

2009

ANNUAL REPORT

of the

WESTERN STATES WATER COUNCIL

44th Annual Report

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	iv
IN MEMORIAM - D. CRAIG BELL	1
MEMBERS ADDRESSES AND PHONE NUMBERS	3
COMMITTEE AND SUBCOMMITTEE MEMBERSHIP	11
COUNCIL MEMBERS	17
STAFF	18
COUNCIL MEMBERSHIP CHANGES/NEWS	19
COUNCIL MEETINGS	
Spring - Kansas City, Kansas	21
Summer - Park City, Utah	24
Fall - Lincoln, Nebraska	27
OTHER MEETINGS	
NARF/WSWC Symposium on the Settlement of Reserved Indian Water Rights Claims	30
WGA/WSWC Water and Land Use Planning Symposium	32
The National Integrated Drought Information System and Climate Services Workshop	33
Water Information Management and Climate Change Adaptation Workshop	36
WESTERN STATES FEDERAL AGENCY SUPPORT TEAM	39
OTHER IMPORTANT ACTIVITIES AND EVENTS	
Western States Water	40
21 st Century Water Commission Act	40
Ag-to-Urban Water Transfers Work Group	41
American Recovery and Reinvestment Act	42
Bureau of Reclamation	45
FY2010 Budget Request	45
American Recovery and Reinvestment Act	46
California	47
Central Utah Project	47
House Oversight Hearing	47
Rural Water Supply	48
Corps of Engineers	49
American Recovery and Reinvestment Act	49
Water Resources Development Act	49
Clean Water Act/Environmental Protection Agency	50
Wetlands Jurisdiction and Navigable Waters	50
<i>U.S. v Rapanos</i>	50
Clean Water Restoration Act	51
State Revolving Funds	52
Water Protection and Reinvestment Act of 2009	52
American Recovery and Reinvestment Act	54
National Pollutant Discharge Elimination System	55
Water Transfers Rule	55

Pesticides	58
<i>National Cotton Council of America v. EPA</i>	58
Section 404	58
<i>Coeur Alaska, Inc. v. Southeast Alaska Conservation Council/Mine Slurry</i>	58
Enforcement and Compliance Assurance	59
National Association of Clean Water Agencies	60
Good Samaritan	61
House Hearing - Clean Water Act Anniversary	62
Endangered Species Act	63
Delta Smelt	63
Consultation Rules	64
Habitat Conservation Plans	65
Polar Bear Rule	65
California Water Project	66
Indian Water Rights	66
Senate Oversight Hearing	66
Ad Hoc Group Letter on Negotiating Teams	68
Blackfeet Settlement	68
Northwest New Mexico Rural Water Projects	69
Crow Tribe/State of Montana	69
Emergency Fund for Indian Safety and Health	71
Landsat Data Continuity Mission/Thermal Infrared Sensor	72
Litigation/Water Rights	73
Yellowstone River Compact	73
<i>Montana v. Wyoming</i>	73
Arkansas River Compact	74
<i>Kansas v. Colorado</i>	74
Central Valley Project	75
<i>Stockton East Water Districts et al. v. United States</i>	75
Red River Compact	76
<i>Tarrant Regional Water District v. Sevenoaks</i>	76
National Streamflow Information and Cooperative Water Program	77
Omnibus Public Land Management Act	77
Aging Water Infrastructure Act Title IX - Subtitle G	78
Cooperative Watershed Management Act Title VI - Subtitle A	78
SECURE Water Act Title IX - Subtitle F	79
Water Settlements - Title X	79
River Basins	79
Colorado River Water Bank	79
Klamath River Basin	80
Tahoe Basin	80
States	81
Colorado/Wyoming	81
Aaron Million's Water Supply Pipeline	81
Washington	82
Exempt Wells	82
Water Resources Research	83
National Water Research and Development Initiative Act	83
Water Supply/Drought	85
Water Supply Outlook	85
House Oversight Hearing on California Drought	86
House Hearing on Water Management and Climate Variability	87
RESOLUTIONS AND POLICY POSITIONS	91
Energy and Water Integration Act of 2009 (S. 531)	93
National Water Research and Development Initiative (H.R. 1145)	95

Funding for Research and Planning Assisting in Climate Change Adaptation	97
Sustainable Watershed Planning Act	99
National Pollutant Discharge Elimination System (NPDES) Discharge Permits	101
Reclamation's Water Conservation Field Services Program	102
Comment on the Existing Principles and Guidelines	104
National Water Policy Vision	106
Federal Water and Climate Data Collection and Analysis Programs	108
 RULES OF ORGANIZATION	 110

2009 ANNUAL REPORT

OF THE

WESTERN STATES WATER COUNCIL

INTRODUCTION

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

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

Council membership and associate membership status is determined based on a request from the governor. Originally, Council membership consisted of eleven western states: **ARIZONA, CALIFORNIA, COLORADO, IDAHO, MONTANA, NEVADA, NEW MEXICO, OREGON, UTAH, WASHINGTON and WYOMING.** In 1978, **TEXAS** was admitted to membership, after many years of participation in Council activities in an "observer" status. **ALASKA** requested and received membership in 1984. **NORTH DAKOTA** and **SOUTH DAKOTA** both received membership in 1988 after a long association with the Council. **HAWAII** was a member from 1991-1999. In 1999, **OKLAHOMA** requested and received membership. In 2000, both **KANSAS** and **NEBRASKA** joined the Council at the request of their respective governors. Council membership is automatically open to all member states of the Western Governors' Association. Other states may be admitted by a unanimous vote of the member states.

Associate membership has also been granted states exploring the benefits of membership, experiencing financial hardship, or otherwise temporarily unable to maintain full membership. Washington is currently an Associate Member.

Each member state's governor is an ex-officio Western States Water Council member. The governor may appoint up to three Council members or representatives, and as many alternate members as deemed necessary. They serve at the governor's pleasure. (Associate member states are limited to two representatives and two alternates.)

Council officers, including the Chair, Vice-Chair, and Secretary-Treasurer, are elected annually from the membership. State representatives are appointed to working committees, with one representative per state also appointed to an Executive Committee. The Executive Committee attends to internal Council matters with the assistance of a Management Subcommittee, which includes the Council officers, immediate past Chair, and Executive Director. The Council's working committees are the Legal Committee, the Water Quality Committee, and the Water Resources Committee. Each working committee is directed by a committee chair and vice-chair. Committee chairs, in turn, name special subcommittees and designate subcommittee chairs to study issues of particular concern.

Meetings of the Council are held on a regular basis, rotating among the member states, with state representatives hosting Council members and guests. In 2009, meetings were held in: Kansas City, Kansas on April 21-24; Park City, Utah on July 15-17; and Lincoln, Nebraska on October 14-16. Guest speakers are scheduled according to the relevant subjects to be considered at each meeting. The Council meetings are open to the public. Information regarding future meeting locations and agenda items can be obtained by contacting the Council's office, or visiting our website. Included herein are reports on each of the Council meetings, positions and resolutions adopted by the Council, and a discussion of other important activities and events related to western water resources. Other information about the Council and Council members is also included.

The Council relies almost exclusively on state dues for funding the organization. The dues for FY2009 (ending June 30, 2009) were set at \$30,000 per state. A copy of the audit performed for the fiscal year ending June 30, 2009 can be obtained from the Council office. The auditors noted "no matters involving the internal control over financial reporting and its operation that we consider to be a material weaknesses," and "no instances of non-compliance that are required to be reported herein under *Government Auditing Standards*."

During 2009, the Council lost its long-time Executive Director, D. Craig Bell, who passed away unexpectedly in June. In his place, the Council named Anthony G. (Tony) Willardson as the new Executive Director. The remaining staff is comprised of: Nathan Bracken, Legal Counsel; Jonne Hower, Western Federal Agency Support Team (WestFAST) Liaison; and a secretarial staff consisting of Cheryl Redding and Julie Groat.

Also during 2009, the Western States Water Council moved its office, but remained located in the metropolitan Salt Lake City area:

5296 South Commerce Drive, Suite 202
Murray, Utah 84107
(801) 685-2555
Fax (801) 685-2559
<http://www.westgov.org/wswc>
E-mail: twillardson@wswc.utah.gov

IN MEMORIAM - D. CRAIG BELL

Memorial services were held on Thursday, June 18th for Delen Craig Bell, the Western States Water Council's Executive Director for nearly 30 years, and on staff for 35 years. Craig was born November 24, 1945 and passed away suddenly at home on June 13th of natural causes. He was 63. He was a devoted family man and religious leader. Professionally, he joined the WSWC staff in 1974 as Assistant Director, and became Executive Director in 1980. Over the decades he proved to be a quiet, but effective leader and was a distinguished expert in the area of water rights, particularly federal and Indian reserved water rights, and federal/state water resource management relationships generally. He worked tirelessly to resolve Indian water rights issues, helping set the stage for numerous settlements and federal authorizing legislation.

Craig worked for the Council during a time of unprecedented growth and changing public values, joining the staff just after the enactment of federal environmental legislation that included the Clean Water Act in 1972 and the Endangered Species Act in 1973. He was instrumental in defining federal and state roles with respect to water resources management, a continuously evolving process. He also worked on water and energy issues during the energy crisis of the 1970s and helped with the western response to the 1976-77 drought. Over nearly three decades, his efforts helped lead to the enactment of federal legislation that created the National Integrated Drought Information System (NIDIS).

Craig helped draft several amicus briefs and was a lifelong champion of states' rights and prerogatives related to management and administration of western water resources. He worked with numerous state, interstate, and federal agencies and officials, as well as non-governmental organizations to improve water resources planning and management, recognizing the interests of myriad and diverse stakeholders.

Craig helped lay the foundation for what would become the Park City Principles, later revised and adopted by the Western Governors' Association (WGA) as the Enlibra Principles, which address natural resources development and environmental protection issues through national standards with local implementation, collaboration, education, sound science, watershed approaches to problem solving that transcend political boundaries, performance-based incentives and rewards involving market mechanisms over command-and-control programs and regulatory mandates.

He ensured that the Council always supported and was closely associated with the Western Governors' Association (WGA), culminating in the WGA's adoption of two reports in recent years that laid out the West's Water Needs and Strategies for a Sustainable Future. He was also instrumental in the creation of a Western Federal Agency Support Team (WestFAST), which collaboratively addresses the report's identified needs and implements its recommended strategies.

Craig's many professional accomplishments are too numerous to adequately recall in this brief eulogy. He recognized the interests of many disparate individuals and organizations in the stewardship of our water resources for the mutual benefit of all. His integrity and spirit of dedication, perseverance, patience and cooperation will continue as an example for future conflict resolution. He was a leader, a mentor and a friend. Personally and professionally we will all miss him more than words can express.

The Western Governors' Association issued a proclamation honoring Craig, which reads: "Craig Bell...has been a tireless advocate to protecting water resources and improving water policy in the West for over 35 years of enormous change in water policy and rapid growth in the region.... Under Craig's leadership the Council expanded its geography to address water challenges in every major river basin in the West.... Craig provided valuable advice to Western Governors on nearly every aspect of Western water law and policy, from Total Maximum Daily Loads to water resources planning, water transfers to water conservation.... Craig helped establish the Ad Hoc Group on Indian Water Rights that brought together tribes, industry, state government and federal government with the goal of negotiating settlements to water rights claims rather than litigating them resulting [in] 20 major settlements over nearly two decades.... Mr. Bell was a driving force behind the establishment of the Western Federal Agency Support Team (WestFAST), which is designated to foster greater coordination and collaboration amongst the western states and numerous federal agencies...."

The proclamation continues, "Craig managed development of the two seminal Western Governors' reports on water sustainability that described the competing demands and challenges for water in the West given new uses, population growth and climate change, and laid out a vision for ensuring clean and sustainable supplies of water in light of these challenges that will guide our work into the future.... Craig brought to every contentious western water issue a civility, patience and depth of knowledge that enabled diverse parties to build on their common interests.... [The] Western Governors express our deepest regrets and sympathy to Craig's family and friends for the great loss in his passing and...posthumously thank Craig for his outstanding leadership, vision and support on western water policy."

The proclamation was signed by Governors Brian Schweitzer (D-MT), Jon Huntsman (R-UT), Bill Ritter (D-CO), Bill Richardson (D-NM), C.L. "Butch" Otter (R-ID), Dave Freudenthal (D-WY), and Michael Rounds (R-SD).

MEMBERS WITH ADDRESSES AND PHONE NUMBERS⁺

ALASKA

***Honorable Sean Parnell**

Governor of Alaska
P.O. Box 110001
Juneau, AK 99811-0001
(907) 465-3500

†Richard H. Mylius, Acting Director

Division of Mining, Land & Water
550 West 7th Avenue, Suite 1070
Anchorage, AK 99501-3579
(907) 269-8600
(907) 269-8904 (fax)
dick.mylius@alaska.gov

†Christopher Estes, Chief

Statewide Aquatic Resources Coordination Unit
Alaska Department of Fish and Game
Division of Sport Fish/RTS
333 Raspberry Road
Anchorage, AK 99518-1599
(907) 267-2142
(907) 267-2422 (fax)
Christopher_Estes@fishgame.state.ak.us

†Lynn J. T. Kent, Director (Alt.)

Division of Water
Department of Environmental Conservation
555 Cordova Street
Anchorage, AK 99501
(907) 269-6281
(907) 334-2415 (fax)
lynn.kent@alaska.gov

†Gary Prokosch (Alt.)

Chief, Water Resources Section
Division of Mining, Land & Water
550 West 7th Avenue, Suite 900A
Anchorage, AK 99501-3577
(907) 269-8645
(907) 269-8947 (fax)
gary.prokosch@alaska.gov

ARIZONA

***Honorable Janice K. Brewer**

Governor of Arizona
Statehouse
Phoenix, AZ 85007
(602) 542-4331

†Herb Guenther, Director
Department of Water Resources
3550 North Central Avenue
Phoenix, AZ 85012-2105
(602) 771-8426
(602) 771-8681 (fax)
hrguenther@azwater.gov

L. William Staudenmaier, Attorney

Snell & Wilmer
One Arizona Center
400 East Van Buren Street, Suite 1900
Phoenix, Arizona 85004-2202
(602) 382-6571
(602) 382-6070 (fax)
wstaudenmaier@swlaw.com

†Benjamin H. Grumbles, Director (Alt.)

AZ Department of Environmental Quality
1110 West Washington Street
Phoenix, AZ 85007
(602) 771-2203
(602) 771-4834 (fax)
bhg@azdeq.gov

CALIFORNIA

***Honorable Arnold Schwarzenegger**

Governor of California
State Capitol
Sacramento, CA 95814
(916) 445-2841

****Lester Snow, Secretary**

Natural Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814
(916) 653-5656
(916) 653-8102 (fax)
lester.snow@resources.ca.gov

*Ex-Officio Member

**Executive Committee Member

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

⁺List as of December 31, 2009

Darlene E. Ruiz
Hunter & Ruiz
1017 L Street, #599
Sacramento, CA 95814-3805
(916) 552-6700
(916) 552-6705 (fax)
derhr@earthlink.net

Jeanine Jones, P.E. (Alt.)
Interstate Resources Manager
Department of Water Resources
1416 Ninth Street
P.O. Box 942836
Sacramento, CA 94236-0001
(916) 653-8126
(916) 653-5028 (fax)
Jeanine@water.ca.gov

Betty H. Olson (Alt.)
Professor
Civil & Environmental Engineering
University of California, Irvine
1361 SE II, Code: 7070
Irvine, CA 92697-7070
(949) 824-7171
(949) 824-2056 (fax)
bholson@uci.edu

COLORADO

***Honorable Bill Ritter**
Governor of Colorado
State Capitol
Denver, CO 80203
(303) 866-2471

****Jennifer Gimbel, Director**
Colorado Water Conservation Board
1313 Sherman Street, Room 721
Denver, CO 80203
(303) 866-3441
(303) 866-4474 (fax)
jennifer.gimbel@state.co.us

Paul D. Frohardt, Administrator
Water Quality Control Commission
OED-OLRA-A5
4300 Cherry Creek Drive South
Denver, CO 80246-1530
(303) 692-3468
(303) 691-7702 (fax)
paul.frohardt@state.co.us

Dick Wolfe
State Engineer
Colorado Division of Water Resources
1313 Sherman Street, Room 318
Denver, CO 80203
(303) 866-3581
(303) 866-3589 (fax)
dick.wolfe@state.co.us

Alexandra Davis (Alt.)
Assistant Director for Water
Colorado Department of Natural Resources
1313 Sherman Street, Room 718
Denver, CO 80203
(303) 866-3311
(303) 866-2115 (fax)
alex.davis@state.co.us

Steve Gunderson, Director (Alt.)
Water Quality Control Division
WQCD-DO-B2
4300 Cherry Creek Drive South
Denver, CO 80246-1530
(303) 692-3509
(303) 782-0390 (fax)
steve.gunderson@state.co.us

Harold D. (Hal) Simpson (Alt.)
5967 South Birch Way
Centennial, CO 80121
(303) 771-3449 (home)
(303) 916-1093 (mobile)
halsimpson28@msn.com

IDAHO

***Honorable C. L. "Butch" Otter**
Governor of Idaho
State Capitol
Boise, ID 83720
(208) 334-2100

****Jerry R. Rigby**
Idaho Water Resource Board
553 East 4th South
Rexburg, ID 83440
(208) 356-3633
(208) 356-0768 (fax)
jrigby@rex-law.com

Toni Hardesty, Director
Department of Environmental Quality
Statehouse Mail
1410 North Hilton Street
Boise, ID 83706-1255
(208) 373-0240
(208) 373-0417 (fax)
toni.hardesty@deq.idaho.gov

John Simpson
Barker, Rosholt & Simpson, LLP
P.O. Box 2139
Boise, ID 83701
(208) 336-0700
(208) 344-6034 (fax)
jks@idahowaters.com

John Chatburn (Alt.)
Energy Policy Analyst
Office of Energy Resources
P.O. Box 83720
Boise, ID 83720
(208) 287-4892
(208) 287-6713 (fax)
john.chatburn@oer.idaho.gov

KANSAS

***Honorable Mark Parkinson**
Governor of Kansas
State Capitol, 2nd Floor
Topeka, KS 66612-1590
(785) 296-3232

****David W. Barfield**, Chief Engineer
Kansas Dept. of Agriculture
109 SW 9th Street, 2nd Floor
Topeka, KS 66612-1283
(785) 296-4621
(785) 296-1176 (fax)
david.barfield@kda.ks.gov

Tracy Streeter, Director
Kansas Water Office
901 South Kansas Avenue
Topeka, KS 66612
(785) 296-3185
(785) 296-0878 (fax)
tracy.streeter@kwo.ks.gov

Josh Svaty
Secretary of Agriculture
Department of Agriculture
109 SW 9th Street, 4th Floor
Topeka, KS 66612-1280
(785) 296-3556
(785) 296-8389 (fax)
josh.svaty@kda.ks.gov

Kim Christiansen (Alt.)
General Counsel
Kansas Water Office
901 South Kansas Avenue
Topeka, KS 66612
(785) 296-3185
(785) 296-0878 (fax)
kim.christiansen@kwo.ks.gov

Paul Graves, P.E. (Alt.)
Assistant Chief Engineer
Division of Water Resources
Kansas Department of Agriculture
109 SW 9th Street, 2nd Floor
Topeka, KS 66612-1283
(785) 296-2683
(785) 296-1176 (fax)
paul.graves@kda.ks.gov

Earl Lewis, Assistant Director (Alt.)
Kansas Water Office
901 South Kansas Avenue
Topeka, KS 66612
(785) 296-3185
(785) 296-0878 (fax)
earl.lewis@kwo.ks.gov

Tom Stiles, Chief (Alt.)
Kansas Dept. of Health & Environment
Office of Watershed Planning
Signature Building
1000 SW Jackson Street
Topeka, KS 66612-1367
(785) 296-6170
(785) 291-3266 (fax)
tstiles@kdhe.state.ks.us

MONTANA

***Honorable Brian Schweitzer**
Governor of Montana
State Capitol
Helena, MT 59620
(406) 444-3111

****Susan Cottingham**, Program Manager
Reserved Water Rights Compact Commission
Dept. of Natural Resources & Conservation
1625 11th Avenue
Helena, MT 59620-1601
(406) 444-6716
(406) 444-6721 (fax)
scottingham@mt.gov

Richard Opper, Director
Department of Environmental Quality
1520 East Sixth Avenue
P.O. Box 200901
Helena, MT 59620
(406) 444-6815
(406) 444-4386 (fax)
opper@mt.gov

Mike Volesky (Alt.)
Policy Advisor for Natural Resources
Office of the Governor
P.O. Box 200801
Helena, MT 59620-0801
(406) 444-7857
(406) 444-5529 (fax)
mvolesky@mt.gov

Candace West (Alt.)
Chief Legal Counsel
Dept. of Natural Resources and Conservation
P.O. Box 201601
Helena, MT 59620-1601
(406) 444-6702
(406) 444-0533 (fax)
cwest@mt.gov

NEBRASKA

***Honorable Dave Heineman**
Governor of Nebraska
State Capitol
Lincoln, NE 68509
(402) 471-2244

****Brian Dunnigan**, Director
Department of Natural Resources
P.O. Box 94676
Lincoln, NE 68509-4676
(402) 471-2366
(402) 471-2900 (fax)
brian.dunnigan@nebraska.gov

Michael Linder, Director
Department of Environmental Quality
Suite 400, The Atrium
P.O. Box 98922
Lincoln, NE 68508-8922
(402) 471-3595
(402) 471-2909 (fax)
mike.linder@nebraska.gov

Patrick Rice, Assistant Director (Alt.)
Department of Environmental Quality
P.O. Box 98922
Lincoln, NE 68509-8922
(402) 471-2186
(402) 471-2909 (fax)
pat.rice@nebraska.gov

NEVADA

***Honorable Jim Gibbons**
Governor of Nevada
State Capitol
Carson City, NV 89701
(775) 687-5670

****Roland D. Westergard**
207 Carville Circle
Carson City, NV 89703
(775) 882-3506

Allen Biaggi, Director
Dept. of Conservation and Natural Resources
901 S. Stewart Street, Suite 5001
Carson City, NV 89701
(775) 684-2700
(775) 684-2715 (fax)
abiaggi@dcnr.nv.gov

Tracy Taylor
Nevada Deputy State Engineer
Division of Water Resources
901 S. Stewart Street, Suite 2002
Carson City, NV 89701-9965
(775) 684-2861
(775) 684-2811 (fax)
ttaylor@water.nv.gov

James H. Davenport (Alt.)
Special Counsel
Colorado River Commission of Nevada
555 East Washington Avenue, Suite 3100
Las Vegas, NV 89101
(702) 486-2689
(702) 486-2697 (fax)
jdavenport@crc.nv.gov

Joseph E. Dini, Jr. (Alt.)
Speaker of the Assembly
Nevada State Legislature
104 North Mountain View
Yerington, NV 89447
(775) 463-2868
(775) 463-2816 (fax)
jdini@asm.state.nv.us

NEW MEXICO

***Honorable Bill Richardson**
Governor of New Mexico
State Capitol
Santa Fe, NM 87501
(505) 476-2200

****John D'Antonio**, State Engineer
Office of the State Engineer
130 South Capitol Street, NEA Building
P.O. Box 25102
Santa Fe, NM 87504-5102
(505) 827-6175
(505) 827-6188 (fax)
john.dantonio@state.nm.us

Ron Curry, Environment Secretary
New Mexico Environment Department
1190 Street Francis Drive, N4050
P.O. Box 26110
Santa Fe, NM 87502-0110
(505) 827-2855
ron.curry@state.nm.us

Bidtah N. Becker, Attorney (Alt.)
Navajo Nation Department of Justice
P.O. Box 2010
Window Rock, AZ 86515
(928) 871-7510
(928) 6200/7570/6177
bidtahnbecker@navajo.com

Eileen Grevey Hillson (Alt.)
AguaVida Resources
915 Camino Ranchitos NW
Albuquerque, NM 87114
(505) 238-0461 (cell)
(505) 898-0747 (fax)
ehillson@swcp.com

Maria O'Brien, Attorney (Alt.)
Modrall Sperling
Roehl Harris & Sisk, P.A.
500 Fourth Street NW
P.O. Box 2168
Albuquerque, NM 87103-2168
(505) 848-1800
(505) 848-9710 (fax)
mobrien@modrall.com

DL Sanders (Alt.)
General Chief Counsel
Office of the State Engineer
130 South Capital
Santa Fe, NM 87506-5108
(505) 827-6150
(505) 827-3887 (fax)
d.sanders@state.nm.us

John Utton, Attorney (Alt.)
Sheehan and Sheehan, P.A.
40 First Plaza NW, Suite 740
Albuquerque, NM 87102
(505) 247-0411
(505) 842-8890 (fax)
jwu@sheehansheehan.com

NORTH DAKOTA

***Honorable John Hoeven**
Governor of North Dakota
State Capitol
Bismarck, ND 58505
(701) 224-2200

****Dale Frink**
North Dakota State Engineer
State Water Commission
900 East Boulevard
Bismarck, ND 58505-0850
(701) 328-4940
(701) 328-3696 (fax)
dfrink@nd.gov

L. David Glatt, Chief
ND Department of Health
Environmental Health Section
Gold Seal Center
918 East Divide Avenue
Bismarck, ND 58501-1947
(701) 328-5152
(701) 328-5200 (fax)
dglatt@nd.gov

Todd A. Sattler
Assistant Attorney General
Office of the Attorney General
500 North 9th Street
Bismarck, ND 58505
(701) 328-3537
(701) 328-4300 (fax)
tsattler@nd.gov

Michael A. Dwyer (Alt.)
North Dakota Water Users Association
P.O. Box 2599
Bismarck, ND 58502-2599
(701) 223-4615
(701) 223-4645 (fax)
mdwyer@btinet.net

OKLAHOMA

***Honorable Brad Henry**
Governor of Oklahoma
State Capitol
Oklahoma City, OK 73105
(405) 521-2342

***Duane A. Smith**, Executive Director
Oklahoma Water Resources Board
3800 North Classen Boulevard
Oklahoma City, OK 73118
(405) 530-8800
(405) 530-8900 (fax)
dasmith@owrb.ok.gov

†**Steve Thompson**, Executive Director
Oklahoma Dept. of Environmental Quality
P.O. Box 1677
Oklahoma City, OK 73101-1677
(405) 702-7100
(405) 702-7101 (fax)
steve.thompson@deq.state.ok.us

J.D Strong
Secretary of Environment
Office of the Secretary of Environment
3800 North Classen Boulevard
Oklahoma City, OK 73118
(405) 530-8995
(405) 530-8999 (fax)
jdstrong@environment.ok.gov

Dean A. Couch, General Counsel (Alt.)
Oklahoma Water Resources Board
3800 North Classen Boulevard
Oklahoma City, OK 73118
(405) 530-8800
(405) 530-8900 (fax)
dacouch@owrb.ok.gov

Jon Craig (Alt.)
Water Quality Division Director
Oklahoma Dept. of Environmental Quality
P.O. Box 1677
Oklahoma City, OK 73101-1677
(405) 702-8100
(405) 702-8101 (fax)
jon.craig@deq.state.ok.us

OREGON

***Honorable Ted Kulongoski**
Governor of Oregon
State Capitol
Salem, OR 97310
(503) 378-3100

****Phillip C. Ward**, Director
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1271
(503) 986-0900
(503) 986-0903 (fax)
phillip.c.ward@wrdd.state.or.us

†**Neil Mullane**, Interim Administrator
Water Quality Division
Oregon Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204
(503) 229-5327
(503) 229-5408 (fax)
mullane.neil@deq.state.or.us

SOUTH DAKOTA

***Honorable M. Michael Rounds**
Governor of South Dakota
State Capitol
Pierre, SD 57501
(605) 773-3212

****Steven M. Pirner**, Secretary
Dept. of Environment & Natural Resources
Joe Foss Building
523 E. Capitol Avenue
Pierre, SD 57501-3181
(605) 773-5559
(605) 773-6035 (fax)
steve.pirner@state.sd.us

Garland Erbele, Chief Engineer
Water Rights Program
Dept. of Environment & Natural Resources
Joe Foss Building
523 E. Capitol
Pierre, SD 57501-3181
(605) 773-3352
(605) 773-4068 (fax)
garland.erbele@state.sd.us

John Guhin (Alt.)
Assistant Attorney General
South Dakota Attorney General's Office
1302 East Highway 14, Suite 1
Pierre, SD 57501-8501
(605) 773-3215
(605) 773-4106 (fax)
john.guhin@state.sd.us

TEXAS

***Honorable Rick Perry**
Governor of Texas
State Capitol
Austin, TX 78711
(512) 463-2000

****Thomas Weir Labatt, III**
P.O. Box 12506
San Antonio, TX 78212-0506
(210) 732-2493
(210) 732-8082 (fax)
wlabatt@satx.rr.com

Carlos Rubinstein
Commissioner
Texas Commission on Environmental Quality
P.O. Box 13087, MC-100
Austin, TX 78711-3087
(512) 239-5505
(512) 239-5533 (fax)
crubinst@tceq.state.tx.us

Christopher D. DeCluitt (Alt.)
Presiding Officer
Brazos River Authority
4600 Cobbs Drive
Waco, Texas 76714
(254) 761-3100
(254) 761-3207 (fax)
cdd@hot.rr.com

John R. Elliott (Alt.)
Vice President
Headwaters Groundwater Conservation District
25 Lehmann Drive, Suite 102
Kerrville, TX 78028-6059
(830) 238-5176
(830) 238-4611 (fax)
elliottj@cebridge.net

Craig Estes, Senator (Alt.)
Texas Senate
2716 Commerce Street, Suite 101
Wichita Falls, Texas 76301
(940) 689-0191
(940) 689-0194 (fax)
craig.estes@senate.state.tx.us

UTAH

***Honorable Gary R. Herbert**
Governor of Utah
State Capitol
Salt Lake City, UT 84114
(801) 538-1000

****Dennis Strong**, Director
Division of Water Resources
1594 West North Temple, Suite 310
P.O. Box 146201
Salt Lake City, UT 84114-6201
(801) 538-7250
(801) 538-7279 (fax)
dennisstrong@utah.gov

D. Larry Anderson
DLA Consulting Engineer, PLLC
245 West Sienna Lane
Centerville, UT 84014
(801) 292-4662 (office)
(801) 541-0131 (cell)
landerson@barnettwater.com

Walter L. Baker, Director (Alt.)
Division of Water Quality
Department of Environmental Quality
195 North 1950 West, P. O. Box 144870
Salt Lake City, Utah 84114-4870
(801) 536-4300
(801) 536-4301 (fax)
wbaker@utah.gov

Dallin Jensen (Alt.)
Parsons, Behle, and Latimer
201 South Main Street
P.O. Box 45898
Salt Lake City, UT 84145-0898
(801) 532-1234
(801) 536-6111 (fax)
djensen@pblutah.com

Norman K. Johnson (Alt.)
Assistant Attorney General
Utah State Attorney General's Office
1594 West North Temple, #300
Salt Lake City, UT 84116
(801) 538-7227
(801) 538-7440 (fax)
normanjohnson@utah.gov

WASHINGTON

***Honorable Christine Gregoire**
Governor of Washington
State Capitol
Olympia, WA 98504
(360) 753-6780

†Ted Sturdevant**, Director
Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600
(360) 407-7001
(360) 407-6989 (fax)
tstu461@ecy.wa.gov

Barbara Markham
Assistant Attorney General
Ecology Division, Water Section
Washington State Attorney General's Office
P.O. Box 40117
Olympia, WA 98504-0117
(360) 586-6749
(360) 586-6760 (fax)
barbaram@atg.wa.gov

Ken Slattery
Program Manager
Water Resources Program
Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600
(360) 407-6602
(360) 407-6574 (fax)
kshw461@ecy.wa.gov

Stephen Bernath (Alt.)
Water Quality Program
Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600
(360) 407-6459
(360) 407-6426 (fax)
sber461@ecy.wa.gov

Evan Sheffels (Alt.)
Special Assistant to the Director
Department of Ecology
300 Desmond Drive
Lacey, WA 98503
(360) 407-7015
(360) 407-6989 (fax)
eshe461@ecy.wa.gov

WYOMING

***Honorable David Freudenthal**
Governor of Wyoming
State Capitol
Cheyenne, WY 82001
(307) 777-7434

****Patrick T. Tyrrell**
Wyoming State Engineer
WY State Engineer's Office
Herschler Building, 4th Floor East
Cheyenne, Wyoming 82002
(307) 777-6150
(307) 777-5451 (fax)
ptyrre@seo.wyo.gov

John Corra, Director
WY Dept. of Environmental Quality
Herschler Building, 4th Floor West
122 West 25th Street
Cheyenne, WY 82002
(307) 777-7937
(307) 777-7682 (fax)
jcorra@wyo.gov

Peter K. Michael
Senior Assistant Attorney General
WY Attorney General's Office
123 Capitol Avenue
Cheyenne, WY 82002
(307) 777-6196
(307) 777-3542 (fax)
pmicha@state.wy.us

Sue Lowry (Alt.)
Interstate Streams Administrator
WY State Engineer's Office
Herschler Building, 4th Floor East
122 West 25th Street
Cheyenne, WY 82002
(307) 777-5927
(307) 777-5451 (fax)
slowry@seo.wyo.gov

Mike Purcell, Director (Alt.)
WY Water Development Commission
6920 Yellowtail Road
Cheyenne, WY 82002
(307) 777-7626
(307) 777-6819 (fax)
mpurce@state.wy.us

John Wagner, Administrator (Alt.)
WY Dept. of Environmental Quality
Herschler Building, 4th Floor West
122 West 25th Street
Cheyenne, WY 82002
(307) 777-7072
(307) 777-5973 (fax)
jwagne@wyo.gov

WESTERN STATES WATER COUNCIL
Committee Assignments

EXECUTIVE COMMITTEE

Richard Mylius - Alaska
Herb Guenther - Arizona
Lester Snow - California
Jennifer Gimbel - Colorado
Hal Simpson - Colorado
(Alternate)*
Jerry Rigby - Idaho
David W. Barfield - Kansas
Susan Nottingham - Montana
Brian Dunnigan - Nebraska
Michael Linder - Nebraska
(Alternate)*
Roland Westergard - Nevada
Allen Biaggi - Nevada
(Alternate)*
John D'Antonio - New Mexico
Ron Curry - New Mexico
(Alternate)*
Dale Frink - North Dakota
J.D. Strong - Oklahoma
Duane Smith - Oklahoma
(Alternate)*
Phil Ward - Oregon
Steve Pirner - South Dakota
Garland Erbele - South Dakota
(Chair) (Alternate)*
Thomas Weir Labatt - Texas
(Vice-Chair)
Dennis Strong - Utah
Ted Sturdevant - Washington
Patrick T. Tyrrell - Wyoming

Farm Bill Subcommittee

Jeanine Jones - (Chair) - California
Paul Frohardt - Colorado
David Glatt - North Dakota
Phil Ward - Oregon
Walt Baker - Utah
Stephen Bernath - Washington
Sue Lowry - Wyoming

*For purposes of Committee rosters, the designation as "alternate" may not necessarily reflect the person's status regarding Council membership, but rather the person's function on the Committee.

Management Subcommittee

Garland Erbele - South Dakota
(Chair)
Weir Labatt - Texas
(Vice-Chair)
Phil Ward - Oregon
(Secretary/Treasurer)
Duane Smith - Oklahoma
(Past Chair)

WSWC Water Policy Seminar Subcommittee

Richard Opper - Montana
Roland Westergard - Nevada

Endangered Species Act Subcommittee

Dean Couch - (Chair) - Oklahoma
Roland Westergard - Nevada
James Davenport - Nevada
Eileen Grevey Hillson - New Mexico
Phil Ward - Oregon
Weir Labatt - Texas
Sue Lowry - Wyoming

Western Water Supply Challenges Subcommittee

Sue Lowry - (Chair) - Wyoming
Hal Simpson - Colorado
Mike Volesky - Montana
Tracy Taylor - Nevada
Jim Davenport - Nevada
John D'Antonio - New Mexico
Eileen Grevey Hillson - New Mexico
Garland Erbele - South Dakota
Dennis Strong - Utah
Pat Tyrrell - Wyoming

LEGAL COMMITTEE

Christopher Estes - Alaska
William Staudenmaier - Arizona
(Chair)
Lester Snow - California
Jeanine Jones - California
(Alternate)*
Jennifer Gimbel - Colorado
Vacant - Idaho
Vacant - Kansas
Susan Cottingham - Montana
Candace West - Montana
(Alternate)*
Vacant - Nebraska
Roland Westergard - Nevada
Jim Davenport - Nevada
(Alternate)*
Maria O'Brien - New Mexico
(Vice-Chair)
John Utton - New Mexico
(Alternate)*
Todd A. Sattler - North Dakota
Dean A. Couch - Oklahoma
Phil Ward - Oregon
John Guhin - South Dakota
Vacant - Texas
Norman K. Johnson - Utah
Barbara Markham - Washington
Peter Michael - Wyoming

Federal Reserved Water Rights Subcommittee/Ad Hoc Group

William Staudenmaier - Arizona
Bidtah Becker - New Mexico
John Utton - New Mexico
Norman Johnson - Utah

Water Reuse Subcommittee

Rick Huddleston - Idaho
Tracy Hoffman - New Mexico
John Kennington - Utah
Jim McCauley - Washington

WATER RESOURCES COMMITTEE

Richard Mylius - Alaska
Gary Prokosch - Alaska
(Alternate)*
Herb Guenther - Arizona
Lester Snow - California
Jeanine Jones - California
(Alternate)*
Harold D. (Hal) Simpson - Colorado
Alexandra Davis - Colorado
(Alternate)*
Dick Wolfe - Colorado
(Alternate)*
Vacant - Idaho
David Barfield - Kansas
Mike Volesky - Montana
Brian Dunnigan - Nebraska
Tracy Taylor - Nevada
Eileen Grevey Hillson - New Mexico
John D'Antonio - New Mexico
(Alternate)*
Dale Frink - North Dakota
JD Strong - Oklahoma
Phil Ward - Oregon
Garland Erbele - South Dakota
Thomas Weir Labatt - Texas
Larry Anderson - Utah
Dennis Strong - Utah
(Alternate)*
Ken Slattery - Washington
Evan Sheffels - Washington
(Alternate)*
Patrick Tyrrell - Wyoming
(Chair)
Sue Lowry - Wyoming
(Alternate)*

Border Water Issues Subcommittee

Jeanine Jones - California
Herman Settemeyer - Texas
Ken Slattery - Washington

Drought/Flooding Issues Subcommittee

Jeanine Jones - California
John D'Antonio - New Mexico
Ken Slattery - Washington

Water Transfers and the Public Interest

Jeanine Jones - California
Tom Stiles - Kansas
Jim Davenport - Nevada
Phil Ward - Oregon
Weir Labatt - Texas
Larry Anderson - Utah
Pat Tyrrell - Wyoming

Water Information Management Systems and Data Collection Subcommittee

Phil Ward - Oregon (Chair)
Hal Simpson - Colorado
Hal Anderson - Idaho
Paul Graves - Kansas
Estevan Lopez - New Mexico
Barry Norris - Oregon
Robert Mace - Texas
Sue Lowry - Wyoming

Water Resources Management, Program Project Funding Subcommittee

Jeanine Jones - California (Chair)
Hal Simpson - Colorado
Mike Volesky - Montana
Eileen Grevey Hillson - New Mexico
John Utton - New Mexico
Kevin Ward - Texas
Larry Anderson - Utah

Water Use Efficiency/Conservation Subcommittee

Sue Lowry - Wyoming (Chair)
Herb Guenther - Arizona
Lester Snow - California
Jim Davenport - Nevada
Estevan Lopez - New Mexico
Ann Watkins - New Mexico
Kevin Ward - Texas
Larry Anderson - Utah
Stephen Bernath - Washington

Water Resources and Energy Subcommittee

Alex Davis - Colorado (Chair)
Herb Guenther - Arizona
William Staudenmaier - Arizona
Jeanine Jones - California
John Simpson - Idaho
Eileen Hillson - New Mexico
Todd Sando - North Dakota
Dennis Strong - Utah
Robert Mace - Texas
Sue Lowry - Wyoming

High Plains Work Group

Hal Simpson - Colorado
Dave Barfield - Kansas
Estevan Lopez - New Mexico
Dean Couch - Oklahoma
Garland Erbele - South Dakota
Weir Labatt - Texas
Robert Mace - Texas
Sue Lowry - Wyoming
Pat Tyrrell - Wyoming

Landsat Thermal Infrared Subcommittee

Vacant (Chair)
Tony Morse - Idaho
DL Sanders - New Mexico
David Rodriguez - New Mexico
Dennis Strong - Utah
Ken Slattery - Washington
Stephen Bernath - Washington
Pat Tyrrell - Wyoming
Sue Lowry - Wyoming

USGS Cooperative Water Program Subcommittee

Todd Sando - North Dakota
Robert Mace - Texas

WATER QUALITY COMMITTEE

Lynn Kent - Alaska
Ben Grumbles - Arizona
Darlene Ruiz - California
Paul Frohardt - Colorado
Steve Gunderson - Colorado
(Alternate)*
Toni Hardesty - Idaho
Tom Stiles - Kansas
(**Vice-Chair**) (Alternate)*
Richard Opper - Montana
Michael Linder - Nebraska
Patrick Rice - Nebraska
(Alternate)*
Allen Biaggi - Nevada
Ron Curry - New Mexico
David Glatt - North Dakota
J.D. Strong - Oklahoma
Steve Thompson - Oklahoma
(Alternate)*
Neil Mullane - Oregon
Steve Pirner - South Dakota
Vacant - Texas
Walter Baker - Utah
(**Chair**)
Ted Sturdevant - Washington
Stephen Bernath - Washington
(Alternate)*
John Corra - Wyoming
John Wagner - Wyoming
(Alternate)*

Arid West Water Quality Issues Subcommittee

Paul Frohardt - (**Chair**) - Colorado
Tom Stiles - Kansas

Clean Water Act Subcommittee

Paul Frohardt - Colorado
Barry Burnell - Idaho
Tom Stiles - Kansas
Richard Opper - Montana
Walt Baker - Utah
Stephen Bernath - Washington

Good Samaritan Subcommittee

Paul Frohardt - Colorado
John Kennington - Utah

Section 518/Tribes as States Subcommittee

Barry Burnell - Idaho
Dean Couch - Oklahoma
Derek Smithee - Oklahoma

Quality-Quantity Interrelationship Subcommittee

Tom Stiles - (**Chair**) - Kansas

WESTERN STATES WATER COUNCIL
Committee Assignments

EXECUTIVE COMMITTEE

Richard Mylius - Alaska
Herb Guenther - Arizona
Lester Snow - California
Jennifer Gimbel - Colorado
Hal Simpson - Colorado
(Alternate)*
Jerry Rigby - Idaho
David W. Barfield - Kansas
Susan Nottingham - Montana
Brian Dunnigan - Nebraska
Michael Linder - Nebraska
(Alternate)*
Roland Westergard - Nevada
Allen Biaggi - Nevada
(Alternate)*
John D'Antonio - New Mexico
Ron Curry - New Mexico
(Alternate)*
Dale Frink - North Dakota
J.D. Strong - Oklahoma
Duane Smith - Oklahoma
(Alternate)*
Phil Ward - Oregon
Steve Pirner - South Dakota
Garland Erbele - South Dakota
(Chair) (Alternate)*
Thomas Weir Labatt - Texas
(Vice-Chair)
Dennis Strong - Utah
Ted Sturdevant - Washington
Patrick T. Tyrrell - Wyoming

WATER RESOURCES COMMITTEE

Richard Mylius - Alaska
Gary Prokosch - Alaska
(Alternate)*
Herb Guenther - Arizona
Lester Snow - California
Jeanine Jones - California
(Alternate)*
Harold D. (Hal) Simpson - Colorado
Alexandra Davis - Colorado
(Alternate)*
Dick Wolfe - Colorado
(Alternate)*
Vacant - Idaho
David Barfield - Kansas
Mike Volesky - Montana
Brian Dunnigan - Nebraska
Tracy Taylor - Nevada
Eileen Grevey Hillson - New Mexico
John D'Antonio - New Mexico
(Alternate)*
Dale Frink - North Dakota
JD Strong - Oklahoma
Phil Ward - Oregon
Garland Erbele - South Dakota
Thomas Weir Labatt - Texas
Larry Anderson - Utah
Dennis Strong - Utah
(Alternate)*
Ken Slattery - Washington
Evan Sheffels - Washington
(Alternate)*
Patrick Tyrrell - Wyoming
(Chair)
Sue Lowry - Wyoming
(Alternate)*

WATER QUALITY COMMITTEE

Lynn Kent - Alaska
Ben Grumbles - Arizona
Darlene Ruiz - California
Paul Frohardt - Colorado
Steve Gunderson - Colorado
(Alternate)*
Toni Hardesty - Idaho
Tom Stiles - Kansas
(Vice-Chair) (Alternate)*
Richard Opper - Montana
Michael Linder - Nebraska
Patrick Rice - Nebraska
(Alternate)*
Allen Biaggi - Nevada
Ron Curry - New Mexico
David Glatt - North Dakota
J.D. Strong - Oklahoma
Steve Thompson - Oklahoma
(Alternate)*
Neil Mullane - Oregon
Steve Pirner - South Dakota
Vacant - Texas
Walter Baker - Utah
(Chair)
Ted Sturdevant - Washington
Stephen Bernath - Washington
(Alternate)*
John Corra - Wyoming
John Wagner - Wyoming
(Alternate)*

LEGAL COMMITTEE

Christopher Estes - Alaska
William Staudenmaier - Arizona
(Chair)
Lester Snow - California
Jeanine Jones - California
(Alternate)*
Jennifer Gimbel - Colorado
Vacant - Idaho
Vacant - Kansas
Susan Cottingham - Montana
Candace West - Montana
(Alternate)*
Vacant - Nebraska
Roland Westergard - Nevada
Jim Davenport - Nevada
(Alternate)*
Maria O'Brien - New Mexico
(Vice-Chair)
John Utton - New Mexico
(Alternate)*
Todd A. Sattler - North Dakota
Dean A. Couch - Oklahoma
Phil Ward - Oregon
John Guhin - South Dakota
Vacant - Texas
Norman K. Johnson - Utah
Barbara Markham - Washington
Peter Michael - Wyoming

Intentional Blank Page

COUNCIL MEMBERS

Park City, Utah

July 15-17, 2010



First Row (left to right)

Jerry Rigby, Susan Cottingham, Herb Guenther, Maria O'Brien, Jeanine Jones, Weir Labatt

Second Row (left to right)

John Simpson, DL Sanders, Sue Lowry, Betty Olson, Herman Settemeyer, Kim Christiansen, Pat Tyrrell

Third Row (left to right)

Larry Anderson, Norm Johnson, Brian Dunnigan, Walt Baker, Jennifer Gimbel, Phil Ward, Paul Frohardt, Dale Frink

Fourth Row (left to right)

Paul Graves, Alexandra Davis, Garland Erbele, Dennis Strong, Duane Smith

STAFF



From left to right:

Cheryl Redding, Julie Groat, Jonne Hower, Tony Willardson and Nathan Bracken

Anthony G. Willardson (Tony)	Executive Director
Nathan Bracken	Legal Counsel
Jonne Hower	WestFAST, Federal Liaison
Cheryl Redding	Office Manager
Julie Groat	Receptionist/Secretary

COUNCIL MEMBERSHIP CHANGES/NEWS

Arizona

Joan Card, Director of the Water Quality Division, Arizona Department of Environmental Quality resigned in April 2009. Joan served since June 2005 as a representative from Arizona to the Western States Water Council and made valuable contributions to the work of the Council as Chair and member of the Water Quality Committee during her tenure of service.

Idaho

Dave Tuthill, a WSWC member and Director of the Idaho Department of Water Resources, announced his retirement from public service effective June 30, 2009. Dave served since April 2007 as a representative from Idaho and made valuable contributions to the work of the Council as member of the Executive and Water Resources Committees during his tenure of service.

Kansas

Kansas announced several new appointments to the WSWC. **Governor Mark Parkinson** replaced **Governor Kathleen Sebelius**, now with the Obama Administration. A number of representatives from the Kansas Water Office replaced some members from the Kansas Department of Health and Environment. In particular, **Tracy Streeter**, **Earl Lewis**, and **Kim Christiansen** replace **John Mitchell** and **Karl Mueldener**. The appointments of **David Barfield**, **Paul Graves** and **Tom Stiles** remain unchanged.

Adrian Polansky, Secretary of Agriculture for Kansas since 2003, was selected to head the Kansas Farm Service Agency within the U.S. Department of Agriculture. Governor Mark Parkinson appointed **Joshua Svaty** as the new Kansas' Secretary of Agriculture and to the WSWC.

Montana

Secretary of the Interior Ken Salazar named **John Tubbs** to be Deputy Assistant Secretary for Water and Science. John was appointed a member of the WSWC in April 2007 and worked for over 20 years in the Montana Department of Natural Resources and Conservation, serving most recently as the Administrator of the Water Resources Division.

New Mexico

Bill Hume, the Policy and Planning Director for Governor Bill Richardson announced his retirement effective September 15, 2009. Bill served since June 2004 as a representative from New Mexico to the Western States Water Council and contributed greatly to the management and protection of water resources not only in the state of New Mexico, but throughout the West during his distinguished career.

Texas

Fred Pfeiffer, who retired as General Manager of the San Antonio River Authority in June 1999 continued to represent Texas on the Council until May 2009. Fred had served on the Council since October 1983 and made valuable contributions to the work of the Council as a member of the Legal and Water Quality Committees particularly with respect to states' rights as related to the federal hydropower licensing process.

Governor Rick Perry reappointed long-time WSWC member **Weir Labatt** of the Texas Water Development Board, and appointed **Carlos Rubinstein**, Commissioner of the Texas Commission on Environmental Quality. Governor Perry also appointed the following alternate members: **Christopher DeCluitt**, Presiding Officer of the Brazos River Authority; **John Elliott**, Vice President of the Headwaters Ground Water Conservation District; and **Senator Craig Estes**, Texas Senate. They replaced **David Montagne**, Controller of the Sabine River Authority; **Fred Pfeiffer**, General Manager for the San Antonio River Authority; and **Senator Buster Brown**, Texas Senate.

Washington

Governor Chris Gregoire named WSWC member **Jay Manning** as her Chief of Staff. Jay served previously as the Director of the Washington Department of Ecology and began his new duties in October. **Ted Sturdevant**, who served as Ecology's Director of Governmental Relations, replaced Jay as Director.

COUNCIL MEETINGS

159th Council Meetings Kansas City, Kansas April 21-24

The WSWC held its 159th meetings in Kansas City, Kansas at the Great Wolf Lodge on April 21-24. Adrian Polansky, Kansas Secretary of Agriculture, David Barfield, Kansas Chief Engineer, and Paul Graves, Kansas Assistant Chief Engineer, hosted the meeting. A pre-meeting field trip included visits to an award-winning artistic “rain to recreation” dam in the town of Lenexa, the only hydro-electric dam in Kansas on the Kansas River, the coal-fired Jeffrey Energy Center, and Tuttle Creek Reservoir. The tour ended at the Konza Tallgrass Prairie Preserve owned by the Nature Conservancy and Kansas State University (KSU).

Adrian Polansky provided an overview of Kansas agriculture and the state’s water use during the Full Council meeting. He said the state’s future is related to its fields and that biotechnology and other research will increase production and lessen water use. He also addressed the amount of water used in ethanol production, stating that reducing ethanol production will not decrease the amount of water Kansas uses from the Ogallala Aquifer, because the water would be used for other purposes. Dave Barfield then discussed Kansas’ water resources and described the state’s ground water modeling efforts. Lastly, Tracy Streeter, the Director of the Kansas Water Office, discussed the Kansas State Water Plan, which includes public involvement and is aimed at getting “everyone at the table.” He also discussed a number of challenges Kansas is facing, including sedimentation in reservoirs and river bed and bank degradation. With respect to funding, Mr. Streeter explained that Kansas’ water plan is looking for new revenue sources, including increasing water use fees and using gaming revenue.

Of note, the Council adopted three new position statements. The first was a letter related to the Energy and Water Integration Act of 2009 (S. 531), introduced by Senator Jeff Bingaman (D-NM), Energy and Natural Resources Committee Chairman. It states that the Council “...fully support[s] the objective of S. 531, to provide an in-depth analysis of the impact of energy development and production on our Nation’s water resources.” The letter also says that states “must be indispensable partners” and “must be appropriately involved in any authorized studies.”

A second letter to Rep. Bart Gordon, Chairman of the House Science and Technology Committee pertains to the National Water Research and Development Initiative Act (H.R. 1145), which recently passed the House by a vote of 413-10. The bill aims to improve the federal role in designing and implementing federal water research, development, and other activities. The letter states that the WSWC agrees with “...the need to focus limited federal research resources” and encourages “...an emphasis on practical application addressing present and future water management challenges.”

A third resolution supports the “...development and enactment of federal legislation that would authorize and fund applied research and improvements to water resources management planning capabilities that would assist water agencies at all levels of government in adapting to climate change and variability.” The resolution also makes clear that “...climate change is an

additional stressor on western water resources” and that “...many of the applied research needs and improvements to water resources planning capabilities [identified by the Council] are not presently incorporated into federal agency budgets.”

The Council’s committees also discussed their work-to-date with respect to their 2009 work plans. The Water Resources Committee reported that it updated its work plan to more closely reference the 2008 WGA Next Steps report and said that “quite a bit” of work has been done on the energy-water nexus outline. The Legal Committee presented a draft report regarding exempt wells for member review, and will coordinate with the Water Quality Committee with respect to the water reuse reports that the work plans for both committees require.

WestFAST Chair Mike Fallon of the U.S. Army Corps of Engineers summarized their work plan, which addresses twelve issues identified in the 2008 WGA Next Steps report. Representatives considered a broad scope of work for collaboration, integration, and economies of scale. They also looked for opportunities for horizontal integration among agencies. Mike said that the federal support team will rely on WSWC members and staff to identify opportunities in member states or within river basins to implement specific objectives identified in the work plan. They will also relying upon WSWC staff to facilitate communication and collaboration between WestFAST members, the federal liaison, and Council members. Of note, Mike’s term as Chair will end in July, at which time Roger Gorke, Environmental Protection Agency (EPA), will become Chair. The Council thanked Mike for his invaluable service as Chair and for his efforts in helping establish WestFAST.

Ward Staubitz, U.S. Geological Society (USGS), discussed a National Ground Water Monitoring Network, a unified ground water monitoring network that would allow for spatial description of water levels. He said that the end product should collect data in major aquifers and forecast future trends. With respect to Stimulus Act funding, Ward stated that USGS will use the money for mapping, the removal of abandoned observation wells, and upgrading streamgaging with high- data rate radios.

Matt Larsen discussed a USGS climate change study, which explores strategies to improve water management by tracking, anticipating, and responding to climate change. USGS prepared the report with the Corps, Bureau of Reclamation, and NOAA. Mr. Larsen discussed the report’s key findings, including: (1) the general consensus that climate change is occurring but that effects differ regionally; (2) climate change could affect all sectors of water resources management; (3) climate change is one of many challenges facing water resource managers; and (4) monitoring networks are critical for quantifying the impacts of climate change.

Rich McIntyre, a consultant and former International Water Program Director for Food and Water Watch, provided a brief presentation on the need for ground water and aquifer mapping. According to Mr. McIntyre, USGS is underfunded and may take up to 20-30 years to finish mapping at current levels, which may be too long for some western states. Mr. McIntyre also stated that there appears to be strong support among Congressional members from both parties to complete this project and that the time may be right for states to call for an increase in federal funding.

Avra Morgan of the Bureau of Reclamation gave a status update regarding the Rural Water Supply Program, which authorizes the agency to provide rural communities with financial and technical assistance to complete appraisal and feasibility studies, but does not authorize construction. Reclamation has already published an interim final rule, which could change, following a public comment period. Avra stated that the agency will then publish a final rule that sets forth the criteria that will determine eligibility, the application process, project selection, and prioritization.

In the Legal Committee, MaryLou Smith, a consultant with Aqua Engineering, discussed ag-to-urban transfers, focusing on how stakeholders with different interests can find common ground. Ms. Smith also described the process for developing best management practices, and discussed her work as a facilitator in the creation of guidelines in the Arkansas River Basin in Colorado.

Ryan Seiger, Staff Director/Senior Counsel for the House Subcommittee on Water Resources and Environment, discussed the next version of the Clean Water Restoration Act that Rep. James Oberstar (D-MN), Chairman of the House Transportation and Infrastructure Committee, is drafting for introduction in the 111th Congress. Mr. Seiger stated that the prior version of the bill that Oberstar introduced in the 110th Congress has been “thrown out” and that the new version of the bill is currently a “blank slate.” However, he stated that the next bill will return the Clean Water Act (CWA) to the “status quo” that existed before the Supreme Court’s plurality decision in *Rapanos and SWANCC*, which Mr. Seiger and Rep. Oberstar believe created uncertainty regarding CWA jurisdiction. Mr. Seiger said the intent of the legislation is not to change the relationship between the CWA and ground water, but noted that it would ensure that the CWA protects aquifer recharge zones. Mr. Seiger expects the legislation to be introduced in the House later this year and welcomed comments from the Council and individual states.

The Water Resources Committee meeting also included: a legislative update from Tony Willardson on the recently passed Omnibus Public Lands Management Act of 2009; an update from Alexandra Davis about the 2009 Fall Water Symposium scheduled for September 28-30 in Denver; and a presentation from Jeanine Jones about the 2009 Water Information Management/Climate Change Adaptation Workshop to be held on November 17-19, in San Diego. At the Legal Committee meeting, John Utton and Bill Staudenmaier provided an update regarding Indian water rights settlements, while Nathan Bracken discussed litigation resulting from EPA’s exempting water transfers from the NPDES permitting process under the Clean Water Act, Section 402.

The Water Quality Committee did not meet, but Joan Card of Arizona as Chair reported via telephone on a conference call conducted February 27 and a March 4 meeting between a number of Council members and EPA officials in Washington, DC. Also, Joan had resigned as Director of the Arizona Division of Water Quality,² and the Council recognized her with a Resolution of Appreciation for her service.

The WSWC also recognized Tom Maddock of California for his fifteen years of service as a member of the Council, Water Resources and Legal Committees. He retired in 2004 as President and CEO of Boyle Engineering, a position he had held since 1971. The Council welcomed Tom’s replacement, Betty Olson, a professor at the University of California, Irvine.

²*Western States Water*, Issue #1822, April 17, 2009.

160th Council Meetings
Park City, Utah
July 15-17

The WSWC held its 160th meetings in Park City, Utah on July 15-17. A special memorial service for Craig Bell was held in conjunction with the meetings, which included awards and comments by John Tubbs, Department of the Interior; Amy Bowers, Native American Rights Fund; Dianne Nielson, Utah's Governor's Office representing WGA; Roger Gorke for WestFAST; and past and present WSWC chairs, WSWC members and staff. Craig's wife and several family members attended. It was a moving recognition of Craig's 35 years of service to the Council.

The State of Utah and Central Utah Water Conservancy District hosted a pre-meeting field trip to the Jordanelle Reservoir and Hydropower Plant, as well as a number of small stabilized dams and lakes off the Mirror Lake Scenic Byway in the Uinta Mountains, all parts of the Central Utah Project (CUP). The tour ended at Soldier Hollow, a cross country skiing and biathlon venue for the 2002 Winter Olympics, and a state park golf course during the summer.

During the Full Council Meeting, Dennis Strong, Director of the Utah Division of Water Resources, described its organization, and said that planning is one of its most important functions. He also described a number of current projects, including rehabilitation work on Red Butte dam near Salt Lake City, and Mill Site dam in Emery County. Next, Todd Adams, the Division's Assistant Director, discussed the Utah State Water Plan, which was last published in 2001. Mr. Adams also described the Utah Governor's Water Conservation Team, which is working to develop a long-term statewide ethic with the goal of realizing a 25% reduction in per capita daily use by 2050, focusing on reducing outdoor use by municipalities. Lastly, Walt Baker, Director of Utah's Water Quality Division, described a new study on selenium levels in the Great Salt Lake and the development of a selenium standard for tissue in waterfowl. He also discussed the ground water pollution plumes that are a legacy of mining in the southwest corner of the Salt Lake Valley.

The Council adopted one external policy position in the form of a letter to House Transportation and Infrastructure Committee leaders raising concerns regarding a draft bill entitled the Sustainable Watershed Planning Act. The letter states, "We strongly feel that the draft bill is based on a top-down policy paradigm that has more often than not proved unworkable in the past." While the intent may be to "require federal agencies to engage in greater collaboration with each other, States, and other governmental and non-governmental entities...one size doesn't fit all." The letter suggests the Committee "carefully reconsider acting on the draft legislation and continue to explore alternative approaches..." including looking at "the WSWC-WestFAST partnership as a better way to focus federal support on state priorities."

The Council also agreed to send a letter, based on past positions and the 2008 Western Governors' Association (WGA) Water Report, to the Council on Environmental Quality (CEQ) in response to its July 1 request for comments on the 1983 Principles and Guidelines (P&Gs) for federal water projects. The letter both reiterates past comments and focuses on the WGA report, opposing "...complex, inflexible and difficult to apply procedures and rigid rules," and supports "flexible guidelines to govern water resource planning." We concur that National Economic Development (NED) "...should be a primary national planning objective," but assert that other

benefits must be “recognized and taken into account in project formulation,” as water projects approved strictly based on NED “...would not be compatible with existing state water plans and planning efforts.... We cannot concur that the plan that has the maximum net economic benefits is necessarily the best plan.... One of the alternative plans may provide greater total benefits and...a benefit cost ratio...in excess of one to one.” Moreover, the letter declares that States should “take the lead in all aspects of water resources planning.”

CEQ should “carefully consider” the WGA 2008 Water Report. “States have the pivotal role in water planning, as well as allocating and protecting the resource.” The Federal role should be to provide support in the form of “technical and appropriate financial assistance.” The letter continues: “Developing optimal solutions...will require an integrated approach and greater partnerships among state, local and federal agencies.... Federal agencies should use state water plans...to help determine national water policy and priorities.... Integrated Water Resources Planning (IWRP) should be a primary mission...(a) changing the way water planning is conducted by encouraging more comprehensive plans developed under state leadership with federal assistance; and (b) reducing inefficiencies caused by the present mode of project-specific responses to competing demands, contradictory actions by multiple state, local and federal agencies, and hastily conceived reactions to the latest real or perceived crisis. More consideration needs to be given alternative ways to quantify, evaluate and prioritize funding for water, wastewater, watershed protection and restoration, and public safety needs....”

The Council allowed a number of outdated letters and position statements to sunset. The WGA has current policy positions on two, adopted subsequent to the Council’s action, in support of a National Drought Planning Act and urging Congress to require the United States to subject itself to general adjudication fees to the same extent as all other water users.

A number of special guests addressed members. John Tubbs, a former member from Montana and the current Interior Deputy Assistant Secretary for Water and Science, discussed Secretary Ken Salazar’s initiatives and priorities, which include energy, climate change, protecting “treasured” landscapes, empowering “Indian Country,” and engaging youth in natural resources. He said water conservation will be a top priority, and that Interior’s water and science team will be key to implementing the Secretary’s initiatives. John added that he would advocate using the WGA/WSWC’s strategic plan in setting Interior policy and priorities. Brigadier General William E. Rapp, Northwestern Division Commander, U.S. Army Corps of Engineers, highlighted examples of water resource collaboration and opportunities for improvement, declaring, “Our imperatives are to collaborate with all stakeholders, anticipate future challenges, innovate and embrace new solutions, and communicate openly and constantly.”

Newly designated WestFAST Chair Roger Gorke of EPA updated the Council on implementation of the team’s work plan. He said WestFAST is ready to help and has fostered greater cooperation among member agencies beyond western water issues. He thanked Mike Fallon, with the Corps, for his service as Chair, and named Ward Staubit of the U.S. Geologic Survey (USGS) as WestFAST’s Vice-Chair.

The Legal and Water Quality Committees combined to hear from Bureau of Reclamation Commissioner Mike Connor (via telephone). He addressed a number of issues, emphasizing “water

conservation is energy conservation,” and saying that Reclamation will do “all that it can do” to implement recently approved Indian water rights settlements, including the Navajo and Duck Valley settlements. He said the agency has a “strong” role to play in empowering native communities. Further, he is “very aware” of the agency’s funding issues and obligations under the Endangered Species Act (ESA). Next, Beth Card, a Co-Chair on the Legal Affairs Task Force for the Association of State and Interstate Water Pollution Control Administrators, discussed a recent 11th Circuit Court decision upholding EPA’s water transfers rule, as well as a U.S. Supreme Court decision that found that gold mine slurry qualified as fill material subject to Section 404 of the Clean Water Act. Richard Atwater, President of the Water Reuse Association and General Manager of California’s Inland Empire Utilities, spoke about national and international water reuse developments. He said that water reuse is expanding due to drought, climate change, and other factors that limit water supplies; that almost every watershed is looking at ways to implement water reuse; that technology costs have dropped significantly; and that reuse technology varies per application.

Dr. Jason Gurdak presented the findings of a U.S. Geological Survey study of ground water quality in the High Plains/Ogallala Aquifer, which include: (1) conversion of rangeland to irrigated cropland affects water quality; (2) chemical transport to the water table follows fast and slow paths; (3) important differences exist between the quality of shallow ground water and deep ground water; (4) mixing of ground water by high-capacity wells with multiple screens adversely affects water quality; (5) the ability to naturally attenuate some contaminants is limited; (6) most private, public-supply, and irrigation wells produce water suitable for their intended uses; and (7) ground water availability and sustainability are a function of water quantity and quality. Nathan Bracken provided updates on the status of the Clean Water Restoration Act legislation and the Water Quality Committee’s water reuse report.

Separately, the Legal Committee met and listened to WestFAST member Jean Thomas, U.S. Forest Service, describe legal issues associated with instream flows and public lands. Susan Cottingham provided an update on Indian water rights settlements, and Nathan discussed the final version of the exempt wells report. In the Water Quality Committee meeting, Roger Gorke provided an EPA administration update, while Betty Olson discussed issues associated with emerging contaminants.

The Water Resources Committee discussed the Corps’ collaborative state water planning initiative related to federal Principals and Guidelines (P&Gs), as well as an upcoming national meeting and development of a “vision” statement. WestFAST members Shirley Hughbanks (NRCS) and Ward Staubitz (USGS) reported on federal program funding, and Alexandra Davis gave an update on energy/water issues. NASA infrared thermal sensor (TIRS) funding was mentioned.

The Council also adopted resolutions of appreciation for outgoing WSWC members John Tubbs of Montana, Dave Tuthill of Idaho, and Fred Pfeiffer of Texas. Of note, the Executive Committee selected Tony Willardson, a 30-year employee, as the next Executive Director.

**161st Council Meetings
Lincoln, Nebraska
October 14-16**

The 161st WSWC meetings were held in Lincoln, Nebraska on October 14-16. The State of Nebraska hosted a pre-meeting field trip that included a flood control project tied to the urban revitalization of the city, as well as a salt marsh with unique endangered species issues, and a state park on the Lower Platte River, from which Lincoln and Omaha draw drinking water.

Nebraska Governor Dave Heineman spoke at the Full Council meeting and declared, "Water is our most important natural resource." He pointed out that the state has suffered through a multiple-year drought, which is particularly challenging as agriculture is the state's #1 industry, accounting for about one in every three jobs. In Nebraska, local natural resource districts (NRDs) are responsible for managing and protecting ground water. There are tough decisions to be made. In light of Nebraska's interstate water compact obligations, the Governor said, "We've got to reduce consumptive use." He shared his experience talking to some 350 irrigators (ground water pumpers) about reducing their use. While not a popular position to take, he said, "Think about the future. We can't change the past, but we can try to avoid the mistakes of the past."

Nebraska is developing water management plans and has changed the way it evaluates and deals with fully appropriated or over-appropriated areas. Most Nebraskans are willing to "sit down at the table" to discuss water-related challenges. The Governor stressed the importance of being "upfront about things," involving stakeholders in the decision making process, and using "good sound science." He discouraged states from getting involved in water litigation, saying, "As long as we can sit at the table and talk, there's a chance...we can find solutions." He expressed his appreciation for the Council's efforts.

Brian Dunnigan, Director, Nebraska Department of Natural Resources (DNR), addressed integrated water management. There are 23 NRDs, based on watershed boundaries, that have authority to regulate ground water use. Each is governed by a local board of directors that can levy taxes. Brian also described key state legislation passed by the Unicameral that has impacted how Nebraska manages its water. In 1996, LB 108 was passed and authorized the integrated management of surface and ground water, first looking at basins affected by interstate compacts. In 2002, LB 1002 addressed inequities between surface and ground water users and opportunities to facilitate water leasing, transfers and banking. In 2004, LB 962 authorized the DNR to determine that a basin had been fully appropriated, what ground water was available that was hydrologically connected, and whether or not supplies were available to meet demands. It also established criteria for preliminary determination of over appropriated basins and limits on new permits, water well construction and acres irrigated. Primary control remains with the local NRDs. Nine now have integrated management plans (IMPs), and five are developing IMPs. Brian said, "We're learning a lot as we go." It is a continual process of revisiting and revising IMPs.

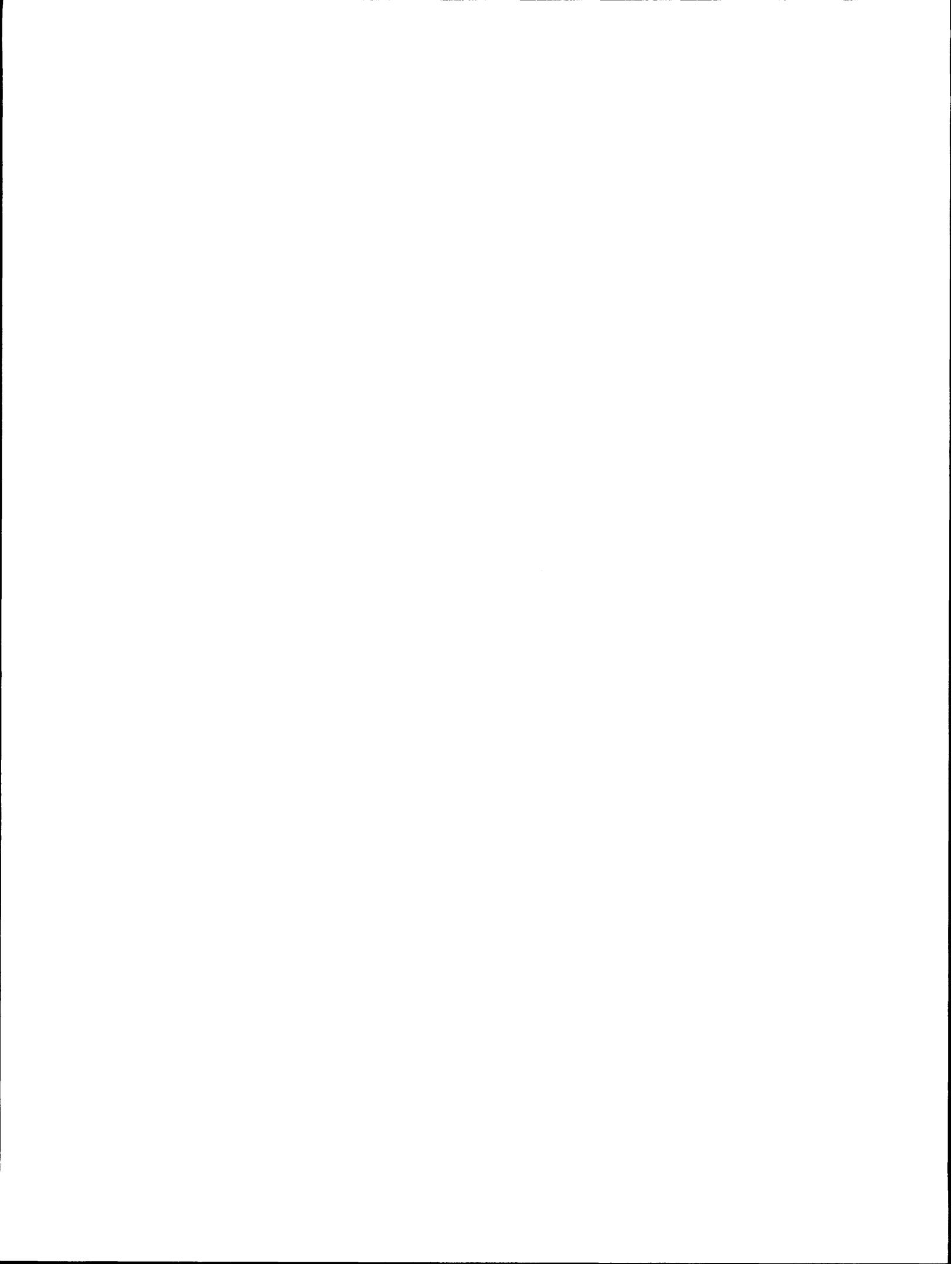
Following Brian's comments, Mike Linder, the Director of Nebraska's Department of Environmental Quality, described water quality issues in Nebraska. He said ground water is abundant in Nebraska and provides drinking water for 85% of the state's urban population and 99% of its rural population. Some 65% of the Ogallala Aquifer lies beneath Nebraska. Ground water is

defined by statute as part of the waters of the state. Since 1972, Nebraska has had some of the more comprehensive ground water protection laws in the Nation. In 1986, ground water quality standards and use classifications were set, and point source remediation required. Nitrates from agricultural production are a serious threat. There are management areas to protect ground water and related rules have been promulgated and implemented by the local NRDs, with state oversight under the Ground Water Management and Protection Act of 2006. Mike further said that he expects to see a number of water quality challenges (in the next 5-10 years) involving nutrients, ammonia, pharmaceuticals and other emerging contaminants, and pesticides.

Kira Finkler, Deputy Commissioner of External Affairs, Bureau of Reclamation, provided an overview of the agency's water resource policies, programs, and priorities. In particular, she praised the leadership within the Department of Interior and Reclamation for their interest and expertise in water matters, saying "the stars have aligned for water." She also discussed Interior Secretary Ken Salazar's initiatives, which include (1) a new energy frontier; (2) protecting treasured landscapes; (3) empowering Native American communities; (4) climate change; and (5) engaging youth in natural resources management and protection. Of note, Finkler said Reclamation is looking into increasing and integrating hydropower and solar power generation in some locations. She quoted the Western Governors' Association's (WGA) 2006 Water Report with respect to Indian water rights settlements and the proposed use of the Reclamation Fund for related water projects. She also addressed the needs of the Secretary's Water Rights Office. Kira also mentioned the Commissioner's appreciation for the Council's support for the SECURE Water Act, which authorized Reclamation's Challenge Grants program. Lastly, she noted Reclamation is proud to be involved with WestFAST and have Jonne Hower as its liaison. She concluded saying, "A top down solution isn't going to work. It hasn't in the past and won't in the future. The Secretary understands this. We will not be imposing solutions. Our job is to stimulate and convene [discussions]."

WestFAST Chairman, Roger Gorke, Environmental Protection Agency (EPA) provided an update of the team's work to date. He said that the political principals from each WestFAST agency are planning a meeting to discuss each agency's work, where they are and how they can use WestFAST and the WSWC. Roger also said the team will narrow its work plan to a few key items on which it can "get some real engagement." WestFAST is completing an inventory of the climate change efforts of each of the nine WestFAST agencies. Ward Staubitz, U.S. Geological Survey (USGS), described the inventory. WestFAST is also looking at reservoir operation plans in light of climate change, and wants to find specific case studies to focus this effort. Roger also mentioned that Duane Smith, former WSWC chair, is serving on a national advisory committee on drinking water that EPA staffs.

The WSWC revised and readopted sunseting Position #284, which urges the Administration and Congress to give a high priority to the allocation and appropriation of sufficient funds for important federal water and climate data programs that: (1) provide data on flooding, drought and climate change impacts; (2) project future water supplies; (3) estimate streamflows; and (4) facilitate water management and the administration of water rights, decrees and interstate compacts. Of note, the position specifically adds to a list of critical programs USGS ground water monitoring and measurement, and the National Oceanic and Atmospheric Administration (NOAA) National Weather Service and Climate Programs Office.



The Council also discussed how best to be involved in the dialogue on national water resources needs and strategies to meet those needs. The WSWC will suggest the WGA consider sending a letter asking for a more inclusive and structured dialogue as to how best to identify, evaluate, prioritize and face the Nation's present and future water-related challenges.

Tom Christensen, Natural Resources Conservation Service (NRCS), Regional Conservationist, addressed the Water Resources Committee on NRCS activities, including the Agricultural Water Enhancement Program. Chris Reimer, National Ground Water Association, talked about a national ground water monitoring network. Tom Iseman, WGA Water Program Manager, discussed a WGA proposal to the Department of Energy to compile information on the availability of existing water supplies for energy development and water/energy nexus issues. The Committee also discussed the 2009 Innovation in Government Award that Idaho received for its METRIC (Mapping EvapoTranspiration with High Resolution and Internalized Calibration) program; funding to include a thermal infrared sensor (TIRS) on the next Landsat mission; the yet-to-be introduced Sustainable Watershed Planning Act; WestFAST efforts; the 2009 Fall WSWC Water Symposium held in Denver, Colorado; and a WGA workshop on the National Integrated Drought Information System (NIDIS) and climate service, which was held in Lincoln on October 13-14, before the WSWC meetings.

At the Water Quality Committee meeting, Mike Tate of the Kansas Department of Health and Environment discussed nutrient criteria, while Derek Smithee of the Oklahoma Water Resources Board spoke on antidegradation policy. Andrew Fisk of the Association of State and Interstate Water Pollution Control Administrators described his organization's "Call for Change," which requests increased federal funding for core Clean Water Act programs and a more effective relationship between EPA and the states. Roger Gorke said his agency is aware of the "Call for Change," and mentioned that he has noticed a "new focus" at EPA with respect to collaboration with the states.

The Legal Committee listened to presentations by Bidtah Becker of New Mexico and Ryan Smith, Counsel to Senator Jon Kyl (R-AZ), on the Reclamation Fund and legislation authorizing up to \$1 billion for water supply projects that are part of Indian water rights settlements approved by Congress. The Committee discussed areas of possible collaboration with the Native American Rights Fund; the NARF/WSWC 2009 Indian Water Rights Symposium; pending Indian water rights settlement legislation; and the publication of the exempt wells report. The Committee and Water Quality Committee met jointly to hear a water quality litigation/legislation update and a description of the progress on a joint report by both committees on water reuse in WSWC member states.

OTHER MEETINGS

NARF/WSWC Symposium on the Settlement of Reserved Indian Water Rights Claims

The Western States Water Council (WSWC) and the Native American Rights Fund (NARF) held another in a series of symposia on the Settlement of Reserved Indian Water Rights Claims on August 24-26, in Ferndale, Washington. The Lummi Nation hosted the event, which included presentations and speeches from Administration representatives, key Congressional staff members, and state and tribal leaders. Lummi Nation Chairman, Henry Cagey, welcomed nearly 200 people in attendance and explained the importance of water. He also discussed efforts to preserve the tribes resources and presented NARF Executive Director, John Echohawk, with a bandana representing a Lummi dancer, canoe, and tribal leader.

Next, Mr. Echohawk explained the history and purpose of the Symposium is to provide a forum for water experts from around the country to exchange information and advice regarding Indian water rights settlements. He also recognized the efforts of former WSWC Executive Director Craig Bell, who passed away unexpectedly in June. Mr. Echohawk presented the WSWC with a hand-made quilt in his honor. WSWC Executive Director Tony Willardson accepted the gift and also thanked the Lummi Nation for its hospitality. He referenced the Western Governors' Association's policy statement on settlements, which supports negotiated resolutions to Indian water rights claims and calls for appropriate federal participation and assistance.

Following these remarks, Jay Manning, Director of the Washington Department of Ecology (DOE) and a WSWC member, addressed "Washington's Water Challenge." Jay addressed a number of topics, including climate change, the loss of snowpack, and the proliferation of exempt wells. With respect to Indian water rights settlements, Jay said Washington is committed to resolving disputes through settlements, but added that the real trick is making an agreement "stick" in basins where non-Indians will be impacted. To do this, Jay said that "... it takes a lot of education for non-tribal folks to gain a tribal perspective." He also described water management partnerships and programs in the Columbia, Walla Walla and Yakima river basins.

NARF Senior Staff Attorney Steve Moore moderated the first panel discussion, entitled, "Gathering Background Information and the Role of Technicians in Negotiations." The panel consisted of Randy Chandler, Deputy Manager of the Bureau of Reclamation's Phoenix Area Office; Andrew B. Dunn, Section Manager for the Washington Department of Ecology's Water Resources Program; and Joe Ely (filling in for Robert Bear), who worked on the Duck Valley settlement and is a project coordinator for Stetson Engineers, Inc. Mr. Chandler said parties should consult with technicians early in the settlement process to ensure that the terms of an agreement are practical. Mr. Dunn stressed the importance of sharing information and having technical staff communicate directly with each other. Mr. Ely said technical issues are a significant portion of a settlement and that technicians can mean the difference between success and failure.

A second panel discussion was entitled, "Identifying Parties and Issues and How Negotiations Bind Larger Groups." WSWC member and Washington Assistant Attorney General Barbara Markham moderated the panel, which included: Duane Mecham, a Senior Attorney with the Department of Interior's Solicitor's Office; Chris Tweeten, the Chairman of the Montana Reserved

Water Rights Compact Commission; and Stanley Pollack, an Assistant Attorney General for the Navajo Nation. Mr. Mecham said the settlement process helps create relationships that allow parties to work jointly on “outlier” issues and implement settlements. Mr. Tweeten and Mr. Pollack discussed the challenges associated with crafting politically feasible settlements and obtaining funding.

Next, NARF Staff Attorney David Cover moderated a panel on “Settlements and Ground Water.” Panelists included: Robert Talbot, a hydrogeologist with the Bureau of Reclamation; WSWC member Ken Slattery, Washington DOE Water Resources Program Manger; Merle Jefferson, Executive Director of the Lummi Nation Natural Resources Department; and Dr. Rosalind Bark with the University of Arizona’s Department of Hydrology and Water Resources. Mr. Talbot said ground water should be included as an “integral” component of a tribe’s water rights claims early in the negotiation process, while Ken provided a state perspective on whether federal reserved water rights extend to ground water. Mr. Jefferson described the “lessons” the Lummi Nation learned as a result of its settlement, and Dr. Bark discussed ground water rights within the context of the Arizona Water Settlement Act of 2004.

On Tuesday, Letty Belin, Counselor to Deputy Secretary of the Interior David Hayes, conducted a listening session. She said the Administration does not yet have a comprehensive settlement policy, adding that Reclamation Commissioner Mike Connors testimony on the White Mountain Apache bill (HR. 1065) is it’s only official statement. She also said the Administration “strongly supports” settlements, but recognizes that climate change, budget issues, and other challenges present obstacles. Of note, Ms. Belin said the Administration is: (1) concerned about the end costs of settlements and will look skeptically at proposals that lack significant state and non-Indian contributions; but is (2) open to take suggestions on funding mechanisms and spending offsets; and (3) will work to address the “impression and expectation” that the federal government will always say “no.” Pam Williams, Director of the Indian Water Rights Office, and Bella Wolitz, Assistant Legislative Counsel in the Office of the Secretary of the Interior, also participated in a question and answer session following Ms. Belin’s remarks.

A response panel followed, consisting of Scott McElroy, a partner with the law firm of McElroy, Meyer, Walker & Condon; and WSWC member Susan Cottingham, Program Manager, Montana Reserved Water Rights Compact Commission. Clayton Matt, Head of the Confederated Salish and Kootenai Tribes Natural Resource Department, moderated the discussion. Susan commented that a fully engaged federal sovereign is critical. Settlements consistently involve funding issues and a process that involves decisions coming from Washington, D.C. to the local level and back and forth. Mr. McElroy added that more money is needed in a number of areas, including the team building process in the early stages of a settlement.

Ken Slattery moderated a panel discussion on the Lummi Settlement, which included Barbara Markham and Harry Johnsen, a partner with the law firm of Raas, Johnsen & Stuen. Mr. Johnsen represented the Lummi Nation. He provided a historical overview of the events leading up to the settlement, while Barbara discussed the prior and present litigation regarding the Tribes water rights. Following their remarks, symposium attendees embarked on a tour of the Lummi Reservation that included stops at ground water wells, pump stations, and tribal government and cultural buildings. The tour also included a salmon barbeque, a cultural presentation, artisan fair, and a canoe race.

On Wednesday, NARF Staff Attorney Amy Bowers moderated a panel on the “Congressional Outlook for Funding for Indian Water Rights Settlements.” It included: Allison Binney, Majority Staff, Senate Indian Affairs Committee; David Mullon, Minority Staff, Senate Indian Affairs Committee; Tanya Trujillo, Majority Staff, Senate Energy and Natural Resources Committee; Ryan Smith, Legislative Counsel for Senator Jon Kyl (R-AZ); and Camille Calimlim, Majority Staff, House Natural Resources Committee, Water and Power Subcommittee. Mr. Mullon described the process the Senate Indian Affairs Committee uses for settlement bills. Ms. Binney said the Committee Chair, Senator Byron Dorgan (D-ND), does not like to move bills that are opposed by a Senator from an impacted state or involve interstate conflicts where the parties have not tried to resolve disputes. She also said this Congress is taking a “closer look” at state and non-Indian contributions and waiver provisions. Ms. Trujillo and Mr. Smith then discussed options available through a recently created settlement fund, and the President’s Emergency Plan for AIDS Relief, a statute which also authorized \$1 billion for Indian water supply projects. Lastly, Ms. Calimlim described her subcommittee’s processes. She said the White Mountain Apache (HR. 1065), Crow (HR. 545), Taos (H.R. 3254), and Aamodt (HR. 3342) settlement bills will be priorities for action.

WSWC member Candace West, the Chief Legal Counsel for Montana’s Department of Natural Resources and Conservation, moderated a response panel consisting of: Mark Sheridan, a partner with Holland & Hart, LLP; Don Wilson, the Director of Natural Resources for the Blackfoot Tribe; Barbara Cosens, Associate Professor of Law, University of Idaho College of Law; and Bella Wolitz from Interior. Mr. Sheridan spoke of his experiences representing non-Indian water users in the Aamodt Settlement, and said parties need to make Indian water rights a “sorrow” that can compete with other “sorrows” before Congress and the President. Mr. Wilson recommended frequent contact with Congressional staffers, and said parties should look to other sources to secure funding in addition to the federal government. Lastly, Ms. Wolitz described the process of authorizing and appropriating settlement funds, while Ms. Cosens discussed strategy development.

Billy Frank, Jr., Chairman of the Northwest Indian Fisheries Commission, provided the concluding “wrap up.” He said the current system is “broken,” but urged tribes to work with the new Administration and Congress and to play an integral role in the new team efforts to fix “the machine.”

WGA/WSWC Water and Land Use Planning Symposium

On September 28-30, the Council, the Western Governors’ Association (WGA), and the Colorado Department of Natural Resources sponsored a “Symposium on Water and Land Use Planning for a Sustainable Future: Scaling and Integrating,” in Denver, Colorado. The Symposium encompassed a variety of topics on land and water use planning, and participants included developers, nongovernmental organizations, and state, local, and federal government agencies. Over 150 people were registered.

John Tubbs, a former WSWC member and Deputy Assistant Secretary of Interior for Water and Science, was the keynote speaker. “I can attest to the fact that our institutions are built to divide the resource rather than to recognize the intrinsic and undeniable fact that water is a unified resource and the lands that drain it, the watershed, are the units of understanding and management,” he said. “Comprehensive watershed plans that integrate water quantity, water quality and land use make

sense.” John also discussed the impacts of climate change on western water resources, and highlighted a number of Interior initiatives, including Assistant Secretary Anne Castle’s initiative on water conservation. John said, “Her vision is to bring together the resources of the U.S. Geological Survey and the Bureau of Reclamation working with states, tribes, local governments and water users to identify best management practices and to establish a leadership role at the Department of the Interior in water conservation. Our goals are to focus on securing water supplies for existing uses, to provide strategies to stretch limited supplies to ensure the long-term survival of aquatic ecosystems and surrounding environments, and to seek ways to conserve water so that future growth can be sustainable.” He also said Castle and Bureau of Reclamation Commissioner Mike Connor are “...focused on implementing the SECURE Water Act....”

Colorado Governor Bill Ritter (D) also spoke. He said, “You have to engage towns, cities and communities to consider how they grow. Water use planning and land use planning have to go together.” He added, “Any growth plan we have must acknowledge the scarcity of water,” and opined that water planning should be more like transportation planning, which looks at where growth is likely to occur. As for ag-to-urban transfers, Ritter said Colorado should not sacrifice other values solely for urban growth. He noted, “Agriculture is part of our heritage. It is important to have a locally produced food supply.” He also addressed the energy/water nexus, saying the oil shale industry has “no idea of the amount of water needed” to extract oil from rocks on a commercial scale, and that “...there are a host of ways to produce energy with less consumptive use of water.” He recommended a combination of energy conservation, natural gas, wind, solar, geothermal and possibly nuclear power to reduce emissions.

A number of speakers with ties to the WSWC also spoke: WSWC Executive Director Tony Willardson; WestFAST Liaison Jonne Hower; WGA Water Program Director Tom Iseman; former WSWC member Roderick Walston, Best, Best & Krieger; and Mark Pifher, City of Aurora, Colorado. Other speakers included: representatives from EPA; Randy Karstaedt, the U.S. Forest Service; Maryanne Kurtinaitis, the Bureau of Land Management; Meg Estep, the U.S. Fish and Wildlife Service; Kay Brothers, the Southern Nevada Water Authority; John Longworth, the New Mexico State Engineer’s Office; Sandy Fabritz-Whitney, the Arizona Department of Water Resources; Lorna Stickel, the Portland Water Bureau; Graham Billingsley, the American Institute of Certified Planners; Brian Walsh, the Washington Department of Ecology, and others.³

The National Integrated Drought Information System and Climate Services Workshop

On October 13-14, in conjunction with the WSWC Fall Meetings in Lincoln, Nebraska, the Council and Western Governors’ Association sponsored a workshop for Midwest states on the National Oceanic and Atmospheric Administration’s National Integrated Drought Information System (NIDIS) and Climate Services. A diverse group of about 50 federal, state and local partners and stakeholders from the water and land management communities came together to discuss and understand decisionmakers’ needs for climate, weather, and water-related information and how to improve our capacity to meet those needs.

³Presentations are posted online at <http://www.westgov.org/wswc/meetings.html>.

The purpose was to: (1) increase participants' knowledge and awareness of present decision-support tools and processes, including NIDIS; (2) identify gaps in our knowledge, information for decisionmaking and communication resources; (3) discuss ways to better coordinate, integrate, display and distribute climate, weather, and water data and information; and (4) develop recommendations for future actions, collaborative research, and decision support.

Garland Erbele, WSWC Chairman, Tony Willardson, Executive Director and Tom Iseman, WGA Water Program Manager, welcomed the workshop participants. They emphasized the importance of drought in the West and Midwest, and the impacts it can have on our economy, environment, and quality of life. Drought has long been a priority for the Western Governors, and the WSWC and WGA have worked together to develop better information to help anticipate and respond to drought. Together they supported the establishment of the National Integrated Drought Information System (NIDIS) by Congress in 2006. Now that NIDIS exists, the WGA and WSWC convened this workshop to get feedback and recommendations from end-users of drought information for improving the system for on-the-ground drought planning and response.

Roger Pulwarty, the NOAA's NIDIS Director provided background on NIDIS and climate services, generally. He described the basic purpose of NIDIS, how it works to assimilate drought-related information from multiple agencies and sources, and the drought information services it provides to end users. Forming the right partnerships with end users is one key mission of the NIDIS project and will be essential to its future success in delivering drought information. Mr. Pulwarty described the recent activities of NIDIS, including the development of pilot projects in the Upper Colorado River Basin, Apalachicola-Chattahoochee-Flint Basin, and California. He noted that NIDIS is being considered as a model for the timely delivery of climate information to resource managers as NOAA and other federal agencies prepare for climate change. Thus, we need to get NIDIS right.

Mark Svoboda, a climatologist with the National Drought Mitigation Center (NDMC), gave a powerpoint presentation on the existing U.S. Drought Portal (USDP), a national, internet-based clearinghouse for data, models, forecasts, risk information, and impacts of drought that is part of NIDIS. The Drought Portal can help answer the following kinds of questions: (1) Where are drought conditions now and where might they develop? (2) Does this drought event look like other events in the past? (3) Will the drought continue? (4) How is the drought affecting me? and (5) How can I plan for and manage the impacts of drought? The Portal provides scalable drought information, from nationwide drought maps to county-by-county assessments for many places. It also is incorporating more information and tools on drought impacts.⁴

Two panels, one federal and one non-federal, addressed how drought affects their day-to-day decisions and ability to achieve their mission, what information they use to make drought-related decisions, and what information they need to do a better job of preparing for and responding to drought. Several themes emerged: (1) drought has impacts on a wide-array of federal, state, non-governmental, and private decisions; (2) agencies and individuals use a range of drought-related data

⁴For more information, see Mark's presentation posted online at www.westgov.org/wswc or visit www.drought.gov.

and information to make a wide array of decisions at scales from national to regional to local; and (3) different types of data could be used to improve drought response decisions.⁵

Mike Hayes, the Director of the National Drought Mitigation Center, presented an overview of drought information and provided observations on where NDMC and other stakeholders could go from here. He emphasized four main areas for the future direction of drought services: (1) Scale – developing higher resolution tools to consider more local and regional conditions and impacts; (2) Tools and Technology – developing a more robust set of drought metrics, including data on soil moisture, vegetation condition, streamflow percentiles, etc.; (3) Impacts – reporting impacts of drought, including those related to agriculture, fire, water resources, social effects, etc; and (4) Citizen Science – engaging people on the ground in reporting their drought observations, including through the Community Collaborative Rain, Hail and Snow Network (CoCoRaHS). These advancements will help us do a better job of planning, adapting to, and mitigating drought.

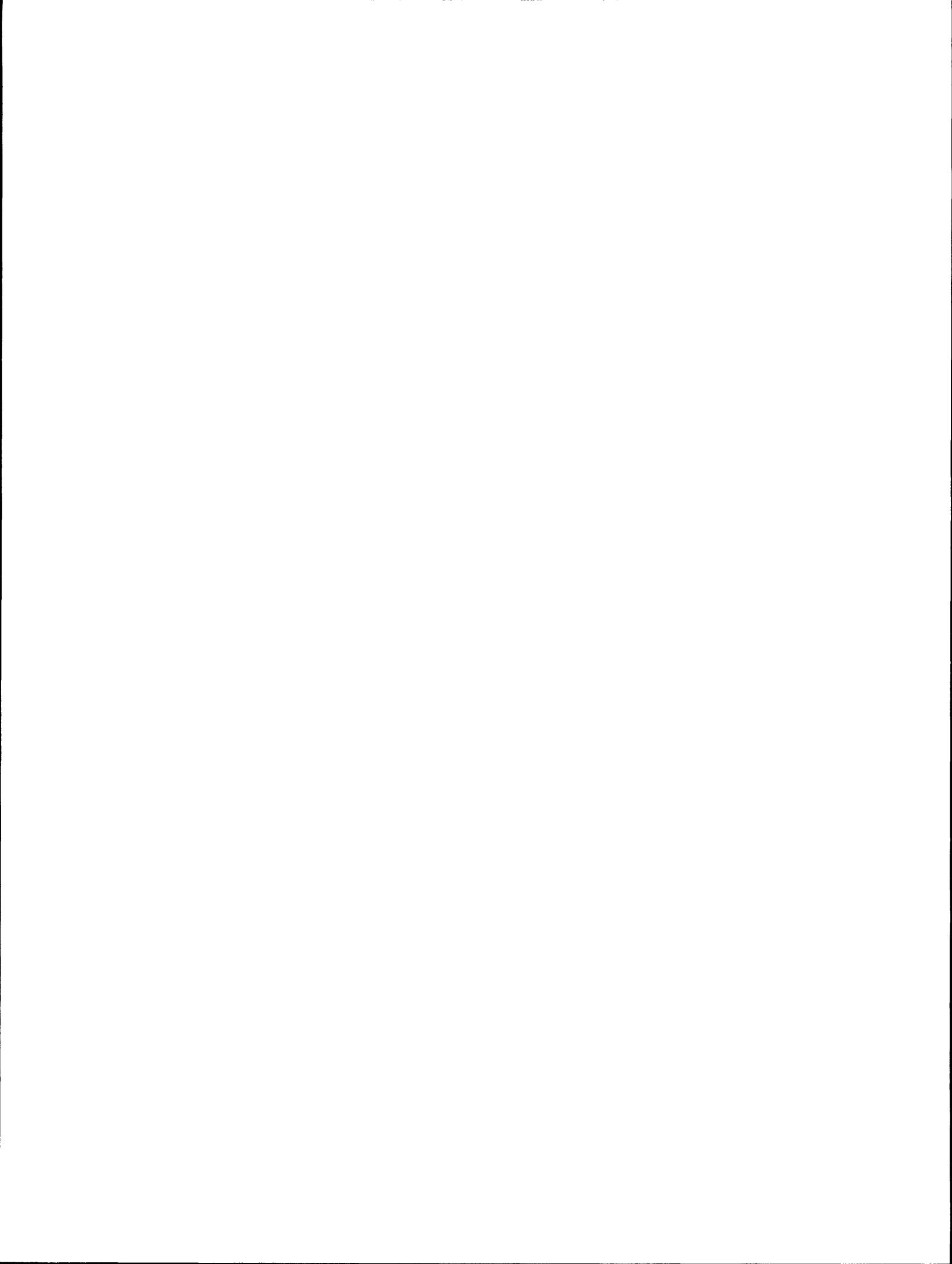
Over the course of the workshop, participants were asked to engage in three small group discussion sessions addressing: (1) your current situation related to drought decisions, data, and information; (2) data and information as the fundamental building blocks for action; and (3) decision support innovations and strategies. Each session was introduced by a case study presentation that highlighted the issues at hand in the context of an existing, on-the-ground project. Then, each small group discussed their experiences relating to the topics. The discussion was captured by note takers and formed the basis for a plenary discussion later.

Karl Dreher, a court appointed arbitrator and a consultant, presented a case study on the Republican River Compact. He discussed the interconnection between surface water and groundwater use in the Republican Basin, and how groundwater pumping for agriculture has lagging effects on surface flows for years into the future. It is critically important to understand groundwater use for irrigation in order to quantify impacts to surface flows and assess compliance with the compact. He has employed Landsat satellite imagery and the METRIC (Measuring EvapoTranspiration with high Resolution and Internalized Calculation) model to estimate evapotranspiration and consumptive water use. The Landsat imagery and METRIC model were key to addressing issues in the Republican and will be widely employed by other water managers in the West going forward.

Dave Pope, the Executive Director of the Missouri River Association of States and Tribes (MORAST), described work in the Missouri River Basin, which is a complex, big-river system, with an array of federal projects, a history of disputes over management, and a set of Endangered Species Act (ESA) issues. He highlighted a variety of data needed to address management questions, including storage data, streamgage data, precipitation, flood forecasting, floodplain information, and ecosystem and threatened and endangered species data. These are essential to the collaborative forums that have emerged to address management questions, including the ESA recovery program and Authorized Purposes Study.

Dr. Ruben Solis of the Texas Water Development Board, and John Neilsen-Gammon (by phone), the Texas State Climatologist, discussed the recent drought of record and how the state of Texas has responded. The current drought has replaced the 1950's drought as the drought of record

⁵Panelists and their presentations are listed at <http://www.westgov.org/wswc/meetings.html>.



in Texas, and the state has formed a Drought Preparedness Council to report to the Governor. At least two messages emerged from this council: (1) we need higher resolution data and information to make decisions; and (2) we need to understand the relevance of our information and how it will be used to answer questions and make decisions. We also need to know more about water demands. Drought is not just about climate, but how it affects people who need water. As demands grow, the impacts of drought will get more severe. As an illustration, the Texas drought has been estimated to have caused over \$4 billion in impacts to agriculture alone in Texas. Other key impacts include those related to municipal water supplies and forests and fires.⁶

Don Wilhite, the Director of the School of Natural Resources at the University of Nebraska-Lincoln and the former Director of the National Drought Mitigation Center, made a presentation on the History of Drought Response and Planning Efforts. He described the “Hydro-Illogical Cycle,” where we cycle from drought to awareness to concern to panic followed by rain resulting in apathy with respect to drought and then the cycle begins again when drought returns. We have progressed from impact response towards more drought risk management. Over time, we have developed new and useful drought monitoring data and tools. NIDIS provides an opportunity to develop a better drought early warning system and to increase our resilience to drought through planning and adaptation. Yet we still need to make more progress with NIDIS, as this conference suggests.

Workshop participants offered a range of suggestions in response to the question, “What next?” Their responses are summarized around the following four main themes addressing ways to strengthen NIDIS. First, under Basic Data and Forecasts, we need to increase resources dedicated to collect fundamental drought and climate data and to improve the accuracy and utility of “risk-based” drought monitoring. This includes streamgages and snow telemetry (SNOTEL) monitoring sites, but also higher-resolution climate forecasts, a better understanding of population trends, and more information on the growing economic impacts of drought. Basic data is essential to a true “early warning system” for drought. Second, with respect to Drought Decision Making, we need to improve the way we make decisions on drought, including through broad-based collaborative processes and a regular process for reviewing and updating drought plans. Drought planning should be embedded and integrated into water supply management, not an ad hoc response to the latest drought event. Third, regarding Education, we need to educate the public and decisionmakers on the impacts of drought and the benefits of sound and proactive drought planning and risk management. Finally, under Advocacy, we need to build a network of political support, including WGA and many others, to raise awareness and secure resources for funding drought and climate services and response.

In 2010, the WSWC and WGA (with NOAA support) will conduct additional workshops to be followed by a report on end user needs and recommendations for future activities.

Water Information Management and Climate Change Adaptation Workshop

On November 17-19, the Council and the California Department of Water Resources (DWR) co-hosted the 14th annual Water Information Management Systems (WIMS) Workshop in San Diego. It focused on climate change adaptation and information needs, and brought together over 50 water resources and technology specialists from five states, ten federal agencies, three universities, and numerous consulting and non-governmental organizations. Three important themes

⁶The case study presentations are available at: <http://www.westgov.org/wswc/meetings.html>.

emerged from the workshop. First, science can identify possible climate change outcomes, but cannot predict probabilities. Second, no climate models are perfect, and states must develop flexible adaptation measures and strategies that best handle all possible outcomes. Third, the downscaling of some climate models may not produce information that is useful for water managers given the limitations of current computer technology and run times.

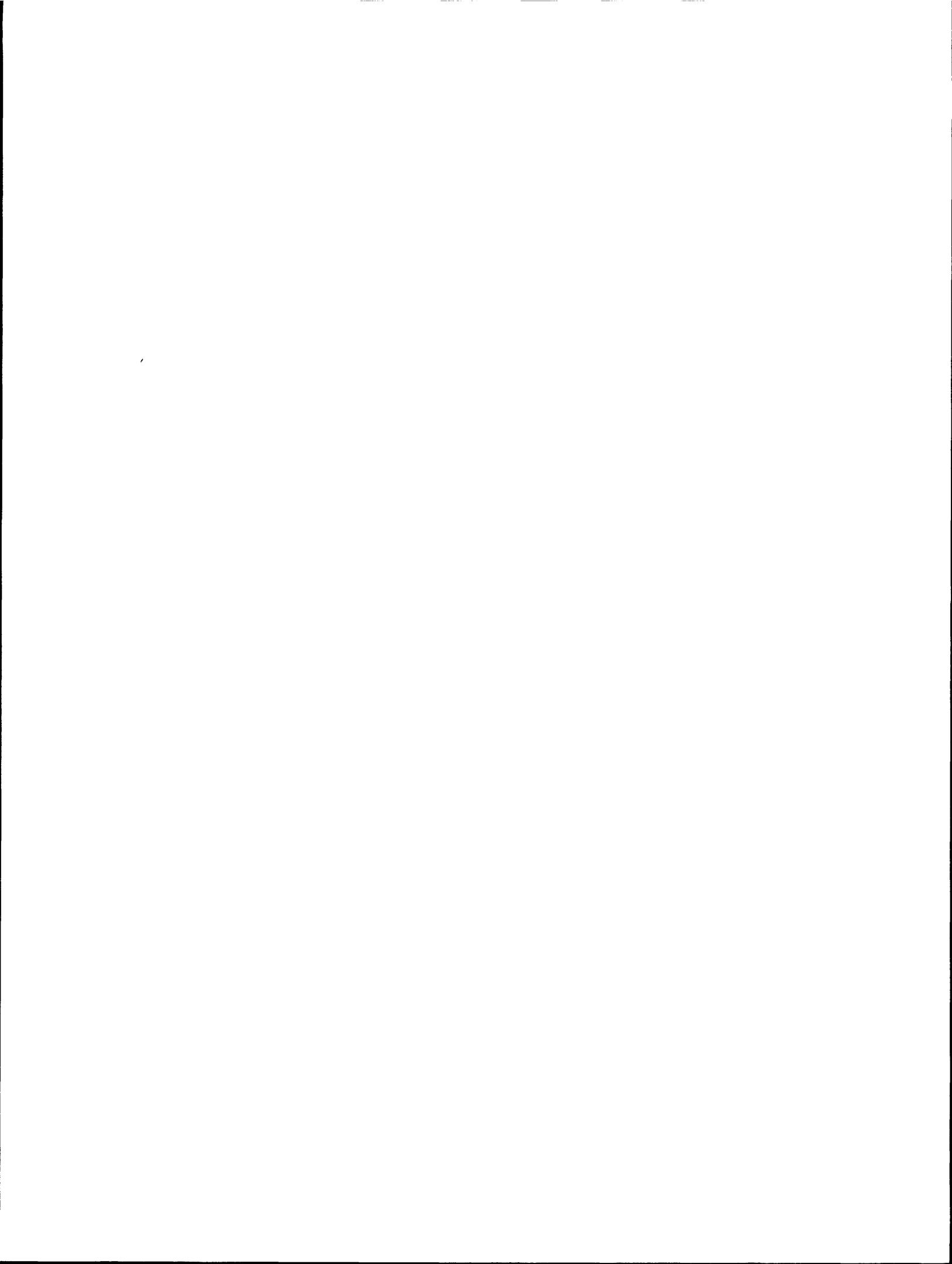
Jeanine Jones, a WSWC member and DWR's Interstate Resources Manager, discussed climate change adaptation efforts and the water/energy nexus. Regarding the latter, California is focused on water and energy conservation. States like Wyoming and Utah are interested in the amounts of water needed for oil and gas development, while Midwestern states are focused on the water needed to create biofuels. DWR's John Andrew described California's Climate Change Adaptation Plan, which organizes state agencies to address impacts in seven sectors, including: water, transportation and energy infrastructure; forestry; oceans and coastal resources; agriculture; biodiversity and habitat; and public health. Veva Deheza, Colorado Water Conservation Board, reported that Governor Bill Ritter has organized his state's adaptation efforts into four areas focusing on climate science, drought planning, interstate compact issues, and public education and outreach.

Tom Iseman, Western Governors' Association (WGA) staff, described two resolutions that call for the integration of climate change adaptation science and a national policy to reduce green house gas emissions. He also reported on the status of pending climate change legislation in the House (H.R. 2454) and Senate (S. 1733). University of Arizona Professor David Plane described demographic trends, noting that immigration from Latin America and Asia is increasing the West's population, raising water and energy needs.

A federal panel consisted of: Dave Raff, Bureau of Reclamation; Rolf Olsen, U.S. Army Corps of Engineers; Jim Verdin, National Oceanic and Atmospheric Administration (NOAA), National Integrated Drought Information System (NIDIS) Program Office; and Earl Greene, U.S. Geological Survey (USGS). USGS Circular 1331, authored by all four agencies, was mentioned. It focuses on the science needed to understand climate change impacts on water resources. Some of the other federal actions discussed included: (1) a synthesis of the knowledge in all five Reclamation regions regarding climate change; (2) a study of how climate change may impact 132 Corps' reservoir projects with a municipal and industrial water supply; and (3) a NIDIS early warning system pilot project in the Upper Colorado River Basin. Greene discussed global climate models and the need to downscale them into regional models in order to make "more precise" predictions and management decisions. Of note, Greg Holland, with the National Center for Atmospheric Research (NCAR), described how costly and time consuming that can be.

Remote sensing applications were addressed by a panel. Jim Verdin said the prospects for including a thermal infrared sensor (TIRS) on Landsat 8 look "better," but that December 18 is an "important decision point" regarding whether or not to include TIRS on the mission. Bryan Thoreson, SEBAL North America, Inc., discussed the use of TIRS data in calculating evapotranspiration (ET) and consumptive water use. Simon Yueh, with the Jet Propulsion Lab (JPL), described the use of optical, passive microwave, and radar to monitor snow cover and snow water equivalent. Passive microwave radiation is "OK" for prairies, but less accurate for mountains. Tom Farr, JPL, outlined the use of radar and trigonometry to measure earth surface elevation changes related to ground water use and recharge.

Other scientists made a number of key points regarding monitoring and data needs, including: (1) the relationship between carbon and temperature levels; (2) more computing power to run sophisticated atmospheric models at a finer resolution; (3) monitoring of actual evapo-transpiration; (4) the implications of climate change on ecological and fishery resources; (5) updating flood frequency and maximum probable precipitation data; and (6) water uses, particularly in agriculture. Power point presentations are available on the WSWC's website.



WESTERN STATES FEDERAL AGENCY SUPPORT TEAM

The Western States Federal Agency Support Team (WestFAST) was created in 2008 pursuant to a recommendation in the Western Governors' Association (WGA) report entitled: *Water Needs and Strategies for a Sustainable Future: Next Steps*. Comprised of nine federal agency representatives, it completed its first full year of operation in 2009, undertaking a work plan that included actions related to eleven of the 42 recommendations in the 2008 Water Report.

The WestFAST federal liaison, Jonne Hower, facilitated collaboration between WGA, WSWC and WestFAST agency representatives working out of the Council's office. Jonne was primarily responsible for meetings and communication with WGA and WSWC leadership.

Some of the major coordination tasks included WSWC and WGA participation as part of:

- (1) The U.S. Army Corps of Engineers' Building Strong Collaborative Relationships for a Sustainable Water Resources Future, including a Western Regional Meeting in conjunction with the WSWC's Kansas City Meetings in April, a National Collaborative Water Resources Conference in Washington, D.C. on August 25-27, and a National Collaborative Capacity Assessment by the Corps' Institute for Water Resources;
- (2) The Environmental Protection Agency's Climate Change Council and National Drinking Water Advisory Council;
- (3) The Department of the Interior's Secretarial Order on Climate, as well as Landscape Conservation Cooperatives, River Basin Studies, and California's Bay-Delta Interim Action Plan;
- (4) The National Oceanic and Atmospheric Administration's National Integrated Drought Information System;
- (5) The Climate Change and Western Water Group (CCAWG) organized by the U.S. Bureau of Reclamation and Corps; and
- (6) Various state and federal water resources data gathering activities.

More information on WestFAST activities is available in its 2009 work plan and biannual newsletters.

OTHER IMPORTANT ACTIVITIES AND EVENTS

Western States Water

Since the first issue in 1974, the Council's weekly newsletter, *Western States Water*, has been one of its most visible and well received products. Its primary purpose is to provide governors, members and others with accurate and timely information with respect to important events and trends. It is intended as an aid to help achieve better federal, state, and local decisionmaking and problemsolving, improve intergovernmental relations, promote western states' rights and interests, and highlight issues. Further, it covers Council meetings, changes in Council membership, and other Council business.

The newsletter is provided as a free service to members, governors and their staff, member state water resource agencies, state water users associations, selected multi-state organizations, key congressmen and their staffs, and top federal water officials. Other public and private agencies or individuals may subscribe for a fee.

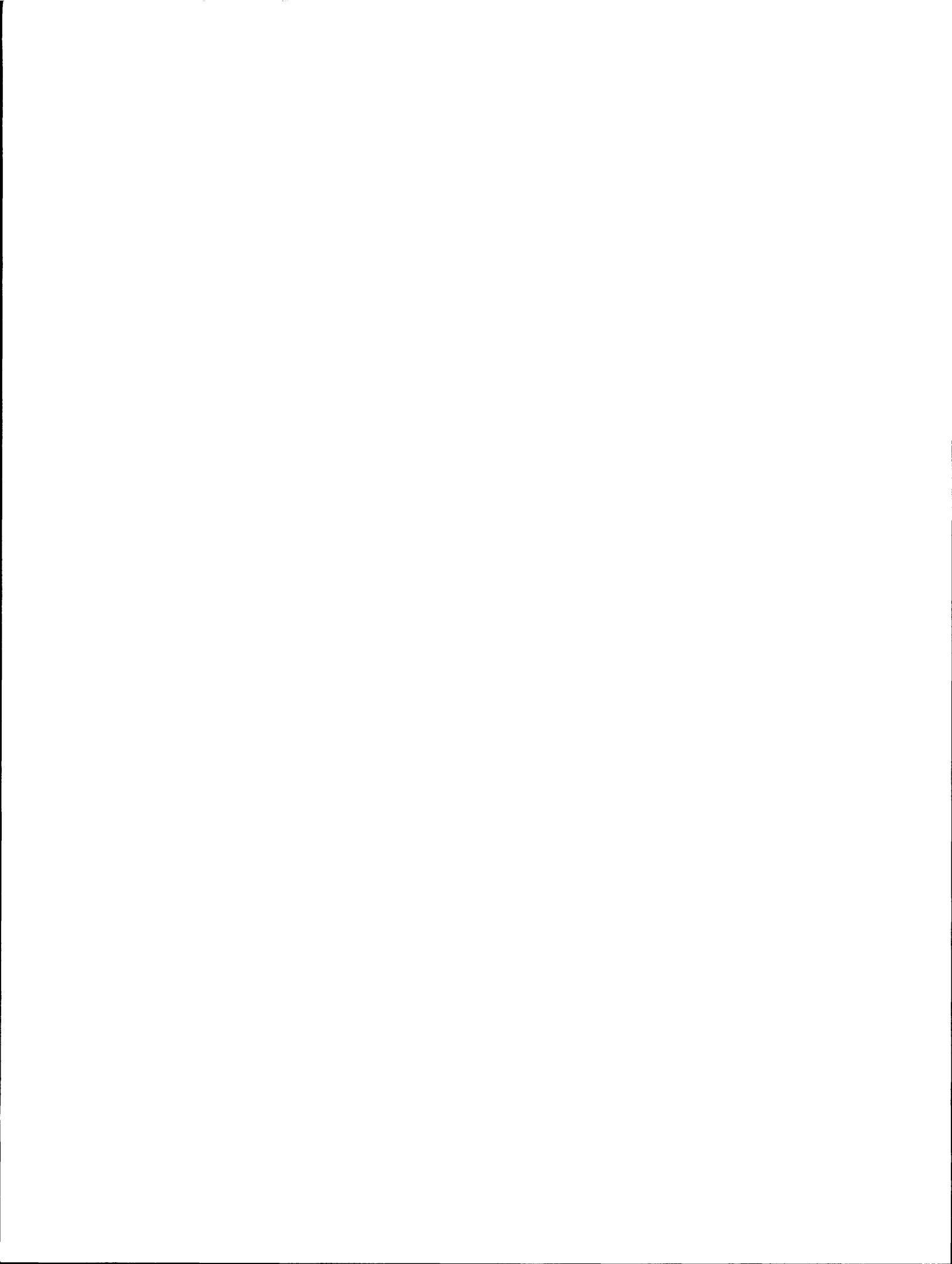
The following is a summary of significant activities and events in 2009 primarily taken from the newsletter. However, this does not represent an exclusive listing of all Council activities or other important events. Rather, it seeks to highlight specific topics.

21st Century Water Commission Act

On January 6, Rep. John Linder (R-GA) again introduced the 21st Century Water Commission Act of 2009 (H.R. 135). The bill had the same number as that twice introduced in earlier Congresses. It was again referred to the House Natural Resources and Transportation & Infrastructure Committees. The bill would create a commission that would estimate future water supply and demands, conduct a study of current water management projects aimed at increasing water supplies, and develop recommendations for a comprehensive water strategy aimed at ensuring an adequate and dependable 50-year supply of water for the United States.

The bill was nearly identical to the bill that Rep. Linder introduced in January 2007, but differed in some respects from a later version of the bill that the Natural Resources Committee reported in December 2007. First, unlike the reported version of the bill, the new bill did not require the comprehensive water strategy to suggest options that promote nonstructural elements (green infrastructure and low impact development techniques) when managing stormwater; specifically encourage the avoidance and minimization of adverse impacts to natural systems and the restoration of natural systems, or evaluate the impacts of climate change.

Second, this version's provisions regarding the Commission's membership differs from the last reported version. In the reported version, the President, the Speaker of the House, and the Senate Majority Leader would each appoint three members, while the minority leaders for the House and Senate each appoint one member. In contrast, this version would allow the President to appoint five members, while the Speaker of the House and Senate Majority leader would each appoint two members without any appointments from the Senate and House minority leaders. The new version would also empower the President to appoint the Chairperson, while the reported version required the Commission to elect a Chairperson by a majority vote.



Third, the new bill would give the Commission three years to complete a final report instead of five (as the reported version required), and authorize \$9 million instead of \$12 million in funding to carry out the Act.

Ag-to-Urban Water Transfers Work Group

The Western Governors' Association (WGA) and the WSWC are participating in an Agriculture/Urban/Environmental Water Sharing Group that is working to identify innovative ways to transfer and share agricultural water with urban uses, while avoiding or mitigating damages to agricultural economies and environmental values.⁷

The group was formed in November 2009, building on other efforts by interested groups and individuals in response to concerns and recommendations set forth in the 2006 and 2008 WGA Water Reports. WSWC staff, in coordination with WGA staff, have participated with the group since its inception under the direction of the Council's Legal Committee. The efforts of this group are consistent with standing WGA/WSWC policy.⁸

To date, the group has acquired a facilitator and received a grant from the Walton Family Foundation to investigate ag-to-urban transfers, focusing first on the Colorado River Basin in the Southwest. As part of this effort, the group is planning to hold a Water Sharing Forum in August 2010 to bring together selected experts from across the Basin to work with group members to identify strategies and obstacles to sharing water, and to develop policy recommendations to maximize the water available for the benefit of agriculture, urban uses, and the environment. Once the respective organizations have reviewed and approved the forum's final work product, the group will present its findings and recommendations to the western governors, the Bureau of Reclamation, and others for their consideration. WGA and WSWC staff will participate in the forum and are working with other group members to develop the agenda, identify possible experts, and extend invitations.

American Recovery and Reinvestment Act

On January 15, the House released its draft American Recovery and Reinvestment Act (ARRA). An Appropriations Committee press release stated, "The economy is in a crisis not seen

⁷In addition to the WGA and the WSWC, the group includes representatives from the Colorado Water Institute, the Environmental Defense Fund, the Metropolitan Water District of Southern California, Tumbling T Ranches, the Western Urban Water Coalition, WestFAST, the Colorado Water Conservation Board, the Family Farm Alliance, and the Nature Conservancy.

⁸"States and local governments should consider the impacts of continued growth that relies on transfers from agriculture and rural areas, and identify feasible alternatives to those transfers." 2006 Water Report, p. 6,1.D. "States..., working with interested stakeholders, should identify innovative ways to allow water transfers from agriculture to urban uses while avoiding or mitigating damages to agricultural economies and environmental values." 2008 Water Report, p. II, III Water Policy and Growth, 1.

since the Great Depression.” Chairman Dave Obey (D-WI), quoted Franklin D. Roosevelt, saying, “This nation asks for action, and action now.” The \$825 billion package targets science and technology, energy, transportation, water-ways and water projects, education, healthcare and jobs. It includes an estimated \$275 million in tax cuts. The Committee release states: “The economy is in such trouble that, even with passage of this package, unemployment rates are expected to rise to [6-9%] this year.... This package is the first crucial step in a concerted effort to create and save 3 to 4 million jobs, jumpstart our economy, and begin the process of transforming it for the 21st century [with] thoughtful and carefully targeted priority investments with unprecedented accountability measures built in.... With passage of this package, we will face a large deficit for years to come. Without it...we face the risk of economic chaos. Tough choices have been made...and fiscal discipline will demand tough choices in years to come.”

On January 21, the House Appropriations Committee passed the ARRA. A draft of the as yet unnumbered bill was posted to the Committee’s website, accompanied by a discussion draft committee report. The draft report provides the following details regarding proposed “recovery funding.”⁹

The Democratic Congress was under pressure to get a bill to President-elect Obama’s desk soon after his inauguration. House Minority Leader John Boehner (OH) expressed his disappointment, saying the plan was developed with no Republican input, and “appears to be grounded in the flawed notion that we can simply borrow and spend our way back to prosperity.” He said, “I can’t tell you how shocked I am at what I’m seeing.” While individual expenditures will be scrutinized, the package is not subject to “pay go” rules and required offsets.

On February 17, President Obama signed the ARRA (P.L. 111-5). The Conference Committee report was adopted by the House and Senate on February 13. The stimulus package includes appropriations for many water-related federal programs. These amounts are in addition to FY2009 spending approved under the current continuing resolution, soon to be replaced with a FY2009 omnibus spending bill, and in addition to the soon to be announced FY2010 budget request.

Under the U.S. Department of Agriculture (USDA) there is \$290 million for Watershed and Flood Prevention Operations in the Natural Resources Conservation Service, with \$145 million for purchasing and restoring floodplain easements under the Emergency Watershed Protection Program that provides for an enrollment process encompassing multiple regions of the country to provide the greatest public and environmental benefits (investing in both structural and nonstructural watershed infrastructure improvements. There is \$50 million for the Watershed Rehabilitation Program for aging flood control structures, with priority given projects at greatest risk of failure and that present threats to public safety. The USDA Rural Utilities Service received \$1.38 billion for Rural Water and Waste Disposal Program grants and loans, which will be leveraged to support \$3.79 billion with \$2.82 billion for direct loans and \$968 million for grants. The U.S. Forest Service appropriation includes \$650 million for maintenance and capital improvements, and \$500 million for wildland fire management.

⁹*Western States Water*, #1809, January 16, 2009.

Within the Department of Commerce, there is \$600 million for the National Oceanic and Atmospheric Administration (NOAA) to construct and repair facilities and equipment, to improve weather forecasting and to support satellite development - with \$170 million to address critical gaps in climate modeling and establish climate data records for research into the cause, effects and ways to mitigate climate change.

The NASA received \$400 million for Science. "Funding is included herein to accelerate the development of the tier 1 set of Earth science climate research missions recommended by the National Academies Decadal Survey and to increase the agency's supercomputing capabilities." It does not name the Landsat thermal infrared (TIR) imaging sensor as the House committee report did, but both the House and Senate Appropriations Committees have supported TIR. Further, NASA's reauthorization legislation last year directed the Administrator to prepare a plan for "ensuring the continuity of Landsat [TIR] data" and provide an "option at minimum cost to be flown on the Landsat Data Continuity Mission with minimum delay...."

The Energy and Water Appropriations provisions of the bill provided an additional \$4.6 billion for the U.S. Army Corps of Engineers for projects, programs and activities that "can be obligated/executed quickly; ...will result in high, immediate employment; ...have little schedule risk; ...will be executed by contract or direct hire of temporary labor; and...will complete either a project phase, a project, or will provide a useful service that does not require additional funding." The Corps is also directed to "maximize national benefits." The conferees agreed on \$25 million for investigations; \$2 billion for construction (while granting the Secretary of Army "unlimited reprogramming authority" for the funds); \$375 million for the Mississippi River and tributaries; \$2.1 billion for operation and maintenance; \$25 million for the regulatory program; and \$100 million for site remedial action.

The U.S. Bureau of Reclamation received an additional \$1 billion with identical criteria for setting priorities as the Corps. There is \$50 million to expedite implementation of the Central Utah Project Completion Act; \$50 million to accelerate California Bay-Delta restoration work; \$10 million for a bureau-wide inspection of canals in urbanized areas; \$60 million for rural water projects, primarily for water intake and treatment facilities; and \$126 million for Title XVI water reuse and reclamation projects. The conference agreement also provided that the costs of "extraordinary maintenance and replacement activities" shall be repaid pursuant to existing authority, except that the Commissioner may extend the repayment period up to 50 years at an interest rate based on average market yields on outstanding marketable U.S. obligations. The Secretary of the Interior is to submit a report to the House and Senate Appropriations committees within 45 days detailing the allocation, obligation and expenditure of funds (and quarterly thereafter). Other departments and agencies have similar reporting requirements.

The Act authorized the Western Area Power Administration to borrow from the Treasury a total of \$3.25 billion for planning, constructing, operating and maintaining new or upgraded electric power transmission lines and related facilities to facilitate delivery of power generated by renewable energy resources. Repayment is to be made solely from revenues from the use of projects and payments for ancillary services.

A number of agencies in the Department of Interior benefit, including an additional \$125 million for the Bureau of Land Management for maintenance, rehabilitation and restoration work, including remediation of abandoned mines and wells. There is another \$180 million for construction activities, and \$15 million for wildland fire management. The Fish and Wildlife Service (FWS) received \$115 million for construction, and another \$165 million for "resource management" for maintenance and capital improvements on national wildlife refuges and national fish hatcheries and high priority habitat restoration. The National Park Service total is \$750 million. The Act provides an additional \$140 million for the U.S. Geological Survey for equipment replacement and upgrades including streamgages, national map activities, and critical deferred maintenance and improvement projects.

Funding for the EPA includes \$6.4 billion for state and tribal assistance grants, including \$4 billion for further capitalization of the Clean Water State Revolving Fund (SRF) and \$2 billion for the Safe Drinking Water SRF. These funds are not subject to matching and cost share requirements. Any money allocated to individual states for projects that are not "under contract or construction" within 12 months are to be reallocated by the Administrator. Priority is to be given to projects "ready to proceed to construction" otherwise notwithstanding their ranking on a State priority list. Also, at least 50% of the funds appropriated by the Act are to be used for an additional subsidy in the form of "forgiveness of principal, negative interest loans or grants." Further, to the extent there are "sufficient eligible project applications" at least 20% of the money is to be used to address "green infrastructure, water or energy efficiency improvements or other environmentally innovative activities." In addition, up to 4% of the money is to be set aside (not the current 1.5% requirement) under Section 518 of the Clean Water Act to support Indian Health Service management and oversight of tribal projects. EPA also received \$100 million for Brownfields projects, \$300 million for Diesel Emission Reduction Act grants, plus \$600 million for Superfund remedial work, and \$200 million for leaking underground storage tanks (not subject to cost share requirements).

House Appropriations Committee Chairman Dave Obey (D-WI) opined on the House floor, "Mr. Speaker, this country faces the greatest crisis that we've seen in terms of our economy since the 1930's.... We're told if we do nothing, we're likely to see unemployment at least around 12% and we hope that with the passage of this proposal, we can mitigate that disaster to a significant degree.... [W]hat we are trying to do with this bill is to save and create several million jobs.... [W]e're trying to invest in new portions of the economy through science, technology, new energy initiatives...to modernize the economy and make it stronger.... Guess what? This bill isn't perfect.... I think...supporters of the bill are inclined to overstate its possibilities and opponents...are certainly inclined to trash it.... I do not know how many jobs this bill is likely to produce. What I do know is that the consensus of economists...is that this bill will save or create several million jobs. Exactly how many will be determined by history."

The Committee's Ranking Minority Member, Rep. Jerry Lewis (R-CA) declared, "I have said from the beginning of this Congress that we all want to help our president to succeed in providing relief to American workers and beginning our economic recovery. All of my efforts have gone toward ensuring that the spending and tax cuts in this legislation give us the maximum value in new or saved jobs, which should be the only goal of an emergency economic stimulus package.... But we are spending billions of dollars on...new programs that have never been considered in congressional committees. We are expanding...other federal programs in ways that will add to the

federal deficit for years to come. [Much] of the total spending in the bill...is devoted to increasing the size of government. Only [a portion] is for a temporary, one-time infusion of money into...federal programs to stimulate the economy.... I cannot vote for legislation that leaves our children and grandchildren so much deeper in debt, with such a small immediate result.”

On the Senate side, Appropriations Committee Chairman Daniel Inouye (D-HI) hailed passage of the ARRA as a “victory” for America’s economy, with \$311 billion in critical domestic spending as part of the total \$787 billion package. He observed, “The expeditious action taken by the Senate underscores the gravity of the crisis that we face.... This bill will help to save or create 3.5 million jobs, give working families immediate tax cuts, provide essential aid to states, and help rebuild our nation’s crumbling infrastructure. This is not a perfect bill, but it is a good bill, and it will begin the process of leading America out of this crisis and back on a path to strong, sustainable economic growth.”

Senate Minority Leader Mitch McConnell declared, “This isn’t Monopoly money. It’s real. It adds up - and it has to be paid back, by our children and by their children. And the American people don’t have the facts about the total cost.... The situation is serious. It appears to be getting worse.... A stimulus bill that was supposed to be timely, targeted, and temporary is none of the above.”

Bureau of Reclamation

FY2010 Budget Request

The Bureau of Reclamation’s FY2010 budget request totaled \$1.021 billion, offset by \$35 million in discretionary receipts from the Central Valley Project Restoration Fund for a net discretionary budget authority of \$985.6 million, a \$37 million decrease from FY2009. However, this is in addition to the \$1 billion that Reclamation received under the Stimulus package. As requested, the spending be would allocated among the following categories: (1) water and related resources (\$893 million); (2) policy and administration (\$61 million); (3) the Central Valley Project Restoration Fund (\$35 million); and (4) the California Bay Delta Restoration Fund (\$31 million). With respect to specific projects, it includes: \$54 million for the Animas La Plata Project; \$133 for Central Valley Project; \$18 million for the Central Arizona Project; \$48.8 million for facility maintenance; \$39 million for water reclamation and reuse; \$19M for the Endangered Species Recovery Program; \$102 million for dam safety; \$488,000 for drought emergency assistance; \$25 million for the Klamath Project; \$5 million for the Rio Grande Project; and \$64 million for rural water programs. The budget also separately requests \$42 million for the Central Utah Project.

In addition, the budget request also allocates \$46 million to the Water Conservation Initiative by providing \$33 million in Challenge Grants, \$4 million for basin studies, and \$9 million to Title XVI projects. These grants will be available for water marketing projects, water efficiency and conservation projects, projects that improve water management, and pilot and demonstration projects that show the economic viability of treating and using brackish ground water, seawater, or waters of impaired quality.

On June 3, Department of Interior Secretary Ken Salazar testified before the Senate Appropriations Subcommittee on Interior, Environment, and Related Agencies regarding Interior’s

FY2010 \$12.1 billion budget request. Salazar identified the increased variability of water supplies as a “key aspect” of climate change. Although the Bureau of Reclamation does not fall under the Committee’s jurisdiction, Salazar said the agency’s water conservation, water basin studies, and water reuse activities are an “important complement of the Department’s climate impacts initiative.” He also said the request increases Reclamation’s conservation challenge grants by \$26 million and requests \$64 million for seven ongoing authorized Reclamation rural water projects.

In related news, the very recently sworn-in Reclamation Commissioner, Michael Connor, in a June 2 open letter to agency employees, said the agency “...is now expected to serve a much broader spectrum of needs in the 21st Century.” He has “no illusions” about the challenges and expectations facing Reclamation. “Reclamation, perhaps more than any other agency within the Department, has a role to play in all of the initiatives identified by [Secretary Salazar in the 2010 budget].”

American Recovery and Reinvestment Act

On April 15, Secretary Ken Salazar of the Department of the Interior and California Governor Arnold Schwarzenegger (R) held a press conference in which they announced that the Bureau of Reclamation will invest \$1 billion under the ARRA (Stimulus) package “to create jobs and get the economy moving again.” “President Obama and this Department have ambitious goals to build America’s new energy future, to protect and restore our treasured landscapes....” said Secretary Salazar. “These Bureau of Reclamation projects will help us fulfill these goals while helping American families and their communities prosper again.”

According to a Reclamation media packet, the majority of the \$1 billion in Stimulus funds will be expended by the end of 2010, and “nearly all funds will be spent by the end of 2011.”¹⁰ About \$451 million will go towards meeting future water supply needs, including \$135 million for projects “providing for the reclamation and reuse of wastewater and naturally impaired ground and surface waters,” and \$200 million for the “construction of rural water projects with an emphasis on water intakes and water treatment plants.” Another \$164.6 million will be allocated for infrastructure reliability and safety projects, including \$10 million to inspect canals in urban areas using aerial and onsite procedures, and \$130 million for “high priority infrastructure repair and replacement projects across many Reclamation facilities across the West.” With respect to environmental and ecosystem restoration projects, Reclamation will spend a total of \$236.3 million on projects in California, Washington, Nevada, Arizona, and Oregon. Similarly, \$13.5 million will go towards a green office building in Nevada, while \$40 million will fund “competitively selected grants” as part of Reclamation’s Water Conservation Initiative (formerly known as the Challenge Grant Program) for water marketing and efficiency grants. An addition \$40 million will go towards emergency drought relief projects. In total, Interior will manage \$3 billion in investments as part of the Stimulus package.

¹⁰<http://www.doi.gov/news/09NewsReleases/041509.html>.

California

California will receive \$260 million of the \$1 billion in Reclamation Stimulus funds, and an additional \$135 million will be available for grants for water reuse and recycling projects. In total, Secretary of the Interior Ken Salazar has announced over 30 Reclamation water infrastructure projects in California. These include: (1) \$40 million for “immediate emergency drought relief in the West, focused on California,” which includes the installation of ground water wells to boost water supplies to agricultural and urban contractors, water transfers, and the installation of rock barriers in the Sacramento Delta to meet water quality standards during low flows; (2) \$109.8 million to build a screened pumping plant at the Red Bluff Diversion Dam to protect fish populations while “delivering water to agricultural users irrigating approximately 150,000 acres;” (3) \$22.3 million to address dam safety concerns at Folsom Dam near Sacramento; (4) \$8.5 million to repair water-related infrastructure at Folsom Dam; (5) \$20 million for the Contra Costa Canal to protect water supplies for 500,000 people and to build fish screens to restore winter-run Chinook salmon and the Delta smelt; (6) \$4.5 million to restore the Trinity River; (7) \$26 million for the Battle Creek Salmon/Steelhead Restoration project aimed at helping restore fisheries in northern California; (8) \$4 million to the Bay Delta Conservation Plan for conveyance systems to move Central Valley Project water; (9) \$4 million to “broaden scientific knowledge of Klamath River sedimentation for future management decision-making;” and (10) \$20.7 million in smaller water infrastructure and related projects across California.

Secretary Salazar explained the need for the funding, saying that it will “...help address both short and long-term water supply challenges the Golden State is facing. From boosting water supplies and improving conservation to improving safety at our dams, these shovel-ready projects will make a real and immediate difference in the lives of farmers, businesses, Native American Tribes, and communities across California.”

Central Utah Project

On April 15, Secretary Salazar announced that Interior will invest \$50 million from the Stimulus on the Central Utah Project (CUP), which delivers water from the Colorado River Basin to water users in Central Utah. Interior’s Central Utah Project Completion Act (CUPCA) Office will use \$41 million to construct portions of the pipelines for conveying an additional 60,000 acre-feet of water to Utah and Salt Lake Counties as part of the Utah Lake System. An additional \$9 million will be used to construct a Ute Tribal fish hatchery and other fish and wildlife projects. “This investment in the [CUP] will help stimulate the local economy, protect and restore the environment, and support our commitment to Native Americans and rural communities,” said Secretary Salazar in an Interior press release.

House Oversight Hearing

On April 28, the Bureau of Reclamation’s Acting Commissioner, William McDonald, testified before the House Natural Resources Committee’s Subcommittee on Water and Power at an oversight hearing on the agency’s spending of \$1 billion in appropriations it received under the

Stimulus Act.¹¹ McDonald provided more information regarding the funds for projects in western states including: in the Dakotas and Montana \$200 million for six rural projects; in Oregon \$4 million for environmental restoration and infrastructure reliability; in Colorado \$20 million for infrastructure reliability, as well as \$12 million for the Animas-La Plata Project; in Arizona \$66 million for infrastructure reliability, future water supplies and environmental restoration; and in Washington \$120 million also for infrastructure reliability, future water supplies and environmental restoration.

McDonald also said that Reclamation will select other projects for funding under: (1) the Title II Colorado River Basin Salinity Control Project (\$10 million); (2) the Water Conservation Initiative/Challenge Grant Program (\$40 million); and (3) the Lower Colorado River Multi-Species Conservation Plan (\$2.5 million). McDonald also said the final selection has yet to be made for emergency drought relief projects, but added that Reclamation is "...gathering information from those suffering from 2009 drought conditions" and will "...begin some projects within the coming months."

McDonald also described Reclamation's project selection process, saying that it used a "multi-tiered, merit-based" evaluation process that considered: (1) the Stimulus' general objectives (creating jobs, investing in infrastructure) and Interior policy objectives (improving energy efficiency and assisting Native Americans); (2) project priorities specific to Reclamation; (3) Reclamation's overall program priorities; and (4) criteria for the selection of projects within individual program investment areas. McDonald further said that Reclamation gave priority to Stimulus activities with "more efficient construction schedules, probable cost reductions, and an earlier realization of project benefits."

Of note, the Stimulus requires that all appropriated funds be obligated by the end of FY2010, and to this end, McDonald expects "...that nearly all [selected] projects...will be well along by the end of fiscal year 2010 and completed by the end of fiscal year 2011, although a few will not be completed until fiscal year 2012." Many of the projects receiving Stimulus funding may be included in President Obama's FY2010 budget request. McDonald also said that Reclamation did not yet have sufficient information to characterize the Stimulus' overall effect.

Rural Water Supply

On June 26, Department of the Interior Secretary Ken Salazar announced that the Bureau of Reclamation had identified three rural water projects in the Dakotas to receive a total of \$93 million in Stimulus funding. The three projects are: (1) the Perkins County Rural Water Project in South Dakota (\$4.5 million); (2) portions of the Garrison State Rural Water Project in North Dakota (\$32 million); and (3) the Lewis and Clark Rural Water Project, which serves parts of South Dakota, Iowa, and Minnesota (\$56.5 million). Salazar discussed the importance of the funding in an Interior press release, saying the funds will provide water to communities and create "...economic opportunities and local jobs while infusing some of the nation's most drought-ravaged areas with expanded water supplies and a brighter outlook for the future." Reclamation's Stimulus spending will total \$200 million for rural water projects in the West, with an emphasis on water intakes and water treatment plants.

¹¹*Western States Water*, #1822, April 17, 2009.

On August 10, Interior Secretary Ken Salazar announced that the Bureau of Reclamation awarded \$40 million in Stimulus funds to the Fort Peck/Dry Prairie Rural Water System in northeastern Montana. Salazar praised the funding saying, "This project is just one example of how we are creating economic opportunities and local jobs while infusing some of the Nation's most substandard water supply areas with high quality water and a brighter outlook for the future." He also said the federal government needs to fund more Western water projects to address growing agricultural issues, changing demographics, and climate change.

On October 14, the Bureau of Reclamation announced \$41.8 million in Stimulus money for tribal rural water projects in North Dakota and South Dakota. In North Dakota, the Three Affiliated Tribes and the Standing Rock Sioux Tribe will receive \$6.4 million and \$18.9 million respectively, while South Dakota's Oglala Sioux Tribe and Lower Brule Sioux Tribe will receive \$14.7 million and \$1.8 million. Reclamation Commissioner Mike Connor said the funding "...will facilitate getting clean water to our Nation's first people."

Reclamation also awarded a modification to an existing contract totaling \$5.27 million in Stimulus funds for the Navajo Nation to construct key portions of the Navajo Nation Municipal Pipeline (NNMP). The Colorado Ute Settlement Act Amendments of 2000 authorized the NNMP as part of the Animas-LaPlata Project to provide municipal and industrial water to the Navajo Nation. Connor said the funding will "...augment an existing highly stressed and aging drinking water system for the benefit of tribal residents living between Farmington and Shiprock, New Mexico."

Corps of Engineers

American Recovery and Reinvestment Act

On November 4, the House Transportation and Infrastructure Committee's Subcommittee on Water Resources and Environment held an oversight hearing on the progress of the American Recovery and Reinvestment Act (Stimulus), including the status of U.S. Army Corps of Engineers' projects. Jo-Ellen Darcy, the Assistant Secretary of the Army for Civil Works testified, "Nearly all of the \$4.6 billion appropriated for Civil Works has been identified for specific Civil Works projects and activities, and, as of September 30, 2009, financial obligations totaled \$2.2 billion, of which \$2 billion was for contracts and the balance was for temporary hired labor and administration and oversight of contracts. As of that date, outlays totaled \$328 million." Darcy also said 731 civil works projects are currently underway across the nation.

Water Resources Development Act

On November 18, the House Committee on Transportation and Infrastructure's Water Resources and Environment Subcommittee held a hearing on proposed water projects to be included in a 2010 Water Resources Development Act (WRDA). The hearing followed a November 3 request by Committee Chair James Oberstar (D-MN) and Ranking Member John Mica (R-FL), which asked their Congressional colleagues to submit project and study submissions by December 3. The last WRDA bill passed in 2007 after seven years of Congressional wrangling and authorized hundreds of Corps' flood control, navigation, hurricane protection, and ecosystem restoration projects.

In his opening statement, Oberstar said, "I am pleased that this Subcommittee is continuing its responsibility to move timely and predictable authorization bills for vital water resources studies and projects across the mission of the [Corps]. The projects authorized by these bills provide critically needed jobs while addressing the needs of our nation's crumbling infrastructure and restoring our natural environment."¹²

Similarly, Subcommittee Chair Eddie Bernice Johnson (D-TX) said, "Enactment of a new water resources bill to address the current needs of the Nation is a high priority of mine, and, I am certain, of all of our Committee members." She added, "Our intent today is to receive testimony and begin to gather information on individual project requests so that we can be in a position to move a new bill next year."

Subcommittee Ranking Member John Boozman (R-AR) also said WRDA allows the Corps "...to carry out its missions of navigation improvements at harbors and waterways, flood damage reduction in our communities, and environmental restoration at our lakes, rivers, and wetlands. These projects reduce transportation costs, save lives, homes, and businesses from the ravages of floodwaters, and improve the quality of life."

Rep. Grace Napolitano (D-CA) urged the Committee to look at recycling, reuse, and desalination projects. "We must make critical investments in underground storage, water replenishment, and remediation of our aquifers, and address the fact that climate change is forcing us to change our water habits and be less dependant on traditional water sources such as rivers and dams." She also requested the following projects: (1) \$2.3 million for a Pamona City ground water cleanup project; (2) \$7.5 million to provide greater reliability and improving water quality within the Pico Water District; (3) \$250,000 to renovate the City of Pico Rivera's water system regional intertie project; and (4) \$50 million for the Los Angeles County Flood Control District's San Gabriel River Watershed Environmental Assessment and Restoration Project. Napolitano was the only western representative to propose specific projects at the hearing.

Clean Water Act/Environmental Protection Agency

Wetlands Jurisdiction and Navigable Waters

U.S. v. Rapanos

In a consent decree filed on December 29, 2008, John A. Rapanos and related defendants agreed to resolve alleged violations of the Clean Water Act (CWA) at three sites in Michigan. Rapanos did not admit any wrongdoing, but will pay a "civil penalty" of \$150,000 and will construct a \$750,000 mitigation project of at least 100 acres that will "restore the functions and benefits" of 54 acres that Rapanos is accused of filling without authorization under the CWA. Rapanos also agreed to preserve an additional 134 acres, including 53 acres of wetlands, that were unaffected by his activities. The decree represents a complete and final settlement of the civil claims that the Environmental Protection Agency (EPA) filed against Rapanos. It also states that nothing in it "shall

¹²<http://transportation.house.gov/hearings/hearingDetail.aspx?NewsID=1041>.

be deemed an admission by [Rapanos] that any portion of the Sites are subject to regulatory jurisdiction under the CWA," nor does it affect a pending, parallel criminal matter.

The case dates to the late 1980s and early 1990s, when Rapanos cleared and backfilled 54 acres of land on his property that was at times saturated with water. Although the land was twenty miles from the nearest navigable-in-fact waterway, EPA determined that it was a wetland that qualified as a "navigable water" subject to CWA jurisdiction and brought an enforcement action against Rapanos under section 301(a) of the CWA for failing to obtain a permit from the U.S. Army Corps of Engineers. Rapanos argued that the wetlands were not "navigable" waters subject to CWA jurisdiction. A trial court found CWA jurisdiction applied and entered judgement against Rapanos, who appealed his case, ultimately to the U.S. Supreme Court.

The Supreme Court vacated the civil judgments in a split, 4-1-4 plurality decision that found that a lower court used an incorrect standard to determine that the land was subject to CWA jurisdiction. The Court remanded the case for further determinations as to whether the land was a "navigable" waterway subject to CWA jurisdiction. However, its opinion did not contain a clear majority and set forth two different jurisdictional tests, creating uncertainty regarding the types of waters that qualify as "navigable" waters.

Clean Water Restoration Act

On April 2, Senator Russ Feingold (D-WI) re-introduced the Clean Water Restoration Act (S. 787) in the 111th Congress, along with 23 co-sponsors, including Senate Environment and Public Works Committee Chair, Barbara Boxer (D-CA). The legislation is a response to the Supreme Court's *Rapanos* and *SWANCC* decisions, which Senator Feingold and others believe created confusion regarding CWA jurisdiction and removed CWA protection for a number of water bodies.

A press release from Senator Feingold states that the bill would again protect water bodies that "were long protected" under the CWA. To accomplish this goal, the bill would redefine the term "waters of the United States," used to determine CWA jurisdiction, as "all waters subject to the ebb and flow of the tide, the territorial seas, and all interstate and intrastate waters and their tributaries, including lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, natural ponds, and all impoundments of the foregoing, to the fullest extent that these waters, or activities affecting these waters, are subject to the legislative power of Congress under the Constitution."

The bill stated that one of its purposes is to "provide protection to the waters of the United States to the maximum extent of the legislative authority of Congress," and "...to restore geographical jurisdiction of the [CWA] to that which was in existence before the dates of the [*Rapanos* and *SWANCC*] decisions." Of note, the findings section of the bill identified "those features that were treated as [waters of the U.S.] pursuant to the regulations of the EPA and the [Army Corps of Engineers] in existence before the dates of the [Supreme Court] decisions." It also stated that "'ground waters' are treated separately from 'waters of the United States' for the purposes of the [CWA] and are not considered 'waters of the United States' under this Act." Further, the bill maintains that "Congress supports the policy in effect under section 101(g) of the [CWA]," which states in part that "the authority of each State to allocate quantities of water within its jurisdiction shall not be superceded, abrogated, or otherwise impaired by the [CWA]."

Feingold explained the need for the bill, saying, “If you support the [CWA], you must also support this bill to restore the protections of the [CWA]. Every day Congress fails to reaffirm [CWA] protections, more and more waters are stripped of their protections, jeopardizing the drinking water of millions of Americans, as well as our Nation’s wildlife habitats, recreational pursuits, agricultural and industrial uses, and public health.” Both Feingold and Rep. James Oberstar (D-MN) introduced legislation in the 110th Congress that aimed to implement pre-Rapanos CWA jurisdiction but failed to pass.¹³

State Revolving Funds

On May 14, the Senate Environment and Public Works Committee reported the Water Infrastructure Financing Act (S.1005), which would authorize nearly \$35 billion in new federal assistance, including money for the Clean Water and Drinking Water State Revolving Funds (SRFs). It would authorize SRF funding of \$20 billion and \$14.7 billion respectively over five years, provide additional flexibility within the Clean Water SRF for low income communities, and expand eligibility to include funding of storm water management, water conservation, and water reuse and recycling projects. Other highlights include a \$1.85 billion national grant program to address sewer over-flows, a \$50 million nationwide grant program to address agricultural water quality issues, and new incentives for green infrastructure projects.

Water and Wildlife Subcommittee Chairman Benjamin L. Cardin (D-MD) introduced the bill, and its co-sponsors, including: Committee Chairwoman Barbara Boxer (D-CA), Ranking Member James Inhofe (R-OK), and Subcommittee Ranking Member Mike Crapo (R-ID). Senator Boxer praised the bill’s approval as a “historic milestone,” saying: “Thanks to the partnership among the four key leaders from both parties on the Committee, we have reported a bill that invests in protecting the health of American families, that creates jobs and encourages communities to use the latest green technologies.” Senator Crapo offered similar praise, calling the bill a “significant breakthrough for clean water in this country.” Senator Inhofe said it “...will go a long way in helping our state and local communities meet their water needs.”

The Clean Water SRF provides low-interest loans and grants primarily for wastewater treatment projects, while the Drinking Water SRF provides low-interest loans for drinking water systems to finance improvements and also funds small communities and programs encouraging pollution prevention to ensure safe drinking water. The bill’s funding authorization far exceeds the WSWC’s calls for minimum annual appropriations of \$1.35 billion for the Clean Water SRF and \$850 billion for the Drinking Water SRF. WSWC Position No. 295 (adopted March 7, 2008) also called for “greater flexibility and fewer restrictions on state SRF management.... States - large and small - face different fiscal challenges and need to have the flexibility to meet their required match in accordance with their individual situation.”

Water Protection and Reinvestment Act of 2009

Rep. Earl Blumenauer (D-OR) introduced the Water Protection and Reinvestment Act of 2009 (H.R. 3202) on July 14. It would create a \$10 billion water trust fund to address the \$300-\$500

¹³*Western States Water*, #1815, February 27, 2009, and #1771, April 25, 2008.

billion water infrastructure funding gap. The fund would be financed through taxes assessed on bottled beverages, products disposed of in wastewater, corporate profits, and the pharmaceutical industry. It would also allocate \$5 billion or 48% of funding to the Clean Water State Revolving Fund (SRF) and \$3.5 billion or 35% of funding to the Drinking Water SRF. The remaining funds would support other water improvements and promote green infrastructure. Unlike a prior draft version of the bill, H.R. 3202 does not impose a tax on pesticides and fertilizers and increases the proposed tax rate on water-based beverage containers from 3 to 4 cents per container. Representatives Mike Simpson (R-ID), Norm Dicks (D-WA), Tom Petri (R-WI), and Steve LaTourette (R-OH) co-sponsored the bill.

The bill would also amend the Clean Water SRF programs so that: (1) engineering and design services awarded by the Act would be done in open competition in accordance with the Brooks Act; (2) the trust fund is subject to "Davis-Bacon" prevailing wage laws; and (3) no money would be used to subsidize new "communities, lots, or subdivisions."

Projects eligible for Clean Water SRF funding would include: (1) construction of public treatment works; (2) measures to increase the security of public treatment works; (3) implementation of non-point source management programs under Section 319 of the CWA; (4) conservation and management plans under Section 320 of CWA; (5) measures to manage, reduce, treat, capture, or reuse municipal stormwater; (6) the repair or replacement of decentralized wastewater treatment systems that treat domestic sewage; (7) measures that reduce the demand for publically-owned treatment works through conservation, efficiency, or reuse; (8) measures to integrate water resources management, planning and implementation; (9) measures to increase energy efficiency or renewable energy at a public facility; (10) projects to correct failing residential septic systems and cesspools; and (11) implementation of technologies, management programs, or other measures to improve monitoring and alerts for water quality threats. States must also allocate 50% of Clean Water SRF funds as grants instead of loans, and a 50% cost share for projects receiving grants would be required.

Under current law, Safe Drinking Water SRF funding can be used for two purposes: to facilitate compliance with drinking water regulations and to further the public health objectives of the Safe Drinking Water Act. The bill would expand these purposes and authorize states to spend money on existing infrastructure for: (1) planning, design, and associated preconstruction activities; (2) replacement or rehabilitation of aging treatment, storage, or distribution facilities; (3) capital projects to upgrade or enhance the security of public water systems; (4) consolidation of management functions with other public water systems; (5) increasing the energy or water efficiency of the water system; and (6) onsite projects to generate renewable energy.

The bill would also require that states use one-third of Safe Drinking Water SRF funding for infrastructure improvement projects in systems that serve populations of 100,000 or more. Three percent of total trust fund revenues would be used for "technical assistance to public water systems owned or operated by Indian tribes."

Of note, WSWC Position No. 295, adopted March 7, 2008, supports "stable continuing federal appropriations of \$1.35 billion for the Clean Water SRF and \$850 million for the Drinking Water SRF." It calls for "greater flexibility and fewer restrictions on state SRF management."

The National Association of Clean Water Agencies praised the bill as an "...important milestone in the efforts...to obtain a long-term, sustainable revenue source to help our communities provide strong protections for our environment and public health and ensure economic prosperity." The American Society of Civil Engineers also offered "strong support" for a stable, long-term funding mechanism, and said provisions "...such as making the program deficit neutral and including budgetary firewalls to prevent the diversion of monies collected - must be included to ensure long-term, sustainable success." American Rivers, the Rural Community Assistance Partnership, and others also expressed support for the bill.

American Recovery and Reinvestment Act

On November 4, the House Transportation and Infrastructure Committee's Subcommittee on Water Resources and Environment held an oversight hearing on the progress of the American Recovery and Reinvestment Act (Stimulus) funding for water resources infrastructure. Although the hearing discussed the status of U.S. Army Corps of Engineers' projects, much of the testimony focused on the \$4 billion in Stimulus funds that the EPA received for the Clean Water State Revolving Fund (SRF), which provides low-interest loans and grants for wastewater treatment projects.

"We have...seen progress in putting to work Recovery Act funds for Clean Water State Revolving Fund projects," said Committee Chairman James Oberstar (D-MN). "States and their local partners have put out to bid 48 percent of the total available formula funds, have signed contracts worth 30 percent of these funds, and work is underway on projects associated with 23 percent of these funds." Nevertheless, Oberstar warned, "While I am encouraged by these numbers, the [EPA] and their State partners must do more to ensure the quick and efficient use of these funds." With respect to the \$4.6 billion in Stimulus funds that the Corps received, Oberstar said it has committed \$2.3 billion for 744 projects, representing nearly 50 percent of available funds.

Similarly, Subcommittee Chair Eddie Bernice Johnson (D-TX), reported that EPA awarded \$3.98 million in Stimulus funds for capitalization grants, and said EPA should "...continue to take a greater role in facilitating further expenditures of Clean Water SRF funds by the individual states." She also said, "Every member of this committee should want the infrastructure investment made by this Act to improve the economy.... I see hopeful signs in today's testimony, but I remind all our witnesses that more must be done to ensure that these funds have their intended effect."

Craig Hooks, EPA's Assistant Administrator for the Office of Administration and Resources Management, submitted written testimony in which he discussed the challenges of implementing the Stimulus' SRF funds. First, he said EPA issued 23 project specific waivers from the Stimulus' "Buy American" provision, which requires funded projects to use only manufactured goods produced in the United States. He said the waivers were necessary because suitable US made products "...were not available or not available in sufficient quantities." Second, Hooks discussed the requirement that all Clean Water SRF Stimulus funds be under contract or construction by February 17, 2010. He said, "I have concern about the ability of some states to meet...the deadline.... EPA is working diligently to assist states in meeting the deadline, in order to avoid having to reallocate funds." Third, with respect to the requirement that states allocate 20% of their SRF dollars to promote green infrastructure, Hooks said "...14 states have awarded 20 percent or more of their Recovery Act funds

for green infrastructure projects, totaling more than \$355 million.” He also said that EPA anticipates that the remaining states will meet the 20% requirement.

Of note, Michael Gritzuk, Director of the Pima County Regional Wastewater Reclamation Department, in Tucson, Arizona, testified on behalf of the National Association of Clean Water Agencies, saying the Stimulus was a “good first step” in addressing the Nation’s water infrastructure needs. However, he added, “...the time is now to move forward with a clean water trust fund that will provide stable, dedicated revenue sources that would be deficit-neutral and would further help leverage local and state dollars for wastewater and water infrastructure projects. The Water Protection and Reinvestment Act (H.R. 3202) is a good starting point...”¹⁴

National Pollutant Discharge Elimination System

Water Transfers Rule

On June 5, the 11th Circuit upheld the EPA’s water transfers rule, which interprets the CWA as exempting water transfers from the permitting requirements of the National Pollutant Discharge Elimination System (NPDES). The Court held that the statutory language of the CWA was ambiguous as to whether it required an NPDES permit for water transfers and concluded that the rule “...is a reasonable, and therefore permissible, construction of the [CWA’s] language.” It also said, “Unless and until EPA rescinds or Congress overrides the regulation, we must give effect to it.”

The case addressed the South Florida Water Management District’s pumping of drainage canal water into Florida’s Lake Okeechobee. The Friends of the Everglades sued the District in 2002, arguing that the pumping constituted a discharge of a pollutant under the CWA and required an NPDES permit. The EPA joined the District, and argued a “unitary waters theory,” which maintains that all navigable waters in the U.S. are one, and that transferring water between navigable waters does not constitute an “addition” of pollutants because the pollutants are already in the water. A federal district court ruled for the plaintiffs in 2006, but the EPA finalized its rule in the summer of 2008.

Although other circuits, including the 11th Circuit, had held against a unitary waters theory upon which the transfers rule was based, the 11th Circuit is the first appellate court to address the validity of the rule following its promulgation. This was an important distinction for the Court, which noted that the prior decisions were not “precedent against [the rule].” Moreover, now that the rule is final, the Court noted that it could not overturn it so long as the CWA is ambiguous and the rule is a “reasonable construction.”

A number of groups and states, including the State of Washington, have filed other challenges to the rule. These challenges were consolidated by lottery in the 11th Circuit and were stayed pending the outcome of this case. Of note, some experts have opined that the outcome of the Lake Okeechobee case could determine the outcome of the consolidated rules challenge case.

¹⁴*Western States Water*, #1834, July 10, 2009 and #1838, August 7, 2009.

The Miccosukee Tribe, Friends of the Everglades and other plaintiffs have asked the 11th Circuit Court of Appeals for an en banc rehearing of a unanimous panel decision holding that the CWA is ambiguous as to whether a NPDES permit is required for water transfers and that EPA's final regulation providing that water transfers do not require NPDES permits is permissible and entitled to deference.

The Department of Justice's position is set out in a filing with the court. "Water transfers are activities that convey or connect waters of the United States through a point source without any intervening use or alteration of the water. Plaintiffs' petitions for rehearing...en banc should be denied. The Court's decision is correct and does not conflict with any decision by the Supreme Court, this Court, or other courts of appeal." Justice points out that "discharge of a pollutant" means "any addition of any pollutant to navigable waters from any point source."¹⁵

While the case was pending before the 11th Circuit, EPA promulgated its final water transfers rule providing that they do not require an NPDES permit. Justice states: "The Court concluded, based on its examination of the language, context, purposes and legislative history, that the statute is ambiguous on the question of whether water transfers are a 'discharge of a pollutant,' and thus require an NPDES permit, because there exist two reasonable competing interpretations of the relevant statutory language.... [T]he Court held that EPA's regulation providing that water transfers do not require an NPDES permit is permissible and thus controlling...."¹⁶

Contrary to plaintiffs contention, the 11th Circuit's decision does not conflict with decisions of the First and Second Circuits, which held the "discharge of a pollutant" did encompass water transfers because the *Catskill I*, *Catskill II* and *Dubois v. U.S. Department of Agriculture* decisions were rendered prior to EPA's rulemaking, and those courts were not reviewing an agency's interpretation of the statute that it was directed to enforce. "As this Court states, these cases 'decided only how best to construe the statutory language - not whether that language is ambiguous and could reasonably be construed another way,'" Justice says in its filing. "[T]he panel's decision creates no circuit split."

Plaintiffs also assert that the 11th Circuit's decision conflicts with the Supreme Court's *Miccosukee* decision. The Justice filing states: "[T]he Supreme Court commented on, but expressly declined to decide, whether the statute compelled or permitted the interpretation advanced by the United States, i.e., the position, based on the Act's language, structure, and long-standing administrative practice, that water transfers that merely transport navigable waters from one location, through a point source, to another location are not subject to the NPDES program.¹⁷ Instead, the Court instructed that this argument could be raised on remand." The Court did reject the argument that "a point source that does not itself add pollutants is not subject to NPDES permitting requirements because the addition is not 'from any point source' ...explaining that by definition the

¹⁵33 U.S.C. Section 1362(12)(A).

¹⁶(73 FR 33697 - June 13, 2008).

¹⁷541 U.S. at 109.

point source itself need not be the source of the pollutant.” The filing adds, “That holding does not, however, answer the separate question discussed, but not decided, by the Court, namely whether pumping polluted water from one navigable water body to another constitutes an ‘addition of any pollutants to navigable waters.’”

Justice points out, “As the United States explained in its brief in this case and EPA explained in the preamble to its rule, waters being moved through a water transfer do not lose their status as waters of the United States and thus pollutants moved from the donor water to the receiving water are not ‘added’ to the waters of the United States.”¹⁸

The Tribe also suggests the Supreme Court held in *Miccosukee* that permits are required for discharges from one meaningfully distinct water into another. “The Court did not so hold. The Supreme Court simply recognized that the case could be decided on an alternative ground because the plaintiff Tribe conceded that if the waters at issue were not meaningfully distinct, no permit would be required and there was an unresolved dispute among the parties as to whether the waters were in fact meaningfully distinct.” The Court remanded for further development of the factual record. Justice added, “The panel correctly concluded that the statutory language is ambiguous because, ‘addition...to navigable waters,’ can reasonably be read to refer to waters in the individual sense or to waters as a unitary whole.¹⁹ As the Court explains, the ordinary usage of ‘waters’ can collectively refer to several different bodies of water or refer to any one body of water.... The Court also correctly found that the statutory structure, context, purposes, and legislative history do not resolve the textual ambiguity.”²⁰

Justice observes, “The CWA is a comprehensive statute that addresses the problem of water pollution through a multifaceted federal-state approach.” It continues, “Plaintiffs suggest that the Court erred by deferring to EPA’s water transfer rule because the so-called unitary water reading was first advanced by the United States (as opposed to EPA) in *Miccosukee* and then by [the South Florida Water Management District] and the United States in this litigation. “EPA’s ‘holistic’ analysis and other stated rationale for its rule, such as policy considerations, support the Court’s finding of ambiguity in the statute. They do not, however, provide reason not to defer to EPA’s rule. Stated differently, as the Court correctly noted, the true conflict in this case is whether the statute is ambiguous. From the determination that there are two competing reasonable interpretations of the statute - one that would require NPDES permits for water transfers and one that does not - it necessarily follows that EPA’s rule providing that water transfers do not require NPDES permits is permissible under the statute.”

The Justice Department concludes: “Having found that the statute is ambiguous and can support differing reasonable readings, the Court...properly deferred to EPA’s reasonable, and therefore permissible, water transfers rule. The Court’s decision allows EPA to retain, rescind,

¹⁸(73 FR 33705).

¹⁹570 F.3d at 1223.

²⁰570 F.3d 1224-1227.

reconsider, or change the water transfers rule. EPA in fact intends to reconsider the rule; however, as the Court correctly concluded, unless and until EPA rescinds or changes the rule through notice and comment rulemaking (or Congress amends the Act), the current rule must be given effect.²¹ Accordingly, NPDES permits are not required for the water pumps at issue and the district court's judgment is properly reversed. For the foregoing reasons, the petitions for review should be denied."

Pesticides

National Cotton Council of America v. EPA

The National Cotton Council of America (NCC) and other agriculture groups have filed a petition for certiorari to the U.S. Supreme Court seeking reversal of the Sixth Circuit's decision in *National Cotton Council v. EPA*. The case invalidated a George W. Bush-era rule that exempted some pesticides from permitting under the NPDES, holding that the rule was not a reasonable construction of the Clean Water Act (CWA). In a press release, the NCC said, "The Court's decision creates duplicative regulation over pesticide applicators as they are already subject to [Federal Insecticide, Fungicide, and Rodenticide Act] requirements that were put in place by Congress to govern the applications of pesticides. If the decision is allowed to stand, it could potentially unravel the current [CWA's] agricultural exemptions for storm water runoff and irrigation return flow that have long protected farmers' rights."

Of note, Secretary of Agriculture Tom Vilsack sent EPA Administrator Lisa Jackson a letter in March urging the agency to challenge the ruling. He said, "The court's adverse decision will have profound implications for American farmers. The permit requirement could reach almost any pesticide application, requiring farmers to navigate a permitting system that is ill-suited to the demands of agricultural production. Failure to obtain a timely permit for pesticide application could cripple American farmers' emergency pest management efforts and hamper their ability to respond quickly to new pest infestations or threats of infestations, thus increasing the risk of crop losses." Instead of seeking a rehearing, EPA obtained a two-year stay to develop a permitting process that could comply with the ruling.

Section 404

Coeur Alaska, Inc. v. Southeast Alaska Conservation Council/Mine Slurry

On June 22, the U.S. Supreme Court ruled 6-3 that the U.S. Army Corps of Engineers (Corps) and not the EPA has the authority to permit mine slurry as "fill material" under Section 404 of the Clean Water Act (CWA). The case, *Coeur Alaska, Inc. v. Southeast Alaska Conservation Council (SEACC)* focused on a 404 permit that the Corps issued to an Alaska gold mine that would allow the mine to discharge "froth flotation" slurry into a naturally occurring lake, thereby raising the lake's bottom elevation. The EPA chose not to veto the permit under Section 404(c) of the CWA. A number of environmental groups led by the SEACC challenged the permit arguing: (1) that the mine should have obtained a Section 402 permit from the EPA - not a 404 permit from the Corps;

²¹570 F.3d at 1228.

and (2) that the slurry discharge would violate new source performance standards that the EPA promulgated under CWA Section 306, which prohibit froth-flotation gold mines from discharging wastewater, including solid wastes. A federal district court found in favor of the Corps, but the 9th Circuit reversed the decision, holding that the plain language of the CWA demonstrated that EPA's performance standard governed the discharge.

Justice Kennedy, writing for the majority, overturned the 9th Circuit decision. In doing so, he addressed SEACC's first argument by pointing out that the Corps has authority to issue permits for "fill material" under Section 404 of the CWA, while the EPA has authority to issue permits for discharges of all other pollutants under Section 402. Within this framework, Kennedy found that the mine's slurry qualified as "fill material," and that the mine "properly obtained its permit from the Corps of Engineers under § 404, rather than from the EPA, under § 402." Kennedy reached this decision because both agencies define "fill material" as any material that has the effect of changing the bottom elevation of water, including slurry. Kennedy found this regulatory scheme to be "a defined and workable line for determining whether the Corps or the EPA has the permit authority."

Kennedy addressed SEACC's second argument by noting that the CWA is ambiguous as to whether Section 306 applies to fill material discharged under Section 404; that Section 306 does not exempt fill material; and that Section 404 gives the Corps blanket authority to permit the discharge of fill material without mentioning Section 306. Given this ambiguity, Kennedy sought guidance in an internal EPA memorandum that discussed CWA regulation of the mine and concluded that EPA's new source performance standards did not apply to the discharge of slurry into the lake. Although Kennedy noted that agency memoranda do not merit the deference afforded final agency rules, he found the memorandum was consistent with the agencies' CWA regulations and held that the Corps' 404 permit did not violate EPA's new source performance standard.

Justice Ginsberg, joined by Justices Stevens and Souter, wrote a dissenting opinion that criticized the majority for creating a loophole that will allow regulated industries to bypass pollution control standards by adding solid matter to a pollutant to raise the bottom of a water body, thereby converting Section 306 pollutants into Section 404 fill material. However, Justice Breyer, who sided with the majority, pointed out that: (1) not every material that has the effect of fill is automatically subject to Section 404 instead of 402; (2) the EPA has veto authority under Section 404(c); and (3) a decision not to apply Section 306 and to allow permitting under Section 404 must be reasonable and subject to judicial review.²²

Enforcement and Compliance Assurance

In a July 2 memorandum to the Office of Enforcement and Compliance Assurance (OECA), EPA Administrator Lisa Jackson called for stronger CWA enforcement at federal and state levels, as well as a transformation of EPA's water quality and compliance information systems. Jackson directed OECA to: (1) "...improve and enhance information that is available through the EPA web site on compliance with the [CWA] and the level of enforcement activity in each state, showing connections where possible to local water quality;" (2) "raise the bar" for CWA enforcement

²²<http://www.supremecourt.gov/opinions/08pdf/07-984.pdf>.

performance, "...recognizing that authorized states have the first opportunity to act;" (3) improve enforcement in states where EPA directly implements the clean water program; and (4) "launch into a major shift of EPA's [CWA] information systems - so that data...will be readily available and transparent to both federal and state regulators and the public, over the web, on a real-time basis."

Jackson also directed OECA to develop an action plan to "...enhance public transparency regarding EPA and state [CWA] enforcement program performance, to strengthen that performance, and to transform our water quality and compliance information systems." According to Jackson, a "critical" part of this process will be "close consultation with EPA Regional Offices and with states, including the Environmental Council of the States (ECOS), and the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA)." OECA will now gather the "best ideas from the states and regions, as well as outside stakeholders" and report back to Jackson in 90 days with its recommendation.

Jackson made the above requests to address her concern that the agency is "...falling short of this Administration's expectations for the effectiveness of our clean water enforcement programs." She noted that data has shown that "...the level of significant non-compliance with permitting requirements is unacceptably high and the level of enforcement activity is unacceptably low. Our commitment to the rule of law as a foundational principle for EPA requires that we take action against significant violations and that we assure a consistent standard for compliance across the country."

Jackson further stated, "Compliance with the [CWA] is a shared responsibility of EPA and the states.... I believe that, working together with the states, there are positive steps we can take quickly to improve compliance and enhance water quality. The first step is to improve transparency.... An informed public is our best ally in pressing for better compliance."²³

National Association of Clean Water Agencies

In December, the National Association of Clean Water Agencies (NACWA) released a white paper that criticized EPA's current CWA enforcement efforts and its recent Clean Water Enforcement Action Plan. Among other "shortcomings," the paper says EPA's efforts: (1) stress "...the quantity of enforcement actions and the dollar value of fines and consent decree obligations as the benchmark of success, rather than determining if the resulting consent decrees and court orders actually translate into water quality improvements;" (2) create "...a 'one-size-fits-all' approach to dealing with CWA violations that assumes the same enforcement paradigm will work in all parts of the country;" (3) fail "...to take into account the sizeable contribution from nonpoint sources such as stormwater, agriculture, and air deposition;" and (4) lack "consistency and coordination" between EPA regions and states with respect to the regulation of treatment technologies and practices at publically owned treatment works.

The paper calls for EPA to develop a new "...holistic watershed approach to clean water permitting and enforcement that addresses water quality impairment on a watershed level, increased

²³<http://www.epa.gov/compliance/data/results/performance/cwa/jackson-ltr-cwa-enf.html>.

federal funding for water infrastructure, and improved affordability guidelines for communities implementing enforcement mandates.” Such an approach would also emphasize “...reducing the contributions of agriculture, stormwater, and other nonpoint sources to water quality impairments. It must also be flexible enough to take into account the likely impacts of climate change, particularly with regard to how changing precipitation patterns may affect multi-million dollar infrastructure projects now being mandated through consent decrees, and innovative enough to encourage the use of green infrastructure and other low impact development that can both improve water quality and provide a host of other ancillary environmental and community benefits.”²⁴

Good Samaritan

On October 13, Senator Mark Udall (D-CO) introduced the Good Samaritan Cleanup of Abandoned Hardrock Mines Act of 2009 (S. 1777), which aims to reduce legal uncertainties for Good Samaritans, willing to volunteer to help clean up and reclaim hardrock mine sites that are degrading water quality throughout the western United States. Specifically, the bill would create a new CWA program in which the EPA would issue permits that would allow Good Samaritans to clean up abandoned mines and relieve them “...of each obligation and liability under the [CWA].” The bill only addresses CWA liability, and fulfilling the terms of a permit would constitute compliance with the CWA. Moreover, permits would expire when clean ups are finished, thereby ending a permit holder’s responsibility for a project. Qualifying entities would not be responsible for the conditions at an abandoned mine, but would be required to submit detailed remediation plans that would be subject to public comment and EPA review.

On November 13, 2009 Governors “Butch” Otter of Idaho and Michael Rounds of South Dakota, wrote expressing WGA’s support for bipartisan legislation introduced by Senator Mark Udall of Colorado, along with Senators Michael Bennet of Colorado and James Risch of Idaho to encourage the clean up of abandoned hardrock mines by individuals or entities who had no role in the creation of the resulting environmental pollution and are not legally responsible for remediation. The bill would authorize the Environmental Protection Agency to approve Good Samaritan program permits under the Clean Water Act for any remaining discharges following such clean ups, and release such parties from any liability under the Act as long as they comply with such permits.

The WSWC and the Western Governors’ Association (WGA) have long supported Good Samaritan legislation. Udall recognized this support in a press release in which he stated: “The [WGA] has several times adopted resolutions on this subject, such as its most recent resolution in 2007 entitled “Cleaning Up Abandoned Mines,” wherein the governors urge Congress to take action to address liability issues and funding concerns.”²⁵

²⁴http://www.nacwa.org/index.php?option=com_content&view=article&id=10&Itemid=8.

²⁵*Western States Water*, #1674, June 16, 2006, #1725, June 8, 2007, and #1743, October 12, 2007.

House Hearing - Clean Water Act Anniversary

On October 15, the House Transportation and Infrastructure Committee held a hearing to mark the 37th anniversary of the CWA and to examine its implementation and effectiveness as of 2009. The hearing focused particularly on concerns that CWA enforcement has been inadequate or ineffective and that additional regulation is needed. In his opening statement, Committee Chair James Oberstar (D-MN), said the CWA's effectiveness rests on "sound science and technology," adequate funding, and a "strong" enforcement program. "Regrettably, we are faced today with a situation where these elements are incomplete and eroding, and as one might expect, it appears that we are losing ground with respect to the water quality goals of the [CWA]," he said. Oberstar further criticized the "drastic deterioration" of EPA's enforcement program during the Bush Administration and cited a recent New York Times article that described the "...systemic failure by Federal and State governments to enforce the [CWA]." He also urged EPA Administrator Lisa Jackson "...to begin taking the management steps necessary to protect our water, our public health, and our environment by improving oversight of the states, and reducing the surprising variance of noncompliance region by region."

In a written statement, Subcommittee on Water Resources and the Environment Chair Rep. Eddie Bernice Johnson (D-TX) said the CWA has made the nation's waters cleaner and safer, but warned that "...the reality that all of our waters are safe for public health and the environment continues to elude us." Johnson also addressed the concern that traditional point source discharges continue to be a significant source of pollution, saying "...we must recognize that the implementation of the [CWA] is a partnership between the Federal government and the States and Tribes.... However, testimony from today's witnesses shows that it is nearly impossible to determine the effectiveness of Federal and States efforts to protect water quality from point sources of pollution.... It is time that we take implementation and enforcement of our Clean Water laws seriously. We must hold polluters responsible for their actions and end recurring violations of the [CWA]".

During her testimony, Administrator Jackson announced a "Clean Water Act Enforcement Plan" that will consist of three elements. First, EPA will "...develop more innovative approaches to target enforcement to the most serious violations and the most significant sources." Second, it will "...strengthen [its] oversight of state permitting and enforcement programs." Jackson further explained, "EPA must clearly articulate the acceptable 'bar' for state clean water programs and consistently hold states accountable. In situations where states are not issuing protective permits or taking enforcement to achieve compliance, EPA needs to act to strengthen state programs and to pursue federal enforcement actions as necessary." Third, Jackson said EPA will take immediate steps to improve transparency and accountability. She also said, "EPA plans to work closely with the states to implement these actions and make long-term improvements in our [CWA] enforcement and compliance program." During the question and answer session, Jackson said EPA only has jurisdiction over surface water; clarity is needed to determine what is a water of the United States; and the EPA does not have a position on creating a trust fund to help pay for CWA compliance.

Tom Porta, the Deputy Administrator for the Nevada Division of Environmental Protection and the President of the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) also testified. He said, "States are doing a good job of enforcing the provisions of the [CWA] and should be commended given the constraints they work under." Tom further said recent

news stories highlighting unreported CWA violations are “a small part of the compliance picture” and that other factors should be considered. To illustrate his point, he cited enforcement data from a sample of states, where 99.3% of the water quality requirements and 95.4% of reporting requirements were achieved for 116 permitted facilities during the last four years. In Nevada, Tom reported “...the compliance rates for both effluent and reporting were over 99% for the recent four year period.”

In addition, Tom explained that ASIWPCA believes an effective enforcement/compliance program would: (1) “Identify problems before they become violations through technical and compliance assistance;” (2) “Focus on water quality violations, not paperwork or reporting glitches;” (3) “When appropriate, resolve violations quickly through non-formal enforcement actions;” (4) “Take formal enforcement actions when necessary and when compliance assistance and non-formal enforcement actions have failed;” and (5) “Track enforcement and compliance through reasonable data systems.”²⁶

Endangered Species Act

Delta Smelt

On January 7, Rep. George Radanovich (R-CA) came out in support of a Family Farm Alliance (FFA) request for the U.S. Fish and Wildlife Service (FWS) and the Department of Justice to correct the Effects Analysis (EA) portion of the Biological Opinion (BiOp) that the FWS issued for the endangered Delta smelt, a minnow located in California’s Sacramento-San Joaquin Delta. The BiOp found that pumping water from the Delta to provide water for southern California water users jeopardizes the smelt.²⁷ In December, the FFA requested FWS to correct the EA pursuant to the Information Quality Act (IQA), which requires federal agencies to exclude biased and inaccurate information and to ensure the integrity of expert peer reviews.

Radanovich said the EA is “biased, inaccurate, and misleading” and does not satisfy IQA guidelines. He also echoed the FFA’s concern that the FWS incorrectly blames pumping for the effects of toxic waste and invasive species that have contributed to the decline of the smelt, while FWS acknowledges that entrainment is not driving the population decline.²⁸

On April 8, the FWS announced that the San Francisco Bay-Delta population of the longfin smelt does not meet the legal criteria for protection under the Endangered Species Act (ESA) as a species subpopulation. The determination was in response to a petition seeking protection for the longfin as a distinct population segment (DPS) under the ESA. According to a FWS press release, in order for the longfin to be classified as a DPS, it must be “markedly separated from other populations” of the species. However, FWS determined that the Bay-Delta longfin population did

²⁶*Western States Water*, #1829, June 5, 2009 and #1834, July 10, 2009.

²⁷*Western States Water*, #1806, December 26, 2008.

²⁸Radanovich’s views can be found at: <http://radanovich.house.gov/News/>.

not satisfy this requirement because: (1) some longfin migrate into the Pacific Ocean and can travel up the coast to breed with other longfin further north; (2) coastal currents disperse longfin to northern estuaries; (3) “a conclusion could not be reached” that the Bay-Delta population is “markedly separate” than other populations; and (4) the single genetic study used was too limited to show that the Bay-Delta population is genetically different from other longfin. Despite its determination, FWS will seek additional information for a broader assessment that could lead to future action. Longfin tolerate wide ranges of salinity and are cousins of the delta smelt, which is already protected under the ESA and are found exclusively in the Delta.

Pumps in the Delta provide water to over 16 million people in the San Joaquin Valley and southern California. The petition which prompted FWS’ determination had argued that reduced outflow from the Delta had contributed to the longfin’s decline. State and federal court decisions aimed at protecting the smelt have already curtailed the amount of water that can be diverted from the Delta, and a decision by FWS to list the longfin could have further reduced pumping.²⁹

Consultation Rules

On April 9, twenty environmental and conservation groups, including the Sierra Club, the Izaak Walton League, and the Union of Concerned Scientists, sent a letter to the Departments of the Interior and Commerce, asking them to rescind ESA consultation rules that the agencies finalized in the last months of the Bush administration. Under new authority from Congress, the agencies have until May 9 to rescind the rules without public hearing or comment. The letter asks the agencies to fast-track the process, and urges the agencies “...to restore integrity to the [ESA] and withdraw the Bush administration’s ideologically driven regulations.” The regulations in question modified the ESA process in which federal agencies consult with FWS biologists to determine if their actions are likely to harm endangered species. The rules were criticized as weakening the ESA by allowing federal agencies to determine for themselves whether consultation is necessary.³⁰

On April 28, Secretary of the Interior Ken Salazar and Secretary of Commerce Gary Locke announced that they were revoking the ESA consultation rules that the Bush Administration finalized in December. The rules modified the process so that federal agencies were not required to consult with the FWS and National Marine Fisheries Service (NMFS) if their actions were unlikely to have an adverse impact on a listed species.

“Because science must serve as the foundation for decisions we make, federal agencies proposing to take actions that might affect threatened or endangered species will once again have to consult with biologists at [FWS and NMFS],” Secretary Salazar said in a joint press release. Secretary Locke echoed this, “Our decision affirms the Administration’s commitment to using sound science to promote conservation and protect the environment.”³¹

²⁹<http://www.fws.gov/news/NewsReleases/showNews.cfm?newsId=86D5FA27-998B-5D3D-4F605AB46CC8AA3C>.

³⁰*Western States Water*, #1809, January 26, 2009, #1805, December 19, 2008.

³¹Interior Press Release 4-28.

When the rule was promulgated, then-Interior Secretary Dirk Kempthorne said federal agencies had long made their own determinations about when to consult on a project and that the rules clarified the threshold for when consultation should occur. However, critics, including House Natural Resources Committee Chairman Nick Rahall (D-WV), the Sierra Club, and the American Bird Conservancy, criticized the rules as giving federal agencies too much discretion to determine when consultation should occur and narrowing the scope of activities that may adversely impact listed species.³²

Congress specifically authorized revocation of the rules, without the usually required notice and comment procedures, in the 2009 Omnibus Appropriations Act. President Obama also directed a review of the rule in March. Salazar and Locke said that FWS and NMFS will conduct a new review to determine if any consultation improvements should be proposed.

Habitat Conservation Plans

On April 20, Interior Secretary Ken Salazar announced \$57.8 million in grants aimed at helping 27 states work with private landowners, conservation groups and other agencies to conserve threatened and endangered species through the acquisition and protection of habitat. The grants, authorized under the ESA Section 6, will support the development of Habitat Conservation Plans (HCPs) and will be awarded through the FWS's Cooperative Endangered Species Conservation Fund (CESCF). HCPs are agreements between landowners and the FWS that allow landowners to conduct lawful activities on their property that may adversely impact a listed species so long as the landowners agree to conservation measures that mitigate impacts. Of the \$57.8 million total, \$7.6 million will be available through the HCP Planning Assistance Grants Program and \$36 million through the HCP Land Acquisition Grants Program. Another \$14.1 million will go to the Recovery Land Acquisition Grants Program. Salazar said the grants will "...empower landowners and local communities to be good stewards of the vital habitat that makes the recovery of listed species possible."³³

Polar Bear Rule

On May 8, Department of the Interior Secretary Ken Salazar announced the retention of the controversial "polar bear rule" under Section 4(d) of the ESA, which limits the use of the ESA to curb emissions of greenhouse gases. The Bush Administration issued the rule in December, six months after declaring the polar bear a threatened species due to the decline of Arctic sea ice as caused by global warming. "We must do all we can to help the polar bear recover," said Salazar in a press release. "However, the [ESA] is not the proper mechanism for controlling our nation's carbon emissions. Instead, we need a comprehensive energy and climate strategy that curbs climate change and its impacts - including the loss of sea ice." The decision was hailed by business groups concerned that the listing would allow the ESA to regulate greenhouse gasses thousands of miles

³²*Western States Water*, #1821, April 10, 2009, #1809, January 26, 2009, #1805, December 19, 2008.

³³FWS News Release, 4-20.

from where the polar bear lives. However, environmental groups who have sued to overturn the rule criticized the decision and said they would continue their lawsuits.³⁴

California Water Projects

On June 4, National Oceanic and Atmospheric Administration (NOAA) Fisheries issued a biological opinion saying that the Bureau of Reclamation's Central Valley Project (CVP) and California's State Water Project water pumping operations jeopardize the existence of a number of threatened species. The opinion concludes that the pumping operations of both projects should be changed to protect winter and spring run Chinook salmon, Central Valley steelhead, the southern population of North American green sturgeon, and southern resident killer whales.

The opinion's recommended changes would cut deliveries to the San Francisco Bay Area, San Joaquin Valley, Central Coast and Southern California by 330,000 acre-feet per year. This reduction would follow three consecutive years of drought and recent court decisions regarding the Delta smelt that have reduced CVP water deliveries to historic lows. Reclamation has provisionally accepted NOAA's recommended changes, and has said it will implement its near-term elements as it carefully evaluates the overall opinion. However, water operations will not be affected by the opinion immediately. The opinion does include exceptions for drought and health and safety issues.

The opinion provides a number of recommendations to help the imperiled species, including increasing cold water storage and flow rates. In a press release, NOAA said that the Stimulus could "...mitigate some costs resulting from the opinion's actions," and points out that the Department of Interior identified \$109 million to construct a pumping plant that will allow the Red Bluff Diversion Dam to be operated in a "gates out" position that will allow salmon and green sturgeon unimpeded passage. The Stimulus also contains another \$26 million to restore Battle Creek, a salmon tributary in the Sacramento River.³⁵

Indian Water Rights

Senate Oversight Hearing

On February 12, Ken Salazar, Secretary of the Interior, testified before the Senate Committee on Indian Affairs at his first hearing since being confirmed. Senator Byron Dorgan (D-ND) Chaired the hearing. Senator John Barrasso (R-WY) is the Ranking Minority Member. Salazar declared, "I am proud that my first hearing as the Secretary of the Interior is about America's First Americans. I am also honored to...discuss the Department of the Interior's role for Indian Affairs. During his campaign for the Presidency, President Obama spoke out in support of empowering Indian people in the development of the national agenda. As President, he recognizes that federally recognized Indian tribes are sovereign, self-governing political entities that enjoy a government-to-government

³⁴Interior Press Release, 5-8, *Western States Water* # 1805, December 19, 2008.

³⁵<http://swr.nmfs.noaa.gov/ocap.htm>.

relationship with the United States government, as expressly recognized in the U.S. Constitution. I, too, am a strong supporter of the principle of tribal self-determination and will work to fully enable tribal self-governance.”

Salazar continued, “As Secretary of the Interior, I will work hard to empower America’s Native American communities by helping address economic development, education, and law enforcement and other major challenges faced in Indian country. There are many challenges facing our Native American communities. I believe that together, we can create many opportunities for these communities to thrive and flourish. I am committed to restoring the integrity of the government-to-government relationship with Indian tribes. Together, through consultation and with a spirit of mutual respect and understanding, we can address these challenges and can create stronger economies and safer Native American communities. I am committed to ensuring that the Department of the Interior fulfills the trust responsibility of the United States. I will also seek to resolve the unending litigation about the management of these lands and assets. I would also like to reiterate my commitment to the settlement of Indian water rights claims.”

He added, “While there are many important priority issues for Indian country that I will address as Secretary, today I would like to discuss with you more fully four important areas for the Nation’s Native American communities: Economic Opportunities, Energy Development and Climate Change, Education, and Law Enforcement.... For too long, Native Americans have experienced some of the most severe socioeconomic conditions in the United States. More than a quarter of all Native Americans live in poverty and unemployment rates reach 80 percent on some reservations. Real per-capita income of Indians is less than half of the U.S. level. Eight of the ten poorest counties in America include Indian reservations. Housing conditions in many of these areas are inadequate, and about 14 percent of all reservation families have no electricity. I believe that the Department of the Interior should be a partner with tribal communities to advance sustainable economic development.”

Salazar said, “A good partnership between tribes and departmental programs in key areas will stimulate a much needed economic boost for tribal economies and the national economy. The Department’s capacity to address infrastructure and employment needs through its programs will provide a framework for robust national economic development. Our programmatic outreach will extend from tribal water projects and loan guarantee programs to workforce training and transportation.... In addition, the economic stimulus package will provide much needed economic development for Native communities. The bill would provide funds for infrastructure and workforce development, and create thousands of jobs.”

He observed, “A defining issue of our time is energy and climate change. We must succeed as a Nation to create a new energy frontier. As Secretary of the Interior, I have been tasked by President Obama to take a key role in our moon shot to energy independence and addressing climate change. Indian lands can be a rich source of conventional fossil fuels. But they also have major renewable energy potential. One of the greatest opportunities for economic development for tribes can be the development of alternative energy sources, including solar, wind, and geothermal resources.”

On September 10, the Senate Indian Affairs Committee reported three bills that would authorize the Crow (S. 375), Taos (S. 965), and White Mountain Apache (S. 313) settlements. Of note, Senator Jon Tester (D-MT) expressed support for the Crow settlement bill saying, “You never say anything’s for sure, but coming out of committee with a unanimous vote is a good sign. Quite frankly, it’s going to be a good opportunity to really empower the Crow folks and help [alleviate] some of their economic problems and unemployment problems.”³⁶

Ad Hoc Group Letter on Negotiating Teams

On April 2, the Ad Hoc Group on Indian Water Rights Settlements, comprised of the WGA, WSWC, NARF and Western Business Roundtable (which have worked together for many years), sent a letter to the Secretary of the Interior, Ken Salazar, urging him to request funding sufficient to establish and maintain negotiation teams. The letter noted the Federal government’s trust responsibility and obligation towards tribes, and encouraged the Secretary to provide the necessary funding to increase tribal participation, facilitate completion of negotiated settlements, and then implement agreements. The letter read in part:

“Over the past 25 years, more than 20 settlements of Indian land and water rights have been reached in eight Western states. These settlements have helped to save untold millions of dollars of public and private monies through avoidance of prolonged and costly litigation. A key component of this success has been the Administration’s efforts to establish and maintain negotiation teams for both achieving and implementing settlements. Unfortunately, we understand that the current level of funding for these negotiation teams is inadequate to meet the needs. Consistent with the trust responsibility of the United States to the tribes, we urge you to provide the necessary funding in future budgets. Adequate funding will facilitate increased tribal participation which could significantly advance our mutual goal of achieving water rights settlements. We believe there is strong bipartisan support in the Congress for this goal.”

Blackfeet Settlement

On April 15, Montana Governor Brian Schweitzer (D) signed HB 161, ratifying a negotiated water compact settlement between Montana, the Blackfeet Tribe, and the federal government over the Tribe’s longstanding claims to federal reserved water rights on its reservation. The compact creates the Blackfeet Tribe Water Rights Compact Infrastructure Account and authorizes the transfer of \$4 million from the state general fund to this account for the 2011 biennium to fund water-related infrastructure projects within the reservation’s exterior boundaries.

Under the compact, the Blackfeet will receive water rights in various basins within the State, including an increase in quantified amounts from Birch Creek and an allocation of 50,000 acre-feet from the St. Mary River, where the Tribe previously had no water rights. A tribal right to the use

³⁶*Western States Water*, #1841, August 21, 2009.

of natural flows and ground water is recognized, which remain after existing water rights have been satisfied in a number of rivers, creeks, and drainages. In order to allow existing water users to develop additional water supplies, the compact defers new development of some of the Tribe's water rights, including a portion of its rights in Birch Creek, which the Tribe agrees not to exercise for 15 years in exchange for \$14.5 million from the state. The compact requires Congressional approval.

Northwest New Mexico Rural Water Projects

On May 26, state, federal, and tribal lawmakers gathered in New Mexico to celebrate the enactment of the Northwestern New Mexico Rural Water Projects Act, which was signed into law earlier this year as part of the federal Omnibus Public Lands Act. The Act settles water rights claims in the San Juan River Basin and recognizes the Navajo Nation's rights to 600,000 acre-feet of water per year. One important aspect of the Act is the authorization of \$870 million in federal funding for the construction of the Navajo-Gallup Pipeline. The pipeline would deliver drinking water to approximately 80,000 people on the reservation. An estimated 40 percent of Navajo Nation residents do not have running water and must use trucks and trailers to haul water to isolated homes. Navajo Nation President Joe Shirley lauded the Act, saying, "The settlement has been a long time coming and it didn't start with my administration. There were other presidents, other leaders who worked on this to bring it to fruition."

Senator Jeff Bingaman, who introduced the Act, praised its passage, but also said it is "...the beginning of a lot more work," referring to the fact that although Congress has authorized funding for the pipeline, it must still vote to appropriate the money. WSWC member Bill Hume, Policy and Planning Director in Governor Bill Richardson's office, also described the importance of the pipeline. "The deal is set for more than 80,000 Navajos from Window Rock to the chapters surrounding Gallup, to have fresh water available much closer to their homes, if not actually directly piped there," he said. "For those Navajos who will be served by this pipeline, it will mark a major waypoint on the second Navajo Long Walk - the journey toward full participation in the quality of life of the 21st century in America."

Crow Tribe/State of Montana

On September 22, the House Committee on Natural Resources Subcommittee on Water and Power, held a hearing on a bill (H.R. 3563) to ratify and authorize a compact entered into by the Crow Tribe and the State of Montana, which recognizes a tribal water right to 500,000 af/year from the Bighorn River, as well as up to 300,000 af/year from Bighorn Lake. The bill also calls for \$559.4 million in federal spending and would authorize the Bureau of Reclamation to construct a municipal, rural and industrial water system and to rehabilitate, expand, and improve the Crow Irrigation Project.³⁷

Reclamation Commissioner Mike Connor testified on behalf of the Department of Interior, saying the Administration is taking "...an independent, detailed, and careful look at every aspect of the settlement," because of its complexity and size. He also said the Administration approves of

³⁷*Western States Water*, #1844, September 18, 2009, and #1841, August 21, 2009.

changes to the bill that would transfer title of a water system to the Tribe: "The Administration believes that transferring title to infrastructure is consistent with concepts of self-determination and tribal sovereignty." Connor said changes that address Wyoming's concerns regarding the impact of the bill upon the Yellowstone River Compact are "...consistent with the rights of the Tribe as set forth in the Compact and confirmed in [the bill]."

However, Connor said, "...the high costs of the infrastructure projects and other benefits called for in the bill and the large disparity between local and State cost share and the Federal settlement contribution are of concern." He added that the size of the federal obligation presents "significant challenges" in relation to Reclamation's budget and its \$2 billion backlog in authorized projects, while raising "...serious concerns because of the precedent that enactment of such a large settlement could set for future...settlements." He further said that each settlement sets a "...benchmark that influences the course of ongoing settlement negotiations with other tribes. Enacting settlements without considering Federal assessment of the fairness of proposed settlement costs will make it difficult for Federal negotiators to participate meaningfully in future settlement negotiations. Negotiators have difficulty holding the line on settlement costs when tribal, state, and local parties to the settlement have much higher expectations regarding the expected Federal contribution than Federal negotiators are able to discuss."

Connor then highlighted a number of non-monetary concerns over the bill's waiver provisions, engineering reports used to define the scope of the settlement's infrastructure development, and several key Compact documents that remain "incomplete or at issue." He also noted that the Administration is looking closely at the implications of a provision that would give the Tribe the exclusive right to develop power at a dam that is a component of the Pick-Sloan Missouri Basin Project.

WSWC member and Wyoming State Engineer, Pat Tyrrell, explained Wyoming's concerns regarding the Crow Compact and subsequent federal legislation. He also said Wyoming sought language clarifying that: (1) "The Compact would not impair Wyoming's allocations of Big Horn River water under the Yellowstone River Compact;" (2) "...Wyoming be protected from the impact of the tribe's decision to subordinate its water right to Montana state rights on the Big Horn;" (3) Montana could not seek water from Wyoming for instream flow purposes; and (4) "all management needs" under Reclamation's discretion are given "equal weighting." He said language addressing these concerns exists in some form in the bill and that "...while the amended bill is not perfect in Wyoming's view, it is better than the original...."

Chris Tweeten, Chairman of the Montana Reserved Water Rights Compact Commission, testified in favor of the bill. He explained that Montana and the Tribe have worked with Wyoming to address concerns, and that the changes to the bill "...ensure that the respective rights of Wyoming and Montana are protected to the maximum extent possible...while also allowing this agreement to recognize and confirm the rights of the Crow Tribe." Tweeten also said state funding for the settlement includes an escrow account currently worth around \$18 million and an agreement to "...pass-through certain state taxes on the extraction of Crow coal...."

Chairman Cedric Black Eagle of the Crow Tribe testified in favor of the bill, saying, "There is no question that this is a large bill as other Indian water settlements have been. However, one

must not forget or minimize the Federal government's liabilities and responsibilities with respect to the Crow Tribe's water rights."

Emergency Fund for Indian Safety and Health

Title VI of the U.S. Global Leadership Against HIV-AIDS, Tuberculosis, and Malaria Reauthorization Act of 2008 (the Act) (P.L. 110-293) authorizes an Emergency Fund for Indian Safety and Health (EFISH). The fund authorizes a total of \$2 billion over a five-year period beginning October 1, 2008, for law enforcement, health care, and water projects benefitting American Indians and Alaska Natives. Of this amount, EFISH authorizes \$1 billion for water supply projects that are part of Indian water settlements approved by Congress. This amount is above any amounts made available under any other provision of law. Although President George W. Bush signed the Act in 2008, Congress has yet to appropriate any funding for EFISH.

On October 13, a bipartisan group of twenty-two U.S. Senators sent a letter to President Barack Obama, requesting that the Administration's FY2011 budget request include \$667,000,000 for EFISH. It said, "A drinking water crisis... is plaguing Indian Country. According to [the Indian Health Service], safe and adequate water supply and waste disposal facilities are lacking in approximately 11 percent of American Indian and Alaska Native homes, compared to one percent for the U.S. general population. In some areas of Indian Country, this figure is as high as 35 percent. The lack of a reliable potable water supply in Indian Country results in a high incidence of disease and infection attributable to waterborne contaminants. IHS estimates that for every dollar it spends on safe drinking water and sewage systems, it achieves at least a twentyfold return in health benefits. The agency estimates that the cost to provide all American Indians and Alaska Natives with safe drinking water and adequate sewage systems in their homes is estimated to be over \$2.3 billion. In addition to inadequate safe drinking water and sewage systems throughout Indian Country, many tribes are facing water supply shortages. The cost of constructing the water supply infrastructure necessary to deliver water to these tribes would be an additional several billion dollars."

On November 6, the Council wrote President Obama expressing support for including \$667 million in the FY2011 budget for EFISH to provide funding for water supply projects and other public safety and health needs in Indian Country. The letter states: "The funding authorized by Title VI of the Act would provide essential federal support for settlement of Native American Water Right claims throughout the West and would help fulfill the federal government's trust obligations to our Native American citizens. Twenty-two United States Senators, many from western states that are members of the Council, have written you urging the Administration to include a total of \$667,000,000 in the Fiscal Year 2011 Budget Request for the purposes authorized by Title VI of the Act (including not only water supply projects, but also law enforcement activities and health programs in Indian Country). The Council fully supports this request for funding and we urge the Administration to include this request in its budget for Fiscal Year 2011. Importantly, this request should be over and above any amounts already included in the baseline budgets for the Department of Interior and its respective water-related programs, and for Native American and Alaska Native law enforcement, health programs and water-right settlement-related projects."

On November 10, WSWC Executive Director Tony Willardson hand-delivered a copy of the letter to Interior Deputy Secretary David Hayes during a meeting of the Ad Hoc Indian Water Rights

Group with key Administration officials to discuss a number of issues pertaining to Indian water rights. Other federal officials at the meeting included: Letty Belin, Counselor to David Hayes; Anne Castle, Assistant Secretary of Interior for Water and Science; Deanna Archuletta, Deputy Assistant Secretary for Water and Science; and Bureau of Reclamation Commissioner Mike Connor. Ad Hoc Group members included: John Echohawk, Executive Director, Native American Rights Fund (NARF); Susan Cottingham, Program Manager of the Montana Reserved Water Rights Compact Commission; Tom Iseman and Shanna Brown, Western Governors' Association (WGA) staff; as well as Navajo and other tribal representatives.

The discussions largely revolved around funding settlements, and Interior's spending plan for any EFISH money that might be appropriated for water projects related to settlements. Given the increasingly gloomy federal budget outlook, and the high cost of many settlements, the prospects for funding are uncertain.

Landsat Data Continuity Mission/Thermal Infrared Sensor

In a letter dated June 11, 2009, Senators Jeff Bingaman (D-NM), Chairman of the Senate Energy and Natural Resources Committee, together with Senator Michael Crapo (R-ID), wrote Senate Appropriations Committee leaders encouraging them to direct NASA to include a thermal infrared sensor (TIRS) instrument as part of the Landsat Data Continuity Mission (LDCM), noting that the data provided is "...critical for the western water management community and essential for other national applications."

They added, "For over 25 years, Landsat 5 has gathered thermal infrared imagery. TIRS data has opened the door for greater water use efficiency, better defined rights to the use of water, and subsequently markets and transfer mechanisms that can be employed to facilitate changes in uses to maximize both our economic and environmental well being." A similar letter of bipartisan support was signed by twelve western Senators on May 5, 2008. The Council continued to work extensively with western Senators and members of the House to secure bipartisan support for federal funding for TIRS.

On August 13, Landsat 5 tumbled out of control and its power sunk to a critical level. The U.S. Geological Survey (USGS) Landsat Flight Operations operates the satellite and were able to regain control of the spacecraft. However, power was still at a critical level and the extent of the damage was still being assessed. The USGS suspended imaging operations until further notice so that it might test its systems and equipment. According to a USGS press release, "We are in the very early stages of investigating the cause of the anomaly, but have noted extremely high gyro rates, indicating either a gyro failure or potentially some type of impact. Although there were no known objects reported in the most recent report of space debris, there is a possibility the spacecraft was potentially hit by a meteor."

On August 21, the USGS restored Landsat 5 to full operations. According to a press release, "The spacecraft is well past its life expectancy, but is one of only two Landsat craft in orbit so it is hoped that it will continue to carry out its mission until a new craft is launched."³⁸

³⁸*Western States Water*, #1840, August 21, 2009.

On September 15, the Ash Institute for Democratic Governance and Innovation at Harvard University's Kennedy School of Government honored the State of Idaho with a 2009 Innovation in American Government Award for its Mapping EvapoTranspiration with High Resolution and Internalized Calibration (METRIC) program. METRIC uses Landsat images and other data to measure how much water is consumed in a region or on a certain parcel of land through evapotranspiration. Idaho launched METRIC in 2000, and state water management agencies see it as an effective and more precise way of measuring water consumption. Eleven other states currently use the program, which depends on Landsat thermal infrared sensor (TIRS) data.

Idaho was one of a handful of recipients chosen from nearly 700 applicants for the award, which recognizes unique government programs that address pressing environmental, economic, education, and other issues. Anthony Saich, director of the Ash Institute, praised the recipients, saying, "Such public sector innovations demonstrate creative approaches to previously intractable civic challenges and prove instrumental in enhancing scholarly research and academic study of government innovation." We congratulate Idaho on a well-deserved award. On September 22, the WGA wrote a letter of support encouraging House and Senate Appropriations Committee leaders to fund TIRS and the LDCM program.³⁹

In a letter dated November 4, following testimony presented in October before the House Resources Committee's Water and Power Subcommittee, the WSWC responded to written questions presented by the Subcommittee regarding the use of remote sensing information and thermal infrared sensor (TIRS) data by western water managers for a variety of purposes.

Litigation/Water Rights

Yellowstone River Compact

Montana v. Wyoming

On June 2, the special master in *Montana v. Wyoming*, a water rights dispute over the Yellowstone River Compact of 1950, denied Wyoming's motion to dismiss the case. Montana filed the lawsuit in 2008, alleging that Wyoming had violated the Compact. Wyoming sought to dismiss the complaint in April 2008. By denying Wyoming's motion, the special master allowed the lawsuit to proceed.⁴⁰

³⁹2008 WGA Water Report, p. III. "4. Congress should provide funding sufficient to include the emissive thermal infrared (TIR) instrument on Landsat 8 as part of the Landsat Data Continuity Mission (LDCM) as a unique and cost effective means to measure agricultural and other consumptive water uses. 5. The National Aeronautics and Space Administration (NASA) should immediately begin preparing a request for proposals (RFP) and take other steps needed to ensure TIR is included on Landsat 8, and request supplemental and future funding sufficient to minimize any necessary delay in the scheduled launch."

⁴⁰*Western States Water*, #1776, May 30, 2008, #1797, October 24, 2008.

The Compact divides water from the Tongue and Powder Rivers among Montana, North Dakota, and Wyoming. It states that water rights existing before January 1, 1950 "...shall continue to be enjoyed in accordance with the laws governing the acquisition and use of water under the doctrine of appropriation." It also allocates fixed percentages of "the remainder of the unused and unappropriated water" to Montana and Wyoming for storage and other uses. Montana claims that Wyoming violated the Compact by failing to curtail water consumption (when water is needed to meet Montana's pre-1950 water rights) through the irrigation of new acres, the construction of new storage facilities, new ground water withdrawals for irrigation and coalbed methane production, among other reasons. Wyoming has argued that if it is otherwise in compliance with certain percentages in the Compact, it is not required to provide more water to satisfy Montana's pre-1950 water rights, even if Wyoming does not need the water to meet its own pre-1950 water rights.

In denying Wyoming's motion, the special master made the following principal conclusions: (1) "The Compact unambiguously protects pre-1950 appropriative rights in Montana from new diversions and withdrawals in Wyoming subsequent to January 1, 1950;" (2) if Montana cannot use intrastate means to protect pre-1950 rights, the Compact "...requires that Wyoming ensure that new diversions or withdrawals...not interfere with pre-1950 appropriative rights in Montana;" (3) Wyoming diversions of water into storage "...are to come only from 'unused and appropriated water after protecting pre-1950 appropriations,'" but Montana cannot demand the release of stored water for pre-1950 appropriators if the water was stored at a time when the needs of the pre-1950 appropriators were fully met; (4) the Compact protects pre-1950 appropriators from interference "by at least some" ground water pumping if the pumping started after January 1, 1950 and is hydrologically interconnected to the surface channels of the Yellowstone River and its surface tributaries (but the special master did not address the exact circumstances when ground water pumping violates the Compact); and (5) the Compact allows pre-1950 appropriators in Wyoming to use conserved water on lands irrigated as of January 1, 1950 (but conserved water use on new lands is subject to the same restrictions as post-1950 uses).

Arkansas River Compact

Kansas v. Colorado

On August 4, the Kansas Attorney General's Office announced an agreement that will end litigation in *Kansas v. Colorado*. A 1985 water rights dispute over the Arkansas River Compact that has resulted in four U.S. Supreme Court decisions and an order requiring Colorado to pay Kansas \$34 million in damages. According to a Kansas press release, the agreement "...specifies how Colorado's replacement requirements will be evaluated in order to maintain compliance with the [Compact]." Dave Barfield, a WSWC member and Kansas Chief Engineer, said additional disputes exist, but that "...Colorado has shown us by this agreement that they are willing to resolve certain disputes without litigation." Nevertheless, he noted that "...Kansas has an enforceable Supreme Court decree...to rely on if needed."⁴¹

⁴¹<http://www.ksag.org/content/page/id/582>.

Central Valley Project

Stockton East Water Districts et al. v. United States

The U.S. Court of Appeals for the Federal Circuit has ruled in a 2-1 decision that the federal government has breached a water contract with two California water districts by diverting water for environmental needs. The case, *Stockton East Water Districts et al. v. United States*, pertains to contracts that the Stockton East Water District and the Central San Joaquin Water Conservation District executed with the Bureau of Reclamation in 1983. The contracts required Reclamation to provide the districts with specified, annual amounts of water stored behind the New Melones Dam for consumptive uses. However, the dam is part of Reclamation's Central Valley Project (CVP) and Congress later passed the Central Valley Improvement Act in 1992, which did not specifically address the operation of the dam, but directed Reclamation to dedicate a significant amount of water from the CVP to non-consumptive environmental needs. California also enacted subsequent changes to state law that required Reclamation to release more water for fish and wildlife. Subsequently, Reclamation lessened the amount of water it delivered to the districts, prompting them to sue.

During the ensuing 16-year legal battle, the government raised a number of affirmative defenses. First, it argued that the districts were required to adhere to legal and policy changes that impacted the contracts because the inherent nature of the agreements involved the administration of a government program that is subject to later changes. The court disagreed, saying, "There is nothing in these contracts to suggest that the Government's reading of the contracts and the claim of inherent law incorporated into them is what either party to the contracts understood what was intended." As for subsequent change to state law, the court found, "The government did not establish...the critical connection between the state law mandates, whatever they were, and the management practices of Reclamation that caused the shortages."

Second, the government pointed to provisions in the contracts that indemnified Reclamation against shortages caused by "...drought, or other causes, which...are beyond the control of the United States...." However, the Court dismissed this argument, stating "...changes in law, or changes in government policy, or changes in management practices...are all causes within the control of the United States. The fact that certain changes in management of the New Melones unit by Reclamation were the result of mandates by Congress...is nonetheless a change within the control of the 'United States,' a term that of course includes Congress as well as the administering agency."

Third, the government argued that the Act and its implementation by Reclamation are sovereign acts and that it cannot be liable for incidental and/or unintended consequences. The government based this argument on the Sovereign Acts Doctrine, which gives the United States immunity from contractual obligations for acts performed in its sovereign capacity. In order to prevail under the defense, the government needed to show that: (1) the sovereign act is properly attributable to the government as contractor; and (2) the act would otherwise release the government from liability under normal principles of contract law. The court found that the government failed the first element because Reclamation's actions only harmed the districts and were "...directly aimed at the contracts and [its] duties under them, nullifying the rights of the Districts...." The court also held that the government failed the second element because it did not show that performance under the contract was impossible. Consequently, the court remanded the case to determine damages for those years in which the government was liable.

The court also restored a takings claim by the districts, which a trial court had stayed pending the outcome of the contract's claim. When the trial court denied the contracts claim, it also dismissed the takings claim on the grounds that the contract's claim precluded it. The court said this was in error.

Red River Compact

Tarrant Regional Water District v. Sevenoaks

On November 18, the U.S. District Court for the Eastern District of Oklahoma dismissed a case filed by the Tarrant Regional Water District in Texas, which alleged that an Oklahoma embargo on out-of-state water sales violated the Commerce and Supremacy Clauses of the U.S. Constitution. Tarrant filed the case against the Oklahoma Water Resources Board (OWRB) in 2007 as part of an effort to divert over 400,000 af of water from Red River tributaries in Oklahoma for use in Texas. Subsequently, the Oklahoma Legislature enacted HB 1483, which prevents out-of-state water permits from impairing the state's compact obligations.

In dismissing the case, the court found that the Red River Compact (RRC) apportioned the water in question between Oklahoma, Texas, Arkansas, and Louisiana. Although it recognized that the dormant Commerce Clause normally prevents states from giving their residents a preferred right of access to water within their borders, it found "...the approval of the RRC by Congress necessarily constituted its consent to a legal scheme different from that which would otherwise survive Commerce Clause scrutiny. Moreover, the Oklahoma statutes...are not inconsistent with the RRC insofar as they relate to the water allocated and apportioned to Oklahoma under the compact."

As for the Supremacy Clause claim, the court held that federal law, namely the RRC, did not preempt the Oklahoma embargo. It said, "The compact itself explicitly states it is not intended to supplant any state legislation if it is otherwise consistent with the compact.....[T]he court can discern no basis upon which the RRC could be a basis for preemption, at least in the context of any claim which plaintiff has standing to pursue."

The court also stated that its order "...does not purport to address a potential Commerce Clause claim, by plaintiff or others, to the extent it pursues rights in, or approvals as to, water not subject to the [RRC]. It does not purport to address in some hypothetical way questions which might arise under other compacts to which Oklahoma is a party, as the court's review has been limited to the [RRC]. It does not anticipate or address the possibility of a claim by Texas or other signatory state under the compact, based on a compact violation. This is a circumstance different from the claim presented here. Finally, there is nothing in this order which precludes Oklahoma...from negotiating, as a good neighbor, some arrangement to use more effectively the water allocated to it under the [RRC]."

In a press release, OWRB Executive Director and WSWC member Duane Smith asserted that "...the legislature's recent enactment of House Bill 1483 framed this matter to clarify that interstate compacts, each approved by Congress, actually strengthen Oklahoma's right to control the use of its water." Oklahoma Attorney General, Drew Edmonson, also noted, "The judge said our statute does not violate the Commerce or Supremacy Clauses of the U.S. Constitution regarding waters

subject to the Red River Compact. The judge agreed with our argument that our statute is constitutionally sound.”

Of note, although Texas is a member of the Red River Compact, it was not a party to the lawsuit. In addition, a similar case is pending in the Eastern District of Oklahoma where the City of Hugo is seeking an injunction preventing OWRB from enforcing the ban on out-of-state water sales so that it may sell Oklahoma water to Irving, Texas.⁴²

National Streamflow Information and Cooperative Water Program

On October 27, the Council testified before the House Water and Power Subcommittee stating: “Over the years, federal appropriations have not kept up with increasing needs, program costs and/or capital replacement requirements, as well as matching non-federal contributions, and this erosion in funding has led to the discontinuance, disrepair, or obsolescence of vital equipment needed to maintain existing water resources related data gathering activities. For example, the USGS lists some 287 streamgages that have been or are being considered for discontinuation or for conversion from continuous record discharge to stage-only stations. The Council has consistently supported the fully-federally funded USGS National Streamflow Information Program (NSIP) and Cooperative Water Program (CWP), a federal/state streamgaging program. The Council has urged the Congress to appropriate sufficient money to restore the latter to a 50-50% funding match. Together, these programs form a national streamgaging network.”

In a December 9 letter to Congressional leaders signed by 56 organizations, the WSWC joined in calling for increased funding. Full NSIP funding is estimated to require \$110 million, compared to the \$27.7 million appropriated for FY2010. Another approximately \$95 million would be needed to fully match state, tribal and other non-federal CWP expenditures, compared to the \$65.5 million provided in FY2010.

The slow erosion in federal spending has led to the loss of hundreds of streamgages and data that are vital for the management of western water resources, particularly given the uncertainty of future hydrologic regimes due to climate variability. Real-time streamflow information is a key to monitoring and adapting to a changing climate. The continuing decline in real federal CWP spending due to unfunded or only partially funded federal salary and other cost increases continues to shift the burden to the non-USGS cooperators, including states, which are not able to absorb all these costs. Hundreds of gages have been dropped – many with over 30-years of record – due to the lack of funding.

Omnibus Public Lands Management Act

On March 30, President Barack Obama signed into law as a package the Omnibus Public Land Management Act of 2009 (P.L. 111-11), which incorporated scores of bills including the following

⁴²Western States Water, #1800, November 14, 2008, and #1708, February 9, 2007.

legislation. Several of the provisions in the bill's various subtitles as drafted were consistent with the WGA Water Reports' recommendations and closely mirrored some sections.

Aging Water Infrastructure Act Title IX - Subtitle G

This Act provides for the inspection of facilities constructed under federal Reclamation Law that could pose a risk to public safety or property damage, in response to the failure of a canal near Fallon, Nevada that flooded hundreds of homes. Often, such "transferred works," non-dam facilities operated by non-federal entities, pose increasing risks of loss due to urbanization of what were once agricultural lands. The Act directs the Secretary of the Interior, after inspection, to provide recommendations for improved operation and maintenance processes, and authorizes technical assistance and extraordinary work on facilities to preserve structural safety. Senate Majority Leader Harry Reid (D-NV) introduced the bill and testified in its support at an April 17, 2008 hearing, before the Senate Energy and Natural Resources Committee's Water and Power Subcommittee.

The WSWC also testified at that hearing on behalf of WGA, on the general topic of the Bureau of Reclamation's aging water resources infrastructure. The testimony specifically referenced the 2006 WGA Water Report's recommendations related to rural water supply needs and urged Congress to increase appropriations from annual receipts, "...accruing to the Reclamation Fund for authorized Bureau of Reclamation projects and purposes, to help meet western water supply needs, especially for rural communities, to maintain and replace past projects, and to build new capacity necessary to meet demands related to growth and environmental protection."⁴³

Cooperative Watershed Management Act Title VI - Subtitle A

In response to a specific request from Senator Jon Tester (D-MT), the bill's original sponsor, to review his draft legislation, the WSWC provided comments and upon introduction of the bill (S. 3085), supported its enactment. In a July 11, 2008 letter to the leadership of the Senate Energy and Natural Resources Committee,⁴⁴ the Council pointed out that the legislation could be an "important tool for watershed groups and managers, consistent with our ongoing efforts and those of the governors..." as expressed in the 2006 WGA Water Report, which states that the "focus should be on a grassroots, watershed approach to identifying water problems and potential solutions from the ground up, integrating these efforts into individual state plans."⁴⁵

⁴³2006 WGA Water Report, 3.B. and 3.C., p. 15.

⁴⁴Letter to Senators Jeff Bingaman (NM), Chairman, Pete Domenici (NM), Ron Wyden (OR) and John Barrasso (WY).

⁴⁵Specifically, the report says: "States should facilitate collaborative watershed focused planning that balances desirable growth and protection of the natural environment that depends on surface and ground water quantity and quality." 1.B. p.5. Further, "The WSWC should encourage states to develop and implement strong state water plans.... The focus should be on a grassroots, watershed approach to identifying water problems and potential solutions from the ground up, integrating these efforts into individual state plans. Similarly, regional or multi-state

SECURE Water Act Title IX - Subtitle F

At the request of its sponsor, Senator Jeff Bingaman, the WSWC testified in support of the SECURE Water Act legislation in 2007. The Council specifically supported the enhanced spending authority for USGS streamgaging activities, a ground water monitoring system, brackish water study, new methods to estimate and measure water use, a national water use and availability assessment, establishment of an intra-governmental panel on climate change and water resources, a Reclamation Climate Change Adaptation Program, hydroelectric power assessment and effects of climate change, and financial assistance to nonfederal entities for water-use efficiency improvements.⁴⁶

Water Settlements - Title X

The omnibus legislative package also included two significant water settlements: the San Joaquin River Restoration Settlement Act in California and the Northwestern New Mexico Rural Water Projects Act.

It also established in the U.S. Treasury a Reclamation Water Settlements Fund providing for the deposit of specified amounts from the Reclamation Fund for FY2020-FY2034. Moreover, it authorized the Secretary of the Interior to spend this money without the need to return to the Congress for further appropriation legislation. The settlement agreements eligible for funding must be approved by the Congress, resolve litigation and require the Bureau of Reclamation to provide assistance for water supply infrastructure and other purposes.

This fund would, for the first time, provide a dedicated source of revenue to implement Indian water rights settlements. A list of priority expenditures covers project features related to Indian water rights settlements in New Mexico and Montana. Despite the fact that budget rules will delay implementation and it is only a temporary authorization, it represents a very significant step forward in resolving outstanding water right claims that cloud western water rights and planning.

River Basins

Colorado River Water Bank

On June 4, the boards of the Colorado River District and its sister water conservation district, the Southwest District, met in Durango in a rare joint meeting to review progress on a planned water bank designed to address the potential impacts of an interstate compact call on Colorado River water users. Together, both districts cover the entire Colorado River watershed in Colorado.

The bank aims to minimize the risk and impacts of an interstate curtailment of water use if the four upper states of the Colorado River Basin fail to meet the water delivery requirements of the

and multiple river basin strategic plans should be comprised of these building blocks.” 2.D. p. 10.

⁴⁶Testimony before the Senate Energy and Natural Resources Committee by John D’Antonio, New Mexico State Engineer on behalf of the WSWC on December 11, 2007.

Colorado River Compact. It will allow water users with pre-1922 water rights to be compensated for entering into an agreement to temporarily offer their senior water rights that are exempt from compact administration to junior users who would otherwise be called out by compact requirements. Junior water users could “subscribe” to the bank in the event of a call on their water rights. The bank would serve as the administrator and clearinghouse for those with senior water rights and those with junior water rights in need of water. Use of senior rights by juniors would only be permitted if a compact call were in effect or imminent.

Klamath River Basin

On September 30, Department of Interior Secretary Ken Salazar announced that California, Oregon, and a host of other local, tribal and environmental groups have reached a draft agreement on a proposal to remove four hydroelectric dams on the Klamath River by 2020. The dams, which PacifiCorp owns, currently block salmon and steelhead from reaching more than 300 miles of spawning habitat. The agreement requires public review and approval by the negotiating parties’ respective boards, commissions, and councils.

Under the agreement, PacifiCorp’s Oregon customers would contribute up to \$200 million for dam removal and river restoration. If project costs exceed this amount, California would provide up to an additional \$250 million. Interior would also investigate the costs and benefits of removing the dams and confirm by 2012 that removing the dams is in the public’s best interests. Other provisions of note include agreements for: (1) PacifiCorp to modify project operations and fund activities to mitigate impacts and protect restoration of the Klamath until the dams are removed; (2) PacifiCorp to transfer the dams to the federal government for removal once Interior has determined that removal is in the public interest and project permits are obtained; (3) federal legislation to protect PacifiCorp against any liability arising from the dams’ removal (PacifiCorp will retain liability for constructing the first dam in 1908); and (4) California’s Siskiyou County is to receive up to \$20 million to mitigate possible adverse impacts to its revenues.

In a press release, Salazar praised the agreement and said, “It is vital that all parties stay engaged, lend their ideas and views on this draft agreement and - importantly - complete [the agreement].” Salazar further said, “True basin-wide restoration can occur only if we act to implement the restoration agreement and the hydroelectric settlement concurrently.” PacifiCorp Chairman and CEO, Greg Abel, also described the agreement as a “...balanced and reasonable outcome that best protects the interests of our customers, while achieving the policy objectives of the states and federal government, as well as helping to peacefully resolve numerous conflicts in the Klamath basin.”⁴⁷

Tahoe Basin

Senator Harry Reid (D-NV) along with Senators Barbara Boxer (D-CA), Dianne Feinstein (D-CA), and John Ensign (R-NV) introduced the Lake Tahoe Restoration Act Reauthorization of 2009 (S. 2724) on November 3. The bill aims to protect Lake Tahoe and the Tahoe Basin from a

⁴⁷*Western States Water*, #1801, November 21, 2008.

number of threats and would authorize \$415 million over eight years to combat invasive species, improve water clarity, reduce the threat of wildfires, and restore the environment. With respect to water, the bill would authorize \$72 million for stormwater management and watershed restoration projects to improve water clarity, as well as \$136 million for Lake Tahoe stakeholders to implement prioritized environmental restoration projects. Representatives Dean Heller (R-NV), Shelley Berkley (D-NV), Dina Titus (D-NV), and Tom McClintock (R-CA) introduced a House bill (H.R. 4001).

With the bill, Reid said, "...we are making it clear that we will continue our nation's commitment to protecting and restoring this jewel of the Sierras." Rep. Heller offered similar praise for the legislation saying, "Preventing catastrophic wildfires, increasing lake clarity, and investing in critical infrastructure is vital to the long-term ecological health of the Tahoe Basin." The bills were referred to the Senate Committee on Environment and Public Works and the House Committee on Natural Resources.⁴⁸

States

Colorado/Wyoming

Aaron Million's Water Supply Pipeline

Colorado entrepreneur Aaron Million has proposed a \$3 billion privately funded, 560-mile pipeline that would carry 250,000 acre-feet of water from the Green River and Flaming Gorge Reservoir across Wyoming to Colorado's Front Range. Although the water would be pumped in Wyoming, it would come from Colorado's share under the Colorado River Compact. The Corps is currently leading an environmental study of the pipeline and expects to complete a draft study in 2012 and a final version in 2014. Million says that the pipeline could be built within two years of the study's completion.

However, Wyoming Governor Dave Freudenthal (D) submitted written comments to the Corps on July 27, saying, "I would strongly caution that you not confuse my calm expressions of issues with a change in position on the project.... I remain opposed to this project. In turn, I expect similar deference to Wyoming's right to develop its compact allocation going forward - starting with a robust and thoughtful analysis of the potential impacts of the [Million] project on Wyoming." He also said, "The Colorado uses served by this project cannot affect, in any way, or deny future uses in Wyoming, which of course will have later priority dates. As such, the...analysis must consider that diversions for use in Colorado will be conditioned by Wyoming, such that they will always be the most junior users on the lower river above Flaming Gorge." Freudenthal also said that the pipeline must not impact existing water users and expressed concerns about its impacts on endangered species and recreation at Flaming Gorge Reservoir.

In addition, Wyoming's Sweetwater County and the City of Green River both believe that the proposal would have no real benefit to southwest Wyoming and passed resolutions in early July

⁴⁸http://reid.senate.gov/newsroom/press_releases.cf.

allocating \$150,000 each to fund possible litigation against the project. Most of the Green River downstream from the proposed diversion is located in Utah and some local governments have expressed concern about the project. Utah also intends to submit comments. Colorado has not commented on the project, according to WSWC member Alexandra Davis, the Assistant Director for Water at the Colorado Department of Natural Resources.

Washington

Exempt Wells

Washington's Department of Ecology accepted comments on a final rule for managing the use of exempt wells in northern Kittitas County. Washington law does not require permits for certain small ground water uses not exceeding 5,000 gallons per day. These exempt wells are subject to the state's ground water code and the priority system, but are not metered or subject to adjudication. The final rule would replace an emergency rule that is based upon a memorandum of understanding (MOU) that Ecology and the County created in April 2008, which called for a comprehensive ground water study and imposed restrictions on the use of exempt wells in new developments. The MOU also called for the creation of the emergency rule and a formal rulemaking process, which the final rule aims to satisfy.

The final rule is a result of a petition that a citizens group named Aqua Permanente filed with Ecology in September 2007, requesting a moratorium on exempt well use in the County until more information became known about their effects on senior water rights and stream flows. The group issued its petition pursuant to Washington laws that allow any person to petition an agency to adopt a rule, and that authorizes Ecology to withdraw waters from additional appropriations in situations where sufficient information is "lacking to allow for the making of sound decisions."

The group filed its petition because it was concerned that exempt wells had become the principal means of obtaining water rights in the County and that developers were circumventing the permitting process by using them to supply water to new subdivisions. The group also believed that the bulk of new wells were being installed with little or no knowledge of water availability. However, instead of imposing a moratorium, Ecology created the MOU and the final rule. Public hearings were scheduled for February 11-12, and Ecology accepted comments through February 20.⁴⁹

On July 16, the Washington Department of Ecology issued an emergency rule closing upper Kittitas County to all new ground water withdrawals. After nearly two years of negotiations, Ecology announced on July 1, that it was terminating a 2008 memorandum of understanding (MOU) with the County to cooperatively manage exempt wells in the upper portion of the County. To address concerns that exempt wells could impair senior water rights and streamflows in the Yakima Basin, the MOU set forth a process to create a permanent ground water management rule for the County and called for a study of exempt well impacts to aquifers and water supplies. However, Jay Manning, Ecology Director and a WSWC member, explained, "The County has struggled to come to a decision and has missed three previous decision deadlines related to finalizing an agreement

⁴⁹http://www.ecy.wa.gov/programs/wr/cro/kittitas_wp.html.

with Ecology. Faced with a management gap, we are adopting this temporary rule.” Nevertheless, he noted that Ecology remains open to a partnership with the County and is willing to continue negotiations. The rule would be in place for 120 days.

At the request of Washington Governor Chris Gregoire (D), Ecology Director and WSWC member Jay Manning met with the chair of the Kittitas County Commission, and both parties have agreed to resume negotiations. Ecology amended the emergency rule to clarify that people with vested building permit applications and permits issued as of July 16, were not subject to the closure. The rule will only allow new water uses that fully offset impacts to senior water rights and streamflows. Furthermore, the Washington Legislature funded a study designed to gain a better understanding of the connection between ground water and surface water in the County.

Water Resources Research

National Water Research and Development Initiative Act

On February 24, Rep. Bart Gordon (D-TN) has reintroduced legislation, a National Water Research and Development Initiative Act (H.R. 1145), that he introduced in 2008. In opening a March 4 hearing entitled, “21st Century Water Planning: The Importance of a Coordinated Federal Approach,” Rep. Gordon, Chair of the House Science and Technology Committee, noted a recent outlook issued by the National Center for Environmental Prediction, in the National Oceanic and Atmospheric Administration (NOAA), indicates drought conditions continue to plague parts of the Nation, including California, the Texas and Oklahoma central plains, southeastern Georgia, South Carolina and Florida. He observed, “Recent reports of California’s water shortages carry dire predictions. This year’s drought is projected to be one of the most severe in California’s recorded history.... Differing forecast scenarios predict a substantial impact to California’s agricultural economy and indicate that some areas will receive no water this year. As a result, agriculture losses could reach \$3 billion in 2009 and water delivery reductions could result in the loss of 80,000 jobs.” He declared, “Constraints on water supplies are taking a toll on society, our economy, and the environment. Water is too valuable a resource for us to manage in a crisis-by-crisis fashion.... We need to take decisive action to ensure that the United States can meet the water challenges of 2009 and beyond.”

Chairman Gordon continued, “Economic recovery legislation, recently signed by President Obama, included significant and long-overdue funds for states and localities to improve water infrastructure. Upgrading and repair of water delivery and treatment systems will conserve water, improve public health, and create jobs. This is a good start, but we must do more. We need new tools to evaluate the status of our water infrastructure and our water supplies. We need efficient and effective technologies and management practices to improve water quality. And we must learn to use water efficiently. We need a national water policy, and research and development must be an integral part of that policy. Research and development are key ingredients to sound water resource management.”

H.R. 1145 incorporates recommendations from a 2004 National Academy of Sciences report. It is intended to ensure that the 20 different federal agencies conducting and funding water-related research coordinate their efforts to achieve a goal of managing our water resources “for the benefit

of our Nation.” H.R. 1145 directs the President to implement the Initiative to improve the federal government’s role in designing and implementing federal water research, development, demonstration, data collection and dissemination, education, and technology transfer activities to address changes in U.S. water use, supply, and demand. It directs the President to establish or designate an interagency committee to implement the Initiative.

In introducing the bill, Rep. Gordon explained that it incorporates recommendations from the 2004 report by the National Academy of Sciences entitled, *Confronting the Nation’s Water Problems: The Role of Federal Research*. These recommendations, and others, helped to form the basis of the Initiative, which included a recommendation to strengthen the Subcommittee on Water Availability and Quality (SWAQ) and its role in setting priorities and developing an integrated budget to support research on water resources. The Academy’s report indicated that SWAQ is an effective forum for agencies to share information about their efforts on water. However, the report identified several issues that needed to be addressed to make SWAQ an effective coordinating body. Gordon stated, “This bill strengthens the budget function for SWAQ through participation of OMB on the subcommittee. In addition, SWAQ is directed to engage in outreach activities to develop connections to state and local governments, to a wider community of stakeholders, and to the public.”

The Initiative shall: (1) develop a National Water Research and Assessment Plan; (2) coordinate all water-related federal research, development, demonstration, data collection and dissemination, education, and technology transfer activities; (3) encourage cooperation among federal agencies; and (4) facilitate technology transfer, communication, and opportunities for information exchange with various parties through a National Water Initiative Coordination Office (to be established by the President to provide technical and administrative support to the committee).

The National Research Plan would: (1) establish priorities for federal water research; (2) identify each current program and activity related to the Initiative; (3) identify funding levels; (4) set forth a strategy and timeline to achieve specified desired outcomes, including implementation of a National Water Census; (5) address suggestions and incorporate public input received; and (6) be submitted to Congress within one year of enactment.

Regarding water research outcomes, H.R. 1145 directs: “The plan shall outline and direct agencies under the interagency committee to work to achieve the following outcomes: (1) implementation of a National Water Census, which shall include the collection of data on national water resources to create a comprehensive database that includes information about the quantity, availability, and quality of ground water and surface water resources; (2) development of a new generation of water monitoring techniques; (3) development of technologies for enhancing reliable water supply; (4) development of innovative technologies and tools to enhance water-use efficiency and tools to encourage public acceptance of such technologies; (5) development of tools and processes to facilitate resolution of conflicts over water resources; (6) improvement of understanding of water-related ecosystem services and ecosystem needs for water; (7) improvement of hydrologic prediction models and their applications; and (8) analyses of the energy required to provide reliable water supplies and the water required to provide reliable energy supplies throughout the United States.”

H.R. 1145 also directs the President to: (1) provide guidance to each federal agency participating in the Initiative regarding the preparation of requests for appropriations for activities related to the Plan; and (2) submit, concurrent with the annual budget submission to Congress, a report that describes Initiative activities and results during the previous fiscal year and outlines objectives for the next fiscal year.

Testifying at the March 4 hearing were: Dr. Peter Gleick, President, Pacific Institute; Mark Modzelewski, Water Innovations Alliance; Dr. Henry Vaux, Jr., professor emeritus, University of California at Berkeley; Nancy Stoner, Co-Director, Water Program, Natural Resources Defense Council; and Christine Furstoss, General Manager, Technology, GE Water & Process Technologies. Their testimony is available online at <http://science.house.gov/publications>.

Water Supply/Drought

Water Supply Outlook

On March 12, the NRCS issued its weekly Snowpack/Drought Monitor Update, which contained good and bad news for WSWC member states. According to the update, heavy precipitation in central and eastern California and western Nevada have helped to “ameliorate drought in the hardest hit areas of these states..... Extreme drought was eliminated [and] severe drought improved in the Sacramento and San Joaquin Basins, as well as in the Russian, Yuba, and American River watersheds and through much of western Nevada.” In addition, reservoir storage “...continued to increase on many rivers with Shasta Reservoir storage in the Sacramento Basin increasing in elevation over 10 feet this week.” The update also stated that moderate drought “eased slightly” in southern Idaho and northwest Montana.

However, not all areas of the West fared as well and “abnormally dry” conditions expanded in eastern Washington, while moderate, severe, and extreme drought conditions expanded in Texas. Similarly, in Oklahoma, “abnormal dryness” and “moderate drought expanded slightly northeastward” and severe drought expanded northward towards the Canadian River. Abnormal dry conditions also expanded through western Kansas and southern Nebraska. Fortunately, NRCS reports, “Much needed precipitation is expected for much of Texas in the upcoming days” and “lesser amounts” are possible in the Southwest and Midwest....”

As for snowpack, the update reported that “deficits persist over the Northern Tier States while surpluses still exist over southwest Utah and eastern Nevada.” In addition, the “snow depth changes show significant [decreases] over the Sierra and significant increases over the Cascades and much of the West.”⁵⁰

On June 23, the NRCS issued its Snowpack/Drought Monitor Update. The report showed that severe drought (D2) conditions persisted in most of California, western Nevada, and southeastern New Mexico, while southeast Texas experienced exceptional (D4) drought conditions. Most of the Plains States saw above average precipitation. West Texas received enough rainfall to

⁵⁰<http://www.wcc.nrcs.usda.gov/water/drought/wdr.pl>.

improve extreme and severe drought along the New Mexico border, while western North Dakota and parts of Nebraska also saw improvements from rainfall. Northeast Oklahoma and southeast Kansas saw rainfall totals of four inches or greater locally. However, moderate drought (D1) expanded into south central Nebraska, central Oklahoma, and in eastern Texas into the Houston area.

The NRCS reported two swaths of significant precipitation. The first extended from northern California and Oregon into northern Nevada, southern Idaho, Colorado, and Wyoming. As a result, severe (D2) and moderate drought (D1) conditions were ameliorated in central and northern Nevada and southern Oregon. The second swath of precipitation fell in western New Mexico and southern Colorado. Northern Montana did not receive the beneficial rains, and moderate drought (D1) conditions expanded into the area. The driest sections of the West persisted over “the extreme Northern Tier States and extreme Southwest.” Generally, Alaska experienced near to above average precipitation, except around the Anchorage area and southeast panhandle, which experienced abnormally dry (D0) and moderate drought (D1) conditions.⁵¹

For the week of July 30, NRCS’s Snowpack/Drought Monitor Update indicated that drought and abnormally dry conditions eased in southeastern Colorado, southwest Kansas, northeastern Montana, eastern and southeastern New Mexico, and portions of east-central and the western panhandle of Oklahoma. However, abnormally dry conditions connected “virtually all of the West Coast from Washington to southern California,” and severe drought persisted in central Nevada and portions of Montana and Oklahoma. Moderate drought conditions continued in northeast Montana, western Nevada, eastern New Mexico, eastern South Dakota, and northcentral Washington.⁵²

In southern Texas, NRCS reported that “...record heat and no significant rains have coupled to increase the impacts of [the state’s] exceptional, protracted drought.” The drought is the worst the state has experienced in 50 years and nearly 80 of its 254 counties are experiencing extreme or exceptional drought. The Texas Water Development Board (TWDB) also reported in July that 109 of the state’s major reservoirs “...declined in the past month by 3% to 24.8M acre-feet in conservation storage, or 79% of their combined conservation storage capacity.” In addition, TWDB noted that “twelve lakes were below 30%, five of which were below 10% full.” NRCS also found abnormally dry conditions in eastern, central, and northwest Texas.

NRCS reported that drought conditions continued for the third year in California, with the western half of the state suffering severe drought, while moderate and abnormally dry conditions persisted in the eastern half. On July 30, Bureau of Reclamation Commissioner Mike Connor announced \$40 million in Stimulus funds for drought-relief projects. According to a Reclamation press release, these projects include “...the installation of temporary pipelines and pumps, drilling and installation of new water wells, well-enhancement projects, and a ground water monitoring effort.” Reclamation approved 265,000 acre-feet of water transfers, and creation of a Drought Water Bank together with the California Department of Water Resources. The Bank will make additional water obtainable “now and in the future” and will allow an acquisition team to “...purchase water

⁵¹<ftp://ftp.wcc.nrcs.usda.gov/support/drought/dmrpt-20090625.pdf>.

⁵²<http://www.wcc.nrcs.usda.gov/water/drought/wdr.pl>.

from willing sellers upstream of the Sacramento-San Joaquin Delta and transfer the water to willing buyers using State Water Project of Central Valley Project facilities.”

On August 3, Interior Deputy Secretary David Hayes said that the Obama Administration would not ease enforcement of the ESA to lessen the impacts of the California drought. Pumping restrictions ordered to protect salmon and the delta smelt in the Sacramento-San Joaquin Delta and Central Valley cut critical water deliveries to California farmers, water districts, and cities. Some members of California’s Congressional delegation criticized the ESA. Although sympathetic, Hayes said, “Compliance with the ESA is obviously something that’s required.”

Ironically, California’s budget problems could also close dozens of important streamgages next year, all but six of which are located in the Central Valley. The USGS operates the gages, but the California Department of Water Resources pays for 60% of the operating costs. This year’s state budget funds the program, and assures operation of the gages through October, but DWR will have to tap part of next year’s budget allocation to cover money due this year, which could create a shortfall for the program in 2010. USGS currently lists 56 California gages as being threatened, and Program Manager Jim Bowers says perhaps 20 gages could be shut down next year.

House Oversight Hearing on California Drought

The House Natural Resources Committee held an oversight hearing on the California drought on March 31. It focused on federal and state actions to address the impacts of the drought upon lands, fisheries, and water users. In his opening statement, Chairman Nick Rahall (D-WV) said, “What happens in California does not stay in California.... I agree that we need to make sure we are all informed about the importance of water to our economy and are ready to act when drought hits.”

The Bureau of Reclamation’s Acting Commissioner, William McDonald, discussed the Department of the Interior’s response to California’s three-year drought and addressed efforts that Reclamation, the FWS, the USGS, the Bureau of Land Management, and the National Park Service have taken. Of note, he stated that Reclamation is working with California, FWS, and the National Oceanic and Atmospheric Administration (NOAA) to allocate water supplies from its Central Valley Project (CVP), which pumps water from California’s Sacramento-San Joaquin Delta to much of southern California. The drought and recent court decisions regarding the Delta smelt, an endangered fish, have reduced CVP water deliveries. McDonald said that Reclamation’s initial 2009 allocation for agricultural water contractors north of the Delta will only be 5% of their full supply, agricultural water contractors south of the Delta “will likely receive no allocation.” Municipal and industrial water contractors north of the Delta will likely receive 55%, while those south of the Delta will likely receive 50% “with adjustments to meet minimum public health and safety needs.”

McDonald also stated that Interior and the U.S. Department of Agriculture (USDA) have announced the formation of a Federal Drought Action Team, which will work with California Governor Arnold Schwarzenegger’s state drought response team “to minimize the social, economic, and environmental impacts of the current drought.” The Team will consist of representatives appointed by the Secretaries of Interior and the USDA, as well as executives from the U.S. Army Corps of Engineers, NOAA, the EPA, the Council on Environmental Quality, the Department of Labor, the Office of Management and Budget, and the Small Business Administration.

Candace Thompson, the Acting Deputy Administrator for Farm Programs in USDA's Farm Service Agency testified, "Drought will affect the quantity, quality, and timing of water coming from the National Forests in California." In particular, she stated that the Forest Service plans to protect these forests through fuels reduction, fire preparedness and suppression, forest health treatments and rehabilitation and restoration. Thomas also discussed a number of efforts the USDA is undertaking to "help farmers and ranchers mitigate the effects of the drought."

California's Secretary for Natural Resources, Mike Chisman, described Governor Schwarzenegger's February 27th emergency proclamation requesting that all urban water users immediately increase conservation activities to reduce individual water use by 20%. The proclamation also directs state agencies "...to immediately implement a water use reduction plan and take immediate water conservation actions." It directs the California Department of Water Resources (DWR), to: (1) expedite water transfers; (2) offer technical assistance to agricultural water suppliers and users; (3) implement short-term efforts to protect water quality or water supply; (4) join with other agencies to launch a statewide water conservation campaign; (5) provide an updated report on the state's drought conditions and water availability; and (6) recommend measures to reduce the drought's economic impacts with the California Department of Food and Agriculture.

Tulare County Supervisor, Allen Ishida, testified that "the severity of this year's drought is mostly man made" as a result of ESA court rulings that have "shut off water transfers to the [CVA] to protect the Delta smelt." Republican Committee Members, including Ranking Member Doc Hastings (R-WA), echoed this belief. He said, "It's important to protect lands and endangered fish, but our government's environmental policies shouldn't make our communities endangered in the process." Similarly, Rep. Devin Nunes (R-CA) stated that if "Democrat leaders....do not act within the next 30 days...[w]e will witness the collapse of modern civilization in the San Joaquin Valley." Rep. George Radanovich (R-CA) said, "We need the Government to protect the safety and happiness of people, not fish." Rep. Wally Herger (R-CA) stressed the need for "a sustainable, balanced and comprehensive solution to this water situation that will allow us to equitably meet the needs of all water users, human and otherwise." Rep. Ken Calvert (R-CA) questioned whether shutting off CVP diversions will help the smelt, saying, "The American people deserve clear and undeniable evidence that those actions are in fact benefitting the species."⁵³

House Hearing on Water Management and Climate Variability

On October 27, at the request of Subcommittee Chair Rep. Grace Napolitano (D-CA), the WSWC Executive Director testified on behalf of the Council at a House Resources Committee, Water and Power Subcommittee, oversight hearing on Water Management and Climate Variability: Information Support at the USGS and Bureau of Reclamation. The testimony referenced the 2006 and 2008 WGA Water Reports saying:

⁵³http://resourcescommittee.house.gov/index.php?option=com_jcalpro&Itemid=54&extmode=view&extid=238

In June 2006, the Western Governors' Association unanimously adopted a report prepared by the Western States Water Council entitled, "Water Needs and Strategies for a Sustainable Future" and in 2008 a follow up "Next Steps" report. The 2006 report included 28 recommendations in six different areas, all of which are dependent on water resources information. The 2006 Report called for "...a state-by-state and westwide summary of existing water uses..., current ground and surface water supplies, and anticipated water demands, ... [that] should address both consumptive and non-consumptive uses and demands."⁵⁴

The 2008 "Next Steps" Report's Executive Summary included 42 recommendations for action. It recommended, "State and federal water resource agencies should work together to provide universal access to the water-related data collected by all state, local and federal agencies, as well as tools and models that better enable the synthesis, visualization and evaluation of water-related data..."⁵⁵ It also called for "an accurate assessment of the Nation's water availability and water demands, with the goal of integrating the information into state water resources planning, recognizing that a truly national assessment must begin at the state and local level with appropriate technical and financial support from the federal government."⁵⁶

In 2007, the Council undertook a survey of its member states regarding their existing water supplies, projected future water uses, and strategies for closing any gaps in water supply and demands. The effort highlighted the general lack of good information. Much of the future projected water use data could best be characterized as "unsubstantiated estimates."

The National Science and Technology Council's Committee on Environment and Natural Resources, Subcommittee on Water Availability and Quality (SWAQ), released a 2007 report entitled, "A Strategy for Federal Science and Technology to Support Water Availability and Quality in the United States." The report said, "Simply stated, quantitative knowledge of U.S. water supply is currently inadequate."

The report continued: "Our present situation regarding water supplies, water uses and the impact of climate change and variability might be compared to trying to balance your bank account without knowing what your income and expenses are, or how much you have or can expect to have in savings. Snowpack, reservoir storage and ground water are our savings accounts. Precipitation, streamflow and ground water recharge represent our deposits, against which we write water use checks for our growing population and demands related to agriculture, our cities and towns, municipal, commercial and industrial uses, rural areas domestic uses, energy production, the environment, fish and wildlife, endangered species, recreation and the list goes on. Balancing our Nation's water books is a challenge that will require a collaborative state and federal effort and must involve myriad stakeholders."

⁵⁴2006 WGA Water Report, p. 10, 2D.

⁵⁵2008 Next Steps Report, p. III, 7.

⁵⁶2008 Next Steps Report, p. IV, 8(c).

The testimony specifically noted the WSWC and WestFAST are working together to improve water resources information for decision-making, and have made incremental progress toward implementing recommendations in the WGA Water Reports. Moreover, the Council expressed its support for implementation of the SECURE Water Act.

The Council's testimony reiterated its support for federal water and climate data collection and analysis programs. Critical and vital information is gathered and disseminated through a number of important federal programs including, but not limited to: (1) the Snow Survey and Water Supply Forecasting Program, administered by the National Water and Climate Center (NWCC) in Portland, Oregon, and funded through USDA's Natural Resources Conservation Service (NRCS); (2) NWCC's Soil and Climate Analysis Network (SCAN); (3) the U.S. Geological Survey's (USGS) Cooperative Streamgaging Program and National Streamflow Information Program, which are funded through the Department of Interior; (4) Landsat thermal data acquired through the National Aeronautics and Space Administration and USGS; (5) USGS ground water measurement and monitoring; and (6) the National Oceanic and Atmospheric Administration's National Weather Service and Climate Programs Office. It is important to note that interdependent and interrelated public and private decisions are made using this data.

RESOLUTIONS AND POLICY POSITIONS

From time to time, the Council adopts policy positions and resolutions, many of which address proposed federal laws, rules and regulations or other matters affecting the planning, conservation, development, management, and protection of western water resources. Policy positions sunset after three years, and are then reconsidered, reaffirmed, revised and readopted, or allowed to expire. The following actions were taken in 2009, during the regular Council meetings.

Position No. 312 is in the form of a letter, dated April 7, to the Honorable Jeff Bingaman, Chairman, and the Honorable Lisa Murkowski, Ranking Member, of the Senate Energy and Natural Resources Committee, expressed the Council's appreciation for their efforts in the introduction of S. 531, the Energy and Water Integration Act of 2009.

Position No. 313 is in the form of a letter, dated May 8, to the Honorable Barbara Boxer, Chairwoman, of the Senate Environment and Public Works Committee. It expressed the Council's interest in the passage of H.R. 1145, the National Water Research and Development Initiative Act, and its intent to coordinate the federal government's role in designing and implementing federal water research, development, demonstration, data collection and dissemination, education and technology transfer activities.

Position No. 314 reiterated the Council's strong support for federal legislation that would authorize and fund applied research and improvements to water resources management planning capabilities that would assist water agencies at all levels of government in adapting to climate change and variability.

Position No. 315 is in the form of a letter, dated July 17, to the Honorable James Oberstar, Chairman, and the Honorable John Mica, Ranking Member, of the House Transportation and Infrastructure Committee. It expressed the Council's concern regarding draft legislation under the title of the Sustainable Watershed Planned Act.

Position No. 316 is a revised resolution to express the WSWC's support for EPA's water transfer rule under Clean Water Act regulations published in the June 13, 2008 *Federal Register*. The WSWC declares States have available authorities to protect the quality of a receiving water body impacted by a water transfer, and opposes regulation to water transfers under the National Pollutant Discharge Elimination System (NPDES).

Position No. 317 is a renewed expression of the WSWC's strong support for Reclamation's commitment to an incentive-based program of technical and financial assistance, through voluntary federal-state-local partnerships, as the appropriate long-term role for Reclamation in encouraging water conservation.

Position No. 318 is in the form of a letter, dated July 17, to Terry Brahman, Council on Environmental Quality, that provides a response to the request to comment on the existing Principles and Guidelines. General comments were provided based on previous positions and the 2008 report of the Western Governors' Association, *Water Needs and Strategies for a Sustainable Future: Next Steps*.

Position 319 is in the form of a resolution expressing the WSWC views regarding the importance of protecting and wisely managing our national water resources for the benefit of our present and future generations, including our environment. It declares that any National Water Policy vision, plan or planning process must recognize, defer to and support State, tribal and local government water plans and planning process.

Position No. 320 is a renewed expression of strong WSWC support for legislation to develop and implement a comprehensive and coordinated national policy and cooperative federal program to enhance research and development by both private and public entities related to weather modification and mitigation, including snowpack augmentation, rainfall enhancement and hail suppression.



WESTERN STATES WATER COUNCIL

5296 South Commerce Drive, Suite 202 / Murray, Utah 84107 / (801) 685-2555 / FAX (801) 685-2559

Web Page: www.westgov.org/wswc

April 29, 2009

Position #312

The Honorable Jeff Bingaman
Chairman
Senate Energy & Natural Resources Committee
304 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Lisa Murkowski
Ranking Minority Member
Energy and Natural Resources Committee
304 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Bingaman and Senator Murkowski:

I am writing on behalf of the Western States Water Council, an affiliate of the Western Governors' Association, to commend you on the introduction of S. 531, the Energy and Water Integration Act of 2009. As you know, the Council advises our governors on water policy issues, and we recognize the close symbiotic relationship between water and energy resources development and use. Not since the 1970's has the Nation faced such increasingly important resource management challenges and policy decisions related to our energy independence and sustainable water future, which now like then will only become more serious.

In the West we face an uncertain future due to increasing demands related to population growth, climate change and growing demands for water and energy to meet our economic needs while protecting our environment. Energy demands and their impact on our water and other natural resources, as well as our environment, are of particular concern. Our future prosperity as a Nation and a region will depend on wise investments in building, rebuilding and maintaining our capacity to provide adequate supplies of clean energy and clean fresh water for future generations.

We appreciate your leadership in addressing these challenges, and fully support the objective of S. 531, to provide an in-depth analysis of the impact of energy development and production on our Nation's water resources. In general, we know far less than we would like regarding the sustainability of our increasingly scarce and threatened clean water supplies, current water uses and the future demands likely to be placed on those supplies. Similar uncertainty regarding our energy future compounds the problems policy makers and resource planners now face. States must be indispensable partners in addressing related issues.

Sound science is an important key to making wise investments in our future and decisions regarding water development and use. A knowledgeable lifecycle assessment of water and energy related needs for the transportation and electricity sectors is overdue. A comprehensive assessment and analysis of the water related impacts of different uses of fuels and power plant cooling technologies will help water and energy planners and policy makers better understand and cope with the challenges they face in the most efficient and effective manner possible.

Senators Bingaman and Murkowski
April 29, 2009
Page 2

Water conservation has always been a fundamental principle of western water law and policy. Often the related energy savings is important. In the West, interbasin transfers of water within states are common, often involving a considerable expenditure of energy to move water significant distances. Energy and water use and related costs are a primary constraint when it comes to the West's economic well being, which has traditionally been based on agriculture, mining and other water intensive consumptive uses, as well as important water- based recreation and other non-consumptive instream uses. Water development, treatment, distribution and wastewater treatment consume substantial amounts of energy. Emerging and expanding technologies involving water recycling and reuse, and desalination, also are energy intensive. States must be appropriately involved in any authorized studies.

No region of the country feels the water-related impacts of energy development and use more acutely than the West, and nowhere is water conservation and wise use more important. As we have in the past, we look forward to working with you on this legislation and other strategies designed to address the future water needs of the West and the Nation.

Sincerely,



Garland Erbele, Chairman
Western States Water Council



WESTERN STATES WATER COUNCIL

5296 South Commerce Drive, Suite 202 / Murray, Utah 84107 / (801) 685-2555 / FAX (801) 685-2559

Web Page: www.westgov.org/wswc

May 8, 2009

Position No. 313

The Honorable Barbara Boxer, Chairwoman
Senate Environment & Public Works Committee
410 Dirksen Senate Office Building
Washington, DC 20510-6175

Dear Chairwoman Boxer,

The Western States Water Council advises the Western Governors' Association on water policy issues. We are interested by the passage in the House of the National Water Research and Development Initiative Act (H.R. 1145), and its intent to coordinate the federal government's role in designing and implementing federal water research, development, demonstration, data collection and dissemination, education, and technology transfer activities. We agree with the need to focus limited federal research resources, and would encourage an emphasis on practical applications addressing present and future water management challenges.

We are concerned that the proposed interagency committee and its charge appear to be modeled after the approach used by the federal government for the Climate Change Science Program (CCSP), an interagency effort which has not proven to be particularly effective. External reviews of CCSP have highlighted the difficulties of managing a program so structured, and – most importantly from our perspective – the absence of dialog between the program and users of the information it would generate. Two-way communications with users of information from federal research programs – such as state and local governments – must be a key component of efforts to design federal water research programs. As presently drafted, HR 1145 lacks this key function, requiring only that in preparing the National Water Research and Assessment Plan "...the interagency committee shall consider and utilize recommendations and information from State, local, and tribal governments and contained in reports that have addressed water research needs."

Not unlike our current national fiscal crisis, in the West we face an uncertain future due to increasing demands related to population growth and growing demands for water for both economic and environmental needs. We are living on past investments (federal, state, local and private) in an infrastructure system that has sustained us for over a century, but much of which is now well beyond its design life. Moreover, climate change and variability introduce a greater degree of uncertainty and threat to the sustainable use of our national water resources.

The Western Governors' Association has adopted a 2006 report entitled *Water Needs and Strategies for a Sustainable Future* and a 2008 *Next Steps* report. Both include a number of recommendations. As passed by the House and sent to the Senate, much of H.R. 1145 is consistent

Chairwoman Boxer
May 8, 2009
Page 2

with these recommendations. We are interested in where the initiative coordination office might be located and how funding for the office will be allocated among the federal agencies.

The former included Recommendation 2.A. "Federal and state agencies should increase support and funding for state and federal basic water data gathering activities that can serve as the basis for sound decision making. Gaps in data should be identified. Remote sensing capabilities, including Landsat thermal data, and developing technologies, such as the use of Doppler radar to measure streamflows, are important tools that need to be retained and fostered..." and

Recommendation 2.B. "Use the research programs at western state universities to focus research on practical applications of promising new technologies, and identify areas where the increased use of technology...should be promoted to enable more efficient and cost effective operations."

The *Next Steps* report added Recommendation 7. "State and federal water resource agencies should work together to provide universal access to the water-related data collected by all state, local, and federal agencies, as well as tools and models that better enable the synthesis, visualization and evaluation of water-related data..." and

Recommendation 11. "The Congress and the Administration should support more spending for research and development related to innovative water conservation and supply augmentation strategies, including ground water recharge and recovery, desalination, recycling and reuse, and weather modification. Financial assistance should be provided as well where there is a significant national or regional benefit."

Our future prosperity as a Nation and a region will depend on wise investments in rebuilding our capacity to provide adequate supplies of clean fresh water for future generations. We appreciate your leadership in addressing these challenges and your commitment to investing in science and technology as a necessary step in wise decision-making and future problem solving.

We would appreciate the opportunity to work with you as this and other legislation is considered further that would enhance our national research capabilities as they relate to addressing our water management challenges in the West and the Nation.

Sincerely,



Garland Erbele, Chairman
Western States Water Council

**RESOLUTION
of the
WESTERN STATES WATER COUNCIL
SUPPORTING FEDERAL LEGISLATION TO
FUND RESEARCH AND PLANNING ASSISTING IN
CLIMATE CHANGE ADAPTATION**

**Kansas City, Kansas
April 24, 2009**

WHEREAS, climate variability and change have serious potential consequences for water resources planning and management, water rights administration, flood management, water supply availability, and water quality management; and

WHEREAS, expected impacts of climate change include increased aridification of much of the West, increased frequency and intensity of severe weather (droughts and floods), reduction of mountain snowpacks, changes in timing and amount of snowmelt runoff, increased plant and crop evapotranspiration resulting in increased water demands, and increased stress on water quality and temperature-sensitive aquatic ecosystems and fisheries; and

WHEREAS, climate change is an additional stressor on western water resources, which are already challenged by population growth, competition for scarce resources, increasingly stringent environmental regulations, and other factors; and

WHEREAS, water resources management and planning at all levels of government and sound future decision-making depend on our ability to understand, monitor, predict, and adapt to changing climate conditions; and

WHEREAS, the 2006 Western Governors' Association (WGA) report on *Water Needs and Strategies for a Sustainable Future* and the follow-up 2008 WGA *Next Steps* report identify addressing climate change impacts as a priority for moving forward, and make specific recommendations for actions that the federal government and the states should take to support adaptation, including detailing research and planning needs; and

WHEREAS, the Council approved Position No. 285 in 2007, calling for the Administration and Congress to give a high priority for funding federal programs that provide for the application of basic research on climate variability and change to real-world water management; and

WHEREAS, the Council co-sponsored workshops in 2007 and 2008 to gather input on climate change adaptation and research needs; and

WHEREAS, the U.S. Geological Survey (USGS) released its Circular 1331, *Climate Change and Water Resources Management: A Federal Perspective*, in February 2009, identifying knowledge gaps, research needs, opportunities to improve planning capabilities, and other activities that would assist in climate change adaptation including those that could impact water quality and thus, available water supply; and

WHEREAS, applied research needs and improvements to water resources planning capabilities identified in the WGA and USGS reports and in the Council's workshops include subjects such as development of regional climate models and downscaled climate model datasets, evaluation of modifications to reservoir flood control rule curves, evaluation of adequacy of existing federal hydroclimate monitoring networks, development and improvement of applications for remote sensing data (satellite imagery), preparation of reconstructed paleoclimate datasets, and development of new guidelines for estimation of flood flow frequencies, consideration of water quality impacts; and

WHEREAS, many of the applied research needs and improvements to water resources planning capabilities identified in the WGA and USGS reports and in the Council's workshops are not presently incorporated into federal agency budgets;

NOW, THEREFORE, BE IT RESOLVED that the Western States Water Council supports development and enactment of federal legislation that would authorize and fund applied research and improvements to water resources management planning capabilities that would assist water agencies at all levels of government in adapting to climate change and variability.



WESTERN STATES WATER COUNCIL

5296 South Commerce Drive, Suite 202 / Murray, Utah 84107 / (801) 685-2555 / FAX (801) 685-2559

Web Page: www.westgov.org/wswc

July 17, 2009

Position No. 315

The Honorable James L. Oberstar, Chairman
Committee on Transportation & Infrastructure
2165 Rayburn House Office Building
Washington, D.C. 20515

The Honorable John L. Mica, Ranking Member
Committee on Transportation & Infrastructure
2163 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Oberstar and Ranking Member Mica:

On behalf of the Western States Water Council, representing the governors of eighteen western states, I am writing to express our deep concern regarding draft legislation circulating under the title of the Sustainable Watershed Planning Act. We very much appreciate the opportunity to comment on the draft proposed bill in advance of its introduction.

We understand that the intent of the draft Sustainable Watershed Planning Act may be to require federal agencies to engage in greater collaboration with each other, States, and other governmental and non-governmental entities – thereby reducing inefficiency, redundancy and conflicting mandates. Nevertheless, we feel strongly that the draft bill is based on a top-down policy paradigm that has more often than not proved unworkable in the past. It closely parallels the old Water Resources Council established under the Water Resources Planning Act of 1965. Not coincidentally, the Western States Water Council was organized that same year to ensure States maintained a strong voice in the development and management of their water resources.

As you may know, as recommended in the Western Governors' Association's 2008 report, *Water Needs and Strategies for a Sustainable Future: Next Steps*, nine federal agencies have entered into a formal agreement with the Western States Water Council to create a Western States Federal Agency Support Team (WestFAST). WestFAST is made up of representatives of federal agencies with water resources responsibilities, and four of those agencies have agreed to provide financial support for a federal liaison position located in our office to better facilitate collaboration. WestFAST is a new and innovative attempt to promote the type of collaborative planning envisioned in the draft legislation, but with a focus on State identified problems and priorities. Though new, we believe it can be a model example of appropriate collaboration in other parts of the country.

We strongly suggest as outlined below in excerpts from the WGA 2008 Water Report, which the Governors approved, that State and local water and watershed plans and planning processes are the most appropriate building blocks for any federal or national water plan. Federal agencies should respect and assist state and local governments with their planning. However, federal agencies cannot and should not try to dictate planning criteria and policies. Experience has taught us that "one size doesn't fit all."

The foreword to the *2008 WGA Water Report* emphasizes that: "States have the pivotal role in water planning, as well as allocating and protecting the resource.... To support the state leadership role, the federal government should help by providing a rational federal regulatory framework, together with technical and appropriate financial assistance." It continues, saying that it is "paramount to move state and local government participation back into the process of federal decisionmaking, before too much momentum has been built toward policy decisions."

Moreover, "Developing optimal solutions to the challenges... will require an integrated approach and greater partnerships among state, local and federal agencies. This approach should consider all needs together, develop effective solutions which are complementary rather than conflicting, and provide direction for selecting the most appropriate governmental entities or organizations for implementing solutions."

One of the highlighted recommendations from the report declares: "The WGA should urge Congress to require federal water resource agencies to include 'Integrated Water Resources Planning and Assistance' as one of their primary missions." The goal should be to encourage more comprehensive plans developed under state leadership with federal assistance, and reduce "inefficiencies caused by project-specific responses to competing demands, contradictory actions by multiple state, local and federal agencies, and hastily conceived reactions to the latest real or perceived crisis."

Another highlighted recommendation is that "Federal agencies should use state water plans: (a) to help determine national water policy and priorities that best align federal agency support to states; and (b) to inform decision making regarding regional water issues."

We hope that you will carefully reconsider acting on the draft legislation and continue to explore alternative approaches. We do not believe the proposed Council on Sustainable Watershed Management and the Regional Planning Boards are the best way to work together with myriad other state and interstate planning commissions, boards and watershed groups. We would suggest you look at the recently enacted Cooperative Watershed Planning Act which our Council supports. We would also hope you would look at the WSWC/WestFAST partnership as a better way to focus federal support on state priorities.

Again, thank you for the opportunity to comment and for your interest in the most efficient means to accomplish effective water resources planning and management.

Sincerely,



Garland Erbele, Chairman
Western States Water Council

(See also No. 278, revised and reaffirmed July 21, 2006)

RESOLUTION
of the
WESTERN STATES WATER COUNCIL
regarding
WATER TRANSFERS
and
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
DISCHARGE PERMITS
Park City, Utah
July 17, 2009
(revised and reaffirmed)

WHEREAS, on August 1, 2003 the Western States Water Council adopted a resolution regarding water transfers and National Pollutant Discharge Elimination System (NPDES) discharge permits; and

WHEREAS, on July 21, 2006, the Western States Water Council adopted a resolution that generally supported the U.S. Environmental Protection Agency's (EPA) proposed amendment to its Clean Water Act regulations as published on the June 7, 2006 Federal Register (Vol. 71, No. 109), which exempted water transfers from the NPDES permitting program.

WHEREAS, in those resolutions the Western States Water Council declared its position that the transport of water through constructed conveyances to supply beneficial uses should not trigger federal NPDES permit requirements, simply because the transported water contains different chemical concentrations and physical constituents; and

WHEREAS, in those resolutions the Western States Water Council also expressed support for the ability of each Western State to use available authorities to place appropriate conditions on water transfers to protect water quality; and

WHEREAS, on June 13, 2008, the EPA published in the Federal Register (Vol. 73, No. 115) a final amendment to its Clean Water Act regulations (40 CFR Part 122) that expressly excludes water transfers from regulation under the NPDES permitting program, and defines water transfers as an activity that conveys waters of the United States to another water of the United States without subjecting the water to intervening industrial, municipal, or commercial use; and

WHEREAS, the final rule relies on EPA's interpretation of the federal Clean Water Act and does not limit any ability of a State to use any available authority, including authority regarding nonpoint sources of pollution, to protect the water quality of the receiving water body in a water transfer; and

WHEREAS, water transfers and water quality are essential to the social, economic and environmental well-being of the Western States,

NOW, THEREFORE, BE IT RESOLVED that the Western States Water Council generally supports EPA's amendment to its Clean Water Act regulations as published in the June 13, 2008 Federal Register.

BE IT FURTHER RESOLVED that the Western States Water Council supports the use by a State of available authorities to protect the water quality of the receiving water body in a water transfer.

Position No. 317
(See also No. 232 , 254, and 281)
adopted October 20, 2000
and reaffirmed August 1, 2003 and July 21, 2006

POSITION STATEMENT
of the
WESTERN STATES WATER COUNCIL
in support of
RECLAMATION'S WATER CONSERVATION FIELD SERVICES PROGRAM
AND "BRIDGING-THE-HEADGATE" PARTNERSHIPS
Park City, Utah
July 17, 2009
(revised and readopted)

WHEREAS, the Reclamation Reform Act of 1982 (RRA) directed the U.S. Bureau of Reclamation (Reclamation) to encourage water conservation on federal water projects throughout the seventeen western states, and required districts receiving water from those federal projects to develop water conservation plans; and

WHEREAS, in March 1996, Reclamation adopted an approach to promoting water conservation that would focus on the development of an incentive-based program of technical and financial assistance to districts in lieu of mandatory regulations and other top-down, command-and-control approaches to conservation; and

WHEREAS, Reclamation's Water Conservation Field Services Program (WCFSP) was established in 1997 to encourage the efficient use of water on federal water projects and, in cooperation with States and other entities, provide a non-regulatory, incentive-based approach to assisting water districts, in accordance with state law, develop and implement effective water conservation plans required by the RRA; and

WHEREAS, since 1997, Reclamation's 21 Area Offices have offered local programs that provide assistance and non-binding guidance to districts in four areas of emphasis: 1) water management planning; 2) conservation education; 3) demonstration of innovative conservation technologies; and, 4) implementation of effective conservation measures; and

WHEREAS, the WCFSP's incentive-based conceptual approach is well-received by water districts and other stakeholders at the local level as an appropriate role for Reclamation in encouraging water conservation on federal water projects and fostering improved water management on a watershed, statewide and regional basis; and

WHEREAS, in July 1998, as part of the program outreach under the WCFSP, Reclamation initiated a "Bridging-the-Headgate" conservation partnership with USDA-Natural Resources Conservation Service (NRCS), the National Association of State Conservation Agencies (NASCA), and the National Association of Conservation Districts (NACD), three organizations that have traditionally worked very closely together to support and encourage conservation and resource stewardship among private landowners, farmers, and water users on the "on-farm" side of the water use's headgate; and

WHEREAS, the partners re-affirmed their commitment to the Bridging-the-Headgate-Partnership by signing an updated "Declaration of Cooperation" in August, 2005;

Position No. 317
(See also No. 232 , 254, and 281)
adopted October 20, 2000
and reaffirmed August 1, 2003 and July 21, 2006

NOW THEREFORE BE IT RESOLVED, that the Western States Water Council supports Reclamation's commitment to an incentive-based program of technical and financial assistance, through voluntary federal-state-local partnerships, as the appropriate long-term role for Reclamation in encouraging water conservation; and

BE IT FURTHER RESOLVED, that the Western States Water Council supports the overall objective of the "Bridging-the-Headgate" partnership to work together as federal-state-local partners for the sustained and efficient use of western agricultural water supplies; and

BE IT FURTHER RESOLVED, that the Bureau of Reclamation, in its promotional materials for the program, may use the Council's name as a supporter of the program's incentive-based approach subject to review and approval of promotional materials by the Executive Director of the Council.



WESTERN STATES WATER COUNCIL

5296 South Commerce Drive, Suite 202 / Murray, Utah 84107 / (801) 685-2555 / FAX (801) 685-2559

Web Page: www.westgov.org/wswc

July 17, 2009

Position #318

Council on Environmental Quality
Attn: Terry Brayman
722 Jackson Place, NW
Washington, D.C. 20503

Dear Mr. Brayman:

Given that we have had a limited period of time in which to respond to the request to comment on the existing Principles and Guidelines (P&Gs), we would offer the following general comments based on our previous positions and the 2008 report of the Western Governors' Association, *Water Needs and Strategies for a Sustainable Future: Next Steps*.

Nearly 28 years ago, the Council wrote in response to a request for comments regarding, "Water Project Planning Guidelines – A Summary of Major Proposed Policy Positions." Now, as then, we oppose "complex, inflexible and difficult and expensive to apply" procedures and "rigid" rules, and support "flexible guidelines to govern water resource planning."

Echoing some of those past comments, we concur that National Economic Development (NED) should be a primary national planning objective, but other benefits should be "recognized and taken into account in project formulation and in determination of the justification to proceed with authorization and implementation." Planning for water projects based strictly on a NED objective "...would not be compatible with existing state water plans and planning efforts in many of the states. If the states are asked to cost share in a project, then the plan must reflect the states' objectives." States should take the lead in all aspects of water resources planning.

"We cannot concur that the plan that has the maximum net economic benefits is necessarily the best plan from a national standpoint. One of the alternative plans may provide greater total benefits and still possess a benefit cost ratio considerably in excess of one-to-one. Further, we cannot agree that all costs in excess of those associated with the plan that has the maximum economic net benefits should be borne by non-federal interests. National interests may be the principal beneficiaries of these additional benefits."

In developing new principles and flexible guidelines, CEQ should carefully consider the Governors' 2008 report, which declares in part: "States have the pivotal role in water planning, as well as allocating and protecting the resource.... To support the state leadership role, the federal government should help by providing...technical and appropriate financial assistance." Further, it is "...paramount to move state and local government participation back into the process of federal

Terry Brahma
July 17, 2009
Page 2

Position #318

decision-making... Developing optimal solutions... will require an integrated approach and greater partnerships among state, local and federal agencies.... Federal agencies should use state water plans: (a) to help determine national water policy and priorities that best align federal agency support to states; and (b) to inform decision making regarding regional water issues.”

Integrated Water Resources Planning (IWRP) should be a primary mission of federal water resources agencies, with a goal of: “(a) changing the way water planning is conducted by encouraging more comprehensive plans developed under state leadership with federal assistance; and (b) reducing inefficiencies caused by the present mode of project-specific responses to competing demands, contradictory actions by multiple state, local and federal agencies, and hastily conceived reactions to the latest real or perceived crisis.”

More consideration needs to be given alternative ways to quantify, evaluate and prioritize funding for water, wastewater, watershed protection and restoration, and public-safety related needs – highlighting the benefits of integrated watershed, river basin, regional and interstate planning and management.

While offering these general comments, we look forward to the opportunity to comment in more detail in the future as new Principles and Guidelines are developed.

Sincerely,



Garland Erbele
Chairman
Western States Water Council

RESOLUTION
of the
WESTERN STATES WATER COUNCIL
Regarding
NATIONAL WATER POLICY VISION
August 13, 2009*

WHEREAS, the Western States Water Council has long recognized the importance of protecting and wisely managing our national water resources for the benefit of our present and future generations, including our environment; and

WHEREAS, different entities are currently evaluating the need for a national water vision and new federal legislation to advance water resources planning and management at all levels; and

WHEREAS, States and their political subdivisions have primary responsibility for planning and managing our nation's water resources, both surface and ground water, quantity and quality, as well as allocating and administering rights to the use of water for myriad uses; and

WHEREAS, States are in the best position to identify, evaluate and prioritize their needs; and

WHEREAS, the focus should be on a grassroots, small watershed approach to identifying water problems and potential solutions from the ground up, integrating these efforts into individual state plans; and

WHEREAS, regional or multi-state and multiple river basin strategic plans – as well as any national water plan, vision or planning process – should be comprised of these building blocks; and

WHEREAS, it is paramount to move state and local government participation back into the process of federal decisionmaking, before too much momentum has been built toward federal policy decisions; and

WHEREAS, the federal government should support States by providing a rational federal regulatory framework, together with technical and appropriate financial assistance; and

WHEREAS, developing optimal solutions to our water-related challenges will require an integrated approach and greater partnerships among state, local, tribal and federal agencies; and

WHEREAS, the above approach should consider all needs together, develop effective solutions which are complementary rather than conflicting, and provide direction for selecting the most appropriate governmental entities or organizations for implementing solutions; and

WHEREAS, comprehensive plans developed under state or tribal leadership with federal assistance should (a) reduce inefficiencies caused by project-specific responses to competing demands, (b) reduce contradictory actions by multiple state, local and federal agencies, and (c) minimize hastily conceived reactions to the latest real or perceived crisis; and

WHEREAS, Federal agencies should use state water plans (a) to help determine national water policy and priorities that best align federal agency support to states, (b) to inform decision making regarding regional water issues, and (c) to coordinate investment in water infrastructure;

NOW THEREFORE BE IT RESOLVED, that any National Water Policy vision, plan or planning process must recognize, defer to and support State, tribal and local government water plans and planning processes;

BE IT FURTHER RESOLVED, that any federal legislation should explicitly recognize and provide support for ongoing watershed efforts in and between the states, tribes and local entities and closely consult with the states in the implementation of any new federal program(s); and

BE IT FURTHER RESOLVED, that Congress should direct federal water resource agencies to include integrated water resources management, planning and assistance as one of their primary missions; and

BE IT FURTHER RESOLVED, that the Administration and Congress should look at the WSWC/WestFAST partnership as a model for a better way to focus federal support on state priorities; and

BE IT FURTHER RESOLVED, that any federal legislation should avoid strategies that increase mandates on state, tribal and local governments; and

BE IT FURTHER RESOLVED, that nothing in any act of Congress should be construed as affecting or intending to affect or in any way to interfere with the laws of the respective States relating to: (a) water or watershed planning; (b) the control, appropriation, use, or distribution of water used in irrigation or for municipal or any other purposes, or any vested right acquired therein; or (c) intending to affect or in any way to interfere with any interstate compact, decree or negotiated water rights agreement.

*Adopted by the Executive Committee via conference call.

**POSITION
of the
WESTERN STATES WATER COUNCIL
regarding
FEDERAL WATER AND CLIMATE DATA COLLECTION AND ANALYSIS
PROGRAMS
Adopted as Revised
Lincoln, Nebraska
October 16, 2009**

WHEREAS, the Western States Water Council is a policy advisory body representing eighteen states, and has long been involved in western water conservation, development, protection, and management issues, and the member states and political subdivisions have long been partners in cooperative federal water and climate data collection and analysis programs; and

WHEREAS, in the West, water is a critical, vital resource (much of which originates from mountain snows) and sound decision making demands accurate and timely data on precipitation, temperature, soil moisture, snow depth, snow water content, streamflow, ground water and similar information; and

WHEREAS, the demands for water and related climate data continue to increase along with our population, and this information is used by federal, state, tribal, and local government agencies, as well as private entities and individuals to: (1) forecast flooding, drought and climate change impacts; (2) project future water supplies for agricultural, municipal, and industrial uses; (3) estimate streamflows for hydropower production, recreation, and environmental purposes, such as for fish and wildlife management, including endangered species needs; and (4) facilitate water management and administration of water rights, decrees and interstate compacts; and

WHEREAS, without timely and accurate information, human life, health, welfare, property, and environmental and natural resources are at considerably greater risk of loss; and

WHEREAS, critical and vital information is gathered and disseminated through a number of important federal programs including, but not limited to: (1) the Snow Survey and Water Supply Forecasting Program, administered by the National Water and Climate Center (NWCC) in Portland, Oregon, and funded through USDA's Natural Resources Conservation Service (NRCS); (2) NWCC's Soil and Climate Analysis Network (SCAN); (3) the U.S. Geological Survey's Cooperative Streamgaging Program and National Stream Flow Information Program, which are funded through the Department of Interior; (4) Landsat thermal data acquired through the National Atmospheric and Space Administration (NASA) and USGS; (5) USGS ground water measurement and monitoring; and (6) the National Oceanic and Atmospheric Administration's (NOAA) National Weather Service and Climate Programs Office; and

WHEREAS, state-of-the-art technology has been developed to provide real or near real-time data with the potential to vastly improve the water-related information available to decisionmakers in natural resources and emergency management, and thus better protect the public safety, welfare and the environment; and

WHEREAS, over a number of years, federal appropriations have not kept up with increasing needs, program costs and/or capital replacement requirements, as well as matching non-federal contributions, and this erosion in funding has led to the discontinuance, disrepair, or obsolescence of vital equipment needed to maintain existing water resources related data gathering activities; and

WHEREAS, a substantial increase in related federal program appropriations is required to avoid the loss of critical information and data, and to address new emerging needs; and

WHEREAS, there is a serious need for adequate and consistent federal funding to maintain, restore, modernize, and provide for the targeted expansion of federal programs with a primary focus on coordinated data collection and dissemination.

NOW THEREFORE BE IT RESOLVED, that the Western States Water Council urge the Administration and the Congress to give a high priority to the allocation and appropriation of sufficient funds for these critical, vital programs which benefit so many, yet have been or are being allowed to erode to the point that it threatens the quantity and quality of basic data provided to a myriad, growing and diffuse number of decision makers and stakeholders, with significantly adverse consequences.

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 matters relating to the planning, conservation, development, management, and protection 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 interbasin 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 planning, conservation, development, management, and protection 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.

These rules incorporate the last changes that were adopted in November 1997 at the Council's 125th meetings in Carlsbad, New Mexico.

Article V - Membership

(1) The membership of the Council consists of not more than three representatives of each of the states of Alaska, Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, and Wyoming appointed by and serving at the pleasure of the respective Governors. Member states of the Western Governors' Association, which are not members of the Council, shall be added to membership if their respective Governors so request. The Executive Committee may, upon unanimous vote, confer membership upon other western states, which are not members of the Western Governors' Association, if their respective Governor so requests.

(2) Member states may name alternate representatives.

(3) Any state may withdraw from membership upon written notice by its Governor. Further in the event any state becomes delinquent in paying dues as set forth in Article V (5) for a period of three years, the state will be excluded from Council membership unless and until the current year's dues are paid.

(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 may be granted for a period of up to three years, during which time the state may 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.

(5) If any state fails to pay the appropriate level of dues established by the Executive Committee of the Council, the privilege afforded by virtue of its membership to participate in Council activities and to receive all printed materials dispersed by the Council shall be withheld pending the payment of dues, beginning at the start of the fiscal year following the delinquency.

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 Chair, Vice-Chair and Secretary-Treasurer. They shall be selected in the manner provided in Article VIII.

Article VIII - Selection of Officers

The Chair, Vice-Chair 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. However, the Chair and Vice-Chair may not be elected to serve more than two terms consecutively in any one office. In the event that a vacancy occurs in any of these offices, it shall be filled by an election to be held at the next quarterly Council meeting.

Article IX - Executive Committee

(1) Each Governor may designate one representative 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. In the absence of such a designation by the Governor, representatives of each state shall

designate one of their members to serve on the Executive Committee. Any Executive Committee member may designate an alternate to serve in his/her 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 external policy 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 such 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 - Policy Coordination and Deactivation

With regard to external positions adopted after being added to the agenda of the meeting by unanimous consent, such external policy positions shall be communicated to the member governors of the Western Governors' Association (WGA) and the WGA Executive Director for review. If after 10 days no objection is raised by the governors, then the policy position may be distributed to appropriate parties. In extraordinary cases, these procedures may be suspended by the Executive Director of the WGA, who will consult with the appropriate WGA lead governors before doing so.

Policy positions will be deactivated three years after their adoption. The Executive Committee will review prior to each regular meeting those policy statements or positions due for sunseting. If a majority of the Executive Committee members recommend that the position be readopted by the Council, then such position shall be subject to the same rules and procedures with regard to new positions that are proposed for Council adoption.

Article XII - 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 XIII - Meetings

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

Article XIV - 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 XV - Amendment

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