

**MINUTES
of the
LEGAL COMMITTEE
Crystal Gateway Marriott
Arlington, Virginia
March 14, 2018**

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MEMBERS AND ALTERNATES PRESENT

ALASKA	David Schade
ARIZONA	Einav Henenson
CALIFORNIA	
COLORADO	Pat Pfaltzgraff
IDAHO	Jerry Rigby
KANSAS	
MONTANA	Tim Davis Jan Langel
NEBRASKA	
NEVADA	Jason King Tom Blaine Greg Ridgley
NEW MEXICO	
NORTH DAKOTA	Jennifer Verleger
OKLAHOMA	
OREGON	
SOUTH DAKOTA	Kent Woodmansey
TEXAS	John Niermann Jim Rizk

UTAH

Eric Millis
Todd Adams
Norm Johnson

WASHINGTON

WYOMING

Pat Tyrrell
Steve Wolff

WESTFAST

Roger Pierce, Federal Liaison, Murray, UT
Chris Carlson, U.S. Forest Service, Washington, DC
Stephen Bartell, U.S. Department of Justice, Washington, DC
Doug Cutis, U.S. Bureau of Land Management, Washington, DC

STAFF

Tony Willardson
Michelle Bushman
Sara Larsen
Cheryl Redding

WELCOME AND INTRODUCTIONS

Jennifer Verleger, Chair of the Legal Committee, called the meeting to order, and requested introductions be made around the room.

APPROVAL OF MINUTES

The minutes of the meeting held in Albuquerque, New Mexico on October 19, 2017 were unanimously approved.

SUNSETTING POSTIONS

Jennifer reviewed sunseting Position #380 – Recognizing State Primacy over Groundwater. Einav Henenson mentioned a change in the third whereas clause, “but no federal statute has addressed nor federal appeals court explicitly recognized any federal property or other

rights related to groundwater,” considering the recent 9th Circuit decision in *Agua Caliente Band v. Coachella Valley Water District*. She recommended striking the phrase “nor federal appeals court explicitly recognized. A motion to approve the position as amended was made by Kent Woodmansey. Second was given by Norm Johnson. The position as amended was unanimously approved for re-adoption.

NATIONAL WATER SUPPLY ALLIANCE UPDATE

Jeannette from the Corps addressed the NWSA meeting on March 13th. Jen listed a number of topics they will be addressing, including water supply contract authorities for public water supply projects, reaffirming state primacy, Section 408 concerns, infrastructure, and reallocation studies. It sounds like the Corps is working toward actual consultation with the states, with better engagement than there has been in the past. NWSA has been doing some great work, and their website has more information if you are interested in participating.

WSWC-WESTFAST NON-TRIBAL FEDERAL WATER RIGHTS WORKGROUP

Roger Pierce, WestFAST Liaison discussed the recent activities of the workgroup. We have been trying to have the workgroup meetings quarterly. Water for grazing rights has come up as the next topic of interest for our workshop this Fall at the meeting in Idaho. We would like people to start thinking of issues that could be addressed.

Michelle said that the workgroup considered including some of the ranchers’ organizations. The ranchers perceive the permitting process and whether the permit is for the rancher or for the state. We want to be careful about how we bring them in to engage in the workshop. The states have expressed interest in knowing what the other states are doing.

Pat Tyrrell talked about variations between states, such as Nevada and Wyoming, on who gets the water right, whether the water rights holder must own the stock. Roger Pierce noted that the differences also impact the federal agencies and their policies.

Jerry Rigby noted that we are marking the ten-year anniversary with WestFAST. He mentioned it has been invaluable to be able to have a relationship with our federal partners.

WSWC-NARF TRIBAL WATER RIGHTS AD HOC GROUP

Michelle Bushman referred to the summary of the Ad Hoc Group’s visits in Washington, D.C. in October 2017, Tab R. The constant turnover in Congress means continuously educating members and staff about the importance of approving negotiated settlements of reserved Indian water rights. Several members of Congress are retiring or otherwise not running for re-election, so we are losing some of the experienced members we have relied on in the past.

Jay Weiner mentioned the importance of stressing to Congress the funding aspect of these settlements once they are approved, such as the Reclamation Water Settlement Fund established by P.L. 111-11 or piecing together annual appropriations, otherwise we run the risk of the settlements falling apart down the road.

FY2018-2019 LEGAL COMMITTEE WORK PLAN

Jen briefly reviewed the work plan items and the updates. A motion to approve the work plan and a second was given. The Legal Committee Work Plan for 2018-2019 was unanimously approved.

LEGISLATION AND LITIGATION UPDATE/CATSKILLS III

Michelle Bushman referred to the chart of significant legislation and litigation under Tab S. Notably, the Supreme Court denied certiorari on the *Catskills III* case. Peter Nichols has noted there is not really a Circuit Court split meriting cert, but that could still happen sometime in the future. He is working with WGA and Ward Scott on possible legislation to codify EPA's Water Transfers Rule.

Jen provided updates on the WOTUS rule cases, following the Supreme Court's January 2018 decision overturning the 6th Circuit in *NAM v. DOD*. The various district courts are facing motions to re-consider a stay of the 2015 rule, since the 6th Circuit's nationwide stay will no longer be in effect. She touched on the motions in Texas and South Carolina district courts.

The North Dakota litigation is dealing with a change in judges, since Judge Rob Erickson was appointed to the 8th Circuit Court. The case has been fully briefed, but was put on hold while the 6th Circuit's decision was appealed. North Dakota is asking the new judge to allow the case to proceed.

STATE ENGAGEMENT WITH FEDERAL PARTNERS: TOPICS AND STRATEGIES

Jen asked folks to please be prepared with questions to ask.

OTHER MATTERS

There being no other matters, the meeting was adjourned.