

S  
333.91  
W18R  
1987

---

**WESTERN**

STATE DOCUMENTS COLLECTION

---

**STATES**

JUL 7 1988

---

**WATER**

MONTANA STATE LIBRARY  
3015 E. 6TH AVE  
HELENA, MONTANA 59611

---

**COUNCIL**

---

**Annual Report  
1987**



**PLEASE RETURN**

**MONTANA STATE LIBRARY**

S 333.91 W 18r c.1

Annual report - Western States Water Cou



**3 0864 00021298 8**

**1987**  
**ANNUAL REPORT**  
**OF THE**  
**WESTERN STATES**  
**WATER COUNCIL**

**Twenty-Second Annual Report**



# 1987 ANNUAL REPORT of the WESTERN STATES WATER COUNCIL

## INTRODUCTION

The first official meeting of the Western States Water Council was held on August 3, 1965, at Stateline (Lake Tahoe), Nevada. The Western Governors' Conference approved the creation of the Western States Water Council during meetings on June 10-13, 1965, in Portland, Oregon. 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 state 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 which 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 twenty years, the Western States Water Council has endeavored to develop a regional consensus on westwide water policy and planning initiatives, particularly federal initiatives. The Council strives to protect western states' water interests, while at the same time serving to coordinate and facilitate western water planning and management efforts.

Originally, Council membership consisted of the States of **ARIZONA, CALIFORNIA, COLORADO, IDAHO, MONTANA, NEVADA, NEW MEXICO, OREGON, UTAH, WASHINGTON** and **WYOMING**. In 1978, **TEXAS** was admitted to membership, and **ALASKA** requested and received membership in 1984. **NORTH DAKOTA** and **SOUTH DAKOTA** are affiliated with the Council as "associate members," which is a temporary status approved by amendment of the Council's Rules of Organization in 1983. Membership is open to all member states of the Western Governors' Association, the successor to the Western Governors' Conference, which also includes the States of **Hawaii** and **Nebraska**. In November 1987, Hawaii requested associate member status. Governor John Waihee stated, "We look forward towards participating in Council activities as we in Hawaii share many mutual water problems facing the Western States. We can learn as well as offer innovative solutions to some of our common water problems." The governor's request will be addressed at the January 1988 meetings.

Each member governor is an ex-officio member of the Western States Water Council. The governor appoints three representatives from his or her state, and as many alternates as deemed necessary, to serve on the Council at the governor's pleasure. State representatives are appointed to the working committees, with one representative per state also appointed to the Executive Committee. The Executive Committee attends to internal Council matters with the assistance of the Management Subcommittee. 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 chairperson and vice-chairperson. Committee chairpersons, in turn, name special subcommittees and designate subcommittee chairpersons to study issues of particular concern.

The Western States Water Council offices are in Salt Lake City, Utah. The staff is headed by D. Craig Bell, Executive Director. Working with Mr. Bell are: Tony Willardson, Associate Director; Norman K. Johnson, Legal Counsel; and a secretarial staff including Pearl Pollick, Marjorie Farmer, and Cheryl Redding. During the year, Myrna Shuey and Merrie Jackson left employment with the Council, as our report secretary and office clerk, respectively, for full-time employment as new mothers.

Positions taken and resolutions passed at the quarterly meetings of the Council appear in this report. Meetings are held on a rotating basis among the member states, with state representatives acting as hosts to the other Council members and guests. In 1987, meetings were held in: Scottsdale, Arizona - January 14-16; Washington, D. C. - April 29-May 1; Park City, Utah - July 29-31; and Santa Fe, New Mexico - October 7-9. Guest speakers are scheduled according to the relevant subjects to be considered at each meeting. Information regarding future meeting locations and agenda items can be obtained by writing or calling the Council office.

942 East 7145 South, Suite A-201  
Midvale, Utah 84047  
(801) 561-5300  
*(effective March 1988)*

# TABLE OF CONTENTS

|  |    |
|--|----|
| INTRODUCTION .....   | i  |
| MEMBERSHIP   |    |
| Alaska .....   | 1  |
| Arizona .....  | 1  |
| California .....   | 2  |
| Colorado .....   | 2  |
| Idaho .....  | 3  |
| Montana .....  | 3  |
| Nevada .....   | 4  |
| New Mexico .....   | 4  |
| Oregon .....   | 5  |
| Texas .....  | 5  |
| Utah .....   | 6  |
| Washington .....   | 6  |
| Wyoming .....  | 7  |
| COUNCIL MEMBERS .....  | 8  |
| STAFF .....  | 9  |
| PAST OFFICER AND EXECUTIVE DIRECTORS .....                                     | 10 |
| QUARTERLY MEETINGS .....   | 11 |
| OTHER IMPORTANT ACTIVITIES .....   | 20 |
| RESOLUTIONS AND POSITIONS .....  | 27 |
| Reauthorization of the Clean Water Act .....                                   | 27 |
| Safe Drinking Water Act Amendments of 1986 .....                               | 28 |
| U.S. Fish & Wildlife Service Acquisition of<br>Non-development Easements ..... | 29 |
| U.S. Bureau of Reclamation's Fiscal Year 1988 Budget .....                     | 31 |
| Federal Energy Regulatory Commission Order No. 464 .....                       | 33 |
| The Dam Safety Act of 1987 .....   | 36 |
| Endangered Species and Western Water Projects .....                            | 37 |
| The Water Quality Act of 1986 — Section 518 .....                              | 39 |
| State Water Pollution Control Revolving Loan Programs .....                    | 41 |
| BUDGET AND FINANCE .....   | 42 |
| COMMITTEE CHARTERS AND MEMBERS .....   | 45 |
| RULES OF ORGANIZATION .....  | 55 |
| PRINCIPLES - GUIDELINES .....  | 58 |
| ADDRESSES AND TELEPHONE NUMBERS .....  | 61 |

1987  
WESTERN STATES WATER COUNCIL  
MEMBERSHIP

ALASKA



Judy Brady  
Dennis Kelso  
Grace Schiable

\*Governor Steve Cowper  
11-86

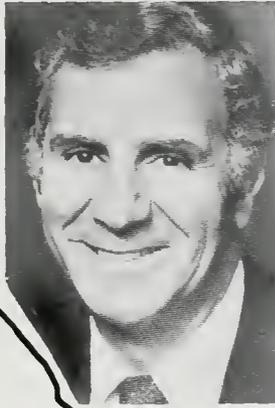
ARIZONA



\*Governor Evan Mecham  
11-86

\*\*Dr. Alan P. Kleinman  
1-87  
Kathleen Ferris  
10-85 to 1-87  
Sidney Woods  
7-83 to 1-87  
Tom Choules  
1-87  
Michael F. McNulty  
6-87

## CALIFORNIA



**\*Governor  
George Deukmejian**  
1-83

**\*\*David Kennedy**  
10-83  
Ruben Ayala  
7-84  
David G. Kelley (Alt.)  
3-84  
Roderick E. Walston (Alt.)  
1-86

Robert W. Miller (Alt.)  
1-86  
Darlene E. Ruiz (Alt.)  
4-87

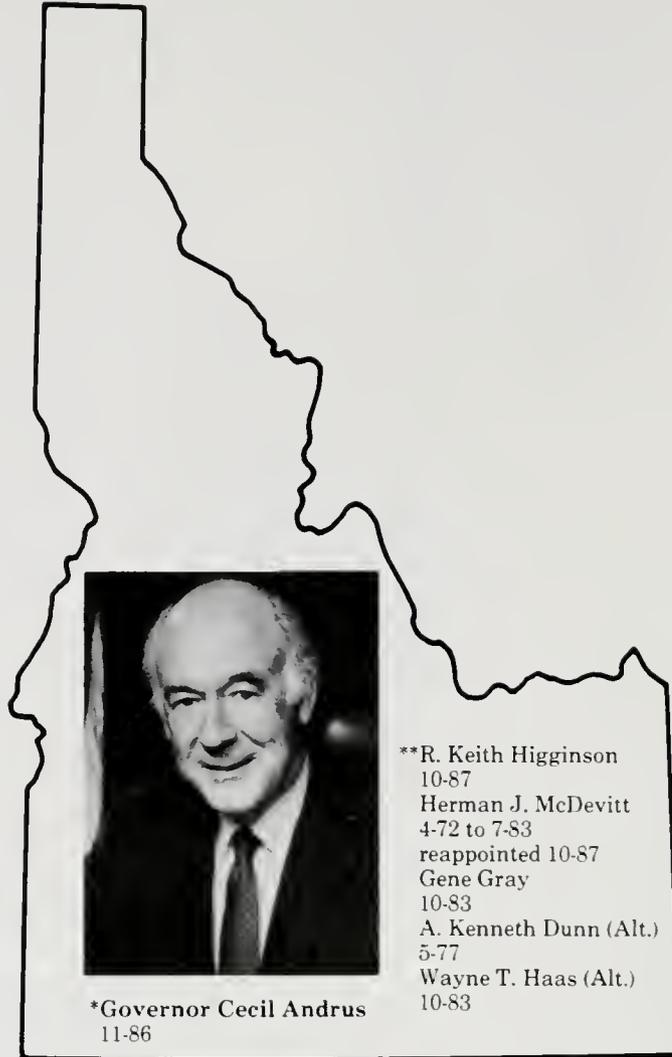
## COLORADO



**\*Governor Roy Romer**  
11-86

**\*\*J. William McDonald**  
10-79  
Gary Broetzman  
9-80  
Wendy C. Weiss  
4-87  
Jeris A. Danielson (Alt.)  
4-80

## IDAHO



**\*Governor Cecil Andrus**  
11-86

**\*\*R. Keith Higginson**  
10-87  
**Herman J. McDevitt**  
4-72 to 7-83  
reappointed 10-87  
**Gene Gray**  
10-83  
**A. Kenneth Dunn (Alt.)**  
5-77  
**Wayne T. Haas (Alt.)**  
10-83

## MONTANA



**\*Governor Ted Schwinden**  
1-81

**\*\*John E. Acord**  
1-72  
**Donald D. MacIntyre**  
2-85  
**Gary Fritz (Alt.)**  
10-83

## NEVADA



**\*Governor Richard Bryan**  
-83

**\*\*Roland D. Westergard**  
5-68  
**Joseph E. Dini, Jr.**  
7-83  
**Jack L. Stonehocker**  
9-83

## NEW MEXICO



**\*Governor Garrey Carruthers**  
11-86

**\*\*S. E. Reynolds**  
6-65  
**Charles DuMars**  
2-84  
**Frank A. DuBois, III**  
4-87

## OREGON



**\*Governor Neil Goldschmidt**  
11-86

**\*\*William H. Young**  
3-79  
George Proctor  
3-79 to 1-88  
Kip Lombard  
1-83 to 1-88

## TEXAS

**\*\*John T. Montford**  
10-83  
Charles E. Nemir  
10-78 to 7-87  
Paul Hopkins  
7-87  
Tom Craddick  
7-87  
Fred Pfeiffer (Alt.)  
10-83  
Terral Smith (Alt.)  
7-87



**\*Governor William P. Clements, Jr.**  
1-79 to 1-83, re-elected 11-86

## UTAH



**\*Governor Norman H. Bangerter**  
1-85

**\*\*Dee C. Hansen**  
3-85  
Thorpe A. Waddingham  
6-65  
D. Larry Anderson  
3-85  
Dallin Jensen (Alt.)  
7-71  
Calvin K. Sudweeks (Alt.)  
3-79 to 10-87  
Don A. Ostler (Alt.)  
10-87

## WASHINGTON



**\*Governor Booth Gardner**  
1-85

**\*\*Andrea Beatty Riniker**  
2-85  
Charles B. Roe, Jr.  
4-70  
Hedia Adelsman  
1-87  
Glen Fiedler  
7-84 to 1-87  
Wilbur G. Hallauer (Alt.)  
4-77 to 1-87  
Michael J. Hambrock  
1-87 to 12-87  
Carol Jolly (Alt.)  
1-87

## WYOMING



**\*Governor Mike Sullivan**  
11-86

**\*\*Gordon W. Fassett**  
3-87  
**George L. Christopulos**  
4-75  
**Myron Goodson**  
6-65 to 3-83  
reappointed 10-86  
**Jennifer Hager**  
3-87

\*Ex-Officio Member  
\*\*Executive Committee Member

**COUNCIL MEMBERS  
AT PARK CITY, UTAH, MEETING July 1987**



Back Row: Ray Rigby, D. Larry Anderson, William H. Young, Fred Pfeiffer, Gene Gray, Frank DuBois, J. William McDonald, Myron Goodson, Charles DuMars, Thorpe Waddingham  
 Row 2: Dee C. Hansen, Calvin K. Sudweeks, Jack L. Stonehocker, David Kennedy, A. Kenneth Dunn, Alan P. Kleinman, Mark Steichen, Tom Choules, John E. Acord  
 Front Row: Gary Broetzman, Darlene E. Ruiz, Roderick E. Walston, George Proctor, Robert W. Miller, Hedia Adelsman, Charles B. Roe, Roland D. Westergard

## STAFF

D. Craig Bell ..... Executive Director  
Anthony G. Willardson ..... Associate Director  
Norman K. Johnson ..... Legal Counsel  
Pearl O. Pollick ..... Office Manager  
Marjorie D. Farmer ..... Receptionist/Secretary  
Cheryl Redding ..... Secretary



Back Row: D. Craig Bell, Norman K. Johnson, Tony Willardson  
Front Row: Cheryl Redding, Pearl Pollick, Marjorie Farmer

**Council offices are located at:**

**942 East 7145 South, Suite A-201  
Midvale, Utah 84047  
(801) 561-5300**

## PRESENT AND PAST OFFICERS AND EXECUTIVE DIRECTORS

The following served as officers during 1987:

| CHAIRMAN                    | VICE-CHAIRMAN                | SECRETARY/TREASURER   |
|-----------------------------|------------------------------|-----------------------|
| J. William McDonald<br>7/86 | Roland D. Westergard<br>7/86 | Dee C. Hansen<br>7/86 |

Since the Council's inception in 1965, the following individuals have served as officers:

|                      |                      |              |                |
|----------------------|----------------------|--------------|----------------|
| Chairman:            | Freeman Holmer       | - Oregon     | 8/65 to 10/66  |
|                      | Raphael J. Moses     | - Colorado   | 12/66 to 7/69  |
|                      | William S. Holden    | - Idaho      | 7/69 to 3/71   |
|                      | William R. Gianelli  | - California | 7/71 to 7/73   |
|                      | William A. Groff     | - Montana    | 7/73 to 7/75   |
|                      | Wesley E. Steiner    | - Arizona    | 7/75 to 7/77   |
|                      | Chris L. Wheeler     | - Oregon     | 7/77 to 7/78   |
|                      | Donald L. Paff       | - Nevada     | 7/78 to 7/79   |
|                      | George Christopulos  | - Wyoming    | 7/79 to 7/80   |
|                      | Daniel F. Lawrence   | - Utah       | 7/80 to 7/81   |
|                      | Charles E. Nemir     | - Texas      | 7/81 to 7/82   |
|                      | Ray W. Rigby         | - Idaho      | 7/82 to 7/83   |
|                      | John Spencer         | - Washington | 7/83 to 7/84   |
|                      | John E. Acord        | - Montana    | 7/84 to 7/86   |
|                      | J. William McDonald  | - Colorado   | 7/86           |
| Vice Chairman:       | Raphael J. Moses     | - Colorado   | 8/65 to 12/66  |
|                      | William S. Holden    | - Idaho      | 12/66 to 10/68 |
|                      | William R. Gianelli  | - California | 7/69 to 7/71   |
|                      | William A. Groff     | - Montana    | 7/71 to 7/73   |
|                      | Wesley E. Steiner    | - Arizona    | 7/73 to 7/75   |
|                      | Chris L. Wheeler     | - Oregon     | 7/75 to 7/77   |
|                      | Donald L. Paff       | - Nevada     | 7/77 to 7/78   |
|                      | George Christopulos  | - Wyoming    | 7/78 to 7/79   |
|                      | Daniel F. Lawrence   | - Utah       | 7/79 to 7/80   |
|                      | Charles E. Nemir     | - Texas      | 7/80 to 7/81   |
|                      | Ray W. Rigby         | - Idaho      | 7/81 to 7/82   |
|                      | John Spencer         | - Washington | 7/82 to 7/83   |
|                      | John E. Acord        | - Montana    | 7/83 to 7/84   |
|                      | J. William McDonald  | - Colorado   | 7/84 to 7/86   |
|                      | Roland D. Westergard | - Nevada     | 7/86           |
| Secretary-Treasurer: | Donel J. Lane        | - Oregon     | 8/65 to 4/70   |
|                      | Floyd A. Bishop      | - Wyoming    | 4/70 to 7/73   |
|                      | Daniel F. Lawrence   | - Utah       | 7/73 to 7/79   |
|                      | Charles E. Nemir     | - Texas      | 7/79 to 7/80   |
|                      | Roland D. Westergard | - Nevada     | 7/80 to 7/86   |
|                      | Dee C. Hansen        | - Utah       | 7/86           |

The following have served as Executive Director:

|                 |               |
|-----------------|---------------|
| Wright Hiatt    | 2/66 to 7/67  |
| Jay R. Bingham  | 3/68 to 12/69 |
| Thomas Cahill   | 1/70 to 9/73  |
| Jack A. Barnett | 3/74 to 11/80 |
| D. Craig Bell   | 11/80         |

# QUARTERLY MEETINGS

## Eighty-Fifth Quarterly Meetings

January 14-16, 1987  
Scottsdale, Arizona

The Eighty-Fifth Quarterly Meetings of the Western States Water Council were held January 14-16, in Scottsdale, Arizona. On Wednesday afternoon, a workshop was held on state water rights and licensing procedures of the Federal Energy Regulatory Commission.<sup>1</sup> During the Three-Committee Informational Meeting on Thursday morning, Robbi Savage, Executive Director of the Association of State and Interstate Water Pollution Control Administrators (ASWIPCA), spoke on current water quality topics. She reviewed the status of the Clean Water Act and EPA's FY88 budget. The latter included \$62.1M for Section 106 state planning grants, but the Office of Management and Budget was holding up FY87 appropriations. EPA's budget request also included \$8M for the new wellhead protection program under the Safe Drinking Water Act Amendments of 1986. Lastly, Robbi dismissed the possibility of enactment of any federal ground water legislation as probably years away.

Next, Joe Gibbons of the General Accounting Office (GAO) spoke about a draft report on conflicts between western states water law and implementation of the Endangered Species Act prepared for the Senate Environment and Public Works Committee. It examines Section 7 consultations. GAO reviewed over 6,000 consultations and found 87 involved water management conflicts, including instances of unnecessary delay and project cost increases. The report also reviews state laws regarding water for fish and wildlife, and finds no inherent conflicts with the Endangered Species Act. Considerable concern was expressed by some WSWC members that the report should not discount the friction which results when federal agencies, under the Act, seek to protect streamflows for fish and wildlife outside state law and state administrative processes. The report was not yet publically available.

Also on Thursday, the Executive Committee approved the WSWC 1987 Work Plan and reviewed cooperative efforts with the Western Governors' Association. The Water Resources Committee addressed future use of Reclamation Fund revenues, the FY88 Bureau of Reclamation's FY88 construction budget,<sup>2</sup> and the Corps of Engineers new omnibus legislation. The Water Quality Committee addressed reauthorization of the Clean Water Act, implementation of the newly amended Safe Drinking Water Act, ground water and other state/EPA issues. The Legal Committee addressed Indian water right negotiations in Colorado, the Fort Peck Indian Tribal Water Right Code in Montana, and current cases affecting water rights and water resource management.

On Friday morning, during the Eighty-Fifth Quarterly Meeting, Herb Dishlip, Deputy Director of the Arizona Department of Water Resources, discussed ground water management in Arizona. A court decision in

---

<sup>1</sup>See "Other Important Activities"

<sup>2</sup>*Western States Water*, Issue #660, January 9, 1987.

in A Tumbling T Ranches v. Phoenix has defined sewage effluent as a new class of waters, under Arizona law, separate from either surface or ground waters.<sup>3</sup> The featured speaker was Dale Duvall, Commissioner of the Bureau of Reclamation. He discussed the future of the Bureau, and assured members the new Bureau policy of concentrating funding on those projects nearest completion was only intended to expedite realization of project benefits and repayments to the Federal Treasury. Some members expressed the opinion that the new policy amounted to an economic “hit-list” and raised doubts about the Administration’s commitment to complete those authorized projects for which funding will be delayed.

Next, the Council’s working committees reported on their activities. Three external positions were adopted. First, the Council called on the 100th Congress to again pass legislation (identical to S. 1128) to reauthorize the Clean Water Act, which the Council also urged the President to sign. Second, the Council called on EPA to implement the Safe Drinking Water Act amendments of 1986 so as to: (1) lessen the impacts on small water systems; (2) promote maximum state participation in the new wellhead protection program; (3) prevent deterioration of EPA/state and state/local relations; and (4) base standards for new contaminants on adequate health-effects data. Third, the Council approved a position reaffirming a previous resolution opposing acquisition of refuge lands by the Fish and Wildlife Service through acceptance of non-development easements, without fully assessing potential conflicts with needed water supply reservoirs. The Service had recently accepted such an easement from the Little Sandy Hunting and Fishing Club on the Sabine River in Texas.<sup>4</sup>

Lastly, the Council recognized the appointment of new members from the State of Washington replacing Wilbur G. (Web) Hallauer and Glen Fiedler, respectively the past Director and Deputy Director of the Department of Ecology. Web has served for nearly ten years, and represented the State of Washington on the Executive Committee, while Glen was an active and very capable member of the Water Resources Committee.

## **Eighty-Sixth Quarterly Meetings**

**April 29-May 1, 1987**  
**Washington, D.C.**

The Eighty-Sixth Quarterly Meetings of the Western States Water Council were held April 29 - May 1, in Washington, D.C. The regular schedule of meetings was modified with committee and subcommittee meetings on Wednesday evening, a special water policy seminar on Thursday<sup>5</sup>, and the Eighty-Sixth Quarterly Meeting on Friday morning. There was no Three-Committee Informational Meeting.

The Water Resource Committee first reviewed conflicts between state water rights management and Federal Energy Regulatory Commission (FERC) hydropower licensing procedures. A proposed action plan was presented for

---

<sup>3</sup>*Western States Water, Issue #598, November 1, 1985.*

<sup>4</sup>*Western States Water, Issue #654, November 26, 1986.*

<sup>5</sup>See “Other Important Activities”

review and comment. It included draft amendments to the Federal Power Act to be considered at the Council's July meetings. The Committee also accepted for review a staff report on the Bureau of Reclamation's funding and FY88 budget. The Committee further reviewed the findings of a recent GAO report on the Endangered Species Act and water development,<sup>6</sup> but deferred formal action until the July meetings. Other topics addressed included drought, dam safety, cost sharing, and a past position on the Waters Bluff Reservoir site in Texas.<sup>7</sup>

In other committee action, the Water Quality Committee addressed implementation of the Clean Water and Safe Drinking Water Acts, including EPA rulemaking on the new wellhead protection and sole source aquifer programs. The Committee also discussed a draft staff report on EPA/state relations. The Legal Committee discussed Indian reserved right negotiated settlements, Indian water codes, implementation of the Reclamation Reform Act, the implications of *Nevada v. Morros*,<sup>8</sup> and negotiations between California and Nevada on a compact for the Truckee River system. On ground water protection, a joint subcommittee reported meeting to review a draft WSWC bill outlining appropriate federal and state roles. The draft bill was prepared as a potential vehicle for addressing state concerns, given the likelihood of some future federal legislation. However, a formal position adopting the bill was not considered, and no consensus was reached on the appropriate direction of future Council efforts.

The Eighty-Sixth Quarterly Meeting of the Western States Water Council was held on Friday, May 1. One formal position was adopted. With respect to the FY88 Bureau of Reclamation budget, the Council urged Congress to carefully review the Administration's proposal and approve a measure which "adequately provides for general investigations and technical assistance to the states and that is equitable to all of the reclamation states." The Bureau's proposed budget would accelerate construction of a few major projects, while reducing funding for other projects, general investigations, and technical assistance to the states.

Guest speakers at the Council meeting included Ralph Tarr, Department of Interior Solicitor, and John Doyle, Acting Assistant Secretary of Army for Civil Works. Mr. Tarr stressed the continued importance of a strong working relationship between the Department of Interior and the western states. He reiterated the Department's policy to work through state procedures in all water efforts, particularly general stream adjudications. He also stressed that the Interior Secretary's policy with regard to the settlement of Indian water right claims is to negotiate a resolution to the greatest extent practicable. Mr. Tarr outlined procedures being undertaken at the federal level to streamline the negotiation process. He further discussed Reclamation Reform Act regulations, the FY88 Bureau of Reclamation budget, and a number of other issues which arose during a question and answer session.

Mr. Doyle highlighted implementation of the Corps of Engineers new omnibus authorization law (P.L. 99-662). He noted the new law solidifies the Corps credibility with Congress, environmentalists and the media. While authorizing some 300 projects at a potential cost of \$18B, annual funding ceilings

---

<sup>6</sup>*Western States Water*, Issue #675, April 24, 1987.

<sup>7</sup>*Western States Water*, Issue #662, January 23, 1987.

<sup>8</sup>*Western States Water*, Issue #669, March 13, 1987.

will hold expenditures down to \$8B over the next five years. Mr. Doyle emphasized that new cost sharing requirements were necessary for building key flood control and navigation projects. He noted that future cost sharing consistency among federal agencies, including the Bureau of Reclamation, will likely be encouraged. Corps district engineers received cost sharing guidance in December, and formal regulations providing credit to non-federal interests for compatible flood control work should be issued soon. With respect to dam safety, the FY88 budget only includes \$500,000 to update the current Corps inventory. No money has been requested to implement the state grant provisions of the new law. On regulatory reform, Mr. Doyle noted that the average time required to issue a Section 404 permit under the Clean Water Act has been reduced from 140 to 70 days, with a goal of 60 days for processing.

The Council adopted four resolutions of appreciation recognizing the contributions of departing members Charles E. Nemir, Kathleen Ferris, and Sidney Woods, as well as the late Don Willems. Charlie was appointed to the Council in 1978, when the State of Texas was accepted as a member. Charlie has served as Secretary-Treasurer (1979-80), Vice Chairman (1980-81), and Chairman (1981-82). The Council recognized his significant contributions during a distinguished career in public service. Kathy Ferris was appointed to the Council in 1985, and during her tenure made significant contributions to the work of the Council. She was serving as Chairwoman of the Legal Committee at the time she resigned as Director of the Arizona Department of Water Resources. Sid Woods was appointed to the Council in 1983, bringing the experience of a successful farmer and rancher. The Council extended its appreciation for his contributions. Don Willems was appointed as a member of the Western States Water Council in 1976, bringing his expertise on water quality issues as Administrator of the Montana Environmental Sciences Division. His able work included service as Vice Chairman of the Water Quality Committee. He died on April 11, 1987 after a long and courageous battle with cancer. The Council expressed their appreciation for his service and condolences to his family in a special resolution.

## **Eighty-Seventh Quarterly Meetings**

**July 29-31, 1987**

**Park City, Utah**

The Eighty-Seventh Quarterly Meetings of the Western States Water Council were held July 29-31, in Park City, Utah. On Wednesday, the State of Utah hosted a special tour of the Great Salt Lake West Desert Pumping Project.<sup>9</sup> On Wednesday evening, the Joint Ground Water and Federal Energy Regulatory Commission Subcommittees met to consider proposed federal legislation. Both deferred final action, while continuing to refine language and evaluate congressional support.

---

<sup>9</sup>*Western States Water, Issue #674, April 17, 1987.*

The regular committee meetings began on Thursday morning. The Executive Committee considered the Council budget and Committee work plan. The Committee reviewed the proposed legislation prepared by the Ground Water Subcommittee, and heard a report by Executive Director Craig Bell on the recent Western Governors' Association meetings.<sup>10</sup> During the Three Committee Informational Meeting, a special panel discussed state water conservation laws and programs. The panel consisted of: Dr. Alan Kleinman, Director of the Arizona Department of Water Resources; Steve Dayton, Water Conservation Specialist for the Texas Water Development Board; and David Kennedy, Director of the California Department of Water Resources. Oregon's new water conservation law was also mentioned.<sup>11</sup> Texas provided a list of its conservation material, and California made available an extensive number of publications. For more information on these resources contact the Council office.

The Council's working committees also met on Thursday. The Water Quality Committee reviewed proposed federal legislation on ground water and recent legislation reauthorizing the Clean Water Act and the Safe Drinking Water Act (SDWA). With respect to the latter, the Council had responded to a request from Larry Jensen, EPA Assistant Administrator for Water, to further explain our January 1987 resolution on the impacts of the new SDWA requirements. Specifically, Mr. Jensen asked for state comments on the Council's position that primary drinking water standards be based on adequate health-effects data, and on the need to promulgate flexible rules to lessen the managerial and financial impacts of the new law on small water suppliers. Next, Darlene Ruiz, Vice Chairwoman of the California Water Resources Control Board, gave a comprehensive description of the current Clean Water Act implementation activities. Under the Committee's direction, a report addressing EPA/State relations has also been drafted.

The Water Resources Committee first addressed proposed amendments to the Federal Power Act that are designed to remedy conflicts caused by the Federal Energy Regulatory Commission preempting state water rights and state water planning decisions. The Committee deferred final action on the amendments in order to prepare educational material on state concerns for congressmen and assess support. The Committee did recommend a position challenging the conclusion of a General Accounting Office (GAO) report that implies the Endangered Species Act has had a limited effect on western water development.<sup>12</sup> The Committee also approved a position calling on the Administration and the Corps of Engineers to fund federal matching grants for state dam safety programs authorized last fall by the Corps omnibus bill (P.L. 99-662).<sup>13</sup> In addition, the Committee considered, but deferred action on a position with respect to a new Administration policy on computing agricultural-related benefits of federal water projects to eliminate the so-called "double subsidy" associated with production of "surplus" crops. The policy had apparently already been adopted by the Departments of Agriculture, Army, Interior, the Office of Management and Budget, and the Tennessee Valley Authority. The Committee also called for comments from members with respect to a draft model

---

<sup>10</sup>*Western States Water*, Issue #686, July 10, 1987.

<sup>11</sup>*Western States Water*, Issue #686, July 10, 1987.

<sup>12</sup>*Western States Water*, Issue #675, April 24, 1987.

<sup>13</sup>*Western States Water*, Issue #654, November 26, 1986.

state drought response plan and a report on U.S. Bureau of Reclamation funding. With respect to the latter, on the broader question of the management of federal water and power programs, the Committee asked staff to further define the issues and state concerns for potential future action. Lastly, the Committee was apprised of federal legislation introduced by Texas Representatives to reverse a U.S. Fish and Wildlife decision to accept a permanent non-development easement from a private hunting club, and prevent such actions in the future.<sup>14</sup>

On Thursday afternoon, the Legal Committee listened to a discussion of Indian reserved water rights negotiated settlements. First, Paul Engstrand, an attorney for the Cities of Escondido and Vista, described the San Luis Rey Water Rights Settlement Act (S. 795),<sup>15</sup> regarding the claims of five bands of Mission Indians in San Diego County, California. Stan Barnes, Vice Chairman of the California Water Commission, expressed the concerns of the Commission that the settlement represents a negative precedent. Following this discussion, WSWC Chairman Bill McDonald, Director of the Colorado Water Conservation Board, discussed the settlement of the reserved rights claims of the Southern Ute and Ute Mountain Ute Indian Tribes. The Committee also heard Charles Roe report on the activities of the Joint Ground Water Subcommittee. Further, Dallin Jensen, of the Utah Attorney General's Office, described Utah v. United States.<sup>16</sup> By a 5-4 decision, the U.S. Supreme Court has resolved a dispute over the bed of Utah Lake by granting title to the State of Utah under the equal footing doctrine.

At the Full Council Meeting on Friday, July 31, Dee Hansen, Director of the Utah Department of Natural Resources, spoke on current Utah water resource issues, emphasizing efforts to control the level of the Great Salt Lake. Next, James Daniel, Assistant Chief Hydrologist with the U.S. Geological Survey, reviewed current federal ground water quality protection efforts and the USGS position with regard to proposed legislation. In addition, Myles Flint, Deputy Assistant Attorney General, Lands Division, spoke to the role of the Department of Justice in negotiating settlements of Indian water rights disputes.

The Council adopted three positions. First, the Council asked the Federal Energy Regulatory Commission to reconsider and modify Order No. 464, relating to a one-year review period, under Section 401 of the Clean Water Act, within which states must certify that projects comply with state water quality standards. The Commission had decided the review period will begin once an application has been filed with the state. The Commission also applied its decision retroactively. The Council opposed the retroactive application and further asked that the order be modified to allow the state to determine at what point an "adequate" application has been received and the review period should properly begin. Second, the Council adopted a position with regard to the GAO report on the Endangered Species Act. Third, the Council adopted a recommended position on the Dam Safety Act of 1986. As suggested, the Council deferred action on amendments to the Federal Power Act and on federal ground water legislation.

---

<sup>14</sup>*Western States Water, Issue #654, November 26, 1986 and Western States Water, Issue #662, January 23, 1987.*

<sup>15</sup>*Western States Water, Issue #673, April 10, 1987.*

<sup>16</sup>*Western States Water, Issue #682, June 12, 1987.*

## Eighty-Eighth Quarterly Meetings

October 7-9, 1987  
Santa Fe, New Mexico

The Eighty-Eighth Quarterly Meetings of the Western States Water Council were held October 7-9, in Santa Fe, New Mexico. On Wednesday evening, the Joint Ground Water and Federal Energy Regulatory Commission (FERC) Subcommittees met and again considered federal legislation to address state concerns in these areas. The work of both Subcommittees continues.

The regular committee meetings began on Thursday morning with the Executive Committee considering the Council budget and Committee work plan. The Committee also reviewed the continuing working relationship with the Western Governors' Association. During the Governors' July meetings, both WGA and WSWC staff were directed to jointly address various issues.<sup>17</sup> With regard to the work plan, each working committee reviewed proposed activities and a final work plan will be approved at the January 1988 meetings.

Assistant Secretary of Interior for Water and Science, Jim Ziglar, and the new Deputy Commissioner of the Bureau of Reclamation, Joe Hall, addressed members during the Three Committee Informational Meeting on Thursday morning. Their presentation, which covered Interior issues, specifically the reorganization and redirection of the Bureau of Reclamation,<sup>18</sup> stirred considerable interest and discussion. Sentiment among Council members with regard to the proposed Bureau changes vary. The need for a new mission for the Bureau of Reclamation appears to be universally recognized. However, some questioned the propriety of expanding the Bureau's foreign activities, as well as new initiatives with regard to hazardous waste and ground water management. Another issue Mr. Ziglar addressed involved the use of the new USDA normalized prices model and indexes for evaluating the feasibility of new irrigation projects. Such action is designed to eliminate any "double subsidy" that might result from growing surplus crops on federal reclamation project lands. Many projects will be affected by the new policy,<sup>19</sup> and at the July quarterly meetings the Water Resources Committee considered, but deferred, a position statement calling on the Administration to reconsider its action. Assistant Secretary Ziglar advised members to obtain and analyze the model developed by the Department of Agriculture to project the new normalized prices. However, he cautioned reopening the issue might do more damage than good.

During the Water Resources Committee Meeting, it was decided to take Mr. Ziglar's advice and review the new computer model behind the "double subsidies" policy. The Committee also intends to closely follow the announced changes within the Bureau of Reclamation. With respect to other issues, the Committee approved two staff reports entitled U.S. Bureau of Reclamation Funding and A Model for Western State Drought Response and Planning. With

---

<sup>17</sup> *Western States Water*, Issue #686, July 10, 1987.

<sup>18</sup> *Western States Water*, Issue #698, October 2, 1987.

<sup>19</sup> *Western States Water*, Issue #697, September 25, 1987.

regard to the Federal Energy Regulatory Commission, the Committee will pursue both judicial and legislative efforts to resolve conflicts over state water rights. However, the Committee did not recommend that the Council support the introduction of new federal legislation at this time. Rather, the Committee will work toward educating key congressmen and staff and monitor relevant litigation in California. With respect to the latter, California has argued its position regarding the Rock Creek and Sayles Flat cases<sup>20</sup> before a federal district court. Both cases involve state regulation of instream flows and actions taken by a FERC licensee contrary to state water rights law. Regardless of the ruling, the cases will likely be appealed to the Ninth Circuit, and eventually to the Supreme Court. The current consensus is that should California prevail, western states will likely gain more than they could through legislation. The Committee also discussed the current status of an agreement in the Upper Colorado River Basin on implementation of recovery activities for endemic fishes under the Endangered Species Act. The Governors of the States of Colorado, Utah and Wyoming are expected to soon sign the agreement, which may serve as a model for future federal/state efforts.<sup>21</sup>

The Water Quality Committee heard updates on pending federal ground water legislation and the implementation of the Water Quality Act of 1987. With respect to the latter, the Committee formulated and recommended for Council consideration two resolutions. The Committee also discussed a report which evaluates current EPA/State relations and makes suggestions concerning improvements.

The Legal Committee heard a report from Joint Ground Water Subcommittee Chairman Charles Roe on recent activities. A discussion followed on federal reserved water rights developments, including an explanation by New Mexico members of language included in Senate legislation which would create the El Malpais National Monument.<sup>22</sup> Also discussed were negotiations on water rights language for wilderness bills in the State of Colorado, and recent hearings on H.R. 2642, the Southern Ute Indian Water Right Settlement Act. The Committee also reviewed Texas v. New Mexico, a suit involving the Pecos River Compact. The Supreme Court held that the Compact is also a contract, and under that contract remedies may be ordered for past breeches of the Compact by the State of New Mexico. The Court returned the case to its Special Master for further proceedings to determine whether New Mexico should be allowed to elect a monetary remedy, in lieu of a "water remedy," and also the size of the payment—whether in water or money. Next, the Committee heard a report on litigation in California involving conflicts between state water management authority and the licensing authority of the Federal Energy Regulatory Commission. Lastly, the Committee accepted a report, The Doctrine of Prior Appropriation and the Changing West.

During the Eighty-Eighth Quarterly Meeting, the Council approved two positions, considered under unanimous consent, which were recommended by the Water Quality Committee. The first opposed any efforts to delay payments to states for capitalization of revolving loan funds as have been recommended by

---

<sup>20</sup> *Western States Water*, Issue #695, September 11, 1987.

<sup>21</sup> *Western States Water*, Issue #640, August 22, 1986.

<sup>22</sup> *Western States Water*, Issue #693, August 28, 1987.

the Office of Management and Budget to limit federal expenditures. The second addresses concern over the incongruity between the statutory requirement to consult states affected by the promulgation of regulations specifying how Indian tribes shall be treated as states under the Clean Water Act, and the relative lack of participation by state officials to date in the implementation process. The other working committees reported on their activities. Then Phil Mutz, New Mexico Interstate Stream Engineer, spoke to current events in the State of New Mexico. Thereafter, a panel presentation on waste water treatment financing included: Bill Kramer, Chief of EPA's Policy and Analysis Branch; Don Ostler, new Director of the Utah Bureau of Water Pollution Control; and Bob Neufeld of Kirchner and Moore, an investment banking firm.

Of special note, the Council adopted resolutions of appreciation on behalf of retiring members Cal Sudweeks and Ray Rigby. Cal has represented the State of Utah as an alternate member since 1979, and has chaired the Water Quality Committee. Ray was appointed to the Council in 1973, and has served since then under various governors. He was elected as Chairman of the Western States Water Council and served during the 1982-83 year. Both have provided exemplary service, and we will miss our close association.

## OTHER IMPORTANT ACTIVITIES

In addition to the events just described associated with the Council's regular quarterly meetings, and the formal resolutions and position statements adopted by the Council that are described later, several other important activities were undertaken, including the following.

### **ABA/WSWC Workshop**

On February 5-6, the Council co-sponsored a workshop on recent developments in western water law in San Diego, California along with the Natural Resources Section of the American Bar Association and the Western Attorneys General. Approximately 200 participants attended the workshop. A number of western water experts spoke at the seminar including Ralph Johnson, Charles Meyers, and Charles Corker. Council members Chuck DuMars, Rod Walston, and Charles Roe either spoke at the seminar or were involved in its planning. The topics discussed fell under the general categories of the Public Trust Doctrine and western water management, Indian reserved water rights, federal water policy, state efforts to deal with the Supreme Court's decision in Sporhase v. Nebraska that water is an article of interstate commerce, and the mechanics of trying a water case.

### **Water Policy Seminar**

On April 30, the Council sponsored a special water policy seminar entitled, State/Federal Relations in Water Resources Management, to provide a forum to discuss important western water issues with congressional and federal agency representatives. The Seminar was held in conjunction with regular WSWC quarterly meetings. Topics included ground water protection, the federal role in water transfers, and FERC hydropower licensing procedures. Briefing material prepared for the Seminar included a chronology of events related to the major issues and a series of pertinent policy questions. Copies are available.

The guest speakers and panelists addressing **Ground Water Quality Protection and Federal/State Responsibilities** were: Rep. Mike Synar (D-OK), Chairman of the House Government Operations Subcommittee on Environment, Energy and Natural Resources; Larry Jensen, EPA Assistant Administrator for Water; Jimmie Powell, Legislative Director for Senator Dave Durenberger; Judy Campbell Bird, staff, Environmental and Energy Study Institute; and Charles Roe, Senior Assistant Attorney General, State of Washington.

Addressing the **Federal Role in Water Transfers**, guest speakers and panelists included: Wayne Marchant, Principle Deputy Assistant Secretary of Interior for Water and Science; Daniel P. Beard, Staff Director for the Subcommittee on Water and Power Resources, House Committee on Interior and Insular Affairs; Russell Brown, senior staff, Senate Energy Committee; and Dee C. Hansen, Director, Utah Department of Natural Resources.

Special guest speakers and panel members addressing **FERC Hydro-power Licensing and State Water Law** were: Charles Trabandt, FERC Commissioner; Frank Dunkle, Director, U.S. Fish and Wildlife Service; Timothy Weston, attorney, Kirkpatrick and Lockhart; Robert G. Fitzgibbons, Jr., Associate General Counsel, Federal Energy Regulatory Commission, and Kenneth Dunn, Director, Idaho Department of Water Resources.

## **Drought Response Workshop**

During 1987, many states, particularly the Northwest and California, experienced moderate to extreme drought conditions. The worst fire season in decades devastated parts of northern California and Oregon. On March 26-27, the WSWC conducted a State Drought Planning and Response Workshop in Salt Lake City. Forty federal, state and local representatives from thirteen western states attended. Participants included the U.S. Department of Agriculture, the Bureau of Reclamation and state water resource, emergency services, economic development, land, forestry and fish and wildlife agencies, as well as water user groups. Meeting in small groups and as a whole, those in attendance discussed drought prediction, data collection and monitoring, intergovernmental cooperation, public information, and various potential impacts and possible mitigation measures. Following the workshop, staff prepared and circulated for comment a draft state drought response plan.

In October, the Council published A Model for Western State Drought Response and Planning. The model plan is designed to help western states address drought-related problems. It was sent to each member-state governor and other state officials. However, reservoir storage (carried over from previous years) helped avoid a general water supply crisis. As it appears, 1988 will also be a dry year. Several states have begun considering various drought response activities, utilizing the model plan.

## **Western Governors' Association Annual Meeting**

The annual meeting of the Western Governors' Association was held at Snowbird, Utah on July 5-7. The governors adopted three policy resolutions related to water efficiency, negotiated settlement of Indian water right disputes, and amendment of the Federal Power Act. WSWC Executive Director Craig Bell addressed the governors and provided briefing materials on a number of other water issues currently of importance in the West. The governors also reviewed the work of the Ad Hoc Group on Reserved Indian Water Rights and the Water Efficiency Working Group, both of which included participation by WSWC members and staff.

Of particular note, during discussion of the WGA budget, which included a \$98,000 line item for water policy, newly elected Governor Roy Romer of Colorado raised certain questions related to the relationship between the Western Governors' Association, the Western States Water Council, and other regional organizations. In response to Governor Romer's request, a subcommittee was appointed to review current arrangements and appropriate changes, including possible consolidation. It consisted of Governor Booth Gardner of Washington, Governor Norman H. Bangerter of Utah, and Governor George Deukmejian of California. WSWC staff prepared an extensive letter to the WGA member governors, as well as briefing material for the WGA Staff Council, explaining our organization, funding, coordination of work with the WGA staff, and the pros and cons of possible consolidation of the WSWC and WGA staffs in Denver.

WSWC members and staff suggested that water policy is a subject of sufficient importance to warrant the existence of a separate organization that not only provides the governors with expert advice on water policy issues, but addresses many issues of importance to western states that do not merit the personal involvement of the governors. The WSWC briefing materials also

addressed previous reviews of the management and organization of multi-state organizations in the West and existing mechanisms for insuring that actions are consistent with and responsive to the governors' interests. Further, cost savings from consolidating the WSWC and WGA staffs in Denver were discounted given the current close cooperation and lack of duplication, as well as the less costly location of the WSWC offices in Salt Lake City. As a result, to date no further action has been recommended or taken by the governors relative to this matter.

### **U. S. Bureau of Reclamation Funding**

In July 1987, the Council published U.S. Bureau of Reclamation Funding, summarizing the various U.S. Treasury accounts and funds used to finance the Bureau of Reclamation. The report analyzes revenues and expenditures, and related legal restrictions. The report also reviews future projections to evaluate the feasibility of increasing federal water resource outlays. Much of the report focuses on the Reclamation Fund, with a projected unobligated balance at the end of FY88 of \$1.1B. Considerable interest from different sectors has focused on potential uses of this money. However, the report points out that as a special fund, the Reclamation Fund is not a savings account drawing interest, but rather a non-interest bearing obligation, set aside for specific purposes, with special restrictions on its expenditure. In essence, it is only a paper figure, an accounting mechanism recognizing dedicated revenues. In reality, the unobligated balance represents perhaps an ethical or moral obligation to make certain expenditures for reclamation-related purposes. However, in fact, past reclamation revenues have long since been used to off-set the need for further federal borrowing to finance the existing budget deficit. The report concludes, "Uncle Sam has borrowed 'the golden egg' and left the goose sitting on a Treasury I.O.U." Therefore, at present, there appears to be no particular advantage in seeking increased levels of funding from the unobligated balance in the Reclamation Fund, as opposed to the General Fund. Either would require a corresponding increase in the federal deficit, which at present is unlikely politically. However, given increasing revenue projections, and declining spending for Reclamation programs, it is possible that by the middle or late 1990's receipts to the Reclamation Fund would cover projected construction expenditures authorized for the Bureau of Reclamation and Western Area Power Administration. At that point, western states should be prepared to oppose diversion of any accruing surplus for federal programs unrelated to water development and management in the West.

### **Fourth Annual Water Management Symposium**

The Fourth Annual WSWC Water Management Symposium, Water Conservation and Water use Efficiency, was held in Boise, Idaho on September 10-11. *Over 40 people attended, representing public agencies and irrigation districts in ten western states. Papers were presented on water conservation incentives, water transfer and marketing opportunities, conjunctive use of surface and ground waters, municipal demand management techniques, and water development opportunities. With respect to the latter, western states continue to view traditional water development projects as important conservation measures. Such "supply-side" conservation opportunities include weather*

modification and the use of waters of impaired quality. The meeting focused on ways to reduce demand and increase water use efficiency by eliminating irrecoverable losses. However, saving water for new uses can be difficult given the complexity of hydrological and institutional systems and often a lack of reliable data. Copies of the proceedings are available.

### **EPA/State Relations Report**

In October 1987, the Council published, EPA/State Relations Related to the Administration of Water Quality Programs in the Western United States. The purpose of the report is to comment upon the condition of relations between EPA and the western states and to evaluate the status of water quality programs established under federal law which either allow or require specific state participation. It contains a brief state-by-state description of EPA/state controversies related to delegated and non-delegated federal water quality programs. It also contains suggestions for improved relations. Good relationships, of course, lead to more effective program implementation.

### **Appropriation Doctrine Report**

In November 1987, the Council released a report entitled, The Doctrine of Prior Appropriation and the Changing West. It describes the establishment and implementation of the doctrine of prior appropriation as the authoritative basis for water law in the West. It focuses on protection of the public interest and the balancing of competing water resource demands. It describes the evolution of some traditional prior appropriation principles and the use of public interest criteria in water use permitting and the protection of instream flows. Also, it discusses water right transfers in the West, the interstate sale and lease of water, and other recent developments or innovations in western water law.

### **WGA Water Efficiency Work Group**

During 1987, representatives of the Western States Water Council and the Western Governors' Association (WGA) worked together with the Department of Interior in preparing a report on water efficiency for western Governors. Representing the Council were: Dave Kennedy, Director of the California Department of Water Resources; Jack Acord, Assistant Administrator for the Montana Water Resources Division; and Dee Hansen, Director of the Utah Department of Natural Resources. The work group was established pursuant to a WGA resolution adopted, "to identify steps to facilitate voluntary water transfers and other needed changes and to develop recommendations for changes in laws and practices at the federal, state, and local levels."

To complete its charge, the work group: (1) examined a number of case studies of both successful and unsuccessful water use transfers to determine factors which facilitate and impede transfers; (2) developed a matrix of state water transfer laws (prepared by the WSWC); (3) prepared a comprehensive bibliography of water efficiency studies; (4) established three teams to assess federal laws, policies and procedures, state laws and policies, and contextual issues—long range trends and issues that may affect the shape of future water policy; and (5) conducted research covering issues such as profiteering from the transfer of federal project water, impediments in federal law to such transfers, the public interest, and state conservation and salvage practices. A

report presenting the findings and recommendations of the the work group was submitted to governors at the WGA annual meeting in July 1987. The working group planned to meet again as necessary to work toward supporting appropriate changes in federal laws and policies, consistent with the recommendations in the report.

### **Federal Energy Regulatory Commission**

For some time, the Western States Water Council has expressed concern over various licensing and permitting activities of the Federal Energy Regulatory Commission (FERC). In general, the problem involves the exercise of federal regulatory authority, under the Federal Power Act, independent of, and often without any consideration for, state water right systems. As an advocate of state water rights, the Council has helped successfully negotiate resolution of similar problems with the Corps of Engineers on Section 404 permits under the Clean Water Act and with the Fish and Wildlife Service in providing protection for endangered species without sacrificing state water rights. The Federal Energy Regulatory Commission has been uncooperative, despite repeated overtures by the Council. FERC is apparently comfortable behind the U.S. Supreme Court's First Iowa decision, claiming exclusive jurisdiction with regard to hydropower project permitting.

In January 1987, the Council sponsored a seminar on FERC hydropower licensing procedures and state water rights. The States of California, Idaho, Maine, Oregon, Texas, and Washington, along with the Susquehanna River Basin Commission, presented case studies of specific problems. FERC representatives addressed how state water rights are handled in the federal hydropower licensing and permitting processes, and opportunities for administrative accommodation. However, they staunchly defended federal preemption under First Iowa, and focused on how states might best present themselves and their interests before FERC. The general consensus among the state participants was that FERC is unlikely to seriously address state/federal jurisdictional problems without future judicial or legislative pressure.

In February 1987, FERC issued Order No. 464, revising its previous practice with respect to the waiver of state water quality certification requirements under Section 401(a)(1) of the Clean Water Act. Without notice to the states, FERC retroactively applied this controversial order and unilaterally usurped state responsibility for addressing the water quality impacts of some 227 projects in 32 states. The Council testified in support of certain provisions of S. 1792, introduced by Senator Max Baucus (D-MT), to reverse the retroactive application of Order No. 464 during a hearing on November 24, 1987 before the Senate Environment Committee.

In March 1987, FERC ruled the California State Water Resource Control Board had no jurisdiction to set minimum instream flow requirements in the Rock Creek case. Similarly, in California, the Sayles Flat Project was substantially completed by a FERC permittee without regard to the lack of a state water right. The Council has closely followed the litigation and supported the position of the State of California.

In October 1987, FERC published Order No. 481, defining state comprehensive plans. It was promulgated as interpretive guidance, precluding any comments by the states. The States of California, Washington, Kentucky, Vermont, New York, and Minnesota, the Northwest Power Planning Council,

and American Rivers, all filed requests for rehearing with FERC challenging Order No. 481. Western states question FERC's comprehensive planning capacity and authority.

In December 1987, Congress approved and the President signed H.R. 519 (P.L. 100-216), directing the Federal Energy Regulatory Commission to approve the Swan Falls water rights negotiated settlement on the Snake River in Idaho, between the State and Idaho Power Company, which had been pending before the Commission since 1982. The agreement subordinates certain rights of the Idaho Power Company to current water uses and limits future development. Only weeks later, FERC issued an order denying a request by the State of Idaho for a similar subordination condition on the federally licensed Horseshoe Bend project on the Payette River in Idaho.

In response to such FERC actions, the Council drafted and considered proposed amendments to the Federal Power Act to reiterate Congress' intent that states are primarily responsible for water rights management in the West. However, to date, the Council has deferred final action seeking introduction of a broad legislative remedy to state problems. Rather, the Council is closely following the Rock Creek litigation in California and the possible reversal, or perhaps new interpretation of the First Iowa decision upon which FERC relies for authority in preempting state water laws and regulations. The considerable controversy surrounding this issue and its direct bearing on state water rights has made it a priority concern of the Council. The Council staff did prepare briefing materials for educating congressmen with respect to state problems and suggested for response several questions related to FERC/state relations in congressional hearings.

### **Federal Ground Water Legislation**

The Council closely monitored the progress of federal ground water legislation in both houses of Congress during 1987. Early in the session, key congressmen and senators indicated an interest in passing such legislation. The focus in the House has primarily been on legislation authorizing further research, while the Senate has expressed an interest in passing a comprehensive bill, including a new federal regulatory program. On June 18, WSWC Executive Director, Craig Bell, presented testimony regarding national ground water policy before the Senate Committee on Energy and Natural Resources' Subcommittee on Water and Power. Very similar testimony was presented by Mr. Bell on September 17, before the Subcommittee on Water and Power Resources of the House Committee on Interior and Insular Affairs. The testimony was based on past Council position statements, and emphasized that states should continue to have the primary role in ground water management, particularly in creating and administering ground water rights. It urged the support of the federal government in aiding the states with their primacy role. No federal ground water legislation was passed in the Senate in 1987, but on December 2, the House, after a great deal of Committee work, overwhelmingly approved H.R. 791, a compromise research bill. Among other things, it stressed intergovernmental coordination and established the Department of Interior as the lead agency for a national ground water assessment. It would require EPA to conduct health-effects research and publish a risk assessment for 30 significant ground water contaminants within two years of enactment. It would also set up a national ground water information clearinghouse.

## Newsletter

In addition to these and other activities, the Council staff maintained its usual workload, which includes publication of the Council's weekly newsletter, Western States Water.

## RESOLUTIONS AND POSITIONS

The following are positions taken and resolutions passed by the Western States Water Council during 1987.

### REAUTHORIZATION OF THE CLEAN WATER ACT

The House and Senate unanimously passed legislation reauthorizing the Clean Water Act on October 15 and 16, 1986. On November 6, 1986, President Reagan vetoed the legislation stating, "Unfortunately, this bill so far exceeds acceptable levels of intended budgetary commitments that I must withhold my approval." The measure would have provided \$18B through FY94 to phase out EPA's sewage treatment plant construction grants program. On January 8, 1987, the House overwhelmingly approved a bill identical to the one vetoed by the President. At that point, approval of the bill by the Senate was less certain. It was generally conceded that if the bill was not approved exactly as passed by the 99th Congress, it could take months or even years to renegotiate a new compromise. The following resolution was passed by the Council, and sent to the President and the Congress. On January 21, by a 93-6 vote, the Senate approved the bill passed by the House, in the process defeating new "compromise" amendments. On January 30, President Reagan again vetoed the bill, but the veto was overridden by the House and Senate on February 3 and 4, respectively.

*POSITION  
of the  
WESTERN STATES WATER COUNCIL  
Regarding  
Reauthorization  
of the  
Clean Water Act  
January 16, 1987*

*WHEREAS, S. 1128, to reauthorize the Clean Water Act, was passed unanimously by both Houses of the 99th Congress after a 4½ year national debate by water quality control leaders and the public; and*

*WHEREAS, S. 1128 represents a delicate balance of competing interests which, if disturbed, may take years to re-attain; and*

*WHEREAS, S. 1128 contains a reasonable phase-out of the federal financial commitment to the construction grants program and provides for increased state self-sufficiency by allowing the use of federal funds to help capitalize state revolving loan programs; and*

*WHEREAS, while S. 1128 does not satisfy all Council concerns with regard to reauthorization of the Act, its passage is preferable to lengthy delays associated with beginning again the reauthorization process; and*

*WHEREAS, further delay in enactment of S. 1128 will be detrimental to the Act's laudable goals, will disturb clean water related programs generally, and will be financially imprudent;*

*NOW THEREFORE BE IT RESOLVED, that the Western States Water Council urge the 100th Congress to act immediately upon the opening of the session to introduce and pass without amendment, hearings, markup, or debate a bill which replicates S. 1128 as passed by the 99th Congress; and*

*BE IT FURTHER RESOLVED that the Council urge the President to sign the reauthorization bill.*

## **SAFE DRINKING WATER ACT AMENDMENTS OF 1986**

President Reagan signed into law new legislation reauthorizing the Safe Drinking Water Act on June 19, 1986. Regarding the reauthorization, Larry Jensen, EPA Assistant Administrator for Water, commented, "Congress has sent a clear signal that the people of this nation are concerned about their drinking water. Solutions to drinking water challenges require that the states continue to be intricately involved in drinking water regulations...." The Council was involved in the debate regarding reauthorization of the Act and passed a related position in July of 1985. Further, following discussions with EPA regarding implementation of the Safe Drinking Water Act Amendments of 1986, Mr. Jensen requested input from the Council regarding its priorities and concerns. This prompted the position below which was transmitted to EPA.

*POSITION  
of the  
WESTERN STATES WATER COUNCIL  
Regarding Implementation  
of the  
Safe Drinking Water Act Amendments of 1986  
January 16, 1987*

*WHEREAS, the Safe Drinking Water Act was reauthorized and amended in the 99th Congress; and*

*WHEREAS, this important federal law assures a clean domestic water supply for United States citizens; and*

*WHEREAS, the 1986 amendments to the Act will create many new requirements for water suppliers; and*

*WHEREAS, proposals to implement the requirements of the new law are pending; and*

*WHEREAS, unwise rules and regulations implementing the Act may place undue burdens on state and local governments;*

*NOW THEREFORE BE IT KNOWN, that the Western States Water Council has identified the following priority concerns and recommendations with regard to implementation of the Safe Drinking Water Act Amendments of 1986:*

*1. To lessen the managerial and financial impacts on small water systems where the quality of drinking water is and has historically been high, the Council requests the Environmental Protection Agency to promulgate reasonable rules specifying flexible criteria to be used to grant variances from the new disinfection, filtration, and monitoring requirements under the Act;*

*2. To promote maximum possible state participation in the new wellhead protection program and to assure that the new program is not damaging to already successful programs which exist in some states, the Council requests: (a) maximum flexibility in the requirements for a qualifying program; (b) adequate funding so that meaningful grants to qualifying programs can be made; and (c) full authority to the states to organizationally establish their programs;*

*3. To prevent deterioration of EPA/state and state/local relationships, the Council requests rules which would require judicious use of new EPA authority to issue orders directly to water supply systems for noncompliance with the Act's requirements; and*

*4. Notwithstanding the time requirements for the establishment of standards for new contaminants, the Council requests that these standards be based on adequate health-effects data.*

## **U.S. FISH & WILDLIFE SERVICE ACQUISITION OF NON-DEVELOPMENT EASEMENTS**

During 1986, the U.S. Fish & Wildlife Service accepted the donation of a non-development easement from the Little Sandy Hunting and Fishing Club on over 3800 acres of bottomland hardwood waterfowl wintering and breeding habitat on the Sabine River in Wood County, Texas. The offer by the exclusive private hunting club was apparently prompted by the proposed development of the Waters Bluff Reservoir by the Sabine River Authority to serve municipal water supply needs of the area through 2030. The nature of the easement created by the agreement created an obstacle to development of the reservoir which only Congress can now remove. Further, though the area came under federal protection as part of the national refuge system, the club retains its exclusive hunting privileges, and reportedly takes 1000-1500 ducks a year.

The Fish & Wildlife Service accepted the easement, by a December 1986 deadline set by the club, despite extensive complaints and a request to delay the decision by the Western States Water Council. Given the potential westwide

implications of similar future action, the Western States Water Council expressed its opposition to such acquisitions without full consideration of the probable impacts, in coordination with affected entities. Further, the Council urged the U.S. Fish & Wildlife Service to seek to accommodate both wildlife and water supply needs in such cases.

*POSITION*  
*of the*  
**WESTERN STATES WATER COUNCIL**  
*Regarding U.S. Fish & Wildlife Service Acquisition of*  
*Non-development Easements*  
*January 16, 1987*

*WHEREAS, a private hunting and fishing club in Texas has donated to the U.S. Fish and Wildlife Service a permanent easement to utilize their land as a national wildlife refuge, while retaining exclusive hunting privileges on such land and while continuing to exclude the public from such land; and*

*WHEREAS, the U.S. Fish and Wildlife Service did not coordinate its review of the proposed acquisition under the National Environmental Policy Act with affected federal, state, regional and local entities; and*

*WHEREAS, the draft environmental assessment prepared by the U.S. Fish and Wildlife Service does not adequately consider the effects of the acquisition on the Waters Bluff Reservoir project and future water needs of the State of Texas; and*

*WHEREAS, suitable reservoir sites in the West are limited and the precedent established by this acquisition could have serious effects on other proposed reservoir sites throughout the western states;*

*NOW THEREFORE BE IT RESOLVED, that the Western States Water Council oppose the acquisition of refuge lands by the U.S. Fish and Wildlife Service without full consideration of the impacts of such acquisition on water supplies and without full coordination with potentially affected federal, state, regional and local entities; and*

*BE IT FURTHER RESOLVED that the Western States Water Council oppose acquisition of such refuge lands by the Fish and Wildlife Service where the use of such lands will be restricted to private clubs and organizations to the exclusion of the general public; and*

*BE IT FURTHER RESOLVED that the Western States Water Council request that the U.S. Fish and Wildlife Service not acquire wildlife refuge sites until the Service fully assesses the potential conflicts with proposed water supply reservoirs, and designs a course of action to accommodate both wildlife and water supply needs.*

## U.S. BUREAU OF RECLAMATION FISCAL YEAR 1988 BUDGET

The Bureau of Reclamation's FY88 budget request reflected a major shift in Administration policy and a reordering of priorities. The total request of \$700.2M was \$98M more than appropriated in FY87. Emphasizing the timely completion of priority projects, Interior Secretary Donald Hodel noted, "In some cases we have spent a million dollars a year on a project just to keep it alive.... Now, we intend to concentrate on those projects near completion, get them done, get the users some water and get some payback to the Federal Treasury." Under the proposed budget, the Central Arizona Project and Central Utah Project received large increases. Funding for the Garrison Diversion Unit of the Pick-Sloan Missouri Basin Program in North Dakota was slashed, as was funding for the WEB Rural Water Development Project in South Dakota. Funding was also reduced for drainage and minor construction work, rehabilitation and betterment spending, planning for new projects or general investigations, and technical assistance to the states. Funding for dam safety work was increased.

Obviously some states stood to benefit under the Administration's proposal, while funding for projects in other states would be severely reduced or indefinitely delayed. The Western States Water Council raised concern over reductions in funding for planning and technical assistance to the states. The Council also called on Congress to carefully consider the Bureau proposal and provide for an equitable distribution of funds among the projects in the Reclamation States. However, in general, the states collectively supported the objective of expediting construction to more quickly bring projects on-line and thereby realize related benefits.

Subsequent congressional action led to a substantial increase in construction funding with the thrust of the Bureau's proposal intact. However, on a project-by-project basis, Congress adjusted proposed funding figures and reduced spending on some priority projects, while appropriating more money than requested on others. Congress provided substantially more money for the Central Arizona Project and the Central Utah Project than in FY87, but less than the Administration requested. Further, Congress substantially increased funding for the Garrison Project in North Dakota and the WEB Rural Water Development Project in South Dakota. Congress also substantially increased funding, over the Administration's request, for general investigations.

In response to the position adopted below, Interior Secretary Donald Hodel wrote stating: "We are not abandoning the planning function. On the contrary, we believe our proposal will strengthen the planning program over the long run by placing the Bureau in a position to plan needed projects on a timely basis, and then start and complete them on optimum construction schedules.... Hopefully you understand how we are attempting to satisfy the many needs competing for limited funds."

*POSITION*  
*of the*  
**WESTERN STATES WATER COUNCIL**  
*Regarding U.S. Bureau of Reclamation Fiscal Year 1988 Budget*  
*May 1, 1987*

*WHEREAS, the U.S. Bureau of Reclamation has proposed an \$98 million increase in the FY 1988 construction budget to selectively accelerate the completion of a few major water resource projects and to attempt to increase overall construction efficiency; and*

*WHEREAS, the U.S. Bureau of Reclamation has proposed an \$18 million decrease in the FY 1988 general investigations budget for water resource project planning; and*

*WHEREAS, the U.S. Bureau of Reclamation has proposed reducing significantly the level of funding for technical assistance to the states; and*

*WHEREAS, the reduction of general investigation funds and technical assistance for the states will seriously hinder the ability of the western states to move forward with sound water resource projects;*

*NOW THEREFORE BE IT RESOLVED, that the Western States Water Council urge the U.S. Congress to carefully review the proposed U.S. Bureau of Reclamation FY 1988 budget and approve an appropriation measure that adequately provides for general investigations and technical assistance to the states and that is equitable to all of the reclamation states.*

**FEDERAL ENERGY REGULATORY COMMISSION  
ORDER NO. 464**

Continuing conflicts with the Federal Energy Regulatory Commission (FERC) over state water management spilled over into water quality issues in 1987. On February 11, FERC issued Order No. 464 and on February 23, published a final rule implementing the decision. Under Section 401(a)(1) of the Clean Water Act, no federal agency can authorize construction or operation of a project without state certification that any discharge will comply with water quality standards. However, if a state has failed to act within a reasonable period of time, defined as one year, the certification requirement is waived.

In the past, FERC had deemed the one-year waiver period to commence once the certifying state agency found a request acceptable for processing. Order No. 464 reversed that practice and defined the waiver period to commence upon receipt of a certification request. The Commission argued that under its past practice, "...states could delay indefinitely their acceptance of a certification request in contravention of the Congress' intent...to prevent unreasonable delays..."

In addition to the impact on all pending applications, FERC retroactively applied its order and unilaterally waived the certification requirement for any project where the state had not acted within one year of receipt of the request. In effect, FERC usurped authority in 32 states to act on some 227 projects. FERC chose to ignore state action on many projects where certification had been denied or granted with conditions, but not within one year of receipt of the request.

The States of Alaska, California, Washington, Maine, and New York protested, and petitioned for a rehearing of the Order. FERC declined. On October 16, Senators Max Baucus (D-MT) and David Durenburger (R-NM) introduced legislation which would require FERC to reverse its retroactive application of Order No. 464. On November 24, Tony Willardson, WSWC Associate Director, testified in support of the legislation before the Senate Environment Committee.

*POSITION*  
*of the*  
**WESTERN STATES WATER COUNCIL**  
*Regarding the Federal Energy Regulatory Commission's*  
*Order No. 464*  
*July 31, 1987*

*WHEREAS, on August 6, 1985, the Federal Energy Regulatory Commission (FERC) published a Notice of Proposed Rulemaking (NPRM) regarding the waiver of the water quality certification requirement of Section 401 of the Clean Water Act (CWA), 13 USC 1341; and*

*WHEREAS, on February 23, 1987, FERC published Order No. 464, which became effective May 11, 1987 (52 FR 5446); and*

*WHEREAS, in Order No. 464, FERC changed its longstanding interpretation of the commencement of the 401 Water Quality Certificate waiver period from the date on which the certifying agency finds the application to be acceptable for processing, to the date the certifying agency receives the certification request; and*

*WHEREAS, Order No. 464 is applicable to all hydroelectric applications filed after the May 11, 1987 effective date; and*

*WHEREAS, in addition to applying this rule to all hydroelectric license applications filed after the effective date, FERC has applied the new interpretation to pending license applications that do not yet have Section 401 certification; and*

*WHEREAS, for the pending license applications, FERC will deem certification to be waived one year after the date the certifying agency received the certification request; and*

*WHEREAS, the new interpretation is inconsistent with FERC's prior interpretation of the 401 waiver period as set forth in Washington County Hydro Development Associates, 28 FERC p. 61, 341 (1984), which has been relied upon by the states in processing Section 401 certification requests; and*

*WHEREAS, the Washington County Hydro decision held that the one-year waiver period under Section 401(a) (1) commenced on the date a state agency deems an application acceptable for processing; and*

*WHEREAS, when the NPRM was made available for comment, it had no provision, either in explanatory text or proposed regulation, for retroactivity; and*

*WHEREAS, the states thus were not provided with notice of the potential retroactivity of Order No. 464 in the initial NPRM and could not have addressed this problem; and*

*WHEREAS, applying the new interpretation retroactively will effectively deny the states the right to issue or deny 401 Water Quality Certificates under the Clean Water Act; and*

*WHEREAS, the Clean Water Act specifically recognizes the need for certifying agencies to provide public notice and hold public hearings on specific applications; and*

*WHEREAS, the public notice and public hearing provision of the Clean Water Act includes the appeal process;*

*NOW THEREFORE BE IT RESOLVED, that the Western States Water Council requests FERC to reconsider and modify Order No. 464, without further hearing, to apply only prospectively to hydroelectric license applications filed after the effective date of the rule and thereby preserve the Washington County Hydro rule for prior applications; and*

*BE IT FURTHER RESOLVED, that the Western States Water Council supports modification of Order No. 464 to specifically allow each state to determine at which point an adequate 401 application has been received for purposes of deciding when the one-year review period begins, and to clearly state that the one-year review period is automatically extended to 90 days after the completion of an appeal process.*

## THE DAM SAFETY ACT OF 1986

The Dam Safety Act of 1986 (Title XII of the Water Resources Development Act of 1986, P.L. 99-662) authorized \$13M in matching grants for approved state dam safety programs. Such funding promised to nearly double the resources available to state dam safety agencies to help monitor and regulate some 80,000 dams nationwide, including 1,948 which were listed as unsafe by the Federal Emergency Management Agency. However, the Administration has failed to request funding for the program.

In response to the position below, the Corps of Engineers and Office of Management and Budget responded that the FY88 budget only requested funding to: (1) maintain the existing national inventory of dams; (2) carry out provisions of the law requiring the Corps to include information in reports on proposed projects addressing design factors and possible dam failures; and (3) provide reimburseable technical assistance for engineering studies of non-federal dams as directed by the law. The Administration does not support federal grants for state dam safety programs. Further, the law specifically prohibits the use of Corps funds for the repair of any non-federal dam.

### *POSITION*

*of the*

### *WESTERN STATES WATER COUNCIL*

*Regarding the Implementation of the Dam Safety Act of 1986*

*July 31, 1987*

*WHEREAS, in 1984, the Western States Water Council identified 665 dams in fifteen western states with safety problems; and*

*WHEREAS, other studies have identified significant non-federal dam safety concerns throughout the nation; and*

*WHEREAS, Congress recognizing such needs has enacted the Dam Safety Act of 1986, which authorizes \$13M annually in matching grants for approved state dam safety programs; and*

*WHEREAS, the Administration and the Corps of Engineers have failed to request funding in FY87 and FY88 for this program;*

*NOW THEREFORE BE IT RESOLVED that the Western States Water Council supports the full appropriation of the \$13M authorized for FY88 and FY89 and urges the Administration and Congress to give non-federal dam safety program grants a high priority; and*

*BE IT FURTHER RESOLVED that the Western States Water Council continues to strongly advocate further federal financial assistance for the repair, replacement or removal of unsafe non-federal dams in order to avert future dam failures and potentially catastrophic loss of life and property in the national interest.*

## ENDANGERED SPECIES AND WESTERN WATER PROJECTS

The Council has a long history of involvement covering implementation of the Endangered Species Act and conflicts with western water development. At the request of the Senate Environment Committee, the General Accounting Office (GAO) undertook and completed a report entitled Endangered Species - Limited Effect of Consultation Requirements on Western Water Projects. As the title indicates, the report suggested that the Endangered Species Act has had little effect on western water resource development and management.

The Council assisted GAO in gathering information for the report, but took exception to the apparent conclusions that might be drawn from its findings. The GAO reviewed 16,700 consultations conducted by the Fish & Wildlife Service between 1977 and 1985. Only 5,849 involved water-related projects, of which 3,179 involved water development. Thus GAO's finding that the consultation requirement has had a limited effect. Only 68 consultations, involving 62 projects, were found to have had an actual effect on project costs, scope, or scheduling. However, these figures include 40 consultations on 38 projects in the Upper Colorado River Basin, where the effect of the Act has been significant.

The report also found that western state water laws are compatible with wildlife conservation objectives, which are recognized as a beneficial use of water. Water can be appropriated to preserve the critical habitat of endangered species when necessary. While true, Council concerns centered on the fact that in the past the Fish & Wildlife Service and other federal agencies have sought to provide water for endangered species outside of traditional state water appropriation systems. This has caused considerable conflict.

*RESOLUTION*  
*of the*  
*WESTERN STATES WATER COUNCIL*  
*Regarding the Report of the General Accounting Office*  
*on the*  
*Endangered Species Act and Western Water Projects*  
*July 31, 1987*

*WHEREAS, the United States General Accounting Office, in the March 1987 report entitled, Endangered Species - Limited Effect of Consultation Requirements on Western Water Projects, implies that in the 7½ year period from October, 1977 to March, 1985 the Endangered Species Act (ESA) had little effect on water resources development and management; and*

*WHEREAS, this conclusion is premised to a large extent on the finding that water projects have not actually been prevented from being constructed by the requirements of the ESA; and*

*WHEREAS, this conclusion fails to recognize that significant constraints have been imposed on the exercise of state water rights and that significant costs and delays have been imposed on the construction of projects; and*

*WHEREAS, these constraints, costs, and delays would not be experienced, but for the imposition of the requirements of the ESA; and*

*WHEREAS, on April 16, 1985, the Western States Water Council submitted testimony on reauthorization of the Endangered Species Act to the Fisheries & Wildlife Conservation Subcommittee of the House Merchant Marine and Fisheries Committee, which testimony noted that such constraints, costs, and delays constitute significant existing and potential conflicts between implementation of the Act and essential development and management of water resources; and*

*WHEREAS, the United States General Accounting Office report further maintains that state water law administrators feel that there is no conflict between state water law and the Endangered Species Act; and*

*WHEREAS, state water law administrators, many of whom are members of the Western States Water Council, have in fact, on numerous occasions, identified and discussed at length a number of these serious conflicts;*

*NOW THEREFORE BE IT RESOLVED that the Western States Water Council finds that the conclusions of the March 1987 report of the United States General Accounting Office entitled, Endangered Species - Limited Effect of Consultation Requirements on Western Water Projects, are misleading and believes, therefore, that the report should either be revised to reflect the real situation or withdrawn from circulation; and*

*BE IT FURTHER RESOLVED that this resolution be submitted to members of Congressional committees having jurisdiction for the Endangered Species Act, western Congressional delegations, appropriate officials in the Administration, including the President, and the Comptroller General.*

## THE WATER QUALITY ACT OF 1987 - SECTION 518

The Water Quality Act of 1987 contains language in Section 518 which allows Indian tribes to be treated as states for certain purposes under the Act. The same section requires the EPA administrator, in promulgating regulations which specify how tribes should be treated as states, to "...consult affected states sharing common water bodies and provide a mechanism for the resolution of any unreasonable consequences that may arise as a result of differing water quality standards that may be set by states and Indian tribes...." EPA formulated a number of work groups to implement Section 518. Two state representatives were included on one of these work groups. The others contained no state officials. As the work groups began to function it became clear that EPA viewed the consultation requirement of Section 518 very narrowly. The agency seemed to be doing little differently than it would have done to implement a similar statute without the consultation provision. The concern of Council members with the lack of consultation with western state officials led to the drafting and approval of the following letter.



WESTERN STATES WATER COUNCIL

220 South 2nd East / Suite 200 / Salt Lake City, Utah 84111 / Phone (801) 521-2800

Mr. Larry Jensen  
Assistant Administrator for Water  
U.S. Environmental Protection Agency  
Washington, D.C. 20460

October 9, 1987

Dear Mr. Jensen:

We understand that as part of the implementation process of the Water Quality Act of 1987 four workgroups have been formed to propose implementation procedures for Section 518, which allows Indian tribes to be treated as states for certain purposes under the Act. State officials, we are told, serve on only one of these workgroups and only one western state official has been included on that group.

The 1987 Water Quality Act allows qualified Indian tribes to, among other things, establish water quality standards, pursue enforcement activities, issue NPDES and dredge and fill permits, and carry out other significant responsibilities. Issues related to these responsibilities, and their relationship to state water quality programs and Indian jurisdiction in general, are very complex.

Clean Water Act Section 518(e) requires the Administrator, in promulgating regulations "...which specify how Indian tribes shall be treated as states(,)..." to "...consult affected states sharing common water bodies and provide a mechanism for the resolution of any unreasonable consequences that may arise as a result of differing water quality standards that may be set by states and Indian tribes located on common bodies of water."

The Western States Water Council is concerned with the incongruity between the explicit requirements of Section 518(e) and the relative lack of participation by state officials in the implementation process. The statutory requirement to "consult affected states" in promulgating regulations specifying how tribes shall be treated as states means something more than the participation of two state officials in one of the four Section 518 workgroups. Likewise, it means something more than allowing the states the usual opportunity to comment on draft rules proposed in the Federal Register.

All issues related to Indian jurisdiction are of vital interest and concern to western state officials. When the jurisdiction is related to the management and protection of water resources the concern, if anything, increases. The Council requests that, in accordance with Section 518(e) of the Clean Water Act, EPA take the steps necessary to consult all states affected by the treatment of Indian tribes as states under the Act. The Council would be pleased to work to facilitate such consultation with affected western states.

Sincerely yours,

J. William McDonald  
Chairman  
Western States Water Council

## STATE WATER POLLUTION CONTROL REVOLVING LOAN PROGRAMS

The Water Quality Act of 1987 provided for the phase out, by 1990, of EPA's current sewage treatment plant construction grants program and a transition to loan funding through the capitalization of state revolving fund programs (SRFs). It authorized \$9.9B for construction grants and \$8.4B for the SRFs. The federal SRF money can be used for granting loans, guaranteeing local bonds, and securing leveraged accounts, among other things.

Because of concerns regarding federal outlays prompted by deficit reduction considerations, the federal Office of Management and Budget (OMB) suggested that EPA use a restricted "letter of credit," rather than cash, as payment by EPA to states under the construction grants program. This would have the effect of delaying, and therefore reducing, federal outlays under the program. However, it could threaten the viability of self-sustaining SRF funds, increase local borrowing costs, and eliminate some kinds of creative SRF financing. As a result, compliance with the July 1, 1988, municipal compliance deadline could be delayed. The following position expresses state concerns with the OMB/EPA "letter of credit" proposal.

### RESOLUTION of the WESTERN STATES WATER COUNCIL Regarding Funding Restrictions for State Water Pollution Control Revolving Loan Funds October 9, 1987

*WHEREAS, municipal pollution remains the Nation's most significant water quality problem; and*

*WHEREAS, the 1987 Water Quality Act provides for the establishment of State Water Pollution Control Revolving Loan Funds and requires water quality compliance by the July 1, 1988 municipal enforcement deadline; and*

*WHEREAS, the Office of Management and Budget has drafted a proposal to delay the outlay of appropriated federal funds to State Revolving Loan Funds.*

*NOW THEREFORE BE IT RESOLVED that the Western States Water Council is opposed to any effort to delay payments to States for capitalization of Revolving Loan Funds and recommends the following language be included in the FY88 Continuing Resolution:*

*"Payments to the State for capitalization of Revolving Loan Funds under Section 601(b) of the 1987 Water Quality Act: (1) shall commence upon U.S. EPA approval of the capitalization grant to the State; and (2) shall be sufficient to meet the needs and timing shown in the intended use plan developed by the State under Section 606. The payments shall be made by U.S. Department of Treasury check to the State each calendar quarter after approval of the capitalization grant in an amount no less than one eighth of the award amount except as otherwise provided in (2)."*

## BUDGET AND FINANCE

At the quarterly meeting held April 29, 1987, in Washington, D.C., the Executive Committee approved a budget for FY87/88 of \$294,600. A previously approved dues schedule called for a yearly assessment of \$19,500 per state for FY87/88. The audit report for FY86/87, prepared by the firm of Hansen, Barnett and Maxwell, was presented to the Executive Committee by the Executive Director at the annual meeting in July at Park City, Utah. The report was accepted unanimously as written. The accounting policies of the Western States Water Council conform to generally accepted accounting principles as applicable to governmental units. The Council utilizes the modified accrual basis of accounting. The auditor's report and the financial statement, with the explanatory note below, are presented on the following pages.

### NOTE – LEASE COMMITMENTS

The Council's lease on the current office space expires December 31, 1987. The monthly rental is \$1,533 including current adjustments and lessee paid taxes. The lease contains a provision for automatic renewal unless otherwise requested by the Council or after notification from the lessor. Council staff have inquired as to alternative office space, and will present a proposal for approval to the Council at the January 1988 meetings.

On October 29, 1985, the Council entered into a capital lease with a leasing company for their phone system. The lease term is four years, with monthly lease payments of \$107.85. At the end of the lease, the Council has the option of purchasing the phone system for \$1.00. The following is a schedule by years of the minimum lease payments together with the present value of the minimum lease payments:

|   |                       |
|---|-----------------------|
| 1988                                    | 1,294                 |
| 1989                                    | 1,294                 |
| 1990                                    | <u>216</u>            |
| Total minimum payments required         | 2,804                 |
| Less: Amount representing interest      | <u>611</u>            |
| Present value of minimum lease payments | <u><u>\$2,193</u></u> |

HANSEN, BARNETT & MAXWELL

A PROFESSIONAL CORPORATION

CERTIFIED PUBLIC ACCOUNTANTS

345 EAST BROADWAY  
SALT LAKE CITY, UTAH  
84111

Members of the Council  
Western States Water Council  
Salt Lake City, Utah

We have examined the combined balance sheet - general fund and account groups of the Western States Water Council as of June 30, 1987 and the related general fund statement of revenues and expenditures and changes in fund balance - budget and actual for the year then ended. Our examination was made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the financial statements referred to above present fairly the financial position of the Western States Water Council at June 30, 1987 and the results of its operations for the year then ended, in conformity with generally accepted accounting principles applied on a consistent basis.

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 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.

July 9, 1987

*Hansen, Barnett & Maxwell*

# 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, 1987

|  | Budget<br>1987 | Actual<br>June 30,<br>1987 | Variance<br>Favorable<br>(Un-<br>Favorable)<br>1987 | Actual<br>June 30,<br>1986<br>(For<br>Comparison<br>Only) |
|--|----------------|----------------------------|---|---|
| <b>REVENUES</b>  |                |                            |   |   |
| Member States' assessments . . . .   | \$253,500      | \$257,500                  | \$ 4,000  | \$257,500   |
| Other miscellaneous income . . . .   | —              | 5,600                      | 5,600   | 6,484   |
| Interest income . . . . .  | —              | 12,238                     | 12,238  | 14,278  |
| <b>Total Revenues</b> . . . . .  | 253,500        | 275,338                    | 21,838  | 278,262   |
| <b>EXPENDITURES</b>  |                |                            |   |   |
| Salaries . . . . .   | 154,000        | 153,458                    | 542   | 145,792   |
| Travel . . . . .   | 26,000         | 25,912                     | 88  | 25,191  |
| Payroll taxes and employee<br>benefits . . . . .   | 36,600         | 36,409                     | 191   | 38,226  |
| Contract services . . . . .  | 50             | 36                         | 14  | 204   |
| Printing and reproduction . . . . .  | 25,200         | 25,142                     | 58  | 23,950  |
| Rent . . . . .   | 19,550         | 18,390                     | 1,160   | 18,390  |
| Freight and postage . . . . .  | 7,200          | 6,317                      | 883   | 8,031   |
| Telephone . . . . .  | 6,200          | 4,883                      | 1,317   | 4,818   |
| Maintenance Contracts . . . . .  | 3,800          | 3,124                      | 676   | —   |
| Office furniture, fixtures, and<br>equipment . . . . .   | 1,150          | 1,124                      | 26  | 5,185   |
| Office supplies . . . . .  | 4,500          | 4,377                      | 123   | 3,806   |
| Reports and publications . . . . .   | 3,000          | 2,987                      | 13  | 2,774   |
| Meetings and arrangements . . . . .  | 1,900          | 1,205                      | 695   | 1,405   |
| Accounting . . . . .   | 1,700          | 1,660                      | 40  | 1,375   |
| Insurance . . . . .  | 1,350          | 506                        | 844   | 490   |
| Contingencies . . . . .  | 2,400          | 2,246                      | 154   | 6,759   |
| Interest . . . . .   | —              | 593                        | (593)   | —   |
| <b>Total Expenditures</b> . . . . .  | 294,600        | 288,369                    | 6,231   | 286,396   |
| <b>EXCESS (DEFICIENCY) OF<br/>REVENUES OVER (UNDER)<br/>EXPENDITURES</b> . . . . .                       | (41,100)       | (13,031)                   | 28,069  | (8,134)   |
| <b>OTHER FINANCING SOURCES:</b><br>Capital Lease Obligation - Note . . .                                 | —              | (701)                      | (701)   | 3,496   |
| <b>EXCESS (DEFICIENCY)<br/>OF REVENUES AND OTHER<br/>SOURCES OVER (UNDER)<br/>EXPENDITURES</b> . . . . . | (41,100)       | 13,732                     | 27,368  | (4,638)   |
| <b>FUND BALANCE -<br/>BEGINNING OF YEAR</b> . . . . .  | 111,899        | 111,899                    | —   | 116,537   |
| <b>FUND BALANCE -<br/>END OF YEAR</b> . . . . .  | \$ 70,799      | \$ 98,167                  | \$27,368  | \$111,899   |

# COMMITTEE CHARTERS AND MEMBERS

The committee charters, committee membership and subcommittee assignments follow:

## EXECUTIVE COMMITTEE CHARTER

This Charter of the Executive Committee of the Western States Water Council was adopted by resolution on January 29, 1970, at the meeting of the Council in Seattle, Washington and amended on July 26, 1979 at the meeting in Sitka, Alaska, and on October 16, 1981 at the meeting in Jackson, Wyoming. The Executive Committee is the administrative and steering committee of the Council on matters outlined in this Charter and such other matters as may be related thereto.

### Objective

The Committee shall assist the Council in carrying out effective cooperation among western states in planning for programs leading to integrated development of water resources by state, federal, and other agencies: by acting as a steering committee; by making sure there is consistency and no overlap of Council liaison with national organizations, including the Interstate Conference on Water Problems, National Governors' Association, Water Resources Council federal departments, National Water Resources Association, Council of State Governments; and by establishing and maintaining liaison with western organizations such as the Western Governors' Conference and the Western Governors Policy Office.

### Authority

The authority of the Executive Committee derives from the Council itself and includes the following powers: (1) to act upon internal and administrative matters between meetings of the Council; (2) to call special meetings of the Council on external matters when prompt action by the Council before the next regular meeting is deemed necessary by a majority of the Executive Committee members; (3) to create working groups and ad hoc groups; (4) to make assignments to committees; (5) to receive committee reports; and (6) to implement actions and programs approved by the Council.

### Program

The Committee shall correlate the Council's liaison with national and regional agencies, and correlate the Council's efforts to keep abreast of broad-scaled developments as they relate to Council programs. The Committee shall be authorized to initiate recommendations for Council actions at conferences, hearings, and special meetings with national water leaders. The Committee may make assignments to other committees and may give direction as to the scope and nature of their activities, and may delegate authority it deems appropriate to the Management Subcommittee of the Executive Committee. The Management Subcommittee is composed of the immediate past chairman, the chairman, the vice-chairman, the secretary-treasurer, and the executive director. In the event that one of these positions is vacant, the position on the Management Subcommittee can be filled by a member of the Executive Committee at the discretion of a majority vote of the Management Subcommittee.

## **Organization and Voting**

The Executive Committee of the Western States Water Council consists of one representative from each member state in accordance with Article IX- Executive Committee of the "Rules of Organization." The Chairman and Vice Chairman of the Council shall serve as officers of the Executive Committee, but do not necessarily have to be voting members of the Executive Committee. The Council staff furnishes necessary assistance as desired and requested by the Executive Committee.

Each member of the Executive Committee shall have one vote in conducting business. A quorum shall consist of a majority of members. A majority of those voting shall prevail on internal matters. If an external matter comes before the Executive Committee between Council meetings, and the Executive Committee finds an emergency exists, it may take final action by unanimous vote of all members. Except as otherwise provided herein, meetings shall be conducted under Robert's Rules of Order, Revised.

## **Meetings**

Regular meetings of the Executive Committee may be held in conjunction with meetings of the Council. Special meetings of the Executive Committee may be called by the Chairman, or by the Vice-Chairman in the event the Chairman is incapacitated, or by any six (6) members, upon five-days notice to all members stating the time and place of the meeting. When all members are present, no notice is required. All meetings may be adjourned to a time certain by majority vote of those present.

## **Reporting**

The Committee shall report to the Council at each Council meeting as to any actions it may have taken between meetings.

## EXECUTIVE COMMITTEE MEMBERS

Alan P. Kleinman - Arizona  
David Kennedy - California  
J. William McDonald - Colorado  
R. Keith Higginson - Idaho  
John E. Acord - Montana  
Roland D. Westergard - Nevada

S.E. Reynolds - New Mexico  
William H. Young - Oregon  
John T. Montford - Texas  
Dee C. Hansen - Utah  
Andrea Beatty Riniker - Washington  
Gordon W. Fassett - Wyoming



Front Row: Roland D. Westergard, A. Kenneth Dunn, J. William McDonald  
Back Row: William H. Young, David Kennedy, Dee C. Hansen,  
Dr. Alan P. Kleinman, John E. Acord

### **Management Subcommittee**

J. William McDonald - Colorado - Chairman

Roland D. Westergard - Nevada  
Vice Chairman

John E. Acord - Montana  
Past Chairman

Dee C. Hansen - Utah  
Secretary/Treasurer

D. Craig Bell  
Executive Director



Front Row: Roland D. Westergard, J. William McDonald  
Back Row: Dee C. Hansen, D. Craig Bell, John E. Acord

### **Water Management Symposium Subcommittee**

J. William McDonald - Colorado  
A. Kenneth Dunn - Idaho

John E. Acord - Montana

### **Water Policy Seminar Subcommittee**

David Kennedy - California  
A. Kenneth Dunn - Idaho  
Philip Mutz - New Mexico

William H. Young - Oregon  
Dee C. Hansen - Utah

### **Council History Subcommittee**

Robert W. Miller - California

Roland D. Westergard - Nevada

## **LEGAL COMMITTEE CHARTER**

### **Objective**

The Committee shall assist in initiating, establishing and carrying out the objectives of the Council by providing guidance on the social, ethical, legal and political aspects of the programs relating to water resource and water quality.

### **Program**

To review and develop recommended Council positions on current legislation, laws, administrative rules and activities relating to water resources, water rights, related land use and Indian issues and to examine and keep the Council current on all ongoing pertinent court cases.

### **Organization and Voting**

Committee membership is by appointment by the states of the Council. One member shall be from each state, but need not be one of the state's delegates to the Council. Any Legal Committee member may designate an alternate to serve in his absence. A quorum shall consist of a majority of members. A majority of those members present and voting is required for Committee action. Each state shall have one vote. Except as otherwise provided herein, meetings shall be conducted under Robert's Rules of Order, Revised.

A Committee chairman shall be appointed by the Chairman of the Council from the Committee membership and serve at his pleasure. The Committee chairman will appoint a vice chairman and subcommittees as needed. The staff of the Council shall furnish such assistance to the Committee as is requested. A member of the staff will serve as secretary.

### **Meetings**

The Committee shall meet at the call of the Committee chairman.

### **Reports**

The Committee shall submit reports and/or recommendations to the Council and to the Executive Committee as requested. The Committee shall not issue any public statements or reports except as may be directed by the Council or Executive Committee.

### **Charter Adoption**

This Charter of the Legal Committee of the Western States Water Council was adopted by resolution on January 16, 1976, at the meeting of the Council in San Diego, California, and amended on October 16, 1981, in Jackson, Wyoming.

## LEGAL COMMITTEE MEMBERS

David Kennedy - California - Chairman

Tom Choules - Arizona

Roderick E. Walston - California

Wendy C. Weiss - Colorado

Herman J. McDevitt - Idaho

Donald MacIntyre - Montana

Roland Westergard - Nevada

Charles DuMars - New Mexico

George Proctor - Oregon

John T. Montford - Texas

Thorpe A. Waddingham - Utah

Charles Roe, Jr. - Washington

Myron Goodson - Wyoming

Jennifer Hager - Wyoming

### Joint Ground Water Subcommittee

Charles B. Roe, Jr. - Washington - Chairman

Gary Broetzman - Colorado

David G. Kelley - California

George Proctor - Oregon

Darlene Ruiz - California

### Migratory Bird Treaty Act Subcommittee

George Proctor - Oregon - Chairman

Charles DuMars - New Mexico

David Kennedy - California

### Reserved Rights Subcommittee

George Proctor - Oregon - Chairman

Roderick E. Walston - California

Roland D. Westergard - Nevada

Charles B. Roe, Jr. - Washington



Front Row: Roland D. Westergard, Roderick E. Walston, David Kennedy, Tom Choules, Charles B. Roe

Back Row: Ray Rigby, Myron Goodson, George Proctor, Thorpe A. Waddingham, Charles DuMars

## **WATER RESOURCES COMMITTEE MEMBERS**

### **Objective**

The Committee shall assist in initiating, establishing and carrying out objectives of the Council by providing guidance on water resources planning, conservation, and developments that are of common interest to the Council.

### **Program**

To review and develop recommended Council positions on current legislation, regulations, criteria, plans and problems relating to water planning, management and conservation development for all purposes, and utilization.

### **Organization and Voting**

Committee membership is by appointment by the states of the Council, one member from each state, but not necessarily one of the state's delegates to the Council. Any Water Resource Committee member may designate an alternate to serve in his absence. A quorum shall consist of a majority of members. A majority of those members present and voting is required for Committee action. Each state shall have one vote. Except as otherwise provided herein, meetings shall be conducted under Robert's Rules of Order, Revised.

The Committee chairman shall be appointed by the Chairman of the Council from Committee membership. The Committee chairman will appoint a vice chairman, and subcommittees as needed. The Council staff will furnish necessary assistance as desired and requested by the Committee. A member of the staff will serve as secretary.

### **Meetings**

The Committee will meet at the call of the Committee chairman.

### **Reporting**

The Committee shall submit its reports and/or recommendations to the Council and to the Executive Committee if so requested. The Committee shall not issue any public statements or reports except as may be directed by the Council and the Executive Committee.

### **Charter Adoption**

This Charter of the Water Resources Committee of the Western States Water Council was adopted by resolution on January 16, 1976, at the meeting of the Council in San Diego, California, and amended on October 16, 1981, in Jackson, Wyoming.

## WATER RESOURCES COMMITTEE MEMBERS

William H Young - Oregon - Chairman

Alan P. Kleinman - Arizona

Ruben Ayala - California

J. William - McDonald - Colorado

R. Keith Higginson - Idaho

A. Kenneth Dunn - Idaho

John E. Acord - Montana

Jack L. Stonehocker - Nevada

S.E. Reynolds - New Mexico

D. Larry Anderson - Utah

Hedia Adelsman - Washington

Gordon W. Fassett - Wyoming

### Drought Subcommittee

Ruben Ayala - California - Chairman

R. Keith Higginson - Idaho

John E. Acord - Montana

William H. Young - Oregon

Hedia Adelsman - Washington

### Endangered Species Act Subcommittee

D. Larry Anderson - Utah - Chairman

J. William McDonald - Colorado

Roland D. Westergard - Nevada

### Appropriation Doctrine Subcommittee

Dee C. Hansen - Utah - Chairman

Robert W. Miller - California

Gene Gray - Idaho

Jack L. Stonehocker - Nevada

Charles Dumars - New Mexico

William H. Young - Oregon

Charles B. Roe, Jr. - Washington

George Christopulos - Wyoming

### FERC Hydro Licensing Subcommittee

John E. Acord - Montana - Chairman



Left to Right: D. Larry Anderson, John E. Acord, William H. Young, Robert W. Miller, Alan P. Kleinman, Jack L. Stonehocker, J. William McDonald, A. Kenneth Dunn, Hedia Adelsman

# WATER QUALITY COMMITTEE CHARTER

## **Objective**

The Committee shall assist in initiating, establishing and carrying out objectives of the Council by providing guidance on the water quality and environmental aspects of all programs of interest to the Council.

## **Program**

To review and develop recommended Council positions on water quality and environmental standards and problems relating to the water resources of the Western United States.

## **Organization and Voting**

Committee membership is by appointment by the states of the Council. One member shall be from each state, but need not be one of the state's delegates to the Council. Any Water Quality Committee member may designate an alternate to serve in his absence. A quorum shall consist of a majority of members. A majority of those members present and voting is required for Committee action. Each state shall have one vote. Except as otherwise provided herein, meetings shall be conducted under Robert's Rules of Order, Revised.

A Committee chairman shall be appointed by the Chairman of the Council from the Committee membership and serve at his pleasure. The Committee chairman will appoint a vice chairman and subcommittees as needed. The staff of the Council shall furnish such assistance to the Committee as is requested. A member of the staff will serve as secretary.

## **Meetings**

The Committee shall meet at the call of the Committee chairman.

## **Reports**

The Committee shall submit reports and/or recommendations to the Council and to the Executive Committee as requested. The Committee shall not issue any public statements or reports except as may be directed by the Council or the Executive Committee.

## **Charter Adoption**

This Charter of the Water Quality Committee of the Western States Water Council was adopted by resolution on January 16, 1976, at the meeting of the Council in San Diego, California, and amended on October 16, 1981, in Jackson, Wyoming.

## WATER QUALITY COMMITTEE MEMBERS

Fred Pfeiffer - Texas - Chairman

Michael F. McNulty - Arizona  
David G. Kelley - California  
Gary Broetzman - Colorado  
Gene Gray - Idaho  
Joseph E. Dini, Jr. - Nevada

Frank DuBois - New Mexico  
Kip Lombard - Oregon  
Don A. Ostler - Utah  
Carol Jolly - Washington  
George Christopulos - Wyoming

### EPA/State Relations Subcommittee

Gene Gray - Idaho - Chairman

Gary Broetzman - Colorado

Fred Pfeiffer - Texas

### Ramifications of the Clean Water Act and Safe Drinking Water Act Reauthorization Subcommittee

Darlene Ruiz - California  
Joseph E. Dini, Jr. - Nevada

Kip Lombard - Oregon



Left to Right: Calvin Sudweeks, Gary Broetzman, Darlene Ruiz, Fred Pfeiffer, Gene Gray, Frank DuBois

# RULES OF ORGANIZATION

## Article I - Name

The name of this organization shall be "THE WESTERN STATES WATER COUNCIL."

## Article II - Purpose

The purpose of the Western States Water Council shall be to accomplish effective cooperation among western states in planning for programs leading to integrated development by state, federal, and other agencies of their water resources.

## Article III - Principles

Except as otherwise provided by existing compacts, the planning of western water resources development on a regional basis will be predicated upon the following principles for protection of states of origin:

- (1) All water-related needs of the states of origin, including but not limited to irrigation, municipal and industrial water, flood control, power, navigation, recreation, water quality control, and fish and wildlife preservation and enhancement shall be considered in formulating the plan.
- (2) The rights of states to water derived from the interbasin transfers shall be subordinate to needs within the states of origin.
- (3) The cost of water development to the states of origin shall not be greater, but may be less, than would have been the case had there never been an export from those states under any such plan.

## Article IV - Functions

The functions of the Western States Water Council shall be to:

- (1) Undertake continuing review of all large-scale interstate and inter-basin plans and projects for development, control or utilization of water resources in the Western States, and submit recommendations to the Governors regarding the compatibility of such projects and plans with an orderly and optimum development of water resources in the Western States.
- (2) Investigate and review water related matters of interest to the Western States.
- (3) Express policy positions regarding proposed federal laws, rules and regulations and other matters affecting the development and management of water resources in Western States.
- (4) Sponsor and encourage activities to enhance exchange of ideas and information and to promote dialogue regarding optimum management of western water resources.
- (5) Authorize preparation of amicus briefs to assist western states in presenting positions on issues of common interest in cases before federal and state courts.

## Article V - Membership

- (1) The membership of the Council consist of not more than three representatives of each of the states of Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Texas, Utah, Washington, and Wyoming appointed by and serving at the pleasure of the respective Governors. The states of Hawaii,

Nebraska, North Dakota and South Dakota shall be added to membership if their respective Governors so request.

- (2) Member states may name alternate representatives for any meeting.
- (3) Any state may withdraw from membership upon written notice by its Governor.
- (4) The Executive Committee of the Council may, by unanimous vote, confer the status of Associate Member of the Council upon states it deems eligible. Associate Membership will entitle a state to appoint two official observers to participate in Council activities and receive all printed material disbursed by the Council. Associate Member states shall have no vote in Council matters. The Executive Committee shall, through regular Council voting procedures, establish the appropriate level of dues for Associate Member states. In addition to determinations concerning Associate Member states, the Executive Committee may, when appropriate, establish fees for participation in Council activities by non-members.

#### **Article VI - Ex-Officio Members**

The Governors of the member states shall be ex-officio members and shall be in addition to the regularly appointed members from each state.

#### **Article VII - Officers**

The officers of the Council shall be the Chairman, Vice Chairman and Secretary-Treasurer. They shall be selected in the manner provided in Article VIII.

#### **Article VIII - Selection of Officers**

The Chairman, Vice Chairman and Secretary-Treasurer, who shall be from different states, shall be elected from the Council by a majority vote at a regular

meeting to be held in July of each year. These officers shall serve one-year terms but may not be elected to serve more than two terms consecutively in any one office.

#### **Article IX - Executive Committee**

- (1) Representatives of each state shall designate one of their members to serve on an Executive Committee which shall have such authority as may be conferred on it by these Rules of Organization, or by action of the Council. Any Executive committee member may designate an alternate to serve in his absence.
- (2) The Council may establish other committees which shall have such authority as may be conferred upon them by action of the Council.

#### **Article X - Voting**

Each state represented at a meeting of the Council shall have one vote. A quorum shall consist of a majority of the member states. No matter may be brought before the Council for a vote unless advance notice of such matter has been mailed to each member of the Council at least 30 days prior to a regular meeting and 10 days prior to a special meeting at which such matter is to be considered; provided, that matters may be added to the agenda at any meeting by unanimous consent of those states represented at the meeting. In any matter put before the Council for a vote, other than election of officers, any member state may upon request obtain one automatic delay in the voting until the next meeting of the Council. Further delays in voting on such matters may be obtained only by majority vote. No recommendation may be issued or external position taken by the Council except by

an affirmative vote of at least two-thirds of all member states; provided that on matters concerning out-of-basin transfers no recommendation may be issued or external position taken by the Council except by a unanimous vote of all member states. On all internal matters; however, action may be taken by a majority vote of all member states.

### **Article XI - Conduct of Meetings**

Except as otherwise provided herein, meetings shall be conducted under Robert's Rules of Order, Revised. A ruling by the Chair to the effect that the matter under consideration does not concern an out-of-basin transfer is an appealable ruling, and in the event an appeal is made, such ruling to be effective must be sustained by an affirmative vote of at least 2/3 of the member states.

### **Article XII - Meetings**

The Council shall hold regular quarterly meetings at times and places to be decided by the Chairman, upon 30 days written notice. Special meetings may be called by a majority vote of the Executive Committee, upon 10 days written notice.

### **Article XIII - Limitations**

The work of the Council shall in no way defer or delay authorization or construction of any projects now before Congress for either authorization or appropriation.

### **Article XIV - Amendment**

These articles may be amended at any meeting of the Council by unanimous vote of the meeting. The substance of the proposed amendment shall be included in the call of such meetings.

# PRINCIPLES - GUIDELINES

## PREAMBLE

The Constitution of the United States and the Constitutions of the individual States shall be adhered to in Western regional water planning and development.

This statement of principle reaffirms, expands and clarifies principles set forth in Article III, "Rules of Organization" of the Western States Water Council.

## 1.0 Principles

1.1 Comprehensive regional planning, transcending political boundaries, is a major consideration in the maximum proper utilization of the water and related resources of the West. Development of those resources to meet all reasonable needs as they may arise is essential to the continuing prosperity of the region and each of its economically interdependent parts.

1.1.1 The planning process should include or supplement rather than supersede existing water resource developments; it should complement and strengthen local and state planning activities rather than displace them; it should result from cooperative effort of all agencies concerned.

1.1.2 The planning program should be aimed to achieve a reasonably equitable balance among all existing and potential uses of water, insofar as the supply available or to be developed will permit, consistent with established rights.

1.1.3 Water resources of the region should be put to beneficial use to the fullest practicable extent in an efficient manner in accord with the needs and types of use in the particular area and wasteful and inefficient practices or those that unnecessarily degrade water quality should be eliminated.

1.1.4 New uses of western water resources should make the most practical and efficient use of water resources and should minimize any necessary reductions in the quality of western water resources.

1.1.5 Water resource developments should be implemented when they are well planned, endorsed by local and state governments and provide for maximum social and economic benefits from the use of western water resources and integrate maximum use concepts with conservation, environmental enhancement and the preservation of natural resources.

1.1.6 The States should be the lead governmental body in the administration of water rights and in the preparation of statewide water plans so that wise use and best conservation practices can be assured.

1.1.7 It is imperative that all States, as expeditiously as possible, make thorough studies of their water needs in accordance with Guidelines and Standards similar to those adopted by the Council.

1.1.8 Long-range water plans should be expeditiously developed which are flexible enough to permit modifications to meet changing long-term needs and advances in technology, yet specific enough to provide solutions for immediate water supply problems.

1.1.9 Water exportation studies shall include a thorough examination of efficiency of water use and cost-price relationships and a comprehensive economic evaluation that considers all costs and benefits accruing to the area of origin and costs and benefits accruing to the area of import. The economic analysis must include similar studies for alternative sources of supply. Aesthetic values shall be considered in over-all project evaluation.

1.1.10 Close cooperation and free-interchange of ideas and reporting of data on a uniform basis among all affected local, State and Federal interests, shall be sought.

1.1.11 Water resource planning shall consider water quality, as well as quantity.

1.2 Regional water planning should be designed to avoid interference with existing rights to the use of water. Any taking of land or water rights shall be governed by law of eminent domain. Interstate compact allocations shall be honored.

1.2.1 Any entity studying transfer of surplus water shall recognize the economic, social, legal, political and ethical implications of the transfer on both the exporting and importing areas. Such entity must plan so as to assure social and economic growth and development, by either:

- (a) The return or replacement of the water exported to the area of origin; or
- (b) Providing equivalent beneficial programs acceptable to the area.

1.2.2 The rights to water of regions, states or individuals must be recognized and guaranteed through due process of law.

1.3 Except as otherwise provided by existing law, the planning of water resources development in the Western States shall be predicated upon the following principles for protection of and assistance to states of origin.

1.3.1 Interbasin or interregional transfer of water shall contemplate only the transfer from the area of origin of those quantities of water deemed to be surplus. The States shall endeavor to agree upon determination of quantities of water that are surplus.

1.3.2 In making determination of possible surplus water, all water-related needs of the States and areas of origin bearing on environmental protection, economic prosperity and social well being shall be recognized.

1.3.3 All water requirements, present or future, for uses within the drainage area of any river basin, shall have priority and right in perpetuity to the use of the waters of that river basin, for all purposes, as against the uses of water delivered by means of such exportation works, unless otherwise provided by treaty, interstate agreement or compact.

1.3.4 The cost of water development to the States of origin shall not be greater, but may be less, than would have been the case had there never been an export from those States under any such plan.

1.3.5 In the study on interstate diversion, any interstate diversion project shall neither impede nor minimize the development of water resources in the state of origin, and shall result insubstantive net advantage to such State over the advantage it could have obtained, by itself or otherwise, without such diversion project.

1.3.6 All plans for interbasin diversion of water shall provide for such financial arrangements with the states of origin as may be necessary to comply with Section 1.3.4 and 1.3.5 above.

1.3.7 The exportation of water shall not change an area of origin from a water-rich to a water-deficient economy and shall not adversely affect the competitive position of the area of origin.

1.3.8 State or area of origin priority shall be explicitly set forth in all contracts for the use of imported water. Should such priority ever be denied, through subsequent action of the Congress, or otherwise, areas of origin will be entitled to just compensation .

1.3.9 Federal statutes designed to protect areas and states of origin, in any regional interstate plan of water development, should include the consent by the United States for any such state of origin to sue in the Federal Courts, to compel Federal officials to comply with such statutes and for such other relief as deemed equitable.

1.4 This statement of principles shall not be considered as any support or advocacy for the diversion of water from one river basin to another.

1.5 The public should be educated concerning the varied and many uses of water and the wise and prudent management thereof. Sound water resource and related land management concepts and the needs and issues confronting the region and the nation should be disseminated. All means and possibilities of financing, development of, and implementing an education program should be explored.

## **2.0 Guidelines and Procedures for Correlation of Plans and Schedules Among Western States**

### **2.1 Interstate Exchange of Information and Data.**

2.1.1 When a state publishes reports or takes any action which may affect plans or objectives of other States, the affected States and the Western States Water Council staff should be furnished copies thereof.

Request for basic data and supporting information should be initiated by the state needing the data or information.

2.1.2 The request for the exchange of basic data and supporting information should be coordinated through one state agency.

2.1.3 The name, official position, address and telephone number of the designated state office will be forwarded to the Western States Water Council staff. The staff will prepare a consolidated list of designated offices and distribute copies to all States through the State's member of the Executive Committee, Western States Water Council.

2.1.4 The type of reports and actions which should be sent to other States and the Western States Water Council staff includes, but is not limited to copies of the following:

2.1.4.1 Summaries of current and long-range estimates of various types of water needs and usable water resources.

2.1.4.2 Planning schedules for developments of all large scale interstate and interbasin plans and projects.

2.1.4.3 State evaluation of programs such as weather modification, watershed management, groundwater recharge, desalination, and waste water reclamation.

2.1.4.4 Major legal and administrative decisions pertaining to water resources.

2.1.4.5 State or Federal legislation as proposed by any state materially affecting Western States water planning.

### **2.2 Correlation of Plans and Schedules.**

2.2.1 A master list shall be prepared and maintained at the headquarters of the Western States Water Council of items furnished pursuant to Section 2.1 with copies to be furnished to member States at appropriate intervals.

# ADDRESSES AND TELEPHONE NUMBERS

## of WSWC Members and Staff

- ACORD, John E. .... (406) 444-6627  
Assistant Administrator  
Water Resources Division  
Department of Natural Resources & Conservation  
1520 East 6th Avenue  
Helena, Montana 59620
- ADELSMAN, Hedia ..... (206) 459-6000  
Water Resources Program Manager  
Department of Ecology  
St. Martins College Campus  
Mail Stop PV-11  
Olympia, Washington 98504-8711
- ANDERSON, D. Larry ..... (801) 538-7230  
Director  
Division of Water Resources  
1636 West North Temple  
Salt Lake City, Utah 84116
- ANDRUS, Cecil ..... (208) 334-2100  
Governor of Idaho  
State Capitol  
Boise, Idaho 83720
- AYALA, Ruben ..... (916) 445-6868  
Senator  
California Legislature  
State Capitol, Room 2082  
Sacramento, California 95814
- BANGERTER, Norman H. .... (801) 533-5231  
Governor of Utah  
State Capitol  
Salt Lake City, Utah 84114
- BELL, D. Craig ..... (801) 561-5300  
Executive Director  
Western States Water Council  
Creekview Plaza, Suite A-201  
942 East 7145 South  
Midvale, Utah 84047
- BROETZMAN, Gary ..... (303) 331-4511  
Assistant to the Director  
Office of Health and Environmental Protection  
Colorado Department of Health  
4210 East 11th Ave., Room 320  
Denver, Colorado 80220

BRYAN, Richard ..... (702) 885-5670  
Governor of Nevada  
State Capitol  
Carson City, Nevada 89701

CARRUTHERS, Garrey ..... (505) 829-3000  
Governor of New Mexico  
State Capitol  
Santa Fe, New Mexico 87501

CHOULES, Tom ..... (602) 783-8321  
2260 Fourth Avenue, Suite 2000  
Yuma, Arizona 85364

CLEMENTS, Bill ..... (512) 463-2000  
Governor of Texas  
State Capitol  
Austin, Texas 78711

CHRISTOPULOS, George L. .... (307) 632-7871  
3600 Bent Avenue  
Cheyenne, Wyoming 82001

COWPER, Steve ..... (907) 465-3500  
Governor of Alaska  
Pouch A  
Juneau, Alaska 99811

CRADDICK, Tom ..... (512) 463-0500  
Representative  
P. O. Box 2910  
Austin, Texas 78769

DANIELSON, Jeris A. (Alt.) ..... (303) 866-3581  
Colorado State Engineer  
1313 Sherman Street, Room 818  
Denver Colorado 80203

DEUKMEJIAN, George ..... (916) 445-4711  
Governor of California  
State Capitol  
Sacramento, California 95814

DINI, Joseph E., Jr. .... (702) 463-2868  
Nevada State Assemblyman  
104 North Mountain View  
Yerington, Nevada 89447

DuBOIS, Frank A., III ..... (505) 646-3008  
Assistant Director  
New Mexico Department of Agriculture  
New Mexico State University  
Las Cruces, New Mexico 88003

- DuMARS, Charles ..... (505) 277-3130  
 Professor of Law  
 2021 Lakeview, S.W.  
 Albuquerque, New Mexico 87105
- DUNN, A. Kenneth (Alt.) ..... (208) 327-0012  
 11530 Wildrose Court  
 Boise, Idaho 83704
- BRYAN, Richard ..... (702) 885-5670  
 Governor of Nevada  
 State Capitol  
 Carson City, Nevada 89701
- FASSETT, Gordon W ..... (307) 777-7354  
 Wyoming State Engineer  
 Herschler Building  
 Cheyenne, Wyoming 82002
- FRITZ, Gary (Alt.) ..... (406) 444-6601  
 Administrator  
 Water Resources Division  
 Department of Water Resources & Conservation  
 32 South Ewing  
 Helena, Montana 59620
- GARDNER, Booth ..... (206) 753-6780  
 Governor of Washington  
 State Capitol  
 Olympia, Washington 98504
- GOLDSCHMIDT, Neil ..... (503) 378-3100  
 Governor of Oregon  
 State Capitol  
 Salem, Oregon 97310
- GOODSON, Myron ..... (307) 283-2407  
 P.O. Box 429  
 Sundance, Wyoming 82729
- GRAY, Gene ..... (208) 642-3388  
 Route #1, Box 46-A  
 Payette, Idaho 83661
- HAAS, Wayne T. (Alt.) ..... (208) 334-4437  
 Administrator  
 Department of Water Resources  
 Statehouse  
 Boise, Idaho 83720
- HAGER, Jennifer ..... (307) 777-7841  
 Assistant Attorney General  
 Capitol Building  
 Cheyenne, Wyoming 82002

- HANSEN, Dee C. .... (801) 538-7200  
 Director  
 Department of Natural Resources  
 1636 West North Temple  
 Salt Lake City, Utah 84116
- HIGGINSON, R. Keith ..... (208) 334-4437  
 Director  
 Idaho Department of Water Resources  
 Statehouse  
 Boise, Idaho 83720
- HOPKINS, Paul ..... (512) 463-7909  
 Chairman  
 Texas Water Commission  
 P. O. Box 13087  
 Austin, Texas 78711
- JENSEN, Dallin (Alt.) ..... (801) 538-7227  
 Attorney General's Office  
 1636 West North Temple, Suite 300  
 Salt Lake City, Utah 84116
- JOHNSON, Norman K. .... (801) 561-5300  
 Legal Counsel  
 Western States Water Council  
 Creekview Plaza, Suite A-201  
 942 East 7145 South  
 Midvale, Utah 84047
- JOLLY, Carol (Alt.) ..... (206) 459-6000  
 Water Quality Program Manager  
 Department of Ecology  
 St. Martins College  
 Mail Stop PV-11  
 Olympia, Washington 98504-8711
- KELLEY, David G. (Alt.) ..... (916) 445-7852  
 Member of the Assembly  
 State Capitol, Room 5164  
 Sacramento, California 95814
- KENNEDY, David ..... (916) 445-6582  
 Director  
 Department of Water Resources  
 State of California  
 P.O. Box 388  
 Sacramento, California 95802

- KLEINMAN, Dr. Alan P. .... (602) 255-1553  
 Director  
 Department of Water Resources  
 99 E. Virginia, Suite #160  
 Phoenix, Arizona 85004
- LOMBARD, Kip ..... (503) 482-9729  
 P.O. Box 1090  
 Ashland, Oregon 97520
- MacINTYRE, Donald D. .... (406) 444-6699  
 Chief Legal Counsel  
 Department of Natural Resources & Conservation  
 32 South Ewing  
 Helena, Montana 59620
- McDEVITT, Herman J. .... (208) 233-4121  
 McDevitt and Meyers  
 P. O. Box 4747  
 Pocatello, Idaho
- McDONALD, J. William ..... (303) 866-2590  
 Director  
 Colorado Water Conservation Board  
 1313 Sherman Street, Room 721  
 Denver, Colorado 80203
- McNULTY, Michael F. .... (602) 628-1419  
 33 North Stone Avenue, Suite 1500  
 Tucson, Arizona 85701
- MECHAM, Evan ..... (602) 255-4331  
 Governor of Arizona  
 Statehouse  
 Phoenix, Arizona 85007
- MILLER, Robert W. (Alt.) ..... (916) 323-2954  
 Department of Water Resources  
 1416 Ninth Street  
 Sacramento, California 95814
- MONTFORD, John T. .... (806) 747-0467  
 State Senator  
 P.O. Box 1709  
 Lubbock, Texas 79408
- OSTLER, Don A. (Alt.) ..... (801) 538-6146  
 Director  
 Bureau of Water Pollution Control  
 Utah Department of Health  
 Division of Environmental Health  
 288 North 1460 West  
 P. O. Box 16690  
 Salt Lake City, Utah 84116-0690

- PFEIFFER, Fred (Alt.) ..... (512) 227-1373  
 General Manager  
 San Antonio River Authority  
 P.O. Box 9284  
 San Antonio, Texas 78204
- PROCTOR, George ..... (503) 882-4436  
 Proctor & Puckett  
 280 Main Street  
 Klamath Falls, Oregon 97601
- REYNOLDS, S.E. .... (505) 827-6091  
 New Mexico State Engineer  
 101 Bataan Memorial Building  
 Santa Fe, New Mexico 87501
- RINIKER, Andrea Beatty ..... (206) 459-6168  
 Department of Ecology  
 Mail Stop PV-11  
 Olympia, Washington 98504
- ROE, Charles B., Jr. .... (206) 459-6162  
 Senior Assistant Attorney General  
 Attorney General's Office  
 Ecology Division, Mail Stop PV-11  
 Olympia, Washington 98504
- ROMER, Roy ..... (303) 866-2471  
 Governor of Colorado  
 State Capitol  
 Denver, Colorado 80203
- RUIZ, Darlene E. (Alt.) ..... (916) 445-5471  
 Vice Chairman  
 State Water Resources Control Board  
 901 P Street  
 Sacramento, California 95814
- SCHWINDEN, Ted ..... (406) 444-3111  
 Governor of Montana  
 State Capitol  
 Helena, Montana 59620
- SMITH, Terral (Alt.) ..... (512) 463-0700  
 Representative  
 P.O. Box 2910  
 Austin, Texas 78769
- STONEHOCKER, Jack L. .... (702) 486-7060  
 Director  
 Colorado River Commission of Nevada  
 Mailroom Complex  
 Las Vegas, Nevada 89158

- SULLIVAN, Mike ..... (307) 777-7434  
 Governor of Wyoming  
 State Capitol  
 Cheyenne, Wyoming 82001
- WADDINGHAM, Thorpe A. .... (801) 864-5231  
 Attorney  
 P.O. Box 177  
 Delta, Utah 84642
- WALSTON, Roderick E. (Alt.) ..... (415) 557-3920  
 Deputy Attorney General  
 6000 State Building  
 San Francisco, California 94102
- WEISS, Wendy C. .... (303) 866-3611  
 Colorado Department of Law  
 1525 Sherman Street  
 Denver, Colorado 80203
- WESTERGARD, Roland D. .... (702) 885-4360  
 Director  
 Department of Conservation and Natural Resources  
 201 South Fall Street  
 Carson City, Nevada 89701
- WILLARDSON, Anthony G. .... (801) 561-5300  
 Associate Director  
 Western States Water Council  
 Creekview Plaza, Suite A-201  
 942 East 7145 South  
 Midvale, Utah 84047
- YOUNG, William H. .... (503) 378-2982  
 Director  
 Water Resources Department  
 3850 Portland Red., N.E.  
 Salem, Oregon 97310



