

**MINUTES
of the
WATER QUALITY COMMITTEE
Aloft Anchorage Hotel
Anchorage, Alaska
September 13, 2023**

Table of Contents

Welcome and Introductions	4
Approval of Minutes	5
Sunsetting Position.....	5
Alaska Water Quality Issues	5
Tribal Water Quality Standards	6
EPA Updates	8
Nebraska CWA §404 Assumption Process.....	10
Draft FY2023-2024 Committee Work Plan.....	13
Sunsetting Position for Spring 2024 Meetings	14
Other Matters	14

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MEMBERS AND ALTERNATES PRESENT *(via zoom)*

ALASKA	Tom Barrett Radny Bates Julie Pack Emma Pokon
ARIZONA	Trevor Baggiore <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
Teresa Wilhelmsen

WASHINGTON

Ria Berns
Buck Smith

WYOMING

Jeff Cowley
Jennifer Zygmunt

GUESTS

Dan Graham, Donlin Gold
Brian Clark, U.S. Geological Survey
James Davenport, JHDavenport, LLC
Timothy Stryker, U.S. Geological Survey
Christopher Estes, Instream Flow Council
Chad Abel, U.S. Fish and Wildlife Service
Michael Whitehead, Bureau of Indian Affairs
John Trawicki, U.S. Fish and Wildlife Service
Samantha Owen, McMillen Jacobs Associates
Megan Behnke, University of Alaska Southeast
Michael Winfree, U.S. Fish and Wildlife Service
Kevin Mayes, Texas Parks and Wildlife Department
Brian Frazer, U.S. Environmental Protection Agency
Nancy Wainwright, Wainwright Legal Services, LLC
Hannah Singleton, Southern Nevada Water Authority
Alex Petkanas, Northern Alaska Environmental Center
John Plaskett, Anchorage Water and Wastewater Utility
Jeff Axmann, Anchorage Water and Wastewater Utility
Jim Rizk, Texas Commission on Environmental Quality
Kevin Patrone, Alaska Department of Natural Resources
Tanya Trujillo, New Mexico Office of the State Engineer
David Persinger, Anchorage Water and Wastewater Utility
Sara Hisel-McCoy, U.S. Environmental Protection Agency

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
Jessica Cherry, National Oceanic and Atmospheric Administration
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
Danika Holmes, Montana Department of Natural Resources and Conservation

WESTFAST

Lauren Dempsey, U.S. Air Force
Christopher Carlson, U.S. Forest Service
Madeline Franklin, Bureau of Reclamation
Stephen Bartell, U.S. Department of Justice
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

STAFF

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

WELCOME AND INTRODUCTIONS

Jennifer Zygmunt, Committee Chair, welcomed members and guests.

APPROVAL OF MINUTES

The minutes from the Fall meetings held in Reno, Nevada on May 23, 2023, were moved for approval. The motion was seconded, and the minutes were unanimously approved.

SUNSETTING POSITIONS

Jennifer provided a summary of sunseting Position #456: Asserting State Primacy on Protecting Groundwater Quality and the changes proposed. Changes included: (1) using “groundwater” as opposed to “ground water” consistently throughout the document; and (2) an adjustment in a “therefore be it resolved” clause to add “and regulatory mandates.” Jennifer Carr, Nevada, asked what regulatory mandates the change was meant to address.

Michelle Bushman said that WSWC has held the position that if the federal government is going to issue regulatory mandates, there needs to be corresponding funding to make sure that the states can fulfill those mandates.

Tony Willardson noted recent efforts to expand oversight of groundwater management for states, such as the *Maui* guidance. He also discussed the recent New York Times series on ground water depletion which implied that states weren’t doing their job to manage groundwater. He invited the members to consider planning how the WSWC might respond to questions and challenges to how states are managing groundwater. The Committee approved the position with the proposed amendments for consideration by the Full Council.

ALASKA WATER QUALITY ISSUES

Dan Graham, General Manager, Donlin Gold Mine, and Ron Rimelman, Vice President, Environment, Health, Safety & Sustainability, NOVAGOLD Resources, gave a presentation about the water quality permitting process for large projects, particularly the proposed project undertaken by NOVAGOLD and Donlin Gold. Graham gave an overview of the operations side. He began with a geographic profile of the project, an open pit gold mine containing an estimated 39 million ounces of gold. The area is accessible by flight only, which necessitates the proposed 315-mile natural gas pipeline, and 200-mile river barge logistics chain, resulting in 30 miles of road to get to the site. The total footprint is estimated to be about 6000 acres.

Graham discussed the nine different categories of water quality standards: drinking water, stockwater, irrigation, two types of aquatic life standards with subcategories for each, and two categories for human health criteria. He explained that, in Alaska, nearly all waters are protected for all uses. He then gave an overview of the baseline studies necessary to apply for water quality permits. He advised working with agencies early and often when designing a baseline study program. He also recommended understanding the standards and interests of all stakeholders, and presenting the baseline collection program to the agency and stakeholders in advance. He emphasized the need for a good team. He discussed the significant volume of data that accrues

throughout the process emphasizing that some environmental studies continue beyond project closure, including aquatics and water quality. Graham showed a table that included a timeline of sampling at all their sites from 1998 to 2022.

After Donlin established feasibility for the project, baseline collection was initiated in 2006. GIS scoping started in October of 2014. Initial meetings with Alaska Department of Environmental Quality (ADEC) and EPA began in October 2014. The draft Environmental Impact Statement and permit application were complete November of 2015. It took three more years (2015-2018) of work before the state had a draft EIS and a public comment period was initiated. The final EIS was published April 2028, and the APDES permit was issued May 2018.

Julie Pack asked whether it is typical to collect data for eight years. Graham responded that this project was more than most, which is usually 2-4 years.

Graham explained the process of using data to create a Predicted Compliance report based on Reasonable Potential Analysis. This allows a permittee to receive a limited permit that relies on very conservative estimates. These permits must be renewed every five years. He showed a complex diagram of the water resource management plan, illustrating the clean water diversions and treatment that water goes through before reaching the single permitted discharge point for the operation.

Ron Rimelman discussed the development of Alaska's water quality standards, as well as challenges and concerns for large projects permitting into the future. He noted that Alaska's stringent water quality standards require all waters to be managed for all uses, including drinking water in areas not naturally potable. He said provisions that consider natural levels are difficult to attain because high temporal variabilities in metals make it difficult to determine natural levels. As a result, Alaska permittees are often required to treat water to levels much cleaner than baseline conditions.

Rimelman discussed human health criteria as a particular issue of concern in Alaska. Subsistence on fish, salmon in particular, is a significant source of diet for Alaskans. National criteria may not be appropriate in a state with such high fish consumption rates. He emphasized that regulating arsenic and mercury is complex and bears thought. He emphasized stakeholder communication as an area where agencies can help dispel popular misconceptions. He identified future concerns over the expected EPA *Maui* guidance noting that mines typically interact with groundwater. Rimelman expressed concern that the guidance could overwhelm permittees and agencies with technical requirements they are not equipped to address.

TRIBAL WATER QUALITY STANDARDS

Sarah Hisel-McCoy, Director, Standards and Health Protection Division, Environmental Protection Agency (EPA) discussed two recent proposed rules relating to water quality standards that impact tribes: (1) Federal Baseline Water Quality Standards for Indian Reservations (88 FR 29496); and (2) Water Quality Standards Regulatory Revisions to Protect Tribal Reserved Rights (87 FR 74361).

Hisel-McCoy noted that the rule on Federal Baseline Water Quality Standards for Indian Reservations has been twenty years in the making. She gave an overview of the 3,300 comment letters received from tribes, states, industries, and non-governmental organizations during the comment period. Concerns include implementation, geographic footprint, whether the rule should designate uses (public supply, agriculture, and industrial). Throughout the development of this rule 85 Tribes have gone through the Treatment as a State process (TAS). Over two hundred and fifty Tribes will still be covered by the rule unless they attain TAS and develop their own standards or request not to be covered by the baseline.

She also provided an overview of the “Reserved Rights” rule, which was proposed in December of 2022. During the comment period, the EPA received 162 unique public comments which are still being evaluated. Comments from tribes and states agreed that it is not the role or capacity of states to interpret tribal rights. Concerns raised had to do with the way the rule would be enacted, and how it would intersect with state water quality standards. Both states and tribes requested that EPA explain how it intends to resolve disputes between states and tribes and between two or more tribes with overlapping rights. EPA has held three meetings with a group of states to talk about implementation issues. Expected finalization for both of these rules is Spring next year.

Julie Pack asked which states were engaged in the three meetings. Hisel-McCoy responded that the meetings were hosted by AQUA and that Wyoming, Colorado, Minnesota, Iowa, Oregon and the New England Interstate Water Pollution Control Commission (NEIWPCC) had all been invited to participate.

Emma Pokon asked for more detail on the scope of the meetings, noting that usually at this point in EPA’s rulemaking process the EPA might have not allowed further dialogue during the deliberative process following a closed public comment period.

Hisel-McCoy clarified that the meetings, which were requested by state partners and overseen by the Office of General Counsel, were an opportunity to discuss implementation issues and not to do with the rule itself. The EPA is not taking comments and is in a closed deliberative phase in terms of what the actual rule will look like. The meetings addressed key questions such as (1) how best to engage tribes and states earlier in the process, and (2) in what ways have states effectively worked with their tribes in developing water quality standards that reflect treaty rights. She assured the Committee that the EPA has heard strongly that states want to be more engaged with these rules and said the meetings are part of that effort.

Jennifer Zigmunt noted that Michelle had compiled the 12 Western state comment letters (and a letter from an attorney general’s coalition of eight attorneys) on the Baseline Standards Rule and directed the Committee to Tab O, available in the meeting binders and on the Water Council website.

Michelle Bushman gave a summary of the member state comment letters on the Baseline Standards Rule. She noted that states acknowledged the importance of tribal sovereignty but expressed concerns about coordinating jurisdictional lines between state, tribal, and federal authority, particularly in states with checkerboard lands and multiple jurisdictional changes over

short river stretches. States requested transparency during the transition process from narrative to numeric criteria. Michelle noted that between the five alternatives for the narrative-numeric transition process, the states differed on which would work best for them. The states also expressed concerns about whether EPA would be subject to the same rules as states for public comments and triennial review.

Jennifer Zigmunt reminded the members that at the previous meeting in Reno, Position No. 490 was modified to speak to both the Tribal Reserved Rights Rule and the Baseline Water Quality Standards Rule. Western States Water Council used that position to submit a comment letter on the Federal Baseline Water Quality Standards Rule in August.

EPA UPDATES

Brian Frazer, Director, EPA Office of Wetlands, Oceans, and Watersheds, provided an overview of the 2023 Waters of the United States Rule that was recently amended. In January a Revised Definition of Waters of the United States was published in the *Federal Register* (88 FR 3004) and took effect on March 20th. In May, the Supreme Court issued a ruling in the *Sackett v. EPA* case. In August, EPA and the Army Corp of Engineers issued an amendment to the January 2023 Rule consistent with the May *Sackett* decision, effective on the subsequent publication in the *Federal Register* (88 FR 61964) on September 8th.

Frazer noted that the *Sackett* decision determined that the term “waters of the United States” as used in the Clean Water Act encompasses only relatively permanent standing and continuous flowing bodies of waters. The court also determined that to be jurisdictional, wetlands must have a continuous surface connection, with no clear demarcation, to waters that are Waters of the United States in their own right.

Frazer provided an overview of the resulting amendments to the January 2023 rule, stating that an opportunity for public comment was unnecessary under the Administrative Procedures Act. The agencies are deleting the “significant nexus” standard and revising the interstate waters provision to remove “interstate wetlands,” and removing “streams and wetlands” from the additional waters provision. All exclusions from the January 2023 rule remain unchanged. The Army Corps and EPA are planning to host listening sessions in the Fall with co-regulators and stakeholders. The focus of these meetings will be to identify issues that may arise. Frazer advised the counsel to continue to check EPA’s website, www.epa.gov/waters for more details on the listening sessions.

Jennifer Carr asked Frazer about possible future changes to the funding formula of the Section 106 funding program (33 U.S. Code §1256). She noted that during the Trump Administration the number of streams and other bodies which were subject to the NPDES program was reduced. During the Biden administration the number of streams was again expanded. In light of the amended rule again reducing the amount of jurisdictional waters, Carr asked whether there has been any further discussion at the EPA about the Section 106 funding. She noted that during the Trump Administration, EPA had committed to ensuring that the states remained wholly-funded in regards to Section 106. She noted that the State of Nevada’s program is not currently fully funded

and cannot afford a fee increase for its permittees. Frazer responded that the question would be better addressed to the Office of Wastewater Management, and that he is not aware of any new formula they have come up with. Sarah Hisel-McCoy likewise did not have an answer.

Emma Pokon asked about EPA's perspective on the “visibly indistinguishable” standard and language in the *Sackett* decision. She asked how “indistinguishable” as a term is represented in the final rule. Frazer said it was a common question and the interpretation could be found in the preamble on the EPA website.

Trevor Baggione with the Department of Environmental Quality in Arizona asked Frazer whether the EPA is planning anything more than just listening sessions, specifically training and guidance. Frazer responded that the EPA is working on providing training and guidance for field staff. Other than that, they currently only have the listening sessions planned to receive feedback on how to implement the rule moving forward.

Baggione asked whether EPA intends to have state training from the EPA and the Corps on the new rule. Frazer said there are no plans for this in the near future, but that it is a good idea. He emphasized that the focus now is to train EPA and Army Corp field staff, and then move on to receiving public comments from states and tribes on implementation.

Jennifer Zygmunt asked Sarah Hisel-McCoy for updates from EPA about the recent *Center for Biological Diversity vs. EPA* ruling regarding cadmium water quality criteria and Endangered Species Act consultations, particularly in terms of development of PFAS criteria. Hisell-McCoy said she could not talk about next steps but offered to describe the factual background of what happened in the case.

In 2016 EPA updated its four cadmium criteria. Three of those criteria were more stringent than the previous three or four criteria. But the chronic freshwater criteria was slightly less stringent. EPA did not consult on the updates as that step usually occurs during EPA approval of state adoptions of water quality standards. The National Marine Fisheries Service provided a comment on the 2016 criteria that EPA's approach to consultation leads to a piecemeal approach, particularly for broad ranging species.

On March 22, 2022, the Center for Biological Diversity filed a complaint alleging that EPA violated the Endangered Species Act for failing to complete consultation on this 304(a) criteria. On August 18, the U.S. District Court for the District of Arizona denied the government's motion for summary judgment, holding that the EPA's issuance of the section 304(a) national recommended aquatic life criteria for cadmium was an action subject to consultation with the services under section 7(a) of ESA. The Court vacated EPA's 2016 chronic freshwater 304(a) cadmium criteria and remanded all four of the 304(a) cadmium criteria to EPA.

Hisel McCoy explained that the EPA tried to consult on national 304(a) criteria fifteen years ago for cyanide and it was an unfruitful, lengthy effort. Hisel-McCoy highlighted the implications of the ruling. Although there is only one District Court ruling on one cadmium criteria, it does mean the EPA is deciding how to respond to the use of the 304(a) cadmium criteria already in place. In

regards to PFAS criteria, Hisel-McCoy said all she can share is that they are being thoughtful on how to proceed in light of the decision.

Zygmunt requested active communication from EPA when they know more about how this will impact criteria development moving forward. She asked if the EPA was working on PFAS standards for drinking water, and also requested a summary of PFAS aquatic life rules that EPA may be working on.

Hisel-McCoy responded that the agency put out a water quality standard under the CWA as a draft, titled Aquatic Life Criteria for PFOA and PFAS but it is not yet final. There are human health criteria under the CWA that are being developed but nothing has been proposed. She also said that Under the Safe Drinking Water Act, there is a proposal for a revised MCL for various PFAS.

Emma Pokon said she had gone online to find the interpretation of “indistinguishable” as Mr. Frazer had suggested but had not been able to find anything in the preamble of the Federal Register. Pokon asked for further clarification on Frazer’s use of the phrase “no clear demarcation” and whether that was EPA’s view on what “indistinguishable” means. Frazer was no longer online and was not available to respond.

NEBRASKA CWA §404 ASSUMPTION PROCESS

Jim Macy, Director, Nebraska Department of Environment and Energy (NDEE), gave a presentation on Nebraska’s assumption process for CWA §404, which would transfer authority from EPA and Army Corps of Engineers to Nebraska for issuing individual, nationwide, and general permits. He showed a slide that detailed the types of nationwide permits Nebraska currently uses: Maintenance of existing structures (NWP 3); Oil or natural gas pipelines (NWP 12); Bank Stabilization (NWP 13); Linear Transportation Projects (NWP 14); Minor Dredging (NWP 19); Aquatic habitat restoration, establishment, and enhancement activities (NWP 27); Boat Ramps (NWP 36); Living Shorelines (NWP 54); Electric Utility Line and Telecommunications Activities (NWP 57); and Utility Line Activities for Water and Other Substances (NWP 58).

Nebraska has six general permits, which are reauthorized every 3-5 years: (1) Duck Blinds; (2) Bank Protection on Game/Parks Water Bodies; (3) Manmade Lake and Pond Maintenance/Rehabilitation; (4) Maintenance of existing Flood Control Facilities; (5) Flood Protection and Repair; (6) Irrigation Ditch Related Activities. There are 23 Natural Resource Districts in the state. They work with soil and water conservation programs.

Nebraska started the §404 assumption process in former Governor Pete Rickett’s (R-NE) second term. In 2019, the Nebraska Department of Environmental Quality (NDEQ) (now the NDEE) introduced LB302 in the state legislature to acquire authorization to assess assumption as an option for Nebraska. Industry stakeholders observed that the legislation did not have sponsorship for the 60-day session and sought sponsorship themselves. In April 2022, the bill was passed with a unanimous vote with \$1.7M in funding. Macy noted that it being Rickett’s second term, and the vested interest from industry stakeholders, were both likely instrumental in LB302’s approval.

Macy shared both a table and a flow chart illustrating the steps toward §404 program assumption. The first step is an application to EPA including (1) a letter from the Governor requesting program approval; (2) a complete program description; (3) a statement from the Attorney General; (4) MOUs with EPA and the Corps; and (5) copies of state statutes and regulations. In 2021, NDEE developed a Program Assumption Investigation report for stakeholders. NDEE has met bi-monthly with EPA and the Corp since receiving authorization. Macy also indicated that they are close to finalizing a MOA with the Corp. NDEE also meets monthly with a stakeholder group (Assumption Advisory Committee). NDEE is currently meeting with NE Game and Park, as well as U.S. Fish and Wildlife, to coordinate on threatened and endangered species. NDEE is also currently reviewing draft regulations and permits, developing a permitting portal, and drafting a biological assessment.

Macy showed a map indicating the §404 permitting authority retained by the Army Corp of Engineers, which closely follows the Missouri River through the state's eastern edge. Everything west of the Missouri River that isn't tribal land is going to be assumed by the State of Nebraska. Establishing the boundary area allowed NDEE to begin estimating workload. The workload analysis used activities from the last decade to understand the number of permits of different types (individual, general, jurisdiction, use). This allowed them to estimate hourly workload and staffing needs so they could ask their legislature for the appropriate amount. Macy showed a slide with their estimated Annual Assumable Workload (23,128 total annual hours). Macy also showed a breakdown of the types of personnel who would be needed and the total hours for each. The staffing needs included a 30.7 total Full-Time-Equivalents (FTE's) shared between the following positions: (1) Section Supervisor; (2) Permit Writer; (3) Inspector; (4) Engineer; (5) Wetland Biologist. The total administrative cost was estimated to be ~\$2.5M. General revenue will be returned to the state legislature. Macy shared the authorization language granted by the legislature indicating that the department would receive about \$1.7M for the program.

Macy discussed the sustainable funding options under consideration including: (1) pay per service; (2) chargeable impact; (3) hourly rate/hybrid base with hourly rate; (4) hybrid base with project cost. Stakeholders expressed strong support for pay-per-service, saying the time certainty was worth the expense. Macy said the next steps were to finish an MOA with Fish and Wildlife, State Historical Office, and the EPA. Then to draft a program title, adopt the 40CFR by reference, and develop a permitting portal.

Macy discussed the permitting portal in more detail. NDEQ is looking at developing an online permitting portal using ESRI and ArcGIS and Hub. The interface would allow users to draw polygons, place markers, and fill outlines to submit an integrated geospatial application into the system. The remaining permitting work would also occur online.

Macy said the next step is more outreach to identify concerns with regulation development. Newly-developed regulations would then be assessed by the Environmental Quality Council, who would adopt the rules if appropriate. Then it would need to be signed off on by the Attorney General's office, Secretary of State, etc. The agreements with EPA and Army Corps would need to be signed as well.

Julie Pack: Has your team looked at the new §404(g) regulations and do you have any indication as to how that's going to impact your application?

Jim Macy: We're awaiting the next EPA iteration. We have to develop our own regulations for our state, and we will go ahead and do that, and we will see what comes up in the federal register later on and see if we need to make any adjustments to that.

Emma Pokon: Do you have a sense yet whether [inaudible] that will distinguish between areas that you think are WOTUS and under §404, versus other waters in the state? or are you going to take a blended approach?

Jim Macy: Well I think we're going to take a more holistic approach. We will go through the stakeholder process and see what stakeholders would like us to do and then make a regulator determination about state waters later. But my personal opinion is we have a lot of protective measures for state waters. Landowners have a lot of rights to do what they need to do with their land. And we need to listen to the people and see what they think, through the stakeholder process. But I think we've got some good opportunities.

Julie Pack: Have you been working with EPA throughout this process and have they given any indication that they're going to approve your application?

Jim Macy: We have been working with EPA Region 7. We meet a couple times a month with both the Corps and the EPA through this process, probably for the last 2 years. And regionally we get along fairly well with our partners. Even though we have a little bit of drama in terms of--it takes the Corp an incredibly long time (and that's why we're at the table) to do just a general permit. General permits have been averaging like 2.5 years. Not individual permits. General permits. And the stakeholders think there is a different option for that.

Shannon Miller: Have you found that industries have been supportive of paying a fee for an individual permit?

Jim Macy: They did not blink an eye at that. They would rather have the certainty of the \$35,000 permit (plus time and materials on the end of it) than the uncertainty of time. So our sister agency, the Department of Transportation, did a very brief overview study and determined that they would save up to 11-15% of their time and the cost savings of 11-15% would more than fund our agency's program. That's just one agency. So we have overwhelming support.

Jojo La thanked Jim for the helpful presentation. She noted that Colorado is trying to determine how to address their post-*Sackett* decision-making and is looking at examples from other states. She asked whether the list of nationwide permits was comprehensive and whether that mirrored Nebraska's other state permits.

Jim Macy: I think it's comprehensive. (He referred back to the slides.) These are the common nationwide permits that we have in Nebraska. And then this was the regional general permits that we have. And then this is a basic average of what we've seen from that decade of study. Each year changes, but this is our average of what we've seen over the past.

Randy Bates congratulated Jim on the unanimous vote, and asked about Nebraska's relationship with the Corps before and during the 404 negotiations. He raised the issue of how they were able to obtain clarity on which waters were jurisdictional.

Jim Macy noted that there was some initial lack of clarity in the records and difficulty in getting some of the permitting information, in part due to the retirement of a manager in the Corps District. He gave a great deal of credit to the team of state staff that met with the Corps. He also talked about their robust stakeholder engagement process to ensure that that when they go through their rulemaking process it will pass the attorney general's scrutiny and have public approval.

Trevor: The work you've done looks a lot like what we did in Arizona. You've kind of dredged up a lot of my memories that I've buried. You are proposing 30 FTEs to do this work in Nebraska; do you know how many FTEs the Corps has to do this work? Is it comparable?

Jim Macy said he greatly appreciated states like Arizona and Florida for sharing information at ECOS and WSWC, which Nebraska relied on to do this work. He did not know the answer regarding the number of Corps FTEs, but said he could get that.

Trevor: Why is Nebraska pursuing §404? It sounds like a customer service issue because the permits are taking too long. I agree 2.5 years for a general permit is ridiculous. We found that the Corps district that we're in, their timing actually wasn't that bad. It was maybe 2.5 years for an individual permit, not for a general permit. We thought we could beat that but the challenge is the Endangered Species Act. So I'm curious to know how Nebraska has tackled the Endangered Species Act because the Corps can use a special section of the Endangered Species Act that the State can't. So the two main problems we found were the ESA and just the costs. The individual permittees were totally fine with the costs. The general permittees objected to it and we decided not to move forward. But how did you solve the ESA issue?

Jim Macy: I'll have to go back to my staff and get you an answer on that. On the cost part of it, it was just simply a matter of time and talent in getting things done.

Trevor: Okay. Yeah, I would love to follow up with you on the Endangered Species Act. Thank you.

DRAFT FY2023-2024 COMMITTEE WORK PLAN

Jennifer Zygmunt reminded the committee that the work plan needs to be updated, as the task had been missed in Reno as well. She said that the feedback on the work plan has been that there are a lot of tasks that may not be priorities anymore. She asked members to take a look at the work plan and figure out what their top priorities are for the water quality committee to be working and keeping an eye on. She said nutrients are a high priority topic from one state, which also ties into ACWA's recent efforts to develop nutrient principles.

SUNSETTING POSITIONS FOR SPRING 2024 MEETINGS

The Committee does not have any sunsetting positions for the Spring 2024 meetings.

OTHER MATTERS

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