

**MINUTES
of the
WATER QUALITY COMMITTEE
Courtyard by Marriott
Lincoln, Nebraska**

April 24, 2025

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MEMBERS AND ALTERNATES PRESENT (*via zoom)

ALASKA	<i>Tom Barrett Christina Carpenter</i>
ARIZONA	<i>Trevor Baggione</i>
CALIFORNIA	Joaquin Esquivel Jeanine Jones
COLORADO	Jojo La <i>Jason Ullman</i>
IDAHO	Mat Weaver
KANSAS	Tom Stiles Matt Unruh
MONTANA	<i>Jay Weiner</i>
NEBRASKA	Jesse Bradley Justin Lavene
NEVADA	<i>Jennifer Carr Cathy Erskine</i>
NEW MEXICO	<i>Tanya Trujillo</i>
NORTH DAKOTA	<i>Reice Haase</i>
OKLAHOMA	Julie Cunningham
OREGON	<i>Doug Woodcock</i>
SOUTH DAKOTA	Nakaila Steen
TEXAS	

UTAH

Candice Hasenyager
Teresa Wilhelmsen
Mark Stratford

WASHINGTON

Ria Bearns
Leslie Connelly

WYOMING

Chris Brown

GUESTS

Charlie McGuigan, AGA-CWAG
Tom Riley, Riley Consulting LLC
Brian Clark, U.S. Geological Survey
Victoria Asbury, Kansas Water Office
Jennifer Verleger, State of South Dakota
Christopher Estes, Instream Flow Council
Connor Kelley, Houston Engineering, Inc.
Conor Doherty, California State University
Ayse Kilic, University of Nebraska-Lincoln
Adel Abdallah, Utah Division of Water Rights
Forrest Melton, NASA Ames Research Center
Austin Davidson, Legislative Finance Committee
Matt Rakow, Washington Department of Ecology
Hannah Singleton, Southern Nevada Water Authority
Dave Christensen, Washington Department of Ecology
Philip Blankenau, Idaho Department of Water Resources
Alexa Davis, Nebraska Department of Natural Resources
Sarita Nair, New Mexico Department of Workforce Solutions
Isabella Peterson, Nebraska Department of Natural Resources
Patrick Fridgen, North Dakota Department of Water Resources
Kathy Alexander, Texas Commission on Environmental Quality
Steven Goans, Nebraska Department of Environment and Energy
Andrew Dunkley, Nebraska Department of Environment and Energy
Patrick Kormos, USDA Natural Resources and Conservation Service

WESTFAST

Lauren Dempsey, U.S. Air Force
Chris Carlson, U.S. Forest Service
Chad Abel, U.S. Fish and Wildlife Service
Paula Cutillo, Bureau of Land Management
Roger Gorke, Environmental Protection Agency
Elizabeth Ossowski, National Oceanic and Atmospheric Administration

STAFF

Tony Willardson
Michelle Bushman
Elysse Campbell

WELCOME AND INTRODUCTIONS

Tom Stiles welcomed attendees and began introductions.

APPROVAL OF MINUTES

A motion was made and seconded and adopted with no objection.

NEBRASKA WATER QUALITY UPDATES

Bridger Corkill, Nebraska Department of Environment and Energy, gave a briefing of Nebraska's nitrate in drinking water study, funded by LB814 (2023). Groundwater is the primary drinking water source for about 86% of Nebraska's population, including many private domestic wells, which are not regulated by the Safe Drinking Water Act (SDWA). The study focused on data analysis, educational tool development, and public communication and involved partners such as Olsson Associates, Natural Resource Districts, and the University of Nebraska. The Safe Drinking Water Act (SDWA) establishes a health-based Maximum Contaminant Level (MCL) for nitrate of 10 milligrams per liter (mg/L). The nitrate MCL was based on methemoglobinemia (Blue Baby Syndrome) case studies. EPA reopened the Integrated Risk Information System (IRIS) assessment for nitrate in 2023 to examine long-term health effects such as cancer. Excess nitrogen from sources like commercial fertilizers, manure, septic systems, municipal wastewater, and industrial facilities can leach into groundwater, leading to high nitrate levels.

Bridger described the free sampling program for domestic well owners, which contributed a third of the State's domestic well sample data since 2003. NDE analyzed over 3400 kits, with about 15% testing above the SDWA standard. The mean nitrate concentration was 4.83 mg/L. Statistical and trend analysis identified areas with significantly higher nitrate levels ("hot spots"), often associated with high infiltration, sandy soils, and a high water table.

NDE uses the analysis to improve programs over time. Bridger noted that different programs operate on different timescales, pointing out that short-term solutions that involve engineered solutions, such as treatment plants and new wells, are more costly. Mid-term solutions include capacity-building programs, such as capital improvement plans and rate studies, to help communities plan for their water system needs. Long-term solutions are the least expensive and focus on voluntary, proactive programs like wellhead and source water protection to prevent contamination.

The team assigned a concentration-based point metric ranking system to categorize water systems by urgency and assign them proper mitigation based on timeline. For example, systems likely to exceed the MCL in 1-3 years would need the short-term engineered approach. The team also prepared individualized summary reports, including maps and program options, for community waters systems. A key recommendation for public water systems is to continue voluntary best management practices. “We want to do our best to work with partner agencies who manage similar programs, especially on the federal side, to see Can these conservation dollars that come into the state go further to help protect water quality and drinking water source water protection areas? Those are the kinds of synergies we are looking for.” NDE is also considering tying state funded infrastructure projects into long-term planning.

Bridger discussed the tools and guidance developed for private well owners. He noted that, while private wells aren’t regulated by SDWA, NDE sets construction standards, DNR manages registration and permitting, and NDE certifies drillers. Counties may have different requirements such as in Lancaster County, which requires nitrate and bacteria testing upon property sale. As before, Bridger noted that high-risk private wells are typically shallow (<50 feet deep) and located in areas of high infiltration (sandy soils) and a high water table. Older wells are also high-risk as they may lack proper sealing, or may have been constructed in a pit. Bridger said that in their study outreach and resulting guidance, NDE encouraged annual testing for nitrate and bacteria, as well as periodic inspection by a licensed well driller.

Historically, private wells were not required to register. About 35,000 are registered with an estimated 110,000 wells unregistered. NDE estimates that fewer than one in ten are sampled annually, limiting data and understanding. The free sampling effort helped improve understanding by generating over 3400 samples in a 5 month period, with 92 out of 93 counties represented. Bridger noted that outreach generated by the sampling also increased awareness. Over 2500 calls were fielded, showing high public engagement and building public trust.

One of the tools promoted during the study was Water Quality American Rescue Plan Act (ARPA) funds that NDE used to pay for reverse osmosis (RO) systems. Initially, interest was low, but the free sampling effort helped spend the entire fund, resulting in RO systems for 480 households. This funding covered installation, but not ongoing operation and maintenance costs which was discussed with owners prior to installation. Another goal of the study was to build lasting tools for well owners to use once the study was complete. This resulted in a guidance document for private well owners helping them evaluate the risk of nitrate contamination in a domestic well, take steps to address it, and find more information.

The study identified a three-year data gap in NDE’s groundwater quality clearinghouse. Partners said the process for uploading samples was difficult so they were inclined to only report what was required. NDE worked with them on developing a new process and provided in person training, which has had encouraging results. The clearinghouse will also be used to make the nitrate well study available to the public. NDE has also been working to reduce barriers to well registration. NDE also created an outreach toolbox with graphics, fact sheets, and risk communication materials which are publicly available on NDE’s website.

Matt Unruh (KS) asked about the political background that led to the effort. Andrew Dunkley (NE) answered that it had been an increasingly hot political topic for the last 40 years. The study was a response to legislative desire for action and a preventative measure supported by agriculture. Leslie Connelly (WA) asked about whether NDE needed to do bilingual outreach and whether they had any Spanish materials in their toolkit. Bridger said they had discussed it but needed to confirm the status. Roger Gorke (EPA) asked about the 15% of tests about 10 milligrams per liter, and whether the State had seen any public health impact. Bridger said University of Nebraska Medical Center lead research on health impacts and it was not the focus of the department. He noted an encouraging finding that well owners testing above the standard were generally willing to install treatment. Responding to a question from Joaquin Esquivel (CA) on data privacy, Bridger said they framed data sharing to encourage participation and believed names were not included with data in the public clearinghouse, which mitigated pushback. He noted some people used the free sampling program to test properties they were considering buying, indicating awareness of property value concerns.

Regarding RO waste streams, Bridger explained that it generally goes through the sewer into the wastewater treatment facility, and that NDE considered the public system's capacity before installing RO systems. Andrew Dunkley clarified that new land use siting decisions are handled at the county level. Jennifer Carr (NV) asked about whether NDE saw any concentrations over 20 mg/L, citing a case in NV that had approached levels of concern for adult health. Bridger confirmed that some wells showed concentrations above 20 mg/L, with the highest during sampling around 150 mg/L, confirmed at over 200 mg/L. For levels >50 mg/L, RO might need two units in series or a distillation unit. He cited an example where a pitless adapter separation caused a well to become a contamination conduit, leading to very high values.

Tom Stiles noted indications from University of Nebraska Medical Center that understanding is "moving beyond the stereotypical blue baby" focus and into an understanding that there is a heightened risk for cancer where groundwater has elevated nitrate plus elevated atrazine. He suggested this might inform a future Council position and asked Bridger about impacts to management if the MCL dropped to 5 mg/L. Bridger stated he was not a toxicologist and could not speculate on future MCLs. He mentioned 20 mg/L has been cited for long-term adult risks in literature. Tom Stiles added that kids, pregnant moms, and the elderly remain susceptible.

COLORADO DREDGE AND FILL PROGRAM

Annette Quill, Senior Policy Advisor, Colorado Water Quality Control Division, and Jojo La, Director of Colorado's Environmental Boards and Commissions, presented on Colorado's response to the U.S. Supreme Court's *Sackett* decision regarding the definition of Waters of the United States (WOTUS). Annette explained that the *Sackett* decision left over 50% of Colorado's wetlands and seasonal streams unprotected from dredge and fill impacts, which is especially significant as Colorado is a headwater State. In response, Governor Jared Polis (D-CO) convened a task force that led to the passage of HB24-1379 in July 2024. The bill made Colorado the first State to enact legislation directly addressing the *Sackett* decision.

Colorado's definition of state waters is broad: "Any and all surface and subsurface waters which are contained in or flow in or through this state" (besides certain exclusions) C.R.S. 25-8-103 (19)."

However, HB-1379 included 13 exempted activities and 11 excluded types of waters. She explained that the first four exemptions under Regulation 87.3(3) grandfather activities that were previously covered under 404 permits and covers activities that receive a 404 permit in the future. “So again, we’re not trying to overlap with the course continued jurisdiction over WOTUS. We are simply regulating things or activities that occur in non WOTUS state waters.” Other exemptions included normal farming and ranching activities, and maintenance of certain structures. Annette explained that the exemption of construction of certain structures (covering farm ponds, stock ponds, farm lagoons, springs, upland recharge facilities, and irrigation ditches) were a point of concern to the public.

Other exemptions included construction of temporary sedimentation basins, farm and forest roads (including for wildfire mitigation), emergency response, maintenance of water/wastewater facilities, maintenance of off-channel reservoirs (including dredging), wildlife habitat management, and notably, and voluntary stream restoration efforts. She highlighted that the State’s exemptions are significantly broader than federal exemptions. The bill calls out voluntary stream restoration efforts as something the Water Quality Control Commission is allowed to influence with further guard rails and conditions. Most excluded water features are upland. Colorado used the Navigable Waters Protection Rule preamble definition for “prior converted cropland.”

Annette outlined the implementation program responsibilities within the Department of Public Health and Environment. The Water Quality Control Division is responsible for implementing the program by issuing and enforcing “authorizations” (the state’s term for permits in this context). The Water Quality Control Commission, where Jojo works, is responsible for adopting Regulation 87, which will provide detailed rules for implementation, focusing on avoiding, minimizing, and mitigating impacts.

Annette outlined the Division’s mechanism for implementing the program. During the interim period (though 2025, until Regulation 87 is effective), the Division will issue temporary authorizations for non WOTUS state waters. The temporary permits will implement federal 404 permits as if they are the State’s own. These temporary authorizations are required where pre-construction notification (PCN) would otherwise be needed under the relevant Corps permit or where compensatory mitigation thresholds (0.03 acres stream bed, 0.10 acres wetland permanent impact) are exceeded.

General authorization is not activity-based, like nationwide and regional Corps permits, but applies to any dredge and fill activity that impacts isolated wetlands, isolated ponds and impoundments, or isolated ordinary high water mark reaches. This authorization requires best management practices but not PCN, though it doesn’t cover projects exceeding mitigation thresholds or impacting fens, peatlands, or kettle ponds. This isolated waters authorization is currently being developed for public notice.

Post-Regulation 87 (starting in 2026), the Division will issue its own General Authorizations, which will mirror Corps nationwide and regional permits but with state language. For larger projects, Colorado will issue Individual Authorizations. The Commission is tasked with developing rules for individual authorizations and must cover application requirements, alternatives analysis, water quality protection (similar to 401 certification), monitoring, and reporting.

The bill requires that the Commission's rules be at least as protective as the federal 404(b)(1) guidelines that were in effect when the bill was signed. Division staff will propose rules for a major rulemaking hearing scheduled for December 2025. An initial draft was issued in December 2024, and an extensive stakeholder process with monthly meetings and feedback is ongoing to build consensus for the proposal. The regulation outline covers various aspects including general provisions, definitions, scope and applicability, guidelines for protection, consultation, individual authorizations, general authorizations, PCN, and compensatory mitigation. The program is going to be supported to a large degree by fees after the first couple of years.

Jojo La added commentary on the scope and scale of the consensus building and rulemaking process. She highlighted the formal rulemaking process's length, a full 120 days from August to December, which she noted is potentially one of the longest in the Western states, allowing for extensive public input.

During the Q&A, Joaquin inquired about Colorado's approach to enforcement. "Obviously, we have our state laws. We have the Porter-Cologne Water Quality Act that we had adjusted the definition around wetlands and using our dredge and fill procedures there, but since we haven't had to use those state authorities, you know, what's pretty obvious is there's a pretty big in enforcement, particularly from the Clean Water Act side, between citizen enforcement and some of the financial penalties. So just wondering what that discussion was like..." Annette clarified that enforcement provisions were not included in the bill because they already exist within Colorado's Water Quality Control Act (Part 6) and will apply to this program similarly to the NPDES program. Jojo mentioned that stakeholders did express concerns about ensuring sufficient resources for enforcement. Annette confirmed the Division is staffing up and intends to enforce through inspections and potentially public complaints, noting that the state's enforcement scope will expand if the federal WOTUS definition further narrows.

Joaquin asked what data tools Colorado was using to help staff understand lines of jurisdiction. Annette stated they have a good working relationship with Army Corps districts. Her advice was to go to the Corps first if a project is borderline WOTUS. She acknowledged that understanding these lines remains a challenge, but they plan to work with the Corps on projects impacting WOTUS waters and, in some cases, large project areas that may encompass non-WOTUS waters. "But if any impacts are happening to those non WOTUS that would trigger compensatory mitigation, we certainly will be requiring compensatory mitigation through our program."

When asked what the greatest lesson learned was, Annette emphasized the importance of early broad stakeholder engagement. She said their work with diverse groups, being willing to compromise, and actively seeking input (leading to many bill amendments) was crucial for achieving bipartisan support. Jojo added that the prescriptive language in the bill, rather than deferring to experts and commissioners, provided comfort to agricultural and industrial communities, by explicitly listing exemptions. Both stressed the critical need for communication given the complexity and potential for misinformation about the exemptions.

EPA REGION 7 UPDATES

Jim Macy, Regional Administrator for EPA Region 7, gave an overview of EPA's priorities and approaches under the new administration. He highlighted the agency's view on cooperative federalism and key regulatory areas. He began by outlining Administrator Lee Zeldin's five pillars under the Powering the Great American Comeback initiative, emphasizing how they will guide regulatory processes, rulemaking, and cooperative federalism. The first pillar is Clean Air, Land, and Water for Every American. This encompasses core EPA values like reducing toxic emissions, cleaning hazardous waste sites, and fostering economic growth. He highlighted the Brownfields programs as a critical focus of Administrator Zeldin and something council members can look forward to. Jim highlighted recent national environmental emergencies in California and North Carolina the quick response by the Administrator. He detailed the quick response from Administrator Zeldin and the 35 EPA regional employees that were sent on detail. He also provided insight into the "behind the scenes" aspects of EPA's capabilities, noting "how intricately detailed each region is in terms of environmental emergency response" and the "backup capabilities from one regional office to another.

The second pillar is Restoring American Energy Dominance. This is particularly relevant in the Midwest, where three out of four Region 7 states are active in ethanol production [1:27:51]. He noted the significance of the E15 all-year rule for farmers and the economic benefits, viewing this from a federal perspective. The third pillar is Permitting Reform, Cooperative Federalism, and Cross-Agency Partnerships. Jim said EPA is looking at permitting and how it works for state partners, who are the primary authors of permits. He referenced past work with the Environmental Council of States on a roadmap for EPA-state collaboration, where feds serve as backup. He stressed revisiting regulations that might not work as well in action as on paper and aiming for a fair and equitable process based on science, common sense, and practical environmental improvements.

The fourth pillar is Making the U.S. the Artificial Intelligence (AI) Capital of the World. He discussed the high number of data centers in the Midwest, noting their resource consumption. He mentioned potential AI experiments within EPA Region 7 labs to improve efficiency. The fifth pillar is Protecting and Bringing Back American Auto Jobs. With a major manufacturer in the Kansas City market, this pillar focuses on supporting these jobs and ensuring American-made products.

Jim addressed EPA's recent deregulatory actions. Zeldin announced that 31 rules and regulations are up for reconsideration. He said the Administrator is coming in to look with fresh eyes where the regulatory process is, and whether the federal government has overstepped its Congressional authority.

Jim highlighted his past involvement with ECOS in developing a roadmap for cooperative federalism. He supported a model where states serve as the primary regulators, with the federal government providing support as needed. He said this approach remains a top priority for Administrator Zeldin. He said sometimes it may be necessary to reevaluate how things are done and ask: "How do we apply this through the rule of law and make this a fair and equitable process?"

Striking a balance that's informed by science, guided by common sense and build on a foundation of practical, demonstrated environmental improvements. I'm excited about that part of it."

Jim talked about Zeldin's goal for WOTUS, which is to achieve a durable rule that stands the test of time. EPA is aiming for a predictable rule that aligns with the narrow Supreme Court's *Sackett* decision. He emphasized the need to listen to both sides. He touched on PFOA/PFAS regulator actions. He acknowledged the significant risk of PFOA/PFAS substances in causing cancers, liver and heart disease, or developmental issues. EPA is seeking to work with partners to manage the contaminants in a way that protects communities without burdening small water systems. He said EPA was potentially exploring a "polluter pays" approach. He noted EPA's bi-monthly calls in collaboration with ECOS and the Association of State and Territorial Health Officials (ASTHO) to share science updates with state and tribal partners. He offered to provide information to connect council members with those calls.

POSITION #527 REGARDING THE EXTENSION OF NPDES PERMIT TERMS

Michelle Bushman opened discussion on the proposed position in support of lengthening NPDES permit terms from a maximum of five years to a maximum of ten. She informed the committee that there had been multiple substantive calls with the subcommittee working on this position. She believed that the concerns raised in Kansas had all been addressed. Tom Stiles indicated he was looking for a motion to approve the position. A motion was made and seconded. A few technical questions were resolved and Tom called for a vote. The vote was taken and the position passed for consideration by the full Council.

POSITION #481 – REGARDING CLEAN WATER ACT JURISDICTION

Michelle summarized the subcommittee's work and changes. She noted two added orientation "WHEREAS" paragraphs which the Council has agreed to add to all positions going forward. Language regarding the "significant nexus" text has been removed to reflect the *Sackett* decision. Michelle said they had sought to find a balanced representation of what should be considered for jurisdiction. Michelle recalled that Alaska had asked to add something about Section 404. The Executive Committee had discussed it and decided it should indicate specifically for those who are *seeking* 404 authority (emphasis added). Michelle recalled that Leslie from Washington wanted to make sure the position represented support for jurisdiction mapping, but that the actual decisions about mapping were made in coordination with the states.

Mark Stratford asked about whether the language about creating "an enduring and broadly supported definition" should not be plural, as multiple definitions were under consideration. Tom Stiles responded that he didn't think changing "definition" to "definitions" would significantly alter the direction. He felt it wouldn't detract from the thrust of the position and was fine with adding the plural. He offered to take counterpoints from committee members, but none were voiced, so the position was considered further amended to include the plural "definitions." Tom Stiles then called for a motion on the second position, as amended. A motion was made and seconded. Seeing no further discussion, Tom Stiles called for a vote. The position passed.

UPDATES

Michelle provided an update on WSWC comment EPA's coming action on WOTUS. She explained that WSWC had not commented on the federal definition of WOTUS during the comment period because it was too specific to be covered by current positions. WSWC did participate in the federalism consultation kick off meeting with EPA. She said a draft letter had been prepared for submission as recommendations on federalism consultation. She noted that the letter draws from a 2021 workshop to support a regionalist approach. She asked the committee to review the letter and provide comments, and particularly to consider whether the regionalism points are still applicable given the shift away from significant nexus.

FY2025-2026 COMMITTEE WORK PLAN

Tom explained that the work plan would remain on hold pending the results of the strategic planning process underway.

SUNSETTING POSITIONS FOR SUMMER 2025 MEETINGS

Tom noted that Position #484 – Regarding Hydraulic Fracturing would be sunseting at the next meeting in Snowbird, Utah. He encouraged the committee to review the position.

OTHER MATTERS

There being no other matters, the Water Quality Committee was adjourned.