

**MINUTES
of the
176th COUNCIL MEETING
Talking Stick Resort
Scottsdale, Arizona
October 10, 2014**

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MEMBERS AND ALTERNATES PRESENT

ALASKA	--
ARIZONA	Michael Fulton Mike Lacey
CALIFORNIA	Jeanine Jones
COLORADO	James Eklund Trisha Oeth
IDAHO	Jerry Rigby John Simpson
KANSAS	--
MONTANA	Tim Davis
NEBRASKA	Jesse Bradley
NEVADA	Roland Westergard
NEW MEXICO	Greg Ridley Amy Haas
NORTH DAKOTA	Michelle Klose Todd Sando Jennifer Verleger
OKLAHOMA	J.D. Strong
OREGON	Tom Byler
SOUTH DAKOTA	Kent Woodmansey
TEXAS	Carlos Rubinstein

UTAH

Walt Baker
Norm Johnson
Eric Millis

WASHINGTON

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WYOMING

Sue Lowry
Kevin Frederick
Pat Tyrrell

GUESTS

Stephanie Granger, NASA/JPL, Pasadena, CA
Paul Werkheiser, U.S. Geological Survey, Reston, VA
Paul Blanchard, Northwest Pipe Co., Vancouver, WA
Alex Davis, Colorado Parks and Wildlife, Denver, CO
Carlee Brown, Western Governors' Association, Denver, CO
Curtis Seaton, Texas Water Development Board, Austin, TX
Jesse Bradley, Department of Natural Resources, Lincoln, NE
Bruno Bowles, Southern Nevada Water Authority, Las Vegas, NV
Jennifer Gimbel, Department of the Interior, Washington, D.C. (via phone)
Tom Iseman, Department of the Interior, Washington, D.C. (via phone)
Estevan López, Bureau of Reclamation, Washington, D.C. (via phone)
Camille Touton, Department of the Interior, Washington, D.C. (via phone)

WESTFAST

Patrick Lambert, Federal Liaison, Salt Lake City, UT
Becky Fulkerson, Bureau of Reclamation, Washington, DC
Jean Thomas, USDA Forest Service, Washington, DC

STAFF

Tony Willardson
Nathan Bracken
Cheryl Redding
Sara Larsen

WELCOME AND INTRODUCTIONS

WSWC Chair Pat Tyrrell welcomed those in attendance at the meeting.

APPROVAL OF MINUTES

Carlos Rubinstein moved for approval of the minutes from the meeting held in Helena, Montana in July. Tim Davis seconded the motion. The minutes were approved without change.

WATER RESOURCES AND WATER QUALITY ISSUES IN ARIZONA

A. Arizona's Next Century: A Strategic Vision for Water Supply Sustainability

Michael Lacey, Director, Arizona Department of Water Resources (ADWR) discussed a strategic vision for water supply sustainability that his agency has developed. While the state is not facing an immediate crisis, Mike said future water supply and management challenges are likely if action is not taken now.

Among other things, Mike reported that Arizona used as much water in 2010 as it used in 1957, despite more than doubling its population. Going forward, the state is working to determine where future water supplies will come from and is identifying viable strategies using existing information, identifying local options first, and identifying priority strategies, both for portions of the state and for the state overall.

The strategic vision is built on historic accomplishments, namely:

- Salt River Project
- Colorado River Compact and Law of the River
- Central Arizona Project
- Resolution of tribal water rights claims
- 1980 Ground Water Management Act
- Assured and adequate water supply program

To address these challenges, the vision identifies a number of proactive water management strategies, such as recharge and recovery, the use of reclaimed water and brackish groundwater, revised watershed management practices, weather modification, and other actions. Mike said Arizona has stored 9,000 acre-feet for future use, is reallocating supplies under the Non-Indian Agricultural (NIA) priority for Central Arizona Project water, and that reclaimed water and water reuse are being "sustainably used." Water supply development options include revised watershed management practices, weather modification, and rainwater harvesting/stormwater capture. Importing and exchanging new water supplies developed outside of Arizona, such as ocean desalination, may also be needed.

Complex physical water supply availability is a challenge, due in part to the federal government's ownership of 69% of land in Arizona. This means federal reserved water rights, access to water supplies, and transmission of future water supplies are challenges, as well as compliance with federal laws such as the National Environmental Policy Act. The general stream adjudication process has been a real challenge in the state and several outstanding tribal water rights claims remain.

The strategic vision includes regional strategies and statewide priorities for “moving forward” that include: (1) identifying the role of in-state water transfers; (2) resolving federal and non-federal water rights claims; (3) continued commitment to water conservation and reuse of reclaimed water; (4) comprehensive statewide data collection and analysis; (5) supply importation (e.g., desalination); and funding for rural infrastructure and stakeholder engagement.

B. Water Reuse in Arizona: Past, Present and Future

Arizona Water Quality Division Director Michael Fulton described his state’s wastewater reuse efforts, which he said are driven by need and by a comprehensive legal framework that supports reuse. He said 60% of Arizona’s 300 wastewater treatment plants distribute treated wastewater for reuse. Moreover, in Phoenix, 82% of treated wastewater is reused, with 22% for power, 22% for agriculture, 21% for recharge, 11% for environmental uses, and 6% for landscape and turf irrigation.

Mike then went over the state’s Aquifer Protection Permit Program, which protects groundwater for drinking water use by issuing permits to mines, industrial, facilities, wastewater treatment plants, and other uses to control discharges to groundwater. Discharges must not exceed any of the state’s aquifer water quality standard at a point of compliance in the aquifer and facilities must employ best available demonstrated control technology.

There are different types of reclaimed water quality classes: (1) Class A+, A for open access uses; (2) Class B+, B for restricted access uses; and (3) Class C for very limited uses. For example, Classes A and A+ can be used to irrigate food crops and for recreational impoundments, among other uses, but there are some limitations, including direct reuse for human consumption, full-immersion water activities, and evaporative cooling or misting. Of the 98 largest reuse plants, 57% produce A+ water and the 3rd and 4th largest plants, which are located in Tucson, were recently upgrades to A+. Additionally, there are 400 end user permits issued to individuals and large distribution systems. Of these 72% are for Class A+. Tucson has the largest system based on the number of end users and Flagstaff has another large system.

With respect to de facto potable reuse, Mike said 1% to 2% of Central Arizona Project’s canal water delivered to Phoenix and Tucson derives from upstream treated wastewater (e.g., Las Vegas), and Lake Havasu could contain as much as 14% wastewater during low-flow drought conditions.

In 2010, then Governor Jan Brewer’s Blue Ribbon Panel on Water Sustainability issued a report that addressed water reuse in Arizona, finding that “current programs constitute an exceptional framework.” It also made a few recommendations focused on addressing emerging contaminants and creating a steering group to advance potable reuse.

Going forward, Mike said possible trends could include a transition to higher-valued reclaimed water end uses, increased utilization of reuse, particularly off season use, and increased reuse at smaller plants and in smaller communities.

WSWC members asked both Mikes a number of questions.

Eric Millis: Do you have downstream negative effects from water reuse? How do you deal with it?

Mike Fulton: The wastewater belongs to the treater, who has the option of discharging or not.

Mike Lacey: Some water right issues have been solved through contracts.

Walt Baker: Reuse taken to an extreme dries up streams. What are the implications of this?

Mike Lacey: Those are the considerations the state reviews. Some cities have very well managed facilities and they can get credits to pump water. Other incentives to leave water in-stream also exist. While no one is obligated to discharge, the political reality requires that discharges continue.

Nathan: Asked about the future for potable reuse.

Mike Fulton: It will be a community-based decision, and as a state, we need to put regulations in place. Currently, it is not an imminent need in Arizona but smaller communities may have this as an option in the future. We don't want to make decisions ad hoc. The steering committee may push for regulatory change.

Mike Lacey: It is likely that this could happen in a community that is not highly technically skilled, and we need to make sure that the community could have the resources in place when the time comes.

WESTFAST REPORT

WestFAST Chair Becky Fulkerson of Reclamation mentioned that this was Pat Lambert's first meeting as the new WestFAST Liaison. Pat will succeed Eric Stevens of the Corps, whose tenure as Liaison ended in the fall.

Becky noted that WestFAST started with nine federal agencies and has grown to 13 agencies. She also said she hopes to hold more meetings between the WSWC and the WestFAST principals.

WestFAST has convened two "up and running" subcommittees focused drought and data. At WestFAST's request, Pat will attend the Western Governors' Association (WGA) Drought Forum. Dwane Young, former WestFAST Liaison, is leading the efforts with the data subcommittee. Dwane will also visit the WSWC offices for a week to meet with Pat and "get him up to speed."

There is a need to improve collaboration and communication between the WestFAST agencies and the WSWC. Becky will continue to work with Pat Tyrrell, who has made improved communication and collaboration a goal for his chairmanship. Becky stated that Tony, Carlee, and Pat Tyrrell will be invited to join in on the monthly conference calls.

Jerry Rigby: I think the interaction between the WestFAST and WSWC is helpful and asked about declining participation from WestFAST members at the WSWC's meetings. Becky responded that recent travel restrictions and scheduling conflicts have limited their participation.

Pat Tyrrell: "I talked with Becky last night about the need for improvement in communications among our WestFAST partner agencies. We agreed that we need to increase our communications and that the WSWC needs to remember that our WestFAST representatives work in very large agencies, and even amongst their own agency it can be difficult to communicate and coordinate. I talked to her about how we can get a heads up from federal agencies before something is put into the Federal Register. I am hopeful that within two years we will not need to have this kind of discussion."

DEPARTMENT OF THE INTERIOR WATER ISSUES

Tom Iseman, Deputy Assistant Secretary for Water and Science, gave a remote telephone presentation on the Department of the Interior's water activities. He was joined on the phone by recently confirmed Bureau of Reclamation Commissioner Estevan López, newly named Principal Deputy Assistant Secretary for Water and Science Jennifer Gimbel (a former WSWC member from Colorado), and Camille Touton, formerly of the Democratic staff for the House Natural Resources Committee. Estevan, Jennifer, and Camille all expressed their interest in working with the WSWC in their new roles. They also thanked Becky for her service as WestFAST Chair. Tom said the WSWC is well placed to work with Interior, noting its longstanding relationships with himself, Jennifer, Estevan, and Camille.

During his remarks, Tom said Interior will finalize interagency guidelines for the Principles and Requirements (P&Rs) next month. The Administration enacted the P&Rs last year to guide federal investments in water resource projects Interior's guidelines will govern how it implements the P&Rs. Tom also said climate change, drought, data, and infrastructure are areas of interest for Interior.

With respect to infrastructure, Tom mentioned the federal "Build America" initiative, which is working to involve private investors in infrastructure projects, among other things. "We often hear about energy and transportation efforts, but water has not been forgotten in this initiative," he noted. "This could be a great confluence of efforts on the federal level and between the WSWC."

Next, Tom said climate change has been a focus, noting that the Council on Climate Preparedness and Resilience recently released the Administration's Priority Agenda: Enhancing the Climate Resilience of American's Natural Resources. The agenda addresses a range of

natural resources issues and includes a chapter focused on fostering climate resilient lands and waters. Tom said Interior and Reclamation spent “a lot of time” contributing to the agenda.

Lastly, Tom noted that he is part of the National Drought Resilience Partnership, which is looking at ways to leverage resources to address drought. Tom noted that the Partnership is working to respond to some of the requests the WGA and the WSWC have made. Interior is also working with communities at an on-the-ground level, starting in Montana with a demonstration project on drought resilience that it hopes to replicate elsewhere.

Tim Davis: “We are hopeful that in the near future, the federal agencies will be able to identify what resources they will be able to bring to the drought resiliency effort in Montana.”

Tom: “We are grateful to be working with you all, and we look forward to seeing you and working together next Spring.”

USGS WATER PROGRAMS AND THE ADVISORY COMMITTEE ON WATER INFORMATION

Bill Werkheiser, U.S. Geological Survey (USGS) Assistant Director for Water, said USGS priorities for the future include: (1) national networks that are “stable, interdisciplinary, and responsive;” (2) “continued enhancement of real time monitoring and modeling;” (3) “continued development of applications for information management and delivery;” (4) monitoring and modeling for prediction and forecasting of water quantity and quality; and (5) innovative techniques for monitoring and analysis.

Bill also said USGS is focusing on funding streamgages that are important to states and that further federal objectives, so that states and other non-federal partners can focus their resources on other gages. Currently, USGS is only able to fund about a third of the streamgaging network, with the remainder coming from state and local partners. Until recently, USGS’ goal had been to maximize the gages in the field. What that meant had been that USGS would step back to allow states to support gages that the agency knew were important to the states so that it could focus its resources on other gages. Now, the agency is changing this approach to – “if that’s the most important gage and it furthers federal objectives, then USGS will fund it to allow their partners to focus on other gages. This may lead to a decrease in gages, but the number of gages has actually increased.”

Lastly, Bill gave a brief overview of recent Advisory Committee on Water Information’s (ACWI) activities. He noted that ACWI’s Monitoring Challenges in a Shrinking Budget Environment Workgroup recently proposed 12 recommendations. One of the major recommendations as focused on stabilizing USGS’s streamgaging network. Bill also said ACWI’s Subcommittee on Groundwater has proposed a national groundwater monitoring network. As proposed, the network would be a voluntary, cooperative, integrated system of data collection, management, and reporting that would provide data needed to help address present and future groundwater management questions.

Tony Willardson asked Bill to discuss USGS' budget. Bill said there has been a small decrease but that the budget is "basically at 2014 levels."

Tony also mentioned the Clean Water Act (CWA) jurisdiction rule the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers have proposed, asking if it is possible to develop a "binary process" where waters are either jurisdictional or not. Bill said, "I think we can if we work hard enough," but noted that there are not many binary answers based on his experience.

COMMITTEE REPORTS

A. Water Resources Committee:

Tim Davis reported that his Committee will put together a group to discuss the U.S. Forest Service's proposed groundwater directive.

B. Executive Committee

Jerry Rigby reported that the WSWC is financially is a "good state." Most of the states have paid their dues, and the organization is well within its budget. Jerry noted that Pat Lambert is getting settled into the WSWC's office as the new WestFAST Chair. Tim Davis has also agreed to chair the Water Resources Committee.

Pat Tyrrell mentioned that Alaska is looking to pay its dues. The theme of Pat Tyrrell's tenure as Chair will be to work together and communicate more effectively. Pat also noted that WGA Executive Director Jim Ogsbury attended the Executive Committee yesterday, which he said was "useful."

Tony and Nathan may be traveling to Washington, DC in November to support WSWC policies, including possible visits with the Native American Rights Fund in support of Indian water rights settlements. The Committee also discussed the possibility of looking for volunteers to be on a subcommittee to plan for the WSWC's 50th Anniversary meeting, which will take place in July 2015 in Nevada's Lake Tahoe area.

C. Water Quality Committee

J.D. Strong reported on two actions. First, the Committee recommends that the WSWC re-adopt its position regarding groundwater quality protections with the addition of a new whereas clause:

Whereas, nothing stated in this position is intended to apply to the interpretation or application of any interstate compact.

The language is intended to make the position consistent with WSWC Position #340, which asserts state primacy over groundwater and includes identical language.

J.D. moved for the WSWC to re-adopt the position as revised. Carlos Rubinstein seconded, and the motion passed unanimously.

Next, J.D. reported that the Committee recommended that the WSWC approve and send a comment letter regarding the Clean Water Act jurisdiction rule EPA and the Corps of Engineers have proposed. The WSWC's CWA Workgroup developed the letter based on WSWC Position #373. The Committee also approved revisions to reflect the finalization of a scientific report on the connectivity of different water bodies, which EPA completed after the CWA Workgroup had prepared the initial draft of the letter.

J.D. moved for the WSWC to approve and send the letter as revised by the Committee. Carlos seconded the motion, which passed unanimously.

D. Legal Committee

Jennifer Verleger discussed the results of the Legal Committee's meeting, which included two sunseting positions that the Committee recommends for re-adoption. The first, Position #335, supports policy changes federal agencies can make to expedite state general stream adjudications. The position includes new language to reflect some of the findings of the WSWC-WestFAST July workshop on federal non-tribal water rights, namely that federal agencies should place greater emphasis on educating their leaders and staff regarding western water rights and should consult with states before asserting water rights claims. Jennifer moved to re-adopt the position as revised. J.D. seconded and the motion passed unanimously.

The second, Position #336, supports the negotiated settlements of Indian water right disputes. Jennifer reported that Committee recommends the re-adoption of the position with one change – that the first "WHEREAS" clause and the first "RESOLVED" clause be revised to replace "Indian water rights disputes" with "disputed Indian water rights claims." Jennifer moved to re-adopt the position as revised. J.D. seconded and the motion passed unanimously.

Jennifer reported that the Committee recommends the adoption of a new position in support of the National Judicial College's Dividing the Waters Initiative, which seeks to educate judges regarding water disputes. Jennifer moved to approve the resolution, Norm Johnson seconded, and the motion passed unanimously.

STATE REPORTS

Kansas: Dave Barfield reported on four things: (1) the Kansas Department of Agriculture moved to Manhattan as part of a plan to de-centralize and create synergy with Kansas State University, which is located in the town; (2) the state is developing a 50-year, "high-level" vision of what it needs to do in the future to secure water supplies; (3) Kansas is working with the Kickapoo Tribe to resolve its reserved water rights claims; and (4) Kansas will host the fall 2015 WSWC meetings.

North Dakota: Todd Sando reported that his state continues to be very wet and is trying to “get water out,” including pumping water out of Devils Lake. The oil boom is continuing and there has been tremendous growth, which has created some dramatic infrastructure needs. The state previously allocated \$14 million for water projects, an amount that has now grown 85% to \$1B. There are a number of water measures on the ballot focused on clean water, wildlife, and parks.

Oklahoma: J.D. Strong said his state is its fourth year of drought, which is driving a lot of interest and conflict over water. It is an opportunity to stress the state’s Water for 2060 initiative, which aims to ensure that the state uses no more water in 2060 than it does now. As part of this effort, Oklahoma is looking more at wastewater reuse and other alternatives to using freshwater to meet its needs. A final report is due next year to the Oklahoma Legislature. The state also rolled out a new comprehensive groundwater monitoring program. Oklahoma will host the WSWC’s spring 2015 meetings in Tulsa.

Texas: Carlos Rubinstein said Texas has been fortunate with oil revenues and has allocated \$2B from its rainy day fund for water projects. The Texas Water Development Board has been charged with using this \$2B to finance \$27B projects over 20 years. Texas continues to have problems with Mexico regarding treaty compliance on the Rio Grande. Texas is also working cooperatively with Oklahoma to address disputes involving the Red River.

Arizona: Make Lacey reported that the state projects significant decreases in revenues for the next year. The state will also have a new governor as Jan Brewer’s term is limited.

California: Jeanine Jones reported that her state is experiencing its third year of drought and that the water year for 2014 was exceptionally dry. A “very large” bond measure aimed at improving water management will go before voters in November. California also recently approved a major change in how groundwater is managed in the state, making it mandatory for local agencies to manage groundwater at the local level. If the local agencies do not manage it, the legislation authorizes the state to step in and manage it for them. Jeanine said it will take some time to implement this change.

Colorado: James Eklund reported on the Colorado Water Conservation Board’s efforts to develop a state water plan that will address the state’s projected population growth and future water demands. Colorado is also heavily engaged in contingency planning in the Colorado River. In addition, the state recently completed the Long Hollow reservoir and is developing a contingency plan for the Chatfield Reservoir. The two projects will help with Colorado River compliance. James said Colorado is excited to work with the WGA on its Drought Forum.

New Mexico: Greg Ridgley said New Mexico is “still dealing” with drought. However, the state received “much needed rain,” at least on the Pecos River, but still has a “long way to go.” Greg also mentioned a proposed private project that would pipe water from the high desert to the Middle Rio Grande. The State Engineer denied the application, a decision that has been challenged. The project has been re-proposed and is controversial. New Mexico is working to implement three recent Indian water rights settlements (Aamodt, Navajo, Taos) and the parties are working to get the decrees recognized by non-Indian right holders. Amy Haas said New

Mexico has the option of developing an additional 14,000 acre-feet of Gila River water pursuant to the Arizona Water Settlements Act. The state needs to notify the Department of the Interior by December 31, 2014, if it intends to develop the water. The Interstate Stream Commission is considering whether to exercise the option but has not yet made a determination. Lastly, Amy said New Mexico is updating its water plan and is looking at December 2015 for completion.

Utah: Walt Baker reported that his state is developing water quality standards for phosphorous and nitrogen. The state is beginning first with phosphorous and is working closely with the agriculture community. Walt also noted a recent algae bloom in Utah Lake that killed birds and a dog. Eric Millis said Governor Gary Herbert is very focused on water planning and has sought out public comment on how to address future water demands. A public-private partnership, Envision Utah, is working on this effort, which looks at other issues in addition to water. Major water suppliers in the state have been talking to the Legislature about finding additional funding for water infrastructure, including repair and replacement. Environmental groups are also increasing their effort.

South Dakota: Kent Woodmansey said a state district court recently upheld a decision from the state Water Management Board to deny 14 applications for an aquifer in central South Dakota because the Board determined that the area was fully appropriated. As for other developments, South Dakota's State Revolving Funding is about to provide \$69M in bond funding and the state is working with the South Dakota School of Mines and Technology to drill a 900 foot well in the Niobrara to get information on the formation's oil and gas potential.

Montana: Tim Davis said Montana is wrapping up its state water plan meetings, but noted that most of the meetings have focused on the proposed CWA jurisdiction rule rather than the plan. The state is also involved in re-negotiations with the Salish-Kootenai tribes regarding their reserved water rights claims. Lastly, Tim noted that Montana is working with the Natural Resources Conservation Service (NRCS), ranches, and the state's Department of Fish and Wildlife and Park to convince water users to put "significant amounts" of water back into the system. Tim said NRCS has been a "great partner."

Wyoming: Sue Lowry said Wyoming had a great water year – 125% of average with few wildfires. Governor Matt Mead is up for re-election but won his primary race and is expected to win the general election. Wyoming is awaiting the special master's report for its litigation with Montana regarding the Yellowstone River and the report is expected "any day now." In addition, the state has completed its Big Horn adjudication, which began in 1977.

Nebraska: Jesse Bradley reported on behalf Brian Dunnigan. He said that the state had been dry prior to May but that subsequent heavy precipitation has improved conditions, so much so that drought only remains in about two counties. Recent legislation established a water sustainability fund and work is taking place in much of the state to develop integrated management plans. Endangered Species Act issues continue in the Lower Platte River, while discussions are taking place regarding federal water rights in the Niobrara Basin.

Oregon: Tom Byler said this was his first WSWC meeting and that he has succeeded former WSWC Chair and Oregon Department of Water Resources Executive Director Phil

Ward. Tom said Phil gave “high praise” to the WSWC. Oregon has experienced a significant amount of drought response activity in the southern portion of the state. The Upper Klamath Basin has also been an area of great interest, particularly with respect to the adjudication of tribal water rights and recent Klamath Settlement Agreements. Tom said the state is working to secure Congressional authorization for the settlements and to obtain the funds needed to implement them. The “most challenging” aspect of this effort involves regulating communities that are not accustomed to regulation.

Idaho: Jerry Rigby welcomed Tom Byler. Idaho recently held an event to commemorate the completion of the Snake River Adjudication, which has been signed but has a few remaining issues to address. Many of those who had been involved in the adjudication attended the ceremony, which also included the participation of Justice Antonin Scalia of the U.S. Supreme Court. In addition, Jerry noted that there is a dispute about whether reservoirs are entitled to a second fill. The issue went to the Idaho Supreme Court, which sent it back to the Idaho Department of Water Resources to address. Idaho is also considering the possibility of raising two dams, including one in Island Park. Idaho had a lot of rain in August, but other areas remain dry.

FUTURE COUNCIL MEETINGS

The Western States Water Council will meet next in April 2015 in Tulsa, Oklahoma.

OTHER MATTERS

There being no further matters, the meeting was adjourned.