

**MINUTES
of the
205th COUNCIL MEETING
The Oread Lawrence Hotel
Lawrence, Kansas
October 23, 2024**

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MEMBERS AND ALTERNATES PRESENT *(via zoom)*

ALASKA	Christina Carpenter Thomas Mooney-Myers
ARIZONA	<i>Trevor Baggione</i>
CALIFORNIA	Jeanine Jones <i>Joaquin Esquivel</i>
COLORADO	Jojo La <i>Lauren Ris</i> <i>Nate Pearson</i>
IDAHO	Mat Weaver John Simpson
KANSAS	Connie Owen Matt Unruh Tom Stiles Earl Lewis
MONTANA	Anna Pakenham Stevenson
NEBRASKA	Jesse Bradley Justine Lavene
NEVADA	Cathy Erskine Melissa Flatley
NEW MEXICO	<i>Tanya Trujillo</i>
NORTH DAKOTA	<i>Andrea Travnicek</i>
OKLAHOMA	Sara Gibson Julie Cunningham

OREGON

SOUTH DAKOTA

Nakaila Steen

TEXAS

Jon Niermann

UTAH

Todd Stonely
Teresa Wilhelmsen

WASHINGTON

Ria Berns
Leslie Connelly

WYOMING

Chris Brown
Jennifer Zygmunt
Jeff Cowley

GUESTS

Brian Clark, U.S. Geological Survey
Jennifer Verleger, State of South Dakota
Chad Abel, U.S. Fish and Wildlife Service
Tati Eldridge, Graduate Student - Colorado
Steve Emmen, Western Governors' Association
Ivan Gall, Oregon Water Resources Department
Christopher Estes, Chalk Board Enterprises, LLC
Hannah Singleton, Southern Nevada Water Authority
Jim Rizk, Texas Commission on Environmental Quality
Trent Blomberg, Arizona Department of Water Resources
Jason Gerlich, National Integrated Drought Information System
Kathy Alexander, Texas Commission on Environmental Quality
Mark Mayer, South Dakota of Agriculture & Natural Resources
Sharon Vasquez-Ray, National Aeronautics and Space Administration

WESTFAST

Lauren Dempsey, U.S. Air Force
Michael Eberle, U.S. Forest Service
Travis Yonts, U.S. Bureau of Reclamation
Paula Cutillo, U.S. Bureau of Land Management
Roger Gorke, U.S. Environmental Protection Agency
Heather Hoffman, Natural Resources Conservation Service

STAFF

Tony Willardson
Michelle Bushman
Elysse Campbell

WELCOME AND INTRODUCTIONS

WSWC Chair Jon Niermann welcomed everyone.

APPROVAL OF MINUTES

Jon Niermann asked if anyone had seen the minutes from the meeting held on July 26, 2024, in West Fargo, North Dakota as he had not. There was no response, and so the minutes were not approved.

COMMITTEE REPORTS

A. Water Resources Committee

Sara Gibson, who filled in as the Water Resources Committee Chair, provided an update on the meeting. A representative of Senator Moran's office was not able to make it therefore, Tony filled in and provided a brief overview of the Water Projects Navigators Act. Tony also gave an update on WaDE/WestDAAT/WestCAT. Tanya Trujillo provided an update on the New Mexico Integrated Water Financing Plan. She also mentioned a workshop that will be held on November 14 in Santa Fe, New Mexico. There was a roundtable discussion on the challenges of small and rural water systems, particularly on how to get wet water to small systems, and also from an administration and financing side. Jeanine Jones mentioned maybe pushing the Bureau of Reclamation a little bit on their Rural Water Program. If anyone has any thoughts on their program they were asked to talk with Jeanine. The Committee will continue to monitor those issues. The Committee also had a roundtable discussion on water supply as a primary purpose of U.S. Army Corps of Engineers (Corps) projects, which is an ongoing conversation on how to balance water supply with the other uses associated with Corps projects. Some federal legislation was reviewed from Michelle's wonderful legislation update list found in our briefing materials.

In regard to sunseting Positions No. 473, 474, and 475, there were a few amendments to each. The Committee voted to move these forward as amended to the Full Council for approval. Sara moved that these be approved as amended by the Full Council. A second was made, and the motion to adopt the positions as amended were approved unanimously.

B. Water Quality Committee

Tom Stiles reported on behalf of Jennifer Zygmunt. The Water Quality Committee spent quite a bit of time going through two sunseting positions as well as deliberating on a proposed position. Sunseting Position No. 471, which supports State CWA Section 401 Certification Authority, had a few revisions made to cover issues that Wyoming has experienced with their Section 401 authority. In particular, the edits concern EPA claiming Section 401 authority when it comes to national parks. The new language reflects a call for EPA to continue to engage with states in a meaningful way when it comes to federal properties and activities that trigger a 401 certification, and who has the authority under Section 401 given the fact the states have historically carried forth that responsibility. Position No. 477 regarding Abandoned Hardrock Mine Cleanup relates in part to the ongoing efforts toward Good Samaritan legislation and related policies that have been an ongoing discussion between the states and EPA. Tom offered a motion for approval on these two sunseting positions.

Jon Niermann stated that Position No. 477 warranted a conversation because Roger Gorke had raised the concern that in the resolution it asks for both legislative and administrative remedies to be developed. Roger pointed out, and actually presented on the work that EPA has been doing towards remedies, including comfort letters and administrative orders on consent and so EPA has been doing something in terms of a remedy. There may be different views in the room about the utility of those remedies, but the question is, what to do with this particular resolution? Jon proposed the Committee adopt it, as it was just moved. Then if people are so inclined, amend it while in Nebraska to acknowledge some of the work EPA has done and what progress has been made. Jon asked for any thoughts about moving forward, or if there was any discussion at all? Hearing none, Jon thanked Roger for flagging that and for presenting on EPA's work. The motion has been made and there was a second. The motion carries for both resolutions.

Tom Stiles continued with the proposed position regarding the extension of NPDES Permit terms. This item has gained momentum among the states over the past few years, but within the WSWC itself, South Dakota has championed the cause of developing a policy position. Prior to our meeting here in Kansas, the Environmental Council of the States (ECOS) passed its own resolution, which basically embraced the notion of supporting the discretionary flexibility of states to use 10-year terms for certain permits and for Congress to amend the CWA to allow for that. There was quite a bit of discussion and inquiry among the Committee as to how the WSWC position differed in language from that of ECOS. The ECOS position provided the original language, and then the subcommittee modified it. The WSWC would like to express itself in its own words, all while making sure not to miss anything relative to what ECOS has expressed in its own position. The Committee has deferred additional action on this until the Spring Nebraska meeting. The subcommittee in the meantime will meet again to hone out the differences between our language and what ECOS has to make sure that we don't conflict with them but that we are expressing it from our own unique perspective from the west.

The Committee had a riveting water quality presentation by Kansas. Michelle provided an update on some potential congressional legislation on Good Samaritan, as well as a update on the briefing to EPA's Office of Mountains, Deserts and Plains - letting them get to know our states'

efforts a little bit better, and how we can work together on the hardrock mining cleanup issues. Following that, Roger provided updates from EPA's perspective on the Good Samaritan issue, with a lot more detailed insight on things that EPA is concerned with - potential consequences within the context of allowable permitting expectations, etc., when dealing with Good Samaritan projects. Roger also talked about emerging issues with managed aquifer recharge, as well as looking at opportunities to provide tech assistance on drought and pervasively building up disaster situations and what EPA resources can be used for to try to alleviate that and provide some assistance to state governments and local utilities.

The Water Quality Committee wrapped up the meeting with deferring additional items on the agenda until the Spring meeting in Nebraska. We are looking at a groundwater workshop, webinars, WOTUS and a subcommittee that has been reinvigorated to look at post-*Sackett* WOTUS and how that implementation looks, which will culminate in us looking at sunseting Position No. 481, which deals with CWA Jurisdiction and how we want to reframe it.

C. Legal Committee

Chris Brown reported that the Legal Committee had one sunseting position, No. 476, regarding States' Water Rights and Natural Flows, primarily dealing with the Corps issues in the Missouri River Basin. There were no changes, and the Committee voted to move that on for consideration to the Full Council. Chris moved that this position be approved, there was a second and the motion to readopt the position was approved unanimously.

Next, the Committee heard a presentation from Kansas on the Rattlesnake Creek and Quivira National Wildlife Refuge. We heard from Idaho with regard to the Eastern Snake Plain Aquifer curtailment, both dealing with conjunctive surface water groundwater management, which were very interesting case studies. Chris found Idaho's experience very helpful because he's cited some of the litigation lumps that Wyoming has taken on in some of their cases. Hearing how they handled that - got it right, or got it wrong, was very interesting. Very difficult issues. Next, members learned more about the Western Water Cooperative Committee from the Corps. Hopefully we'll be able to meet soon. Chris reminded those who were appointed to that Committee that they should have received an email today, which provided additional information on how to create some sort of federal identification, and further information in order to serve on that Committee. Michelle updated us on the ongoing Indian water rights settlements, and the 2025 symposium, which may be held sometime in August 2025. There was a brief discussion with regard to the groundwater workshop, which Chris encouraged folks to take a look at the materials to see if they had any feedback with regard to the proposed agenda that the subcommittee had put together. The idea was to have a full day workshop in Nebraska to talk about some of these prickly groundwater conjunctive management issues, as well as some other groundwater issues.

D. Executive Committee

Jon reported on the Executive Committee. Tony gave a report on budget and finances, as well as a report on the activities and events of WSWC staff. There were several issues that require further conversations, including the WSWC's intentions and plans for the future, as well as our

vision around WaDE, WestDAAT and WestCAT. Some other priorities include whether it makes sense for the WSWC to consider hiring a lobbyist to help us achieve our policy objectives - especially funding in Congress. We are looking at Tony's retirement next summer and how to handle the transition to a new executive director. This is really all part of a larger topic. Jon stated that this was a moment for members to reflect on what the WSWC is, and what they wanted it to be, while being thoughtful as we deliberate about this over the next several months as we chart a path forward. There were no conclusions reached, but certainly the leadership and the Executive Committee is looking forward to having those conversations and beginning to formulate that vision for this transition coming up in the next year.

RESOLUTIONS OF APPRECIATION

Jon reviewed resolutions of appreciation for former colleagues of the WSWC, which included: Kevin Rein (CO); Jim Macy and Tom Riley (NE); Jennifer Verleger (ND); and Alan Reichman (WA). The resolutions were similar and so Jon read through one. He expressed his appreciation on behalf of the WSWC for their service.

WESTFAST REPORT

Roger Gorke reported that WestFAST's Executive Committee has expanded since the North Dakota meetings to include: Chris Carlson (USFS); Heather Hoffman (NRCS); Paula Cutillo (BLM); Mike Eberle (USFS); and Madeline (USBR) as our WestFAST Liaison. Now WestFAST has a little bit bigger group that's helping with the planning and implementation of WestFAST's work with the WSWC, and with individual states. Madeline's term as liaison is coming quickly to an end. Typically, by this time in the past a new liaison would have been identified, but unfortunately, the one that was chosen unfortunately declined and so we are in a bit of a scramble to figure out the next steps. A couple of agencies are looking at potential options of identifying a person that could be a good liaison and having them fulfill the position. If that doesn't happen by the beginning of the calendar year, members of the Executive Committee will be able to cover a lot of, or all the work that the liaison did. Roger mentioned that given Heather was a former WestFAST liaison, that it really helps to have her be part of the Committee.

Roger mentioned the work in New Mexico that Tanya had mentioned. That's been based loosely on the work that was done in Nevada on helping their hazard mitigation emergency response folks update their hazard mitigation plan. I think it's been an invaluable effort on the federal side to be able to identify the folks that are appropriate on the ground - EPA Region 6, the local USDA Rural Development and USBR folks in getting them at the table to work with each other and then work with the state. We hope to be able to do that with some other states on some other efforts moving forward.

WESTERN GOVERNORS' ASSOCIATION

Steve Emmen, Policy Advisor for the Western Governors' Association (WGA) covering the Energy and Environment portfolio thanked members who participated in the first half of this year in the work groups to renew WGA's Water Quality in the West and Water Management in the West Resolutions. Fifteen states participated and there were over 30 subject matter experts, and multiple review processes. He referred members to WGA's website (westgov.org) for a full list of resolutions, and other information.

For those who are not familiar with WGA, our organization represents 22 of the western governors in the United States and are extremely bipartisan (11 Republicans, 10 Democrats and 1 Independent). We are always looking for strong partners in advocating in Washington, DC on behalf of our governors. Steve shared a statement from WGA's Policy Director about the WSWC. He said the Western States Water Council has been the best partner for advocacy in the West, but tell them the foresters are close second, so they don't get complacent.

Steve shared some of the current issues WGA has been engaged in: (1) the Water Data Improvement Act, which has to do with USGS Federal Priority Streamgages program, as well as soil moisture programs; (2) Good Samaritan legislation; (3) tracking the NDAA, with WGA very supportive of those bills; (4) the Weather Act Reauthorization Act. WGA has been very supportive of the S2S pilot program, which they are actually hearing that there might be a research title that includes S2S in some supplement spending legislation that might come up in response to the hurricanes that have recently happened along with some other measures that are in the Weather Act. Landsat Next is another one. We've been doing a lot of work towards making sure that they get a satellite.

Steve discussed WGA's resolutions, mentioning first that the foundation for all the water quality and water management resolutions is protecting states authority to allocate water throughout the west. Steve thanked the WSWC for being such a wonderful partner because the discussions at your meetings about the best path forward makes my life a lot easier when we need to add new language to our positions. WGA aligned their policy about the funding levels in the SRF with that of the letter that was sent by CEFA, WSWC, and ECOS to Congress. However, our letter and policy was threaded a little bit differently because the governors aren't necessarily opposed to earmarks, but they do want to make sure that the SRF money is getting to the states at the levels that they would prefer. For the USDA programs, we made sure to get an entire statement in there about voluntary programs that support anything in rural communities ranging from water use efficiency, water management, flood prevention, water quality and ecosystem restoration. If anyone is looking at additional programs under that umbrella, please reach out. WGA could potentially help out if it's a funding issue in Congress, or if it's an administration issue. The WGA is a resource for that. We generally try to keep our language in these resolutions broad so it gives staff the ability to adjust and advocate on behalf of governors no matter what comes up. We recognized for water quality managers that cyber security is becoming a much bigger issue. We understand that EPA has been coming out with some guidelines or rules around cybersecurity. We made a statement asking for flexibility for each state to address this challenge in the best way possible for themselves.

Another WSWC contribution to our resolutions was the state and tribal coordination, understanding that there's a lot of work going on around reserved treaty rights. We recently adopted some language from the WSWC position, making sure that states aren't put in an awkward position of becoming a judge on treaties and trying to interpret them. There was little change on our emerging contaminants, but it kind of opened it up for funding research, instead of before we acknowledge that PFAS and other contaminants were emerging. PFAS has come a long way since we last wrote our resolution three years ago.

Our infrastructure permitting resolution that the governors passed a year and a half ago covers a lot of different permitting topics. One area of emphasis is the conversation about permitting reform in the energy sector that needs to expand. In the west, we also have permitting issues around broadband, land management, water infrastructure and resources. If there's permitting, if there's licensing, we need to have a conversation about how we can improve those processes.

I'd like to mention that as you guys move through your day-to-day work, please remember that WGA is a resource. We work closely with the WSWC, and we have a Staff Advisory Council that directs us on what to do. We are here to help the governors serve their constituents.

Michelle Bushman: Could you talk about Governor Lujan Grisham's BRAND West Initiative?

Steve: The 2025 WGA Chair initiative of New Mexico Governor Michelle Lujan Grisham, Building Resilient and Affordable New Developments in the West (BRAND West), will focus on expanding access to housing in western states. The initiative examines strategies to address housing availability and affordability and promote smart and sustainable development in communities throughout the West. There is a public survey on our website to provide feedback. This survey is intended to assist WGA in executing the initiative by identifying: (1) the current state of the housing market in the West; (2) priority issues for gubernatorial leadership to consider in supporting increased access to housing; (3) best practices for planning and developing housing; (4) federal policy issues for potential WGA advocacy; and (5) individuals or organizations interested in participating in the initiative.

Michelle: WGA is asking for experts to provide information and so if you have any statutes or regulations or programs that are in your state that already address what to do to make it easier to build houses and actually have the water there -will you please fill out that survey and let them know about that so that they can appropriately elevate the intersection of water resources with meeting housing needs. A copy of the survey is in our briefing book under Tab S so you can take a look at that.

FUTURE COUNCIL MEETINGS

Jon noted the next WSWC meetings will be held in the Spring of 2025 in Nebraska. The Summer 2025 meetings will be held in Utah and include a celebration of the WSWC's 60th Anniversary. The Fall meetings will be held in California.

STATE REPORTS

Each member who provided their state report expressed their appreciation to the State of Kansas and its members for hosting such a successful meeting.

Colorado: Jojo provided updates on the State's hydrology, and their post-*Sackett* dredge and fill program. She said Colorado is the first state to address this in the United States, so is kind of leading the charge on this effort.

Lauren Ris mentioned the potential impact of a ballot initiative to remove the Tabor cap on tax revenue, which in Colorado caps the amount of tax revenue that governments in Colorado can collect. She also mentioned that they are starting to see applications come forward for the Bucket 2 Environmental Drought Mitigation (B2E) funding out of the USBR for the Colorado River water conservation, and have been asked to provide letters of support from our Governor's office, the Department of Natural Resources, and the Colorado Water Conservation Board.

Utah: Todd Stonely discussed the implementation of many new water programs enacted by the legislature in previous years, including the Great Salt Lake Basin Integrated Plan, Unified Water Infrastructure Plan and the State Water Plan. He talked about the State's current drought conditions.

Teresa Wilhelmsen mentioned the public trust lawsuit on the Great Salt Lake that was filed in Utah. The court heard oral arguments a couple weeks ago. There's been many interveners. The judge asked for additional briefings from the parties and so they're in the process of preparing those. It looks like it may be early next year before there is a district court opinion, but it's likely it will be appealed to the Supreme Court. The Division of Water Rights has been really focusing this year on funding for measurement telemetry and also data management, in coordination with Utah State University.

Idaho: Mat Weaver highlighted a recent decision issued by Judge Nye in the Idaho District Federal Court regarding forfeiture of stock water rights, which has been a longstanding issue. Mat next talked about Quagga Mussels being discovered in the Snake River and the Columbia River Basin system in 2023 and 2024 and the States aggressive treatment response to that.

Kansas: Earl Lewis thanked everyone for coming and making this a really good meeting. He also expressed his appreciation to the staff that worked hard on making the event a success.

Washington: Ria Burns provided an update on the Nooksack Water Rights Adjudication, which was filed in May. The reason it's notable is because it's the largest adjudication in the State's history. It involves potentially 32,000 litigants, surface and groundwater, and all water users, including rural and domestic water users. We are approaching it as an outreach and educational opportunity to ensure that we're bringing everybody in, no matter who they are. They are moving forward with the pre-adjudication work for the upper Columbia watersheds and the challenges they are having with federal partners in regard to sovereign immunity.

Leslie Connelly provided an update on human health criteria. To recap, we've had a number of years of back and forth with EPA, with them approving it, and then taking back their approval. We are now at a point where we are moving forward with a state rule to adopt EPA's human health criteria. That was at the request of a handful of tribes in our State that asked us to align with the federal criteria. The only main issue for us was the level of PCB for the criteria. For PCB being so small we'll just need to do some water quality variances.

South Dakota: Nakaila Steen reported that the State of South Dakota has been dry as well and any precipitation is welcomed. Since 1965, they've had an internal water rights program management decision to limit appropriations from the James River to 300 CFS. Recently, a staff member analyzed the stream flow data to determine if this 300 CFS was still appropriate. The study determined that there has been a 30-year increase in stream flows in the James River during both low and normal flow years. She was able to get the 300 CFS limit removed. For additional protections for existing uses there are also USGS streamgage bypass qualifications along stretches of the river that are placed on any new applications. Lastly, there's been a lot of growth and expansion happening to our regional water systems across the state. Several systems in eastern South Dakota currently pipe Missouri River water over, but as of 2022, we have folks in the western parts of the state trying to do the same as well.

Nebraska: Jesse Bradley: Topics that we're addressing right now are kind of between the nexus of water quantity and water quality. The Department of Natural Resources has been tasked with starting to integrate more of our water quality management into our water quantity management. Over the last couple of years, new legislative initiatives have been given to our agency to focus on healthy soils, kind of regenerative agriculture practices in trying to get demonstration opportunities out in the field with producers to get better uptake on cover crops, no-till farming and other practices aimed at reducing nitrogen application. During this last session, we saw a new initiative aimed at providing incentives to producers for reducing nitrogen application by the lesser of 40 pounds, or 15% across their baseline levels of use. The department just launched that program last week, which we're doing in partnership with our Natural Resource Districts (NRDs). The department is also working pretty closely with our Department of Energy and Environment. Under their priority climate action planning efforts, they were recently awarded \$307 million, and half of that they plan to use on agricultural practices aimed at reducing greenhouse gas emissions. We'll be working closely with them on the regenerative ag practices, which I think they're targeting about \$20 million into that area, and then \$70 million into precision ag and carbon intensity registration - kind of creating score cards for all of our producers across the state so we can start to look at farm intensity, in terms of both water quantity and quality. Those are significant new initiatives going on in Nebraska. There are still some pretty big infrastructure efforts we're

pursuing. We were given a billion dollars for a variety of projects we'll hopefully be able to visit during our meetings in Lincoln.

California: Jeanine Jones reported on three items. First, in a couple of weeks, the state will have a \$10 billion climate bond initiative on their state ballot, and a nice chunk of that is for water. Second, California is celebrating the 10-year anniversary of its Sustainable Groundwater Management Act (SGMA) this month. 100 years after the state passed its comprehensive surface water rights system, they established a state-mandated but locally-driven groundwater management system, which entailed the creation of more than 250 local agencies known as groundwater sustainability agencies. So far, only a relatively small percentage of them are suing each other. This will be interesting to see how this develops. The agencies have an initial 20-year period to come in compliance with what they call avoiding the "six sins" listed in the legislation - overdraft, subsidence, etc. The last item, California just completed a 3,400 acres title habitat restoration program, primarily for delta smelt in the San Francisco Bay Delta system. It has about \$120 million price tag. It also provides 40,000 acre feet of flood storage. It is a p3 contracting process, and the primary benefit for the private partner is the creation of mitigation credits that are fungible.

Oklahoma: Julie Cunningham talked about updating their 2025 State Water Plan. Phase one of a new flood plan was just finalized, which was a directive from the legislature. We're really trying to integrate drought planning and flood planning. We are also integrating infrastructure - not just sewer water, but flood, storm, lake capacity, sedimentation and nutrient enrichment and all those water quality issues that go into aging infrastructure. We have a big initiative on addressing the reduced capacity of our reservoirs. We received some money for lake evaluation, bathymetric mapping and yield studies and so we're working in that direction. We also got some funding for our new drought and flood task force, which really is just creating a more intentional coordination between state, federal and local agencies, with recommendations to the legislature each year. We really get to tell them what the status is and what the needs are in drought and flood planning and feel like that opens up all of water planning. In regard to water rights, we've heard from a lot of legislators, had a lot of public meetings, had an interim study on water rights, regarding worries about declining aquifer levels. Now they're wanting the Oklahoma Water Resources Board to be out there enforcing the water rights. They want to give us money. They want marijuana, dairy, and poultry out of the state and so we're trying to deal with that. They've passed legislation and provided some funding last year for just simple enforcement of water rights. So now we have an ability to find and those types of things. On our infrastructure financing programs, there is interest beyond ARPA, which was about \$600 million last year, there was a proposal for \$250 million more. It turned into a one-time thing then it went away because they wanted to do a tax cut. But we're hoping there's still interest, and there's certainly a demand, and we've been able to prove that to our legislature in actual projects, what the needs are. We've identified \$28 billion through the water planning process, and we've set up a mapping system where they can go in and look at the actual projects, actual needs in their area. So if you're interested in that, talk to me.

Texas: Jon Niermann talked about the challenge of produced waters, water quality, and induced seismicity. For every barrel of oil you produce, you'll produce multiple barrels of water, which is contaminated. Typically, the water is disposed of by injecting it back into the ground. What we're

experiencing in Texas, and Oklahoma and New Mexico are having these issues too, is induced seismicity. That is a limiting factor. The contaminated water needs to go somewhere if we continue to produce oil and gas, and the answer is that it needs to go to surface waters. There's limited experience in discharging produced water to surface water and I think there's just a handful of permits across the nation. There's one in Wyoming, and so our agency is currently sitting on several applications to do exactly this and we're trying to be thoughtful about it. We're trying to definitely stay in front of any problems, including permit reopeners, as we learn more about it, but that process is rolling forward. In the last few months our agency has been grappling with what to do with groundwater derived return flows. In Texas, groundwater is private property. If you produce it from your land, you own it. Historically, return flows have just gone into the water course, and downstream users have availed themselves of that water. As water grows scarcer, owners of the water are trying to hang on to it. We had a utility ask our agency for permission to use the state bed and banks to transfer their groundwater derived return flows downstream and pull it out and reuse it. Our agency, on the facts of the application and the law as we understood it, decided that it would be a fine thing to do over the strenuous protests of a water rights holder downstream. That issue is now being reviewed on appeal in civil court.

Nevada: Melissa Flatley stated that adjudications are the thorn in their side right now. We have this very convoluted situation where a rancher (Baker Ranch) has sued the National Park Service (NPS) seeking access to the waterway. They asked for an easement onto the federal land, and they sued them in state court. That's the first of three lawsuits that's going to trial. The second, the rancher filed in state court to enforce a 1920 decree (that the federal government was not a party to) against the NPS. The state court remanded it to federal court (3:21-cv-00150). The federal district court remanded it back to state court, and that decision was appealed to the Ninth Circuit. In the meantime, the state court held the federal government in contempt, and that decision is now being appealed to the state Supreme Court. Meanwhile, the Ninth Circuit reversed and remanded the case back to the district court and asked them to consider sovereign immunity. Once the district court did that, they said they dismissed the case, saying that the federal government hadn't waived that immunity, which is now on appeal again at the Ninth Circuit. The rancher is looking for an amicus. The issue, how they've framed it, is that they weren't briefing the court on impacts of finding the federal government not subject to the jurisdiction of the decree court for decrees that were issued prior to the McCarran Amendment. We kind of see it in three different scenarios. If you'd like to talk more about it, please reach out and I can set up a time that we can talk with our AGs office and get everybody together.

Cathy Erskine provided an update on environmental protection and water quality on behalf of Jennifer Carr, and then one for water resources. Jennifer wanted to report that Nevada's first advanced wastewater treatment plant for indirect potable uses is in its final design and headed for bond closing in February 2025. The parties are also interested in developing regulations for direct potable reuse. An expert panel is forming, so Nevada may be initiating a rule making process on that as soon as Summer 2025, which is just after our legislative session. That's primarily what I'm working on because I do policy work for the department. We have a number of legislative proposals that we carry as an agency. One is from the Division of Environmental Protection that has a water quality nexus where this proposal is going to seek to provide clear guidance to the division and delegate certain aspects of the Nevada's public water system law to local district

boards of health when established by the State Board of Health. So originally, in its implementation, the public water system law fell under the umbrella of the State Board of Health. However, in 2025, the responsibility was transferred to the State Environmental Commission, which is within the division, causing a disconnect between new districts of health and how they're established without adequate consideration for the breadth of their statutory responsibilities. For the Division of Water Resources, we will be proposing three pieces of legislation, with two of them more of cleanup. One is going to be more of a robust effort. We've been working with stakeholders on this already. The current statutory tools aren't really working. This proposal is kind of in three components, which is clarifying the process for forfeiture for search certificated groundwater rights. Another component would allow for changes of existing groundwater rights to be limited by the amount of water that's actually placed in beneficial use within the past five years. The last component would specify that water rights certificates may be issued based on demonstrated ability to use the full amount of permitted water right rather than the actual measured use. That's something Melissa mentioned earlier. We see these as kind of working together, and so we're hopeful that the bill can pass with all these three components. Hopefully we'll see more teeth in the law of what we currently have that's just not working.

Alaska: Christina Carpenter provided an update on Alaska's human health criteria regulations. We have yet to go out for public comment on that due to unexpected delays. I hope to have a more meaningful update for the group when we convene in the Spring. One thing that we have asked the team to evaluate specific to mercury is if there is a way to set a limit that doesn't require fish tissue testing. If other states have started to look at that and you have some helpful hints for Alaska, I would appreciate it if you reached out to me.

Tom Barrett: The other issue that Alaska would like to address specifically, especially given that we didn't have time to address it today in the Water Quality Committee, is the implementation of *Sackett*. It's Alaska's concern that EPA and the Corps are not providing sufficient guidance on what the implementation actually looks like and given that lack of clarity that is expanding that CWA jurisdiction beyond the lines that *Sackett* actually drew. There's a variety of different ecosystems in Alaska where this comes up. I think the most dramatic is our concern that the Corps and EPA may try to exercise CWA jurisdiction across the entirety of northern Alaska, especially when WGA is talking about meeting housing needs. This also has huge implications for our South-Central population hubs and our temperate rainforest in southeast. Again, it's of particular importance to Alaska that as we move forward, we get better guidance and guidance that complies with the outlines set by *Sackett* as we look at where the CWA actually applies.

Arizona: Trent Blomberg (DWR) - from the water resource side, we've got a lot going on! Touching on some of the highlights, we have a couple tribal water rights settlements that we've reached in the state. Northeastern Arizona Indian water rights settlement with the Navajo Nation, Hopi Tribe and the San Juan Southern Paiute Tribe, which is one of the largest outstanding tribal water right claims in the state. We're really happy to reach a settlement on that. Then the Yavapai and the Apache Nation water rights settlement agreement both reached this summer. They've both been introduced, and hopefully we'll see some conclusion on that with congressional approval this year. If not, we'll seek it again next year. Just today, our department initiated procedures to

consider designating an active management area, which is our most stringent tool for water conservation, in the Wilcox Groundwater Basin, which is a heavy agricultural area in southeastern Arizona that has seen significant groundwater aquifer declines. So by the end of the year, the department will determine if there will be an active management area in that region of the state. And then, of course, we're continuing the Colorado River post-2026 discussions with the other basin states and the federal government.

Trevor Baggione - I've heard a couple of discussions from the other states about indirect and even direct potable reuse. I would like to mention that Arizona's rule, for what we call advanced water purification, is a fancy term for direct potable reuse. We'll open up our notice of proposed rulemaking for public comment in early November. For other states that are looking at direct potable reuse and would like to see what Arizona's approach to it has been, please check that out. We're happy to meet with anybody to discuss it further.

Wyoming: Jennifer Zygmunt - just a real quick based on what you mentioned, which is the produced water discharge. EPA is undertaking reevaluation of Subpart E ? limit guidelines that allow discharge of produced water west of the 98th meridian. They are going to be doing a tour of some oil and gas facilities here in Wyoming the second week in November. Recognizing that the formations that Wyoming's working with may be different than what you're dealing with in Texas and New Mexico, I'm happy to share information about that field trip and any notes about where they're heading with this Subpart E study with other states that may be interested. Something we'll be watching closely.

Jeff Cowley thanked the WSWC for putting the nice article in the last newsletter about Pat Tyrrell's passing. Pat was the state engineer for almost 19 years, which is far longer than any other state engineer in state history. If you knew him, that really was a testament to his ability to talk to anyone, work with anyone on any topic, and get things done. We were sad to have seen him go. He was a good boss, a good mentor, a good friend, and I worked for him for about 16 years. After he retired, I worked with him for a couple more years on Colorado River issues and had him help get me up to speed on those. He survived four governors, which in politics that's just unheard of in this day and age. Pat will be missed and just sad to see him go.

Jon thanked Jeff for his recollections of Pat and stated that he was a real leader with the WSWC too.

New Mexico: Tanya Trujillo talked about the governor's appointment of Liz Anderson, New Mexico's first female state engineer. We're looking forward to helping her continue to get her feet on the ground and get through the confirmation process with our Senate. In addition, the state has been dealing with droughts and floods similar to what other states are experiencing. Earlier this week or over the weekend, there was extreme flooding in a community that resulted in a couple of deaths and left hundreds of people stranded that needed rescuing. We are also dealing with dredging in some of our stream areas as a result of flooding, in particular, as a result of the post-fire impacts in some of our areas. These are just ongoing challenges which are similar to what other states are experiencing as well. There are six federal bills pending for authorization of Indian water rights settlements in New Mexico and are hoping that they can get over the finish line in this

Congress. If not, we'll keep coordinating and keep pushing to get those done. We are also working on our regional water planning efforts, which is a significant push for us right now.

SUNSETTING POSTIONS FOR 2024 FALL MEETINGS

Tab XYZ of the briefing materials contains sunseting positions (#478 -#481) for the 2025 Spring meetings. Please review them and get any proposed changes to staff.

OTHER MATTERS

The meeting was adjourned.