



Western States Water

Addressing Water Needs and Strategies for a Sustainable Future

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WESTERN STATES WATER COUNCIL **Fall Meetings – Lawrence, Kansas**

On October 23, the State of Kansas hosted meetings of the WSWC in Lawrence. Fifty-four participants joined both virtually and in person. The WSWC revised and re-adopted six sunseting positions relating to: (1) State Clean Water Act (CWA) §401 Certification Authority; (2) Federal Water and Climate Data Collection and Analysis Programs; (3) Drought Preparedness, Prediction and Early Warning Programs; (4) Bureau of Reclamation (USBR) Drought Response Program; (5) States' Water Rights and Natural Flows; and (6) Abandoned Hardrock Mine Cleanup.

The CWA §401 position was amended to note the Environmental Protection Agency's (EPA) 2023 rule, as well as its related assertion of "exclusive federal jurisdiction" over certification authority within sixteen identified national parks, although States have been exercising such authority for decades. Regarding federal water and climate data programs, additions noted that Western States have invested million of dollars in federal and non-federal monitoring and observing networks and systems. The WSWC also expressed its support for the creation of a "federal water data council, a national water data framework, an advisory committee, and water data grants program, as well as sufficient appropriations" to support these efforts. Minor technical changes were made to update the other positions.

During the Water Resources Committee, Tony Willardson gave an overview of the Water Projects Navigators Act (S. 4995/H.R. 9506), introduced by Senators John Hickenlooper (D-CO) and Jerry Moran (R-KS). The bill aims to help states and other eligible entities navigate funding opportunities available for "multi-benefit" water projects through the Infrastructure Investment and Jobs Act (IIJA), Inflation Reduction Act (IRA) and other sources by authorizing the Secretary of the Department of the Interior (DOI) to hire and assign navigators to a specific project. Tanya Trujillo, New Mexico Office of the State Engineer, provided an update on the New Mexico Integrated Water Financing Plan. She highlighted the plan goals, the positive feedback from participants, and a final workshop to showcase the

results of the pilot programs, scheduled for November 14. Christopher Estes gave an update on efforts by the Instream Flow Council, in partnership with the American Fisheries Society, to establish a new training center for instream hydrologists. Estes requested feedback on interest in that effort.

The Committee also had a roundtable discussion regarding the challenges of small and rural water systems, particularly their limited technical, managerial, and financial capacity. Participants also addressed consolidation of small water systems, the need for support from federal agencies such as U.S. Department of Agriculture (USDA) Rural Development and USBR. Participants suggested seeking further engagement with federal agencies. The Committee also discussed the prospect of water supply as a primary purpose of certain U.S. Army Corps of Engineers (Corps) civil works projects. Participants agreed on the potential benefits of elevating water supply among Corps priorities, while being careful to maintain state authority over water resources, and not unduly allowing Corps expansion.

Tony Willardson provided an update on the Water Data Exchange Program (WaDE), Western States Water Data Access Analysis Tool (WestDAAT), and Western Water Conservation Application Tool (WestCAT). The USBR has agreed to provide WSWC with \$400,000 for the development of WestCAT to help conservation programs use the existing water rights database and available OpenET data. Willardson provided a summary of what data is included in the program, who is using the data, and how funding will be apportioned.

During the Water Quality Committee, the Committee discussed a proposed position to support extending National Pollutant Discharge Elimination System (NPDES) permit terms limits from 5 to up to 10 years, while maintaining flexibility for States to determine the lengths. The Committee agreed that most states support exploring the concept, but further discussion is needed before passing a resolution.

Tom Stiles discussed Kansas water quality issues. He highlighted harmful algal blooms and the formation of a response-based bloom monitoring program. Kansas

has focused on reducing nutrient loads from point sources and managing non-point sources through their CWA §319 Nonpoint Source Management Program.

Michelle Bushman updated members on the subcommittee's planning efforts for the upcoming WSWC groundwater workshop and webinars, including a survey of the subcommittee regarding potential topics. She gave a brief update on her presentation to EPA's Office of Mountains, Deserts, and Plains (OMDP) Workgroup, where she provided an overview of Western States' efforts, challenges, and prioritization strategies for abandoned mine cleanup. She said the OMDP and workgroup are interested in hearing further from States.

Roger Gorke highlighted administrative tools with liability protection to entities seeking to clean up abandoned mines, including existing mechanisms, such as model "comfort status" letters and model administrative orders, which can protect an entity while on site, but do not provide long-term CWA protection from citizen suits. Gorke discussed efforts by EPA's Office of Research and Development to understand barriers to managed aquifer recharge and their plans to host a series of internal workshops to better understand the issues. He highlighted EPA's recent efforts to determine how best to help small to medium-sized water systems access funding and respond to drought and cascading disasters. EPA has piloted an Engineer on Call program in California, Colorado, and now Utah. The program helps States coordinate with USDA Rural Development, the USBR and the Federal Emergency Management Agency (FEMA) to provide direct technical assistance to communities. Gorke indicated they are looking to expand the program to other states in the future.

During the Legal Committee, Earl Lewis detailed the long-standing water rights dispute over the Cheyenne Bottoms and Quivira National Wildlife Refuge in Kansas, highlighting groundwater depletion and its impact on the refuge. Mat Weaver explained Idaho's recent conjunctive management challenges related to water shortages in the Eastern Snake Plain Aquifer, leading to short-term curtailment orders. Lauren Leuck, Assistant for Water Resources Legislation and Policy, Office of the Assistant Secretary of the Army for Civil Works, provided an update on the Western Water Cooperative Committee. All committee members have been appointed by their respective governors and attorneys general, and noted that a recent email to all members details the next Department of Defense Federal Advisory Committee Act (FACA) committee requirements. She hopes that the final paperwork can be submitted by November 22. They intend to hold the first committee meeting early next year.

Michelle Bushman discussed the upcoming 2025 Indian Water Rights Settlements Symposium. 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). She called for volunteers to join a subcommittee to help plan the symposium and engage with Congress. Next, she highlighted the recent Supreme Court oral arguments in *San Francisco v. EPA* on narrative criteria in NPDES permits. State amicus briefs emphasized the critical importance of their authority to determine whether to use narrative or numeric criteria in permits.

Prior to the Full Council meeting, the State of Kansas gave a host state presentation. Earl Lewis discussed Kansas' efforts to reduce water usage and extend the life of the Ogallala Aquifer, including the creation of Local Enhanced Management Areas (LEMAs). Connie Owen, Kansas Water Office, presented on the State's water supply challenges, noting the sedimentation issues in the State's important reservoirs. Tom Stiles address the policy and funding challenges around water quality and infrastructure. He emphasized the need for and possibility of creating state revolving funds, separate from EPA's funds.

Roger Gorke gave a WestFAST report, including work on the New Mexico Integrated Water Financing Plan. Steven Emmen, Policy Advisor, Western Governors' Association (WGA), described renewed and revised WGA water resources and water quality related positions, recent letters sent to Congress, and Governor Lujan Grisham's housing focus as WGA Chair. Michelle Bushman pointed to the housing-water nexus and encourage members to respond to the WGA survey.

On October 22, the WSWC met jointly with the Interstate Council on Water Policy (ICWP). Afterwards, the State of Kansas hosted a field trip to visit the Arabia Steamboat Museum, with artifacts salvaged from a vessel that sank in the Missouri River in 1856. The passengers and crew were saved, but some 200 tons of cargo was lost. The museum highlighted the importance of navigation on the river to westward migration, as well as the dangers. The search and excavation were privately funded primarily by a local family that researched information about the wreck, which with the shifting riverbed, was found in a farmer's field. Following was a tour of a Corps project to construct and update levees along Kansas City's historic West Bottoms neighborhood, as well as re-developing the Rock Island Bridge to create a cross-river community connection to trails and an entertainment district.

The WSWC Spring (206th) Meetings will be held in Lincoln, Nebraska on April 24-25, 2025 at the Courtyard by Marriott Lincoln Downtown. <https://westernstateswater.org/events/2025-wswc-spring-206th-meetings-in-lincoln-nebraska/>.

The WESTERN STATES WATER COUNCIL is a government entity of representatives appointed by the Governors of Alaska, Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming.