

**MINUTES
of the
LEGAL COMMITTEE
The Oread Lawrence Hotel
Lawrence, Kansas
October 23, 2024**

Table of Contents

Welcome and Introductions	4
Approval of Minutes	4
Sunsetting Position.....	4
Rattlesnake Creek and Quivira National Wildlife Refuge.....	4
Eastern Snake Plain Aquifer Curtailment	6
Western Water Cooperative Committee	10
Indian Water Rights Settlements and 2025 Symposium.....	12
Groundwater Workshop Discussion	13
Staff Updates.....	13
Sunsetting Position for Spring 2025 Meetings	14
Other Matters	14

**MINUTES
of the
LEGAL COMMITTEE
The Oread Lawrence Hotel
Lawrence, Kansas
October 23, 2024**

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
Virginia Rynk, U.S. Army Corps of Engineers
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
Kathy Alexander, Texas Commission on Environmental Quality
Mark Mayer, South Dakota of Agriculture & Natural Resources
Lauren Leuck, Office of the Assistant Secretary of the Army for Civil Works

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
Ryan James

WELCOME

Chris Brown, Committee Chair, called the meeting to order.

APPROVAL OF MINUTES

Chris noted a change to the minutes from the meetings held on July 25, 2024, in West Fargo, North Dakota, correcting the error regarding Arizona's lower basin apportionment. Aside from that, he did not have any other changes and entertained a motion to approve the minutes. There was a motion, a second and the minutes were unanimously approved.

SUNSETTING POSITIONS

The Legal Committee reviewed one sunseting position (#476) regarding states' water rights and natural flows. There have been no proposed changes since it was last adopted. Given no further discussion from the Committee, Chris entertained a motion to move it on to the Full Council for consideration. There was a motion, a second and the motion was approved.

RATTLESNAKE CREEK AND QUIVIRA NATIONAL WILDLIFE REFUGE

Earl Lewis, Kansas Department of Agriculture, provided an update on water rights for the Quivira National Wildlife Refuge. This has been one of those long-standing issues; both David Barfield and David Pope (former Kansas State Engineers), who are here for our meetings, dealt with this during their terms.

The Quivira National Wildlife Refuge is in south central Kansas - 45 miles or so northwest of Wichita. It's at the bottom end of a primarily agricultural region. If you were in the Water Quality Committee, you heard Tom talk about how we are transitioning from groundwater to surface water there. It's in an area of the State where we've got a lot of interaction between groundwater and surface water resources.

The U.S. Fish and Wildlife Service (USFWS) owns a 1957 surface water right from Rattlesnake Creek to serve the Quivira National Wildlife Refuge. The streamflow in Rattlesnake Creek is being depleted by upstream junior groundwater pumping. The USFWS started expressing

concerns in the 1980s, and the Chief Engineer determined in 2016 that the senior right was impaired. On February 10, 2023, USFWS filed a request to the Chief Engineer to secure water for their senior water right.

Earl showed a map (see power point slide 3) of the Rattlesnake Creek Basin showing where the groundwater and surface water rights are, as well as an outline of the National Wildlife Refuge. The refuge itself is about 22,000 acres in surface area and has an authorized quantity of 14,632 acre feet in any given year, and can divert up to 300 CFS, which rarely happens. Kansas doesn't have a fish and wildlife beneficial use under the Water Appropriation Act, so from our standpoint its beneficial use of water under Kansas's law is classified as recreation.

Groundwater and surface water are managed conjunctively under the Kansas Water Appropriation Act, which was passed in 1945. The date of priority of every water right of every kind, and not the purpose of use, determines the right to divert and use water at any time when the supply is not sufficient to satisfy all water rights. As between persons with appropriation rights, the first in time is the first in right.

We've done a lot of groundwater modeling in this area, Zone A. In fact, the groundwater management district hired a modeling expert to look at whether the groundwater use is impairing the surface water. There were 60 water right filings that existed at the time Quivira obtained its water right. Earl showed an animation of water right development through time - as of 2016, there were 1,436 (See slides 7 and 8). Data for the modeling comes from two USGS gages with long records, and some measurements on the Refuge. The Zenith Gage is one or two miles upstream from the boundary of the Refuge (See slide 9). Slide 10 shows a video of the Zenith Gage flows from 1974 through 1983. Very rarely do we ever get to 1,000 cfs. A lot of dry conditions. We used to be at an average flow of 60-70 cfs, but now we are about 10 cfs on average. That's the amount of water we've lost coming into the refuge since the 1970s. If we looked at the Macksville gage, which is further upstream and has a longer record, the decrease is even more significant. We're seeing the impact of those groundwater depletions at the gage itself.

The Rattlesnake Creek Partnership was formed in 1994 between the USFWS, KDA-DWR, Groundwater Management District No. 5 (GMD 5), and the Water Protection Association of Central Kansas to find a way to address the USFWS concerns. On April 9, 1996, the Chief Engineer certified the Quivira water right for 14,632 acre feet. In 2000, the Partnership finalized a 12-year Management Plan to address the issue. The annual goal of 27,346 acre feet of savings and relied heavily on voluntary activities. In 2012, an evaluation of the success of the Partnership Plan showed savings of 2,804 acre feet, just over 10% of the goal set in 2000. April 8, 2013, the USFWS requested KDA-DWR investigate senior right impairment. In 2015, Kansas Legislature modified the Kansas Water Appropriation Act to allow augmentation in the Rattlesnake Basin. July 15, 2016, the Chief Engineer finalized an impairment report.

In 2017 and 2018, the USFWS made further requests to secure water. From late 2017 through July 30, 2019, the Chief Engineer informed GMD 5 that the proposed LEMA did not meet the statutory requirements, nor did it solve the underlying impairment issue. In 2020, the USFWS and GMD enter into a MOU. In 2021 the GMD received an NRCS Watershed Grant (a little over

\$1 million total). On February 10, 2023, USFWS again filed a request to secure water. Then on June 23, 2023, the Audubon of Kansas sued USFWS and KS Chief Engineer (*Audubon v. Lewis*). On October 10, 2023, the USFWS sent a letter requesting a workgroup in lieu of administration in 2024. In October 2023, the Audubon lawsuit was withdrawn. The workgroup convened in January 2024, and a letter was sent to junior water right holders of potential 2025 water right administration if adequate progress isn't made.

In the middle of this, the Governor and Legislature dedicated \$7 million to this area. We've tagged about \$4 million of that for the purchase and lease of water rights; \$3 million for pilot augmentation from existing wells (approximately 500 acre-feet per year) to try and speed up the NRCS or the local groundwater major districts efforts on augmentation. This is kind of a one-year reprieve to implement the augmentation efforts. We are going to start to administer those water rights starting next year.

That's where we are today. We will continue to work forward.

Questions/Comments

Chris: The locals raising funds to lease these water rights - is that going to be a yearly effort with their expectation that they're going to pay \$1,000 per pivot into the future?

Earl: Yes. Whether everybody understands that or not, I think that's going to be the question, but that's the deal.

EASTERN SNAKE PLAIN AQUIFER CURTAILMENT

Mat Weaver, Idaho Department of Water Resources (IDWR) Director, discussed the conjunctive management efforts and the resulting curtailment of groundwater users that occurred on the Eastern Snake Plain this year. He provided some background regarding the legal framework in Idaho, which included the Idaho Groundwater Act of 1951, and the conjunctive management rules that were established in 1996, which was in response to some delivery calls that were starting to come to light on the Eastern Snake Plain.

An entity called the Surface Water Coalition filed a delivery call against junior groundwater users on the Eastern Snake Plain. The members of the Surface Water Coalition irrigate roughly 550,000 acres. Their call would impact roughly a million acres of land irrigated by groundwater. The history of the delivery call proceeding includes an era of intense litigation from 2005 to 2015. A lot of legal challenges went to the district court and were appealed to the Idaho Supreme Court. The remands from the courts directed us to find a better way to handle this process and modify the methodology. During that time, our methodology order was revised five times, and at least three of those were remanded back from the courts.

One of the solutions to the litigation was mitigation plans to allow the groundwater users who participated to continue to use their water supplies. Unfortunately, 2015 was an extreme

drought year. The determination of injury to senior water rights was large, and we were anticipating it to get much larger. Water users were not going to be able to adhere to their mitigation plan to provide protection that year, so we were facing large scale curtailment. In 2015, there was a settlement agreement which was adopted as the new mitigation plan in 2016, which has been implemented since then. The second era of this delivery call proceeding was relatively calm. In 2017 and 2018, we had really good water years, so the groundwater users were able to meet all their obligations. Then 2021 was an extreme drought year in southern Idaho. The Idaho Groundwater Association was not able to meet all of their obligations under their mitigation plan, which we weren't aware of until 2022 because data collection is difficult. We facilitated a conversation to cure that breach. Then they breached again in 2022. At that point, we were rapidly moving out of the calm era back into another era of litigation.

In 2023, IDWR issued a revision to the methodology order, which had one significant change to it - we deployed our groundwater model, which determines curtailment in such a way that if we curtailed groundwater users, the injury amount had to be in the Snake River that year. If we calculated in April, we would have to curtail enough land so that such water was in the river by September 30. In the past, we had looked at that analysis through a steady state deployment of our groundwater model and it had always resulted in much more junior priority date curtailments. There were legal challenges to the process that IDWR deployed in making those changes, and to the breaches that were going on in 2021 and 2022. There was just a lot of litigation and legal uncertainty in 2023 that changed the methodology and some of the other actions of the department.

We started 2024 with all of that legal uncertainty regarding groundwater users and their mitigation plans and obligations. Ten new mitigation plans were filed with the department in January and February, and all were protested. What was unique this time was that the individual groundwater districts were protesting each other's mitigation plans. The groundwater users have been unable to agree how to apportion their obligations and responsibilities under these mitigation plans.

By April 2024 it was time to apply the new methodology that had been adopted in the previous years. There was a very large injury determination at that point and a very significant priority curtailment date of 1954 which would affect hundreds of thousands of acres on the Eastern Snake Plain. The groundwater districts made roughly 30 legal filings and arguments in response to that April determination order. The groundwater districts knew clearly what IDWR's position and expectations were, and in their filings, they made it clear that they weren't going to comply with them. On May 30, IDWR ordered the curtailment. On May 31, the district court ruled on those administrative appeals and affirmed IDWR's decisions on 16 of the 17 issues. They affirmed our changes to the methodology, on the reasonableness of the surface water users calls, the diversions and efficiencies and that the delivery call was not futile, and they affirmed IDWR on the due process. We issued notice to groundwater users that they were going to be curtailed because they were not complying with their approved mitigation plans. That notice went out to over 5,000 individual junior water right holders. We allowed two weeks for that notice to get out to folks so it wouldn't be a complete surprise. On June 10-13, the department was in the field carrying out curtailments. We visited thousands of wellheads, dealt with thousands of users.

The first phase was merely an inspection to confirm whether there was voluntary compliance with the curtailment. If they weren't in compliance with the curtailment, we hung a red tag, which just meant that the well was subject to curtailment and water should not be diverted moving forward. Many people thought that the department shut off wells, which we did not. In those instances where we were barred from accessing the site, or there were hostile or threatening activity, we just backed away and said, we'll come back to it later. There was huge political backlash to that phase from legislators in that part of the state, engaging in what I would refer to as a public disinformation campaign by the groundwater users. That resulted in our lieutenant governor bringing parties together to resolve it. He was able to get a stipulated settlement for this irrigation season, which expired on October 1, but was renewed until November 1. As I understand it, the groundwater users agreed to conform to their 2016 aquifer management plan for one more year. All of the litigation was agreed to by the parties to be stayed until November 1, and then proceed if a new settlement agreement is moving forward. There have been some intense settlement discussions over the last two months, which I've not participated in. However, I may ultimately be presiding over contested case matters resulting from those discussions. I understand that we're close. It will have many components that address some of the historic concerns of groundwater and the surface water users.

Two large components of that previous mitigation plan were unsatisfactory. From the surface water user side, they didn't like that the groundwater users only measured their diversions at the end of the irrigation season, and then we didn't know if they'd complied with their plan until the following year. They were saying, if we revise a plan, we have to have in-season measurement of groundwater diversions. The other piece is that the groundwater users really felt that it was unfair that they were not able to average their conservation activities over a longer period of time. I think the language of the agreement said, each and every year, you will reduce by 240,000 acre-feet. I think they had a fair argument that they should be able to do an average reduction over time so that we can take advantage of good water supply years and do more. Then in the really dry years, when it's hard for us to meet reductions, there's some forgiveness based on that averaging. I'm led to believe that both of those issues are being addressed in the current mitigation plan that's being discussed.

I was genuinely surprised by the outcry and the backlash that came with this curtailment. Maybe that's very naive of me in hindsight, being brand new to the job. But certainly, the leadership in those groundwater districts and the attorneys representing those groundwater districts had a very good understanding of what was going on, but the average water user didn't. If I find myself in this position again, lesson learned! Communication is going to be a real point of emphasis. There were a lot of conspiracy theories that came out of this that my staff had to confront and deal with. In addition to having an intense focus on carrying out this water administration, you're having to deal with these ancillary issues. I'm hopeful that we'll get a settlement agreement in place that will give us some more peace moving forward. Then we'll have to evaluate if other activities or practices are needed to stabilize that aquifer.

Questions/Comments

Chris: When you went out to enforce the curtailment order, you said you hung red tags, but didn't turn off the wells. Why not?

Mat: For a couple of reasons. We wanted to be seen in the field so people could get acclimated to the presence of the department carrying out the administration of these wells without actually turning off a well - to prevent escalating a confrontation that would come from that. Secondly, it's very rare that you encounter one well, one pivot, or one junior groundwater right. Often these are very complicated and messily plumbed systems, and so just being able to show up and understand what needs to be turned off is not very feasible on most of these sites. It's really effective only when you have the farmer or the irrigator there to help with that process.

Chris: For 5000 wells, how many people does it take from your staff to go out and get that done?

Mat: Somewhere between 35-40 people were necessary. Over that short period of time, we were able to visit over 50% of the well sites and make an evaluation.

Chris: It sounds like a massive undertaking.

Thomas Mooney Myers: A couple of questions. In terms of managing communication with different water holders and managing that disinformation, did you have disinformation coming from regional companies, like canal companies or individuals? How did you get your message out? Does it work to go to regional groups, or are you really having to go to individuals? Sorry, I know that's a broad question.

Mat: In dealing with the disinformation, we had very prominent billionaires in Idaho that got involved in this issue, and they were responsible for a lot of disinformation. They felt very sympathetic to the groundwater users, and then again, just that kind of conspiratorialist mentality out there with all manner of social media that were just way out there on this issue.

Thomas: Individual landowners and those regional companies, or those regional like canal companies or groundwater districts?

Mat: One of the challenges was that we were hearing a lot from the groundwater users, but we weren't hearing very much from the senior surface water users. They were initially really allowing the state to carry the message.

Connie Owen: It might be a little premature, and you might not even want to think about it, but what are you expecting to happen after this peace period is in a year from now?

Mat: I guess that depends on whether we're (the collective State of Idaho) successful in getting another regional mitigation plan in place. If that does occur, then many of the irrigators will be protected under that mitigation plan. There was a Senate bill enacted during this last legislative session that changed the area of common groundwater supply. That's the administrative boundary

of this proceeding, with the curtailment call bringing in more junior groundwater users that addressed a lot of the unfairness that the groundwater user community had, and also IDWR to bring tributary basins in. I think bringing in more groundwater users to participate in this, which perhaps, in theory, will make it more likely we'll stabilize the aquifer in May and, in time, reduce the individual obligations of groundwater users as we bring all of the parties in. We've known that tributary basins and people outside of the administrative boundary are depleting the Snake River, but they have not gotten to participate in this proceeding to date.

John Simpson: Mat's department did a great job. It was a very difficult political issue.

WESTERN WATER COOPERATIVE COMMITTEE

Lauren Leuck, Assistant for Water Resources Legislation and Policy, Office of the Assistant Secretary of the Army for Civil Works

The Western Water Cooperative Committee (Committee) was authorized in the Water Resources Development Act of 2022, but it has taken some time to get the Committee up due to the legal requirements under the Federal Advisory Committee Act, as well as a number of transitions in our office. Virginia Rink and Sean are the designated federal officers from this Committee, so we're fortunate to have them to help move this effort forward.

As of last week, all Committee members have been nominated. The next step is for the nominated members to complete some additional paperwork requirements. We will be hounding folks to get those things accomplished as quickly as possible so that we can continue the process internally to get the Committee approved and stood up! A big, huge thank you to Michelle Bushman for helping track down those folks and get the points of contact to get folks nominated. I recognize that there are a few folks in the room who are part of the Committee, but our message today is to just look for that email from Virginia and start completing those requirements. Please let us know if you have any questions.

Virginia explained the email she sent out to Committee members this morning, that's pretty self-explanatory. Committee members will need to create an account for the financial disclosure form that they're going to have to submit, as well as a copy of their resume. She asked for this information by November 22, recognizing that everyone is busy.

In the meantime, Lauren and Virginia encouraged Committee members to reach out if they had any questions, or if they have any issues they would like the Committee to address, so the agenda can be shaped based on member input.

Questions/Comments

Chris: Do you have an anticipation of when the Committee is going to start meeting?

Lauren: It will depend on how quickly we can get the information and get it through the Army internal approval process. We'll try to do that as quickly as possible, but we're hoping by early next year.

Chris: Why do you need resumes?

Lauren: It is an internal Department of Defense (DOD) requirement. I believe in this instance, it's just to confirm that you meet the requirements that were set forth in WRDA, as well as to know that you have relevant experience for the Committee.

Tony Willardson: I'm looking forward to the Committee's work. What does the legislation outline? For instance, earlier today, we talked about some legislation that would elevate water supply, at least at some Corps projects as a primary mission. Is there any thought about some of those questions that this Committee might address?

Lauren: We're open to really getting the members together and having them determine the focus of this Committee. Obviously, it includes membership from all western states, as well as the Bureau of Indian Affairs. We'll look to the Committee to really identify those issues that you all think are the crucial ones that should be the focus. The house WRDA bill did have the water supply as a primary mission included in their draft of that bill. We're waiting to see what happens with the final.

Jennifer Verleger: Just looking down through this list, I see a couple of names on here that are probably going to get replaced soon. Is there a specific process that you want people to go through if the names need to change going forward?

Lauren: We will need the nomination letter from the Governor or Attorney General, depending on which position they're taking. Then it will be the same process for them to fill out the paperwork, etc. That's part of the problem with this. There was transition in our office, and so folks had left positions, and we had to get initial additional nomination letters. With a group of this size of 36 members, folks are constantly changing, and so it's trying to get everything as final as we can to send it up to get this approval completed.

Jennifer Verleger: I assume Michelle's going to end up coordinating this in the end. Should those letters go to you or who do we get them to?

Lauren: You can send them to Virginia. However, Michelle and I are in constant coordination on this effort and so if you would prefer to send them to Michelle, I'm sure she's okay with that. She has been coordinating heavily with us.

INDIAN WATER RIGHTS SETTLEMENTS AND 2025 SYMPOSIUM

Michelle Bushman discussed the ad hoc work group and the importance to help educate members of Congress on Indian water rights settlements, which is something that has not been done for a while, in part because there have been a lot of retirements, or people leaving.

She listed current settlements before Congress, including in New Mexico (Zuni, Rio San José and Rio Jemez, Navajo Nation and Rio San José, Ohkay Owingeh Rio Chama), in Arizona (Yavapai-Apache, Northeastern Arizona), in California (Tule River), and in Montana (Fort Belknap).

The WSWC and the Native Americans right fund (NARF) host an Indian reserve water rights settlement symposium every other year after the end of Congress that following August. We bring together representatives from state, federal and tribal who participated in those negotiations that recently were approved by Congress. In January 2025, we will start working with NARF, to start planning that symposium. We will be reaching out to members of those states, tribes and federal agencies that have this experience to come and speak.

She wanted to see if there was any interest in going back to visit Congress, or to set up zoom appointments, or explore different opportunities to engage with Congress about what is before Congress. We don't actually advocate for settlement specifically, but we do educate Congress in terms of how important these settlements are to quantify reserved water rights that have been previously unquantified, and how this impacts water security in the West.

Tanya Trujillo: I'm happy to volunteer to be on the subcommittee with you, Teresa, Jay and whoever else is engaged on that.

Michelle: Teresa, Jay and Tanya, would you mind if I reached out to you in the coming weeks, just to see what your thoughts are on some of these Indian water rights issues?

Tanya: Great for me. Is there a proposed date for a 2025 symposium, or is that part of the planning process that needs to happen?

Michelle: It becomes part of the planning process. But I can tell you, it's almost always been in August because that is the Congressional recess. NARF usually reaches out to the different tribes to determine who will host it. We tend to provide support as states. So once we know what tribes are expressing interest, then we'll reach out to you to help with that support.

Jay: Historically, it's aimed for the reservation, or at least geography close to the reservation of a recently enacted settlement. So we'll also have some sense of whether there are any of those candidates come the end of the lame duck.

DISCUSSION: GROUNDWATER WORKSHOP

Chris: With regard to the groundwater workshop, refer to Tab O, which contains some relative materials. I think the focus is primarily on conjunctive management of groundwater and surface water. Although, there's some other associated topics that go along with that. I think the main thing we want to talk about is that planning group. The subcommittee participants have started putting together a draft agenda for a workshop, which I think the anticipation would be to hold it at the WSWC's spring meeting that will be in Lincoln, Nebraska. There's a draft agenda in the last section under Tab O that we're wanting to seek any feedback from this group. Particularly, if what they've started putting together is capturing what the states are interested in discussing at such a workshop.

I think as we heard from Kansas and Idaho today, I think these are issues that we all struggle with to one degree or another. Thankfully, Wyoming doesn't have the degree of struggle that Idaho has, but we've had our share. Did you want to add anything with regard to that Michelle?

Michelle: Please give feedback! We want to make this workshop be useful for you. We can adapt it to what you want. On the second page of the agenda, there's a list of potential webinar series that we could record. This is just a recommendation. There were way too many topics to cover in one workshop. There were some specific issues that people wanted to cover, but they didn't fit under one of those categories and so we thought maybe we can just do a webinar on that specific topic. Those are just some suggestions. If you have recommendations, especially for speakers, I am always happy to have you volunteer yourself, or someone else to speak. We're happy to send out those invitations.

Chris: I think the focus is on both quantity and quality so let's not just limit it to the quantity side. If somebody wants to be part of the planning subcommittee just let Michelle know.

?: I'm thinking specifically about managed aquifer recharge. I'm not sure that's necessarily captured in there as I'm kind of reading between the lines, but I think that that's something that's certainly of interest to several states, and it touches on both quality and quantity.

Chris: I think that's on the webinar series. Not necessarily on the full day workshop agenda, but I think that was part of the webinar series for February - groundwater recharge, recycled water injection wells, storage, recovery, that kind of thing. Water quality oversight.

?: Great. Thank you. Let's consider that. I'd also like to join the subcommittee.

STAFF UPDATES

Chris stated that Michelle always puts together a very nice summary with regards to the current legislation and litigation, which members can look at under Tab R. Some of the pending litigation was covered in the Water Resources Committee.

SUNSETTING POSITION FOR SPRING 2025 MEETINGS

Chris mentioned sunsetting Position No. 480 for the Spring 2025 meeting, which is regarding migratory birds and the management of state water rights and resources.

OTHER MATTERS

Michelle: Our most recent newsletter summarized the U.S. Supreme Court oral arguments in *City and County of San Francisco v. EPA* and various state amicus briefs filed in the case. We wanted to bring this to your attention because this touched on Position No. 517, State Nutrient Reduction Strategies that the Water Quality Committee passed during our meetings in North Dakota. This was more of a water quality issue, but it's now crossed over into the Legal Committee because it's a lawsuit.

The Water Quality Committee's position focused on states exercising control over whether they do narrative criteria or numeric criteria. As Tom Stiles put it at one point, we don't want the perfect to be the enemy of the good. Each of the states weighed in on that very eloquently in their amicus briefs on how important this was to states to have that latitude. EPA actually used narrative criteria for the permits at issue, and the states that filed the amicus briefs wholeheartedly supported that. I think the concern from the state side has been, if EPA pushes for more numeric criteria when states want to have that latitude, I don't know how much that is going to be impacted by the outcome of this Supreme Court decision.

Roger Gorke: To add to that, when does narrative criteria turn into numeric criteria when the discharger is not meeting the water quality standard?

Chris: Are there any other matters? Not to put anybody on the spot, but Tanya texted me earlier that she might have an update with regard to *Texas v. New Mexico* and the recent supreme court decision.

Tanya: This may have to be on the agenda for the next meeting. Today, there was a status meeting in Denver with the new Special Master for *Texas v. New Mexico*. As everyone here knows, the states had a settlement agreement that they proposed to the Supreme Court, but the United States opposed it. The Supreme Court then failed to recognize the states' positions. I don't have a report yet from the team up there in Denver on New Mexico's perspective. Obviously, Texas and Colorado also had folks up there as well. Stay tuned! It is something that we will want to be tracking closely as a group. The overwhelming support from the other states was so much appreciated. I think we're all disappointed that it didn't go our way in court. It's a hot topic for sure so maybe we could hold this for a future discussion.

There being no other matters, the meeting was adjourned.