

**MINUTES
of the
202nd COUNCIL MEETING
Aloft Anchorage Hotel
Anchorage, Alaska
September 14, 2023**

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MEMBERS AND ALTERNATES PRESENT (*via zoom*)

ALASKA	Tom Barrett Randy Bates Julie Pack Emma Pokon
ARIZONA	Trevor Baggione <i>Kelly Brown</i>
CALIFORNIA	Joaquin Esquivel
COLORADO	Jojo La
IDAHO	Jerry Rigby
KANSAS	Earl Lewis Connie Owen <i>Tom Stiles</i> Matt Unruh
MONTANA	<i>Anna Pakenham Stevenson</i> <i>Jay Weiner</i>
NEBRASKA	Justin Lavene Jim Macy Tom Riley
NEVADA	Jennifer Carr Melissa Flatley Adam Sullivan
NEW MEXICO	--
NORTH DAKOTA	Jennifer Verleger
OKLAHOMA	Sara Gibson

OREGON	--
SOUTH DAKOTA	Nakaila Steen
TEXAS	Jon Niermann
UTAH	Candice Hasenyager John Mackey Sarah Shechter Todd Stonely <i>Teresa Wilhelmsen</i>
WASHINGTON	Ria Berns Buck Smith
WYOMING	Jeff Cowley Jennifer Zygmunt

GUESTS

Brian Clark, U.S. Geological Survey
James Davenport, JHDavenport, LLC
Christopher Estes, Instream Flow Council
Nancy Wainwright, Wainwright Legal Services, LLC
Hannah Singleton, Southern Nevada Water Authority
John Plaskett, Anchorage Water and Wastewater Utility
Jeff Axmann, Anchorage Water and Wastewater Utility
Jim Rizk, Texas Commission on Environmental Quality
Christy Colles, Alaska Department of Natural Resources
Kevin Patrone, Alaska Department of Natural Resources
Tanya Trujillo, New Mexico Office of the State Engineer
David Persinger, Anchorage Water and Wastewater Utility
Mark Corsentino, Anchorage Water and Wastewater Utility
Sharon Ray, National Aeronautics and Space Administration
Rachel Clark, Montana Department of Environmental Quality
Courtney Osolnik, Yukon River Inter-Tribal Watershed Council
Mark Schimscheimer, Anchorage Water and Wastewater Utility
Kelly Pack, Alaska Department of Environmental Conservation
Kathy Alexander, Texas Commission on Environmental Quality
Robert Singletary, Oklahoma Department of Environmental Quality
Shannon Miller, Alaska Department of Environmental Conservation
Charley Palmer, Alaska Department of Environmental Conservation
Cari-Michel La Caille, Texas Commission on Environmental Quality

Christina Carpenter, Alaska Department of Environmental Conservation
Cathy Erskine, Nevada Department of Conservation and Natural Resources

WESTFAST

Lauren Dempsey, U.S. Air Force
Christopher Carlson, U.S. Forest Service
Madeline Franklin, Bureau of Reclamation
Paula Cutillo, Bureau of Land Management
Roger Gorke, U.S. Environmental Protection Agency
Heather Hofman, Natural Resources Conservation Service
Gretel Follingstad, National Oceanic and Atmospheric Administration
Chad Abel, U.S. Fish and Wildlife Service
Michael Whitehead, Bureau of Indian Affairs
John Trawicki, U.S. Fish and Wildlife Service
Brenda Hatathlie, Bureau of Indian Affairs
Travis Yonts, Bureau of Reclamation

STAFF

Tony Willardson
Michelle Bushman
Elysse Campbell
Adel Abdallah
Ryan James
Andrew Campbell

WELCOME AND INTRODUCTIONS

WSWC Chair Jennifer Verleger welcomed everyone.

APPROVAL OF MINUTES

A motion to approve the minutes of the meetings held May 24, 2023, in Reno, Nevada was offered and seconded. The minutes of the meeting were unanimously approved.

COMMITTEE REPORTS

A. Water Resources Committee

Nakaila Steen reported that the Water Resources Committee recommended one sunsetting position for approval by the Full Council. Position #455, supporting USDA Conservation Programs and Water Resources had one minor grammatical edit on the second page. Nakaila moved approval of Position #455. The motion was seconded and unanimously approved.

Nakaila provided an overview of the presentations during the Committee meeting. Tom Barrett with Alaska's Department of Natural Resources presented on Alaska's water resources. He talked about the challenges of data collection with the local road system, recent changes in the law related to online public notices and addressing the backlog of water use applications. Jim Davenport discussed opportunities for use of Artificial Intelligence (AI) and recommended two books: (1) *Three Ages of Water* by Peter Gleick, which has documented how water has shaped the course of human life and history; and (2) *The Age of AI* by Henry Kissinger and others, which considers how AI will change our relationship with politics and the society in which we currently live. The use of AI or machine learning for water management was discussed and how indexing water database information into the system can be used to compare management scenarios such as different economic benefits of beneficial use. Tony Willardson provided an update on seasonal to sub-seasonal (S2S) forecasting. Gretel Follingstad, NOAA-NIDIS, talked about an integrated system to provide improved risk and vulnerability assessments to be used in decision making and some funding paths that can be used to improve those risks. Tim Stryker, USGS, gave an exciting update on Landsat Next, a 10th generation land satellite. He talked about annual budget pressures, resource management data on ET and HABS, and talked about the potential to refuel Landsat 7 to extend its useful life. Brian Clark, USGS, talked about the National Water Census. Regional water availability assessments are more detailed, and the country has been divided into ten basins. The National Water Availability Assessment will come out in phases with the initial report expected in 2024, providing a snapshot of water availability in the nation and an updated version in 2026 to address future trends and projections. Becci Anderson, USGS, share what the National Geospatial Program is doing with the 3D Hydrography Program, which is the first systematic remapping of the nations since the original mapping that was active from the 1940s to the 1990s. Adel Abdallah provided an update on the WestDAAT conservation tool. Nakaila remarked that for the short time she has been a member of the WSWC, it has been interesting to see how the WaDE tools have grown and developed. Adel also discussed regulatory overlays and spoke about the dynamic efforts continuing this project.

Lastly, there are six sunsetting positions, Positions #459 - #464 to be considered at the 2024 Spring meetings in Washington, D.C.

B. Legal Committee

Sara Gibson reported on the presentations to the Committee. Julie Pack, Alaska's Department of Law, gave an update on the State's legal issues, which includes CWA §404

assumption, and an original jurisdiction petition to the U.S. Supreme Court with some interesting takings arguments.

Stephen Bartell, U.S. Department of Justice, provided a western water litigation update in lawsuits where the federal government is a party. In addition, he talked about cases involving non-tribal federal reserved rights claims to groundwater. Sara noted that a comprehensive list of legislation and litigation prepared by Michelle Bushman is available in the briefing materials under Tab T. Madeline Franklin, WestFAST Liaison, provided an update on a recent series of webinars on stream restoration. Anna Pakenham-Stevenson of the Montana Department of Natural Resources and Conservation, and Jerry Rigby, Idaho, talked about their respective States' efforts and challenges in managing exempt wells. They noted that perhaps some of the regulations may be outdated in meeting the needs of the communities in their states. WSWC staff asked the Committee to consider updating WSWC reports done previously addressing groundwater issues. Tony Willardson brought to the Committee's attention a recent article in the New York Times regarding the Nation's use of groundwater (see the article under Tab S in the briefing materials). A roundtable discussed groundwater regulation. Adel Abdallah provided an update on the WaDE regulatory and administrative overlays. The staff will send those out for review before final publication.

Michelle Bushman gave an update on the 18th Symposium on the Settlement of Indian Reserved Water Rights Claims and noted potential implications of the congressional shift from project-based settlements to fund-based settlements on the continued utility of the Reclamation Water Settlements Fund as a permanent source of financing. Michelle also provided an update on the Corps' efforts to establish the Western Water Cooperative Committee, and she requested appointments from remaining States.

A short-term subcommittee was appointed to address issues raised by the Legal Committee on Position #454, supporting Indian Water Rights Settlements. A new whereas clause was added to specify the kind of Indian water rights claims under the Winter's doctrine. There was a lot of back and forth about this additional paragraph. A distinction was made to clarify the use of the terms "Indian water rights" as a widely-used legal term of art, and "Native Americans" to refer to the individuals or communities. Sara made a motion to accept the changes presented to the Full Council, and was seconded. The position was adopted as amended.

The Committee also recommended the Full Council to consider Position #458 outlining actions federal agencies should take to expedite state general stream adjudications. The State of Arizona offered some amendments. During the Committee meeting, concern was raised by the federal entities that they can be required to make all their claims in a general adjudication and often do not have the resources to do that in an efficient manner. So proposed changes were made noting that federal and state agencies should work together. Arizona's concern was calling for consultation with the states as part of their adjudication process, which they could not do, as federal agencies, like any other water rights holder, were parties to their process. In legal terms, it would be an *ex parte* communication, which was not allowed by Arizona. Changes were also made which would help support the federal agencies by pointing out that the administration should request, and Congress should appropriate sufficient funding for the agencies to adequately and effectively

identify and quantify and prepare evidence to substantiate its water rights claims. Sara moved to approve Position #458 as amended. A second was offered and the Full Council unanimously approved adoption of the position as amended.

C. Water Quality Committee

Jennifer Zygmunt noted that the Water Quality Committee considered one sunseting position, Position #456, Asserting State Primacy on Protecting Groundwater Quality. The Committee unanimously approved forwarding it to the Full Council without any further revisions. Jennifer moved for the Full Council to approve that position as put forward. The motion was seconded. Jennifer Verleger called for discussion and for a vote. Position #456 was adopted without opposition.

The Committee heard from representatives of the Donlin Gold Mine about Alaska water quality issues. They shared their perspective on the good working relationships they built with the Alaska regulators, in terms of meeting Alaska's stringent water quality requirements, and also how to build good outreach and communication with stakeholders and communities affected by the projects.

Tribal water quality standards and two proposed EPA rulemakings were discussed. We heard from Sara Hisel-McCoy at EPA who provided an update on both of those rules and the status, as well as the number of comments EPA received on both rules and where they are in evaluating the comments. We were briefed on the resources that the Western States Water Council has put together to compile western states' comments on those proposed rules.

There were further updates from Brian Frazer of EPA's Office of Wetlands and Water on WOTUS following the *Sackett* decision, and EPA having published a conforming rule. We also heard from Sarah Hisel-McCoy on the recent *Center for Biological Diversity v. EPA* case and potential implications for Endangered Species Act consultations for all water quality standards.

Jim Macy from Nebraska gave a presentation about their incredible journey to assume the Clean Water Act §404 program. There were lots of questions from other states who are also in that process or considering that process. There were questions and discussions on EPA's proposed revisions to §404(g). We briefly discussed the Water Quality Committee's work plan for FY 2023-2024, primarily noting that the tasks need to be reprioritized. This will be done at the 2024 Spring meeting.

WESTFAST REPORT

Roger Gorke, WestFAST Chair (EPA), noted the number of federal agency representatives in attendance at the meetings, showing very strong support from the federal family in supporting the Western States Water Council and working more collaboratively with you. The meeting agenda are also indicative of WestFAST's support. Roger remarked that when he began working with the WSWC almost 20 years ago, federal agency reps attended the meetings, but basically sat

around the perimeter and listened and observed the meetings. Whereas nowadays, the WestFAST team is included in the WSWC meeting agenda topics which allows the federal agencies to provide more information about federal level products and efforts.

WestFAST has been working with the State of Nevada and helping them align their state planning efforts to better set up their communities for accessing federal funding, and specifically working with FEMA and their Hazard Mitigation Grant Program. After the presentation at the last meeting in Reno, we had a webinar at the end of the month or early end of May or early June. This caught the attention of Rebecca Roose who used to work for New Mexico's NMED, which has led to an effort to get some grant funding for the State of Mexico through the Thornburg Foundation to be able to help them align and better identify sources of funding for their needs such as community drinking water, wastewater stormwater capacity, water resources management and planning, and river aquifer and watershed health. Roger talked about the level of trust that has been built, even though we still have our differences.

The WestFAST team is very committed to working with the WSWC and the individual states to help with issues, problems, or questions. As an example of such cooperation, Jason Cooper in Nevada, who works for the finance division, had an issue with BLM on a project that had been submitted six months to a year earlier, yet nothing had happened. The State did not know if the project was being denied by BLM, or what the status was. I was informed and I contacted Paula Cutillo, our BLM WestFAST representative. Paula is attending this meeting online with us today. Paula turned it around and sent out information on the project to the district office. They found that it had been buried on someone's desk. It is now moving forward.

So, I'm referring to such examples, and questions such as "what is going on with this? Can you help see if there is a concern?" These may seem like small, insignificant examples, but it can be significant for a community trying to get work done while a permit or a license is stuck on somebody's desk.

He also highlighted the WestFAST webinar series. We did a whole year of wildfire webinars, which was fantastic. The series was very informative, and looked at how water resources could and should be analyzed from a fire perspective. We investigated water resources pre-fire, during an incident, and post-fire. A more recent webinar series we have tackled is pumped storage, in which water is moved between two reservoirs at different elevations, basically recycling the water. A couple of weeks ago, we had a webinar on stream restoration and water rights, which was jam-packed with a lot of solid information. It was great.

When WestFAST started in 2008, a declaration of cooperation was signed by 12 federal agencies. Now, at least 15 different federal agencies participate. Newer agencies include the Bureau of Indian Affairs (Michael Whitehead), and FEMA has also been more actively involved. We have new members from the NIDIS program, and Chad Abel of the U.S. Fish and Wildlife Service, as well as a new member from the Department of Energy. Thus, the team is growing and has been very steady over the last 10 years. We are now expanding to agencies that also deal with water for which WSWC members need points of contact.

INSTREAM FLOW COUNCIL

Christopher Estes, Chalk Board Enterprises, LLC, talked about the Instream Flow Council (IFC), which works to improve the effectiveness of state, provincial, and territorial instream flow programs and activities in conserving (protecting, maintaining, and restoring) aquatic ecosystems and uses. It is a subset of the Association of Fish and Wildlife Agencies, which includes leadership of all 50 states' fish and wildlife agencies and their counterparts.

Between 1970 to 2000, interdisciplinary instream flow related conservation (protection, restoration and enhancement) training, research and development services were provided under the direction of the federal Cooperative Instream Flow Service Group (CIFSG) in Fort Collins, Colorado. The group developed a widely used instream flow method to standardize the science. They also provided training and technical support to help secure instream flow protection for countless waters around the world. Unfortunately, there was a shift of this program from its establishment under the U.S. Fish and Wildlife Service to the U.S. Geological Survey in 1998. The CIFSG ceased to exist in 2001, with no equivalent centralized uniform source of instream flow and water level conservation (IFWLC) training and support services having been established.

Several projects were undertaken to identify and describe instream flow methods, but there was no authority to establish or advance the processes. There were challenges to training folks on how to collect and analyze data to determine the amount of water that should be left in a river, lake, or reservoir to sustain fish and wildlife and other environmental-related purposes dependent upon leaving a portion of water in a system. They lost the ability to provide legal, institutional, and policy training, which must be integrated into making water management decisions, including public involvement.

The National Instream Flow Program Assessment (NIFPA) project was initiated in 1993 to scope out the problems. There was a need to provide consistency and scientific integrity across the board, as well as training, not just to folks in the fish and wildlife and environmental agencies, but also for those in DNR agencies, consultants, private developers, and hydropower folks. It is open to every water stakeholder impacted by how water is used, and end users impacted by NGOs and how decisions are made.

Concerns are being addressed by the [Instream Flow Council](#) (IFC) and [American Fisheries Society](#) (AFS) through a multi-state conservation grant project to assess the needs and support for establishing a new Instream Flow and Water Level Conservation training, research, and development center (Center), and contingent on positive outcomes of the assessment, develop strategies and pathways forward to establish and operate the Center.

The Multistate Conservation Grant Project was initiated in 1993. When you fish, you pay taxes on tackle, boat fuel, and so on. The money is collected by the federal government, administered by the U.S. Fish and Wildlife Service (USFWS), and they provide a 75% and 25% match to the States' fish and wildlife agencies. Most of your state fish and wildlife agencies are largely funded by this tax. The administration puts surplus funds into a conservation grant fund,

to keep a cap on how much the federal government spends. Entities apply annually on a competitive basis for these grants.

The NIFPA project is governed by a steering committee comprised of six state fish and wildlife agencies and three USFWS members. They held a conference which included instream flow coordinators from each of the 50 state fish and wildlife agencies, as well as representatives from each of the seven USFWS regions, and tribal representatives. They assessed the status of how the programs were working and determined their needs to figure out next steps. Each state's instream flow program was assessed for its strengths and weaknesses. A resulting special project on the Public Trust Doctrine produced a videotape series. At the time the series was produced in 1996, they were shown all over the country. For those interested in the history of the Public Trust Doctrine, the information contained in these tapes is still relevant today.

They met over a two-year period and found they shared many issues in common. Ideas were exchanged to develop an organizational structure that would strengthen their individual and collective roles as trustees of the public trust aquatic resources and to help better manage aquatic ecosystems. They found it important to: (1) create a technical assistance network; (2) identify appropriate stewardship strategies both nationally and regionally; (3) provide support and opportunities for agency conflict resolution; and (4) obtain assistance for programs. Further, there needed to be something to replace the training center that was on the way out.

Once the project was summarized, it led to the formation and establishment of the Instream Flow Council (IFC) to represent the interests of state and provincial fish and wildlife management agencies in the United States and Canada. The mission of this council is to help state provincial and territorial fish and wildlife agencies better fulfill their public trust responsibilities and protect required resources so they can be used and enjoyed by current and future generations.

The IFC is comprised of a Governing Council (voting) of state agencies' representatives and a General Council (nonvoting). The General Council Members are limited to the state fish and wildlife agencies in the United States, and to the provincial and territorial state, fish and wildlife agencies in Canadian territories. Membership on the General Council is open to any individual or institution that desires to help state and provincial fish and wildlife management agencies effectively administer their instream flow programs. The first official IFC membership meeting was held in Denver, Colorado on March 17-19, 1998.

Tony Willardson, Executive Director of the WSWC and formerly Sue Lowry of the Interstate Council on Water Policy, now headed by Beth Callaway, found that our organizations can coordinate well. We have a lot of common issues, though people may not all agree on how to use the water, who should get to use the water, and determining how much water is in a system. We share a lot of common interests.

The umbrella or leadership organization for IFC is the Association of Fish and Wildlife Agencies (AFWA) which was founded in 1902. Its mission is to advocate for the roles, responsibilities, and authorities of our member agencies, which are all the state fish and wildlife agencies and Canadian counterparts as public trust resources. They operate through a committee

structure. They represent the U.S. state fish and wildlife agencies on Capitol Hill and go before the Administration on key conservation and management policies to ensure fish and wildlife priorities are addressed, and to secure funding through legislation. The AFWA also provides management, technical assistance, and training.

The IFC has produced some publications which are available on our [website](#). A couple of the publications are still in print and can be purchased through the website. Your state fish and wildlife agencies should have a copy, and many water management agencies have copies as well.

A variety of global workshops have been held and brought together water stakeholders in a collaborative way to figure out how to best deal with the issue of balancing the water uses and the data needed in order to make effective and useful decisions in the best interest of society. The slides and the dialogue that correspond to each slide for Flow 2015 and Flow 2018 are posted on the website.

The IFC and AFS received a multistate conservation grant to establish a full-time instream flow and water level conservation training, research, and development center. We sent out a survey two years ago to figure out the need for this center globally. Secondly, we sent out a draft assessment in January 2023 to 15,000 entities around the world. The feedback on that assessment has been received. We intend to hold global Flow/Water Level workshop in the future which will be open to all water stakeholders.

We found that the basic framework for effective aquatic resource conservation and management needs to integrate the science (which consists of five elements), the institutional capacity, the public involvement, and laws and policies. We want to make sure that things are integrated and interdisciplinary. We are now developing the business plan for the final assessment which will be available publicly soon. We are seeking funding sources and have had some preliminary discussions about co-location feasibility, determining that a hybrid approach is the best way to go.

From my perspective, I suggest you all explore the IFC website. Reach out and get to know your state IFC members and collaborate with them. Joe Klein is Alaska's member. Participate in the global workshops when they are available. Participate in and interact with the Association of Fish and Wildlife Agencies committees and subcommittees. AFWA interacts with The Western Governors Association and has collaborated with the Western States Water Council on letters. AFWA is a signatory on the annual USGS letter that Beth Callaway (ICWP) now coordinates regarding the USGS streamgage data. Let the IFC members that you interact with know how IFC might help and collaborate with you. Consider participating as an instructor, student, and/or advisor in the Instream Flow and Water Level Conservation Training, Research, and Development Center and track its progress.

I would like to highlight that in Alaska we can set aside not just a flowing river, but also a water level. The environment cannot effectively be dealt with if all the elements of the hydrology and watershed are not linked. There are flowing systems and lake systems. A species such as the sockeye salmon must have the entire system for its lifecycle. The term instream flow was coined

in the 1960s-1980s, when states started passing laws to leave a little water in rivers and lakes. The term was used to distinguish the flow from what everyone was familiar with. However, it became a limiting term because people only considered the flowing part of a river.

Questions

Question: Does the IFC have an agreed upon definition of the term public trust? In Washington, we struggle with that. Our water code includes the public interest and public welfare. I'm curious if folks have come together and agreed on a definition.

Christopher Estes: We don't have a formal definition. We use the materials I told you about, and the Association of Fish and Wildlife Agencies have written quite a bit about it. However, as an organization, we talk about what we think it involves and what is required to achieve it.

Paula Cutillo: Chris, thank you so much. When I saw the addition of "water level," I thought perhaps the IFC was including water level in reference to groundwater, because many states have recognized that groundwater levels are also needed to sustain baseload streams and habitat for fish, like springs and seeps. I'm wondering if the IFC is considering *in situ* groundwater needs for fish and ecosystems?

Christopher Estes: I showed a slide of the four elements we look at in terms of connectivity of the ecosystem, which is vertical, horizontal, lateral, and includes the interaction between surface and groundwater. We would not be able to, especially in those systems where it can take water out of the groundwater system, detect surface water or vice versa. You would not be taking care of the environmental needs of the aquatic life that depends upon that interaction and nexus between the two. Alaska is one of the states that does integrate groundwater with surface water where there is a defined hydrologic connection. When we say water level, we are taking into consideration all the water in any form. The state's jurisdiction laws provide a pathway to take into account the law. Not all states recognize the ability to manage on an integrated basis, surface and groundwater.

Joaquin Esquivel: I'm wondering if you have much participation from folks on the water rights administration side in your discussions. It looks like Robert is our representative on the council, so I am going to connect with him. How much participation do you get from water rights administrators in the various states?

Christopher Estes: In the Flow workshops, for example, the water rights folks from Alaska's DNR attended. We encourage their participation. We want everybody who is impacted by the outcome to be involved in the decision making. We will not be able to deal with these issues from the societal public interest and socio-economic aspects if we are in silos. Your point is well taken. We reach out to make sure that all sectors are represented in the presentations as well. If you look at our assessment, you will find that all the different entities that have various needs for water have commented and provided input. We try to cover the wide spectrum.

Charley Palmer: Christopher, thank you very much for sharing your perspective and for the presentation. A lot of talk about instream flow reservation revolves around fish and wildlife

agencies and fish and aquatic habitat resources. I was wondering if you could speak briefly about other values for flow reservations.

Christopher Estes: One of the uses is for recreation, aesthetics, and so on. In Alaska, we have frozen roads and most of our infrastructure is not road-based. In remote areas, it is accessible by water. You need the right amount of water to land your plane or in the winter to make sure that ice integrity is maintained. Or if you want to launch a boat, you want to know that the water level you are accustomed to is there. Our water rights process allows us to reserve – that is the term we use in the state – water; we set aside water to maintain access for navigation, not in terms of how you were talking about in terms of who has jurisdiction for the benefit that comes in or navigability but navigation or transportation to and from a location. The lake levels have been protected. Recreational purposes, such as cross-country skiers, are also considered, if that is what you are alluding to. Under Alaska law, one can file for a reservation to protect the volume of water and to sustain the water quality.

Tony Willardson: Would you please talk about how Alaska benefited in the development of your state water law from looking at what has been done in the lower 48 states?

Christopher mentioned that Alaska has the unique attribute of having 20% of the landmass of the United States. Alaska has one-half of the nation's coastline and 40% of the nation's water. Alaska has only managed or allocated approximately 1% of its water. So, 99% is still up for grabs. One must consider that in many places there is no infrastructure, and a good portion of the water is frozen 9-12 months of the year. The state's population is sparse.

I think of Alaska's water management as being similar to where the country was when the Colorado River began to be divided up nearly 100 years ago. At that time, it was thought there was a surplus amount of water in the Colorado River since they experienced twenty years of high flows. In Alaska, we have one streamgauge for approximately every 500 square miles. Thus, we don't really know how much water is in a given place, or in a given location at any given time with any certainty compared to our neighbors to the south. When we get into a remote area to develop it, we don't have the necessary information. This creates a conundrum because the people borrowing money for development do not know how much water is available. The permitting agency puts a hold on the development of collecting data for a period of five years. People often ask why the state does not spend the money on a water management plan and figure out where the low hanging fruit is so that for future developments, they know the amount of resources available, and then figure out how to deal with more complex issues. It would be a big help if we had an inventory and knew how much water is available so we could prioritize where to develop things with minimal conflict between different user groups.

Alaska hired Frank Trelease, Professor of Law at the University of Wyoming to write the basis for the Alaska Water Act of 1966. The State's Constitution has some great elements specific to water. However, in the original law, they did not include the ability to leave a portion of water in a river, lake, or reservoir for fish, wildlife, and other purposes. There is a section that is very valuable which provides for a check and balance to make sure there is never abuse of the water

management. Amendments have been passed to allow for Federal Reserved water rights, both administratively and traditionally.

Another key element is the passage of a water export law in 1992. It basically provides an automatic set-aside of water. At that time, there was a big push to export water out of Alaska without knowing how much water was available. We had to meet the *Hayes v. Nebraska* ruling for interstate commerce in which the scheme was to divide the state into six hydrologic unit polygons. The law only applies if water is moved from one of the six units to the other five. It must be proven that the water is surplus to that hydrologic unit and other needs. It provides a reservation of water priority date of June 1992.

FUTURE COUNCIL MEETINGS

Jen Verleger announced that the WSWC's 2024 Spring Meetings will be held in Washington, D.C. The Summer meetings are scheduled to be held in North Dakota, with the Fall meetings in Kansas. Calendar dates will be provided later.

ELECTION OF OFFICERS

Jerry Rigby reported on behalf of the Nominating Subcommittee. Every two years, new officers are elected. Jerry commended the current WSWC Chair, Jen Verleger and thanked her for her leadership.

The Nominating Subcommittee, consisting of Jeanine Jones, Jerry Rigby, Jen Verleger, Jon Niermann, and Tony Willardson, met and discussed a slate of officers to put forward for a vote. The Subcommittee made the following nominations as new officers: Jon Niermann (TX) as Chair, Julie Cunningham (OK) as Vice Chair, and Earl Lewis (KS) as Secretary-Treasurer. Jerry moved for the election of these three individuals to these positions by acclamation. The motion was seconded and approved.

STATE REPORTS

Oklahoma

Robert Singletary remarked that the panhandle counties are one of the few places in the state that are not in drought. The legislature has appropriated approximately \$60 million over the last year and a half to fund drought mitigation measures. An emergency drought commission is currently only able to operate under an emergency declaration from the governor. We believe there may be a permanent expansion of that during the next legislative session. The 2025 comprehensive water plan process is ongoing, and we look forward to meeting with workgroups across the state and receiving input from stakeholders about water management into the future.

South Dakota

Nakaila Steen reported that South Dakota fared well this spring and summer with precipitation which kept drought conditions from heightening to extreme. The areas experiencing moderate to severe levels of drought conditions are on the eastern and in the southeastern portions of the state. DNR has had a few administrative changes after many years of service. For those who know Jeanne Goodman, she has retired as our DNR Deputy Secretary and Office of Water Director. They are currently trying to fill her position as well as positions in the watershed protection program and the water quality program. As part of a nationwide health initiative under EPA's Safe Drinking Water Act, a lead service line inventory is taking place in South Dakota through a statewide contract. DNR developed a survey that can be accessed on an app, or a paper copy, to help public water system customers identify if their service line material is hazardous. The results have been made accessible to educate providers on where that service line or lines remain and to mitigate potential health risks in the water.

Recently, there was a contested application that made it to the Board. It started with an oxbow lake that was once a segment of the Missouri River located in southeastern South Dakota in an area that has become heavily residential. The lake would likely be a slough like other Missouri River oxbow lakes in the area. However, the lake association holds a water right to the authorized diversion of 12,000 gallons per minute from the Missouri River to maintain a certain elevation in this lake. Diverting water to maintain the lake elevation is necessary due to the sand and gravel material underlying the lake being directly connected to the nearby Missouri River which has become entrenched downstream of the channel at Gavin's Point Dam, a mainstem reservoir on the Missouri River. Pumping water has been a longtime costly issue for this association. A water permit application was filed in March under the name Dakota Bay for recreational purposes. They are proposing to divert up to 30 acre-feet of water initially to fill the canal connected to McCook Lake, followed by another eight acre-feet annually to maintain a base water level in the canal to protect the integrity of the canal liner. Protecting the liner is necessary as part of the requirements for issuance of the shoreline alteration permit. The proposed water source for the canal to wet the liner is an existing well completed in the Missouri Alluvial Aquifer, an aquifer that is hydrologically connected to the river at McCook Lake. Our chief engineer recommended approval of the water permit application for Dakota Bay, and the lake association filed a petition in opposition which resulted in the contested case. In the petition, the association indicated concerns that approval of the application for Dakota Bay would impair the Missouri River water rights held by the association and undermine their efforts in sustaining the water levels of McCook Lake. At the same time, they filed a declaratory ruling with the water management indicating that construction of the canal constituted an appropriation of water from McCook Lake. DNR's position was that construction of the canal did not require a water right to be obtained because the holder does not possess or take control of the water. In addition, there is a Corps of Engineers §404 permit required and the shoreline alteration permit required by the PGP. The findings and facts and conclusions of law are to be voted on this matter in October.

Wyoming

Jeff Cowley noted that on the current drought maps, Wyoming has no drought. In my personal travels around the state of Wyoming, there are some places that are still pretty bad off. The pasture around my house has grasses and plants growing that I've never seen before. At the State Engineer's Office, we deal with the Colorado River all day every day. Meeting upon meeting about every topic you can imagine. We have hired a hydrologic modeler. It took about two years to fill the position. He has hit the ground running, and Wyoming is no longer in the dark age of modeling products. Chris Brown has hired two attorneys. He has designated them to work on other river basins so that he can focus completely on the Colorado River Basin. At a previous WSWC meeting, I gave an update on House Bill 222, which created the Wyoming Colorado River Advisory Committee. We just held our first meeting. This group is comprised of 11 members, nine of which are appointed by the governor representing ag municipalities, industries, conservation districts, recreation, and fish and wildlife. Two legislators are appointed by the House and the Senate. A staff member acts as a liaison between the SEO's office and the State Attorney General's Office, and they will have a lot of work for one person. We will be advertising the position next week. We are working on a system conservation pilot program (SCPP) and hope to move forward in 2024. In this program, landowners in the Colorado River Basin are paid to try something new such as to not irrigate or to switch crops. We are also working on post-2026 guidelines for the entire base with respect to how to operate the reservoirs. We are working to extend the Upper Colorado endangered fish recovery program. We are working to update a cooperative agreement and the Blue Book, which is the program documents that define what we do, where, and when. All those dominoes need to fall in the exact right order to be able to maintain that program, which like the North Platte, gives a reasonable and prudent alternative. Moreover, we continue updating the funding split between the states to decide who pays for what.

Jennifer Zygmunt spoke about Wyoming's water quality program efforts with the underground injection control class six program. The State has primacy for carbon sequestration. The first three permits are now out for public notice. These are for three wells in the southwest part of the state that will take carbon dioxide from industrial sources in the area. They plan to have a direct air capture unit in the future. There is a 60-day public comment period and comments will be received through late October. A public hearing will follow. These permits are only to construct the wells, after which more data will be collected to modify the permits to authorize injection. There are two additional permits currently under review, and they are expecting another ten by the end of the year or in early 2024.

Idaho

Jerry Rigby remarked that Idaho had a good water year, though not as good as their neighboring state to the south. Utah received an unbelievable snowpack. With respect to litigation in the state, I reported yesterday about a water district which has an aquifer the size of Lake Erie. Litigation is ongoing. The rental pool concept is very unique and has worked well. The Idaho Water Resource Board has promulgated rules for rental not only of natural water but also storage water. Pursuant to those rules, the Board allows the local water district committee to promulgate procedures, not rules, that use those rules as the authority. The procedures have worked very well.

The rental pool procedures allow for the give and take, and water can be moved around the water district. The City of Pocatello took deference with them because one of the procedures requires that if you rent water, then you must be last to fill. This means that you have an absolute right to use all your water for its intended purpose -- whether it is for irrigation, municipal, or whatever -- but the extra water goes to the next junior user. And if you use all the water for your intended purposes, that's what a junior must stand. But if you use beyond that by renting it to someone else, you have effectively taken it from the junior who would have received it. Logical, right? Well, the City of Pocatello does not think that is logical. This is being litigated and will be tried next year.

There is ongoing litigation with the Shoshone Bannock. The 1994 Fort Hall agreement essentially kicked the can down the road because we did not know the impacts that would be caused by the non-avian use. We are trying to resolve that, but it's another issue that is continuing to be litigated.

Next month, we will be trying the issue of presumption in our water law. A municipality that diverts water is considered or presumed to be fully consulted. Obviously, municipals can treat water, put it back into the river, and so on. The municipals are arguing that they ought to be given credit for that which goes back into the pool. I can understand the argument. However, the problem is with irrigation in Idaho. If a farmer does not use all his water from a canal and has tailwaters going back into the river at the end of his canal, he does not get a credit for that. Therefore, this would open a can of worms. The Department is wondering how to police that. The State statute says that is a presumption that should stay in place. The municipalities are suing over that issue.

Finally, there is an issue of the groundwater and surface water models not working out. The models said that if you cease diverting this much, or recharge that much, the levels will come up to x. Well, they did not come up to x. The problem is that it is difficult to gauge.

Finally, as noted, Gary Spackman, the Director of the Department of Water Resources, has retired and Matt Weaver is now director. The governor will appoint him as a member of the WSWC. There is a question as to whether his appointment will replace John Simpson or me. So, this could potentially be my last meeting. I want to tell everyone how much I thoroughly enjoy being a part of this council.

Utah

Candice Hasenyager said that, as Jerry alluded, Utah received a record-breaking snowpack. Alta ski area received 903 inches. Previously, the ski area had never broken the 800-inch barrier. The state received more than twice as much water this year (30") than received last year (12"). 15.8" is average. All in all, the runoff was well behaved. We experienced some flooding, but it could have been much worse. This came on the heels of two years of significant drought. In 2021, about 99.96% of the state was in extreme or exceptional drought. Because of the drought conditions, the state legislature prioritized water and funded policy changes. The legislature appropriated about a billion dollars for water infrastructure. The legislature developed new offices:

the Colorado River Authority of Utah and the Office of the Great Salt Lake Commissioner. They had the agencies develop a nonprofit to be an educational resource for the State and to disseminate water conservation information. They also developed an agriculture optimization committee, and appropriated \$276 million toward agricultural optimization projects. We continue to work through a lot of the policy changes that are before us. As a side note, we all understand that drought has a lot of moving parts and impacts all different sectors. We created a website drought.utah.gov as a resource for people to go to whether they are interested in wildlife impacts or reservoir levels or recreational impacts. The public can get the latest drought information on this website. Since the Great Salt Lake is another significant issue and resource for the state, a website was also created to provide additional information for stakeholders, and it is at greatsaltlake.utah.gov.

Todd Stonely reported on behalf of John Mackey, the Director of Utah's Division of Water Quality, that there were several advisories issued this summer. A total of 24 advisories were issued at recreational waterbodies. Utah's water quality program includes monitoring for harmful algal blooms and waterborne pathogens such as E. coli. Of the 24 advisories, only two were related to waterborne pathogens, while the remainder were associated with harmful algal blooms. An interesting event occurred in one of our cities, Lehi City. Strains of E. coli 0157, which causes a severe intestinal infection in humans, were found in pressurized irrigation water in reservoir sediment in connection with an outbreak in the city. The outbreak was traced to sprinklers. Residents had allowed their children to play in secondary irrigation water, which was non-treated, non-potable water. The Centers for Disease Control recommends this type of pressurized irrigation system should be recognized as a reuse system and subject to Utah's reuse water testing and use regulations. If that were to be implemented, it would be a huge burden on secondary systems all around the state. We need to educate the public on the risks of those water systems and other related items in the Jordan River E. coli TMDL. The Jordan River runs through the most populated area of the state in the Salt Lake Valley. It runs from Utah Lake, a freshwater body, to the Great Salt Lake which is saline. Hence, its name comes from the similar geography and hydrology that exists in Israel. All four of Utah's municipal storm sewer system CWA §404 permits have been modified to include requirements relating to the approved Jordan River watershed TMDL. The TMDL identified stormwater as a significant contributor to E. coli loading to surface waters in the Jordan River watershed. Permittees are required to comply with all requirements associated with any improved TMDLs. That is a big deal in this urban part of the state.

Teresa Wilhelmsen gave an update on behalf of the Division of Water Rights, noting that the focus of this last legislative session was on funding for water infrastructure. The State Engineer's Office received significant amounts of money for measurement and measurement devices or sites to inform the distribution systems and to provide real time data and transparency. We are actively working on issues surrounding the Great Salt Lake. Although I haven't been served yet, there is a public trust lawsuit that has been filed in court against the State Engineer, the Division of Water Rights, the Division of Forestry, who oversees our sovereign lands, and the Department of Natural Resources on public trust obligations, or lack of efforts to address that. There will be more to come on that lawsuit. In the meantime, we will keep doing our work, and trying to get water where it needs to be with the monies we received for additional measurement. There were two changes to Utah water law this last year. Through an agricultural optimization

program, we have defined a term in water law called “saved water.” This means that under an agricultural optimization project, if there is a net decrease to a diversion to save water that could be quantified under a change application, then it could potentially be marketed for a different use. We are working on rules and additional modifications to the statute to address the saved water definition. There was also a bill that gave the State Engineer additional distribution authorities for things such as instream flow and potential demand management projects. We received \$5 million for studies. We are partnering with Utah State University on several elements. One of those is a potential complete overhaul of our database systems and informatics to be able to serve up the information more broadly.

California

Joaquin Esquivel reported that Mother Nature continues to keep us on our toes in California, going from the three driest years on record, to one of the wettest years on record. Last year, we were preparing for continued major drought with concerns about an expansion of vulnerability to a lot of water systems in Southern California and the pressures on the Colorado River, and issues in the Bay Delta. The complexity of the movement of water between so many water agencies in Southern California can obscure the vulnerability to water shortage. We are trying to unpack that. We are continuing to respond to rural communities in the Central Valley and throughout the state providing hold water and emergency water for wells that have gone dry. Given the wet year, we ended up having provided hold water for over 2,000 homes. The impacts of drought are ongoing, even with all the precipitation received. We had the reemergence of Lake Tulare. The snowpack runoff was manageable because of coordination with the Army Corps of Engineers and the Bureau of Reclamation. We were able to manage the runoff and put as much of it to beneficial use as we could.

The State Water Resources Control Board permitted 1.2 million acre-feet of recharge this year. That is about half of the temporary permits that have been created over the last years to try and incentivize recharge so that folks do not have to go through the entire water rights process. 180-day or five-year temporary permits allowed them to put water to use and to be able to take it back out. We also found that about half of this was a change in the permit. The Bureau of Reclamation for the Central Valley Project opened their flood flows to a larger part of the service area. By the end of the year, the Board is set to adopt direct potable reuse regulations. These will be incredibly significant. We currently reuse about 750,000 acre-feet a year. We are considering expanding that to 2 million acre-feet by 2024, but we have a long way to go.

We are adopting water budgets for urban water agencies. There is an indoor standard and an outdoor standard for water loss variances and incentives for recycling. They do not come into effect until the end of this decade. We have several groundwater basins that have been found to be inadequately managed under the Sustainable Groundwater Management Act and thus come to the State Board for possible state intervention. We hope to pay off about \$600 million in water debt for drinking water and wastewater systems. We did one round of this, and then there was a moratorium. We look forward to opportunities to continue to chip away at these issues.

Arizona

Trevor Baggio gave an update on water quality issues in the state. He remarked that like California, Arizona is actively working on direct potable reuse regulations, which is now known as advanced water purification. We have been following what California and Colorado have been doing. We are putting together what we call a roadmap which should be done next month. Once it is out, we will start drafting our regulations. We want to have regulations in place by the end of next year. Several cities, including the City of Phoenix and the City of Scottsdale, are pushing hard for the ability to use their wastewater as a sub water supply. From a water supply perspective, there are a few small areas of Phoenix that do not have the required 100-year assured water supply, which creates problems with development. Though we don't have underground injection control primacy from EPA, we are about to public notice our package including all six classes of wells. We expect to submit that package to EPA. The processing at EPA headquarters will take about 9-12 months.

Texas

Jon Niermann thanked Alaska representatives for hosting the meetings. He remarked that the superlatives about Alaska speak for themselves. He also commented that it has been healthy to be reminded just how small Texas is. He introduced the Director of TCEQ's Office of Water, Cari-Michel La Caille, and requested her to deliver the state report. Her office has responsibility for water quality planning, water quality, permitting water, water rights and safe drinking water.

Like most of you, Texas is still struggling with persistent drought conditions. 44% of the state is in extreme or exceptional drought. Statewide reservoir conservation storage is at about 67% in the western part of the state. About 90 water systems have reported less than 180 days of water. There have been several outages. Once that trigger happens, we deploy resources to assist them in finding alternative sources of water. We are always looking for new water supplies. We are starting conversations regarding beneficial uses of produced water. Current estimates in the Permian Basin indicate potential for an additional 500,000 acre-feet for additional uses beyond oil and gas operations. The legislature established the Texas Produced Water Consortium which will be looking at whether produced water can be treated economically and to a quality that is protective of public health and the environment. Several entities have talked to us about what that regulatory framework might look like. Certainly, it presents a number of challenges.

Over the last couple of years, TCEQ has been going through our sunset evaluation process. That process requires an advisory commission to evaluate the effectiveness of our agency and make recommendations for improvements to the legislature. Some recommendations came from that process, one of which was a focus on providing additional outreach and education to the public on participating in the permitting processes. We are also increasing transparency by updating our websites to increase functionality and improve access to data we share with the public. This will take some time to accomplish. We will be posting all our permit applications and associated materials on the website. Additionally, we will be publishing notices and permit applications electronically and accommodating affected persons lacking Internet availability. Lastly, we received a Title VI (Civil Rights Act) complaint that has recently been resolved. Two NGOs filed

both a petition for rulemaking and a Title VI complaint with EPA. The complaint alleges that TCEQ discriminated on the basis of national origin, because the agency's permitting public participation process did not meet the needs of communities with limited English proficiency. So, to resolve that complaint, we have implemented a variety of strategies to improve access for those with language barriers, those who lack Internet access, and other accommodation needs. Some of those strategies are to increase translation resources, translate a lot of agency documents, purchase translation software, and accommodate alternative language considerations through the permitting process. As most of you are aware, the permitting process is quite technical, so we were tasked with providing a plain language summary of the permit application both in English and alternative languages.

In closing, I would like to thank everyone. The last few days have been very enjoyable and I am learning a lot. It was nice meeting a lot of people and I am grateful for the opportunity to participate.

Nevada

Adam Sullivan noted that the State Engineer's Office has been working on common ownership of all state-owned dams. There are about 15 state-owned dams that are all owned by various state agencies. There is some momentum to consolidate those under one state group as this is needed to deal with aging infrastructure. Recently our Supreme Court came out with recommendations regarding a commissioned study to adjudicate water law cases. Their recommendations will be initiated in 2024 and will require that all district judges who hear water cases have specific training in water law and hydrogeology. They will be sitting district judges, though it is not a water court. However, it is a focus on efficient and accurate decisions in water law, so we are looking forward to seeing how that plays out. Lithium mining continues to be a big issue in Nevada. There are a lot of lithium resources dissolved in playa brines as well as lithium clays. There is a lot of pressure for development and challenges with water issues. A few regions around the state are moving towards the use of published groundwater flow models to address conjunctive management issues over large regions where there is surface water connectivity with groundwater development to make things more consistent. This is a positive trend. There were a couple of notable outcomes from our legislative session. In the Las Vegas Basin, it was necessary to have more people hooked up to the municipal systems, both for drinking water and for sewer systems. This requires collaboration between DWR and the county health department for septic tanks, and the municipal water provider for sewers. This is going to take a lot of effort. Like Alaska's situation, we had a proposal to reduce our reliance on local newspapers for public noticing and there was abundant opposition. The proposal did not really go anywhere. There was a partial acknowledgement that this is an issue. There was also a bill that required the state engineer to use the best available science and acknowledge the connectivity between surface water and groundwater sources. It was very contentious and did not pass. And it is interesting because that is the basis of a couple of significant lawsuits now in litigation with respect to the state's authority to protect water resources where there is connectivity between surface water and ground water.

Jennifer Carr recognized the federal family. Despite the frustrations that we have with the federal government, I definitely want to make sure that we are giving the appropriate amount of

thanks to our federal colleagues and friends, who work with us on a regular basis and work on our behalf to get good things done. I do not want anyone to leave here this week thinking that we in general disparage for our federal friends. Rather, we very much thank you and respect you all for what you do. I value the WestFAST team and everything that they bring to the table. I work on the water quality side for Nevada. I am happy to share our earmarks letter with anyone interested. We chose not to sign on to Governor DeWine's (R-OH) letter. For those unfamiliar, there has been discussion on the impacts of earmarks to the State Revolving Funds (SRF). While they are working on the federal budget, the worst-case scenario in the House markup for earmarks would decimate our program funding for this year. Because of the Bipartisan Infrastructure Law (BIL) infusion of funds we are okay. However, three years from now when the BIL funding goes away, we won't be able to keep this up. It is dramatic as the funding would go from \$7-12 million/year for the Clean Water and Drinking Water SRF to \$300,000/year. In our Nevada letter, we tried to find a balance between thanking our congressional representatives for bringing infrastructure money to the state, and making sure that they knew it is coming off the top of the State Revolving Fund, not a separate appropriation like it used to be years ago. Along with the BIL and the IRA money, our Underground Injection Control (UIC) program is going absolutely nuts with the increase in activity on geothermal power production. Some interesting technology has come into Nevada, which uses fracking technology to induce fractures into hard rock, where they can then create a geothermal resource by pumping cold water into those fractures and blowing up geothermal water. So, if this technology proves up, it can be applied anywhere where they can create their own fracture system in a hot rock environment to create geothermal energy. So, stay tuned to that. Over the last few years, we have talked about employment vacancies. I am happy to report that our vacancy rate has decreased from 20% to about 15%. I like to think that has something to do with the fact that our legislature recognized the plight of state workers and gave us a 12% raise this year, and another 11% next year. Within a few days of receiving the 12% increase, the governor called everyone back to in-office work and canceled telework, which has resulted in a morale rollercoaster. It's been an interesting summer as everyone adjusts to the cancellation of telework, particularly for the individuals that have never known anything different since they were hired in the last few years. Adam touched on some of the legislation. For those who attended the tour at the Reno meetings to the forest treatment areas along the Truckee River, I am happy to report a bill was passed by the legislature that realigned the State definition of an eligible entity for the Clean Water State Revolving Fund to match the federal definition. Our definition was too narrow. Thus, for treatment projects like those you saw on the tour, or other types of projects, we are now allowed to make drinking water entities eligible for Clean Water Act funds. It is exciting to be able to expand stormwater projects and expand water quality protection projects throughout the state.

Kansas

Connie Owen noted that the legislature passed two water bills this year. Funding has provided a mechanism to pay off the remaining debt the state owed to the Army Corps of Engineers for state reservoirs. Over a two-year period, it will be paid off. The legislature also infused more money into the State Water Plan Fund, which historically was \$20 million a year at best. This year, they added \$18 million, bringing it to \$38 million. We are moving in the right direction. Some new grant programs will be created and administered. We received some great assistance

from the state of Colorado in helping us figure out how to put the grant programs together. We look forward to being able to get good projects going and to show the legislature that they need to keep bringing more money to the State Water Plan Fund.

Earl Lewis expressed thanks to the host state, Alaska, for the great accommodations and hospitality. The presentations were fantastic. In addition to the legislation that was passed, there was funding added to our budget in water rights for additional positions. We have a significant application backlog that is causing some economic harm and folks in the legislature recognized that. Like Nevada, our ability to hire people is limited, as well as trying to provide competitive salaries. Therefore, a good portion of our staffing has vacant positions right now. I would also echo the earmark issue. Kansas likewise struggles with the SRF funding. We have an influx of large economic development projects, some of which are high water use projects. We are trying to make sure that our human development community recognizes that even though they may think water is available, when a drought hits, there will not necessarily be water available. We will be working out the water and wastewater issues for those large projects. We are also involved in litigation. My concern, aside from the litigation itself, is that some of these circumstances set policy beyond what has historically been done. It is beginning to limit our ability to be flexible and helpful to people. There could be some unintended consequences if the suits are successful. These relate to our consumptive use regulations and changes to type of use.

New Mexico

Tanya Trujillo noted that she has recently been reunited with the Western States Water Council. Prior to returning to New Mexico, I worked with the Department of the Interior. I want to echo the support for the federal partners that participate in this program and support a lot of the Western water work going on in the country. We appreciate your public service on all these issues. It has been an honor for me to have served with the federal family and have gone back to state practice. I have spent most of my career either in New Mexico or in California. I appreciate the hospitality from our Alaska hosts as well.

In New Mexico, I will be working closely with the State Engineer Office and the Interstate Stream Commission on water supply issues. I will also be working with our Environment Department on water quality issues, and our Energy and Natural Resources Department with the fish and wildlife agencies on energy issues. I look forward to continuing to support the existing team there and want to send greetings from State Engineer Mike Hamman and our Interstate Stream Director Hannah Riseley-White who could not be here today.

Like many of the other states, New Mexico has had somewhat of a roller coaster experience over the past couple of years. In May of 2022, I returned to New Mexico and saw smoke clouds on the horizon and saw the burn area instead of seeing snow on the mountains. Fortunately, the 2023 water year brought a different picture and it was good to welcome the good winter precipitation. We are experiencing a drying situation in the Rio Grande, our largest river, which also has some of the state's largest population areas. It is always top of mind to try to address the drought conditions that we know we will be facing going forward.

Like other states have reported, we had good support from the legislature over the past few years to help us build capacity and increase the funding available to take on some of the current challenges. We are going to continue to be focusing on our settlement implementation and negotiations we have with Indian tribes. In New Mexico, we have some settlements that are being implemented, some that are being negotiated, and some that are just in the initiation phase. Of course, there are interstate negotiations and participation in the Colorado River issues with the Upper and Lower Basin partners. There are significant planning efforts underway in New Mexico. We have had great support from our legislature to increase the capacity and recognize the importance of doing regional planning that will enable us to be able to accommodate the future that we see whether it be dry or wet or any of the potential challenges that may be arise. There are also significant efforts relative to water data acquisition. Given the unprecedented funding available from the Department of Interior, EPA, and the Transportation Department, there is potential to do more with respect to infrastructure issues. New Mexico has received additional appropriations to be able to provide support and matching opportunities for some of that funding. So, we are looking forward to emphasizing the need to address aging infrastructure and to consider innovative programs such as desalination or water reuse opportunities.

Nebraska

Tom Reilly stated that the state's budget is about \$1 billion. The legislature and governor understand the need to invest in our aging infrastructure. We now run a program that provides \$9 to every \$1 that folks bring in from our irrigation districts for resolving critical infrastructure problems. A significant amount of our department funding this year is going for the City of Lincoln's second source of water. Approximately one-half of the supply is groundwater and approximately one-half is groundwater under the direct influence of surface water from the Platte River. We are also developing and designing a canal system for the South Platte River. This is an interesting project. Nebraska is exercising her right from the 1923 South Platte compact to make a winter canal diversion that will divert 500 cfs of water and store it in reservoirs to be used in coming years for irrigation purposes. The design process is keeping us on our toes.

Jim Macy thanked Alaska for their incredible hospitality. He reported that the Climate Pollution Reduction grant is a big activity in Nebraska, and they are focusing on four of the six key areas. First is agriculture. I was surprised with the amount of agricultural support, acknowledgement and understanding of where climate scores stand on farms in Nebraska. They think sustainability lies with the future of agriculture, and how it can be protective of the environment and make a profit at the same time. Funds are being leveraged with the grant. With respect to leveraging funds, in Nebraska, we are considering some sort of infrastructure management idea between different state agencies to help manage the incoming billions of dollars. EPA reduced the standards for harmful algal blooms (HABs) from 20 to eight, a couple of years ago. We have had fewer HABs with the lower standard in the last couple of years. This is a climate and water issue and worsens with intensive heat. A couple of significant articles have been written in a couple of news journals about HABs.

To our federal partners, we love you. I extend Jennifer's acknowledgement of our federal partners working together to get things done. I would offer a suggestion that it would be incredibly

helpful that when announcements are made, you make sure to have the right state partners at the table. The SRF earmark issue is significant. There were more congressional earmarks this year. We are deliberating our stance to determine if we will send our own letter.

Washington

Ria Berns noted that Washington has drought conditions in about one-third of the state. We had average snowpack going into the end of April, but this was followed by a really hot, very dry May. Drought was declared in mid-July, which is fairly late for us, which led to a number of implementation challenges and not having the tools necessary to respond to the drought at that time. We typically look ahead to declare drought in the spring timeframe when we have a sense of the snowpack. We are reliant on snow storage and our predictive models. In Washington, we have two statutory requirements to declare drought. One is 75% or less of average water supply, and the other is when a lot of users experience undue hardship. Unfortunately, that term is not defined anywhere, so we are going to start implementing rules related to drought this November. The rules will address both the process by which we manage drought and our grant program. Our grant program provides for drought response. This year the legislature provided us with a reliable funding source. Previously, if a drought was declared and the legislature was not in session, we would use savings to draw on instead of a grant program. Now, whether the legislature is in session or not at the point in which the governor and agency declare drought, funds are automatically transferred. Our program for drought preparedness and response planning now has a stable funding source to initiate work. We are trying to leverage that with a legislative strategy to build out a climate resiliency program in the water space. It is not something we have had the capacity to do previously, and we see this as an opportunity.

Stephen Bartell mentioned yesterday that Washington will potentially be initiating two adjudications. One is in the Nooksack watershed. We anticipate 20,000+ claimants. The reason it is so large is that we will be doing both surface water and groundwater, as well as every permitted exempt well. We anticipate filing in the spring of next year. We are also scoping an adjudication in the Upper Columbia River. We are waiting for our federal partners to determine if our geographic boundaries meet the McCarran minimum comprehensiveness standard. We hope to get clarity on that in the near term.

I also want to mention an environmental justice law that is focused on eliminating environmental and health disparities among communities of color and low-income households. It is the first statewide law that provides a coordinating function related to environmental justice. It requires that we do an environmental justice assessment and community outreach when we do rulemaking. It went into effect July 1, 2023, so we are in the second month of implementation. We are finding that there are a lot of expectations and very little clarity, and it affects a lot of what we do and our resources. As many of you who manage Western water know, there are fundamental inequities in water resource management. This creates a tension in terms of how we uphold the law and how we implement it, and how we integrate it into our western law.

Oregon and Washington have been working on a Walla Walla basin integrated planning initiative that was finalized in 2021. Legislation was passed in Washington, though it is only

proposed in Oregon. Both state governors have asked us to look at alternatives to compacts. I would be interested if any of you have experience with bi-state governance frameworks outside of a compact.

Colorado

Jojo La thanked the host state, as well as Tony and the staff for putting on a great meeting. She commented that a lot of work goes into the meetings, and it is not lost on us.

She provided commentary on what has been going on in Colorado with respect to water quality standards. We adopted our 2024 CWA §303(d) list of impaired water bodies with the approved TMDLs and §404(b) plans, and our monitoring and evaluation list. We also adopted the copper rule revisions for drinking water to conform with the EPA's 2021 revisions to provide public health and LED exposure.

She thanked Nebraska's Director, Jim Macy, for sharing their interesting journey on CWA §404 assumptions. Colorado has been trying to consider how to address gap waters left behind by the *Sackett* decision. The governor's office has been convening stakeholder workgroups to focus on what a Colorado-specific dredge and fill permitting program might look like.

Finally, for those of you who have worked with Commissioner Becky Mitchell, as you know, she is now serving as our full-time commissioner to the Upper Colorado River Commission. Lauren Ris has been named as the director of the Colorado Water Conservation Board.

Colorado has had less monsoon rains this season, which has caused drier conditions. July and August were extremely dry. We are hoping for a good snowpack in this new water year.

North Dakota

Jen Verleger related that in North Dakota, the legislative session ended in April. DWR has been taking a step back and assessing our Administrative Code and legislation. Regarding data collection, we just passed the 400-unit mark. These are mobile units deployed in the field that provide real time data for things such as wind speed, rainfall, soil moisture, and so forth. The governor has pushed to get units installed in the state's more remote areas.

SUNSETTING POSITIONS FOR 2024 SPRING MEETINGS

Tab XYZ of the briefing materials contains sunseting positions for the 2024 Spring meetings, Positions #459-#467. Please review them and get any proposed changes to staff.

OTHER MATTERS

Tony Willardson reported that he thinks many WSWC members are aware that Dave Shade passed away this past March. We wanted to recognize him. Dave was a very active member of the WSWC and an advocate for the WSWC from the state of Alaska. He was successful in getting Alaska back into the Council in as a full voting member. Dave was born in Anchorage and raised on the family's homestead outside of Homer, Alaska. He served in the legislature and in the Department of Natural Resources. He retired as director of the Alaska Department of Agriculture just prior to his passing. He was also active in many community areas. His obituary stated: Remember him with a smile. We will remember the smile and everything that Dave brought to the WSWC in the years that he participated.

Jen Verleger also recognized Dave. She noted that she spent quite a bit of time with Dave, and that, outside of her father, there was probably no bigger advocate of her professional career than Dave Shade. Dave was very instrumental in getting Alaska back in this group. Jen remarked that WSWC members ought to be thankful for that because otherwise this meeting would not have been held in Alaska.

Jen also expressed appreciation for Julie Groat of the WSWC staff who does so much work preparing for the meetings.

There being no other matters, the meeting was adjourned.