the need to stand up new programs and engage in outreach. Oklahoma is pooling resources with the tribes. Nevada is considering partnering with a contractor to handle Davis-Bacon wages requirements and otherwise assist project sponsors. Changes to the State Revolving Fund (SRF) program allocations and a new prohibition on cross-collateralization may be particularly challenging for some states.

Sara Gibson, OWRB, talked about recent developments in case law and administrative rulemaking. A new intent-to-drill rule will help with compliance issues. OWRB is working on instream flow agreements between water use sectors and water users. They have had several interesting water-related cases arise and legislative changes to enable more conjunctive management of water resources. Groundwater is private property in Oklahoma, but its use may be limited to protect the natural flow of water from springs.

Scott Steinbrecher, Assistant Deputy Attorney General, Colorado Department of Law, and Kevin Rein, State Engineer and Director, Colorado Division of Water Resources, addressed water rights speculation in Colorado. The legislature created a task force to explore whether current laws could be strengthened to prevent speculative appropriations of water, given the potential to profit from demand management tools in the Colorado River Basin. The task force found a misalignment between the concepts and the law, and clarified differences between speculative hoarding of water rights without putting water to beneficial use and the speculative investment in water as a primarily profit-

driven activity. Subjective intent can be a difficult thing to objectively prove. The task force came to no consensus.

Earl Lewis, Chief Engineer, Kansas Department of Agriculture, and Connie Owen, Director, Kansas Water Office (virtually), described the Kansas legislature's recent efforts to consider reorganization of the various water-related agencies. It also expanded the focus to include the structure, funding, and meaningful activities of Groundwater Management Districts (GMDs), which are now the subject of a legislative audit.

Caroline Nash, Principal, CK Blueshift LLC, and Paula Cutillo, Sr. Water Resources Specialist, Bureau of Land Management (BLM), discussed the significant increase in IIJA funding for watershed restoration projects, which has the potential to make watersheds more drought resilient and wildfire resistant. These projects have an important water rights component, and they proposed a webinar series to facilitate better understanding of how to address those issues in a thoughtful way. Nebraska and Idaho expressed support and noted concerns that past project lacked required storage rights and/or failed to protect downstream senior water rights during the growing season.

Sara Gibson, together with Stephen Greetham, Senior Counsel, Chickasaw Nation, and Peter Fahmy, Water Rights Branch, National Park Service, talked about CNRA water rights. Fahmy described the history of the Arbuckle-Simpson aquifer, noting the tribe deeded lands back to the federal government to better protect what became the CNRA. The geologically complicated aquifer is important to the tribes and the surrounding towns. Stephen talked about the relationships that have developed between the tribal, state, and federal governments to manage the water, the unique water rights settlement, and a controversial proposal to pump 80,000 acre-feet for transfer to Central Oklahoma. In 2003, SB288 imposed a moratorium on the issuance of any temporary groundwater permit for municipal or public water supply use outside of any county that overlays, in whole or in part, a "sensitive sole source groundwater basin." Gibson explained private groundwater rights, and the buffer zones and pumping limitations that have been imposed to protect the aquifer.

In conjunction with the meetings, on October 19, the WSWC hosted a panel on current federal efforts to remediate abandoned hardrock mine sites, including new programming and funding authorized through the IIJA with: Shahid Mahmud, Director, EPA Office of Mountains, Deserts, and Plains (OMDP); Holly Fliniau, USDA Environmental Management Division, also representing the Federal Mining Dialogue across federal programs on clean-ups; Sarah Martinez, U.S. Forest Service; and Bill Lodder, Department of the Interior (DOI), Office of Environmental Policy and Compliance. For a summary of the discussion contact WSWC staff.

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**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.**