

**MINUTES**  
**of the**  
**WATER QUALITY COMMITTEE**  
**Xylem Reservoir Center for Water Solutions**  
**Washington, DC**  
**March 14, 2024**

**Table of Contents**

Welcome and Introductions .....	4
Approval of Minutes .....	4
Sunsetting Position.....	4
Wild and Scenic Rivers.....	4
ACWA Nutrients Policy and Other Focus Areas .....	5
Discussion: Nutrients .....	7
Discussion: Maui Guidance .....	8
Draft FY2024-2025 Committee Work Plan.....	8
Sunsetting Position for Summer 2024 Meetings .....	8
Other Matters .....	10

**MINUTES  
of the  
WATER QUALITY COMMITTEE  
Xylem Reservoir Center for Water Solutions  
Washington, DC  
March 14, 2024**

**MEMBERS AND ALTERNATES PRESENT** *(via zoom)*

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

Jennifer Zygmunt, Committee Chair, welcomed members and guests.

## **APPROVAL OF MINUTES**

The minutes from the Fall meetings held in Anchorage, Alaska on September 13, 2023, were moved for approval. The motion was seconded, and the minutes were unanimously approved.

## **SUNSETTING POSITIONS**

There were no sun-setting positions.

## **WILD AND SCENIC RIVERS**

Mike Eberle, Forest Service, spoke about Wild and Scenic Rivers. He works with the Interagency Wild and Scenic Rivers Coordinating Council (IWSRCC), which includes the Park Service, Bureau of Land Management, U.S. Fish and Wildlife Service, and the Forest Service. He discussed two technical papers: (1) instream flow protection; and (2) an update to a water quality protection paper, which also included study of the enhancement of Wild and Scenic Rivers. Roy Smith presented the water quality protection paper to WSWC for comments in the late Fall of 2023, with four states participating. The IWSRCC completed integration of those comments in December 2023. Per the IWSRCC's request, the team also sought comment from eastern states by reaching out to the New England Interstate Water Pollution Control Commission as well as the Association of Southeastern Foresters. The IWSRCC approved the content of the paper and all that remains to do is formatting and Section 508 (29 U.S.C. 794d) electronic information accessibility compliance. They expect to have a final copy live in a month, by which time the report will be available on the IWSRCC website, [www.rivers.gov](http://www.rivers.gov). Mike thanked the Council for its efforts and making the paper better.

JoJo La asked whether the report was likely to be updated again with any regularity. Mike noted that the original document was published in 2003, and this is an update after 20 years. There are no immediate plans, but he offered to suggest a timely review to the IWSRCC.

Teresa Wilhemsen asked who the members of the IWSRCC were. The water subcommittee, which lead the paper, includes Roy Smith, Chad Abel, Jennifer Back, Susannah Erwin, and Britta Nelson.

### **ACWA NUTRIENTS POLICY**

Julia Anastasio, Executive Director and General Counsel for the Association of Clean Water Administrators (ACWA) discussed ACWA's nutrient policy and other focus areas. ACWA's Nutrients Policy Committee, chaired by Adam Schneider from Iowa, and Nicole Rowan from Colorado, with a lot of work from Tom Stiles set out to put down on paper ACWA's thoughts and framework with regard to nutrient pollution.

The Committee came up with eleven standing principles. The first three principles are statements on how to measure progress in nutrient reductions. They acknowledge that nutrient issues are typically chronic and related to excess availability rather than toxicity. Reduction efforts should be based on trends leading to desirable ranges of concentrations, and not the achievement of a mere black and white number like Nutrient Numeric Criteria (NNC). They further acknowledge that NNC is not the only way to achieve improvements to water quality and states should be able to demonstrate progress through anecdotal evidence, qualitative data, and quantitative data. These first three principles also recognize that determining feasible NNCs requires complex analysis including ecology, geology, hydrology, as well as the social sciences such as politics, economics, sociology, and the people in the community.

Principles four through eight highlight wet weather reductions, the role of wastewater systems and nonpoint sources, and the use of diverse strategies by states. They highlight technology-based limits, or optimization, as a potentially more achievable and effective pathway to reducing nutrients than a strict NNC number. Installation of higher-end reduction technology should be considered in tandem with water quality-based limits. The fifth principle points out that wet weather reductions should consider both point and nonpoint sources and should not discount best management practices that states employ. States should be getting credit for fertilizer management riparian buffers and constructed wetlands as they can also achieve better water quality. They acknowledge that the nation should be able to use all available tools including market-driven approaches, NNCs, TMDLs, facility upgrades, and integrative planning optimization.

The final principles acknowledge the role of all three levels of government (state, local, and federal). All levels need to be engaged in collaboration to be successful, that states must have flexibility to set priorities for focus and efforts, and that states can be more transparent about their efforts, showing their work so members of the interested public and others can understand their approach. The idea behind the principles is to both guide ACWA as an organization and to help

states in conversations with stakeholders. While the principles will be reflected in ACWA testimony on Capitol Hill, they are not considered a formal resolution.

Julie discussed the memos from EPA Administrators Fox, Beauvais, and Stoner. She noted that Fox's memo was like the previous two but some of ACWA's members were concerned about unclear statements. She reported that ACWA met with Bruno Pigott and others at EPA and came up with an add-on approach. EPA Region 7 led the talks under the direction of Executive Director Jaime Gaggero. The goals were for EPA to appreciate what states are already doing and to figure out where there are more areas of a common alignment. She reported that ACWA found the meetings fruitful and a good example of the agencies hearing what states had to say.

Julie discussed ACWA's positions on other topics. She said that regarding appropriations, ACWA follows Environmental Council of the States (ECOS) and expressed appreciation for ECOS' specificity in regard to Section 106 (Water Pollution Control) grant funding. ACWA is interested in and supportive of fully funding both Clean Water and Drinking Water SRFs. ACWA has not taken a position on earmarks; is supportive of USGS funding; and has been focused on providing training and workshop opportunities. She emphasized that ACWA has grant dollars to help get staff to training events. The next training event coming up is a roundtable on Concentrated Animal Feeding Operations (CAFOs). ACWA is focused on per-and polyfluoroalkyl substances (PFAS). She also discussed ACWA's attention on biosolids, and concerns that regulation of PFAS will remove states' disposal options for biosolids. At the request of some clean water utility groups, EPA has put together a group of experts from states and the solid waste industry to examine pinch points, asking how to communicate risk without unduly alarming the public, and asking how to dispose of waste.

## **DISCUSSION: NUTRIENTS**

Tom Stiles kicked off the discussion of the ACWA standing principles and the motivations that inspired ACWA to draft them. ACWA was motivated to write the principles following the release of Radhika Fox's memo on nutrient reductions in April 2022. Although the memo had promising language on collaboration with agriculture and working on reductions, there was still strong language on states needing to set numeric criteria (a common thread between memos from previous EPA administrators, Stoner and Beauvais). As a rule, the majority of states say they do not want to adopt numeric criteria, believing there are other ways to approach the issue. ACWA set out to put down things they heard from states through nutrient reduction policy committee meetings and workshops from 2017-2023. Tom said they are not intended to be foundational policy, but a resource that each state can draw from to select concepts that are applicable to them. States can choose what to emphasize from concepts such as numeric criteria, reasonable potential analysis, best management practices, market-based solutions, etc.

Principles one through three address water quality standards and set out to establish that states have narrative criteria that should not be discounted. They emphasize that there is value embedded within states' respective water quality standards. These standards may not lend themselves neatly to the technical support document used to set permit limits, because nutrient loading issues are a matter of excess and not toxicity. The presence of excess nutrients is evident

through formation of harmful algal blooms, the introduction of blue green algae and cyano-toxins, disinfection byproducts in drinking water utilities, aquatic life impacts, and nitrate in groundwater. All of these impacts are embedded within the states' narrative criteria. Another point made by the first three principles is that nutrient reduction is a difficult "long game" effort. Recognizing that the nutrient levels in many ambient waters is too high, the short term game is to work toward reduction rather than demanding immediate compliance. Tom said the question should be "How do we continue to work our way down?" and that "We don't have to swing for the fences here. We just need to put the ball in play." The first few principles also establish that, in addition to the natural sciences' role in providing the foundation for what numbers to select, the social sciences are necessary in implementing those numbers. "Everyone wants a number until they see the number and they [say] 'well, we don't want that number.' And then we start going into the negotiation of trying to establish our respective social settings of what's important and the value we place on our respective waters."

Principle four sets out the responsibility for our wastewater and NPDS facilities. It recognizes that, while the overall nutrient pie is dominated by nonpoint source and baseflow, it's really about these facilities. But when recognizing wastewater plants' role, there is a strong case to be made for setting technology-based limits. It may be easiest for new or expanding facilities to incorporate upgrades to technology that would appropriately treat out the nutrients.

Principles five and six are about urban settings. They recognize asset management of the sanitary wastewater collection system, as well as reduction of inflow and infiltration in the system, as pathways to nutrient reduction. They recognize best management practices as appropriate measures to abate runoff. Stiles said: "For most of us, the greater loads come from our surrounding watersheds, which are rural in nature, that are in fact nonpoint sources and for most of us lie outside the regulatory reach of the Clean Water Act. And so again, those types of practices basically represent probably our greatest challenge of ultimately meeting or attaining water quality standards."  
“

Principle seven addresses nonpoint sources in the rural setting and emphasizes best management practices and market-based solutions to manage input. Principle eight recognizes that one size does not fit all, and that each state's reduction strategy is a portfolio embedded with a diverse set of tools. Principles nine through eleven are about process. They emphasize coordination among programs and levels of government, setting priorities, and documenting success. They recognize that nutrients are everywhere, and the impacts are seen everywhere. They encourage states to document success so that other organizations are aware of states' efforts. ACWA hopes that voicing success will manifest a mosaic of approaches that states can present.

Tom recommended the WSWC look at the ACWA principles and the Western Governors Association's (WGA) Nutrients policy, and work on drafting a position for WSWC. Jojo La requested to be included on the subcommittee.

### **DISCUSSION: MAUI GUIDANCE**

Elysse Ostlund Campbell gave a brief overview on the *Maui* guidance that EPA released in late 2023. Jennifer Zygmunt noted that several Western States provided comments on the guidance and noted that Council staff had put together a summary of the feedback, Tab O.

Elysse discussed two Circuit Court level cases relating to the *Maui* factors, possibly impacting how *Maui* is applied in court. In *Cottonwood Environmental Law Center vs Edwards* (22-36015) the Ninth Circuit court held that because the challenged leakage had to move through an aquifer before reaching the underdrain, plaintiffs could not continue their complaint against Big Sky based on a claim of direct discharge. Instead, they would have to continue under an indirect discharge complaint and *Maui*'s indirect discharge test was the proper framework. In *Stone v. High Mountain Mining Co* (22-1340) the District Court held in favor of the plaintiff saying that High Mountain did require a permit because of the first three factors of *Maui*. Because neither party had presented enough evidence for the other four, the District Court omitted those factors altogether. On appeal, the 10th Circuit Court held that it was necessary to include all *Maui* factors. The Tenth Circuit vacated and remanded the decision, and encouraged the District Court to develop all factors factually before making a decision. In its decision the Tenth Circuit also considered Colorado's complex mining industry and noted some phrasing in the *Maui* decision, recognizing that courts should not be putting state regulatory regimes at risk.

Jennifer noted that Wyoming has been getting more comments on proposed permits that have to do with *Maui*. She noted that not all states will be in agreement, but believes there are areas of common ground, namely, to preserve the role of states, state authority to make the functional equivalency determinations, and states' ability to regulate groundwater.

### **DRAFT FY2024-2025 COMMITTEE WORK PLAN**

Jennifer Zygmunt provided an overview of the workplan priorities survey sent in February 2024 (Tab P). Nine States responded. Top priorities were Nutrients, SRFs, Water Quality-Quantity Nexus, and WOTUS. Medium-level priorities were PFAS, 401, Tribes as States, Water Reuse, and Abandoned Hardrock Mining. She suggested keeping these items in the workplan but limiting further to-do list items. Low-level priorities were Water Transfers Rule, Hydraulic Fracturing. She suggested possibly removing Hydraulic Fracturing. Jennifer Carr from Nevada offered that Nevada is seeing development of hydraulic fracturing to create geothermal sources. Jennifer Zygmunt said this would likely be a different point than the current Hydraulic Fracturing topic, but it may be worth watching. John Mackey offered that *Maui* is ubiquitous and has many implications for Utah. Julie Pack expressed a desire to have more time to discuss WOTUS and *County of Maui* issues as they are brewing in many states. Jennifer Zygmunt agreed and suggested that the Council reconvene who is on the WOTUS subcommittee.

Julie Cunningham asked what it is about SRFS that members were interested in. Jennifer Zygmunt responded that she does not have further information on what people wanted. She noted



that the resolution was updated in Reno last May to add language about earmarks, but that SRFS are important funding and that may be why they are high priority.

Jennifer Zygmunt gave a further overview of the survey results. People thought the work plan had sufficient topics. One new topic to consider is Human Health Criteria and pressure from EPA to adopt them. Another point of feedback was to have more opportunities to talk about WOTUS and its subtopics. The majority did vote “Yes” for developing a Nutrients resolution, as well as looking into a resolution for *Maui*. Zygmunt requested volunteers to be on a subcommittee for both Nutrients and *Maui* to develop first workplan action items in preparation for Fargo, or the next meeting.

Jennifer Zygmunt also noted that South Dakota had expressed interest in proposing a new resolution on NPDES. They are interested in whether states would support reopening the Clean Water Act to change NPDES permit terms from 5 years to 10 years. South Dakota is not ready to present a draft resolution, but further feedback on that topic might be sought in Fargo. In summation, Jennifer recounted action item topics as Nutrients, *Maui*, and Clean Water Act NPDES permits.

Julie Pack volunteered to be on WOTUS and *Maui* subcommittees. JoJo La asked whether WOTUS would be one subcommittee with *Maui* added to it. She volunteered to be on WOTUS “if it’s not separated into *Maui*. I just want to be focused on WOTUS.” John Mackey volunteered to be on a subcommittee for *Maui* and Nutrients if needed, but said he was not as interested in WOTUS. Jennifer Zygmunt concluded that there was more interest in keeping *Maui* and WOTUS separate. Tom Stiles volunteered to leave WOTUS and go to the Nutrients subcommittee. Jennifer Zygmunt confirmed with council members that there was interest in hearing more about NPDES permit terms.

Jennifer Zygmunt encouraged members to consider whether to volunteer for subcommittees and reach out to herself or Michelle Bushman if they are interested. She confirmed that there was interest from Committee members in hearing more about NPDES permit lengths at the Fargo meeting. One suggestion was to update the 401 Rule language. One piece of feedback was to consider if the Council should continue to evaluate SRF earmark impacts or leave that to CIFA. Julie Anastasio commented that Dierdre Finn has a good analysis of this year already from the little bit of information that has already been released.

Jennifer Carr pointed out that there is talk of tying SRF language into WGA policy. Jennifer Zygmunt confirmed that WGA is updating their water resources and water quality resolutions. They are also considering combining those resolutions into one. She encouraged members to talk to their governor's office for more information about how to participate in those discussions.

### **SUNSETTING POSITIONS FOR SUMMER 2024 MEETINGS**

Position #469 Water Transfers and National Pollutant Discharge Elimination System (NPDES) Discharge Permits and will be sunseting and will be considered at the next meeting.

**OTHER MATTERS**

Jennifer also noted that Tab M contained letters that WSWC recently sent or joined, including: (1) a CIFA letter about earmarks; and (2) another in support of the Good Sam legislation.

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