



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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WESTERN STATES WATER COUNCIL **Fall Meetings – Anchorage, Alaska**

On September 13-14, the State of Alaska hosted meetings of the WSWC in Anchorage. Participants joined both virtually and in person. New Council officers were elected at this meeting, with Jon Niermann (TX) as Chair; Julie Cunningham (OK) as Vice-Chair; and Earl Lewis (KS), as Secretary-Treasurer. The WSWC revised and re-adopted four sunset positions that: (1) support Indian water rights settlements; (2) support USDA conservation programs and water resources; (3) assert state primacy on protecting groundwater quality; and (4) outline actions federal agencies should take to help expedite state general stream adjudications.

The State of Alaska provided a panel discussion on cooperative federalism and patterns Alaska agencies have experienced in its implementation, and ongoing efforts to defend state sovereignty. Panel members included Treg Taylor, Attorney General; Doug Vincent-Lang, Commissioner, Department of Fish and Game; Emma Pokon, Acting Commissioner, Department of Environmental Conservation; and Brent Goodrum, Deputy Commissioner, Department of Natural Resources (DNR). The panel recommended coordination through groups like WSWC, and agency employees continuing to voice concerns that arise to state decision makers.

During the Water Resources Committee, Tom Barrett, Alaska DNR, presented a hydro-geographical profile on Alaska and identified regulatory issues caused by recent extreme precipitation and longer-term climate trends. He noted recent changes in water use and water laws. He talked about the Interagency Hydrology Committee of Alaska as a facilitator of data sharing within the State.

Jim Davenport, JHDavenport, LLC, presented potential opportunities arising in Artificial Intelligence (AI)-assisted water resource management. In order to be meaningful and useful into the future, he said it would require an index of relevant datasets, descriptions of their relational attributes, and formation of an AI product audit group.

Gretel Follingstad, Intermountain West Drought Early Warning System (DEWS), National Oceanic and Atmospheric Administration (NOAA), talked about the National Integrated Drought Information System (NIDIS) Climate Adaptive Drought Planning Platform (CADP). Beginning in 2024, CADP will summarize cross-agency data sets allowing local agencies to generate drought risk assessments for their communities.

There were several presentations from the U.S. Geological Survey (USGS). Tim Stryker updated members on the Landsat Next program that will provide twice as many spectral bands as the current Landsat 8 and 9 satellites, while improving the spatial resolution. It is expected to launch late 2030. Brian Clark presented on the Water Resources Availability Program (WRAP). WRAP is developing a comprehensive survey and model of water availability in the U.S. The next publication (Cycle 1a), to be released in 2024, will assess current availability. In future years WRAP will develop a historical assessment and use the knowledge to create predictive models. Becci Anderson talked about the 3D Hydrography Program. 3DHP is a systematic mapping of the nation's hydrography. When completed it will fully model the hydrologic cycle throughout the U.S. and provide a geospatial underpinning for the Internet of Water. It will help create a water census, predictive modeling and coordinated water data management, as well as better accounting of the water cycle and other connections. States and any member of the public will be able to submit proposed corrections where the map does not appear to reflect what is happening locally. She noted that while NHD+ will no longer be actively supported by USGS, a static version will still be available.

Adel Abdallah noted that the Western States Water Data Access and Analysis Tool (WestDAAT) was launched with water rights data in April 2023. Future steps will develop WestDAAT with more overlays and tools. Adel presented a mockup of a proposal for a water conservation tool that allows water users to draw an outline of proposed fields to fallow and directly submit a conservation incentive application with verification using Landsat imagery to calculate net evapotranspiration (using OpenET). He also provided an update on including state regulatory and administrative overlays in WestDAAT, and noted that staff would be reaching out to

Council members in each State for feedback. The WSWC will be applying for new grant funds to continue to improve access to and the utility of WestDAAT.

During the Water Quality Committee, Dan Graham, General Manager of Donlin Gold Mine, talked about water quality permitting in Alaska. Graham gave a walkthrough of Alaska's water quality standards, permitting timeline and challenges, and the importance of collaboration with all stakeholders and regulators. Sara Hisel-McCoy and Brian Frazer from EPA gave updates on recent rulemaking on water quality standards (WQS). Hisel-McCoy discussed the Tribal Baseline Rule (88 FR 29496) and the Tribal Reserved Rights rule (87 FR 74361). She acknowledged that both Tribes and States had expressed concerns over state water quality agencies interpreting treaty rights to establish WQS. Frazer informed the Council about listening sessions with EPA and the Army Corp of Engineers to be held this Fall.

Jim Macy, Nebraska Department of Environment and Energy, talked about the Nebraska CWA §404 assumption process. He detailed the Department's collaboration with the EPA, Army Corp of Engineers, and with stakeholders through the internal Assumption Advisory Committee. He noted that industry stakeholders were instrumental in getting legislative support for this process due to current permitting delays.

During the Legal Committee, Julie Pack, Alaska Department of Law, gave an update on various legal issues in Alaska. She discussed the impact of EPA's various final and proposed rules, the impact of the recent *Sackett v. EPA* decision on the definition of Waters of the United States (WOTUS), legislative efforts toward CWA §404 assumption, and grappling with human health criteria and fish consumption rates. She discussed a case on navigability in the Knik River and conflicts with BLM over title to submerged lands, and a new original jurisdiction case filed in the U.S. Supreme Court regarding EPA's preemptive veto of the proposed Pebble Mine with copper, gold and molybdenum deposits in the Bristol Bay watershed.

Stephen Bartell, U.S. Department of Justice, provided a western water litigation update for cases where the federal government is a party. He also talked about cases involving non-tribal federal reserved rights claims to groundwater, a federal perspective of the importance of *de minimis* uses in water rights adjudications, and laws impacting the federal payment of filing fees in state general adjudications.

Madeline Franklin, WestFAST Liaison, provided an update on the recent webinars in the Stream Restoration Webinar Series, and extended an invitation to the States to participate in the upcoming webinars focused on state water rights and stream restoration programs.

Anna Pakenham-Stevenson (virtually), Montana Department of Natural Resources and Conservation, and Jerry Rigby, Idaho, talked about their respective States' efforts and challenges in managing exempt wells, which are beginning to have a noticeable cumulative impact on the management of other water rights in the States, particularly through drought. Pakenham-Stevenson talked about Montana's Stakeholder Working Group and their recent legislative efforts. She will be reaching out to other States on their mitigation approaches. Rigby discussed Idaho's homeowners' exemption and proposed restrictions toward more efficient shared development wells.

During a roundtable discussion on groundwater regulation, Tony Willardson and Michelle Bushman asked the Council to consider whether to update past reports on the work States are doing to address groundwater issues.

Michelle Bushman's update included a brief report 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. She also provided an update on the Corps' efforts to stand up the Western Water Cooperative Committee and requested appointments from remaining States.

Christopher Estes, Chalk Board Enterprises, LLC talked in the Full Council meeting about the Instream Flow Council (IFC) and its progress in establishing a full-time Training, Research, and Development Center. He invited the Council to explore IFC training resources and engage with its members, workshops, and committees. He also discussed a Public Trust Doctrine video series which are accessible at instreamflowcouncil.org/publictrustdoctrine. Lastly, he briefly outlined the development of Alaska's water law in the 1970s, leaning on the experiences of the other States.

Roger Gorke, EPA and WestFAST Chair, also talked about developing further coordination between States and federal agencies through WestFast. The WestFast team is available to help States access products and funding at a federal level. They are committed to working with the Council to help network, solve problems, and align state project plans with additional federal funding opportunities. He also discussed the ongoing WestFast webinars which are recorded and available.

Prior to the meetings, our Alaska hosts arranged a full day field trip on with stops that included the Alaska Water and Wastewater Utility (AWWU) Drinking Water Treatment Facility, Eklutna Hydroelectric Project Powerhouse, Eklutna Village, and Eklutna Lake.

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