

**MINUTES
of the
203rd COUNCIL MEETING
Xylem Reservoir Center for Water Solutions
Washington, DC
March 14, 2024**

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MEMBERS AND ALTERNATES PRESENT *(via zoom)*

ALASKA	Julie Pack Christina Carpenter
ARIZONA	
CALIFORNIA	<i>Joaquin Esquivel</i>
COLORADO	Jojo La
IDAHO	Mat Weaver
KANSAS	Connie Owen <i>Earl Lewis</i> <i>Tom Stiles</i>
MONTANA	
NEBRASKA	Jesse Bradley Justin Lavene <i>Jim Macy</i>
NEVADA	Cathy Erskine <i>Jennifer Carr</i> <i>James Bolotin</i>
NEW MEXICO	
NORTH DAKOTA	Andrea Travnicek
OKLAHOMA	Julie Cunningham <i>Sara Gibson</i>
OREGON	<i>Doug Woodcock</i>
SOUTH DAKOTA	Nakaila Steen

TEXAS

Jon Niermann

UTAH

John Mackey
Candice Hasenyager
Teresa Wilhelmsen

WASHINGTON

Ria Berns
Leslie Connelly

WYOMING

Jennifer Zygmunt
Chris Brown
Jeff Cowley

GUESTS

Kara Cafferty, State of Idaho
Yifan Luo, Cornell University
Joan Carlson, USDA Forest Service
Bob Joseph, U.S. Geological Survey
Victoria Asbury, Kansas Water Office
Norm Semanko, Parsons Behle & Latimer
Jaclyn Buck, Texas Water Development Board
Katherine Rowden, US Army Corps of Engineers
Hannah Singleton, Southern Nevada Water Authority
Jordan Beamer, Oregon Water Resources Department
Jim Rizk, Texas Commission on Environmental Quality
Lane Kisonak, Association of Fish and Wildlife Agencies
Trent Blomberg, Arizona Department of Water Resources
Jennifer Verleger, South Dakota Attorney General's Office
Kim Nugren, Texas Commission on Environmental Quality
Kathy Alexander, Texas Commission on Environmental Quality
John-Cody Stalsby, Texas Commission on Environmental Quality
Christopher Estes, Instream Flow Council / Chalk Board Enterprises, LLC

WESTFAST

Lauren Dempsey, U.S. Air Force
Mike Eberle, U.S. Forest Service
Chris Carlson, U.S. Forest Service
Mindi Dalton, U.S. Geological Survey
Chad Abel, U.S. Fish and Wildlife Service
Travis Yonts, U.S. Bureau of Reclamation
Stephen Bartell, U.S. Department of Justice

Michael Whitehead, Bureau of Indian Affairs
Paula Cutillo, U.S. Bureau of Land Management
Roger Gorke, U.S. Environmental Protection Agency
Heather Hofman, Natural Resources Conservation Service
Madeline Franklin, U.S. Bureau of Reclamation (WestFAST Liaison)

STAFF

Tony Willardson
Michelle Bushman
Elysse Campbell
Adel Abdallah

WELCOME AND INTRODUCTIONS

The first portion of the meeting was not recorded.

WSWC Chair Jon Niermann welcomed everyone.

APPROVAL OF MINUTES

A motion to approve the minutes of the meetings held September 14, 2023, in Anchorage, Alaska was offered and seconded. The minutes of the meeting were unanimously approved.

COMMITTEE REPORTS

A. Water Resources Committee

Andrea Travnicek, Chair of the Water Resources Committee, reported that the Committee had a very full agenda and reviewed numerous positions. The positions that were considered and approved by the Committee and now being forwarded for the Full Council's approval are found in your briefing materials under Tab C with the numbers as follows: #459, #460, #461, #462, #463, and #463. Andrea moved for the Full Council to approve all these positions as modified. The motion was seconded, and all were unanimously approved.

The Water Resources Committee heard presentations on Agrimet, and Landsat Next. There was a discussion on OpenET and a brief update on current federal legislation was provided. The Committee further discussed its work plan, WGA policy resolution on Water Resource Management in the West, and recent letters the WSWC has sent to Congress.

B. Water Quality Committee

(first part was cut off) We're moving forward with nutrients. We will coordinate with the Legal Committee as we talk about Maui and WOTUS. We had some people volunteer. If there's other states who'd like to participate, please reach out to Michelle or myself, and we'll make sure that gets captured. Finally, South Dakota's proposal to discuss a resolution that would extend the fixed term of NPDES use permits in the Clean Water Act from five years to ten. That's what we covered in the Water Quality Committee.

C. Legal Committee

Chris Brown, Chair of the Legal Committee provided an update. There were three sunseting positions: (1) Position No. 466, State Primacy over Groundwater only had a few grammatical changes; (2) Position #465, supporting Universal Access to Reliable, Clean Drinking Water for Federally Recognized Indian Tribes, which Becky Mitchell and Ann Castle talked about. Alaska also described their unique situation with regard to the Alaska Native communities; and (3) Position #467, supporting the Dividing the Waters Program for Judges, and Steve Snyder, Executive Director of the Dividing the Waters gave an overview of that program. I would move that the Council adopt, as amended, Positions 465, 466 and 467.

A motion to approve the revised position was seconded and the Committee unanimously approved.

We had an update from Madeline Franklin, WestFAST Liaison, on the webinar series on stream restoration and water rights. These are online and so I would encourage folks to take a look at them when they have time. The Committee briefly talked about the Committee's work plan, which we will visit in more detail in Fargo. That's all I have.

D. Executive Committee

Jon stated that the first substantive report was on the budget and finances, and he turned the time over to Tony to provide an update.

Tony: The Council is in a good financial position. The Council's funds that are not used for current operations are held by the State of Utah Public Treasurer's Investment Fund, which we are going to make some changes that were approved by the Executive Committee. With regard to the Water Data Exchange (WaDE) Program, for our current fiscal year we have over a million dollars in our budget. About 45% of that has been for the WaDE, and 55% for the Council's basic operations. We have received all the dues from our member states, which fund our operations. The money that we have used for WaDE has been federal grants and philanthropic grants. We have exhausted some of those grants and have an application for another WaterSMART grant that we hope to hear on in the next month or two on. That will determine where we will go with WaDE in the future.

Jon: Thank you, Tony. Tony also delivered the Executive Directors report on activities and events. He provided a Council membership update. We discussed the work plan briefly and the substance of that conversation was really to send any suggestions onto me, which we will consider in Fargo. Of course, I extend that invitation to anybody whether you serve on the Executive Committee or not. We identified sunseting positions for the Summer 2024 meeting in Fargo. Those are Positions 468, 469 and 470. I believe you already covered the resolution concerning account signers - a resolution to add Michelle and our CPA to have signing authority for our bank accounts. I think that covers it.

WESTFAST REPORT

Roger Gorke, Chair (EPA) and Madeline Franklin (Liaison) provided an update on WestFAST.

Roger: The last couple days have been great with the ICWP Roundtable and today's Council meeting. Tomorrow we are having our WestFAST Principals meeting. The agenda is the briefing book. We'll start with just some introductions and then we'd like for some of the states to provide success stories of where WestFAST has helped you individually, or wherever we helped the Council generally. The principals heard from us last month, but we thought it'd be great for them to hear from you about the benefits of the WestFAST Team. Specifically, to the individual states. Then we'd like to have a discussion about anything that came up over the last couple of days that would provide an opportunity to collaborate together. As an example, the OpenET discussion we had. Can WestFAST help to facilitate better information sharing, or collaboration on OpenET with any specific state, or with the Council in general, or with a group of states? Something like that, which is just an example that came to mind. There were some other things that came to mind during yesterday's discussion. Everything from the economic impacts of drought, information sharing versus data sharing. Whatever you think about that we can help facilitate, that would be great. It's not necessarily us doing it, but we can get you to the right people within our agencies, or regional offices. We go to roundtables, conferences, and meetings and say that was a great discussion, but nothing ever comes out of it. We have the opportunity now to follow up.

Madeline added that a lot of the WestFAST members will be attending the Principles Meeting, such as Dave Raff, Chief Engineer from Reclamation – it's sort of that level of folks that we're bringing in to engage with. The people who can really speak about what's going on and have influence beyond just what our individual WestFAST members have within our respective agencies. It'll be a good group, and I really look forward to the discussion.

Roger: Yes, there will be senior career level folks.

Michelle: You guys had talked previously about the possibility of having an online participation. Is that still a possibility?

Roger: Yes, but we wanted it to be in person and so don't count on the technology working.

Tony suggested asking for volunteers to discuss success stories because we don't want to get there and have no one say anything.

Roger stated that he already asked Julie Cunningham to speak up about the work in Southwest Oklahoma. Other ideas are the efforts that are beginning in New Mexico. Duane Young may be attending and so Tony, if you wanted to talk about him as the former WestFAST Liaison, and how the work he began 12 or 13 years ago on the beginning of WaDE and then if he's there, he can chime in on those types of things.

Julie Pack: Roger, I'm curious if you're only looking for success stories. Could this also be a forum to raise where communication breakdowns have happened, and try to find solutions to that? Also, possibly broaden the topics that we've historically talk about such as droughts, floods, wildfires, and stuff like that, to include more Alaska-relevant topics?

Roger: To be perfectly honest, we wanted to focus on what the WestFAST Team has done. We wanted to take this as an opportunity to show what the WestFAST Team could do to help. If there's things that we've screwed up on as the team, that would be great to hear too. But I think these folks hear the negative stuff as well. How do we find things that we can collaborate on in a positive way would be great. You're welcome to bring up whatever, I can't say no. But we are looking for what we can work on in the future. Does that help?

Julie: Yes, that's helpful and fair. I appreciate it.

Chris: My question was kind along the same lines if it was going to be limited to WestFAST, which I can completely appreciate. I was just thinking how I could help promote that, because I think it's worth promoting. But most of our federal dealings have been with the individual federal agencies, not necessarily funneled through WestFAST. I'm trying to think how we could be helpful because we want to support the continuation of WestFAST because I think it's a valuable effort. But I don't know that I have anything specific, at least off the top of my head.

Roger: Maybe just to pick up on that. Since you work closely with the Upper Basin Reclamation Representatives - do you need somebody from EPA Region 8, that could help? What about someone from NRCS that could be more engaged? Is there somebody from the Forest Service, BLM or NOAA? That's where I think we can help. If you've got a relationship, it's not changing what the relationship is. It's not like, "No, you need to go through us!" It's how can we help bolster a state or basin level relationship. If you have a strong working relationship with an agency and you want to build on that, that's where I think we can help.

Tony: Roger, I was looking into our involvement with NIDIS, as one example. Also, the work we've done with NOAA on S2S. I know you and a number of our members have been involved with the Western Regional Partnership (WRP) with DOD.

Roger: Yeah, that's how I met Bunny Bishop in Nevada was through the WRP. Then we made connections through Jennifer Carr and through some of her staff and then was able to connect with FEMA. Being able to connect where different people, and who they're talking with, is where we want to make sure that there's no gaps. If there are, how can we help fill the gaps? And if there's a problem, how we can you effectively raise that problem with whatever the agency is.

Chris: The way I'm imagining the session tomorrow is really to be about the utility of WestFAST as a point of contact as an organization that can help put us in touch with people and solutions. Not really what do we think about EPA and their policies? This is coming from a state that certainly has its critiques. At the same time, I really value what WestFAST brings to the Council and so for what it's worth, that's how I see it.

Roger: No, I think that's right. If there are issues that we don't know about, you can raise those anytime you want. You can raise them tomorrow, or you have our contact information. You're more than welcome to reach out to any of us anytime. The other thing that came to mind, is the workforce development. How do we attract and retain folks in the water sector at every level? Is there something that we could do together that can help with that? Especially with all the new financing and grant funding that's coming in. We're having trouble keeping up. I can only imagine you guys and the troubles you are having. Is there a way to streamline, for example, Tony getting into grants.gov, which is a real issue that turns into a negative of getting access to the money. How can we also help to facilitate information from our agencies to the States? When we come across something, we want to make sure that we can get it to you.

FUTURE COUNCIL MEETINGS

Jon Niermann announced that the WSWC's 2024 Summer Meetings will be held in Fargo, North Dakota. The Fall meetings will be held in Lawrence, Kansas. During 2025, Spring meetings will be held in Nebraska; Summer in Utah; and Fall in California.

STATE REPORTS

Jon reminded members that state reports are to highlight 2-4 issues of interest and noted that time was short.

Wyoming: Jennifer Zygmunt mentioned that a significant milestone was reached with their Class VI carbon sequestration program. They issued the first three permits in December. Those wells will be drilled sometime in the spring or summer, and then the permits will be modified to authorize injection. There are six applications under review to be determined, but they are expecting another 30 this year. The program is definitely growing and so it's an exciting initiative for Wyoming.

Chris Brown: From a water quantity standpoint, everything is Colorado River. It's in the news all the time. Last week, both the Upper and Lower Basins submitted modeling alternatives

to the USBR for our post-2026 operating rules. Every agreement that Wyoming has entered into for the past couple of decades expires in two years so we need renegotiate by then. A lot of what's in the press right now is the Basins are so far apart, what are we going to do? We're right at the beginning of the process. In my experience, in studying this issue for quite some time we've always been quite far apart until we weren't. We've got a lot of work to do and have a lot of really tough issues to tackle. Everything has become that much more difficult because it isn't just the Lower Basin in the crosshairs. With the Upper Basin involved it's harder to find the consensus solutions that we've been able to come to in the past. I'm still hopeful that the states are going to be able to come together. The USBR hopes to have a draft EIS done by December, which I think might be a little ambitious, but that's their current goal. In my personal opinion, I think we really need to have some sort of consensus alternative agreed to by about this time next year, which Reclamation won't like. The rules expire at the end of 2025, but they work through the 2026 operating year. For those of you that don't know, the primary elements of the Colorado River are the operations of Lake Powell and Lake Mead. Although when you start talking about that River, it has a tendency to bleed just about everywhere into the basin. That's some of the concerns that the State of Wyoming has. With regard to this current negotiation, I know Utah's in the same place with regard to how these issues are going to work their way upstream and impact our water users. Hopefully, with this initial round of submissions to USBR, we're able to engage in it because for the past two months, we've been kind of in our own corners trying to figure out where we were at amongst ourselves. Wyoming at least is all on board with finding a consensus solution. We've done the litigation, which does not work, and so we are definitely working to try to find other solutions.

Nevada: Melissa Flatley - Nevada made an investment of \$100 million of ? dollars last year. \$75 million of that went to wastewater treatment programs. They earmarked \$25 million of that for groundwater right retirement. I did speak to New Mexico and Tony had sent me some additional information about different states retiring some water rights. We're in year one of it and it looks like everything's been allocated. We're attempting to see what the results of it is, but I think I'm predicting that is going to have mixed results. Meaning that we may be retiring more water rights than wastewater. So, to-be-continued on that. There's a lot of interest from our legislature in terms of codifying that program and identifying some sort of a funding source. Selfishly from the State Engineer's perspective, we'd rather see that money spent on what we call the Nevada Water Resource Initiative. That is basically going back and updating our understanding of groundwater availability throughout the state basin by basin, or regional flow systems, things like that. We'd like to see that as a foundational tool versus this sort of patchwork effort. Also getting folks to the table to want to retire their rights has been challenging. They need both a stick and a carrot to come to the table. Michelle briefly touched base on a recent Nevada Supreme Court decision related to conjunctive management. This was a hallmark case for Nevada and the State Engineer in terms of basically affirming his authority to manage multiple basins combining hydrographic basins recognizing conjunctive management. We've had this debate at the legislature for a couple of years and we've never been able to agree on any sort of language. The decision itself laid it out very, very clearly in terms of explicit authority, implied authority, and then reading the statutes in conjunction with one another. It's very strong from our point of view. This sort of incited some fear in our stakeholders thinking that the State Engineer would be going around the state and conjunctively manage everything, but it's a necessary tool for water management.

Jennifer Carr: I know Sam.gov has come up and it's been a nightmare for us. If your grant folks haven't embarked on renewing their Sam.gov registration, tell them to start early. We started in January and we just got our registration renewed about a week ago. Of course, people really start to panic when they can't apply for grants or receive awards. We really don't know what happened in the process of changing Sam.gov, but it's absolutely broken for state agencies. We've had other divisions within the department that have been able to use a notarized letter from our director that the state environmental program does in fact exist. But when it came to us, they wouldn't accept it. They wouldn't accept anything that we provided because the name that we always had for decades in Sam.gov didn't match other documents that proved we are a legal entity. We ended up having to pull in Congressman Amodei's office and Senator Cortes Masto's office to intervene on our behalf. If you're in the midst of this, and having issues, reach out to your congressional representatives. There's a GSA representative, her name is Ivana Henry. She was able to go into the backside of Sam.gov and change us to be a department DBA at Nevada Division of Environmental Protection. That's the only thing that opened the door for us.

I also want to give a shout out to Kansas, particularly Cathy Tucker-Vogel, Public Water Supply Section Chief, Department of Health and Environment. She did a fantastic job at a hearing that happened at the end of January. The House Energy and Commerce Committee's Subcommittee on Environment, Manufacturing and Critical Materials held a hearing about ensuring cybersecurity for Americans drinking water systems. Like I said it was a fantastic hearing. If you have issues or concerns related to managing cybersecurity for water and wastewater utilities, it would be a good hearing to watch. We're starting to work with our folks on the Hill on cybersecurity issues because EPA has kind of pulled back. We have real concerns about who should be managing and overseeing cybersecurity at our water wastewater utilities.

Lastly, we have a new water quality challenge in Nevada related to reuse of wastewater. We have an entity that is seeking to do advanced wastewater treatment and reuse that wastewater for indoor contact cooling. When you want to cool a building, you can either do it dry, like you might have AC in your home, you can do indirect cooling, which is more like heat exchangers and then there's direct evaporative cooling. I understand this is going on in Virginia and maybe a site or more in California, but if any other states are working in this area of using reuse water for direct evaporative cooling, I'd be interested in talking with you. Of course, the primary concern is shifting our focus from normal reuse issues related to ingestion, exposure, dermal exposure to now where we're having to consider respiratory exposure health endpoints related to Legionella. This is a serious challenge for us in an economic development situation that we're just going to have to move on.

Utah: John Mackey - For the last two years we've seen cumulative reductions across the state in nitrogen and phosphorus entering into waters of the state, as a result of an Adaptive Nutrient Management Program that was implemented beginning in 2012. We established criteria for our headwaters, technology-based solutions for our municipal wastewater treatment facilities and a number of good non-point source nutrient reduction projects as a result of regulations that we passed in 2015. Since 2015, the twenty major wastewater treatment facilities have undergone major improvements. Those plants are not completed with their construction but are just about done. This has led to net nutrient reductions across the state. Through the State Revolving Fund

(SRF) we invested about \$350 million. There is \$1 million in WIFIA funding that came in from EPA for a couple of the facilities, as well as self-funding through fees and local bonding with about a \$2 billion investment. We asked for a moderate level of technology-based treatment for phosphorus down to one milligram per liter. Almost all of our 20 major facilities had major limitations due to aging infrastructure. They took advantage of a new regulation for modest phosphorus control and decided to build for the future, which basically doubled the amount of cost put into that construction. However, not only will they get phosphorus removed through the next 20 to 30 years, most of them also built for nitrogen control. So more bang for the buck! We asked for one milligram per liter phosphorus and we're going to get 10 nitrogen as well. A lot of those facilities are also putting in filters, or have at least foot printed for filters. We also have some site specific numeric nutrient criteria that are being proposed for Utah Lake, which affects five facilities. Looking forward to the filters with the possibility of needing to go lower. So a big win - \$2 billion dollars of investment over 10 years is about what we see it looking at. Our needs beyond that, which we just completed a survey last year, projects the need for another \$9.1 billion for ongoing improvements through the next 20 years.

Teresa Wilhelmsen: From the Utah State Engineer's perspective, we are dealing with Colorado on one side of our state and on the other side, we have a saline lake that we get to deal with and the issues that it brings. There was a lawsuit filed last September by some nonprofit organizations against three of our agencies, mine being one, that alleges that we violated our public trust obligations. One of the reliefs that the lawsuit seeks is that the State Engineer needs to regulate upstream water rights or curtail those upstream water rights. We have that lawsuit going on and multiple entities have intervened in the case. We all filed motions to dismiss and there's a briefing schedule that's been set. So more to come with that.

The legislature continues to invest in measurement. I received \$2 million (\$1 million at a time, and another \$1 million ongoing) for additional measurement within the Great Salt Lake Basin. They're asking us to do better data management. There's been some changes to law reuse. Reuse is not allowed in the Great Salt Lake Basin anymore and so that's a challenge we're facing right now with reuse projects. I get to develop a distribution management plan for the extraction industry rights that are on the lake. So more to come as we develop that over the next 18 months.

Candice Hasenyager: To wrap up with one item that came out of this last legislative session, there's a lot of concern regarding water infrastructure. In Utah, we have an estimated number of \$38 billion for repair and replacement in new infrastructure and \$16 billion on our water quality side. The legislature allowed us to develop a Unified Water Infrastructure Plan, which looks out over 20 years and creates a list of each of the water infrastructure projects that needs to be done and develop a process to rank and prioritize them. They also created a \$2.5 million water infrastructure fund and asked us to do a study on imposing a fee to water users.

Nebraska: Jesse Bradley - We were provided the opportunity by our legislature over the last two years, through seed of about a \$1 billion of funding that's focused on water supply and water infrastructure projects. One thing that has probably garnered the most attention is our decision to move forward with the Perkins County canal under the South Platte River Compact. That effort alone is estimated as a \$628 million project. All compacts are unique, but this one

requires the construction of this canal to be able to exercise a right during the non-irrigation season and it's kind of sat idle here for 100 years. The fact we are moving forward with it has obviously caught folks off guard. We actually made our first land purchase in Colorado at the end of last year and acquired just shy of 90 acres. We're moving through about 10% of the design process now and hoping to move that to 30% by this Fall. We've also been engaging with all the key federal agencies in doing a pre-consultation for permitting discussions on that project. We are still having good conversations with the state of Colorado. We meet about every other month and talk through trying to figure out ways we can do that in the least intrusive way.

There was a write up in the one of the weekly updates on our transbasin diversion application that came before our agency. There was an initial case, which was really just resolved standing issues. We prevailed on that case. Now we get to move through the factual process now of processing that application. We'll be doing that this year. We will hold a public hearing. There's a number of required public interest factors in our law to be able to process a transbasin transfer like that. We really don't have one of these in Nebraska. This would be to move water out of our central Platte area where there's an endangered species programs and other things going on into the Republican River Basin, which we've had a lot of interstate compact related issues on. We'll be weighing through those facts over this year as the process moves forward.

Lastly, Director Jim Macy, Nebraska Department of Energy and Environment announced his retirement earlier this week. He will be retiring on April 19. They did announce an interim, but they are going to do a national search for that position.

Colorado: Jojo - Denver is getting a lot of good snow and the snowpack is okay this year! Just a couple of quick updates. On Waters of the United States (WOTUS), our Colorado General Assembly is assessing how Colorado responds to the *Sackett v. EPA* case. That's a big undertaking. We're considering options and working with Speaker McCluskie on that issue. We've held several stakeholder meetings, and we're talking about draft legislation. So we're working on that.

Lastly, due to the earmarks, the wastewater Colorado SRF has actually run out of money. This is this first time that we've ever run out of money in 35 years. It has impacted us quite greatly. Our SRF has actually been cut by 56% and we've lost over \$31 million, cumulatively, as compared to a 2021 baseline program. Just to give you an idea, this amount equates to more than \$60 million in permanent losses to our program over 20 years. Since those projects are no longer revolving, this is a really important subject for us. We are actually anticipating at least another \$20 million will be lost as compared to that 2021 grant.

Rebecca: We are thrilled to be getting the level of snow that we are in Colorado. I'm actually looking out and it's still coming down hard. In fact, if you're flying back through this way, I know they canceled over 700 flights today and so good luck.

Kind of echoing on some of what Chris Brown said from Wyoming. We are very focused on Colorado River issues right now and also the Perkins Canal with Nebraska. As Chris said on the Colorado River, it's in the news all the time! One of the things that I wanted to expand on is yes, I think this is really the beginning and hopefully we will be able to come together at some

point and avoid litigation. We're very protective of our water users in Colorado, just like I know all the states are. As Chris mentioned, the Upper Basin is now in the target zone. I think it's important to clarify, at least from my perspective, is that Colorado has always been in the target zone, it's just never been acknowledged until this point. We have been on the frontlines of climate change. The snow that we're seeing now is not typical. The last 20 years we've experienced far less hydrology than we were previously used to. We hope as part of the equation, that is acknowledged.

North Dakota: Andrea - On February 29, we had our first ice jam that we had to deal with, which was probably the earliest that we've had to deal with one in North Dakota on the Missouri River. We had extreme temperatures from 60-70 degrees, to all of a sudden we were down to freezing temperatures. We were already in the emergency operation centers with the Adjutant General and briefing the governor and senators related to that. We were able to get the ice moving by using Blackhawk helicopters, which pulled water from the river and then slammed it on the ice to try to get it to move. We'll continue to watch conditions for the rest of the Spring.

Other things on our radar, I think like other states, we continue to see a lot of requests related to economic development from several different types of entities. So we're really trying to make sure we're having conversations with our Department of Commerce at the state level. This agency can't just make water appear in certain areas and so we are trying to make sure that we're educating folks on where we do have reliable water sources and where we do not. We've kicked off a Know Your Aquifer campaign. We're doing a six-month educational campaign related to what is an aquifer? What is your aquifer? We just wrapped up a study related to managing aquifer recharge. We're trying to figure out where we want to prioritize some of those pilot projects moving forward.

Just in case all of you get kind of pinned down by HDR, we do have a study out on the street. We have pushing remote sensors in North Dakota to try to make sure that we're capturing real time data. We do have some telemetry to associate with our oil and gas development. But we're trying to see if we're ahead of the game, behind the game, how can we collaborate? We've hired HDR, the consulting firm and so they might be reaching out to all of the states just to get an update on what you're doing in regards to real-time data. We just want to make sure that we get that updated and for the future of where we need to go. If you get pegged, just let me know and please work with HDR.

Texas: Jon Niermann - John, I got really excited when you were talking about Utah's approach to nutrients and was curious about how that technological standard was going to work, but then I realized that we have a different problem in Texas. We've got some credible science for some of our water courses that suggests that total phosphorus limits need to be .015 - .02 in order to avoid algal blooms that degrade recreational uses. We're trying to figure out how to crack that. Because the science is dynamic and evolving, and the watercourses are all different, I think it's going to be a case-by-case sort of determination on each individual record as to what the limit is going to look like. I'm concerned that it's going to be eye popping to some operators, but that's our phosphorus challenge.

On the Rio Grande, this is really kind of a perennial issue. As most of you know, Mexico is a downstream nation on the Colorado River and on the upper portion of the Rio Grande. Downstream of El Paso, the U.S. is the downstream receiver of water and Mexico again is failing to deliver the water that Texas farmers need in south Texas and in the valley. We're working on that issue through the International Boundary and Water Commission (IBWC), but it's like so many of these intractable water supply issues. There are no obvious solutions and Mexico really controls the gates.

Finally, just a note, the *Texas v. New Mexico* litigation under the Rio Grande Compact is settled between the states. There is a question before the Supreme Court as to whether or not you can have a consent decree that omits one party. The U.S. is a party and we are teed up next week for oral argument before the U.S. Supreme Court as to whether the federal government can get in the way of a resolution between the states on a River Compact. That will be an interesting case to watch.

Washington: Ria Berns - We're jealous of all the snow that's coming down in Colorado, and Utah. Much of the State of Washington is in a drought status and we're looking at expanding that drought status likely later this spring.

Washington is on the precipice of initiating a comprehensive adjudication in one of our watersheds in northern Washington on the Canadian border. The interesting thing about it, it's adjudicating both surface and groundwater. It includes what we call permit exempt water users - folks that have a single home and use a well. Our total defendant list is upwards of 30,000 folks. What we're finding is that while an adjudication is a legal process, it requires significant public outreach, education, and essentially a communications plan to go along with it. We're having to really invest in that work, which is a little bit of a different muscle than we usually use. We are planning on filing that later this Spring.

We have funding for an upper Columbia Adjudication. We're still waiting for our federal partners to give us an indication on whether or not the lines that we've drawn meet the comprehensiveness standard under the McCarran Amendment. We're evaluating what our options are moving forward. We're not interested in litigating the comprehensiveness question, and so I'm hoping to get some indication from federal partners in the near term.

We're in the process of building our FY25-27 budget. We're looking to significantly increase our staffing on the permitting, and enforcement and compliance side. I know this is not often popular with the legislature. We've tried this before, but are looking for other states who have successfully increased their resources in terms of FTEs. If there are specific stories that have worked for you, or any talking points you have - I'm definitely interested in exploring that with you so come find me later.

Leslie Connelly: I'm interested in the nutrients discussion. In Washington, we took a approach for our wastewater treatment plants in Puget Sound, which is our marine water body that Seattle and a number of our urban areas sit on. We took an approach two years ago to issue a general permit to all 58 wastewater treatment plants. It's under litigation. In the meantime, we're

moving forward with that permit, and requiring monitoring of nutrients outputs, and doing some modeling work. Then in our next permit reissuance, we'll be really narrowing down on the improvements that each treatment plant needs to go through to meet our statewide standard. We're doing an innovative look at that group of wastewater treatment plants. The legislature asked us to develop a nutrient trading scheme where they could trade discharge on nutrients between those 58 wastewater treatment plants. We're doing a market feasibility analysis on that right now and will see what happens if there's any interest in that.

In terms of the *Sacket* decision, the State of Washington is moving forward with the assumption that we have state authority to fill that gap. Our state legislature provided us funding to do so, which is great support. We're not quite yet seeing a gap in the permit issuance from the Corps and so that's interesting to us. It would be interesting if other people are starting to see a gap.

We're working on some new aquatic life criteria. We are going to add 14 new chemicals, including PFOA, PFAS and 6-PPD, which is the tire dust that rubs off our tires and is lethal to our salmon, as well as to many other aquatic species. We received money from our state legislature to do research on this toxic chemical. The tire industry is also taking it up and looking at alternatives. We are going to take what research we know about this and incorporate it into a new set of municipal stormwater permits this Summer. EPA in our region is going to put those chemicals into their NPDES permits and so we're trying to coordinate with EPA on that.

Idaho: Mat Weaver - To follow up on the adjudication comments from Washington, Idaho has been long at adjudicating its water rights, really getting serious with it in 1987. Right now, we have ongoing adjudications in our northern Idaho basins. I think we're starting to see the horizon on that and are about to conclude claims, and hopefully within five years we'll be near the end of that process. We initiated our Bear River Basin Adjudication in 2021 and really got underway with that last year. We've taken about 2,200 claims in the upper reaches of that basin since that time. I've been getting some texts from folks at our capitol building today and it looks like we're going to get authority this legislative session to initiate adjudication in the Kootenai River Basin. We share boundaries with Montana and Canada in that basin. That's the last basin in the state lacking authority to initiate adjudication and so I'm happy to see that moving forward. Hopefully, I have a long enough tenure as director to see that process near to the end. We've had a couple of complications though in our adjudication processes. We initiated an adjudication in 1987 with the Snake River Basin (SRB). That adjudication took 27 years and we ended up with a decree for about 158,000 rights, but there was a process to defer domestic stock water uses. In 2022, the U.S. government filed a motion in our state water court asking it to adjudicate domestic and stock water uses currently deferred under the SBA. They've suggested that without adjudicating those deferred uses, Idaho won't have an effective McCarran Act General Stream Adjudication. So perhaps something of interest to folks in Washington. In January, the parties agreed again to stay that matter pending another SRB matter, which has to do with show cause orders that my predecessor issued to the federal government, saying that he was going to forfeit a number of federally held stock water right decrees if they couldn't come forward and show that they owned the stock that was beneficially using the water. This dates back to a lot of contention in the SRB where both cowboys, ranchers and the feds applied for water rights on the same land and the feds walked away

with the decrees and the cowboys didn't. We passed a bunch of legislation four or five years ago that authorized and set forth a process for the department and the director to issue the show cause orders. In response to that the U.S. government filed suit in federal court arguing in essence that Idaho's laws violate the Equal Protection clauses of the U.S. Constitution. The parties are currently awaiting summary judgment from the court on that matter. That will certainly drive forward a number of litigated matters that are going on right now in Idaho, both in state and federal court. Regarding the deferred domestic and stormwater uses, we've estimated somewhere between 60 - 120,000 claims that might be filed if we're forced to move forward with that. That is a huge work effort that we're not currently resourced for.

In the State of the State address, our governor highlighted that over the last few years, we've appropriated about \$1 billion towards water infrastructure projects. About half of that has come into my department's budgets. We have a five-year process ongoing now to identify, prioritize, and carry out projects for aging infrastructure, water sustainability initiatives and flood management. Again, it's one of those jobs that didn't exist 10 years ago and is eating up huge resources at our department. Someone mentioned yesterday that great expectations come with that kind of money and we certainly feel that at the department. Certainly I'm emphasizing transparency and how we're awarding and selecting those projects.

Finally, on Senate Bill 1341, which was introduced in the Idaho this session is still ongoing. This expands to an area of common groundwater for the Eastern Snake Pine Aquifer, which is effectively our largest aquifer system in southeast Idaho. We have an administrative boundary that's been established in the rule and law since the early 1990's. Basically, if you're within that boundary and are a groundwater user, you have to participate in conjunctive administration, you have to mitigate or face curtailment. If you're outside that boundary, then you're free and clear of those administrative proceedings. There has long been real inequity within the groundwater user community between those that have had to participate in those that haven't. There was a bill brought in January that was going to expand that boundary, ridge top to ridge top. If you're upstream of the Milner Dam on the Snake River in Idaho, all tributary basins were going to be brought into common administration of groundwater and surface water. That got my attention pretty quick. I started working with some of the legislators and we've scaled that back a bit. Now we are expanding the area of common groundwater to recognize the best available science on the aquifer itself with a process to bring tributary basins into administration. It really forces you to think about some of the questions of where Idaho is going. Are we headed towards common administration of groundwater and surface water rights upstream of the Milner dam on the Snake River? How are we going to administer that with many water districts? What kinds of tools do we need? Is that an expectation of what we would need in all of the basins? So a lot of questions being asked. I am supportive of the big picture because we continue to have declining groundwater resources in most of the southern third of Idaho.

South Dakota: Nakaila Steen - I think the most important and exciting update for South Dakota is that Jennifer Verleger is now our new attorney.

House Bill 1128, which passed this year, defines what an abandoned well and an established well are separately for zoning purposes. It indicates that a well that is either abandoned

or not established or both must not be used as a basis for denial of the zoning determination. This bill was brought in part in response to several county zoning decisions related to the citing of a new concentrated animal feeding operation (CAFO) that involves setback distances from wells. People basically knew a CAFO would be coming up so they would go punch a well in the ground real close to prevent it from happening.

Our Safety Dams Program, which is ran by one gal with a couple of support staff, recently completed part one of the FEMA High Hazard Potential Dam Grant with the intent of securing a level of funding for rehab of two recreational dams. One being Richmond Dam in Aberdeen near North Dakota, which is owned by school and public lands and then Marindahl Dam in southeast South Dakota owned by Game, Fish, and Parks.

Kansas: Connie Owen - We've had a really weird drought reversal in our state. A year ago, western Kansas was in an absolute dire straits. Eastern Kansas was hurting as well. Generally west is bad, east isn't so bad. Right now, the west has had a lot more precipitation. So much, it's not even in a drought category. Then central and eastern is desperate. They didn't get any of those rains. So we have a very different distribution of critical drought going into the summer right now. We also expect that it's going to get worse over the summer.

I mentioned yesterday that we have a Reservoir Sediment Management Workgroup. The Corps, Kansas City Office, and the Tulsa Water Office are working with the Kansas Water Office in a new approach to try to figure out what to do about reservoir sedimentation. We are also in the midst of our very first water transfer process. We have a specific statute that if you want to move water of 1,000 acre-feet or more, at least 35 miles, you have to go through this additional statutory process that involves an initial hearing and then a review panel. That particular hearing has happened and the matter is now before the review panel. We'll see how that shakes out. The people on that review panel, are me, the Director of the Kansas Water Office; Earl Lewis, Chief Engineer, and Leo Henning, who is with the Department of Health and Environment.

Our legislature gave us the opportunity to create two new grant programs, which was a big deal, largely for some infrastructure help. The long and the short of it is they gave us \$17 million to give out and the applications that came in exceeded \$380 million, so we're dealing with that right now.

Alaska: Julie Peck - I mentioned in one of the meetings previously that Alaska is not pursuing 404 assumption this year. We relied quite a bit on Florida, Nebraska, Arizona and other states that have gone through this effort and so we're happy to share our experience from last year with any other states that are interested.

Regarding Human Health Criteria (HHC), EPA continues to pressure Alaska, and Alaska continues to push back to create space to ensure that in updating our HHC criteria, we are taking into account Alaska's stakeholders views and concerns, which include the environment and the economy.

With regard to WOTUS, we're similar to Washington in that we aren't seeing a difference pre- or post-*Sackett*, which is concerning and we believe unlawful. To that end, we have assembled an interstate agency sort of quasi-task force to assess what the state can do and how the state might have a greater say in WOTUS decisionmaking. If any other states have any thoughts, or want to learn more, please let me know as I'm heading that.

We do have a continued frustration with a lack of meaningful opportunity for input on federal initiatives and rulemaking, which unfortunately has resulted in litigation. We have several lawsuits on the horizon related to problems that could have been solved if the federal government had reached out to us before, but they didn't. This illustrates why Councils like this are so important, because this provides states like Alaska with a platform to communicate with the federal government, because the federal government otherwise is not communicating with us. We're very appreciative of the efforts politically and personally that everyone has made on this Committee.

Christina Carpenter - In case I haven't had a chance to meet you, I'm replacing Emma Pokon as the Deputy Commissioner for the Alaska Department of Environmental Conservation.

Alaska has received a couple of post-award audits for Alaska to demonstrate that we are in compliance with the Civil Rights requirement. This seems specific to infrastructure money for our SRF grant, and we also get some money from USDA, HUD. We have been putting together those responses, which kind of came out of nowhere. I specifically asked EPA if this was tied to the Justice40 Initiative, and I didn't get an answer. If other states are seeing the same thing, I'd be curious to know if you have additional information to share.

Arizona: Trent Blomberg - Some highlights on the Colorado River that has been mentioned, which is obviously pretty big in Arizona. We've been working with the Lower Basin States to put together a Lower Basin alternative for post-2026. I won't go through the details, because you can look into that if you're interested. Some of the things Arizona is doing within the state borders there. We've got the governor's Water Policy Council, which is pretty big. Last year, new governor Katie Hobbs convened a group of about 35 stakeholders in the State to address some of the groundwater regulation issues. Arizona has active management areas (AMAs) in some of the more populated areas to manage groundwater. We had one half of the Water Policy Council on the Committee addressing some of areas where we could improve those regulations and then we had another group looking at rural groundwater regulation across the State. There's been increasing calls from rural communities to increase rural groundwater regulation. There's been quite a bit of discussion at the State Capitol with the legislature and stakeholders from around the state on some of the rural groundwater management with those AMAs. Voters in southeast Arizona just voted to enact a new one for an area seeing a lot of increased agricultural pumping. It's going to be the Douglas AMA and so the ADWR is setting that up as well.

Then just note, Arizona has three tribal water settlements going on that the department is heavily involved with: Navajo, Hopi, and Yavapai Apache.

Oklahoma: Julie Cunningham - We've been dealing with a lot of the same things that Kansas has as far as drought and flooding on the opposite sides of the state. There's a lot of

attention on water right now. Our legislature is talking about water all over the place. You mentioned groundwater management districts, drought, enforcement, giving the water board more regulatory authority and more FTEs to actually go out and do enforcement. It's just been a huge one. We're actually hearing well-spacing and setbacks from roads. We're even hearing from the Farm Bureau about metering, which we don't say "required metering" in Oklahoma. There's several bills being heard today and so I'm watching and a few of them are still alive.

In regards to funding, we received \$464 million through the water board, which was about 25% of our state ARPA money. We also have surpluses this year. There was a \$250 million proposal, which is giant for us in the legislature, that is being debated right now for surplus funding. We've asked the legislature, if you give us anything, let us use that for leverage for our existing program. I got a revenue bond loan program and then the SRF program. We feel like even though they are wanting it to go out for loan, they get the concept of the revolving fund and the repayments and so I have a feeling we will get something to assist in those programs.

Jon: Thank you all for the reports, and I'm sorry we had to hurry through those.

SUNSETTING POSITIONS FOR 2024 SPRING MEETINGS

Tab XYZ of the briefing materials contains sunseting positions for the 2024 Summer meetings, Positions #468-#470. Please review them and get any proposed changes to staff.

OTHER MATTERS

Jon thanked everyone for a great meeting. I look forward to seeing many of you in Fargo.

The meeting was adjourned.