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1995 ANNUAL REPORT

OF THE

WESTERN STATES WATER COUNCIL

INTRODUCTION

The first official meeting of the Western States Water Council was held at Stateline, near Lake Tahoe, Nevada on August 3, 1965. The Western Governors' Conference approved the creation of the Western States Water Council during meetings in Portland, Oregon on June 10-13, 1965. The Governors' resolution explicitly stated: "The future growth and prosperity of the western states depend upon the availability of adequate quantities of water of suitable quality." Further, the governors felt that a fair appraisal of future water needs, and the most equitable means of meeting such needs, demanded a regional effort. Water availability and interbasin transfers of water were important issues. Western states found themselves in an era of rapid federal water resources development, and regional or basinwide planning, without a sufficient voice in the use of their water resources. The Western States Water Council has since provided a unified voice on behalf of western governors on water policy issues.

The emphasis and focus of the Western States Water Council has changed over the years as different water policy problems have evolved. However, the commitment towards reaching a regional consensus on issues of mutual concern has continued. The Council has proven to be a dynamic, flexible institution providing a forum for the free discussion and consideration of many water policies that are vital to the future welfare of the West. As envisioned by the Western Governors' Conference, it has succeeded as a continuing body, serving the governors in an expert advisory capacity. For over thirty years, the Western States Water Council has sought to develop a regional consensus on westwide water policy and planning issues, particularly federal initiatives. The Council strives to protect western states' interests in water, while at the same time serving to coordinate and facilitate efforts to improve western water planning and management.

Originally, Council membership consisted of eleven western states: **ARIZONA, CALIFORNIA, COLORADO, IDAHO, MONTANA, NEVADA, NEW MEXICO, OREGON, UTAH, WASHINGTON and WYOMING.** In 1978, **TEXAS** was admitted to membership, after many years of participation in Council activities in an "observer" status. **ALASKA** requested and received membership in 1984. **NORTH DAKOTA** and **SOUTH DAKOTA** both received membership in 1988 after a long association with the Council. In 1991, **HAWAII** requested and received membership. Council membership is automatically open to all member states of the Western Governors' Association (which also includes the **State of Nebraska**). Other states may be admitted by a unanimous vote of the member states. **OKLAHOMA** was admitted as an associate

member in January 1990, but withdrew in 1994 following an extended trial period as the state was unable to secure funding for full membership. Associate membership may be granted for up to three years in order to explore the benefits of membership. Oklahoma continues to seek funding for full membership. Due to severe budget cuts, temporary associate member status was requested by the State of Montana in 1993, and the States of Alaska and Washington in 1994. These requests were granted by the Council. Similar conditions in Hawaii required a review of their status in 1995. Council membership stands at sixteen states.

Each member governor is an ex-officio member of the Western States Water Council. The governor may appoint up to three representatives to the Council, and as many alternates as deemed necessary, to serve at the governor's pleasure. Council officers, including a Chair, Vice-Chair, and Secretary-Treasurer, are elected annually from the membership. State representatives are appointed to working committees, with one representative per state also appointed to an Executive Committee. The Executive Committee attends to internal Council matters with the assistance of a Management Subcommittee, which includes the Council officers, immediate past Chair, and Executive Director. The Council's working committees are the Legal Committee, the Water Quality Committee, and the Water Resources Committee. Each working committee is directed by a committee chair and vice-chair. Committee chairs, in turn, name special subcommittees and designate subcommittee chairs to study issues of particular concern.

Meetings of the Council are held on a regular basis, rotating among the member states, with state representatives hosting Council members and guests. In 1995, meetings were held in: Durango, Colorado on April 12-14; Rapid City, South Dakota on August 2-4; and Scottsdale, Arizona on November 15-17. Guest speakers are scheduled according to the relevant subjects to be considered at each meeting. The Council meetings are open to the public. Information regarding future meeting locations and agenda items can be obtained by writing or calling the Council's office. Included herein are reports on each of the Council meetings, positions and resolutions adopted by the Council, and a discussion of other important activities and events.

Of note, Governor Roy Romer of Colorado had proposed that the western governors dissolve the Western States Water Council and Western Interstate Energy Board and consolidate their important functions within the Western Governors' Association, but without sufficient support from the other governors, he later withdrew his proposal. Instead the governors approved a motion that called for a "virtual office" and even greater policy and program coordination.

The Council staff are: D. Craig Bell, Executive Director; Anthony G. (Tony) Willardson, Associate Director; Ricky S. Torrey, Legal Counsel; and a secretarial staff including Lynn Bench, Alona Banks and Cheryl Redding.

The Western States Water Council offices are located south of Salt Lake, in Midvale, Utah.

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MEMBERSHIP⁺

MEMBER STATES

ARIZONA

- *Governor Fife Symington; 1-91
 - **Rita Pearson; 6-91
 - Michael Brophy; 6-91
 - Edward Z. Fox; 7-91
 - †Russell Rhoades; 8-95
 - C. Laurence Linser (Alt.); 6-88

CALIFORNIA

- *Governor Pete Wilson; 1-91
 - **David Kennedy; 10-83
 - David G. Kelley; 1-83 to 7-83
 - reappointed 3-84
 - Thomas S. Maddock; 5-94
 - Roderick E. Walston (Alt.) 1-86
 - Edward C. Anton (Alt.); 2-91
 - James M. Stubchaer (Alt.); 6-93

COLORADO

- *Governor Roy Romer; 1-87
 - **Daries (Chuck) Lile; 8-92
 - J. David Holm; 1-90
 - Harold D. Simpson; 3-92
 - Wendy C. Weiss (Alt.); 4-87
 - Jim Lochhead (Alt.); 8-92

*Ex-Officio Member

**Executive Committee Member

†Council members denoted by this symbol are listed on this membership list by virtue of their office, pending receipt of a letter of appointment by their Governor.

HAWAII

- *Governor Ben Cayetano; 12-94
 - †Michael D. Wilson
 - Manabu Tagomori; 2-88

IDAHO

- *Governor Phil Batt; 1-95
 - **Karl Dreher; 7-95
 - Wallace N. Cory; 3-95
 - Sherl Chapman; 10-95
 - Wayne T. Haas (Alt.); 10-83
 - J.D. Williams (Alt.); 5-91
 - R. Keith Higginson; 10-87 to 7-95
 - Gene M. Gray; 10-83 to 7-95
 - Joe Nagel; 3-91 to 3-95

NEVADA

- *Governor Robert J. Miller; 1-89
 - **Roland D. Westergard; 5-68
 - Joseph E. Dini, Jr.; 7-83
 - Peter G. Morros; 3-91
 - Janet Rogers (Alt.); 5-94

NEW MEXICO

- *Governor Gary Johnson; 1-95
 - **Thomas C. Turney; 7-95
 - Charles DuMars; 2-84
 - Frank A. DuBois; 4-87
 - Wayne P. Cunningham (Alt); 7-88
 - Richard A. Simms (Alt.);
 - 10-82 to 2-84;
 - reappointed 4-91 to

⁺ The date after each name is the beginning date of tenure. A second date indicates the date that the appointment came to an end. Alternate (Alt.) members are also listed.

NORTH DAKOTA

- *Governor Ed Schafer; 1-93
 - **David A. Sprynczynatyk; 9-89
 - Francis Schwindt; 9-88
 - Julie Krenz; 11-90
 - Michael A. Dwyer (Alt.); 11-90

OREGON

- *Governor John Kitzhaber; 1-95
 - **Martha O. Pagel; 6-92
 - Steve Sanders; 7-90

SOUTH DAKOTA

- *Governor Bill Janklow; 1-95
 - **Nettie Myers; 5-95
 - John Hatch; 6-88
 - Steve Pirner; 6-88
 - John Guhin (Alt.); 6-88
 - Reese Peck; 6-88 to 5-95

TEXAS

- *Governor George W. Bush; 1-95
 - **John T. Montford; 10-83
 - Charles W. Jenness; 7-91
 - Ron Lewis; 7-91
 - Fred N. Pfeiffer (Alt.); 10-83
 - Pam Reed (Alt.); 11-91
 - J. David Montagne (Alt.); 9-92

UTAH

- *Governor Michael O. Leavitt; 1-85
 - **D. Larry Anderson; 3-85
 - Thorpe A. Waddingham; 6-65
 - Dee C. Hansen; 3-85
 - Dallin Jensen (Alt.); 7-71
 - Don A. Ostler (Alt.); 10-87

WYOMING

- *Governor Jim Geringer; 1-95
 - **Gordon W. Fassett; 3-87
 - Myron Goodson
 - 6-65 to 3-83
 - reappointed 10-86
 - William L. Garland (Alt.); 10-90

ASSOCIATE MEMBER STATES

ALASKA

- *Governor Tony Knowles; 12-94
 - **Leonard D. Verrelli; 2-95
 - Jules Tileston; 2-95
 - Mead Treadwell (Alt.); 10-91 to 12-94

MONTANA

- *Governor Marc Racicot; 1-93
 - **Gary Fritz; 10-83
 - Steve Pilcher; 4-88
 - Donald D. MacIntyre (Alt.); 2-85
 - Harley R. Harris (Alt.); 6-91

WASHINGTON

- *Governor Mike Lowry; 1-93
 - **Carol Fleskes; 4-94
 - Tom McDonald; 11-91
 - Michael Llewelyn (Alt.); 11-91

COUNCIL PICTURE

at Scottsdale, Arizona Meeting - November 17, 1995



Front Row: Cheryl Redding, Tony Willardson, David Kennedy, Rita Pearson, Larry Anderson, Jeff Fassett, Karl Dreher, Craig Bell, Ricky Torrey

Second Row: Janet Rogers, Philip Mutz, Myron Goodson, Steve Sanders, Edward Anton, Chuck Lile, Wayne Cunningham

Third Row: Dee Hansen, Wendell McCurry, Ken Slattery, Wallace Cory, Sherl Chapman, Jim Stubchaer, Tom Maddock, Fred Pfeiffer

STAFF

D. Craig Bell	Executive Director
Anthony G. Willardson (Tony)	Associate Director
Ricky S. Torrey	Legal Counsel
Cheryl Redding	Office Manager
Lynn Bench	Bookkeeper
Alona Banks	Receptionist/Secretary

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COUNCIL MEETINGS

117th Council Meetings April 12-14, 1995 Durango, Colorado

The Western States Water Council's 117th meetings were held in Durango, Colorado on April 12-14. Council members and guests enjoyed a field trip of the Dolores Project, on Wednesday, including a visit to the dam and reservoir, as well as to Indian and non-Indian lands and communities served by the project. Subcommittees met to update the Council's position on reauthorization of the Clean Water Act, and to plan for the Water Policy Seminar to be held in April 1996.

The standing committees met on Thursday. The Legal Committee meeting began with a description of key legal developments in general adjudications in Oregon, Idaho and Arizona. Next, Committee Chair Mike Brophy led a discussion regarding a proposal to amend the Federal Advisory Committee Act to exempt "intergovernmental communications and consultations involving federal and state, local or tribal governments." The Legal Committee approved for consideration by the Council a position urging the Congress to amend or repeal the Act. Chuck DuMars from New Mexico next discussed efforts to reauthorize the Endangered Species Act, and described a position developed by a Western Governors' Association working group. Chuck also briefed members on the issue of NEPA compliance relative to the Bureau of Reclamation's proposed water conservation guidelines. Ricky Torreythen reported on the latest staff draft of a water transfers report.

The Water Quality Committee primarily discussed proposed Council positions relative to reauthorization of the Safe Drinking Water Act and the Clean Water Act. The Committee adopted a letter urging the Senate Committee on Environment and Public Works to expedite its work to reform and reauthorize the Safe Drinking Water Act, so as to increase state flexibility, improve implementation and provide cost-effective public health protection. The discussion focused a good deal on Section 401 of the Clean Water Act, which authorizes states to certify whether proposed projects requiring a federal license or permit meet state water quality laws and standards, including designated uses. States may impose conditions as appropriate to assure such compliance. Representatives of the hydropower industry attended the meeting to explain their concerns and objectives with regard to a proposed amendment to the Act, following the Supreme Court's *Tacoma* decision, which expanded the scope of state authority under Section 401.¹ However, after some discussion, the Committee determined to reassert its position that "states have primary jurisdiction over water quantity issues and should retain primary jurisdiction under the Clean Water Act for the integration of water quantity and water quality considerations through the water quality certification process set forth under Section 401."

¹Western States Water, Issue #1046.

The Water Quality Committee also considered language relative to the protection of state water rights and authorities under the Clean Water Act. The Committee concluded that Congress should renew its existing deference to the states' authority to allocate quantities of water and establish water rights. The Committee recommended that: (1) Congress leave to states the responsibility of selecting an appropriate mix of voluntary and mandatory approaches to control non-point source pollution; (2) when a state, in establishing a water quality standard, has considered the impacts of non-water quality factors, that the Administrator of the Environmental Protection Agency should also consider those factors in reviewing the state's standards; (3) Congress should recognize the basic differences between natural wetlands and those that are artificially and/or incidentally created; (4) the Clean Water Act should be revised to clarify that anti-backsliding requirements apply only to technology-based effluent limits, rather than to water-quality based limitations; (5) Congress should provide direction that will aid in cooperative resolution of water quality issues between states and tribes; and (6) Congress should add a provision to the Act to assure that a "good Samaritan" attempting to address water quality problems caused by abandoned mines will not be liable for conditions existing prior to initiation of clean-up under its remediation plan.

The Executive Committee approved the budget for FY96 and dues for FY97 and FY98. The Committee also approved a new format for the annual report. It then reviewed cooperative efforts with the Western Governors' Association and the Bureau of Reclamation (BOR). The Committee also decided to again hold a Water Policy Seminar in Washington, D.C. in the spring of 1996.

The Water Resources Committee discussed the BOR's water conservation guidelines and criteria. The Committee discussed plans for a symposium on water conservation programs to be held in July 1995. Tony Willardson updated the Committee on the BOR report being prepared on ground water recharge projects, and shared with the Committee draft conclusions regarding feasibility and other issues associated with such projects. Jeff Fassett, Council Vice-Chair, described plans for a Water Information Management Systems workshop to be held in Cheyenne in June. Mr. Fassett expressed the hope that each state would be sending a representative, and advised the Committee that Governor Jim Geringer had agreed to address the group. Lastly, the Committee heard from Betsy Rieke and other representatives of the Natural Resources Law Center in Boulder, Colorado regarding its "watershed project." They shared their preliminary findings, and asked for further Council assistance in helping shape and comment on the project.

At the full Council meeting on Friday morning, Chuck Lile, Colorado's lead member, officially welcomed Council members and introduced Leonard Burch, Chairman of the Southern Ute Indian Tribe. Chairman Burch described the status of the Animas-La Plata project and the 1986 Ute Indian settlement agreement, noting that failing to help build the project as provided by the settlement would be a breach of the tribes' "Contract with America." Thereafter, Mr. Lile and Hal Simpson, the Colorado State Engineer, with the assistance of Ross Bethel, described Colorado's impressive system for water data collection and analysis.

Colorado's presentation was followed by Ed Osann, Director of BOR's Office of Policy. Mr. Osann updated Council members on the status of BOR's water conservation guidelines, which on

April 3rd were encapsulated as part of proposed rules relative to Reclamation law reform. Mr. Osann maintained that the proposed rule, like the guidelines, would serve the Bureau in determining whether to provide "discretionary benefits" in the future to irrigation districts and others receiving water from Reclamation. Mr. Osann then described briefly the Bureau's intentions with regard to the issue of unauthorized water use. Recognizing that unauthorized use was also a challenge for state water managers, he hoped that the Bureau could work cooperatively with the states in addressing this issue.

The Council then heard reports from its various committees. In the course of these reports, the Council approved positions recommended by the Water Quality Committee relative to reauthorization of the Clean Water Act and the Safe Drinking Water Act. It approved the position proposed by the Legal Committee regarding the Federal Advisory Committee Act. Finally, the Council approved a letter to be sent to Dan Beard, BOR Commissioner, expressing dismay that the Bureau had published, as part of its proposed rules on Reclamation reform, the essential elements of the proposed water conservation guidelines, even though the comment period on the guidelines had not yet closed. Believing firmly in the utility of conservation as a water management tool, the Council expressed its intent to facilitate efforts to work cooperatively with local water users to make the most efficient use of their water resources. However, the Council expressed grave concerns over the validity and effectiveness of the Bureau's guidelines/rules. The letter to Commissioner Beard closed by asking for his views as to whether, in view of the publication of the proposed rule, continuation of the cooperative efforts between the Bureau and the Council relative to the guidelines would have merit.

**118th Council Meetings
August 2-4, 1995
Rapid City, South Dakota**

The Western States Water Council held its 118th meetings at The Inn at Rapid City, South Dakota, on August 2-4. The meetings began on Wednesday with a state water planning workshop. Martha Pagel, Water Resources Committee Chair, welcomed participants, then Executive Director, Craig Bell provided an introduction on the history of the Council's interest in the subject of water planning, particularly as it relates to local watershed efforts. Jo Clark, Director of Programs for the Western Governor's Association, offered the WGA's perspective and expressed her conviction that encouraging local watershed efforts was an important means to help find solutions to the many difficult problems we face in natural resources management.

The group heard reports from fourteen states regarding the status of state water planning, and its relationship to local watershed efforts. There was a significant range of approaches to state water planning, indicative of the differences in the respective states' institutions and hydrology. However, the group recognized a trend towards encouraging local watershed initiatives as a means of addressing complex issues. At the end of the state presentations, Teresa Rice of the University of

Colorado's Natural Resources Law Center, and Frank Gregg, a consultant, described a watershed management study they are conducting. Mr. Gregg shared several conclusions he had drawn from various interviews of water officials conducted in several western states. The last agenda item was a discussion of the future relationship between state and local watershed and water planning efforts, and how western states should respond to federal watershed/ecosystem initiatives.

The workshop was followed by meetings of the Clean Water Act Subcommittee and a recent subcommittee established to look at proposed laws and policies relating to the transfer of Bureau of Reclamation facilities to project beneficiaries. The Clean Water Act subcommittee discussed a number of features of H.R. 961, the House-passed reauthorization bill. While there seemed to be consensus that the House bill incorporated many of the provisions recommended by the Council, there are still some differences.

On Thursday, the Legal Committee featured a presentation by Joseph Sax, Counselor to the Secretary of Interior, on the effects of proposed federal legislation on regulatory "takings."² Carol Fleskes, head of Washington State's Water Resources Program, discussed a recently enacted state "takings" law.³ Opponents have received the requisite signatures to place repeal of the legislation on the ballot in November. Pending this vote, implementation of the legislation has been suspended. In Texas, the legislature also recently approved takings legislation. Fred Pfeiffer, General Manager of the San Antonio River Authority, described its potential impacts.

The Legal Committee also heard Martha Pagel, Director of the Oregon Water Resources Department, describe the U.S. Supreme Court's holding in *Babbitt v. Sweet Home*.⁴ Jo Clark next reported on Congressional actions relative to amending the Endangered Species Act (ESA). She also described the WGA working group's efforts. Ricky Torrey, Council staff, provided an update on preparations for the WSWC/Native American Rights Fund symposium on Indian water rights settlements scheduled for September 6-8. The committee then heard reports on the Supreme Court's decisions in *Kansas v. Colorado* and *Nebraska v. Wyoming*, the status of the Snake River Basin adjudication, and members' updates on pending litigation.

The Water Resources Committee meeting featured a number of speakers including Ed Osann, Director of the Office of Policy for the Bureau of Reclamation, accompanied by Zell Stever. Mr. Osann first provided members with information regarding the Bureau's initiative relative to illegal water use or "water spreading." He emphasized that the Bureau is committed to working with the states in attempting to resolve problems on a site-specific basis. Charles Calhoun, Reclamation's Upper Colorado Regional Director next provided an update on the recommendations being

²Western States Water, Issue #1103, July 7, 1995.

³Western States Water, Issue #1100, June 16, 1995.

⁴Western States Water, Issue #1103, July 7, 1995.

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WESTERN STATES WATER COUNCIL

Thirtieth Annual Report

developed regarding the transfer of Bureau facilities to private beneficiaries. Lastly, Mr. Osann described the status of Reclamation's water conservation plan guidelines and rules. He said both will reflect several significant changes, including: (1) clarification that the guidelines are guidance, rather than mandates; (2) the absence of a requirement for Bureau "approval" of water conservation plans; and (3) preparation of a plan will not by itself result in a need to comply with the National Environmental Policy Act. The changes will be proposed as part of Reclamation Reform Act rules, which are required to be promulgated by December 1, 1995. They will be consistent with the guidelines, which are expected by September 1st.

Next, members, guests and staff addressed several issues. Jeanine Jones described the conference co-sponsored by the Council and the Bureau regarding western water conservation. She briefly described some of the findings and recommendations of the group. Fred Pfeiffer discussed a draft policy position regarding proposed changes in the Corps of Engineers' mission and flood control responsibilities. Dave Sprynczynatyk, State Engineer of North Dakota, addressed recent developments regarding management of the Missouri River. Considerable controversy has been generated by the Corps decision to review its "Master Water Control Manual."⁵ Dave also described the situation at Devils Lake in North Dakota, which has no outlet. Increases in lake levels have caused a variety of problems. Next, Don Wilhite, Director of the National Center for Drought Mitigation, described the genesis of the Center and its mission. Finally, Tony Willardson provided members with an update on the study undertaken by the Council at the request of the Bureau of Reclamation to examine the feasibility of ground water recharge projects.

The Executive Committee met next to review the Council's budget and the WGA's annual meeting and upcoming work plan. Tony provided a status report on work under different Bureau of Reclamation cooperative agreements. Notably, the committee welcomed three members attending their first meeting, Karl Dreher, Director of the Idaho Department of Water Resources, Carol Fleskes, Washington State Water Resources Program Manager, and Nettie Myers, Secretary of the South Dakota Department of Environment and Natural Resources.

The Water Quality Committee discussed Clean Water Act reauthorization efforts, and accepted the Clean Water Act Subcommittee's recommendation to review both the Council's current position and H.R. 961 to determine if and how the Council's position should be updated, in preparation for an anticipated House/Senate conference committee meeting. The committee also heard from James Roelofs, Environmental Protection Agency (EPA), regarding a new initiative by the Office of Pesticides to develop a rule that would make EPA-approved state management plans a condition of use for five high-volume herbicides.

At the Full Council meeting on Friday, in celebrating the Council's 30th anniversary, Myron Goodson, a charter member of the Council since it was formed in 1965, shared several of his recollections of the Council's early years. Thereafter, Greg Powell of the South Dakota Department

⁵Western States Water, Issue #1100, June 16, 1995.

of Environment and Natural Resources reported on the state's impressive program to fund and develop rural water systems. Next, the respective chairs of the committees of the Council gave their reports. The committee reports were followed by an opportunity for each state to report on their recent activities and events.

The Council adopted the proposed position on the Administration's new flood control policy. While recognizing the need for reform, the Council requested the Administration reconsider its new federal flood control policy, and called for dialogue with the states on a more responsible and equitable approach to meeting the nation's needs within current budget constraints. The Council also unanimously approved a letter to be sent to Senator Christopher Bond, Chair of the Agriculture, Rural Development, and Related Agencies Subcommittee of the Appropriations Committee, relative to proposed cuts in EPA's budget. The letter suggested that direction "should be given to EPA regarding these cuts to carefully assess regulatory needs, eliminate duplication and improve efficiency. In this regard, we believe state programs which implement existing environmental mandates should be given high priority."

**119th Council Meetings
November 15-17, 1995
Scottsdale, Arizona**

The 119th Council meetings were held in Scottsdale, Arizona on November 15-17, 1995. They began with a tour of the Salt River Project's Granite Reef Underground Storage Project (GRUSP) and Roosevelt Dam, one of the U.S. Bureau of Reclamation's first projects. GRUSP is designed to enhance ground water recharge in the bed of the usually dry Salt River, using local surface water supplies and imported Central Arizona Project water. Roosevelt Dam has been redesigned, rebuilt and raised some 75 feet in order to address growing water supply needs and dam safety concerns.

The Federal Water Projects Transfer Subcommittee met and discussed recent federal proposals and policies with respect to the sale or transfer of water and power projects and related distribution systems. Jeanine Jones chairs the Subcommittee and she described the results of a survey of transfer activity in WSWC member states. Also, a proposed position was considered, amended and forwarded to the Council for approval, along with an item for the Water Resources Committee work plan. Next, the Water Policy Seminar Subcommittee met to talk about a joint meeting with the Interstate Council on Water Policy to be held in Washington, D.C. in concert with the next WSWC meetings on March 19-22, 1996.

The Legal Committee met and listened as Douglas Miller, General Counsel, Central Arizona Water Conservancy District, described past negotiations and litigation over the non-federal capital repayment obligation for the Central Arizona Project. The District and the Department of Interior remain some \$400,000 apart on the estimated \$1.8-\$2.2B price tag. Next, the Committee addressed

a proposed position to further strengthen the states' role in water right general adjudications and require federal entities to pay appropriate fees for participating in adjudications. After considerable discussion, it was revised and then later presented to the Council. Next, there was a panel discussion on the status of general adjudications in a number of western states, followed by a summary of recent federal legislation (H.R. 2555) introduced by Rep. Mike Crapo (R-ID) entitled the "State Water Sovereignty Protection Act."⁶ The Committee also addressed interrelationships and litigation in Utah involving state management of water quantity and water quality, in light of the U.S. Supreme Court's "Tacoma" decision.⁷

Next, the Water Quality Committee listened to a legislative update on the Safe Drinking Water Act (SDWA) and Clean Water Act (CWA) by Shaun McGrath of the Western Governors' Association. He stated that the SDWA has the best chance of passage next year, while final CWA action appears unlikely. Given the outlook, a CWA subcommittee will meet to address a number of proposed changes to the Council's current position suggested by North Dakota. However, the committee approved without opposition a position in support for H.R. 2567, a bill introduced on November 1, by Rep. Gary Condit (D-CA) to amend the CWA as it relates to standards for constructed water conveyances. The bill is consistent with the Council's CWA position. Thereafter, a number of guests spoke to the Committee. Kim MacEachern addressed water quality issues in Arizona's Department of Environmental Quality. A panel discussion on state ground water management included: Sonja Massey, Ground Water Task Force Chair for the Association of State and Interstate Water Pollution Control Administrators and Chief of Alabama's Ground Water Branch; Wendell McCurry, Chief of Nevada's Water Quality Planning Bureau; and Ken Slattery, Washington Department of Ecology.

The Executive Committee considered the budget report and annual report, and plans for future meetings and the Water Policy Seminar. It also discussed joint activities with the Western Governors' Association (WGA). In a surprise visit, WGA Executive Director Jim Souby informed members the governors would consider a motion at their Winter meetings in Las Vegas on November 30- December 1, to dissolve both the Western States Water Council and Western Interstate Energy Board (WIEB) in a reorganization designed to continue within the WGA those functions of each organization deemed to be most important. He suggested members should directly contact their governors with their advice. In 1965, the Western States Water Council was created by a governors' resolution.

The Water Resources Committee heard Denise Fort, Chair of the recently chartered Western Water Policy Review Commission, describe its status and future. With support from Senator Mark Hatfield (R-OR), the Commission will receive \$800,000 a year for two years to prepare a report to Congress by December 1, 1997. The money will come from existing funds within the Department

⁶Western States Water, Issue #1119, October 27, 1995.

⁷Western States Water, Issue #1046, June 3, 1994 and Issue #1022, December 17, 1993.

of Interior, which along with other federal agencies is to provide staff and other support. She does not expect to have much money for outside help, but looks forward to the Council's questions and comments as the work proceeds. She also noted two members remain to be named.⁸ The Commission is to review present and anticipated water resource problems in nineteen western states, examine and make recommendations for improving or eliminating federal water programs, review the need for additional water storage, as well as greater conservation, and look at past and present water laws and institutional arrangements.

Tom Donnelly, Executive Secretary of the National Water Resources Association, discussed various water issues with the Committee and NWRA's new strategic plan. Also, Jeanine Jones discussed a survey of federal water and power project transfer proposals and presented an amended position statement covering related issues. Council staff reviewed the status of work on ground water recharge, water conservation and water information management systems for the Bureau of Reclamation. Staff also noted the Council and Environmental and Energy Study Institute will cosponsor a briefing on water conservation in Washington, D.C. on December 1st. The Committee next reviewed a request for comments from Rep. Elizabeth Furse (D-OR) on a bill she and Senator Mark Hatfield (R-OR) have introduced, the Waterways Restoration Act (H.R. 1331 and S. 626). Lastly, Dave Kennedy showed a video of the failure of a spillway gate at Folsom Dam on the American River above Sacramento, California.

All of the working committees also considered, amended and adopted work plans for 1996, and staff were given some direction with respect to priorities.

The Western States Water Council's 119th meeting began with reports by the working committees on their actions of the previous day. The Legal Committee first presented a position statement, adopted by the Council, urging the Congress to reaffirm its deference to state water law, waive the United States sovereign immunity to allow participation in western state administrative and judicial proceedings, and provide for the payment of related fees required by state law. The Council also adopted a position in support of the sale or transfer of federal water and power projects and related facilities, after the establishment of a process and development of appropriate criteria and guidelines for a project-by-project review, with strong state involvement. Lastly, the Council approved a resolution of appreciation for former member Pam Reed of Texas.

Bureau of Reclamation Commissioner [designate] Eluid Martinez was unable to attend as planned and address members as he has yet to be confirmed by the Senate.

Mark Killian, Speaker of the Arizona House of Representatives, addressed members and described his ties to water in Arizona. His family has a farm and ranch in Mesa and his grandfather was Secretary of the Interstate Streams Commission for seventeen years. He is an advocate for the Central Arizona Project (CAP). Speaker Killian believes, "Water is our life line to the future." With

⁸Western States Water, Issue #1117, October 13, 1995.

respect to growing conflicts over water use, particularly in the lower Colorado River Basin, he called for getting all the parties to the table to work together to solve their problems. He also called for a meeting of the legislative leaders in the basin, and development of a Western States Coalition. Unfortunately, the Speaker said, solutions to many of our water problems appear to be precluded by burdensome federal environmental rules and legislation. He highlighted the need to set priorities among the needs of people and the environment. He stated that Arizona is willing to help meet the water needs of neighboring states, but believes they should look first to their own resources and conservation.

Rita Pearson, Director of the Arizona Department of Water Resources added that a joint legislative committee had been created to look at Colorado River issues, including Indian water right claims, CAP operations, water pricing, municipal and agricultural water use, and ground water recharge. Despite conservation and the development of access to Colorado River waters, ground water overdrafting continues at about 1.4 million acre-feet per year.

OTHER IMPORTANT EVENTS AND ACTIVITIES

Council Member Changes

During 1995, there were a number of changes in membership. Two long-time members from Idaho were replaced. **Gene Gray**, former Chair of the Idaho Water Resources Board, had served on the Council since 1983. He chaired the Water Quality Committee. Before retiring as Director of the Idaho Department of Water Resources, **Keith Higginson** had represented Idaho since 1987, serving as Chair of the Legal Committee and a number of subcommittees. The state of South Dakota was represented by **Reese Peck** before he left his position as Deputy Secretary of the Department of Environment and Natural Resources. He was named to the Council in 1988. **Eluid Martinez** served four years as the New Mexico State Engineer and a member of the Council. **Pam Reed** also served four years, representing Texas as a member of the Council and former Texas Water Commission. Their friendship, leadership and expertise will be missed.

Western States Water

For over twenty years, the Council's weekly newsletter, Western States Water, has been one of its most visible and well received products. Its primary purpose is to provide governors, members, and others with accurate and timely information with respect to important events and trends, in order to promote better federal, state, and local decisionmaking and problemsolving. It is intended as an aid to help achieve better water management, improve intergovernmental relations, promote western states' rights and interests, and point out policy trade-offs. Further, it covers meetings, changes in Council membership, and other Council business. The newsletter is provided as a free service to members, governors and their staff, member state water resource agencies, state water users associations, selected multi-state organizations, key congressmen and their staffs, and top federal water officials. Other public and private agencies or individuals may subscribe for a fee, which was raised to \$100 in 1994. Call the Council office for information.

Water Law Workshop

On February 2-3, the American Bar Association's Section on Natural Resources, Energy and Environmental Law, in cooperation with the Western States Water Council and the Conference of Western Attorneys General, sponsored their 13th Annual Water Law Conference in San Diego. About 150 people attended. The seminar addressed many important aspects of water law. Considerable discussion was offered regarding developments within the Bureau of Reclamation (BOR), including water spreading, contract renewals, and Reclamation Reform Act regulations. Draft BOR regulations establishing a presumption about which wells in the Colorado River floodplain will be deemed to pump Colorado River water were also discussed. Other topics included the Endangered Species Act, expert testimony in water rights litigation, ground water hydrology, and developments involving California's Mono Lake and the Columbia and Snake Rivers.

Water Information Management Systems Workshop

The U.S. Bureau of Reclamation, Western States Water Council and Wyoming State Engineer's Office sponsored a workshop on water information management systems (WIMS) in Cheyenne, Wyoming on June 12-14. Officials from seventeen western states were also joined by representatives from the U.S. Geological Survey, U.S. Fish and Wildlife Service and Bureau of Land Management. The meeting drew more than 90 participants. Jeff Fassett, Wyoming's State Engineer, welcomed everyone to the state and described the growing importance of information management and communication in managing Wyoming's water. Ed Osann, Reclamation's Director of Policy and External Affairs, addressed participants and stressed the critical importance of information management in future decisionmaking, as wise water management becomes more and more difficult, given increasing demands from competing uses. He urged states to work with federal agencies "step-by-step," or "byte-by-byte," to share the task of obtaining, managing and updating information.

Governor Jim Geringer was a featured speaker. He focused his remarks on the productive application of technology to increase government efficiency and provide the public with greater access to information and opportunity. He called for new ways to share information, suggesting that technology allows state and federal agencies to cooperate by reaching across barriers through a "horizontal handshake." Wyoming has established an information technology oversight panel and an advisory council of the use of geographic information systems (GIS). GIS technology has been used in the state to identify and target for protection aquifers vulnerable to pollution from nitrates and pesticides, as well as to track the status of wetlands. Governor Geringer also stressed the importance of training water managers in the use of information management technologies in order to be able to better anticipate and resolve problems based on reliable and defensible data.

Most of the meeting involved presentations from state and federal official on a wide variety of information management topics, such as centralizing data while decentralizing access, administering and adjudicating water rights, mapping and imaging, tracking water uses, Internet access and use, integrating GIS use in water management, planning and modeling, improving public/client access and service, and applying WIMS technology to solving water problems and developing decision support systems.

A number of small groups met at the end of the workshop to discuss hardware and software resources, available data, information on data (or metadata), better use of information technology in policy and decisionmaking, and cooperative federal and state partnerships. Most states and speakers provided written summaries of their remarks, which were compiled before hand and distributed at the workshop. Also, a number of recommendations for further action were suggested for consideration, including continuing annual meetings as a means of information exchange.

Western Governors' Association

Annual Meeting

The Western Governors' Association (WGA) held its annual meeting in Park City, Utah on June 24-26. A private luncheon was held with Senator Pete Domenici of New Mexico, Chairman of the Senate Budget Committee. He described efforts to balance the budget over the next seven years and its likely effects on the West. A plenary session also dealt with new fiscal realities. It focused on what federal obligations the states may be asked to assume, ranging from complex management challenges associated with block grants to demands for services formerly provided by the federal government. The governors also heard from Assistant Secretary of the Interior George Frampton, who discussed the impacts of congressional budget proposals on the Fish and Wildlife Service and the National Park Service.

Another session was devoted to consideration of policy resolutions. With respect to water, the governors adopted one resolution encouraging the Congress and the Administration to support "Good Samaritan" remediation efforts at abandoned mine sites through amendments to law and policy "as quickly as possible." The governors also passed a resolution urging Congress to refrain from weakening section 401 of the Clean Water Act, "the one remaining avenue for states to influence hydropower siting within their borders and upon their waters." The resolution also asks Congress to closely examine the Federal Power Act and amend it to clarify and strengthen Congressional deference to state primacy over water resource allocation and management. Specifically, the Congress should require that any projects that remain under FERC jurisdiction should not be licensed unless or until they acquire a water right or the functional equivalent from the affected state or states. The governors directed the staff to continue working with the governors, state water resource and natural resource agencies, and the Western States Water Council in opposing amendments to section 401 of the Clean Water Act and to seek sponsorship of legislation restoring full state authority over state waters under the Federal Power Act. They also reaffirmed their support for a resolution first adopted in 1992 setting forth principles to govern reauthorization of the Clean Water Act.

The governors adopted a resolution critical of the Bureau of Reclamation's proposed water conservation guidelines/rules.⁹ The resolution questions Reclamation's authority to require more than the submission of a conservation plan from those receiving water from Bureau of Reclamation facilities. Further, it criticizes Reclamation's presumption that approval of a plan is a federal action triggering compliance with the National Environmental Policy Act, as well as the Endangered Species Act. The governors' policy statement proposes that Reclamation's efforts to encourage water conservation should include voluntary and flexible incentives, rather than penalties for non-compliance with specific mandates under questionable statutory authority. The governors asked that

⁹Western States Water, Issue #1099, June 9, 1995.

the WSWC monitor promulgation of related rules and regulations, or guidelines and criteria, and work with Reclamation and other interested organizations to further the governors' policies.

In another resolution, the governors noted that the process which they have consistently supported regarding negotiated settlement of Indian land and water rights disputes, has broken down. Recognizing the difficult financial times, the governors nevertheless reiterated the need to resolve these disputes and to address tribal grievances. "It is time to revisit the need and process for resolving these issues and to rededicate efforts to continue the positive accomplishments of the last decade," the resolution states. The governors therefore call for a broadly representative committee to be formed to review where problems have developed and to formulate recommendations to ensure continued momentum and success.

The WGA also adopted a resolution sponsored by Governor Fife Symington of Arizona stating, in part, "The Western Governors recognize the sanctity of the law of the (Colorado) River. Any administrative decisions intended to improve the operations of the Colorado must comply with the Law of the River and should not be undertaken without the unanimous consent of all affected parties." The Governors also reaffirmed their support for the "Park City Principles" as a guide to improve water management. These principles were developed through a series of WGA/WSWC workshops.

Governor Ben Nelson of Nebraska was elected as the new chairman, and Governor Edward Schafer of North Dakota was elected Vice-Chairman.

Winter Meeting

Review of Multi-state Organizations

The Western Governors' Association held its winter meeting in Las Vegas, on November 30-December 1. Resolutions were adopted and motions approved on a number of matters. Jim Souby, the WGA Executive Director, reported on a review of multistate organizations. He said Governor Roy Romer of Colorado had decided to withdraw his motion to dissolve the Western States Water Council and Western Interstate Energy Board and consolidate their important functions within the WGA. Instead the governors approved a motion that they continue as independent organizations, but WGA staff were directed to: (1) review how appointments are made to the two organizations; (2) identify measures to further assure the development of integrated policy resolutions and positions; and (3) create "a virtual office" by enhancing electronic means of communication and interchange between the organizations. A report on these matters will be made at the June 1996 meetings.

Water Conservation Workshop and Meetings

The Western States Water Council and U.S. Bureau of Reclamation co-sponsored a workshop on water conservation in San Diego, California on July 10-12. The meeting focused on state and federal efforts to promote water conservation. More than eighty federal, state and local officials participated. Fourteen states sent representatives to discuss their conservation programs, and there were a number of presentations on different policy, project and program initiatives within Reclamation. Reclamation's proposed water conservation guidelines, criteria and separate rules were discussed briefly.¹⁰ Ed Osann, Director of Policy and External Affairs, addressed some of the comments that had been received to date and pointed out that there was a clear dichotomy between the views expressed by states and water districts and those by environmental groups.

While unable to state that any policy decisions had been made at this time, he predicted that a clearer distinction would be made as to the nature and purpose of the guidelines and the separate rules. Further, there would be a number of modifications. References to Section 210(b) of the Reclamation Reform Act will likely be removed, and Reclamation's statutory authority otherwise clarified. The requirement for Bureau approval of plans would likely be removed, thus eliminating for the moment the federal action triggering a need to comply with the National Environmental Policy Act. This will likely apply to both the guidelines and the proposed rules. However, plan implementation may trigger NEPA compliance. The rules were expected to be finalized by December and the guidelines by September, but no effective date had been set.

Mr. Osann suggested that Reclamation will be working to improve communications and collaboration with its clients and the states. While compliance with the rules and guidelines will still form the basis for eligibility for discretionary Reclamation program benefits, and budget and resource allocation decisions, greater flexibility and more regulatory relief will likely be allowed in those states or specific areas that have or will take a proactive role in promoting water conservation. With respect to the use of any water savings, Mr. Osann stated it will be determined by local districts within the constraints of existing state and federal law and site-specific characteristics. Other Reclamation officials reported on the progress of contracts for the preparation of guidebooks to assist districts in the preparation and implementation of water conservation plans. Further, Reclamation reported that unfortunately its \$9M request for "Challenge Grants" to fund partnership arrangements to assist districts and others in promoting innovative water conservation activities had been cut from the House's energy and water appropriations bill, though there was still hope the Senate would agree to some level of spending.

With respect to workshop products, a binder with a summary of each participating state's program and copies of some of the federal presentations was prepared and distributed to those in attendance. Further, the final day included time for small group discussions regarding a number of questions and issues related to water conservation and the resulting recommendations were later summarized and

¹⁰Western States Water, Issue #1079, January 20, 1995.

distributed. A preliminary review suggests there is consensus on the importance of water conservation as a tool for efficient and effective water management and as an essential component of river basin or watershed planning. However, it is a means to an end, and water conservation is not a water management panacea. Conservation programs should include specific goals, and expected costs and benefits.

The workshop was the culmination of a number of meetings between western state officials and Representatives of the Bureau of Reclamation. The meetings were held in Salt Lake City on February 6-7 and March 7-8. The first included several state representatives, while the second included about 50 people representing every Reclamation state as well as Reclamation's regional and area offices. Under a cooperative agreement, the Council helped facilitate these meetings and coordinate state participation as a means of providing comments on Reclamation's water conservation activities, including development of guidelines for required district water conservation plans. Specifically, the Council identified appropriate state contacts, helped draft a proposed state/federal memorandum of agreement, provided a forum for information exchange, and prepared and distributed a summary of the workshop, including state recommendations for future action.

In addition to working with Bureau, the Council maintained contacts and discussions with other multistate nongovernmental organizations interested in water conservation. Of note, On December 1, the Council and Environmental and Energy Study Institute (EESI) cosponsored a briefing in Washington, D.C. at the Rayburn Building for congressional staff and others that addressed how western states are encouraging more efficient use of water and how states view the federal role in water conservation. About 65 participated. California, Kansas, Oregon and Texas officials spoke on a wide range of topics, including state water law, federal environmental law, western hydrology, and economic and cultural issues. They focused on the use of conservation as a means to an end, but emphasized that it is not a panacea for all western water problems. It is important to understand its costs and benefits, and related environmental issues.

Western State Water Planning Symposium

As previously reported herein, in conjunction with the 118th meetings of the Council in Rapid City, South Dakota on August 2-4, a symposium was held on state water planning. There fourteen state representatives reported on the status of their water planning activities, and its relationship to local watershed efforts that hold promise as an important means of helping find solutions to the many difficult problems facing state water resources managers. There were significant differences in the various states' approaches. Finally, a general discussion focused on the future relationship between state and local watershed and water planning efforts, and how western states should respond to federal watershed/ecosystem initiatives.

Indian Water Rights Settlement Symposium

Special Report

The symposium was cosponsored by the Council and the Native American Rights Fund (NARF) and held in Portland, Oregon on September 7-8. Former Oregon Governor Victor Atiyeh offered the keynote address and emphasized opportunities to develop understanding, promote mutual respect and a willingness to find agreeable solutions. John Echohawk, NARF Executive Director, called for respect for the decision to litigate or negotiate, made by tribes, states or private parties. Mike Brophy, WSWC Legal Committee Chair, recalled the optimistic mood and productive attitude from former symposia, then noted that the climate has changed. The new Congress had not acted on any negotiated settlements, but despite frustrations, he believes that litigation ultimately costs more, in time, money and emotions.

Don Miller, NARF, moderated a session devoted to the fundamental aspects of settlement negotiations. Joe Ely, Project Coordinator for Stetson Engineers, stated that the level and extent of preparation help determine winners and losers in negotiations, as well as the success or failure of the settlement. Faye Bergan, Legal Counsel for the Montana Reserved Water Rights Compact Commission, stressed the importance of an integrated structure to the ultimate success of negotiations. Frank Jones, Rights Protection Officer for the Bureau of Indian Affairs, described differences in technical preparations for litigation and negotiation.

On the topic of identifying parties and issues and how negotiations bind larger groups, Paul Russette, Chairman of the Water Rights Subcommittee of the Chippewa-Cree Tribe, advised involvement of all tribal members and parties from the beginning, and identifying all public and private concerns early in the process. Phil Mutz, the Upper Colorado River Basin Commissioner for the New Mexico Interstate Stream Commission, recommended experienced leadership is important on the negotiation team. David Yargas, Water Resources Analyst for the Environmental Defense Fund, advised federal involvement always, early, and often. He described the bottom line for successful negotiations as process, substance and relationships.

A session on the federal Administration's settlement policy and settlement implementation was moderated by Mike Brophy. Pamela Williams, Special Assistant to John Duffy, Counsel to Interior Secretary, presented his remarks and said that insufficient litigation pressure can hold up settlement approval. She noted Interior's institutional settlement structure includes five fact-finding teams gathering technical and legal information regarding tribal claims. They report back to the negotiating working group. Teams are not appointed where general adjudications are not in progress, she said, because of resource constraints and the lack of finality. She advised tribes to seize opportunities now, due to pending budget cuts. She also described Interior's attempts to establish firm timeframes for progress in negotiations.

Council member Steve Sanders, Oregon Assistant Attorney General, emphasized that states, tribes and the federal government have similar water management goals, and that creative

approaches can enable all parties to reach their goals. Della Wheeler, of the Nez Perce Tribal Adjudication Team for the Snake River Basin Adjudication, described participation in the largest general stream adjudication ever undertaken, involving the entire Salmon and Clearwater River drainages. It impacts the largest hydropower system in the country and several endangered fisheries.

Clive Strong, Idaho Assistant Attorney General, emphasized the importance of involving parties with authority to bind their principals in negotiations and not leaving key issues, such as water supply sources, to be resolved during implementation. Judy Knight-Frank, Chair of the Ute Mountain Ute Tribe, described her frustration with groups and issues holding up settlement implementation. With the project deadline near, the Tribe may again have to litigate.

Tracy Labin, NARF, moderated a session on issues surrounding marketing of Indian water rights. Mark Tilden, NARF, described the draft NARF/WSWC report on tribal water marketing. It included a review of the marketing provisions that are part of twelve of eighteen settlements. Ed Whitelaw, President of ECONorthwest, identified key differences between water markets and other markets, and described the changing western economy and its impacts on rising water prices. Tod Smith, an attorney with Whiteing and Thompson, discussed ten tribes' ongoing discussions with the seven Colorado River basin states on water marketing issues and outlined pertinent federal law. Les Ramirez, Special Assistant to the Secretary of Interior, stressed that water marketing should build on concepts of tribal self-governance and public benefits. Peter White, New Mexico State Engineer's Office, described the state processes involved in reviewing proposed transfers and the need to balance conflicts between private property rights and public resource values.

Dr. Catherine Vandemoer, Special Assistant to the Assistant Secretary of Interior for Indian Affairs, Ada Deer, and Chair of the Taos Pueblo Water Rights Negotiation Team was a special luncheon speaker. She emphasized the Administration's affirmation of tribal sovereignty in directing all federal agencies to adopt a government-to-government relationship with tribes. However, she noted that this progressive policy is in serious jeopardy due to proposed budget cuts, reminiscent of the termination era for the tribes, and the impacts on rural communities where most tribes live. As the federal government has contributed the greatest share to past tribal water settlements, she noted that the burden will have to shift dramatically to the states, if settlements are to continue. Given increasing water scarcity, she recommended watershed management, conservation incentives, water marketing provisions, and institutional changes to integrate state and tribal water management. She stated that only 26 of the 535 federally recognized tribes may require Secretarial approval of tribal water codes, and encouraged states and tribes to work out border issues and cooperative water management arrangements. She asked states to support creation of a permanent fund for Indian water settlements, and noted that the Western Governors' Association had called for high level discussions with the White House, the tribes, and Interior to obtain a commitment to water rights settlements, adding that Congressional involvement is also essential.

Steve Sanders moderated a session on water management in Indian country. Craig Cooper, Division Superintendent of the Wyoming State Board of Control, described developments in coordinating state and tribal water management on the Wind River reservation, after 18 years of litigation. John Schumacher, Counsel for the Shoshone Tribe of the Wind River Reservation,

discussed notions of tribal sovereignty and the importance of water and the ability to control its use. Herb Becker, Director of the Office of Tribal Justice, Department of Justice, described the federal role in water management issues. Jody Calica, General Manager for Natural Resources with the Warm Springs Tribe, distinguished treaty rights from the Public Trust Doctrine, and described the federal trust obligation toward tribes. She also addressed tribes' attempts to influence and redirect water management issues. Martha Pagel, Director of Oregon's Water Resources Department and Chair of the WSWC Water Resources Committee, described negotiating an intergovernmental cooperative agreement with the Warm Springs Tribe.

The Symposium's concluding discussion focused on the outlook for water right settlements and was moderated by Steve Moore, NARF. Both House and Senate staff involved with Indian affairs described the changes in Washington and possible impacts on tribal programs. Jo Clark, Western Governors' Association, described the work of the Ad Hoc Group on Indian Reserved Water Rights and provided a valuable prospective on the history of state/tribal relationships. The wrap-up presentation by Susan Cottingham, Montana Reserved Water Rights Compact Commission, eloquently summarized the Symposium proceedings. Her summary is available from the Council.

Endangered Species Act

The new Congressional leadership targeted reform of the Endangered Species Act (ESA) as one of its second tier priorities for legislation. While there appears to be a general consensus that some type of reform is needed, there is little agreement on the scope of the necessary changes. The Clinton Administration proposed ways to increase flexibility and improve implementation of the Act, but argued there was no need for significant legislative changes. The new Congress adopted a temporary moratorium on new listings, and several reform bills were introduced. A major issue is the burden -- cost and uncertainty -- on private landowners. The Supreme Court added to the controversy by holding that the prohibition under Section 9 against "taking" or "harming" an endangered species had been properly interpreted by the U.S. Fish and Wildlife Service to include modification of endangered species habitat on private lands (*Babbitt v. Sweet Home Chapter of Communities for a Greater Oregon*).¹¹ The Western Governors' Association testified at Congressional hearings and presented an "essential elements" document outlining a greater role for the states in management of the Act. The Council continues to work with the WGA and monitor ESA issues as they relate to western water resources management.

Federal Energy Regulatory Commission

The Commission's continuing failure to recognize legitimate state concerns and interests in the federal licensing of non-federal hydropower projects continued to concern the Council. However, the Supreme Court's recognition of the states' authority to include minimum stream-flows as a condition of the related required certification under Section 401 of the Clean Water Act restored to

¹¹Western States Water, Issue #1103, July 7, 1995.

the states some degree of control over the effects of a project on their water resources.¹² The debate shifted to the Congress as amendments to the Clean Water Act were proposed to overturn the Court's decision as part of the reauthorization process. The Council and the WGA actively opposed any such amendments. The CWA reauthorization debate continues, with this and many other issues still to be resolved.

General Stream Adjudications

Several ongoing stream adjudications continued in a number of states, and the Council served as a forum for the discussion of important developments through out the year both at its regular meetings and through the newsletter. Specific adjudication proceeding were reviewed and discussed in Arizona, Idaho, New Mexico, Oregon and Wyoming.

Ground Water Recharge Demonstration Program

Council staff continued to work on a draft report on the Bureau of Reclamation's ground water recharge demonstration program. The program is in its seventh year, and final project reports are just now nearing completion. The cooperative agreement under which the work has been undertaken was again extended, in order to allow analysis of information from completed projects. A summary report and series of case studies will highlight economic and institutional aspects of the program, including economic efficiency, financial feasibility, benefit-cost analysis, cost sharing and cost recovery arrangements, legal issues, and environmental and political acceptability.

Intrastate Water Transfers

The 1994 Work Plan of the Legal Committee called for a discussion paper on intrastate water marketing, summarizing major issues, current programs and approaches, and experiences to date. A draft report was prepared and distributed for comment by WSWC Legal Counsel Ricky Shepherd Torrey in 1994. Following a review by Legal Committee members, and suggested corrections, the final report, "Intrastate Water Transfers in the West: Approaches, Problems and Related Issues," was released in 1995. The study found an unmistakable trend towards an increasing number of water transfers, given finite western water resources, and observed that the potential exists for achieving social goals through appropriate transfers. However, there are a number of obstacles to any transfer, including outdated legal impediments, a broadening array of recognized interests that are affected by transfers and must be considered, and potential social and environmental costs, as well as benefits. The report summarized opportunities to clarify what types of waters might be available for transfer and suggested guidelines to streamline the transfer process, while protecting the public interest. It also made a number of other recommendations for encouraging transfers.

¹²Western States Water, Issue #1048, June 17, 1994.

Water Policy and Growth Management

The Western Governors' Association (WGA) requested that the Council staff prepare a report on water policy and growth management in connection with a broad WGA growth management initiative. The report was prepared jointly by D. Craig Bell, Executive Director, and Ricky Shepherd Torrey, Legal Counsel. Council members helped refine the issues and reviewed the report, but it was not officially adopted by the Council as representing the views of member states. The report examined growth issues and trends in the western states, and considered various mechanisms dealing with growth management at the state and local level. It addressed alternatives for managing or influencing the pace, location and character of new development and concluded that water policies alone were an ineffective means to manage growth. However, water resources policy is an appropriate component of any comprehensive state growth management strategy. The report did recommend that the states take action to: (1) clarify water suppliers' "duty of service" obligation; (2) facilitate local watershed planning initiatives; and (3) ensure state water rights administrative decisions respected local planning and growth management decisions.

Water Project Transfers

In August 1995, the U.S. Bureau of Reclamation formally announced that it was initiating a westwide program to encourage and facilitate the transfer of title to uncomplicated single-purpose projects to beneficiaries as part of its implementation of the Administration's National Performance Review. Reclamation released a framework document and held a series of public meetings to explain its program. The Council created a subcommittee to review related issues, chaired by Jeanine Jones of California. The subcommittee discussed related issues and Jeanine prepared and distributed to members information on Reclamation's program, general federal legislative proposals and action, and proposals to transfer specific projects. Alaska, California, Colorado, Nevada, New Mexico, North Dakota, Oregon, South Dakota and Texas all responded to a questionnaire that was sent to all member states requesting information on proposed transfers and related issues.

Also, the Subcommittee and Council staff responded to a proposal to sell federal power transmission and related facilities in the Southeast, and study similar sales in the Southwest and West, that was presented late in the Congressional session, as part of the budget negotiation. As described hereafter, the Council adopted a position calling for the careful evaluation of any sale or transfer of federal water and power assets and urged the establishment of a process and development of appropriate criteria and guidelines for a project-by-project review of such proposals, with strong state involvement.

Water Spreading

Water spreading or the illegal or unauthorized use of water on Reclamation project lands was an issue raised by the Interior Department's Inspector General. The issue involves the use of water from federal projects on lands in addition to or outside of those authorized to be served by specific federal legislation, as well as any lands without a state water right. Congressional hearings were

held. Environmental and Indian water rights groups called for quick action to terminate such unauthorized uses, in hopes of finding a new source of water to meet their needs and interests. However, it soon became apparent that it was a much more complex issue than it might seem, and that defining unauthorized or illegal uses was also difficult. Much of the so-called unauthorized use developed over the years with at least the government's tacit approval, as new technology made once marginal lands irrigable. Further, Reclamation soon found its information with respect to project boundaries, irrigable lands, and state water rights was incomplete. Therefore, potential abuses of the law were best handled on a case-by-case basis, providing districts and individuals the opportunity to first comply with the law, once defined, before pursuing serious enforcement actions. Western states were involved in continuing discussions with Reclamation.

Western Water Policy Review Advisory Commission

Given increasing uncertainty regarding the appropriate direction and scope of national water policy, Senator Mark Hatfield (R-OR) introduced legislation to create a national water policy review commission. Later, the scope of the proposal was narrowed to address only western water policy, as a first step. Congress enacted the Western Water Policy Review Act in 1992. It listed a number of Congressional findings and directed the President, "...to undertake a comprehensive review of Federal activities in the nineteen Western States which directly or indirectly affect the allocation and use of water resources," and report on his findings and recommendations.

The Act also authorized the establishment of an advisory commission, composed of twenty-one members, including specific key Congressmen and others appointed by the President. However, activation of the federal advisory commission required a charter from the Department of Interior, which was granted only after years of delay, due in part to a change in Administration and disagreement over appointments. Finally, a charter was granted in September 1995. The Commission has an expansive mandate, but relatively little time and money to accomplish its tasks. The deadline for a report was extended to the end of 1997.

Given its limited time and resources, cooperation from states will be essential in completing many of the Commission's studies. The Commission's chair is specifically directed to invite western state governors to designate a representative to work closely with the Commission. Also of note, Keith Higginson, a longtime WSWC member and original member of the advisory Commission, retired as Director of the Idaho Department of Water Resources and resigned. Ken Salazar, former executive director of the Colorado Department of Natural Resources, and John Davidson, a law professor at the University of South Dakota, were named to the Commission.

POSITIONS AND RESOLUTIONS

Under the Council's rules of organization, its functions include the investigation and review of water-related matters of interest to the western states. Moreover, from time to time, the Council adopts express policy positions and resolutions regarding proposed federal laws, rules and regulations and other matters affecting the planning, conservation, development, management, and protection of western water resources. The following were adopted by the Western States Water Council in 1995.

CLEAN WATER ACT REAUTHORIZATION

The Congress continued to work on the Clean Water Act reauthorization in 1995. The WSWC has taken a longstanding interest in the Clean Water Act, both with regard to its implementation and pending reauthorization. The Water Quality Committee, in particular, has devoted considerable efforts toward tracking developments involving the Clean Water Act.

As reauthorization for the Clean Water Act took the forefront of legislative attention during 1995, the Clean Water Act Reauthorization Subcommittee provided input for revising the past position of the Council adopted on April 15, 1994. Accordingly at the Spring meeting in Durango, Colorado, the Council voted to revise its position on the Clean Water Act to reflect western state concerns and further refine the Council's expression of important aspects of clean water management to western states.

The following revisions to the WSWC's position regarding reauthorization of the Clean Water Act included several positions covering crosscutting issues, such as pollution prevention and watershed management, as well as risk assessment and management, funding, non-point source pollution control, water quality standards, effluent dominated waters and water reuse, federal/western state issues, wetlands, ground water, stormwater, anti-backsliding requirements, clean lakes, compliance with state law under section 401, trans-border area issues, water quality controls on tribal lands and cleanup of abandoned and inactive mines. The position clarified that states should have discretion to select and mix voluntary and enforceable provisions of the law as required to meet clean water requirements. It also recommended states be allowed to review water quality standards every five years, rather than three.

**POSITION
of the
WESTERN STATES WATER COUNCIL
regarding
REAUTHORIZATION OF THE CLEAN WATER ACT
April 14, 1995**

BACKGROUND

Clean water is essential to the quality of life and health of the citizens of the nation. This is particularly true in the arid West, where water is a scarce and precious resource that must be managed considering all social, environmental, and economic values and needs. Because of their unique understanding of these needs, states are best able to manage the water within their borders. Much progress has occurred under the Clean Water Act (CWA) toward the goal of controlling water pollution. Western states have made great strides in integrating water quality and water quantity decision-making and have developed legislative and planning strategies for promoting these goals as well as promoting water conservation and water reuse.

The CWA is now being considered in Congress for reauthorization. The outcome of the debate will affect the ability of state, federal, local, and tribal governments to protect water quality, and could affect the ability of state governments to administer water rights. The Western States Water Council encourages the reauthorization of the CWA based upon the following principles. As issues become more clearly defined, the council will provide further comments in future position statements.

CROSSCUTTING ISSUES

There are three issues of importance, pollution prevention watershed management and risk assessment and management, which deserve special consideration during the CWA reauthorization process, because they potentially impact all programs authorized by the CWA.

POLLUTION PREVENTION

Pollution prevention has recently received a great deal of attention, but needs to be given more emphasis. The concept of pollution prevention cuts across all CWA programs by offering a means of avoiding complex and costly "command and control" approaches to water pollution control and clean up. Expanded funding should be provided to states for development of pollution prevention programs, and incentives such as greater flexibility in using existing grants should be provided to states with strong pollution prevention programs.

WATERSHED MANAGEMENT

The watershed approach offers great opportunities. It allows focus on the most critical problems that affect the watershed while eliminating duplication and inconsistency between regulatory entities. It allows public involvement to be focused on a defined area where results

can be measured. It has the potential to foster cooperative problem solving where the important players can help each other solve mutual problems in a way that can result in an improved environment at less cost. It provides a feasible means of developing an "ecosystem approach" relative to the protection of water quality and related values. To encourage these benefits the CWA should embody the following principles:

1. States should be encouraged, but not mandated, to utilize a watershed approach for water quality and resources management.

2. Any absolute mandate contained in the CWA should be limited to water quality concerns.

3. While states should be allowed to craft their watershed management to meet their needs, the goals and the scope of such programs must be clearly defined. This definition is essential since "watershed management" has many different meanings to different people. In general, basin-specific goals and programs should be selected and prioritized on the basis of risk to quality-of-life, human health, and ecological concerns.

4. Watershed management should emphasize performance, not planning. A uniform set of best management practices should not be mandated. States should be allowed to identify appropriate individual strategies to be applied within, and for, a given basin.

5. There should be no interference with the rights of the states to manage allocation of their water supplies.

6. The internal structure of state government should not be mandated. States should be allowed to use existing authorities and programs or set up advisory committees and watershed councils to meet their needs as they understand them.

7. Flexibility should be provided in both the procedural and substantive requirements of clean water programs to meet the goals of improving water quality and the environment as soon as possible.

8. EPA should provide technical, financial, and research assistance. It should not mandate any particular approach or try to mandate its preferred methods.

9. Federal funding should be made available to the states to support watershed management. The funding should not be tied to following processes specified by EPA. There should be sufficient flexibility in funding to allow states to deal with watershed problems according to the priorities they have identified.

RISK ASSESSMENT AND MANAGEMENT

Implementation of programs authorized by the Clean Water Act should be based on the magnitude of risk to human health, the protection of designated uses, and the likelihood of further significant and unreasonable water quality degradation if no action is taken.

FUNDING

1. The minimum funding at the national level for the state revolving fund (SRF) should be \$2.4 billion annually for at least five additional years beyond the current authorization to meet the original funding commitment of the CWA. Funding levels must be restored in response to changes from the "stimulus package" which caused a reduction of funding to unacceptable levels. This funding is also needed to provide adequate assistance for new needs created by the 1987 reauthorization, such as controls on non-point source pollution, stormwater, and toxics. Adequate funding should also be provided to meet the water quality needs of small communities and rural areas. A grant program or combination loan/grant program with loan terms greater than 20 years should be implemented through new funding and/or in a manner that does not deplete SRF assets.

2. CWA Section 106 funding should be increased to a level that enables states to maintain effective water quality planning, ambient monitoring, permitting, and compliance. Funds available to states under CWA Sections 104, 319, and any new funding for pollution prevention and watershed management should be combined into Section 106, and a single grant should be awarded to each state. States should then have flexibility in targeting the expenditure of funds.

3. For any new federally mandated programs, new federal funds should be provided. The Council opposes any increased matching requirements for federal funds.

4. In providing SRF financial assistance to municipalities, federal requirements other than those specified by CWA Title VI should not be imposed. Once federal capitalization of the program ceases, EPA oversight should be limited to ensuring that the SRF is maintained. Federal crosscutting laws associated with the SRF program should be eliminated. Costs associated with the purchase of land, easements, and rights of way should be eligible for SRF funding.

5. The 4% limitation on SRF administrative costs should be based upon the authorized level rather than the appropriated capitalization grant amount, and provisions should be made for a minimum amount of federal assistance per state for administrative costs.

6. Separate funding and administrative requirements should be provided for any drinking water state revolving fund program. Money allocated for the drinking water fund should be from a source separate from the wastewater SRF.

7. Alternatives to typical "command and control" programs can be promoted through creative funding incentives. The elimination of "cross-cutter" requirements for states with 90% of point sources meeting secondary treatment or for states with no or minimal National Pollution Discharge Elimination System (NPDES) permit backlogs are two examples.

NON-POINT SOURCE POLLUTION CONTROL

1. Maximum flexibility should be provided to states to effectively implement non-point source (NPS) pollution control programs. NPS funding should enable states to balance program elements and focus, as needed, on technology development and transfer, monitoring, assessment, demonstrations, local community technical assistance, and institutionalizing non-traditional water quality management programs.

2. NPS plans, demonstration projects, and program development as envisioned in the 1987 CWA amendments are not yet complete. To produce needed results, states must have the ability to use a significant portion of their CWA Section 319 funds to establish and maintain long term, consistent programs as envisioned by the 1987 amendments.

3. A provision should be added to the CWA to ensure that Section 319(k), requiring federal agency activities to comply with state NPS management plans, is implemented.

4. EPA should not define national, mandatory management practices to control agricultural runoff and other forms of NPS pollution. It should be left to states to select an appropriate mix of voluntary and mandatory approaches to control such pollution, provided that the overall program is adequate to achieve compliance with water quality standards within a 15-year time frame. A voluntary approach should be acceptable if the states have authority to enforce mandatory requirements where water quality standards violations occur. The irrigation return flow exemption from the NPDES should not be rescinded.

5. Federal agencies should be required to develop incentives for implementing NPS controls on federal lands and for federally supported activities. For example, support payments could be increased to farmers with effective conservation plans and bonus acreage awarded to lumber companies with successfully implemented NPS plans.

WATER QUALITY STANDARDS

1. The states must have the primary role in establishing and interpreting water quality standards that meet the intent of the CWA. EPA should be required to provide necessary criteria development guidance to states in a clear and timely manner.

2. The CWA should clearly acknowledge that municipal stormwater systems are to implement best management practices to the maximum extent practicable with the goal of meeting water quality standards.

3. The various water quality assessment requirements should be integrated into a single, streamlined assessment under CWA Section 305(b). The assessment requirements should not be overly burdensome and the 305(b) assessment should be prepared every three to five years rather than every two years.

4. The states should review and revise water quality standards on a five-year basis. EPA should continue to be responsible for approving adopted state water quality standards to assure interstate compatibility and compliance. However, the application of water quality standards in support of state water quality protection goals must continue to be the prerogative of the states.

5. States must be allowed to establish water quality standards flexible enough to account for natural variations in water quality and background levels.

6. When a state, in establishing a water quality standard, has considered the impacts of non-water quality factors -- such as legal and illegal harvest of fish, introduction of non-native aquatic species, and unscreened diversions -- on the maintenance of a balanced population of fish, shellfish, and wildlife, the Administrator shall also consider those factors in reviewing the state's standard.

7. Not all waters should be classified as fishable, swimmable. For example, the CWA should be amended to recognize the unique nature of constructed drains and canals and allow water quality standards to be set that recognize the benefits provided by these waterways (many of which would not exist without the agricultural activity) and the nature of agricultural operations and their ability to reduce pollutants from non-point sources. In such cases, protection of receiving waters for designated beneficial uses should be assured. Also, there are waters which historically, for natural reasons and causes, cannot meet fishable/swimmable criteria.

EFFLUENT DOMINATED WATERS/WATER REUSE

1. Natural channels are often needed to transport reclaimed water to an area of reuse. Reuse of wastewater is an increasingly important source of water in the West. Effluent dominated waters also support riparian habitat. In the CWA reauthorization, Congress should recognize the interrelationship of such waters and water quality standards, riparian habitat, and water rights issues, and should develop policies that support the objectives of state and federal law, by allowing establishment of appropriate water quality standards, based on intended uses, for natural conveyance systems and man-made waterways that discharge flows to waters of the United States.

2. A policy statement should be added to the CWA such as: It is the policy of Congress to allow states to encourage the reuse of treated wastewater, as a component of water quality control as well as comprehensive water management.

3. The CWA reauthorization should allow the permitting authority maximum flexibility in establishing requirements pertaining to effluent dominated waters and ephemeral and intermittent streams based upon net environmental benefit under applicable law. States should be encouraged to adopt water quality standards for reclamation projects to control toxicity, nutrients, and other water quality parameters to provide for reasonable protection of designated water uses. EPA should assist with research to establish safe effluent discharge parameter levels for human contact water uses.

FEDERAL/WESTERN STATE ISSUES

1. Water pollution control programs are administered most efficiently and effectively at the state level. Delegated state programs should be approved if they meet the goals, objectives, and intent of federal statutes. They should not be less stringent than, but need not be identical to, EPA regulations, policies, or procedures.

2. CWA Sections 510(2) and 101(g) are clear expressions of Congressional intent regarding deference to the states' role to allocate quantities of water and establish water rights. This fundamental principle of deference, which is manifest in many other federal environmental statutes, should be reinforced in the context of the CWA reauthorization.

3. Virtually all western states have in place mechanisms to establish and maintain instream flows. Statutory requirements in the CWA for maintenance of such flows would affect water rights and impact water management in the West. No such requirements, either explicit or implicit, should be included in the CWA.

4. Additional federal research and technical assistance are needed on the following topics important to western states: turbidity, suspended solids, physical integrity of the water body, biotic methods applicable to ephemeral and intermittent waters, definition and regulation of ephemeral and intermittent waters, federal land and facility compliance with state water quality standards, mining activities as they relate to storm water, and turbidity.

5. To maintain an appropriate federal/state partnership, it is essential that state officials have a meaningful voice in EPA policy development, particularly in the early stages of such development before irreversible momentum leads toward prescriptive programs. State participation in EPA policy making should not be subject to the Federal Advisory Committee Act or the Administrative Procedures Act.

WETLANDS

1. The existing CWA Section 404 regulatory program must be improved. Sole authority for administration of the program should be vested in one agency. The program

should encourage and enable states to assume full or partial permitting authority. Financial support should be provided to states that assume the federal program. The program must recognize the basic differences between natural wetlands and those that are artificially and/or incidentally created. The program should include research into and development of techniques to assess wetlands' functions and values.

2. The continuing loss and degradation of the nation's wetlands base is unacceptable. A no-net-loss policy is an important step toward reversing that trend. Such a policy, however, must provide flexibility and be implemented at different rates and in different ways in various regions of the country to reflect regional wetlands needs, conditions, and types.

3. National wetlands policy should lend itself to implementation through state, regional, and local plans and programs, and recognize individual state and local planning and regulatory efforts to preserve and protect wetlands.

4. The diverse needs and types of wetlands nationwide, and concern for human and economic impacts, will make it difficult to achieve a no-net-loss goal. To achieve such a goal, a broad range of non-regulatory programs (such as subsidies and tax incentives, public acquisition, conservation easements and leases, and other non-punitive approaches) and regulatory programs will be required.

GROUND WATER

1. A national regulatory program for ground water would be inappropriate and should not be part of the CWA reauthorization. Ground water protection and management are primarily the responsibilities of state and local governments. Such governments must have the flexibility to develop and continue existing programs appropriate for their own circumstances, including strategies and mechanisms appropriate to assure ground water quality protection and preserve their ability to allocate, manage, and protect rights to use ground water.

2. The federal role in ground water management should be to provide technical assistance, gather data, and promote research to support state programs. Also, any federal funds that are provided for ground water protection should be made available to support all phases of program development and implementation of state ground water quality programs, not just program development.

3. Federal agencies should be required to conduct their activities in accordance with, and without duplication of, state and local ground water protection programs.

4. EPA's Comprehensive State Groundwater Protection Program strategy is an acceptable approach to ground water protection to the extent that it is carried out on a

voluntary basis. This approach provides flexibility to address the most pressing ground water problems within a given ground water basin.

STORMWATER

1. Existing requirements for NPDES permits applicable to stormwater discharges are often unrealistic and may, to a large extent, be unachievable, especially in arid areas. The CWA should clarify previous congressional intent that municipal stormwater dischargers are to implement best management practices and should not necessarily be subject to end-of-pipe treatment standards. Best management practices shall be developed through public participation and be designed to ensure that control of stormwater discharge is consistent with regulatory implementation of mandated stream standards. State regulatory agencies are encouraged to establish additional monitoring and performance criteria to assure meeting goals of watershed management programs.

2. The statutory deadlines for implementation of the stormwater program should be revised to establish realistic deadlines for permit issuance and to accommodate phased implementation of stormwater regulatory programs.

3. Recognition should be made of the tremendous responsibility placed upon states by federal stormwater regulations. Significant additional federal resources should be made available to avoid major cuts in other programs.

4. Stormwater pollution controls may include small ephemeral ponds and injection wells as part of on-site retention requirements which could result in significant pollution of ground water. Impact of these requirements may adversely affect the overall water management process. States need the flexibility to design optimum water quality/water quantity interfaces.

ANTI-BACKSLIDING

1. The CWA should be revised to clarify that anti-backsliding requirements apply only to technology-based effluent limits. Water quality-based limits may become more or less stringent over time as more information is acquired about the conditions necessary to protect beneficial uses. Any implication that anti-backsliding requirements apply to water quality-based limitations provides a powerful disincentive for states to establish conservatively protective water quality standards in the face of uncertainty. EPA's inaction on guidance or regulations regarding anti-backsliding has been detrimental to the permitting process, resulting in delaying permits or causing less-restrictive permits to be written.

2. The CWA should be amended to allow removal or modification of effluent limits in cases where the limit is determined to be unnecessary because of errors in calculation,

publication of new scientifically valid information, or determination that the substance being limited is not present in the discharge.

CLEAN LAKES

1. CWA Section 314 funding should be increased to a level that recognizes the key role the Clean Lakes Program plays in managing the nation's lakes for maximum beneficial use and enjoyment.

2. Appropriations should be sufficient to support meaningful efforts to continue assessment and identification/implementation of methods and procedures to restore lake quality.

COMPLIANCE WITH STATE LAW UNDER CWA SECTION 401

States have primary jurisdiction over water quantity issues and should retain primary jurisdiction under the CWA over integration of water quantity and water quality considerations through the water quality certification process set forth under Section 401.

TRANS-BORDER AREAS

The International Boundary and Water Commission, International Joint Commission, and EPA need adequate resources to deal with water quality issues in trans-border areas. Also, mechanisms should exist for better coordination and participation between the International Boundary and Water Commission, International Joint Commission, EPA, the states, other agencies, and our neighboring nations.

WATER QUALITY CONTROLS ON TRIBAL LANDS

In order to prevent voids in regulation, state water quality standards should be effective on Indian lands until replacement standards have been adopted by tribal governments which have been designated as states, or promulgated by EPA. Congress should provide direction that will aid in cooperative resolution of water quality issues.

CLEANUP OF ABANDONED AND INACTIVE MINES

States and local government agencies should be encouraged to address water quality problems caused by abandoned and inactive mines. To provide encouragement, the remediating party must be assured that its liability for cleanup at the site is limited to following its cleanup plan including any amendments thereto. The remediating party should not be liable for conditions existing prior to initiation of cleanup under its remediation plan.

FEDERAL ADVISORY COMMITTEE ACT

An issue emerged in the 1995 Work Plan for the Legal Committee concerning the application of the Federal Advisory Committee Act. The Act requires that any group intending to make recommendations to the federal government must be chartered and approved by the appropriate federal agency, and must provide notice, hold public meetings, record meetings using a court reporter, and publish any findings in the Federal Register. The requirements of the Act have increasingly emerged as a stumbling block to dialogue between state and local governments and the federal government. In 1995, the Legal Committee proposed and the Council adopted a position supporting the grant of a statutory exemption for intergovernmental communications, or in the alternative, a repeal of the Federal Advisory Committee Act.

**POSITION
of the
WESTERN STATES WATER COUNCIL
concerning
AMENDMENT OF THE FEDERAL ADVISORY COMMITTEE ACT
Durango, Colorado
April 14, 1995**

WHEREAS the Federal Advisory Committee Act (FACA) of 1972 establishes extensive and burdensome procedural requirements for committees, boards, commissions, councils and other groups engaged in communications and consultations with members of the executive branch of the federal government;

WHEREAS the judiciary is increasingly applying an expansive interpretation of FACA so as to invalidate many consensual communications between federal and state agencies;

WHEREAS implementation of existing laws and regulations frequently requires significant cooperation and consultation between state agencies and the executive branch of the federal government;

WHEREAS the Western States Water Council historically has been involved in numerous dialogues between federal and state agencies, and anticipates further such interactions in years to come;

WHEREAS many member states of the Western States Water Council have enacted state "sunshine" laws and administrative procedures which would preserve the openness and accessibility of intergovernmental discussions without unduly burdening the public process;

WHEREAS the members of the Western States Water Council believe that increasingly broad application of FACA to intergovernmental communications is an impediment to fruitful cooperation between state, local, tribal and federal governments;

NOW THEREFORE BE IT RESOLVED that the Western States Water Council supports legislation granting a statutory exemption from the requirements of FACA for intergovernmental communications and consultations involving federal and state, local or tribal governments or, in the alternative, to repeal the Act.

FEDERAL WATER CONSERVATION PLANNING GUIDELINES AND RULES UNDER THE RECLAMATION REFORM ACT

The Western States Water Council and U.S. Bureau of Reclamation co-sponsored a number of meetings between western state and Reclamation officials on different policy, project and program initiatives within Reclamation. Under a cooperative agreement, the Council helped facilitate different meetings and coordinate state participation as a means of providing comments on Reclamation's water conservation activities, including guidelines for required district water conservation plans. Reclamation's proposed water conservation guidelines and criteria were the focus of two meetings held in Salt Lake City on February 6-7, and March 7-8. A joint workshop on water conservation was to be held in San Diego, California on July 10-12. However, shortly before the close of the period Reclamation had set for comments on proposed guidelines, similar proposed rules were published in the Federal Register for comment. Many state representatives were infuriated.

The Council approved a letter to be sent to Dan Beard, BOR Commissioner, expressing dismay that the Bureau had published, as part of its proposed rules on Reclamation reform, the essential elements of the proposed water conservation guidelines, even though the comment period on the guidelines had not yet closed. Believing firmly in the utility of conservation as a water management tool, the Council expressed its intent to facilitate efforts to work cooperatively with local water users to make the most efficient use of their water resources. However, the Council expressed grave concerns over the validity and effectiveness of the Bureau's guidelines/rules. The letter to Commissioner Beard closes by asking for his views as to whether, in view of the publication of the proposed rule, continuation of the cooperative efforts between the Bureau and the Council relative to the guidelines would have merit.



WESTERN STATES WATER COUNCIL

Creekview Plaza, Suite A-201/942 East 7145 South/Midvale, Utah 84047/(801) 561-5300 / FAX (801) 255-9642

April 19, 1995

The Honorable Daniel P. Beard, Commissioner
Bureau of Reclamation, Department of the Interior
1849 C Street, N.W., Room 7654
Washington, D.C. 20240

Dear Commissioner Beard:

In January 1995, the Bureau of Reclamation invited the Western States Water Council ("Council") to assist the Bureau in fostering state involvement in the federal water conservation program under the Reclamation Reform Act of 1982. The Council has made a good faith attempt to participate with the Bureau in this effort. Our staff has devoted substantial time, as have many of our state representatives. The Council agreed to participate in this effort with the Bureau because we believed it would promote a cooperative and productive relationship with the Bureau, as well as reduce regulatory pressure on water users in our members' respective states.

We were astounded when the Bureau published proposed rules on April 3, 1995 (Fed. Reg. Vol. 60 No. 63, p. 16959), in advance of the close of the comment period on the guidelines. This action in effect makes the guidelines mandatory, rather than the flexible mechanism for achieving conservation which was initially represented to be the objective.

Our members, the state agencies charged with water management, planning, and water rights administration, are responsible for working with the local water agencies and water users affected by this federal regulatory action. To the extent that your published regulations now seek to impose federal authority on water management actions covering state-administered water rights, the Council strongly opposes implementation of these regulations. We firmly believe in the utility of conservation as a water management tool, and were glad to note that your guidelines as originally released did recognize that conservation is not an end in itself. The Council's intent is to facilitate the efforts of its member states to work cooperatively with local water users to make the most efficient use of their water resources in an economically feasible manner.

We have grave concerns over the validity of the proposed regulations; the financial burdens they will impose on water users; the regulations' potential effect on state-federal efforts in the area of water conservation; their potential to interpose federal regulation in areas beyond the Bureau's jurisdiction; and other aspects of the regulations and incorporated guidelines. These concerns will be communicated separately by our members. Nevertheless, the Bureau's action jeopardizes the future ability of the Council and its member states to continue working with you on the guidelines.

We would appreciate hearing from you as to whether, in view of the publication of the proposed rule, continuation of our cooperative effort has any merit at all.

Sincerely,

A handwritten signature in dark ink, reading 'D. Larry Anderson', written in a cursive style.

D. Larry Anderson, Chair
Western States Water Council

THE SAFE DRINKING WATER ACT

Legislative efforts to reauthorize the Safe Drinking Water Act have been an important item in the Water Quality Committee work plan in recent years. In 1992, the Council adopted a position endorsing reauthorization and revision of the Safe Drinking Water Act. In 1995, the Committee offered, and the Council adopted, a position on reauthorization the Safe Drinking Water Act. It supported reauthorization legislation passed by the Senate in the 103rd Congress. In particular, the position supported creation of a state revolving loan fund for drinking water, and allowing states flexibility to transfer funding between the Clean Water and Safe Drinking Water revolving funds. It endorsed eliminating the requirements that the EPA set standards for 25 contaminants every three years, and substituted a requirement that EPA set standards only for contaminants, found in drinking water supplies, that have adverse health effects. It also supported requiring performance of a cost/benefit analysis before EPA could set new standards. The position supported relaxation of monitoring requirements and endorsed variances for small public water systems.



WESTERN STATES WATER COUNCIL

Creekview Plaza, Suite A-201/942 East 7145 South/Midvale, Utah 84047/(801) 561-5300 / FAX (801) 255-9642

April 24, 1995

Members of Senate Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Senator ____:

The Western States Water Council understands the Senate Committee on Environment and Public Works is considering reforming and reauthorizing the Safe Drinking Water Act. We urge you to expedite this important work to increase state flexibility, improve implementation and provide cost effective public health protection.

The Western States Water Council is an organization of seventeen western states that includes representatives from agencies responsible for implementing the Drinking Water Program. The Council asks your support for changing the current law to ensure the limited resources of federal and state agencies and water utilities are used to provide the greatest risk reduction. We offer the following suggestions for improvements to the Act:

1. Eliminate the need to develop standards for 25 additional contaminants every three years.
2. Require EPA to develop standards based on sound science and occurrence in drinking water at levels of public health concern. Existing and proposed regulations, such as sulfates and other contaminants, should be evaluated in accordance with this principle.
3. Require EPA to consider risks and incremental costs in establishing any new drinking water standard.
4. Create a state revolving loan fund for improvements to public water supply systems. A separate adequate funding source should be provided to capitalize the fund rather than transfer Clean Water Act SRF funding.
5. Provide additional state flexibility to tailor monitoring and public notification to state and local conditions.

Reauthorization of the Safe Drinking Water Act is critical to improve implementation of the Drinking Water Program. An improved program offers stronger protection of public health by focusing limited resources on areas of greatest concern. We would appreciate your efforts for moving a bill to accomplish these important goals.

Sincerely,

A handwritten signature in black ink that reads 'D. Larry Anderson'.

D. Larry Anderson, Chair
Western States Water Council

FEDERAL FLOOD CONTROL POLICY U.S. ARMY CORPS OF ENGINEERS

The Administration's Fiscal Year 1996 budget for the U.S. Army Corps of Engineers included a number of proposed policy changes that would drastically reduce the future federal role in flood control projects and programs. A Corps press release outlined the potential impacts stating, "Nationally significant missions of the Civil Works program will continue to include commercial navigation, interstate flood control, and environmental restoration. Nationally significant flood control projects will decrease damage which has been caused by waters which mainly originate from out of state. They also provide significant contributions to the national economy, in fact they must provide \$2 benefit to every \$1 invested. Because of the tight Federal budget dollar, the Federal share of these projects will be reduced to 25% of the cost, while the non-Federal share will be 75%." Nationally significant interstate flood control projects were defined so that one-half of the flood damaging waters must come from outside the boundaries of the state.

Western states raised concerns over the discriminatory effect of the criterion that flood damaging waters have an interstate origin. For example, if the Sacramento River in California were a tributary of the Potomac River, its headwaters would be anywhere from three to six states away, depending on the direction taken. However, as it is totally within California, flooding on the Sacramento would not be considered of "national significance." Others objected to the new policy's proposed requirement that projects with federal participation demonstrate a benefit-cost ratio in excess of 2:1. Applied as planned to any stages of project development, this could eliminate many worthwhile projects already in some stage of reconnaissance or feasibility study, planning, engineering and design, or construction. Moreover, the Corps' benefit-cost analyses were based only on economic loss, and did not incorporate a value for human life! State representatives also questioned why, given the proposed 75% non-federal cost sharing requirement, local agencies and their citizens would subject themselves to years of delay in the federal process in the hope of getting 25% of their costs paid? Experience shows that the 25% would be consumed in inflation, federal overhead costs and project restraints.

Nineteen Texas congressmen wrote President Clinton opposing efforts to limit federal funding for flood control projects. They estimate the federal share of bayou engineering and other flood control projects and programs in southeast Texas to be \$900M, with another \$600M in non-federal cost sharing. They feared state and local resources could not shoulder the entire \$1.5B cost of these vital projects. "The loss of life and widespread devastation of property that occurred as a result of 1994's devastating floods in Texas underscores the urgency of protecting these projects. Flood control is essential to the safety of the residents and the economic viability of the region," the letter stated.¹³

In response to these and other concerns, as reflected in the Council's following position statement, the Corps announced it would rethink its proposal, according to Dr. John Zirschky, Assistant Secretary of the Army (Civil Works).

¹³Western States Water, Issue #1093, April 28, 1995.

**POSITION
of the
WESTERN STATES WATER COUNCIL
concerning
U.S. ARMY CORPS OF ENGINEERS
LOCAL FLOOD CONTROL POLICY
Rapid City, South Dakota
August 4, 1995**

WHEREAS, in releasing its FY96 budget the Administration has announced a substantial change with respect to the U.S. Army Corps of Engineers flood control and protection policy; and

WHEREAS, the new policy would limit federal participation to projects where more than 50% of the floodwaters originated from outside the boundaries of a state; and projects with a benefit/cost ratio of greater than two-to-one; and

WHEREAS, nonfederal interests would be required to pay 75% of the cost of future federal flood control projects; and

WHEREAS, the new policy largely abdicates responsibility for local flood control projects, essentially shifting such needs to state and local agencies; and

WHEREAS, the abrupt change in policy was made without discussion with state and local governments, and may likely increase the risk of greater loss of life and property; and

WHEREAS, the proposed change appears to be based solely on budgetary considerations with little or no thought given to any legitimate federal interest in local flood control projects; and

WHEREAS, past federal expenditures for local flood control projects have produced significant national benefits; and

WHEREAS, the policy changes will create significant inequities between states; and

WHEREAS, the Administration has expressed a willingness to consider alternative criteria for federal participation in flood control projects.

NOW THEREFORE BE IT RESOLVED that the Western States Water Council, recognizing the need for reforms, requests the Administration to reconsider its new federal flood control policy, and calls for a dialogue with the states on a more responsible and equitable approach to meeting the nation's needs within current budget constraints.

FUNDING FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

In 1995, the Congress mandated a 33% cut in funding for the Environmental Protection Agency for Fiscal Year 1996. The Council supported, in principle, the reduction in funding. However, Council members were concerned lest those reductions in funding be passed on to the states in the form of reduced funding for mandated state programs. Accordingly, in 1995, Council Chairman Larry Anderson wrote a letter on behalf of the Council to Christopher Bond, Chairman of the Veterans Affairs, HUD and Independent Agencies Subcommittee of the Appropriations Committee, expressing these concerns. The letter urged that, accompanying the budget cut, direction should be given to the Environmental Protection Agency providing that environmental programs remain a high priority, and that funding cuts passed on to states should be accompanied by reduced federal mandates.



WESTERN STATES WATER COUNCIL

Creekview Plaza, Suite A-201/942 East 7145 South/Midvale, Utah 84047/(801) 561-5300 / FAX (801) 255-9642

August 9, 1995

Christopher Bond, Chairman
Veterans Affairs, HUD, and Independent Agencies
Appropriations Committee
SD-131 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Bond:

The Western States Water Council, representing 16 western states, is concerned about the 33% cut in funding for the U.S. Environmental Protection Agency mandated by the 1996 House Appropriations bill. We acknowledge and support the need for federal budget cuts to reduce the federal deficit. However, we are concerned with the lack of guidance to EPA about how the cuts will be made, and the impact on state program grants which provide direct environmental service delivery to the public.

Direction should be given to EPA regarding these cuts to carefully assess regulatory needs, eliminate duplication and improve efficiency. In this regard, we believe state programs which implement existing environmental mandates should be given high priority. If state program cuts occur, more flexibility must be provided to the states to target remaining funds to the highest priority issues. Similarly, federal mandates must also be reduced commensurately.

In addition to the Congress providing guidance to EPA in implementing these cuts, we ask that the states be given the opportunity to provide input as these issues are addressed.

Sincerely,

A handwritten signature in black ink that reads 'D. Larry Anderson'.

D. Larry Anderson, Chairman
Western States Water Council

cc: Carol Browner, USEPA

**FEDERAL DEFERENCE TO STATE WATER LAWS
IN STATE ADMINISTRATIVE AND JUDICIAL PROCEEDINGS
AND PAYMENT OF FEES REQUIRED BY STATE LAW**

The federal government has historically deferred to state authority to manage water within state boundaries. Consonant with that deference, the McCarran Act was enacted to provide state courts with authority to join federal agencies in general adjudications commenced by the states. In the general adjudications now underway in many western states, federal agencies are among the largest claimants of water rights. Yet the McCarran Amendment preserves the immunity of federal agencies with regard to the payment of fees and costs associated with state general adjudications. Pursuant to this immunity, federal agencies have also claimed an exemption from paying fees required of all other water users for the appropriation, use or distribution of water. In 1995, the Legal Committee proposed and the Council adopted a position resolving that the federal government should be required to pay filing fees and comply with other state requirements associated with the general adjudication of water rights. In addition, the position endorsed Congressional appropriation of moneys to reimburse states for expenses incurred in connection with the general adjudication of water rights for federal parties.

RESOLUTION
of the
WESTERN STATES WATER COUNCIL
URGING CONGRESS TO REAFFIRM ITS DEFERENCE TO STATE WATER
LAW,
PROVIDE FOR THE WAIVER OF THE UNITED STATES' IMMUNITY TO
PARTICIPATION IN STATE ADMINISTRATIVE AND JUDICIAL
PROCEEDINGS,
AND PROVIDE FOR PAYMENT OF FEES REQUIRED BY STATE LAW
Scottsdale, Arizona
November 17, 1995

WHEREAS, water is the lifeblood of each of the arid Western States, the allocation of which determines the future of each Western State's economic, environmental, social and cultural fortunes; and

WHEREAS, each Western State has developed comprehensive systems for the appropriation, use and distribution of water tailored to its unique physiographic, hydrologic and climatic conditions found within that state;

WHEREAS, the United States does not have a water management system that is equivalent to those of the Western States for the appropriation, use or distribution of water; and

WHEREAS, Congress has consistently recognized the primacy of state water law because of the need for comprehensive water management systems tailored to the unique needs and characteristics of the individual states; and

WHEREAS, Congress enacted the McCarran Amendment, 43 U.S.C. § 666, to allow the joinder of the United States in state general stream adjudications, and Congress intended the United States to be subject to the same procedures as all other water right claimants joined in state general stream adjudications; and

WHEREAS, many of the Western States are conducting general stream adjudications for the purpose of quantifying all water right claims in accordance with the McCarran Amendment; and

WHEREAS, the United States is often the largest claimant of water rights in these general stream adjudications, and the adjudication of federal water right claims requires a large commitment of time, effort and resources by the state courts and by state agencies; and

WHEREAS, the adjudication of water rights claims is absolutely essential for the orderly allocation of water in all the Western States where state law is based on the prior appropriation doctrine; and

WHEREAS, many of the Western States' general stream adjudication procedures require claimants to pay a fee to offset the states' expenses arising from state general stream adjudications; and

WHEREAS, citing to *United States v. Idaho* the United states claims immunity from the payment of adjudication filing fees required of all other claimants to offset the state's judicial and administrative expenses in conducting general stream adjudications; and

WHEREAS, for the United States to be immune from sharing in the expenses of these proceedings constitutes an unfunded federal mandate to the states; and

WHEREAS, the United States contends that it cannot be joined in state administrative or judicial proceedings with respect to water rights it has acquired under state law other than pursuant to the McCarran Amendment, 43 U.S.C. § 666; and

WHEREAS, it is inefficient and wasteful to require that a separate lawsuit be commenced for the sole purpose of regulating water rights acquired by the United States under state law; and

WHEREAS, the United States claims it is also immune from paying fees to states that are required of all other water users for the appropriation, use or distribution of water; and

WHEREAS, equity and fairness dictate that federal agencies who voluntarily seek to appropriate water pursuant to state law, or who acquire water rights based on state law, should be required to comply with state law, including the payment of fees, to the same extent as all other persons.

NOW, THEREFORE, BE IT RESOLVED that the Western States Water Council supports passage of legislation that at a minimum provides for the following:

1. Requires the federal government to participate in all state administrative and judicial proceedings with respect to water rights it acquires to the same extent as all other persons.
2. Requires the federal government to pay filing fees as well as comply with all other state substantive and procedural water right adjudication laws to the same extent as all other persons.
3. Requires the federal government to pay applicable fees as well as comply with all other state substantive and procedural laws for the appropriation, use and distribution of water rights to the same extent as all other persons.
4. Provides for state administration of all water rights.

BE IT FURTHER RESOLVED that the Western States Water Council also urges Congress to appropriate moneys for payment of unpaid fees to states that have incurred

expenses as a result of processing federal claims or federal objections to private claims in state general stream adjudications.

BE IT FURTHER RESOLVED that the Western States Water Council shall send a copy of this resolution to the congressional delegations representing the states and territories who are members of the Western States Water Council, to President Bill Clinton, and to the President Pro-Tem of the United States Senate and the Speaker of the United States House of Representatives.

SALE OR TRANSFER OF FEDERAL WATER AND POWER PROJECTS

Interest in the transfer of federal water and power projects to non-federal ownership has been discussed for many years. The transfer of operation and maintenance (O&M) responsibilities is common, but the transfer of title is not. Other federal administrative and legislative proposals have suggested transferring power marketing facilities, including power generation and power transmission facilities. At present, a number of bills would direct or facilitate the transfer of individual projects, as well as establish a process for evaluating and approving transfers administratively.

Some transfers may be rather simple and straightforward, involving a limited number of issues and interest groups. Others will be very complex and involve many different interests and important policy issues. Many projects serve multiple purposes and were built under longstanding agreements with water and power and other users. Many were individually authorized by the Congress, and will require Congress' approval of any transfer.

Potential sales and transfers of federal water and power facilities may offer important public and private benefits. There may also be important public and private costs. In addition to the primary project purposes and direct benefits and costs, there may now be other important secondary and indirect benefits and costs. Such interests, which may involve various parties, must be considered. Moreover, many environmental and other interests that might be adversely affected by proposed transfers are currently protected under various state and federal laws.

Of particular interest to the states, many transfers of federal projects will directly affect state and local interests related to water, and some proposals have been moved forward without the benefit of state and local or public participation. Many questions regarding the future operation and maintenance and regulation of transferred projects remain unanswered. The following position calls for criteria to be developed and a process established to carefully evaluate any proposals to sell or otherwise transfer federal water and power assets. Generally, a project-by-project review, with subsequent Congressional approval, will be appropriate. However, in the case of some simple projects, an administrative review and decision may be possible.

Western states must be involved in any transfer decision, as they still have primary responsibility for the comprehensive development, management and protection of water resources for all purposes.

**POSITION
of the
WESTERN STATES WATER COUNCIL
regarding
THE SALE OR TRANSFER OF FEDERAL WATER AND POWER PROJECTS
AND RELATED FACILITIES
Scottsdale, Arizona
November 17, 1995**

WHEREAS, various proposals have been made to sell or transfer ownership of different federal agencies' water and power projects and related facilities; and

WHEREAS, such sales or transfers may offer important benefits, but many are necessarily very complex and may involve many different interests and important public costs, as well as benefits; and

WHEREAS, federal project sales or transfers require a careful project-by-project analysis of expected returns and impacts; and

WHEREAS, many of these projects serve multiple purposes and were built and their capital costs are being repaid under longstanding agreements with water and power and other users; and

WHEREAS, most of these projects also involve significant public and third party interests that are currently protected under various state and federal laws; and

WHEREAS, the many potential public benefits and costs related to sales or transfers involve state and local governments and other interests, in addition to the federal government; and

WHEREAS, many present and potential benefits may be lost unless there is a careful analysis of the wisdom of the sale or transfer of individual projects and related facilities; and

WHEREAS, recent federal divestment proposals have been made without the benefit of full and open public hearings; and

WHEREAS, many questions regarding the future operation and maintenance and regulation (state and federal) of such projects have yet to be openly discussed and addressed; and

WHEREAS, states have primary responsibility for the comprehensive development, management and protection of their water resources for all purposes, including hydropower generation; and

WHEREAS, continuing conflicts between the Federal Energy Regulatory Commission (FERC) and the states over jurisdictional issues involving many water and power projects (such as the protection of state water rights, instream flows, future water development and dam safety) have yet to be adequately addressed and resolved; and

WHEREAS, at least one proposal would appear to suggest FERC would be solely responsible for the licensing and regulation of any project with a hydropower component transferred out of federal ownership, apparently preempting applicable state law and regulation;

NOW THEREFORE BE IT RESOLVED, that the Western States Water Council supports the careful evaluation of the sale or transfer of federal water and power assets and urges the Administration and the Congress to establish a process and develop appropriate criteria and guidelines for a project-by-project review of sale or transfer proposals, with strong state involvement.

WESTERN STATES WATER COUNCIL

**REPORT OF INDEPENDENT ACCOUNTANTS
AND
FINANCIAL STATEMENTS**

June 30, 1995

WESTERN STATES WATER COUNCIL

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REPORT OF INDEPENDENT ACCOUNTANTS

To the Executive Committee
Western States Water Council

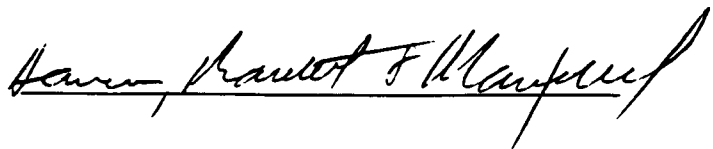
We have audited the accompanying combined balance sheet of Western States Water Council as of June 30, 1995, and the related general fund statement of revenues and expenditures and changes in fund balance - budget and actual for the year then ended. These financial statements are the responsibility of the Council's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with generally accepted auditing standards and Government Auditing Standards issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Western States Water Council as of June 30, 1995, and the results of its operations for the year then ended in conformity with generally accepted accounting principles.

Our examination was made for the purpose of forming an opinion on the financial statements taken as a whole. The schedule of changes in the general fixed assets is presented for the purpose of additional analysis and is not a required part of the basic financial statements. Such information has been subjected to the auditing procedures applied in the examination of the financial statements and, in our opinion, is fairly stated in all material respects in relation to the financial statements taken as a whole.

In accordance with Government Auditing Standards, we have also issued a report dated August 16, 1995 on our consideration of Western States Water Council's internal control structure and a report dated August 16, 1995 on its compliance with laws and regulations.



August 16, 1995

**WESTERN STATES WATER COUNCIL
COMBINED BALANCE SHEET
JUNE 30, 1995**

ASSETS

		<u>Account Groups</u>			<u>Totals</u>	
		<u>General</u>	<u>General</u>	<u>General</u>	<u>(Memorandum Only)</u>	
	<u>Fund</u>	<u>Fixed</u>	<u>Long-Term</u>		<u>June 30,</u>	<u>June 30,</u>
		<u>Assets</u>	<u>Debt</u>		<u>1995</u>	<u>1994</u>
Assets						
Cash - Note 2	\$ 137,045	\$ -	\$ -		\$ 137,045	\$ 222,654
Account receivable - government agreement	16,787	-	-		16,787	1,801
Prepaid expenditures	1,563	-	-		1,563	1,563
Deposits	1,501	-	-		1,501	1,501
General fixed assets	-	91,933	-		91,933	90,573
Other Debits						
Amount to be provided for payment of long-term debt	-	-	-		-	-
Amount to be provided for payment of compensated absences	-	-	12,757		12,757	29,357
Total Assets	<u>\$ 156,896</u>	<u>\$ 91,933</u>	<u>\$ 12,757</u>		<u>\$ 261,586</u>	<u>\$ 347,449</u>

LIABILITIES AND EQUITY

Liabilities						
Accounts payable	\$ -	\$ -	\$ -	\$ -	\$ 18,901	
Payroll taxes payable	2,096	-	-	2,096	300	
Obligations for compensated absences - Note 5	-	-	12,757	12,757	29,357	
Total Liabilities	<u>2,096</u>	<u>-</u>	<u>12,757</u>	<u>14,853</u>	<u>48,558</u>	
Equity						
Investment in general fixed assets	-	91,933	-	91,933	90,573	
Designated fund balance - equipment replacement	16,703	-	-	16,703	9,473	
Undesignated fund balance	<u>138,097</u>	<u>-</u>	<u>-</u>	<u>138,097</u>	<u>198,845</u>	
Total Equity	<u>154,800</u>	<u>91,933</u>	<u>-</u>	<u>246,733</u>	<u>298,891</u>	
Total Liabilities And Equity	<u>\$ 156,896</u>	<u>\$ 91,933</u>	<u>\$ 12,757</u>	<u>\$ 261,586</u>	<u>\$ 347,449</u>	

The accompanying notes are an integral part of these financial statements.

**WESTERN STATES WATER COUNCIL
GENERAL FUND
STATEMENT OF REVENUES AND EXPENDITURES AND
CHANGES IN FUND BALANCE - BUDGET AND ACTUAL
FOR THE YEAR ENDED JUNE 30, 1995**

	Budget 1995	Actual 1995	Variance Favorable (Unfavorable) 1995	Actual 1994 (For Comparison Only)
Revenues				
Member states' assessments	\$ 303,996	\$ 280,000	\$ (23,996)	\$ 309,600
Bureau of Reclamations contract	-	24,841	24,841	8,107
Interest income	-	<u>12,351</u>	<u>12,351</u>	<u>13,252</u>
Total Revenues	<u>303,996</u>	<u>317,192</u>	<u>13,196</u>	<u>330,959</u>
Expenditures				
Current				
Salaries	198,696	196,910	1,786	192,894
Travel	30,000	20,143	9,857	29,748
Payroll taxes and employee benefits	70,980	76,627	(5,647)	79,208
Printing and reproduction	8,568	9,217	(649)	8,683
Rent	23,700	23,486	214	23,212
Freight and postage	9,000	8,546	454	8,304
Telephone	4,500	6,875	(2,375)	5,287
Utilities	2,496	2,374	122	2,107
Maintenance contracts	996	1,108	(112)	908
Office supplies	6,000	2,636	3,364	9,311
Reports and publications	3,504	5,450	(1,946)	2,655
Meetings and arrangements	3,504	6,065	(2,561)	(1,633)
Accounting	2,196	2,200	(4)	2,100
Insurance	996	1,041	(45)	1,014
Contingencies	3,504	5,207	(1,703)	3,350
Interest	-	-	-	14
Pension management	2,028	1,128	900	-
Capital outlay	996	1,697	(701)	18,996
Debt service - Note 3	<u>6,528</u>	<u>-</u>	<u>6,528</u>	<u>431</u>
Total Expenditures	<u>378,192</u>	<u>370,710</u>	<u>7,482</u>	<u>386,589</u>
Excess of Expenditures Over Revenues	(74,196)	(53,518)	20,678	(55,630)
Fund Balance - Beginning of Year - Note 6	<u>208,318</u>	<u>208,318</u>	<u>-</u>	<u>263,948</u>
Fund Balance - End of Year	<u>\$ 134,122</u>	<u>\$ 154,800</u>	<u>\$ 20,678</u>	<u>\$ 208,318</u>

The accompanying notes are an integral part of these financial statements.

**WESTERN STATES WATER COUNCIL
NOTES TO FINANCIAL STATEMENTS
JUNE 30, 1995**

NOTE 1--SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

The Western States Water Council was formed in 1965 as a cooperative endeavor among States in the Western United States. Its purpose is to coordinate programs which will lead to integrated development of water resources by state, federal and other agencies in the region. The Council receives funding through assessments of member states. Each member state is represented on the Council's Executive Committee which comprises the administrative body.

The accounting policies of the Western States Water Council conform to generally accepted accounting principles as applicable to governmental units. The following is a summary of the significant policies:

The Reporting Entity

The Western States Water Council is an independent reporting entity and is not a component unit of any other government. The Council's Executive Committee is the governing authority. This determination has been made using the following criteria: the Executive Committee establishes Council policy, approves the annual budget, and appoints those responsible for administrative and fiscal activities.

Fund Accounting

The accounts of the Council are organized on the basis of funds and account groups, each of which is considered a separate accounting entity. The operations of each fund are accounted for with a separate set of self-balancing accounts that comprise its assets, liabilities, fund equity, revenues, and expenditures. Resources are allocated to and accounted for in the fund based upon the purposes for which they are to be spent and the means by which spending activities are controlled.

Governmental Fund

The General Fund is used to account for all financial resources of the Council not accounted for by a separate, specialized fund.

Account Groups

Account Groups (not "funds") are concerned only with the measurement of financial position. They are not involved with measurement of results of operations. There are two account groups, as follows:

NOTE 1--(CONTINUED)

The General Fixed Assets Account Group is used to record the cost of the capital assets owned, or acquired through capital lease obligations, by the Council, and to aid in maintaining physical control over these assets. Cost of assets acquired through a capital lease is the fair market value at the lease inception date. Purchased general fixed assets are recorded as expenditures in the governmental fund at the time of purchase. These assets are then concurrently recorded, at cost, in the General Fixed Assets Account Group.

The General Long-Term Debt Account Group is used to record long-term liabilities expected to be financed from the governmental fund.

Basis of Accounting

The modified accrual basis of accounting, under which expenditures, other than interest on long-term debt, are recorded when the liability is incurred and revenues are recorded when received in cash unless susceptible to accrual, (i.e. measurable and available to finance the Council's operations, or of a material amount and not received at the normal time of receipt), is followed for the General Fund.

Totals Column on Combined Balance Sheet

The totals column on the Combined Balance Sheet is captioned "Memorandum Only" to indicate that it is presented only to facilitate financial analysis. Data in this column does not present financial position, results of operation, or changes in financial position in conformity with generally accepted accounting principles. Neither is such data comparable to a consolidation.

NOTE 2--CASH

The Council's major cash funds were held in the Utah Public Treasurer's Investment Fund during the years ended June 30, 1995 and 1994. Deposits and withdrawals may be made at any time and interest payments are added to the investment balance monthly. The balance in the Investment Fund at June 30, 1995 and 1994, was \$83,626 and \$173,626, respectively.

During the fiscal year ended June 30, 1991, the Council established an office equipment replacement fund. This fund will be used to purchase new equipment as it is needed. Deposits into this fund are made monthly in the amount of \$544. The fund is also held by the Utah Public Treasurer's Office and accrues interest at the same rate as the Investment Fund. The balance in the Equipment Replacement Fund at June 30, 1995 and 1994 was \$16,703 and \$9,473, respectively.

At year end, the carrying amount of the Council's bank deposits was \$24,949 and the bank balance was \$40,980. All of the bank balance was covered by federal depository insurance. Collateralization of deposits is not required by state statute.

NOTE 3--LEASE COMMITMENTS

The Council renewed the lease agreement for its office location on March 1, 1994. The term of the lease is 3 years. Monthly payments are currently \$1,925.

The following is a schedule by years of future lease payments at June 30, 1995.

1996	\$ 23,095
1997	<u>15,397</u>
	<u>\$ 38,492</u>

NOTE 4--RETIREMENT PLAN

The Council has a defined contribution retirement plan that covers substantially all of its employees. To be a member of the Plan the employee must have completed 12 months or 1,000 hours of service in a 12 month period. Vesting accumulates at a rate of 20% a year, beginning with the second full year of service until the member is fully vested after 6 years of service.

The Council contributes to the Plan an amount equal to 17% of each plan member's gross wages less the total of all amounts to be reallocated during the taxable year by reason of recoveries attributable to contributions arising out of termination of employment of members of the Plan prior to full vesting. The total contribution for the years ended June 30, 1995 and 1994, was \$24,735 and \$29,633, respectively.

NOTE 5--COMPENSATED ABSENCES

Employees of the Western States Water Council are entitled to compensated absences in the form of paid vacation and paid sick leave. According to policy, the vacation pay accrues at a rate of 8.5 hours per full month of service rendered for the first 5 years. The next 5 years accrues at the rate of 11 hours per month and for years thereafter the rate is 13 hours per month. The number of unused vacation days, up to 40, carries forward to the beginning of the next calendar year.

The Obligation for Compensated Absences has been classified as part of the General Long - Term Debt Account Group because presently the obligation is not expected to be paid in the current year.

ACCOMPANYING INFORMATION

**WESTERN STATES WATER COUNCIL
SCHEDULE OF CHANGES IN GENERAL FIXED ASSETS
FOR THE YEAR ENDED JUNE 30, 1995**

	<u>1995</u>
Investment in General Fixed Assets - June 30, 1994	\$ 90,573
Office equipment additions	1,360
Office equipment retirements	<u> —</u>
Investment in General Fixed Assets - June 30, 1995	<u><u>\$ 91,933</u></u>

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REPORT OF INDEPENDENT ACCOUNTANTS ON INTERNAL CONTROL STRUCTURE RELATED MATTERS NOTED IN A FINANCIAL STATEMENT AUDIT CONDUCTED IN ACCORDANCE WITH GOVERNMENT AUDITING STANDARDS

To the Executive Committee
Western States Water Council

We have audited the financial statements of Western States Water Council for the year ended June 30, 1995, and have issued our report thereon dated August 16, 1995.

We conducted our audit in accordance with generally accepted auditing standards and *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement.

The management of Western States Water Council is responsible for establishing and maintaining an internal control structure. In fulfilling this responsibility, estimates and judgments by management are required to assess the expected benefits and related costs of internal control structure policies and procedures. The objectives of an internal control structure are to provide management with reasonable, but not absolute, assurance that assets are safeguarded against loss from unauthorized use or disposition, and that transactions are executed in accordance with management's authorization and recorded properly to permit the preparation of financial statements in accordance with generally accepted accounting principles. Because of inherent limitations in any internal control structure, errors or irregularities may nevertheless occur and not be detected. Also, projection of any evaluation of the structure to future periods is subject to the risk that procedures may become inadequate because of changes in conditions or that the effectiveness of the design and operation of policies and procedures may deteriorate.

In planning and performing our audit of the general-purpose financial statements of Western States Water Council, for the year ended June 30, 1995, we obtained an understanding of the internal control structure. With respect to the internal control structure, we obtained an understanding of the design of relevant policies and procedures and whether they have been placed in operation, and we assessed control risk in order to determine our auditing procedures for the purpose of expressing our opinion on the general-purpose financial statements and not to provide an opinion on the internal control structure. Accordingly, we do not express such an opinion.

Our consideration of the internal control structure would not necessarily disclose all matters in the internal control structure that might be material weaknesses under standards established by the American Institute of Certified Public Accountants. A material weakness is a reportable condition in which the design or operation of one or more of the internal control structure elements does not reduce to a relatively low level the risk that errors or irregularities in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. We noted no matters involving the internal control structure and its operations that we consider to be material weaknesses as defined above.

This report is intended for the information of the executive committee and management. However, this report is a matter of public record, and its distribution is not limited.

A handwritten signature in cursive script, reading "Harry K. Kaut & Associates". The signature is written in black ink and is positioned above a horizontal line.

August 16, 1995

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REPORT OF INDEPENDENT ACCOUNTANTS ON COMPLIANCE WITH LAWS AND REGULATIONS BASED ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE WITH GOVERNMENT AUDITING STANDARDS ISSUED BY THE GAO

To the Executive Committee
Western States Water Council

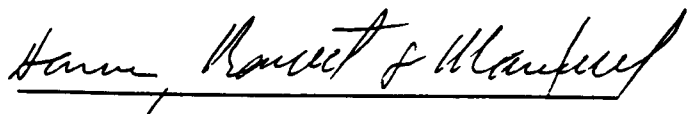
We have audited the financial statements of Western States Water Council as of and for the year ended June 30, 1995, and have issued our report thereon dated August 16, 1995.

We conducted our audit in accordance with generally accepted auditing standards and *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement.

Compliance with laws, regulations, contracts, and grants applicable to Western States Water Council is the responsibility of the Council's management. As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we performed tests of the Council's compliance with certain provisions of laws, regulations, contracts, and grants. However, the objective of our audit of the general-purpose financial statements was not to provide an opinion on overall compliance with such provisions. Accordingly, we do not express such an opinion.

The results of our tests disclosed no instances of noncompliance that are required to be reported herein under *Government Auditing Standards*.

This report is intended for the information of the executive committee and management. However, this report is a matter of public record and its distribution is not limited.

A handwritten signature in cursive script, reading "Hansen, Barnett & Maxwell", is written over a horizontal line.

August 16, 1995

COMMITTEE and SUBCOMMITTEE MEMBERSHIP

EXECUTIVE COMMITTEE

Leonard Verrelli - Alaska (Associate)
Rita Pearson - Arizona
C. Laurence Linser - Arizona
(Alternate)
David Kennedy - California
Daries (Chuck) Lile - Colorado
Michael D. Wilson - Hawaii
Karl Dreher - Idaho
Gary Fritz - Montana (Associate)
Roland Westergard - Nevada
Thomas C. Turney - New Mexico

Dave Sprynczynatyk - North Dakota
Martha Pagel - Oregon
Nettie Myers - South Dakota
John T. Montford - Texas
Charles Jenness - Texas
(Alternate)
D. Larry Anderson - Utah
(Chair)
Carol Fleskes - Washington (Associate)
Gordon W. Fassett - Wyoming
(Vice-Chair)

Management Subcommittee

D. Larry Anderson - Utah
(Chair)
Gordon W. Fassett - Wyoming
(Vice-Chair)
Francis Schwindt - North Dakota
Secretary/Treasurer

David Kennedy - California
(Past Chair)
D. Craig Bell
Executive Director

WSWC Water Policy Seminar Subcommittee

Roland Westergard - (Chair) - Nevada
David Kennedy - California
Francis Schwindt - North Dakota

Steve Sanders - Oregon
Dee C. Hansen - Utah
Gordon W. Fassett - Wyoming

WGA/WSWC Steering Group/National Water Policy Subcommittee

Dave Sprynczynatyk - (Chair) - N. Dak.
David Kennedy - California
J. David Holm - Colorado
Gary Fritz - Montana (Associate)

Peter Morros - Nevada
D. Larry Anderson - Utah
Dee C. Hansen - Utah
Gordon W. Fassett - Wyoming

LEGAL COMMITTEE

Michael Brophy - Arizona

(Chair)

David Kennedy - California

Roderick E. Walston - California

(Alternate)

Thomas Maddock - California

(Alternate)

Daries (Chuck) Lile - Colorado

Karl Dreher - Idaho

Donald MacIntyre - Montana (Associate)

Harley Harris - Montana (Associate)

(Alternate)

Roland Westergard - Nevada

Charles DuMars - New Mexico

Julie Krenz - North Dakota

Steve Sanders - Oregon

John Hatch - South Dakota

(Vice-Chair)

John Guhin - South Dakota

(Alternate)

Fred N. Pfeiffer - Texas

(Alternate)

Thorpe Waddingham - Utah

Larry Anderson - Utah

(Alternate)

Tom McDonald - Washington (Associate)

Myron Goodson - Wyoming

General Adjudication Fees Subcommittee

Steve Sanders - **(Chair)** - Oregon

Donald MacIntyre - Montana (Associate)

Peter Morros - Nevada

Roland Westergard - Nevada

Chuck DuMars - New Mexico

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