

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

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WATER QUALITY COMMITTEE  
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**MEMBERS AND ALTERNATES PRESENT** *(via zoom)*

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

**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**

Jennifer Zygmunt, Committee Chair, joined remotely and welcomed members and guests.

## **APPROVAL OF MINUTES**

Jennifer called for a motion to approve the minutes from the meetings held July 25, 2024, in West Fargo, North Dakota. There was a motion, a second and the minutes were unanimously approved.

## **PROPOSED/SUNSETTING POSITIONS**

The Water Quality Committee reviewed the following sunseting and proposed positions: (1) Position #471 - supporting State CWA Section 401 Certification Authority; (2) Position #477 - regarding Abandoned Hardrock Mine Cleanup; (3) Proposed – regarding the Extension of NPDES Permit Terms.

Jennifer Zygmunt began the meeting with a discussion on Position #471. The position was revised to reference the Environmental Protection Agency’s (EPA) 2023 CWA §401 Water Quality Certification Improvement Rule (88 FR 66558). The rule designates 16 National Parks, including some in Wyoming, Montana, and Idaho, as “lands of exclusive federal jurisdiction,” making the EPA the Section 401 certifying authority rather than States. Language was added to the position to acknowledge the new rule and assert that States have historically been the certifying authority. Concurrently, a new “Be It Therefore Resolved” clause was proposed to emphasize the need for the EPA to consult with states, particularly since EPA has expanded into section 402 permitting without communication and may expand into additional areas in the future. Tom Stiles asked whether the position would be reopened if Wyoming were to reconcile with EPA over Yellowstone. Jennifer responded that it was likely going to be a longstanding issue. Wyoming is pursuing legal challenges to the issue, but it is open to other solutions that could preserve its authority over 401 certifications in the park. The proposed edits were open for discussion, and the position was approved as revised with a motion, a second, and a vote.

Jennifer turned to Position #477, noting new traction in Congress for legislation supporting Good Samaritans in cleaning up abandoned hard rock mines. There were no proposed edits to the resolution. Roger Gorke raised the “Be It Resolved” clause, which stated “develop legislative and administrative remedies,” noting that EPA has remedies that already exist. Michelle Bushman clarified that the clause was included because the existing tools are not currently working well for

the states. Roger suggested that “additional remedies” be added at some future point. Jon Niermann moved that the position be recommended to the full council as drafted and the motion was seconded and passed.

### **NPDES PERMIT EXTENSIONS**

Jennifer led a discussion on the proposed position regarding support for the Extension of NPDES Permit Terms, introduced by South Dakota at the meeting in Fargo, North Dakota. She characterized the proposed position as an effort to reduce NPDES permitting backlogs by amending the Clean Water Act (CWA) to allow NPDES permits to be issued for up to 10 years instead of the current 5-year limit. She emphasized that the proposal is intended flexible, allowing States to choose permit lengths within the limits of 10 years, depending on the specific circumstances. Jennifer gave the example that municipalities could receive 10-year permits, alleviating pressure on staff resources. Alternatively, it could be used as a tool to incentivize compliance, where facilities not in compliance would be kept at a 5-year permit term.

Jennifer noted that the Association of Clean Water Administrators (ACWA) had a “robust discussion” at their annual meeting on this issue, and most states supported the concept, and referred the Committee to ACWA’s survey on the State’s perspectives on the issue, in Tab M of the briefing book. The Environmental Council of States (ECOS) passed a resolution supporting the concept at their summer meeting. She noted that details remain to be worked through such as reopener provisions, administratively continued permits, potential EPA oversight, and possible political pressures from the regulated community. She suggested that the subcommittee work on a document that informally conveys the concerns with implementation to facilitate further discussion.

Tom noted South Dakota’s work on advocating for this permit extension. He pointed out some differences between ECOS’ position and the proposal before the Council and expressed concerns about unintended consequences of extending permit terms. He gave the example of possible tensions at state borders where there may be different length permits on either side. Tom was hesitant to support 10-year permits for the more dynamic mechanical treatment plants, preferring to keep them at 5 years, but was open to 10-year permits for more static facilities such as lagoons. He recommended that the Water Quality Committee be given some time to review ACWA’s state survey responses and create guidance outlining benefits, opportunities, stipulations, and potential challenges.

Jennifer agreed with Tom’s suggestion and recommended moving forward with the position as proposed and the assignment to build out a guidance document. She noted Representative John Garamendi (D-CA) had introduced legislation to modify the CWA to extend NPDES permits to 10 years. She anticipated that with this development in Congress there would be interest in support from WSWC on those bills. She also noted that other organizations had declined to engage in details beyond supporting the concept and said: “I think if we pass the resolution, which I’m fine with, it just needs to be conveyed that again, we support the concept, but we’re not getting down into the details of how the amendment should occur in the Clean Water Act.”

Jojo La asked for clarification on the differences between the draft resolution under consideration and the resolution put out by ECOS. Michelle explained that this was a new position with some ECOS language incorporated. Jojo requested more information on how the two differ and it was agreed that a redline document would be drawn up before the position would be voted on in the full council. Jojo asked for more detail on the content and purpose of the implementation guidance document that Tom had recommended.

Jennifer responded that it would help articulate some of the concerns, details, foreseen challenges, and implementation suggestions—especially from those closest to the implementation of NPDES programs. Tom agreed with that assessment and described the document further. He explained that he anticipates a "bull rush" of permit requests for 10-year terms, once the law is changed. The guidance document would outline when it is advisable to apply a 10-year permit and when to stick with the 5-year term. He hoped that it would help member States navigate decision-making and conversations if future conflict arises among the regulated community.

Leslie Connelly requested to see the redline comparison with the ECOS version. She pointed out that the ECOS resolution also speaks to the concept of a guidance document that outlines considerations, criteria and best practices. The Council agreed to move ahead on the agenda to allow a small group some time to put together a redline comparison between ECOS' resolution and the proposed WSWC resolution.

## **KANSAS WATER QUALITY ISSUES**

Tom provided a quick overview of water quality issues in Kansas. He showed a map of Waters of the United States (WOTUS) classified streams in Kansas. Rainfall patterns in Kansas vary significantly from west to east, with an order of magnitude jump in rainfall. Groundwater withdrawals for irrigation have also impacted streams. In western Kansas, there are ephemeral streams that only flow in response to precipitation events, which are not classified under state law unless someone discharges into them, at which point they are classified. In the center of the State, there is strong stream-aquifer interaction. Further east, groundwater resources taper off causing reliance on reservoirs. Perennial and intermittent streams are protected under state law, while ephemeral streams are evaluated on a case-by-case basis.

Tom discussed Kansas's water quality monitoring system, which has been in place since 1990, with some records going back to 1967. In 1990, the State expanded its spatial coverage and moved from monthly to bi-monthly sampling but doubled the number of stations. Monitoring stations are either permanent, visited yearly, or rotational, visited once every four years. This data has been crucial for making permit decisions, Section 303(d) listings and TMDLs. Due to budget constraints, sampling has decreased from monthly to bi-monthly to quarterly. Tom noted that 99% of Kansas land is privately held, which leaves limited public access to stream systems, except for the Kansas River, which flows through the Kansas from Colorado to Oklahoma and into the Missouri River, which are public rivers. Most public interaction with surface water occurs at reservoirs. There are about 300 reservoir monitoring stations across the State which are sampled every three years.

Tom said the reservoirs are also where water quality problems manifest as harmful algal blooms (HABs), which have become a significant issue since 2010. HABs have galvanized public interest in water quality. The state has implemented a response-based HAB program that tracks lake conditions, classifying them as clear, under watch, or under warning. A “watch” status indicates that there is some evidence of a bloom. A “warning” indicates that thresholds for cell counts of blue-green algae or cyanotoxins have been exceeded. Under a “warning,” without being prohibited, recreators are advised to stay away and, especially, keep dogs and cattle away. He stated that the biggest impact of cyanotoxin poisoning has been the loss of pets and livestock. The State tracks and reports the status of affected lakes and when conditions have cleared. Roughly 12 reservoirs at any given time have blooms. The recreation season runs from April 1 to Halloween, but the State maintains some vigilance through the hunting season.

Tom gave an overview of Kansas’ CWA Section 303(d) list of Impaired Waters, which has been approved by the EPA. Kansas has 178 impaired stream sites which require a Total Maximum Daily Load (TMDL). Almost 270 sites have active TMDLs in place, and water quality standards have been achieved or re-achieved at 240 sites. Nutrients, specifically phosphorus and nitrate, are the number one issue for the State. There are 28 sites that continue to show impairment due to phosphorus or nitrate but Kansas has nearly 100 sites with TMDLs for phosphorus and nitrate. He noted that 5 or 6 of nearly 300 reservoirs in the State are afflicted with eutrophication at a given time and their water quality is correlated with surrounding land use.

Tom showed a map of priority areas for nutrient TMDL development in the State, including sixteen priority watersheds predominantly in the eastern half of the State with one watershed to the west. In the eastern half, a combination of point sources and non-point agricultural land use contributes to water quality issues. To the west, the Big Creek watershed is affected by haze from a nearby major city. He showed the regulated communities under NPDES and the State Water Pollution Control permitting process. The State has 850 NPDES facilities that receive permits to limit pollutants and which are conditioned for a five-year term. Non-dischargers also receive permits for five years. The state is planning to introduce legislation to allow non-discharge permits, which don’t change much from term to term, to be extended up to 10 years. This is intended to allow resources to be directed to more dynamic facilities that influence water quality.

Kansas emphasizes the reduction of nutrient output at point sources. Two pathways have developed to that end: (1) Optimization, in which cities, often voluntarily, make adjustments to existing process to optimize treatment possibilities; and (2) Investment in Nutrient Reduction, in which cities must make large capital investments to build new treatment mechanisms. He cited El Dorado as an example of optimization, which invested in biological nutrient reduction and was able to drive phosphorus down to below 0.5 mg/L, even though they were only expected to maintain 1 mg/L. Johnson County has invested heavily in upgrading their wastewater treatment plants and has more facilities to build. Tom said: “Even in our more affluent counties, there’s not enough money to do everything all at once. Integrated planning, which was rolled out by EPA, is a god-send from our perspective.” He explained that Johnson County’s plan allows them to gradually eliminate in-system bypasses and build up asset management. It allowed them to commit to making the needed improvements over a 25-year period, with the possibility of iterative changes. The plan is codified by a consent order. He said: “Integrated planning is an area where we think 10-year permits have a role there. Because if there are certain facilities that aren’t going to be touched essentially or dealt



with for 10 plus years, we might as well set them up on a 10-year permit cycle while the county works on those projects that are in the more near-term.”

Tom showed a map of priority areas for addressing non-point sources (NPS). He said Kansas has a robust §319 program that also sets priorities and geographic focus areas, allowing the State to include soil health initiatives and other programs while managing nutrients. This program is working with the Department of Agriculture's Division of Conservation.

Tom then discussed emerging issues, specifically per- and polyfluoroalkyl substances (PFASs), noting that sampling of ambient streams showed little evidence of perfluorooctanesulfonic acid (PFOS). He believes that the primary pathway for human exposure to PFOS will be through fish consumption, not drinking water. The State is, however, very concerned about PFAs in biosolids, where it accumulates from wastewater treatment and then is land-applied. He explained that routine treatment at three wastewater plants in Wichita reduced PFAs delivery to the environment, but they were still present in sludge and bio solids. Kansas has 115 wastewater plants that land apply biosolids. He concluded by saying that even though the overall ambient picture for PFOS is good, fish tissue and bio solids are where PFAs will become a big concern.

## **STAFF UPDATES**

Michelle provided an update on Good Samaritan abandoned hard rock mine cleanup. The Senate passed its version of a Good Samaritan bill, which is a scaled-down version with only 15 pilot projects. WSWC submitted support letters to both chambers. Michelle deferred to Roger Gorke to help provide an update on the EPA Good Sam workgroup, hosted by the Office of Mountains Deserts and Plains. Roger explained that the internal EPA workgroup includes members from various offices including the Office of Mountains, Deserts and Plains, the Office of Water, the Office of Enforcement and Compliance Assurance, the Office of General Counsel, and the Congressional and Intergovernmental Relations Office. He added that Regions 3, 8, 9, and 10 are also actively involved. The group supports Good Samaritan cleanups throughout the nation and tries to bridge the water and land aspects of abandoned mines. They meet about once a month and had requested WSWC attend to talk about water. Ryan Ellis from the Interstate Mining Compact Commission presented previously, and they asked Michelle to “help the mining folk” by bringing the “water aspect to the folks that do abandoned mine cleanup.” He described the invitation as “an attempt to kind of bridge internally and externally, the water and land aspects of abandoned mines.”

Michelle described her presentation to the workgroup as a high-level overview (based on member States’ presentations from previous years) of what Western states are working on regarding abandoned mines, the challenges they face, and how they prioritize various sites. She said the workgroup was interested in having further discussions, particularly with States about what abandoned mine cleanup projects they are working on. She noted that the Good Sam bill does not specify water quality as a focus for selecting pilot projects. She suggested that WSWC take full advantage of the opportunity to speak to the workgroup because it could help motivate EPA to prioritize projects that, among other purposes, also include a water quality benefit. She suggested WSWC/WestFAST conduct a series of webinars to bring forward updated information from the



States. She asked for suggestions on how to proceed to provide up-to-date information on what the States are doing rather than working from old presentations.

Jennifer encouraged States to contact Michelle about interest in continuing the hard rock mining discussion with EPA's workgroup or through webinar. She also suggested that both Water Quality and Abandoned Mine Lands (AML) program staff should sit in on the discussion.

## **EPA UPDATES**

Roger gave a background on Good Samaritan efforts from an EPA perspective. He explained that entities seeking Good Samaritan status are often nonprofits who want to clean up only part of a site, concerned about taking on CERCLA liability for the entire site. Additionally, if the site touches water many areas will never meet water quality standards, as the CWA requires. Potential Good Samaritan groups would likely require NPDES permits with impossible to meet standards that they then would have to maintain in perpetuity. He said: "So we have administrative tools that we actually think are pretty good that can protect folks while they're on the site." He said administrative tools range from model Comfort Status letters to the more robust model Administrative Order on Consent. He said under these measures the NPDES permitting would be treated similarly to a construction General Permit, where the construction company gets a permit to control storm water discharges while working at the site. The permit is terminated once they leave the site, and the owner is responsible for discharges after. He noted that EPA has language to delineate eligible parcels of land, namely if the owner purchased the land after the fact and did not cause, contribute, or exacerbate the problem. He said his office had argued to Senate staff that they should just codify the existing tools because they are already being used. He noted over 15 projects that had been completed using the tools, mostly in Region 8 in Colorado and Utah. He said: "We provided significant technical assistance to Senate Environment and Public Works and two of the three House committees that it was referred to." He noted that States are also potential Good Samaritans as well.

Roger then discussed a managed aquifer recharge (MAR) information gathering effort at EPA. He said: "This is not attempt to regulate aquifer recharge, either on top or underneath the ground. It is an effort by our Office of Research and Development (ORD). Throughout my career, they've become more and more aligned with 'What can we do for you in the water program, with our research?'" He explained that ORD had reached out to the Office of Water to learn the state of practice, so the Office of Water provided information from its four program offices. Groundwater and Drinking Water had talked to them about Underground Injection Control (UIC), the Office of Wastewater Management talked about MAR with storm water capture, and the Office of Science Technology talked about reuse. He said they had also encouraged ORD to speak with the States that regulate MAR and those doing active recharge projects on the ground. Roger mentioned upcoming workshops to discuss barriers and opportunities for research, such as different geologic groundwater basins and water quality concerns and that Michelle had participated in a meeting and talked to them about water rights and how different States regulate groundwater. He said while the group could not accommodate all 18 western States they had made an effort to represent different parts of the country in exploring "different types of [MAR], and what are the barriers and opportunities and water quality and quantity concerns that could then be highlighted for research."

Roger also discussed efforts to provide technical assistance to small and medium-sized water systems to access funding for droughts and cascading disasters. He explained that this work was piloted in California, providing one-on-one assistance to communities and utilities, guiding them to the appropriate funding sources and helping them with grant writing. He stated that they have been working in Utah and had broadened the focus to include drought, water scarcity, and cascading disasters. Roger added that it involves various state agencies, EPA, USDA Rural Development, Bureau of Reclamation, and FEMA. He said he had talked to Jennifer Carr about duplicating it in Nevada.

### **GROUNDWATER WORKSHOP AND WEBINARS**

Michelle noted Tab O includes the results of a survey from August to the subcommittee interested in developing a groundwater workshop. The Legal Committee discussed this in North Dakota, and the members of the subcommittee feedback was heavily weighted toward water resources and legal issues. She solicited ideas from the Committee specifically relating to groundwater quality and what kinds of lessons or concerns should be shared. Michelle also noted the possibility of doing multiple in-person workshops or recorded webinars.

Roger suggested that it would be helpful to articulate the impacts to water quality from drought and water scarcity to help build the case for more of a drought portfolio for EPA, focused on the water quality implications of drought and water scarcity.

### **WOTUS AND POST-SACKETT IMPLEMENTATION**

Regarding Position No. 481 on CWA Jurisdiction, Jennifer noted that jurisdictional determinations and WOTUS implementation post-Sackett has not been straightforward and that Colorado and Alaska had both testified at a Congressional hearing on it. She suggested that, in the interest of time, the discussion on the sunseting WOTUS position be put to a subcommittee before the next meetings in Nebraska. Christina Carpenter, Jojo La, and Jennifer Zygmunt volunteered to be on the WOTUS subcommittee.

### **OTHER MATTERS**

Jennifer returned to the discussion on NPDES permit extension, noting that a comparison version had been sent out to the committee. She said: “The sense of the subcommittee was that they didn't want to just readopt the ECOS position as-is. So there are quite a few edits that have been emailed out to the group. I would say, in general, it's different ways of saying the same points, but emphasizing some aspects of program implementation that I think the water quality administrators are a little more directly involved with.” She reviewed questions that had been asked on the email thread on why the proposed position did not reflect ECOS language in the second to last “Whereas” clause regarding allowing States “greater flexibility, efficiency, permit authority, discretion, etc.” Jennifer explained that to the subcommittee’s memory it seemed cleaner to take that out and just

refer to the statute directly, and that the ninth “Whereas” clause already acknowledged some of the intended discretion and flexibility that States need with program implementation.

Leslie Connelley brought the Committee’s attention to a version she had emailed over the course of the meeting with her own edits seeking to simplify the “Whereas” clauses to stay focused on permit lengths.

Jennifer acknowledged the need for time to review the edits and any other State feedback. Not wanting to rush the discussion, and noting that passing the position is not urgent, she suggested putting the position on hold. She recommended holding another subcommittee meeting before the next meeting. Tom agreed that it was starting to feel rushed. He noted that there was some language in the ECOS position that had been clipped that may need to be included. Jennifer agreed that it should be added to the list of subcommittee meetings to “tee up” before Nebraska and adjourned the meeting.