



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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WESTERN STATES WATER COUNCIL Washington DC Spring Meetings

The Western States Water Council (WSWC) held its Spring 2024 meetings in Washington, D.C., on March 14, in conjunction with a joint roundtable with the Interstate Council on Water Policy (ICWP) that brought together over 100 federal, state, interstate and local water managers and scientists in person.

The WSWC revised and re-adopted nine sunseting positions on: (1) Probable Maximum Precipitation Standards; (2) Forecast Informed Reservoir Operations and Innovations; (3) Weather Station Networks; (4) Water Infrastructure Funding; (5) Integrating Water and Energy Planning and Policy; (6) Federal Research on Climate Adaptation; (7) Universal Access to Reliable, Clean Drinking Water for Federally Recognized Indian Tribes; (8) State Primacy over Groundwater; and (9) the Dividing the Waters Program for judges.

The WSWC's working committees met briefly beginning with the Water Resources Committee, chaired by Andrea Travnicek, North Dakota Department of Water Resources. David Raff, U.S. Bureau of Reclamation (USBR) presented on AgriMet, which is growing to a network of 170 weather stations throughout the western states. Tim Newman, U.S. Geological Survey (USGS) gave an overview on Landsat Next. Slated to launch in 2030, Landsat Next will increase revisit frequency, spatial resolution, spectral bands, and radiometric quality. Tony Willardson raised some notable federal legislation, including the Weather Act Reauthorization Act (H.R. 6093), the Water Data Act from the 117th Congress, and the Open Access Evapotranspiration Data Act (S. 1118).

The discussion on OpenET included invited guests Shelby Hagenauer, American Farm Bureau Federation, and Lane Dickson, The Ferguson Group LLC., who represents the Family Farm Alliance. Panelists and Council members acknowledged that OpenET assists states in managing water and protecting water rights. Hagenauer and Dickson, however, identified challenges the members of their organizations have faced when on-farm data is misinterpreted in the media.

The Water Quality Committee, chaired by Jennifer Zygmunt, Wyoming Department of Environmental Quality, discussed their top workplan priorities based on a recent survey of the states, including nutrient management, State Revolving Funds (SRFs), the water quality-quantity nexus, and Waters of the United States (WOTUS). Elysse Campbell provided a brief overview of recent cases interpreting and applying the Supreme Court's *Maui* criteria. The majority of survey respondents were in favor of framing new resolutions on nutrients and *Maui* groundwater equivalent discharge, and taking a closer look at the duration of NPDES permits.

Mike Eberle, USDA Forest Service, provided an update on recent papers published by the Interagency Wild and Scenic River Coordinating Council. He highlighted a paper on water quality for instream flow protection to be released in the next month, which several WSWC members previously reviewed.

Julia Anastasio, Association of Clean Water Administrators (ACWA), talked about the recent development of the ACWA Nutrients Policy and other ACWA areas of focus. Tom Stiles, Kansas Department of Health and Environment, led a further discussion about nutrients, providing greater detail on ACWA's 11 standing principles, which emphasize the value of state-led nutrient reduction policies, including both narrative and numeric criteria.

Chris Brown, Wyoming Attorney General's Office, chaired the Legal Committee. Anne Castle, University of Colorado Law School, updated members on recent developments related to universal access to clean drinking water for tribes. She noted that 48% of tribal homes still don't have access to reliable water sources. She shared a map indicating that the greatest supply needs are in the Dakotas, Oklahoma, the Four Corners region, and Alaska. She acknowledged that funding has been provided but gaps remain, particularly for operations and maintenance.

Steve Snyder, Dividing the Waters Program, provided updates on the recent webinars, workshops, conferences, and the conception of two new projects for the education of judges presiding over water disputes: (1)

an online 15-unit water law course, the first unit of which will launch in the next month; and (2) the formulation of the Western Judicial Consortium on Water Law. The Consortium will coordinate the representation of western states in the Judicial College water law courses and generate funding for continued development of Dividing the Waters materials. California, Colorado, New Mexico, Utah and Washington are the initial members.

Madeline Franklin, USBR and Western Federal Agency Support Team (WestFAST) Liaison, updated members on the Stream Restoration webinar series provided by WestFAST. Franklin said the series has featured California, Colorado, Nebraska, and Utah, and that posted recordings have received significant traffic. Members shared that they have been able to use the recordings to train employees and teach classes.

Michelle Bushman gave an update on water-related litigation and legislation. She noted a shift towards a Congressional and Administration preference for fund-based Indian water rights settlements. She said the Committee may want to take a look at the continued utility of supporting the Reclamation Water Settlements Fund in light of that shift. She also noted that nearly all the Western Governors and Attorneys General have appointed members to the Western Water Cooperative Committee. The Corps determined this is a Federal Advisory Committee Act (FACA) committee and has taken the steps to fulfill the charter and training requirements, and recently testified before Congress on the need for funding to support it. The Committee briefly discussed the recent rulings in *Sullivan v. Lincoln County Water District* (Supreme Court of Nevada, No. 84739) and *Center for Biological Diversity v. Regan* (U.S. District Court for the District of Columbia, No. 1:21-cv-00119).

In the Full Council meeting Roger Gorke, WestFAST Chair (EPA), said that they are looking to close information gaps and create traction for States seeking to address water issues with federal partners. He highlighted recent opportunities where WestFAST has served as a point of contact to assist States with various challenges to connect and collaborate with federal counterparts. He highlighted topics that may be ripe for further collaboration, including OpenET, economic impacts of drought, information sharing and data sharing, and improving S2S forecasting.

Members also provided updates for their respective States. Common themes included water quality criteria, Clean Water Act (CWA) §404 assumption, state litigation and legislation updates, infrastructure projects, funding and SRF cuts, wastewater treatment infrastructure and standards, and Colorado River post-2026 Operations.

Regarding water quality criteria: (1) Utah has reduced nitrogen and phosphorus statewide; (2) Texas

is facing more stringent nutrient standards; and (3) Alaska is facing pressure from EPA on Human Health Criteria standards.

Developments on State CWA §404 assumption: (1) Alaska is no longer pursuing §404 assumption as they evaluate accumulating regulatory and judicial obstacles; and (2) Colorado is in preliminary stages of drafting legislation to acquire funding.

State litigation highlights included: (1) The Nevada Supreme Court ruled in favor of the State Engineer's authority to manage surface and groundwater conjunctively across multiple hydrologic basins; (2) the Utah State Engineer is defending against allegations of mismanagement of the Great Salt Lake; and (3) Texas and New Mexico have agreed to a settlement on the Rio Grande Compact issues, but are waiting to hear from the Supreme Court on whether they can dismiss their claims without USBR as a party to the consent decree.

Updates on State legislation: (1) Washington is about to begin a comprehensive adjudication of surface and groundwater in northern Washington on the Canadian border; (2) Idaho is beginning final stages of completing adjudications in the State, including the Kootenai River Basin; and (3) South Dakota defined abandoned and established wells to simplify zoning and setbacks for siting new concentrated animal feeding operations (CAFOs). Most states indicated challenges in funding infrastructure projects. Some specifically mentioned the impacts of severe cuts to grant funding and SRFs.

On March 15, Council members, federal WestFAST members, and senior career-level principals met at EPA headquarters to discuss past and future opportunities for state-federal collaboration. Past collaboration included state drought action plans, improvement of air force base water use efficiency, and identification of shovel-ready projects. Joint WSWC-WestFAST workshops, webinars, and regular correspondence have allowed state and federal partners to identify constraints in federal and state laws, to reduce uncertainties, and to work together to craft solutions. Topics for future collaboration include: (1) economic impacts of matching funds and legislative processes; (2) messaging on remote sensing data; (3) sustaining and growing WestDAAT; (4) optimizing state projects with federal partners; and (5) inventorying available state and federal tools.

The WSWC Summer (204th) Meetings will be held in West Fargo, North Dakota on July 24-26, at the DoubleTree by Hilton West Fargo Sanford Medical Center. A block of guest rooms has been reserved. Further information, as it becomes available, will be posted on our website at: <https://westernstateswater.org/events/2024-wswc-summer-204th-meetings-in-west-fargo-north-dakota/>

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.