

2015

ANNUAL REPORT

of the

WESTERN STATES WATER COUNCIL

50th Annual Report

TABLE OF CONTENTS

	<u>Page</u>
INTRODUCTION	iv
MEMBERS ADDRESSES AND PHONE NUMBERS	1
COMMITTEE AND SUBCOMMITTEE ASSIGNMENTS	9
WESTFAST MEMBERS	14
COUNCIL MEMBERS.	16
COUNCIL STAFF	17
COUNCIL MEMBERSHIP/STAFF CHANGES/NEWS	18
COUNCIL MEETINGS	
Spring - Tulsa, Oklahoma	20
Summer/50th Anniversary - Lake Tahoe, Nevada	23
Fall - Manhattan, Kansas.	26
OTHER MEETINGS	
Western Governors’ Association	29
Drought Forum/Drought Webinar Series	29
Annual Meeting/Water Policy Resolution	31
Winter Meeting.	32
WSWC Washington, DC Visits	32
WSWC/NARF Symposium on the Settlement of Indian Reserved Water Rights Claims.	33
Water Quality-Water Quantity Nexus Workshop	37
Water Management Strategies for Addressing Long-Term Drought and Climate Uncertainty.	39
CONGRESSIONAL TESTIMONY	
Senate Committee on Energy and Natural Resources Subcommittee on Water and Power	41
WATER DATA EXCHANGE	48
WESTERN STATES FEDERAL AGENCY SUPPORT TEAM	49
OTHER IMPORTANT ACTIVITIES AND EVENTS	
Western States Water	54
Western Governors’ State of the State Addresses.	54
Bureau of Reclamation	55
Water in the 21 st Century Act	55
FY2016 Budget	56
House Water and Power Budget Oversight Hearing.	57
Drought/Rural Water Projects	58
Senate Hearing on Water-Related Bills	59
House Hearing on Water-Related Bills.	60
<i>Oregon Natural Resources Council Action v. Bureau of Reclamation.</i>	61

Clean Water Act/Corps of Engineers/Environmental Protection Agency	62
Water of the United States Rulemaking	62
Jurisdictional Rule/Proposed Groundwater Directive	84
Jurisdictional Determination.	86
Clean Water Act/Environmental Protection Agency.	86
Connectivity Report	86
Tribal Treatment as States	87
Gold King Mine	88
Technical Evaluation of the Gold King Mine Incident	95
Drought	96
Senate Energy and Natural Resources Committee Hearing	96
Western Water and American Food Security Act.	97
Drought Recovery and Resilience Act	100
Forest Service	100
Groundwater Directive	100
Hydraulic Fracturing.	102
Indian Water Rights	103
Legislative Process	103
Administration Settlement Processes	105
Aqua Caliente Band of Cahuilla Indians.	105
Senate Oversight Hearing	107
San Luis Rey Indian Water Rights Settlement Act	107
Landsat	108
River Basins	108
Klamath River Basin.	108
Klamath Water Recovery and Economic Restoration Act	108
Klamath Basin Restoration Agreement	108
Basin Water Supply and Demand Studies	109
Colorado River	109
Santa Fe Basin.	110
Hood River	110
Yakima River Basin Water Enhancement Project Phase III Act	111
States.	112
California	112
Executive Orders/Drought.	112
California Emergency Drought Relief Act of 2015	113
Colorado	115
Colorado Water Plan	115
New Mexico	116
In-Stream Flows.	116
Severe Weather	117
Oklahoma	117
Water Conservation/Water Planning	117
Oklahoma/Texas	118
Flooding.	118
Oregon	118
Utah	118
Water Use/Legislative Audit	118
Water Supply Outlook	119
National Oceanic and Atmospheric Administration	120
National Water Center.	120
Weather Forecasting/Data	120

RESOLUTIONS AND POLICY POSITIONS

Integrating Water and Energy Policy and Planning	124
Federal Research on Climate Adaptation	126
State Primacy over Groundwater	128
Rural Water Supply Project/Infrastructure Needs.....	130
Water Transfers and National Pollutant Discharge Elimination System (NPDES) Discharge Permits. . .	133
Vision on Water	135
Vision on Water	136
Federal Water and Climate Data Collection and Analysis Programs	138
Drought Preparedness, Prediction and Early Warning Programs	140
Bureau of Reclamation Drought Response Program.....	142
States' Water Rights and Natural Flows	144
RULES OF ORGANIZATION.....	146
GLOSSARY OF ACRONYMS	152

2015 ANNUAL REPORT

OF THE

WESTERN STATES WATER COUNCIL

INTRODUCTION

The first official meeting of the Western States Water Council (WSWC) 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 WSWC 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 WSWC has since provided a unified voice on behalf of western governors on water policy issues.

The emphasis and focus of the WSWC 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 WSWC 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 WSWC has sought to develop a regional consensus on westwide water policy and planning issues, particularly federal initiatives. The WSWC strives to protect western states' interests in water, while at the same time serving to coordinate and facilitate efforts to improve western water management.

WSWC membership and associate membership status is determined based on a request from the governor. Originally, WSWC 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 WSWC 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 WSWC. **HAWAII** was a member from 1991-1999. In 1999, **OKLAHOMA** requested and received membership. In 2000, both **KANSAS** and **NEBRASKA** joined the WSWC at the request of their respective governors. WSWC membership is automatically open to all member states of the Western Governors' Association (WGA). 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.

Each member state's governor is an ex-officio WSWC 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.

WSWC 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 WSWC matters with the assistance of a Management Subcommittee, which includes the WSWC officers, immediate past Chair, and Executive Director. The WSWC'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 WSWC are held on a regular basis, rotating among the member states, with state representatives hosting WSWC members and guests. In 2015, the WSWC celebrated its 50th Anniversary. Meetings were held in: Tulsa, Oklahoma on April 15-17; Lake Tahoe, Nevada on July 8-10; and Manhattan, Kansas on October 7-9. Guest speakers are scheduled according to the relevant subjects to be considered at each meeting. The WSWC meetings are open to the public. Information regarding future meeting locations and agenda items can be obtained by contacting the WSWC's office, or visiting our website. Included herein are reports on each of the WSWC meetings, positions and resolutions adopted by the WSWC, and a discussion of other important activities and events related to western water resources. Other information about the WSWC and WSWC members is also included.

The WSWC relies almost exclusively on state dues for funding the organization. Dues are set by the Executive Committee and each state pays the same amount. A copy of the audit performed or the fiscal year ending June 30, 2015 can be obtained from the WSWC office.

During 2015, the WSWC staff was comprised of: Anthony G. (Tony) Willardson, Executive Director; Nathan Bracken, Assistant Director/General Counsel; Sara Larsen, Water Data Exchange Program Manager; Patrick Lambert, WestFAST Liaison; and a secretarial staff consisting of Cheryl Redding and Julie Groat. On May 1, the WSWC hired a new Legal Counsel, Michelle Bushman, who assumed many of the responsibilities of Nathan Bracken, who left the WSWC for private practice.

The WSWC offices are located in the metropolitan Salt Lake City area:

682 East Vine Street, Suite 7
Murray, Utah 84107
(801) 685-2555
Fax (801) 685-2559

<http://www.westernstateswater.org>

MEMBERS ADDRESSES AND PHONE NUMBERS⁺

ALASKA

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

†**Brent Goodrum**, Director
Division of Mining, Land & Water
550 West 7th Avenue, Suite 1070
Anchorage, AK 99501-3579
(907) 269-8600
(907) 269-8904 (fax)
brent.goodrum@alaska.gov

†**Alice Edwards**
Deputy Commissioner
Department of Environmental Conservation
410 Willoughby, Suite 303
P.O. Box 11180
Juneau, AK 99811-1800
(907) 465-5066
(907) 465-5070 (fax)
alice.edwards@alaska.gov

†**David W. Schade** (Alt)
Natural Resources Manager III
Chief, Water Resources Section
Division of Mining Land & Water
Alaska Department of Natural Resources
550 W 7th Avenue, Suite 1020
Anchorage, AK 99501-3579
(907) 269-8645
david.w.schade@alaska.gov

ARIZONA

***Honorable Doug Ducey**
Governor of Arizona
Statehouse
Phoenix, AZ 85007
(602) 542-4331

****Thomas Buschatzke**, Director
Department of Water Resources
3550 North Central Avenue, 2nd Floor
Phoenix, AZ 85012-2105
(602) 771-8426
(602) 771-8681 (fax)
tbuschatzke@azwater.gov

Trevor Baggione, Director
Water Quality Division
1110 West Washington Street
Phoenix, AZ 85007
(602) 771-2321
(602) 771-4834 (fax)
baggione.trevor@azdeq.gov

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

Cynthia Chandley, Attorney (Alt.)
Snell & Wilmer
One Arizona Center
400 East Van Buren Street, Suite 1900
Phoenix, AZ 85004-2202
(602) 382-6154
(602) 382-6070 (fax)
cchandley@swlaw.com

CALIFORNIA

***Honorable Jerry Brown**
Governor of California
State Capitol
Sacramento, CA 95814
(916) 445-2841

****Mark Cowin**, Director
Department of Water Resources
1416 Ninth Street
P.O. Box 942836
Sacramento, CA 95814
(916) 653-5791
(916) 653-5028 (fax)
mcowin@water.ca.gov

*Ex-Officio Member
**Executive Committee Member

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

⁺List as of December 31, 2015.

Thomas Howard
Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100
(916) 341-5615
(916) 341-5620 (fax)
thoward@waterboards.ca.gov

Betty H. Olson
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

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.jones@water.ca.gov

COLORADO

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

****James L. Eklund, Director**
Colorado Water Conservation Board
1313 Sherman Street, Room 721
Denver, CO 80203
(303) 866-3441
(303) 866-4474 (fax)
james eklund@state.co.us

Trisha Oeth, Administrator
Water Quality Control Commission
OED-OLRA-A5
4300 Cherry Creek Drive South
Denver, CO 80246-1530
(303) 692-3468
(303) 691-7702 (fax)
trisha.oeth@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

Patrick J. Pfaltzgraff, 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)
patrick.j.pfaltzgraff@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

John R. Stulp (Alt.)
Special Policy Advisor to the Governor for Water
IBCC Director
1313 Sherman Street, Suite 721
Denver, CO 80203
(303) 866-3441 x. 3257
john.stulp@state.co.us

IDAHO

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

****Jerry R. Rigby**
Rigby, Andrus & Rigby, Chtd.
553 East 4th South
Rexburg, ID 83440
(208) 356-3633
(208) 356-0768 (fax)
jrigby@rex-law.com

†**John Tippetts, Director**
Department of Environmental Quality
Statehouse Mail
1410 North Hilton Street
Boise, ID 83706-1255
(208) 373-0240
(208) 373-0417 (fax)
john.tippetts@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

Gary Spackman, Director (Alt.)

Idaho Department of Water Resources
The Idaho Water Center
322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098
(208) 287-4800
(208) 287-6700 (fax)
gary.spackman@idwr.idaho.gov

KANSAS

***Honorable Sam Brownback**

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

****David W. Barfield, Chief Engineer**

Kansas Department of Agriculture
1320 Research Park Drive
Manhattan, KS 66502
(785) 564-6658
(785) 564-6779 (fax)
david.barfield@kda.ks.gov

Tracy Streeter, Director

Kansas Water Office
900 SW Jackson Street, Suite 404
Topeka, KS 66612
(785) 296-3185
(785) 296-0878 (fax)
tracy.streeter@kwo.ks.gov

Greg Foley

Executive Director, Division of Conservation
Kansas Department of Agriculture
1320 Research Park Drive
Manhattan, KS 66502
(785) 564-6621
(785) 564-6779 (fax)
greg.foley@kda.ks.gov

Chris W. Beightel, Program Manager (Alt.)

Water Management Services
Kansas Department of Agriculture
1320 Research Park Drive
Manhattan, KS 66502
(785) 564-6659
(785) 564-6779 (fax)
chris.beightel@kda.ks.gov

Burke Griggs (Alt.)

Assistant Attorney General
Kansas Attorney General's Office
120 SW 10th Avenue, 2nd Floor
Topeka, KS 66612-1597
(785) 296-4542
(785) 291-3767 (fax)
burke.griggs@ag.ks.gov

Earl Lewis, Assistant Director (Alt.)

Kansas Water Office
900 SW Jackson Street, Suite 404
Topeka, KS 66612
(785) 296-3185
(785) 296-0878 (fax)
earl.lewis@kwo.ks.gov

Tom Stiles, Chief (Alt.)

Kansas Department 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@kdheks.gov

MONTANA

***Honorable Steve Bullock**

Governor of Montana
State Capitol
Helena, MT 59620
(406) 444-3111

****Tim Davis**

Administrator, Water Resources Division
Dept. of Natural Resources and Conservation
P.O. Box 201601
Helena, MT 59620-1601
(406) 444-6605
(406) 444-0533 (fax)
timdavis@mt.gov

George Mathieus, Administrator
Planning, Prevention & Assistance Division
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-1601
(406) 444-7423
(406) 444-6836 (fax)
gemathieus@mt.gov

John Tubbs, Director
Dept. of Natural Resources and Conservation
P.O. Box 201601
Helena, MT 59620-1601
(406) 444-1948
(406) 444-0533 (fax)
jtubbs@mt.gov

Anne Yates (Alt.)
Chief Legal Counsel
Dept. of Natural Resources and Conservation
P.O. Box 201601
Helena, MT 59620-1601
(406) 444-0503
(406) 444-0533 (fax)
ayates@mt.gov

Tom Livers, Director (Alt.)
Department of Environmental Quality
P.O. Box 200901
Helena, MT 59620-1601
(406) 444-2544
(406) 444-4386 (fax)
tlivers@mt.gov

Mike Volesky (Alt.)
Deputy Director
Montana Fish, Wildlife & Parks
1420 East Sixth Avenue
P.O. Box 200701
Helena, MT 59620-0701
(406) 444-4600
(406) 444-4952 (fax)
mvolesky@mt.gov

Jay Weiner (Alt.)
Assistant Attorney General
Civil Services Bureau
Office of the Attorney General
215 North Sanders Street, 3rd Floor
Helena, MT 59620
(406) 444-2026
(406) 444-3549 (fax)
jweiner2@mt.gov

NEBRASKA

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

****Jeff Fassett**, Director (Alt.)
Department of Natural Resources
301 Centennial Mall South
Fourth Floor, State Office Building
P.O. Box 94676
Lincoln, NE 68509-4676
(402) 471-3141
(402) 471-2900 (fax)
jeff.fassett@nebraska.gov

James R. Macy, Director
Department of Environmental Quality
1200 N Street, #400
Lincoln, NE 68508
(402) 471-2186
jim.macy@nebraska.gov

Patrick Rice, Administrator (Alt.)
Water Management Division
Department of Environmental Quality
Suite 400, The Atrium
P.O. Box 98922
Lincoln, NE 68509-8922
(402) 471-2186
(402) 471-2909 (fax)
pat.rice@nebraska.gov

NEVADA

***Honorable Brian Sandoval**
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

Leo Drozdoff, Director
Dept. of Conservation and Natural Resources
901 South Stewart Street, Suite 5001
Carson City, NV 89701
(775) 684-2700
(775) 684-2715 (fax)
ldrozdoff@dcnr.nv.gov

Jason King
Nevada State Engineer
Division of Water Resources
901 South Stewart Street, Suite 2002
Carson City, NV 89701-9965
(775) 684-2861
(775) 684-2811 (fax)
jking@water.nv.gov

†**David Emme** (Alt.)
Administrator
Division of Environmental Protection
901 South Stewart Street, Suite 4001
Carson City, NV 89701-5249
(775) 687-9301
(775) 687-5856 (fax)
demme@ndep.nv.gov

NEW MEXICO

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

†**Tom Blaine**, State Engineer
Office of the State Engineer
Concha Ortiz y Pino Building
130 South Capitol Street, NEA Building
P.O. Box 25102
Santa Fe, NM 87504-5102
(505) 827-6175
(505) 827-6188 (fax)
tom.blaine@state.nm.us

†**Ryan Flynn**, Cabinet Secretary
New Mexico Environment Department
1190 Street Francis Drive, N4050
P.O. Box 26110
Santa Fe, NM 87502-0110
(505) 827-2855
ryan.flynn@state.nm.us

Bidtah N. Becker (Alt.)
Executive Director
Navajo Nation Department of Natural Resources
P.O. Box 9000
Window Rock, AZ 86515
(928) 871-6592
bidtahbecker@navajo-nsn.gov

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 Sperlberg
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

†**Greg Ridgley** (Alt.)
Office of the State Engineer
130 South Capital
Santa Fe, NM 87506-5108
(505) 827-6150
(505) 827-3887 (fax)
greg.ridgley@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 Jack Dalrymple**
Governor of North Dakota
State Capitol
Bismarck, ND 58505
(701) 224-2200

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

L. David Glatt, Chief
North Dakota 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

Jennifer L. Verleger
Assistant Attorney General
Office of the Attorney General
500 North 9th Street
Bismarck, ND 58505
(701) 328-3537
(701) 328-4300 (fax)
jverleger@nd.gov

Michelle Klose (Alt.)
Assistant State Engineer
State Water Commission
900 East Boulevard Avenue
Bismarck, ND 58505-0850
(701) 328-4959
(701) 328-3696 (fax)
maklose@nd.gov

Andrea Travnicek (Alt.)
Senior Policy Advisory
Office of the Governor
600 East Boulevard Avenue
Bismarck, ND 58505-0001
(701) 328-2206
atravnicek@nd.gov

OKLAHOMA

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

****J.D. Strong**
Executive Director
Oklahoma Water Resources Board
3800 North Classen Boulevard
Oklahoma City, OK 73118
(405) 530-8800
(405) 530-8900 (fax)
jdstrong@owrb.ok.gov

†**Shellie Chard-McClary**, Director
Water Quality Division
Oklahoma Dept. of Environmental Quality
P.O. Box 1677
Oklahoma City, OK 73101-1677
(405) 702-7100
(405) 702-7101 (fax)
shellie.chard-mcclary@deq.ok.gov

OREGON

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

****Thomas M. Byler**, Director
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1271
(503) 986-0900
(503) 986-0903 (fax)
thomas.m.byler@wrdd.state.or.us

†**Jennifer Wigal**
Water Quality Program Manager
Oregon Department of Environmental Quality
811 SW Sixth Avenue
Portland, OR 97204
(503) 229-5323
(503) 229-5408 (fax)
wigal.jennifer@deq.state.or.us

SOUTH DAKOTA

***Honorable Dennis Daugaard**
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 East Capitol Avenue
Pierre, SD 57501-3181
(605) 773-5559
(605) 773-6035 (fax)
steve.pirner@state.sd.us

Kent Woodmansey, PE
Engineering Manager
Feedlot Permit Program
Dept. of Environment & Natural Resources
Joe Foss Building
523 East Capitol
Pierre, SD 57501-3181
(605) 773-3351
(605) 773-4068 (fax)
kent.woodmansey@state.sd.us

TEXAS

***Honorable Gregory W. Abbott**
Governor of Texas
State Capitol
Austin, TX 78711
(512) 463-2000

****Jonathan K. "Jon" Niermann**
Commissioner
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, TX 78711-3087
(512) 239-5505
(512) 239-5533 (fax)
Jon.niermann@tceq.texas.gov

Bech K. Bruun
Chairman
Texas Water Development Board
1700 North Congress Ave.
Austin, TX 78701
(512) 463-7847
(512) 475-2053 (fax)
bech.bruun@twdb.texas.gov

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
2525 Kell Boulevard, Suite 302
Wichita Falls, TX 76308
(940) 689-0191
(940) 689-0194 (fax)
craig.estes@senate.state.tx.us

F. Scott Spears, Jr. (Alt)
Partner
Arenson & Spears
901 MoPac Expressway South
Austin, TX 78746-5797
(512) 327-4422
(512) 327-1524 (fax)
scottspearslegal@aol.com

UTAH

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

****Walter L. Baker, Director**
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

Eric Millis, 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)
ericmillis@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@parsonsbehle.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 Jay Inslee**
Governor of Washington
State Capitol
Olympia, WA 98504
(360) 753-6780

****Maia Bellon**, Director
Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600
(360) 407-7001
(360) 407-6989 (fax)
maib461@ecy.wa.gov

Tom Loranger
Water Resources Program Manager
Washington Department of Ecology
P.O. Box 47600
Olympia, WA 98504-7600
(360) 407-6672
(360) 407-6574 (fax)
tlor461@ecy.wa.gov

Alan Reichman (Alt.)
Assistant Attorney General
Ecology Division, Water Section
Washington State Attorney General's Office
P.O. Box 40117
Olympia, WA 98504-0117
(360) 586-6748
(360) 586-6760 (fax)
alanr@atg.wa.gov

†**Buck Smith** (Alt.)
Senior Hydrogeologist
Water Resources Program
Washington Department of Ecology
3190 160th Avenue, SE
Bellevue, WA 98008
(425) 649-7147
(425) 649-7098 (fax)
buck.smith@ecy.wa.gov

WYOMING

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

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

Christopher Brown
Senior Assistant Attorney General
Water and Natural Resources Division
123 Capitol Avenue
Cheyenne, WY 82002
(307) 777-3406
(307) 777-5451 (fax)
chris.brown@wyo.gov

Todd Parfitt, Director
Wyoming Dept. of Environmental Quality
Herschler Building, 4th Floor West
122 West 25th Street
Cheyenne, WY 82002
(307) 777-7555
(307) 777-7682 (fax)
todd.parfitt@wyo.gov

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

Harry LaBonde, Director (Alt.)
Wyoming Water Development Commission
6920 Yellowtail Road
Cheyenne, WY 82002
(307) 777-7626
(307) 777-6819 (fax)
harry.labonde@wyo.gov

†**Kevin Frederick**, Administrator (Alt.)
Wyoming Department of Environmental Quality
Herschler Building, 4th Floor West
122 West 25th Street
Cheyenne, WY 82002
(307) 777-7072
(307) 777-5973 (fax)
kevin.frederick@wyo.gov

WESTERN STATES WATER COUNCIL

Committee Assignments

EXECUTIVE COMMITTEE

Vacant - Alaska
Thomas Buschatzke- Arizona
Mark Cowin - California
Jeanine Jones - California
(Alternate)*
James Eklund - Colorado
Hal Simpson - Colorado
(Alternate)*
Jerry Rigby - Idaho
(**Vice-Chair**)
David Barfield - Kansas
Tim Davis - Montana
Jeff Fassett - Nebraska
Roland Westergard - Nevada
Leo Drozdoff - Nevada
(Alternate)*
Tom Blaine - New Mexico
Todd Sando - North Dakota
J.D. Strong - Oklahoma
Thomas Byler - Oregon
Steve Pirner - South Dakota
Kent Woodmansey - South Dakota
(Alternate)*
Jon Niemann - Texas
Walt Baker - Utah
Maia Bellon - Washington
Patrick T. Tyrrell - Wyoming
(**Chair**)

Management Subcommittee

Patrick Tyrrell
(**Chair**)
Jerry Rigby
(**Vice-Chair**)
Jeanine Jones
(Secretary/Treasurer)
Tony Willardson
(Executive Director)

Nominating Subcommittee

Roland Westergard (**Chair**) - Nevada
Hal Simpson - Colorado

Ex-Officio Representatives

*For purposes of Committee rosters, the designation as an "alternate" only reflect the person's function on the Committee.

Endangered Species Act Subcommittee

Roland Westergard - Nevada
Todd Chenoweth - Texas
Sue Lowry - Wyoming

Ex-Officio Representatives

FWS - Andrew Hautzinger
David Cottingham

Shared Water Vision Subcommittee

Sue Lowry - (**Chair**) - Wyoming
Hal Simpson - Colorado
Mike Volesky - Montana
Pat Tyrrell - Wyoming

Ex-Officio Representatives

USBR - Dionne Thompson
Corps - John Grothaus
Ray Russo
Stu Townsley
EPA - Roger Gorke
USGS - Pixie Hamilton

Water Resources Infrastructure Subcommittee

Jeanine Jones - California (**Chair**)
Hal Simpson - Colorado
Mike Volesky - Montana

Ex-Officio Representatives

USBR - Dionne Thompson
Corps - Elliot Ng
EPA - Steve Albee
NRCS - Keith Admire
Doug Toews

LEGAL COMMITTEE

David Schade - Alaska
William Staudenmaier - Arizona
Cynthia Chandley - Arizona
(Alternate)*
Jeanine Jones - California
James Eklund - Colorado
Jerry Rigby - Idaho
John Simpson - Idaho
(Alternate)*
Burke Griggs - Kansas
Anne Yates - Montana
Jay Weiner - Montana
(Alternate)*
Jim Macy - Nebraska
Roland Westergard - Nevada
Jason King - Nevada
(Alternate)*
Maria O'Brien - New Mexico
Greg Ridgley - New Mexico
(Alternate)*
Jennifer Verleger - North Dakota
(Chair)
Sara Gibson - Oklahoma
Thomas Byler - Oregon
Kent Woodmansey - South Dakota
John Elliott - Texas
Norman Johnson - Utah
Alan Reichman - Washington
Chris Brown - Wyoming
(Vice-Chair)

Non-Tribal Federal Water Needs Subcommittee

Melissa Hornbein - Montana
Ed Bagley - New Mexico
Dwight French - Oregon
Todd Chenoweth - Texas

Ex-Officio Representatives

BLM - Lee Koss
USFS - Jean Thomas
FWS - Andrew Hautzinger
DOD - Marc Kodack

Tribal Reserved Water Rights Subcommittee

William Staudenmaier - Arizona
Cynthia Chandley - Arizona
Jay Weiner - Montana
Bidtah Becker - New Mexico
Greg Ridgley - New Mexico
Arianne Singer - New Mexico
Norman Johnson - Utah

Water Transfers and the Public Interest

Jerry Rigby - Idaho
Pat Tyrrell - Wyoming

Natural Flows Subcommittee

Michelle Klose - North Dakota
J.D. Strong - Oklahoma
Jennifer Verleger - North Dakota
Todd Chenoweth - Texas

WATER QUALITY COMMITTEE

Alice Edwards - Alaska
Trevor Baggio - Arizona
Thomas Howard - California
Betty Olson - California
(Alternate)*
Trisha Oeth - Colorado
Patrick Pfaltzgraff - Colorado
(Alternate)*
John Tippets - Idaho
Tom Stiles - Kansas
George Mathieus - Montana
Tom Livers - Montana
(Alternate)*
Patrick Rice - Nebraska
David Emme - Nevada
Ryan Flynn - New Mexico
David Glatt - North Dakota
J.D. Strong - Oklahoma
(Chair)
Shellie Chard-McClary - Oklahoma
(Alternate)*
Jennifer Wigal - Oregon
Kent Woodmansey - South Dakota
Steve Pirner - South Dakota
(Alternate)*
Jon Niermann - Texas
Todd Chenoweth - Texas
(Alternate)*
Walter Baker - Utah
Maia Bellon - Washington
Pat Tyrrell - Wyoming
Kevin Frederick - Wyoming
(Vice-Chair) (Alternate)*
Todd Parfitt - Wyoming
(Alternate)*

Clean Water Act Subcommittee

Michelle Hale - Alaska
Ruth Hamilton Heese - Alaska
Trisha Oeth - Colorado
Barry Burnell - Idaho
Tom Stiles - Kansas
Michelle Klose - North Dakota
Jennifer Verleger - North Dakota
J.D. Strong - Oklahoma
Todd Chenoweth - Texas
Walt Baker - Utah
Lauren Driscoll - Washington

Ex-Officio Representatives

Corps - Wade Eakle
EPA - Donna Downing

WATER RESOURCES COMMITTEE

David Schade - Alaska
Thomas Buschatzke - Arizona
Mark Cowin - California
Jeanine Jones - California
(Alternate)*
James Eklund - Colorado
John Stulp - Colorado
(Alternate)*
Dick Wolfe - Colorado
(Alternate)*
John Simpson - Idaho
Jerry Rigby - Idaho
(Alternate)*
David Barfield - Kansas
John Tubbs - Montana
Tim Davis - Montana
(Chair) (Alternate)*
Jeff Fassett - Nebraska
Jason King - Nevada
Tom Blaine - New Mexico
Todd Sando - North Dakota
JD Strong - Oklahoma
Thomas Byler - Oregon
Kent Woodmansey - South Dakota
Bech Bruun - Texas
Eric Millis - Utah
Tom Loranger - Washington
Patrick Tyrrell - Wyoming
Harry LaBonde - Wyoming
(Alternate)*
Sue Lowry - Wyoming
(Alternate)*

Border Water Issues Subcommittee

Jeanine Jones - California
Herman Settemeyer - Texas
Arizona
Idaho
Montana
New Mexico
North Dakota

Climate Adaptation and Drought Subcommittee

Jeanine Jones - California (Chair)

Ex-Officio Representatives

Corps - Rolf Olsen
NRCS - Mike Strobel

Water Information and Data Subcommittee

Lane Letourneau - Kansas
David Rodriguez - New Mexico
Julie Cunningham - Oklahoma
Barry Norris - Oregon
Robert Mace - Texas
Pat Tyrrell - Wyoming
Sue Lowry - Wyoming

Ex-Officio Representatives

USBR - Becky Fulkerson
Corps - Steve Ashby
Boni Bigornia
USGS - Pixie Hamilton and Eric Evenson
NASA - Brad Doorn
NOAA - DeWayne Cecil
NRCS - Mike Strobel

Water Use Efficiency/Conservation Subcommittee

Sue Lowry - Wyoming (Chair)
John Longworth - New Mexico

Ex-Officio Representatives

NRCS - Mike Strobel

Water Resources and Energy Subcommittee

William Staudenmaier - Arizona
Jeanine Jones - California
John Simpson - Idaho
Todd Sando - North Dakota
Robert Mace - Texas
Sue Lowry - Wyoming

Ex-Officio Representatives

Corps - John Grothaus

Committee Assignments

EXECUTIVE COMMITTEE

Vacant - Alaska
Thomas Buschatzke - Arizona
Mark Cowin - California
Jeanine Jones - California
(Alternate)*
James Eklund - Colorado
Hal Simpson - Colorado
(Alternate)*
Jerry Rigby - Idaho
(Vice-Chair)
David Barfield - Kansas
Tim Davis - Montana
Jeff Fassett - Nebraska
Roland Westergard - Nevada
Leo Drozdoff - Nevada
(Alternate)*
Tom Blaine - New Mexico
Todd Sando - North Dakota
J.D. Strong - Oklahoma
Thomas Byler - Oregon
Steve Pirner - South Dakota
Kent Woodmansey - South Dakota
Jon Niermann - Texas
Walt Baker - Utah
Maia Bellon - Washington
Patrick T. Tyrrell - Wyoming
(Chair)

WATER QUALITY COMMITTEE

Alice Edwards - Alaska
Trevor Baggione - Arizona
Thomas Howard - California
Betty Olson - California
(Alternate)*
Trisha Oeth - Colorado
Patrick Pfaltzgraff - Colorado
(Alternate)*
John Tippets - Idaho
Tom Stiles - Kansas
(Alternate)*
George Mathieus - Montana
Tom Livers - Montana
(Alternate)*
Patrick Rice - Nebraska
David Emme - Nevada
Ryan Flynn - New Mexico
David Glatt - North Dakota
J.D. Strong - Oklahoma
(Chair)
Shellie Chard-McClary - Oklahoma
(Alternate)*
Jennifer Wigal - Oregon
Steve Pirner - South Dakota
Jon Niermann - Texas
Todd Chenoweth - Texas
(Alternate)*
Walter Baker - Utah
Maia Bellon - Washington
Pat Tyrrell - Wyoming
Kevin Frederick - Wyoming
(Vice-Chair) (Alternate)*
Todd Parfitt - Wyoming
(Alternate)*

WATER RESOURCES COMMITTEE

David Schade - Alaska
Thomas Buschatzke - Arizona
Mark Cowin - California
Jeanine Jones - California
(Alternate)*
James Eklund - Colorado
John Stulp - Colorado
(Alternate)*
Dick Wolfe - Colorado
(Alternate)*
John Simpson - Idaho
Jerry Rigby - Idaho
(Alternate)*
David Barfield - Kansas
John Tubbs - Montana
Tim Davis - Montana
(Chair) (Alternate)*
Jeff Fassett - Nebraska
Jason King - Nevada
Tom Blaine - New Mexico
Todd Sando - North Dakota
JD Strong - Oklahoma
Thomas Byler - Oregon
Kent Woodmansey - South Dakota
Bech Bruun - Texas
Eric Millis - Utah
Tom Loranger - Washington
Patrick Tyrrell - Wyoming
Harry LaBonde - Wyoming
(Alternate)*
Sue Lowry - Wyoming
(Alternate)*

LEGAL COMMITTEE

David Schade - Alaska
William Staudenmaier - Arizona
Cynthia Chandley - Arizona
(Alternate)*
Jeanine Jones - California
James Eklund - Colorado
Jerry Rigby - Idaho
John Simpson - Idaho
(Alternate)*
Burke Griggs - Kansas
Anne Yates - Montana
Jay Weiner - Montana
(Alternate)*
Jim Macy - Nebraska
Roland Westergard - Nevada
Jason King - Nevada
(Alternate)*
Maria O'Brien - New Mexico
Greg Ridgley - New Mexico
(Alternate)*
Jennifer Verleger - North Dakota
(Chair)
Jerry Barnett - Oklahoma
Thomas Byler - Oregon
Kent Woodmansey - South Dakota
John Elliott - Texas
Norman Johnson - Utah
Alan Reichman - Washington
Chris Brown - Wyoming
(Vice-Chair)

Western States Federal Agency Support Team (WestFAST)

D'Antonio, John (USACE)
Deputy District Engineer
Programs and Project Management
U.S. Army Corps of Engineers
Albuquerque District
4101 Jefferson Plaza NE
Albuquerque, NM 87109
(505) 342-3261
john.r.d'antonio@usace.army.mil

Dempsey, Lauren M. (DoD alternate)
Western Region Water Specialist
Air Force Western Regional Environmental
Office: AFCEC/CZO (San Francisco)
540 Airlift Drive, Suite C201
Travis AFB, CA 94535
(707) 424-8628
lauren.dempsey@us.af.mil

Doorn, Bradley (NASA)
Program Manager, Water Resources Program
Science Mission Directorate
Earth Science Division
National Aeronautics & Space Administration
300 E Street, SW
Washington, DC 20546
(202) 358-2187
bradley.doorn@nasa.gov

Ellsworth, Alan (NPS Alternate)
Water Advisor
National Parks Service (202) 513-7181
alan_ellsworth@nps.gov

Fulkerson, Becky (BoR Alternate)
Policy Analyst
Bureau of Reclamation
1849 C Street NW
Washington, DC 20240-0001
(202) 513-0638
rfulkerson@usbr.gov

Gorke, Roger (EPA, WestFAST Chair)
Senior Policy Advisor, Office of Water
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW, MC 4101 M
Washington, DC 20460-001
(202) 564-0470
gorke.roger@epa.gov

Hamilton, Pixie (USGS)
Cooperative Water Program Coordinator
U.S. Geological Survey
12201 Sunrise Valley Drive, MS: 409
Reston, VA 20192
(703) 648-5061
pahamilt@usgs.gov

Hansen, Bill (NPS Alternate)
Water Rights Branch Chief
National Parks Service
(970) 225-3532
bill_hansen@nps.gov

Harvey, Ed (NPS)
Chief, Water Resources Division
National Parks Service
(970) 225-3511
forrest_harvey@nps.gov

Hautzinger, Andrew (FWS)
Chief, Division of Water Resources
Fish and Wildlife Service
500 Gold Ave SW Room 4002
Albuquerque, NM 87102
(505) 248-7946
andrew_hautzinger@fws.gov

Kodack, Marc (DoD)
Office of the Assistant Secretary of the Army
Energy and Sustainability
U.S. Department of Defense
110 Army Pentagon, RM 3D453
Washington, DC 20310
(571) 256-4197
marc.d.kodack.civ@mail.mil

Lambert, Patrick (USGS)
WestFAST Liaison
Western States Water Council
5296 South Commerce Drive, Suite 202
Murray, UT 84107
(801) 685-2555
patlambert@wswc.utah.gov

Melton, Forrest (NASA, alternate)
Associate Program Manager for Water
Resources, Applied Sciences Program
National Aeronautics & Space Administration
NASA Ames Research Center, MS 232-21
Moffett Field, CA 94035-1000
(650) 604-2787
Forrest.S.Melton@nasa.gov

Thompson, Dionne (Reclamation)
Acting Deputy Commissioner
External & Intergovernmental Affairs
Bureau of Reclamation
1849 C Street NW
Washington, DC 20240-0001
(202) 513-0616
dethompson@usbr.gov

McCormick, Ron (BLM)
Water Resources Specialist
for Soil, Water, & Air
Bureau of Land Management
20 M Street South East
Washington DC 20003-3503
(202) 912-7135
rmccormi@blm.gov

Pulwarty, Roger (NOAA)
Physical Scientist and Director, NIDIS
National Oceanic & Atmospheric Administration
325 Broadway R/PSD
Boulder, CO 80305
(303) 497-4425
roger.pulwarty@noaa.gov

Strobel, Michael (NRCS)
Director, National Water and Climate Center
USDA-Natural Resources Conservation Service
1201 NE Lloyd Boulevard, Suite 802
Portland, OR 97232
(503) 414-3055
michael.strobel@por.usda.gov

Werner, Kevin (NOAA, alternate)
Regional Climate Services Director
NOAA Western Region
2725 Montlake Boulevard E, Room 216E
Seattle, WA 98112
(206) 860-3490 (office)
kevin.werner@noaa.gov

Zamuda, Craig (DoE)
Senior Policy Advisor
Office of Climate Change Policy & Technology
Office of Policy & International Affairs
U.S. Department of Energy
1000 Independence Avenue, SW
Washington, DC 20585
(202) 586-9038
craig.zamuda@hq.doe.gov

Thompkins, Anita (FS)
Assistant Director, Water & Aquatic Resources
USDA Forest Service, WFW
1400 Independence Avenue SW, MS: 1121
Washington, DC 20250-1121
(202) 205-1790
anitamthompkins@fs.fed.us

**Council Members
50th Anniversary Meeting
Lake Tahoe, Nevada
July 10, 2015**



(Left to Right)

Front Row: Alexandra Davis (former member-CO), Dick Wolfe, Guest, David Schade, Sue Lowry, Jeanine Jones, Jason King, Robert Mace

Second Row: Tom Buschatzke, Tom Blaine, Michelle Klose, Norman Johnson, Greg Ridgley, Trisha Oeth, Pat Tyrrell, Jennifer Verleger, Betty Olson, Andrea Travnicek, Don Ostler (former member-UT), Jerry Rigby, Susan Metzger, Roland Westergard

Back Row: Mike Turnipseed (former member - NV), Tracy Streeter, Buck Smith, Chris Brown, Tom Byler, John Simpson, Eric Millis, Walt Baker, John Tubbs, Todd Sando, Kent Woodmansey, J.D. Strong, David Barfield, Weir Labatt (former member - TX), Tom Howard, Duane Smith (former member-OK), Phil Ward (former member - OR), Hal Simpson, Joan Card (former members -AZ), Jennifer Gimbel (former member - WY and CO), Karl Dreher (former member - ID) Christopher Estes (former member -AK), Jim Davenport (former member - NV)

COUNCIL STAFF



From Left to Right: Julie Groat, Pat Lambert, Sara Larsen, Tony Willardson, Nathan Bracken, Michelle Bushman and Cheryl Redding

Anthony G. Willardson (Tony)	Executive Director
Nathan Bracken	Assistant Director and General Counsel
Michelle Bushman	Legal Counsel
Sara Larsen	Water Data Exchange Program Manager
Patrick Lambert	Federal Liaison
Cheryl Redding	Office Manager
Julie Groat	Administrative Assistant

COUNCIL MEMBERSHIP/STAFF CHANGES/NEWS

IN MEMORIAM - Pearl Pollick

Pearl Ostler Pollick, a former office manager for the WSWC, passed away on January 6, which was her 96th birthday. Pearl served as the office manager for 19 years, and worked until she was 76 years old. Pearl was known for her promptness, perfection, dependability, and loyalty. She enjoyed traveling to meetings with the WSWC, and particularly working with her sister Fae.

Colorado

Colorado Governor John Hickenlooper named **Patrick Pfaltzgraff** to the WSWC. Patrick is the new director of Colorado's Water Quality Control Division, and replaces his successor and former WSWC member **Steve Gunderson**, who retired in 2014. Patrick served previously as an assistant attorney general for the Colorado Attorney General's Office, where he focused on water quality law and policy and served as counsel to the Water Quality Control Division.

Kansas

On August 12, Kansas Governor Sam Brownback appointed Assistant Attorney General **Burke Griggs** to the Western States Water Council, succeeding former Council member **Chris Grunewald**. Griggs previously served on the WSWC from May 2012 through January 2014 as Legal Counsel for the Division of Water Resources within the Kansas Department of Agriculture.

Nebraska

Nebraska Governor Pete Ricketts named former WSWC Chair (1996-98) **Gordon "Jeff" W. Fassett**, as the new Director of Nebraska's Department of Natural Resources (DNR) and appointed him to the WSWC. Fassett served on the WSWC from 1987-2001. The Governor also named **James R. Macy**, Director, Department of Environmental Quality as a WSWC member and **James C. Schneider**, DNR Deputy Director as an alternate member.

Nevada

On June 2, **Colleen Cripps** retired from her position as the Administrator of the Nevada Division of Environmental Protection (NDEP). Colleen served as a member of the WSWC Water Quality Committee. **David Emme** is the new NDEP Administrator.

Texas

On December 15, Governor Greg Abbott named Commissioner **Jonathan K. "Jon" Niermann**, Texas Commission on Environmental Quality (TCEQ), and **Bech K. Bruun**, Board Chairman, Texas Water Development Board (TWDB) to the WSWC. Texas State Senator **Craig Estes** remains as an alternate member. The changes fill vacancies left by the departure of former WSWC Chair **Weir Labatt** and **Carlos Rubinstein** from TWDB and TCEQ.

Washington

Washington State Commissioner of Public Lands Peter Goldmark has appointed WSWC member **Stephen Bernath** as the new Deputy Supervisor for Forest Practices. Stephen served since July 2001 as a representative from Washington and made many valuable contributions to the work of the Council.

Western States Water Council Staff

In March, WSWC Assistant Director and General Counsel **Nathan Bracken** accepted an Of Counsel position with Smith Hartvigsen, a Salt Lake City law firm with an active water and government law practice. Nathan remained with the WSWC through April to assist with the transition of WSWC's new Legal Counsel, **Michelle Bushman**. Michelle holds a BS and MS in geology, from Brigham Young University (BYU), with emphases in geochemistry, geophysics and hydrology, including groundwater modeling and contaminant hydrology. Her Master's Thesis involved groundwater recharge and flows to discharge at Ash Meadows, Nevada.

Western Governors' Association

In January, the Western Governors' Association (WGA) hired **Troy Timmons** as its Deputy Director of Operations to work on policy issues and help manage its Denver headquarters. A Colorado native, Troy has worked for a Colorado State Senator, a U.S. Representative, and the U.S. House Committee on Energy and Commerce. He also served as a Senior Policy Advisor to the U.S. Secretary of Energy, and has worked in the private sector, primarily on environmental cleanup projects.

In July, **Carlee Brown** was named Manager of Federal Relations in Washington, DC. Carlee served as WGA Policy Advisor for Water and managed projects and initiatives such as the Western Governors' Drought Forum. In her new role, Carlee will act as a liaison to industry and interest groups, and support WGA policy work with congressional and regulatory bodies. **Laura Chartrand** joined WGA on August 12 as Policy Advisor for Water and Agriculture. Laura comes from the Tri-State Generation and Transmission Association where she analyzed water resource issues affecting Tri-State's 44 member cooperatives in Colorado, Nebraska, New Mexico and Wyoming. Laura will continue implementation of the Western Governors' Drought Forum and manage a portfolio of regulatory, legislative, and in-region water management issues.

COUNCIL MEETINGS

177th WSWC Meetings Tulsa, Oklahoma April 15-17

On April 15-17, the WSWC held its spring meetings in Tulsa, Oklahoma. During the meetings, the WSWC re-adopted and revised longstanding positions supporting state primacy over groundwater and federal hydroclimate research and data collection programs.

The WSWC adopted one new position. It focuses on the energy-water nexus and asks policymakers to consider ways to: (1) integrate water and energy policies to maximize program and project effectiveness and efficiencies; (2) support new and continued data gathering; (3) promote integrated water and energy conservation and efficiency; (4) minimize economic, environmental, and other costs associated with providing water and energy; (5) expand public education, engagement, and outreach regarding the energy-water nexus; (6) evaluate and consider the interrelated impacts of energy and water when siting, constructing, and operating projects; (7) tailor alternative cooling technologies and other energy-related options to water availability and related opportunity costs; (8) develop a diversified portfolio of water and energy resources; (9) take advantage of synergies and economies of scale related to energy and water; (10) evaluate and integrate life-cycle costs regarding water and energy supply, development, conveyance, and transmission; (11) integrate short and long-range water and energy supply planning; (12) promote the development and use of “smart” technologies; and (13) ensure that the West maintains sustainable, reliable, and robust energy and water infrastructure.

The WSWC also adopted resolutions of appreciation for former members Mike Lacey and Mike Fulton of Arizona, Brian Dunnigan of Nebraska, and Scott Verhines of New Mexico. The WSWC approved a similar resolution for WSWC Assistant Director and General Counsel Nathan Bracken, leaving to accept a position with Smith Hartvigsen in Salt Lake City, Utah, where he will continue working on water and policy issues.

During the Full Council meeting, J.D. Strong, the Executive Director of the Oklahoma Water Resources Board, gave an overview of a recent and extensive update to his state’s water plan. The update found that the state’s overall water demand will increase 30% by 2060. To plan for this increase, the state adopted a goal to use no more water in 2060 than it does now. To meet this goal, the update sets forth priority recommendations for conservation, reuse and recycling; as well as infrastructure financing, monitoring, supply reliability, fish and recreation flows, regional planning, efforts to address surpluses, and the resolution of tribal water claims.

Tom Iseman, Deputy Assistant Secretary for Water and Science, U.S. Department of the Interior (DOI), gave a remote update via telephone on the DOI’s water-related activities. Among other things, he said DOI is working to finalize guidelines that will outline how it will implement the Principles and Requirements the Administration enacted last year to guide federal investments in water resource projects. Bureau of Reclamation (BOR) Policy Analyst Karl Stock joined Tom on the phone and noted that the BOR does not anticipate changing how it evaluates projects under the guidelines.

BOR Drought Coordinator Avra Morgan also joined Tom to discuss a new drought response program, which will provide funding for drought contingency planning, projects that build long-term resiliency to drought, and emergency drought actions. She said about \$5 million will be available for the program. Avra also said the program will provide about \$200,000 to \$300,000 per project with a 50% non-federal cost share. Selected projects must be completed in two years.¹

Mike Abate, Chief of the Civil Works Branch for the U.S. Army Corps of Engineers' (Corps) Tulsa District gave an overview of his district. He also discussed the Corps' national water efforts, including, among others: (1) drought assistance; (2) planning assistance to states and tribes; (3) water supply reallocation or addition; (4) rulemaking to clarify the Corps' policies regarding the treatment of surplus water; and (5) seasonal operations.

Mike gave a separate presentation at the Water Resources Committee meeting on the Corps' drought authorities. He said each Corps reservoir should have a drought management plan that triggers certain actions when the conservation pool reaches specific levels. He also described the Corps' authorities regarding the addition and reallocation of storage water. Additions and reallocations that would seriously affect a reservoir's authorized purposes or require major changes require Congressional approval. Approval from the Assistant Secretary of the Army (Civil Works) is required if the addition or reallocation is greater than 50,000 acre-feet or more than 15% of the total storage.

Western States Federal Agency Support Team (WestFAST) member Kevin Werner, Regional Climate Services Director for the National Oceanic and Atmospheric Administration's (NOAA) Western Region, discussed a recent assessment his agency prepared on California's record-breaking drought. The assessment found that water decision makers require a "whole" review of water system environments. As a result, it recommended that NOAA partner with other federal and state agencies and stakeholders for modeling and monitoring activities to estimate and forecast full natural flows in California's rivers and streams.

WestFAST member Andrew Hautzinger, a hydrologist with the U.S. Fish and Wildlife Service (FWS), joined FWS biologist Daniel Fenner in giving a presentation on Endangered Species Act (ESA) issues in the Southwest. They discussed FWS' participation in the DOI's Landscape Conservation Cooperative for the Great Plains, greater use of state information in listing decisions, species status assessments, multi-agency programmatic consultations, and mitigation and "banking" efforts for listed species.

Next, U.S. Environmental Protection Agency (EPA) staff provided a series of telephone updates on Clean Water Act (CWA) issues during the Water Quality Committee. WestFAST Vice-Chair Roger Gorke reported that EPA has appealed a federal district court decision that vacated EPA's water transfers rule, which clarifies that certain water transfers are not subject to permitting requirements under Section 402 of the CWA. The 2nd Circuit Court of Appeals will hear the appeal and has scheduled oral arguments for June 15.

¹<http://www.usbr.gov/drought/>.

Roger also reported on the status of a rule regarding CWA jurisdiction that EPA and the Corps have proposed. He said the agencies received over one million comments, which they have worked to incorporate, and have sent the rule to the Office of Management and Budget (OMB) for interagency review. The agencies expect to finalize the rule by the end of spring.

Fred Leutner, Senior Advisor for EPA's National Water Quality Standards Branch, reported on the status of an informal rulemaking EPA is developing to clarify the process that tribes must follow to obtain "treatment as states" (TAS) authorization to administer CWA regulatory programs. He said EPA conducted pre-proposal outreach with tribes and state organizations, including the WSWC, last fall. EPA is processing the information it gathered in its development of the rule.

Sarah Furtak with EPA's Office of Wetlands, Oceans, and Watersheds updated the WSWC on a different but related EPA effort to develop a formal rule setting forth the process tribes would follow to obtain TAS authorization to operate Total Maximum Daily Load (TMDL) programs. She said Section 518 of the CWA requires EPA to develop this process. EPA conducted pre-proposal outreach with the WSWC and other state and tribal organizations last fall, and expects to conduct similar outreach once it publishes the rule in mid-2015.

Jeanne Briskin with EPA's Office of Research and Development gave an update on the status of a multi-year study regarding possible links, if any, between hydraulic fracturing and drinking water. Jeanne said the study, which Congress ordered in 2011, will include seventeen separate research projects. She also said EPA's Science Advisory Board will likely release a draft assessment for public comment this spring.²

Gary Rowe with the U.S. Geological Survey's (USGS) National Water Quality Assessment (NAWQA) Program, gave a presentation on a recent NAWQA assessment of the quality of the nation's groundwater. The assessment found that geologic sources (arsenic, radon, manganese, and uranium) cause slightly less than 80% of cases in which groundwater quality exceeds human health benchmarks. Manmade sources (nitrates, pesticides, and solvents) make up a little less than 20% of those cases where groundwater quality exceeds benchmarks.

During the Legal Committee meeting, David Mullon, an attorney with Venable, LLP, discussed Congressional earmark bans and a recent letter from House Natural Resources Committee Chair Rob Bishop (R-UT) that sets forth a new process his committee will use in addressing legislation to authorize Indian water rights settlements. David said Bishop's letter is specifically intended to create a path forward for settlement legislation in light of the earmark bans, and will require greater consultation between the federal government, states, and tribes.

Before the meetings, Oklahoma sponsored a tour of the Port of Catoosa, a world-class inland seaport on the McClellan-Kerr Arkansas River Navigation System.

²<http://www2.epa.gov/hfstudy>.

178th Council Meetings/50th Anniversary
Stateline, Nevada
July 8-10

WSWC Chairman Pat Tyrrell, Wyoming State Engineer welcomed members and guests via a letter marking the WSWC's 50th Anniversary, since first meeting in Stateline, Nevada in 1965. "Our initial work centered around navigating the troubled waters stirred up by plans for massive interstate water transfers. Our organization has since grown into what is now recognized as the pre-eminent water policy advisory body in the western United States. We are a collection of states with similar (if not identical) water laws, water interests and challenges. Through hard work, collaboration, and expert knowledge, the WSWC has developed a reputation for ably serving as an advisor to western governors."

The WSWC revised and re-adopted existing positions on: (1) supporting legislative action establishing dedicated funding for completion of authorized federal rural water projects; and (2) water transfers and Clean Water Action National Pollutant Discharge Elimination System (NPDES) permitting. The WSWC Vision on Water was re-adopted without change, but with the understanding that it is undergoing continuing review. The WSWC approved changes to its Rules of Organization, adding a preamble that clarifies the purpose of the WSWC and its status as a government entity that is an instrumentality of the states, modifying rules for membership and dues to reflect usual practices, and providing for any eventual dissolution of the WSWC. The WSWC adopted resolutions of appreciation for Jean Thomas, Carlos Rubinstein, Chris McKinnon, and recognized Roland Westergard for his many years of service (47 years).

During the Full Council meeting, Jason King, Nevada State Engineer, presented on current water resource issues in Nevada. Along the Humboldt River system, junior groundwater pumpers upstream are withdrawing their full allocation despite shortages to senior surface water users due to a futile call. Shutting down all pumping would not enable surface flow to recover and reach senior downstream farmers. Nevada also struggles with preference for junior priority domestic well uses. Supplemental groundwater irrigation was declared a secondary use behind all other priorities and a related groundwater curtailment order was issued in the Walker River Basin. While rain barrel harvesting is not yet legal, Nevada is looking at Utah's registration process as a potential model. The Southern Nevada Water Authority Pipeline Project faces appeals from counties and valleys on its 1989 pumping applications. Lastly, Nevada will build on WGA's Drought Forum Report, holding industry meetings and a drought summit, with a final report to Governor Sandoval in November.

Jennifer Gimbel, DOI, provided an overview of water issues from the past 50 years, from legislative acts to data sharing, past WSWC positions to groundbreaking Water Data Exchange (WaDE) development, and from the Western Governors' Association (WGA) Drought Forum Report to leveraging funding through programs like WaterSMART. She addressed ongoing calibration of water models, drought resiliency and adaptation, coordinating federal agency efforts and learning to work within state frameworks, cooperating on Indian water rights settlements, and taking care of watersheds on U.S. Forest Service (USFS) lands. She noted several past WSWC members who have also served in federal agencies.

Becky Fulkerson, WestFAST Chair, reviewed the 2008 WGA Water Report recommendations and progress inter-agency communications and regular webinars that are improving awareness at all levels. Roger Gorke will be the new WestFAST Chair. Pat Lambert, WestFAST Liaison to WSWC, announced the completion of their 2015-2017 Work Plan and noted that WestFAST's task priorities were informed by WSWC Committee work plans and through conferencing with committee leadership. He said WestFAST remains committed to the team's over-arching goal of improved collaboration among federal agencies, and between state, and federal agencies engaged in western water-resource issues.

During the Committee meetings, Carlee Brown, WGA, reported on the seven key themes from the recent Drought Forum Report. She described the online library materials that will continue to grow with monthly updates and be available to the public for at least the next two years.

Pixie Hamilton, National Coordinator, Cooperative Water Program, USGS, reported on internal restructuring to clearly communicate their mission and streamline their business practices and funding sources. She described the existing streamgage and groundwater monitoring networks, and real-time information available to the public in the form of phone apps like Water Now, used by recreationists, irrigation farmers and emergency managers. She also discussed the formation of a Streamflow Information Collaborative and hopes the WSWC will be involved.

Sonya Jones, Science Advisor, USGS, provided an update on the National Water Census water budget priorities and grants funded through the SECURE Water Act. Water use grants for FY2015 are non-competitive, with up to \$26,000 for states with a workplan demonstrating the application of funds toward improvements. Competitive grants for FY2016 have a \$250,000 limit for each state.

Sara Larsen, WSWC, provided an update on the WaDE project. Colorado, Utah and Wyoming are currently flowing data, with additional states preparing to follow. Cloud limitations on larger datasets triggered a search for data hosting alternatives. Collaborative efforts to standardize state and federal data in common formats are increasing the long-term integrity and value of the data, with additional metadata about provenance of, confidence in, and limits to the data.

Dr. Michael Freilich, Director, Earth Sciences Division, National Aeronautics and Space Administration (NASA), described existing and planned satellite missions, both domestically and internationally. The 44 years of continuous satellite measurements allow us to understand the earth as an integrated system. WSWC has been instrumental in supporting past missions. NASA has engineered a sustainable, multi-decadal National Land Imaging Program to avoid future data gaps, particularly thermal infrared measurements from a proposed free flyer (TIR-FF) satellite.

Pat Lambert, WestFAST Liaison, reported on the development of a coordinated National Soil Moisture Network to make real-time, in situ soil moisture data accessible, integrating variable data from numerous sources.

Dionne Thompson, Deputy Commissioner for External and Intergovernmental Affairs, BOR, reported on near-term funding for drought response and contingency planning programs, with emphasis on advance planning to build long-term resiliency and reduce the costs of crisis response.

Mark Limbaugh, The Ferguson Group, and David Rabbitt, Sonoma County Water Agency, talked about a proposed concept for loan guarantees, credit assistance, payment deferrals, and title transfers to deal with water infrastructure needs in the West.

Jeanne Briskin, Hydraulic Fracturing Research Coordinator, EPA, provided an update by phone on the EPA's recently released draft report on the relatively low impacts of hydraulic fracturing on drinking water. The report identified vulnerabilities to consider such as flowback of produced water, inadequately treated wastewater, and areas with poorly constructed wells. The assessment is heavily based on peer-reviewed work and can assist state, tribal and local decision-making.

Joan Card, Senior Policy Advisor, EPA Region 8, provided an update on Section 518 and tribal "treatment as states" rulemaking efforts, the *Catskills* water transfers litigation in the 2nd Circuit, and the Waters of the United States (WOTUS) final rule. In addressing the substance of the WOTUS rule, she pointed out that it honors state authority to allocate water. It excludes groundwater, with references to subsurface flow removed. Language concerning ditches now focuses on ditches as tributaries. Case-specific nexus analyses have been reduced to a narrower class of waters. The agencies are looking at state technical workgroups for meaningful consultation on the implementation of the WOTUS rule.

Anita Thompkins, Assistant Director, USFS, gave a presentation on the development of best practices for USFS activities. The adaptable guidelines reduce legal risks, improve accountability and credibility, and allow the USFS to monitor and evaluate protocols and data collection. She also reviewed the USFS's withdrawn proposed groundwater directive and their intent to continue conversations with states and work toward agreements with individual states.

Jason Kuchnicki, Lake Tahoe Watershed Program Manager, talked about the Lake Tahoe program to restore historic clarity. Inter-local agreements have been key to reducing pollution, particularly small particles, urban stormwater, phosphorus and nitrogen.

Steve Wells, Chief, Bureau of Land Management (BLM) Division of Fluid Minerals, gave a presentation by phone on BLM's new hydraulic fracturing rule. The rule addresses groundwater quality concerns about inter-well communications, particularly with chemicals and additives in large volumes of fracturing fluids. The rule requires public disclosure of chemicals on the FracFocus registry, documentation of well bore integrity, and safe management of recovered fluids.

Jeanine Jones, California Department of Water Resources (CDWR), reported on the May workshop regarding improving western or regional scale seasonal and sub-seasonal precipitation forecasting for drought and flood control purposes. CDWR's is funding additional workshops with the WSWC in the coming year to highlight efforts to work closely with federal agencies. CDWR will also fund WSWC workshops on irrigation management and scheduling assistance to encourage participation from various stakeholders in basin states.

179th Council Meetings
Manhattan, Kansas
October 7-9, 2015

Governor Sam Brownback welcomed members and guests at the 179th meetings of the WSWC, held in Manhattan, Kansas on October 6-9. Governor Brownback applauded the work of the WSWC, and urged members to be patient and not get “weary in well doing.” He lamented not getting more done on water when he was Secretary of the U.S. Department of Agriculture (USDA), also adding it takes a galvanizing event to get people to move. Water is becoming a “burning platform.” With Kansas State and Texas Christian University playing football the next day, he added that like college football, water can also be a unifying event, bringing people together from different sides. You need to “move the herd.” Regarding drought, he stated that no one in Kansas or California should be surprised, as shortages have been predicted for 40 years, but water development and management is a difficult and costly matter that requires an “event” to get momentum. “When you get that momentum, you need to move deliberately.”

The Governor addressed Kansas’ Water Plan. “Where do we want Kansas to be in 50 years? How do we get there? Vision is what pulls it towards us.” Developing the plan involved an extensive public participation process. It is not a “blunt” instrument. Problems arise when we make abrupt policy moves. The plan is based on opening doors, before closing others - giving people options. There are three main objectives: (1) reducing use and the draw on the Ogallala Aquifer, without sacrificing economic activity; (2) addressing the problem of sedimentation “silting in” federal reservoirs in Kansas; and (3) resolving difficult Missouri River Basin allocation issues. Like a car salesman, we have to point out the features, before talking money, but we still need find resources and funding to move forward. With respect to the Ogallala, it is also a matter of taking a longer-term view of our economic interests, and set up incentives to conserve water and extend the aquifer’s life. As a former member of the Senate Appropriations Committee, he stated “the federal government is broke” States can’t depend of federal money to solve their problems.

The WSWC revised and adopted a Vision statement that focuses on ensuring that the West has an adequate, secure and sustainable supply of water of suitable quality to meet its diverse economic and environmental needs now and in the future. The WSWC also re-adopted existing sunseting positions with some modifications supporting: (1) federal water and climate data collection and analysis programs; (2) drought preparedness and prediction efforts; (3) the BOR’s Drought Response Program; and (4) States’ rights to the use of water, particularly natural flows in rivers with federal storage facilities.

During the Water Resources Committee meeting, Steve Stockton, Director of Civil Works, Army Corps of Engineers (Corps) presented Corps’ water resource priorities by phone. With aging infrastructure and limited funding, the Corps is evaluating its water resource project portfolio, determining what to recapitalize or repurpose, what non-constructed projects to deauthorize, how to leverage private funds, and how to improve resiliency for extreme flood and drought events. The Corps’ water surplus rules have been modified to avoid infringing on state and tribal water rights and to improve access to water at all Corps facilities. The modified rules have also moved away from linking pricing to water storage, focusing instead on the cost to process permits and any lost Corps benefits by not using the water for authorized purposes. The rules are undergoing an interagency review process, to be followed by state/public comment.

Dionne Thompson, Deputy Commissioner for External and Intergovernmental Affairs, BOR, provided an update by phone on the BOR's WaterSMART Drought Response Program for western states, tribes and water districts. For FY2015, of 49 proposals, 23 were approved to update and implement contingency plans and fund drought resiliency projects.

Verlon Barnes, Missouri River Basin Coordinator, Natural Resources Conservation Service, described key assistance programs to help farmers improve farming practices and protect the environment. Marty Ralph, Scripps Institution of Oceanography, addressed unique western weather and water monitoring system needs. They need to collect more atmospheric data below 5,000 feet, and create an integrated network to improve forecasting, starting in California with existing data on precipitation, temperature, and wind, as well as radar, satellite and SNOTEL data, then expanding the integrated network across the West.

Laura Chartrand, WGA, addressed water-related activities and resolutions, covering water resources management, western agriculture, water quality, and cleaning up abandoned mines. She discussed the WGA work plan and the importance of: (1) funding for SNOTEL; (2) mapping drought, wildfire and invasive species; (3) regulatory roadblocks to using produced, reused, and brackish waters; and (4) disaster management. She emphasized the importance of state involvement in federal decisionmaking, particularly when states have statutorily delegated authority, noting that state consultation on the Corps' new water surplus rule should take place before the public comment period.

Sara Larsen demonstrated online access to the WaDE, with Colorado, Idaho, Utah and Wyoming flowing data and additional states moving forward. She showed mapped water data with underlying data collection methodologies and searchable queries at various HUC reporting levels. Pat Lambert, WestFAST Liaison, presented on the USGS National Water Census. Several states have received funding through the Water-Use Data and Research (WUDR) Program to develop and improve their water data. Additional funding is available. Under its National Groundwater Monitoring Network, the USGS has entered into cooperative agreements with Montana, Oregon, Texas and Utah, to add existing wells to the nationwide monitoring network. He described interferogram radar and satellite data that can identify subsidence in centimeters, improving observations of aquifer depletion during irrigation seasons.

Lastly, Jeanine Jones provided details of upcoming CDWR/WSWC workshops on seasonal precipitation and temperature forecasting and an interstate irrigation management information system.

In the Water Quality Committee, Shaun McGrath, EPA Region 8 Administrator, answered questions on: (1) Clean Water Act rules and guidance, transparency and consistency; (2) lessons learned on consultation with states; (3) Tribal treatment as states (geographic boundaries and exercise of authorities); and (4) prospects for Good Samaritan legislation to clean up abandoned mines. During the Full Council meeting, he formally noted Waters of the United States rule changes, and recognized the WSWC's thorough and detailed comments. He addressed the Gold King Mine release and lessons learned, though internal and external reviews continue. Shaun described a drought resiliency pilot project in Montana on the Upper Missouri, a large, watershed-scale collaboration with state, federal and local agencies, watershed groups and others intended to prepare for potential crises.

Jennifer Verleger, Legal Committee Chair, updated members on WOTUS litigation, and noted that the 6th Circuit Court issued a nationwide injunction staying the implementation until it determines whether it has jurisdiction.

Anita Thompkins, Assistant Director, Watershed and Aquatic Resources, USFS, addressed withdrawal of the agency's groundwater directive, lessons learned, and future collaborative efforts. WSWC members expressed appreciation for the decision, and subsequent outreach incorporating states' comments. Jean Thomas, USFS National Water Rights Leader, noted changes to ski area operators' water rights clauses in special use permits, now requiring evidence of sufficient quantities of water, rather than addressing specific water rights ownership issues.

Pat Lambert, WestFAST Liaison, described the WSWC-WestFAST Federal Non-Tribal Water Rights Workgroup, an upcoming McCarran Act Amendment webinar and progress on a clearinghouse of state and federal reserved water rights documents. Michelle Bushman, WSWC Legal Counsel, summarized the August WSWC-Native American Rights Fund (NARF) Symposium on the Settlement of Indian Reserved Water Rights, as well as a letter to the President calling for inclusion of a permanent settlement fund in the FY2017 budget. She updated members on legislation and recent water transfers litigation, including a request for *amicus* briefs supporting a Petition for Certiorari to the Supreme Court in *Bear Valley Mutual Water Company v. Jewell* regarding ESA §2(c)(2) cooperation with states and whether ESA compliance displaces National Environmental Policy Act (NEPA) requirements.

During the Full Council meeting, Tracy Streeter, Director, Kansas Water Office, detailed Kansas' Water Vision, efforts to address water quality while increasing supply, as well as reward conservation and penalize over pumping and failing to file water use reports. Mike Tate, Director, Kansas Department of Health and Environment, talked about legacy pollutants from mining and manufacturing. Roger Gorke, WestFAST Chair, reported on federal agencies' efforts to better collaborate with WSWC and states in general. They are looking for a larger watershed with multiple issues where they can demonstrate working together, with state and local partners, as a template for other areas. Pat Lambert added a summary of discussions about pre-rule-making expectations, perceptions, and improving awareness about what types of communications can occur with states for more successful state-federal relationships.³

³PowerPoint presentations given at the meetings are posted on the WSWC's website. See: <http://www.westernstateswater.org/upcoming-meetings/past-meetings/>.

OTHER MEETINGS

Western Governors' Association

Drought Forum/Drought Webinar Series

On January 28-29, the Western Governors' Association (WGA) held a Drought Forum meeting in Santa Fe, New Mexico to discuss drought impacts on tourism and recreation. The meeting was the latest in a series, which WGA Chair Governor Brian Sandoval (NV) initiated to share best management practices on drought response and management.

Keith Gardner, Chief of Staff for New Mexico Governor Susana Martinez, provided the opening remarks. He discussed Martinez's New Mexico Drought Task Force, which is focusing on drinking water, agriculture, watershed health, and recreation and tourism. In addition, Gardner reported that the governor has directed \$89 million to upgrade the state's water infrastructure projects. The funding represents the largest such investment in New Mexico's history.

Next, Tom Blaine, New Mexico State Engineer, and Amy Haas, the Acting Director and General Counsel of New Mexico's Interstate Stream Commission, participated in a panel discussion on how drought manifests itself in the West and in New Mexico. Sam Fernald, the Director of New Mexico's Water Resources Research Institute, also participated in the panel.

In addition, the meeting discussed New Mexico's River Stewards Initiative, to fund projects that clear vegetation in river areas, lower river banklines, replant native species vegetation, revitalize wetlands, and install erosion control. Ryan Flynn, New Mexico's Secretary of the Environment, noted that the initiative has funded 48 projects that have improved 34.6 river miles, with in-state contractors performing 96% of the work.

Rebecca Latham, Secretary Designate of the New Mexico Department of Tourism, described New Mexico True, a marketing program intended to highlight the state's recreational opportunities, especially water-related activities such as fly fishing and skiing. Latham said the program's focus on water is intended to address misconceptions among potential tourists that may view New Mexico as only arid desert.

The Santa Fe meetings follow other Forum meetings the WGA held in Oklahoma (energy), Arizona (energy, mining and manufacturing), California, (agriculture), and Nevada (water supply).

On February 11, the WGA kicked off the first of a series of webinars to discuss specific topics raised during its Drought Forum meetings. The webinar focused on reused, produced, and brackish water. Oklahoma Secretary of Energy and Environment Michael Teague moderated the discussion.

"You name the contaminant and we can generally treat it at this point in time," said Paul Swaim with CH2M Hill. "The main consideration is what [is] the most appropriate way to do that economically."

Ken Knox with Noble Energy said: “Produced water in the energy sector has been traditionally viewed as a waste product that needs to be managed. But now the reuse and recycling of that produced water is the forefront of development in energy operations in the United States and around the world.”

Dr. Jeri Sullivan Graham with the Los Alamos National Laboratory and the New Mexico Energy, Minerals and Natural Resources Department discussed brackish water, stating: “The costs can add up for disposing of solids and liquid concentrate resulting from the desalination of brackish water. Municipalities are used to providing water to customers at relatively low prices and there is not a good open market price signal for water.... This can make covering capital infrastructure costs associated with treating marginal quality water difficult.”

On February 25, the WGA held the second in its series of webinars. The webinar focused on community outreach and consumer technology for municipal water use. Dave McGimpsey, host of the Water Values Podcast and Special Counsel at Lewis Roca Rothgerber moderated the discussion.

Robb Barnit, founder and CEO of Dropcountr, said many utilities rely on “old school” customer engagement, primarily paper statements, which can be inconvenient and expensive. To address this need, Dropcountr has developed web and mobile applications that allow consumers to see how much water they are using and compare their use to others. Utilities can also use this technology to identify high water users and conduct targeted outreach, among other applications.

Nicole Seltzer, Executive Director of the Colorado Foundation for Water Education, described her organization’s efforts to encourage changes in attitude, knowledge, and behavior in Colorado regarding water. In particular, she said the Foundation serves as an “approachable entry point,” working with educators, and serving as a translator to help the public better understand water and its associated challenges.

Jeff Tejral, Conservation Manager at Denver Water, described various conservation methods, including education, rebates, incentives, and tiered rates, among other methods. He noted that partnerships between water utilities and local governments, distributors, and chambers of commerce are a valuable tool in reaching out to the public, including generating interest in rebate programs.

Another webinar was held on March 11, and focused on how scientists use data to understand drought and help policymakers anticipate dry conditions. WSWC Executive Director Tony Willardson moderated the discussion, which will include: Rebecca Moore, Engineering Manager with Google Earth Outreach and Earth Engine at Google; Terry Fulp, the BOR’s Lower Colorado Regional Director; Michael Strobel, the Director of the Natural Resources Conservation Center’s National Water and Climate Center; and Deke Arndt, the Chief of the Climate Monitoring Branch within the NOAA’s National Climatic Data Center.

On June 23, the WGA Drought Forum gathered to discuss the initiative’s first year of work, seven key themes that emerged, and the next steps to improve drought forecasting and management. The most significant themes are: (1) the need for enhanced snowpack, streamflow and soil moisture data and analysis; (2) removing obstacles to adopt technologies that make use of produced, reused and brackish water; (3) improved land management for forest health and soil stewardship; (4)

increased public awareness of drought leading to better strategies for water conservation and efficiency; (5) creative investment in maintenance and expansion of infrastructure to store and convey water; (6) working within institutional frameworks with innovative, flexible policy solutions; and (7) continuing communication and information sharing with other stakeholders.⁴

Annual Meeting/Water Policy Resolution

On June 23-26, the WGA met in Incline Village, Nevada. Governor Brian Sandoval (R-NV) released the first-year report of the Western Governors' Drought Forum. DOI Secretary Sally Jewell's keynote address on June 24 touched on funding of wildfire suppression and sage-grouse conservation efforts. Former Utah Governor and Secretary of the U.S. Department of Health and Human Services, Michael Leavitt, shared memories of his time as governor in a keynote address on June 25. The meeting included a trip to Sand Harbor State Park, where speakers discussed the collaborative efforts of California and Nevada to preserve and protect Lake Tahoe.

The governors elected Governors Matthew Mead (R-WY) and Steve Bullock (D-MT) as WGA's new Chairman and Vice-Chairman. Governor Mead's address emphasized wildlife management concerns, including ESA protections. In addition to Sandoval, Mead and Bullock, Governors Bill Walker (I-AK), Doug Ducey (R-AZ), John Hickenlooper (D-CO), Eddie Calvo (R-Guam), Butch Otter (R-ID), Jack Dalrymple (R-ND), and Gary Herbert (R-UT) attended the WGA meeting.

The governors approved a new policy resolution on Water Resource Management in the West (Policy Resolution 2015-08). The new resolution updates the existing policy resolution on water supply management to include the seven key themes from the Drought Forum, as well as current water management needs. Section one of the Policy Statement specifically acknowledges the important role of the federal CWA, ESA, and the Safe Drinking Water Act, while maintaining state primacy over allocation and administration of state water resources. Infrastructure needs under Section two are expanded to acknowledge both existing water and wastewater facilities as well as additional water projects. Section two also expands hydropower project considerations to include protection of indigenous people's rights. Section three, which now addresses integrated water management among (previously within) states, inserts the following statement: "Federal investments should assist states in implementing state water plans designed to provide water for municipal, rural, agricultural, industrial and habitat needs, and should provide financial and technical support for development of watershed and river basin water management plans when requested by states. Integrated water management planning should also account for flood control, water quality protection, and regional water supply systems." WGA support for negotiated settlements of water rights claims was expanded to acknowledge Hawaiian claims.

Under the extreme weather events planning paragraph of Section four, WGA "...specifically urge[s] the federal government to place a priority on improving the sub-seasonal and seasonal precipitation forecasting capabilities that could support water management decision-making." The previous Section four paragraphs on Drought Information and Planning were removed, and a new

⁴<http://westgov.org/drought-forum>.

Section five on Drought Preparedness and Response was added, with detailed policies reflecting the seven themes of the Drought Forum.

Winter Meeting

On December 4-5, the WGA met in Las Vegas, Nevada for their 2015 Winter Meeting. They discussed cyber security, wildfires, and transportation. The governors approved three new policy resolutions on forest and rangeland management, foreign visitor preclearance, and radioactive materials transport. Regarding Policy Resolution 2016-01 on National Forest and Rangeland Management, WGA notes that: “Western states include more than 75 percent of our national forest and grassland system, so Western states have a strong interest in management of those lands. Western Governors believe in sustainable forest management across federal and nonfederal lands that creates an equitable mix of uses to meet many ecological, social, and economic needs. Western Governors encourage federal agencies to fully implement the tools provided in the 2014 Farm Bill to achieve this goal in collaboration with states.” In addition to emphasizing state-local-federal collaboration, the policy addresses states’ authority over water and protection of community health and safety, and the impact of forest management on water quality and watershed health.⁵

WSWC Washington, DC Visits

On March 17-20, WSWC leaders and staff traveled to Washington, DC to discuss WSWC priorities with Administration and Congressional officials. The WSWC held over 30 visits, including a joint meeting with senior officials from the various WestFAST agencies, as well as individual meetings with officials from the White House, OMB, NASA, EPA, BLM, DOI, the Department of Defense (DOD), and the USFS. On Capitol hill, the WSWC met with Senators John Barrasso (R-WY), Mike Enzi (R-WY), James Risch (R-ID), Jon Tester (D-MT), and Steve Daines (R-MT), as well as Representatives Cynthia Lummis (R-WY) and Ryan Zinke (R-MT). The WSWC also met with Republican and Democratic staff for various committees and other key offices.

The visits focused on improving state-federal collaboration, Landsat, basic data programs, the WSWC’s CWA priorities, the Clean Water and Drinking Water State Revolving Funds, and the USFS’ proposed groundwater directive. Representatives from NARF also joined the WSWC in a series of visits in support of Indian water rights settlements. WSWC leaders participating in the visits included Vice-Chair Jerry Rigby of Idaho and Water Quality Committee Chair J.D. Strong of Oklahoma. Sue Lowry of Wyoming, attended on behalf of WSWC Chair Pat Tyrrell, and Norm Johnson of Utah also participated in the meetings.

Among other things, the meetings gave the WSWC an opportunity to continue ongoing discussions with the USFS to address state concerns regarding the agency’s proposed groundwater directive, which would establish a consistent policy for agency efforts that impact groundwater. The USFS has placed the directive on hold to meet with states and other stakeholders to address their concerns and questions, including questions the WGA has raised. To date, the focus of the WSWC’s conversations, which began at the WSWC’s request, has been on ways to address USFS needs regarding groundwater within existing state legal frameworks.

⁵<http://www.westgov.org/policies/306-land-management/1079-national-forest-and-rangeland-management>.

Of note, during the WSWC's meeting with EPA, the WSWC expressed its appreciation for the agency's continued support of its water transfers rule, which is subject to ongoing litigation and clarifies that certain transfers do not require CWA permits. The WSWC also discussed the status of the proposed CWA jurisdiction rule that EPA and Corps have proposed. EPA indicated that it is reviewing the comments that it received, including the WSWC's and is working to revise the rule. EPA also indicated that it will work closely with the states to implement the rule once it has been finalized this spring or early summer.

On December 14, WSWC and NARF representatives met in Washington, DC with the Council on Environmental Quality (CEQ), OMB and White House Council on Native American Affairs in response to a joint NARF/WSWC letter to the President asking that his FY2017 budget request include a permanent source of funding for tribal settlements (dated October 15). WSWC Executive Director Tony Willardson expressed state support for settlements, described the benefits of avoiding costly and uncertain litigation, and noted opportunities to work together on mutually acceptable negotiated solutions. Also, Tribes need assurances that, once completed, negotiated settlements will be funded. Both tribal and non-tribal communities benefit socially and economically from settlements.

John Echohawk, NARF Executive Director, described the federal trust obligation, pending settlement legislation and ongoing negotiations, as well as the history of the NARF/WSWC/Western Governors' partnership. He noted that "negotiation fatigue" has led some tribes to question the results of settlements and again look at reinitiating litigation. In response to a question regarding tribal reserved water rights and groundwater, he noted the Agua Caliente case in California is on appeal to the 9th Circuit Court. Tony noted that while states question the legal basis for the application of the reserved rights doctrine to groundwater, they recognize the interrelated nature of both surface and groundwaters and have addressed both in settlement negotiations.⁶

Tony described the existing water rights settlement fund authorized in 2009, providing for the direct transfer of money from the Reclamation Fund beginning in 2019 (for a ten year period). He suggested that is one option to consider, extending that authority permanently. In response to a question from OMB regarding the large number of tribes, compared to the number of settlements, and the outstanding federal financial obligation, John and Tony noted that some of the largest and most complex settlements have been completed, but there is no reliable estimate of future needs. A permanent fund with annual appropriations would help both assure tribal settlements will be funded, and allow for a specific amount to be budgeted every year.

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

The WSWC and NARF held their 14th biennial Symposium on the Settlement of Indian Reserved Water Rights Claims on August 25-27, at the Peppermill Hotel in Reno, Nevada. The Pyramid Lake Paiute Tribe and State of Nevada co-hosted the Symposium and a field trip that toured various water features that are key components of the Pyramid Lake Paiute Tribe settlement. The trip included stops at Derby Dam, the Pyramid Lake Paiute Tribe Museum and Visitor's Center, the

⁶*Western States Water*, #2134, April 10, 2015.

Pyramid Lake Fisheries Hatchery, and concluded with dinner, tribal stories from Tribal Elder Ralph Burns, and dancing from the Pyramid Lake Paiute Dancers at the Pyramid Lake Marina.

On August 25, NARF Executive Director John Echohawk welcomed more than 170 people in attendance. He provided an overview of NARF's beginnings in 1975 and its efforts across the West to help with Indian water rights negotiations and settlements. With a new Congress every two years, the biennial Symposium offers an opportunity to receive updates on settlement and legislative progress and to share information on the processes to facilitate more settlements.

WSWC Executive Director Tony Willardson noted commemoration of the WSWC's 50th Anniversary, from its beginnings in 1965. Its purpose is to advise western governors on meeting water needs now and in the future. He noted that sometimes we try to impose our values and culture on others, but it's important to find balance and understanding, to bring everyone to the table and develop solutions that transcend political and cultural differences.

Rod Lewis, a consultant with Akin Gump Strauss Hauer & Feld, LLP, offered the keynote address. He shared experiences with several Indian water rights settlements, including the Gila, Pechanga and Crow. He described some of the post-settlement successes and economic growth on tribal lands due to new access to water, and some of the additional obstacles with funding and infrastructure that have been and continue to be challenging.

Following the keynote address, WSWC member Cindy Chandley, Partner, Snell & Wilmer, moderated a panel that discussed how to gather background information and the role of technicians in negotiations. Tom Paul, Deputy Director, Oregon Water Resources Department, walked the audience through the adjudication process for the Klamath Basin, which quantified water rights during ongoing settlement negotiations. He also shared a memorable image of a semi-truck load of boxes of adjudication documents delivered to the courthouse, underscoring the amount of work that goes into these adjudications and settlements. Gerald Lunak, Director, Natural Resources Department, Blackfoot Tribe, talked about data gathering as a moving target during negotiations, the importance of key players physically visiting the sites, and how it takes a village to energize these compacts and settlements. Doug Oellerman, Deputy Program Manager at the BOR, provided an overview of the unique technical needs of each of five tribal settlements in Montana, and explained how to identify appropriate sources of reliable technical and scientific information to persuade policymakers that the settlements are based on a solid foundation.

WSWC member Norman Johnson, Division Director at the Utah Attorney General's Office, moderated a panel that discussed how to identify parties and issues and how negotiations bind larger groups. Michael Bogert, an attorney at Parsons Behle & Latimer, described how shared risks and sometimes sheer frustration bind tribes, states and federal parties together, and how those relationships improve as each party seeks to understand the needs, responsibilities and driving interests of the other parties. Clive Strong, Natural Resources Division Chief at the Idaho Attorney General's Office, addressed the importance of understanding the scope of the settlement, separating the issues if necessary to tackle the more easily resolved concerns first. He also talked about focusing on the shared interests of the parties, and understanding their respective roles in the settlement process. Clayton Matt, Director of Tribal Services with the Confederated Salish and Kootenai Tribes, talked about creating a settlement structure and building a team that can sustain and support the settlement process over decades without losing momentum, and the importance of

institutional knowledge with the inevitable turnover of important personnel. He also discussed the importance of developing a joint communications plan to convey non-technical information to the public and the media. John Weldon, Partner at Salmon, Lewis & Weldon, listed key federal, state and tribal personnel to bring to the negotiating table, from the tribal chair and council to the federal negotiating teams and parties with state-based water rights. He added the importance of allowing participation from others that feel they have a stake in the negotiations, even if they don't bring money or water to the table.

Next, Ryan Smith, Shareholder at Brownstein Hyatt Farber Schreck, moderated a panel on securing funding for settlements. Mary Pavel, Partner at Sanosky, Chambers, Sasche, Enderson & Perry, and formerly with the Senate Indian Affairs Committee staff, reminded participants that the government process was intended to be difficult to ensure the importance of things that do get funded, and remarked that these settlements are too important not to get done. She provided insights about supportable cost-benefit analyses and the technical feasibility of creative settlement solutions. Bob Wolfe, Budget Director at the BOR, explained the differences between discretionary and mandatory funding. He described past attempts at creating a dedicated source of funding for Indian water rights settlements, and commented on the challenges of coordinating funding across federal agencies with an Indian water rights nexus. Jodi Gillette, Policy Advisor at Sanosky, Chambers, Sasche, Enderson & Perry, and former Special Assistant to the President for Native American Affairs in the White House Domestic Policy Council, talked about the importance of keeping OMB "in the loop" with upcoming settlements, so that the associated costs can be considered throughout the budgetary process, rather than blindsiding OMB when settlements are complete and presented for authorization for the first time. She also emphasized how vital communication and education can be to help non-Indian, non-western members of Congress understand that vulnerable people in our society are getting left behind without access to clean, reliable water.

On August 26, Kiel Weaver, Majority Staff, House Natural Resources Subcommittee on Water, Power and Oceans, provided an overview that gave greater context to a letter from Representative Rob Bishop (R-UT), Chairman of the House Natural Resources Committee, to the DOI and the Department of Justice outlining a process for consideration of legislation authorizing future tribal settlements. He added the Founding Fathers made it difficult for government to get things done on purpose, but that significant efforts are being made by members of Congress to improve understanding about the importance of Indian water rights settlements and to overcome the current lack of funding for pending settlements.

Next, Pamela Williams, Director of the Secretary of the DOI's Indian Water Rights Office, provided some historical context and outlined the benefits of settlements, noting the creative solutions to water use problems based on local knowledge and values. She provided an overview of the 29 congressionally approved and 4 administratively approved Indian water rights settlements since 1978, broken down by year and state, and explained the Criteria and Procedures⁷ followed by the Administration since 1990. Letty Belin, Counsel to the Deputy Secretary, DOI, explained the federal settlement process, including efforts of the Working Group on Indian Water Settlements, and 41 teams working on assessment, negotiation, and implementation of settlements. The Administration is committed to Indian water rights settlements. She noted discouraging examples

⁷(55 Fed. Reg. 9223-9225).

of tribes that spent years on negotiations only to hear the DOI say that the settlement was too costly, sending everyone back to the drawing board. She described the Administration's current efforts to provide important tools and technical assistance early in the process to avoid that from happening again.

Attorney Michael Bogert, Parsons Behle & Latimer, then moderated a non-tribal panel. Arianne Singer, Deputy General Counsel at the New Mexico Office of the State Engineer, addressed some of the challenges related to authorization and implementation once a settlement is reached, including the politicization of the process; coordinating funding approval from both the Congress and the state legislature; and discovering unexpected details the parties didn't have the foresight to pin down during the settlement process. She pointed out that, with the passage of time, some of the vocal members of the public have lost sight of the risks of litigating these issues, and now view settlements as more costly. Tule River Tribe Vice Chairman Kenneth McDarment, provided historical context for the tribe's settlement negotiations, and the frustration of presenting a settlement only to be sent back to find less costly alternatives for much-needed infrastructure. He pointed out that with the effort and cost that the tribes put into these settlements, the negotiation process should only have to happen once. He shared a video clip showing the effects of drought and lack of infrastructure on the Tule River Tribe. Stanley Pollack, Assistant Attorney General in the Water Rights Unit of the Navajo Nation Department of Justice, offered an alternative perspective of the potential impact of the Bishop letter, noting that it places the tribes in a difficult adversarial position of seeking enforcement of trust responsibilities rather than working together with the federal government to fulfill those responsibilities toward the tribes.

NARF Attorney Heather Whiteman Runs Him moderated a panel that discussed the Pyramid Lake Paiute Tribe's water rights settlement. Chairman Vinton Hawley of the Pyramid Lake Paiute Tribe provided an overview of the settlement and the almost-completed Truckee River Operating Agreement (TROA). He emphasized the importance of TROA and regular government-to-government meetings for coordinated river and reservoir management, water quality, instream flows for fish, and improving reservoir capacity during drought. WSWC member and Nevada State Engineer Jason King focused on two of the seven elements of P.L. 101-618, first resolving California-Nevada allocations for the Truckee and Carson Rivers and Lake Tahoe Basin (§204), and second negotiating the Truckee River Operating Agreement (§205). With TROA almost ready for implementation, Jason King quipped: "It's amazing what you can do in 102 years when you put your mind to it." Terry Edwards, the Lahontan Basin Area Manager with the BOR, offered several lessons learned throughout the lengthy settlement process, and noted that the complexity of the Pyramid Lake Paiute Tribe's water right settlement and TROA was necessary in order to be effective.

On August 27, NARF Attorney David Gover moderated a panel that discussed how to move settlement bills through Congress. Stratton Edwards, Legislative Counsel, Capitol Hill Consulting Group, talked about building creative coalitions to put together settlements that work, reaching out to atypical allies and finding common ground to expand advocacy for the broader benefits of Indian water rights settlements, particularly with those who don't see this as a priority. Anthony Walters, Staff Director and Chief Counsel for the Minority, Senate Indian Affairs Committee, described the process settlements go through once they reach Congress. He addressed not only the difficulty in finding the necessary funding, but also the struggle to educate members of Congress unfamiliar with the net benefits of Indian water rights settlements. Christopher Kearney, Budget Analyst and Senior

Professional Staff Member, Senate Committee on Energy and Natural Resources, explained some of the obstacles facing the pending Klamath settlement legislation in particular, and general challenges to getting bills through Congress. He recommended advocating the unique aspects of the settlement, emphasizing what each of the parties are bringing to the table, and providing substantive support for how the settlements will make a measurable difference.

Steve Moore, NARF Attorney, moderated a facilitated discussion between Montana Assistant Attorney General Jay Weiner (a WSWC member), Rod Lewis, and Pamela Williams. Jay explained the concept of dynamic scoring, which recognizes the positive value of settlements to the bottom line of budgets. He also mentioned education through visits to Indian country, generating memorable experiences that become a valuable conversation starter for years. Rod emphasized the need to develop new relationships and coalitions to approach Indian water rights settlements in a bi-partisan way, as well as the need for solid science and strong rationale to support every line item in the settlement budget. Pam Williams, DOI, pointed out that, as frustrating as the settlement process can be at times, the end result is too important to stop trying. Constant education through face-to-face conversations, videos that convey the challenges of tribal access to water, and personal visits to reservations can get government personnel out into the real world so they can see why these settlements are needed. She said that while the Bishop letter may raise difficult obstacles, it also provides a way forward in the House for settlements instead of facing a negative default response.

Nathan Bracken, Of Counsel at Smith Hartvigsen, gave the concluding wrap-up summary. He noted that the past is no longer an accurate predictor of the future. A paradigm shift is occurring, with the loss of senior members of Congress who strongly supported Indian water rights settlements, the continuing impact of drought, and changes to the process under the Bishop letter. Creativity in funding settlements and meaningful partnerships and collaboration among key players will play an increasingly important role. The need to educate the public in a way that connects them to the human interest benefits of completing settlements is becoming increasingly apparent. Building relationships of trust with the Administration and members of Congress can facilitate the final stages of authorization and funding down the road, providing transparent and substantive information early in the settlement process rather than waiting until the parties have reached an agreement. Water is a necessary part of life, and with the vital resource in short supply, parties must continue to work together long after the settlements are completed. Patience, a clear vision of the goals of the settlement, and the ability to work together to reach solutions are in everyone's best interest and will continue to be important elements of completing effecting Indian water rights settlements.

Water Quality-Water Quantity Nexus Workshop

On October 6-7, WSWC held a Water Quality-Water Quantity Nexus Workshop. WSWC members Tom Stiles (KS) and Pat Tyrrell (WY) started the meeting with water quality and water quantity primers, followed by six case studies from Colorado, Oklahoma, Utah, Wyoming, Idaho, and Kansas. Kevin Rein, Deputy State Engineer, Colorado Division of Water Resources, presented (via phone) on the regulatory conflict between stormwater detention and diversions, and recent Colorado legislation allowing short-term detention with a rebuttable presumption of no injury for water rights holders by managing peak flows over time to reflect normal flows in historic hydrographs.

Randy Worden, General Manager, Central Oklahoma Master Conservancy District, addressed the legal and social challenges associated with water reuse at Lake Thunderbird, Oklahoma as an additional resource to increase municipal supply. Tests show that treatment at the Norman plant renders the wastewater clean relative to the existing contaminants in the lake, but cultural resistance in agency leadership and differing rates of municipal growth with different views of both the need and costs of increasing the water supply have delayed the water reuse project.

Walt Baker, Director, Utah Division of Water Quality, offered another perspective on water reuse in Snyderville Basin, Utah, where drought has reduced instream flows through the mixing zone. The stream has transitioned from effluent-dependent to effluent-dominant, exponentially increasing costs to remove various constituents to meet stricter water quality needs for the receiving stream. An alternate solution, allowing the treatment plant to sell the water to the nearby golf course would result in dewatering the stream, impacting the local fishery.

Bill DiRienzo, Manager, Permitting, Compliance and Enforcement Section, Wyoming Department of Water Quality, addressed various permitting and water transfer challenges associated with coal bed methane development in northeastern Wyoming. Through trial and error, the state agencies settled on a combination of watershed-wide permits, containment reservoirs, instream monitoring, and operator bonds to protect water quality, in particular for downstream agricultural use. Post-development reclamation of the reservoirs and wells has presented new challenges in a wave that echoes the flurry of permits at the beginning stages of development.

John Simpson, Partner, Barker, Rosholt & Simpson, LLP, talked about Idaho's efforts to avoid the water quality-quantity nexus through managed recharge of the Snake Plain aquifer between irrigation seasons. Historic incidental recharge from irrigation reduced with new efficient methods of watering crops, and the water table continued to drop as the previous aquifer recharge was mined. Current efforts to replace the incidental recharge are currently limited to surface application, with monitoring that shows the natural filtration of the aquifer maintains the water quality. Idaho anticipates that permitted injection wells will increase in the future, which may change the quality-quantity dynamic.

Mike Tate, Director, Bureau of Water, Kansas Department of Health and Environment, discussed the impact of drought on the Kanopolis Reservoir management plan. The Kansas Water Office raised the question of whether the reservoir water could be put to more efficient use, and went to the Corps to modify the antiquated release schedule to meet local needs, including adjusting flow rates to mix instream flows with treated wastewater and potentially flushing nutrients that feed blue-green algae.

A federal panel shared their experiences with the quality-quantity nexus from the USGS, USFS, NPS, EPA, and BLM. Pat Lambert, WestFAST liaison, noted that the USGS provides reliable information about water resources. He summarized several studies and programs in place to assist water managers in making decisions, and said that the USGS likes to hear how they can be more beneficial if they are not doing enough to support a particular aspect of water management. Jean Thomas, Assistant Director for Water and Aquatic Resources, USFS, addressed the agency's statutory authority to protect and secure favorable conditions of water flow to preserve resources for the Nation. She talked about the challenges of managing highly complex projects, such as bypass flows for reservoir permits and mitigation of environmental concerns associated with a groundwater

tunnel, while complying with federal and state environmental and water resource statutes and regulations, as well as policy considerations and public input.

Bob Boyd, Denver Chief, Branch of Assessment and Monitoring, BLM, talked about the importance of water as part of BLM's management of public lands, from sediment transport and grazing permits, to watershed and wellhead protection, to reclamation from wildfire damage and unwise past management practices. He described MOUs with state agencies to share data and provide a framework for cooperation and collaboration. Roger Gorke, Senior Policy Advisor, Office of Water, EPA and WestFAST Chair, noted the CWA §101(g) paragraph about federal cooperation with state and local agencies in developing comprehensive solutions to pollution in concert with water resource management. He talked about using positive examples of successful federal-state projects to make cooperation more systemic, enabling state and federal agencies to generate effective solutions to quality-quantity challenges aggravated by drought and land use changes.

Alan Ellsworth, Water Advisor, NPS, noted that the water quality-quantity nexus is a vital part of its "whole system" management of park lands, and suggested that, as states have water resource needs, they reach out to NPS and develop relationships so that NPS personnel know who to work with for each component of state water resources. Pat Lambert wrapped up the Federal Panel by pointing out that there is a recognition among the federal agencies of the critical importance of collaboration with states over water resources and a sincere desire to do so, but often a difference in perspective and understanding gets in the way of effective collaboration.

Attendees participated in breakout discussions to share challenges and solutions relative to quality-quantity issues in individual states and agencies. Summaries and highlights of the breakouts were followed by a group discussion about what can be done to improve communication, understanding and cooperation for better overall water management.

Water Management Strategies for Addressing Long-term Drought and Climate Uncertainty

On October 28-29, in Salt Lake City, Utah two multi-state research groups sponsored a Western Water Conference: Water Management Strategies for Addressing Long-term Drought and Climate Uncertainty. Water users and water suppliers, state water resource managers and others face challenges in prioritizing competing demands now and struggle with future projections of increasingly frequent long-term drought related to climate uncertainties, particularly in the arid West. The sponsors included the Western Region Multistate Coordinating Committee on Water Resources (WERA 1020), composed of researchers working to integrate multi-disciplinary approaches to addressing water quantity and quality problems, which was formed in 2013 to fill a role formerly provided by USDA's National Institute for Food and Agriculture's (NIFA) National Water Program, and the Management and Policy Challenges in a Water-Scarce World (W-3190), primarily researchers focused on western water resource management and policy, with members collaborating on research and extension/outreach projects related to biophysical and economic factors influencing farm-level decisions and water allocation. NIFA funded the conference.

The WSWC assisted in organizing the conference, and WSWC Executive Director Tony Willardson provided some opening remarks. The WSWC is celebrating its 50th Anniversary. He noted a 1964 resolution adopted by the Western Interstate Water Conference, a group similarly comprised of western university representatives, urged western governors to establish a task force

to consider the formation of a permanent regional water commission, which was a factor in the WSWC's subsequent creation. At that time, uncertainties related to growth and future water demands led to very preliminary consideration of interstate and international water transfer proposals, some as extensive as bringing water from the Yukon to the Southwest United States. While no major regional water transfers (between states and major river basins) have come to fruition, nor are likely in the foreseeable future, the California State Water Project was built during this era and today there is increasing interest in instate transfers of water between users and more are likely in the future.

He continued, sharing WSWC work on addressing future water needs and strategies for addressing those needs. "We are learning there isn't enough information for the decisions we have to make as a water community, and part of that relates to access to data and other information." He briefly described WSWC's WaDE initiative to provide data on water uses, water rights, water availability and planning information. He reported that data in a standardized format is beginning to flow from Idaho, Colorado, Utah and Wyoming, with data from Oklahoma, Oregon, Texas and Washington expected to be online by next summer. California, Kansas, Nebraska, Nevada and South Dakota are also working to get their data online through WaDE. Eventually, all 18 WSWC member states will be online. He noted the challenges related to bridging science and policy, and expressed appreciation for the conference organizers.

Todd Adams, Deputy Director, Utah Division of Water Resources, described the state's water resources planning efforts and smart growth surveys and scenarios (Envision Utah). Other speakers included: Veva Deheza, Deputy Director of the National Integrated Drought Information System (NIDIS); Bonnie Colby, an economics professor studying water markets, and Sharon Megdal, Director of the Water Resources Research Center, both at the University of Arizona; Nicholas Brozovic, University of Nebraska, Water for Food Institute; Erek Fuchs, Elephant Butte Irrigation District; Carly Jerla, the BOR's Colorado River Basin Water Supply and Demand Study Manager; Ellen Hanak, Director of the Public Policy Institute of California; Richard Howitt, ERA Economics; Jeff Johnson, Southern Nevada Water Authority; Jerry Kenny, Director, Platte River Recovery Implementation Program; Dan Keppen, Executive Director, Family Farm Alliance; Lawrence MacDonnell, University of Colorado School of Law adjunct faculty; Virginia O'Connell, Arizona Water Banking Authority; Carrie Sanneman, Willamette Partnership; MaryLou Smith, Colorado Water Institute, Colorado State University; Brad Udall, Southwest Climate Science Center; John Utton, Sheehan & Sheehan; Esther Vincent, Northern Colorado Water Conservancy District; Mark Walker, Director, University of Nevada Cooperative Extension; Kelly Coburn, Water Policy and Economics, Virginia Tech; and Stefano Pagiola, World Bank.

A USDA National Initiative on the Improvement of Water Security was discussed. It addresses the vitality and resiliency of U.S. agriculture and rural communities through support to "enhance" the land-grant universities' abilities through state/institution coordination, regional water centers, and integrated regional water grants with proposed funding of \$100 million annually.

Nearly 90 participants listened to the presentations and contributed to identifying areas for further priority research as part of a number of breakout groups.⁸

⁸werawater.org/western-water-conference/.

CONGRESSIONAL TESTIMONY

Senate Committee on Energy and Natural Resources Subcommittee on Water and Power

On June 18, 2015, the WSWC was invited to testify before the Senate Committee on Energy and Natural Resources Subcommittee on Water and Power on S. 1365 – Authorized Rural Water Projects Completion Act. Tony Willardson, Executive Director for the WSWC provided the following testimony.

The WSWC, representing 18 western states from Alaska to California and Texas to North Dakota, strongly supports the Authorized Rural Water Projects Completion Act (S. 1365) as an appropriate and a timely federal investment of modest amounts that will minimize long-term federal expenditures, create jobs, and fulfill long-standing promises and trust responsibilities to rural and Tribal communities, some of which date back decades. We have supported previous legislative efforts to establish a dedicated funding source for the completion of federal rural water projects authorized by Congress for construction by the BOR.

By way of this testimony, we also reiterate our support for the federal policy of encouraging negotiated settlements of disputed Indian water rights claims as the best solution to a critical problem that affects almost all of the Western States, as well as a strong fiscal commitment for meaningful federal contributions to such settlements that recognize the trust obligations of the United States government. Further, the WSWC's position is that Congress should expand opportunities to provide funding for the BOR to undertake project construction related to settlements from revenues accruing to the Reclamation Fund, while recognizing the existence of other legitimate needs that may be financed by these reserves. I would add that the WSWC believes Indian water rights settlements are not and should not be defined as Congressional earmarks. Lastly, once authorized by the Congress and approved by the President, the WSWC supports steps to ensure that any water settlements will be funded without a corresponding offset, including cuts to some other tribal or essential DOI programs.

In addition, this testimony sets forth the WSWC's long-standing policy in support of using receipts accruing to the Reclamation Fund for authorized projects, including the types of rural water projects that would receive funding under S. 1365, through the proposed Reclamation Rural Water Construction and Settlement Implementation Fund (the Rural Water Projects "RWP" Fund). The WSWC believes receipts accruing to the Reclamation Fund subsequent to the Reclamation Act and other acts should be fully appropriated for their intended purpose in the continuing conservation, development and wise use of western resources to meet western water-related needs. Further, the WSWC has suggested that the Administration and the Congress investigate the advantages of converting the Reclamation Fund from a special account to a true revolving trust fund with annual receipts to be appropriated for authorized purposes in the year following their deposit (similar to some other federal authorities and trust accounts).

The Need for Rural Water Projects in the West

Across the West, rural communities are experiencing water supply shortages due to drought, declining streamflows and groundwater supplies, and inadequate infrastructure, with some

communities hauling water over substantial distances to satisfy their potable water needs. Moreover, those water supplies that are available to these communities are often of poor quality and may be impaired by naturally occurring and man-made contaminants, including arsenic and carcinogens, which impact their ability to comply with increasingly stringent federal water quality and drinking water mandates. At the same time, many rural and tribal communities in the West are suffering from significant levels of unemployment and simply lack the financial capacity and expertise to finance and construct needed drinking water system improvements.

Since the 1980s, Congress has authorized the BOR to address this need by designing and constructing projects to deliver potable water supplies to rural communities in the seventeen western states. Furthermore, Congress established Reclamation's Rural Water Supply Program when it enacted the Rural Water Supply Act of 2006 (Pub. L. 109-451), authorizing the agency to work with rural communities in the West, including Tribes, to assess potable water supply needs and identify options to address those needs through appraisal investigations and feasibility studies.

In 2009, the WSWC worked closely with the BOR to identify sources of information on potable water supply needs in non-Indian rural areas of the West. BOR released an assessment report on July 9, 2012 ("Assessment Report") that discussed the results of this effort, finding that the identified need for potable water supply systems in rural areas of the seventeen western states ranged from \$5 billion to \$8 billion, not including another estimated \$1.2 billion for specific Indian water supply projects.⁹

The Assessment Report noted that there were eight active rural water projects located in Montana, New Mexico, North Dakota, and South Dakota, including the Lewis and Clark Rural Water Supply Project, which is located mostly in South Dakota, but encompasses parts of the non-Reclamation states of Iowa and Minnesota.¹⁰ The report also noted that of the rural water projects that Congress authorized the BOR to undertake between 1980 and 2007 (when the Rural Water Supply Act was enacted), only four had been completed.¹¹

According to the BOR, the total amount of Federal funding needed to complete the eight authorized projects was \$2.6 billion, which is substantially higher than the \$2 billion Congress originally authorized.¹² This increase is due in part to inflation and the rising costs of materials and labor.¹³ Nevertheless, the Assessment Report estimated that these authorized projects could be completed by 2029 at a total Federal cost of around \$3 billion, so long as Federal funding reflects the estimates provided in the original final engineering reports for each of the authorized projects – about \$162 million annually.¹⁴ However, at current funding levels of around \$40-\$50 million annually for construction, BOR estimates that some projects could be delayed beyond 2063 despite

⁹BUREAU OF RECLAMATION, ASSESSMENT OF RECLAMATION'S RURAL WATER ACTIVITIES AND OTHER FEDERAL PROGRAMS THAT PROVIDE SUPPORT ON POTABLE WATER SUPPLIES TO RURAL COMMUNITIES IN THE WESTERN UNITED STATES, 8 (July 9, 2012), <http://www.usbr.gov/ruralwater/docs/Rural-Water-Assessment-Report-and-Funding-Criteria.pdf>.

¹⁰*Id.* 3 – 4.

¹¹*Id.* at 3.

¹²*Id.*

¹³*Id.*

¹⁴*Id.*

the expenditure of almost \$4 billion in Federal funds by that point.¹⁵ Moreover, an additional \$1.1 billion in Federal expenditures would be needed to complete those projects that are not completed by 2063.¹⁶ Notably, BOR is seeking only \$36.6 million for its rural water program in fiscal year (FY) 2016, with \$18.6 million for construction of authorized rural water projects and the remaining \$18 million for tribal features of specific projects.¹⁷

Federal Funding for Rural Water Projects Under S. 1365

S. 1365 would provide \$80 million per year for each of fiscal years 2015 through 2035 to complete the construction of rural water projects that have already received Congressional authorization. Other projects may be eligible for funding if: (1) a feasibility study is submitted to the Secretary of the DOI by February 27, 2015; and (2) Congress authorizes the project's construction after S. 1365's enactment.

This funding represents a relatively modest Federal investment, compared to the increased costs that will likely occur due to construction delays if funding remains at current levels. We recognize that there are Federal budget constraints. Nevertheless, such constraints do not negate the Federal responsibility to complete authorized rural water projects, particularly those intended to fulfill in part a solemn Federal promise and trust responsibility to compensate States and Tribes for lost resources as a result of the construction of Federal flood control projects.

For example, the Garrison Diversion Unit, an altered version of which would receive funding under S. 1365, is intended to compensate the State of North Dakota for the loss of over 300,000 acres of prime farmland that was lost as a result of the construction of the Pick-Sloan Missouri River Basin Program,¹⁸ which also inundated over 550 square miles of Native American land and displaced more than 900 Native American families.¹⁹ Additionally, the North Central/Rocky Boys rural water project will implement the tribe's water rights settlement (as codified in Pub. L. 106-163) with the United States and the State of Montana.

Authorizing the increased use of Reclamation Fund revenues to expedite completion of these projects fulfills a financial and moral obligation that some beneficiaries have waited decades to see honored.

It is also important to note that the Federal expenditures provided under S. 1365 would generate significant and actual returns on this investment, including but not limited to:

¹⁵*Id.*

¹⁶*Id.* at 5.

¹⁷U.S. BUREAU OF RECLAMATION, RURAL WATER PROJECTS (June 15, 2015), <http://www.usbr.gov/newsroom/presskit/factsheet/factsheetdetail.cfm?recordid=7>.

¹⁸GARRISON DIVERSION CONSERVANCY DISTRICT, HISTORY & FEDERAL LEGISLATION: THE PICK-SLOAN MISSOURI BASIN PROGRAM, http://www.garrisondiv.org/about_us/history_federal_legislation/.

¹⁹SENATE REP. NO. 105-146, 4 (1997) (accompanying S. 156 and describing the impacts of the Pick-Sloan Missouri River Basin Program on the Lower Brule Sioux Tribe), <http://www.gpo.gov/fdsys/pkg/CRPT-105srpt146/pdf/CRPT-105srpt146.pdf>.

- National Economic Impacts: According to a 2008 U.S. Conference of Mayors report, one dollar invested in water and sewer infrastructure increases private output, or Gross Domestic Product, in the long-term by \$6.35. Furthermore, for each additional dollar of revenue generated by the water and sewer industry, the increase in revenue that occurs in all industries for that year is \$2.62.²⁰
- Economic Impacts and Job Creation in Rural Communities: Investments in rural water projects have a direct impact on the economies of the communities serviced by those projects. For example, a 2006 study by HDR, Inc. on the economic impacts of constructing the Lewis and Clark Rural Water System, which would be eligible to receive funding under S. 1365, found that the total economic impact to South Dakota, Iowa, and Minnesota would total \$414.4 million. The report also estimates that the project's construction would directly or indirectly create 7,441 jobs. On a yearly basis, this equals the creation of 532 direct and indirect jobs with average annual salaries ranging from \$25,591 to \$33,462. Approximately 72% of the economic impacts would be realized in South Dakota, with 17% in Iowa and 11% in Minnesota.²¹
- Improved Potential for Economic Development in Rural Areas: The economy of every community, especially rural communities, requires sufficient water supplies of suitable quality. Such supplies depend upon adequate water infrastructure. Improving the water infrastructure of the rural and Tribal communities that would be affected by S. 1365 will improve their ability to attract business and develop their economies in ways that are not possible with their current water supplies.
- Improved Quality of Life: The types of water projects that would receive funding under S. 1365 would meet the same water quality standards as public systems. These projects would therefore provide a higher quality of safe drinking water and associated health benefits than the water supplies upon which these communities currently rely.
- Reduced Costs: Rural communities would no longer need to expend limited resources drilling and maintained wells, softening and treating water, or hauling water. In addition, these communities would see decreased electrical pumping costs.
- Rural Fire Protection: Rural water systems provide water storage that fire trucks can use to assist with rural fire protection.

²⁰THE U.S. CONFERENCE OF MAYORS: MAYORS WATER COUNCIL, LOCAL GOVERNMENT INVESTMENT IN MUNICIPAL WATER AND SEWER INFRASTRUCTURE: ADDING VALUE TO THE NATIONAL ECONOMY, (August 2008), available at: <http://www.usmayors.org/urbanwater/documents/LocalGovt%20InvInMunicipalWaterandSewerInfrastructure.pdf>.

²¹HDR, INC., THE ECONOMIC AND FISCAL IMPACTS OF CONSTRUCTING THE LEWIS AND CLARK RURAL WATER SYSTEM: 2004 STUDY AND 2006 UPDATE, 2 – 3, 63 – 64 (March 2006), available at: <http://www.lcrws.org/pdf/EconomicImpactStudy/EconomicImpactStudy.pdf>. See also BUREAU OF RECLAMATION, *supra* note 1 at 4 (discussing Federal costs for currently authorized rural water projects).

- Livestock Use: Rural water projects provide a more reliable and better supply of water for livestock. They also have the potential to decrease the impacts of livestock grazing on riparian areas by allowing for the delivery of water away from these sensitive areas.
- Increased Property Values: In some areas, the resale value of property may increase with a more reliable, safe, clean and adequate water supply.

The Use of the Reclamation Fund Under S. 1365

Title I of S. 1365 would provide funding for eligible rural water projects by establishing a Reclamation Rural Water Construction and Settlement Implementation Fund (the “RWP” Fund) within the U.S. Treasury, and within the RWP Fund a separate Rural Water Project Account and Reclamation Infrastructure and Settlement Account, that would be financed from revenues that would otherwise be deposited in the Reclamation Fund. These monies would not be subject to further appropriation, would be in addition to other amounts appropriated for the authorized projects, and should not result in corresponding offsets to other critical BOR and DOI programs. The Secretary of the Interior would also invest the portion of these receipts not needed to meet current expenses, and the resulting interest and proceeds from the sale or redemption of any obligations would become part of the RWP Fund. The RWP Fund would terminate in September 2035, at which point its unexpended and unobligated balance would transfer back to the Reclamation Fund.

Congress established the Reclamation Fund when it enacted the Reclamation Act of 1902 (Pub. L. 57-161) and it was intended to be the principle means of financing Federal western water and power projects in the seventeen western states. As stated in Section 1 of the Reclamation Act, the Reclamation Fund provides monies “...reserved, set aside, and appropriated as a special fund in the Treasury.”

Reclamation Fund receipts are derived from water and power sales, project repayments, and receipts from public land sales and leases in the seventeen western states, as well as oil and mineral-leasing related royalties. However, the receipts that accrue to the Reclamation Fund each year are only available for expenditure pursuant to annual appropriations acts. Over the years, rising energy prices and declining Federal expenditures from the Reclamation Fund for Reclamation purposes have resulted in an increasingly large unobligated balance.

According to the Administration’s FY2016 budget request, actual and estimated appropriations from the Reclamation Fund were \$901 million for FY2014 and \$914 million for FY2015. Appropriations requested for FY2016 from the Reclamation Fund are \$856 million, a substantial decrease. This compares with actual and estimated receipts and collection to the Fund of \$1.984 billion for FY2014, \$1.849 billion for FY2015 and \$1.846 billion for FY2016. As a result, the Reclamation Fund’s unobligated balance is expected to grow from an actual balance of \$13.1 billion in FY2014 to an estimated amount of over \$15 billion by the end of FY2016.²² Contrary to Congress’ original intent, instead of supporting western water development, much of the unobligated balance has gone instead to other Federal purposes. The WSWC has long supported using the

²²THE APPENDIX, BUDGET OF THE UNITED STATES GOVERNMENT, FISCAL YEAR 2016, 650 (April 2015), <http://www.whitehouse.gov/sites/default/files/omb/budget/fy2016/assets/int.pdf>.

Reclamation Fund for its intended purpose of financing western water development, including the types of rural water projects that would receive funding under S. 1365.

Unlike typical Congressional authorizations that often do not specify a funding source and may require more Federal monies in addition to current authorizations, S.1365 would employ an established stream of receipts and associated interest. Furthermore, as required by Section 103(c), no amounts may be deposited in, or made available from, the RWP Fund if the transfer or availability of the amounts would increase the Federal deficit.

It is also important to note that the concept of using receipts accruing to the RWP Fund to establish a separate account to finance specific water projects is not new. Specifically, Congress established the Reclamation Water Settlements Fund (RWSF) under Title X of the Omnibus Public Lands Management Act of 2009 (Pub. L. 111-11). The RWSF consists of receipts transferred from the Reclamation Fund and provides specified levels of funding starting in FY2020 for a period of 10 years to help finance specified water infrastructure projects that are part of Congressionally-authorized water settlements, especially Indian water rights settlements. The use of these funds furthers the construction of much needed water infrastructure in the West in accordance with the Reclamation Fund's original intent and purpose.

Funding Prioritization Under S. 1365

Before expenditures from the RWP Fund could be made, Section 202(b)(1) of S. 1365 would require the Secretary of the Interior to develop programmatic goals to ensure that the authorized projects are constructed as expeditiously as possible, and in a manner that reflects the goals of the Rural Water Supply Act of 2006. The bill would also require the Secretary to develop funding prioritization criteria that would consider: (1) the "urgent and compelling need" for potable water supplies in affected communities; (2) the status of the current stages of completion of a given project; (3) the financial needs of affected rural and tribal communities; (4) the potential economic benefits of the expenditures on job creation and general economic development in affected communities; (5) the ability of an authorized project to address regional and watershed level water supply needs; (6) a project's ability to minimize water and energy consumption and encourage the development of renewable energy resources, such as wind, solar, and hydropower; (7) the needs of Indian tribes and tribal members, as well as other community needs or interests; and (8) such other factors as the Secretary deems appropriate.

The WSWC stated in a June 8, 2012 letter that these programmatic goals and funding priorities "...should be developed in a transparent manner in consultation with the affected communities and States – and should consider existing state water plans and priorities." States and the affected communities have on-the-ground knowledge of the facts and circumstances associated with the authorized projects that would receive funding under S. 1365, and are therefore the most appropriate entities to assist the Secretary in developing these goals and priorities.

Reclamation and Rural Water Projects

The BOR is well suited to carry out the development and construction of the authorized rural water projects that would receive funding under S. 1365. These specific projects are already

authorized and under construction by BOR, which has a long history of planning, designing and constructing water infrastructure projects in the West. Most other existing federal water quality and supply programs typically provide loans, grants, or loan guarantees. However, many smaller and poorer rural communities have very limited capacity and little experience to be able to design and construct water projects with financial assistance alone. Consequently, they often need the experience and assistance that BOR can provide to help assess needs, design, plan, and construct large water infrastructure projects.

Conclusion

The expedited construction of authorized rural water projects facilitated by S. 1365 will save the Treasury money in the long run, as costs continue to rise, and fulfill Federal obligations in a more timely manner, including Federal tribal trust responsibilities. Postponing spending on this obligation through inadequate or insufficient funding levels only increases Federal costs and perpetuates hardships to rural and tribal communities in the West. S. 1365 would not only fulfill solemn Federal obligations, but also provide needed economic development and job creation.

Importantly, the bill would use receipts that are already accruing to the Reclamation Fund for their intended purpose of financing the construction of western water projects.

The WSWC appreciates the opportunity to submit this testimony, and urges the Committee to approve S. 1365 and work with the States towards its effective implementation.

WATER DATA EXCHANGE

In 2015, the WSWC continued to work and make progress on its data sharing initiative – the Water Data Exchange (WaDE). Background research and foundational elements of the project, including visits with member states and a comprehensive survey of state data-gathering and maintenance capabilities, were conducted during the early phases of the project. More recently, WaDE work has focused on implementation and bringing more member states online so that a fully-developed pilot could be demonstrated.

Western Governors’ Association (WGA) and RTEP Grant Conclusion:

WSWC staff worked with WGA to incorporate edits suggested by the WSWC and WGA at the 2015 Spring Meetings in Tulsa, Oklahoma. A final draft was accepted by WGA in May. The final report, “*Regional Transmission Expansion Planning: Integrating Energy and Water Resources Management in the Western States,*” can be found on our website at: <http://www.westernstateswater.org/publications/>.

Component Development and Implementation:

The installation stage of the WaDE program has yielded many successes in terms of WSWC members evaluating and migrating their data into the WaDE schema and getting their data ready for publication. It has also yielded many “lessons learned” for the larger effort. Extensive documentation and online tutorials have been created to help guide states with the initial steps of implementation of the WaDE program for states that wished to deploy both “on-site” and in a “cloud” environment. The documentation expedited the process significantly and the amount of time needed to work through the process has decreased by approximately 50% over the 2015 timeline. WSWC is also exploring the potential for hosting instances of the WaDE application at the University of San Diego Supercomputer Center in California, and investigating the potential for additional funding through the National Science Foundation’s “Big Data – Hub and Spoke” initiative.

A new server was purchased to host several of the states’ nodes that needed to host “off-site,” but also needed higher performance than the RedHat cloud platform could provide. States using RedHat were migrated to the new server for ease of maintenance. The Central Catalog has also been configured for the new server. The front-end user-interface of WaDE received significant updating and modifications to be more appealing and more user-friendly. A “How-To” tutorial was added to the map interface for first-time users to assist with data discovery and to explain how to access the states’ data. A registration page for WaDE beta testers was created to allow the WSWC to track individual users and contact them.

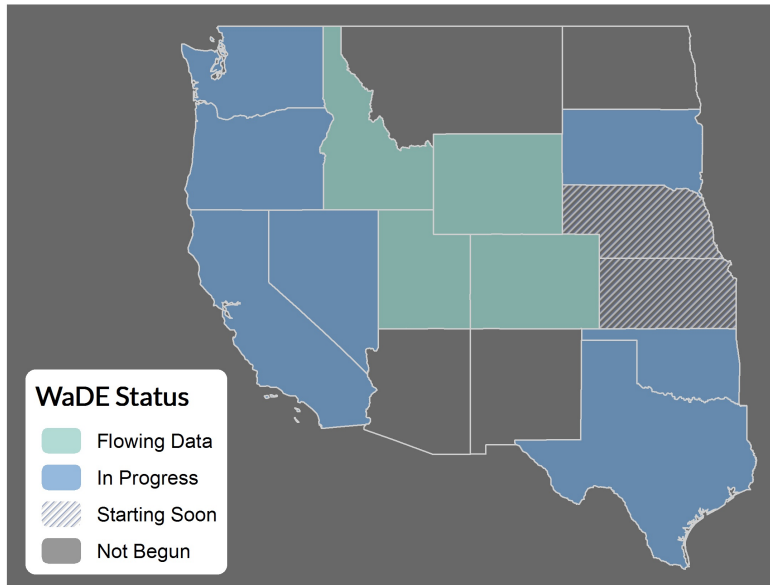
The original components for WaDE were created using older versions of Microsoft Structured Query Language (SQL) Server, PostgreSQL, Microsoft’s web server software Internet Information Services (IIS), and an older version of Hypertext Preprocessor (PHP). As implementation proceeded within the states, the need to upgrade the components for more recent software and server versions became apparent. WSWC staff worked collaboratively with state

information technology (IT) staff to determine what versions to upgrade to, and develop the necessary updates and new documentation. WSWC wishes to express thanks to the Kansas Department of Agriculture and the Oklahoma Water Resources Board for their efforts on this front.

Optimization of the database schema and general performance also continued during 2015. Additional speed testing for use of the cloud platform was conducted. The Redhat cloud platform remains a good option for states who wish to share smaller “summary-level” datasets, or site-specific tables that have fewer than 100K records. Unfortunately, larger datasets show a significant lag in performance, and retrieval speeds are unacceptably slow.

Other optimization efforts included adding and testing table indices for increased data retrieval speeds, as well as implementing “materialized views” to replace slower view instances. This has resulted in dramatic increases in performance with both databases (PostgreSQL and MSSQL) generally. To further investigate how database tools may be utilized to increase performance, WSWC worked collaboratively with the USGS Center for Integrated Data Analytics (CIDA) to see where additional gains could be achieved. WSWC wishes to express thanks to the Wyoming State Engineer’s Office and the CIDA team for their assistance.

Utah, Wyoming, Idaho, and Colorado were able to complete their initial data migration steps and be added to the WSWC’s Central Portal. A Beta pilot of the WaDE Central Portal was released at the WSWC’s Fall Meeting. At that time, other states were also actively working on the deployment process, including Oklahoma, Oregon, California, and Kansas and were projected for release soon afterward. Figure 1 is a map of the states’ status toward the end of 2015.



WESTERN STATES FEDERAL AGENCY SUPPORT TEAM

The Western States Federal Agency Support Team (WestFAST) promotes collaboration between the WSWC and twelve federal agencies with water resource management responsibilities in the West. WestFAST was established pursuant to a request from the WGA and a recommendation in the WGA's 2008 report titled: *Water Needs and Strategies for a Sustainable Future: Next Steps (Next Steps Report)*. Specifically, WestFAST was formed to promote cooperation and coordination between federal agencies, and between states and federal agencies. WestFAST was intended to help the WSWC implement recommendations and collaborative efforts outlined in the *Next Steps Report*.

WestFAST federal agencies include: U.S. Department of Agriculture Forest Service (USFS) and Natural Resources Conservation Service (NRCS); U.S. Army Corps of Engineers (Corps); U.S. Department of Defense (DOD); U.S. Environmental Protection Agency (EPA); the U.S. Department of the Interior - U.S. Fish and Wildlife Service (FWS); U.S. Geological Survey (USGS); Bureau of Land Management (BLM); and Bureau of Reclamation (BOR); and National Aeronautics and Space Administration (NASA); National Oceanic and Atmospheric Administration (NOAA); and National Parks Service (NPS). The WestFAST/WSWC Liaison is Pat Lambert, USGS.

In 2015, WestFAST focused on a number of federal initiatives and promoted communication between federal agencies relevant to priority issues identified in WGA and WSWC reports and resolutions and defined in the WestFAST work plan for 2015-2017. WestFAST representatives and the federal liaison worked closely with WSWC Committee Chairs to create a 2015-2017 work plan to correlate WestFAST actions plans with WSWC priority objectives. Some communication and coordination activities in 2015 are highlighted below.

- WestFAST members met monthly through conference calls to discuss ongoing programs and coordinate interagency and federal-state collaboration and outreach opportunities. WestFAST "Water Data" and "Drought and Water Availability" Workgroups met periodically to work on specific planned actions in these areas.
- WestFAST published a monthly newsletter distributed to more 140 federal agency staff and state and local partners.
- WestFAST continued to maintain a WestFAST web site containing information about WestFAST's origins, goals and objectives, and documentation of activities, reports, newsletters, and webinars.
- WestFAST continued its series of "Special Topics" information meetings, held mainly via webinar, on issues of interest to WestFAST member agencies and WSWC water-resource managers, scientists, and stakeholders. The series was developed and initiated in 2014, continuing with the following in 2015.
 - 2/26/2015 - NRCS Snow Survey, Water Supply Program, and the Soil Climate Analysis Network (SCAN)
 - 3/26/2015 - Open Water Data

- 6/25/2015 - BOR Upper Colorado Region, Reclamation Water Operations: How does it all work?
 - 7/29/2015 - BOR collaborations in “Challenge & Prize Competition” programs for priority water resource solutions
 - 8/20/2015 - NASA - Watching Water in the West: An Overview of NASA Missions and Applied Science for Water Resources Management
 - 9/24/2015 - USGS - Water Programs and the National Water Census
 - 10/29/2015 - USFS Water Resource Roles and the USFS NorWest Stream Temperature Program
- WestFAST agencies gave over 50 presentations at four WSWC meetings and associated events, sharing information and coordinating on priority issue areas for both the WSWC and the federal agencies. WestFAST also assisted in the development of and participated in several focused workshops during the year including three workshops on “Advancing Seasonal and Sub-seasonal (S2S) Precipitation Forecasting for Water Resources,” sponsored jointly by the WSWC and the CDWR.
- WestFAST held two Principals Meetings in 2015. WestFAST liaison with Federal department, agency, and bureau principal leadership (WestFAST Principals) to provide an opportunity for WestFAST agency leadership to meet and discuss federal collaboration on western water issues, as well as engage in emerging issues with WSWC officers, members, and staff. The WestFAST March 17, 2015 Principals meeting was held in Washington, DC and hosted by the DOI. WestFAST agency leaders reviewed the previous year’s WestFAST activities and discussed priority tasks for continuing to enhance interagency coordination and to develop positive working relationships with western state partners and the WSWC. WestFAST Principals and representatives then met with WSWC leadership to discuss federal-state collaboration on western water issues. During the March meetings, WestFAST representatives and Principals discussed the need to coordinate more frequently and recommended that the group convene semiannually.

Congruent with the meeting schedule discussion in March, WestFAST and its Principals met again on September 30, 2015 in Washington, DC and were hosted by the EPA. WestFAST representatives and Principals focused their discussion on best collaboration practices and reviewed several recent cases of federal interagency and federal/state coordination. Reviewed activities included the USFS’s recent communications with the WSWC on potential future framework documents for forest water-resource stewardship. Progress in an inter-federal-agency effort to develop a National Soil Moisture Monitoring Network was presented, and collaboration activities that have led to the current success of that work were discussed.

- In 2015, the WestFAST Federal Liaison began working with the Western Regional Partnership (WRP) on the water-resource components of their programs. The WRP is a Department of Defense-led collaboration between federal, state, and tribal interests in six western states - Arizona, California, Colorado, Nevada, New Mexico, and Utah. The

WestFAST Liaison is working with the WRP Natural Resources Committee assisting them in developing a coordinated water-resource action plan.

- WestFAST has continued working on Open Water Data Initiative (OWDI) activities and to provide linkage from western states to initiatives and working groups forwarding the coordination of spatial water data among all levels of government. The OWDI was proposed in 2014 by a working group comprised of leadership from the Secretary of the Interior's office, USGS, NOAA, and universities. The group proposed a new initiative that will integrate currently fragmented water information into a connected, national water data framework - an objective of great interest to the WSWC. WestFAST has directly engaged, during the past year, in this initiative through participation in associated workgroups and subcommittees such as the Subcommittee on Spatial Water Data (SSWD). The WestFAST Federal Liaison has worked directly on the SSWD and WestFAST has linked other WestFAST representatives and agency personnel to OWDI tasks and to subcommittees.
- In 2015, the WestFAST Federal Liaison continued to work to coordinate federal agency science programs within the Colorado River Basin Salinity Control Program (SCP) toward informed development and operation of projects to reduce total dissolved solids in the Colorado River Basin surface water supplies. The USDA, NRCS, BLM, and the BOR collaborate with basin states in this program. The WestFAST Federal Liaison is a member of SCP Science Team. Bob Doyle, WestFAST BLM alternate representative, also participated in SCP planning and coordination in 2015.
- WestFAST continued to assist in the coordination of the water-use component of the USGS National Water Census, as well as with WSWC efforts to develop and implement its WaDE. The National Water Census is a USGS research program on national water availability and use, implemented through the DOI's WaterSMART initiative. The program develops new water accounting tools and assesses water availability at the regional and national scales. Through the Water Census, USGS is striving to provide more comprehensive reporting of national information on withdrawal, conveyance, consumptive use, and return flow by sector of use. WestFAST has facilitated coordination between USGS National Water Census Program/WaterSMART program leaders and the WSWC WaDE developers to understand how each effort might benefit the other. National Water Census leaders also participated in WestFAST Work Groups to aid in that coordination.
- WestFAST continued to work jointly with the WSWC in the sponsorship of a Non-Tribal Federal Water Rights Workgroup, convened in 2014. WestFAST and its agency representative participating in the workgroup have continued to gather documents and other information on water-right issues and settlements and incorporate them in the workgroups document clearing house. The workgroup has focused initially on the McCarran Amendment as it relates to the general adjudication of water rights from state and federal agency perspectives and reviewed case studies of its application and relevance in the West.

- In 2015, WestFAST provided support to states and federal agencies in engaging in the National Groundwater Monitoring Network (NGWMN). The NGWMN Data Portal provides access to groundwater data from multiple, dispersed databases in a web-based mapping application. The NGWMN is a product of the Subcommittee on Ground Water (SOGW) of the Federal Advisory Committee on Water Information (ACWI). The WestFAST Federal Liaison worked with the SOGW in 2015 and has briefed the WSWC twice on the status of the NGWMN and on funding programs to support state and local participation in implementation of the NGWMN.
- The WestFAST Federal Liaison participated in the WGA Drought Forum. WestFAST members and WestFAST agency representatives participated in Forums throughout the nation providing presentations and participating in roundtable and panel discussions. WestFAST provided a review of the WGA Drought Forum Summary report at the request of the WGA. All WestFAST member agencies contributed to the review providing comment, mainly, on the open data needs identified in the Forum meetings and case studies.

OTHER IMPORTANT ACTIVITIES AND EVENTS

Western States Water

Since the first issue in 1974, the WSWC'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 problem solving, improve intergovernmental relations, promote western states' rights and interests, and highlight issues. Further, it covers WSWC meetings, changes in WSWC membership, and other WSWC 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 congressional 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 2015 primarily taken from the newsletter. However, this does not represent an exclusive listing of all WSWC activities or other important events. Rather, it seeks to highlight specific topics.

Western Governors' State of the State Addresses

During their state of the state addresses, a few western governors touched on water-related issues. California Governor Edmund ("Jerry") Brown (D) discussed a recently passed bond measure that authorized \$7.12 billion for state water supply infrastructure projects, which he said will "...save water and money and prepare us for an uncertain future."

In Colorado, Governor John Hickenlooper (D) noted that when he took office the Front Range and Western Slope "...were engaged in a long boiling war over water rights.... Now we have a draft for the first statewide Water Plan in Colorado history, wherein the Front Range and Western Slope are moving forward together and managing our state's most precious resource."

Oregon Governor and WGA Vice-Chair John Kitzhaber (D) gave a historic fourth inaugural address, stating: "I have learned that advancing the common good cannot be done from Salem but only by engaging people where they live and showing them that they have a stake in the problem and a sense of ownership in the solution. And we are doing that every day in Oregon through our regional solutions committees; our coordinated care organizations; our early learning hubs; our watershed councils; and, yes, through the Oregon Business Plan."

Wyoming Governor Matt Mead (R) said: "We're not making decisions for the now, but instead for the tomorrows." He also described his efforts to develop the state's energy and water plans.

Bureau of Reclamation

Water in the 21st Century Act

On January 13, Rep. Grace Napolitano (D-CA) and Senator Barbara Boxer (D-CA) re-introduced the Water in the 21st Century Act (H.R. 291 and S. 176) to support efficient water management. Twenty-five Democrats co-sponsored H.R. 291, including Jared Huffman (D-CA). Senator Dianne Feinstein (D-CA) co-sponsored S. 176. The bills are similar to legislation (H.R. 5363 and S. 2771) Napolitano and Boxer introduced last year.

Specifically, the bills would create a financing program within the DOI to offer long-term, low-cost financing for eligible water infrastructure projects in the West that are directly and indirectly associated with BOR projects. Eligible projects and activities include reuse, new infrastructure, energy efficiency, and desalination, as well as construction, reconstruction, rehabilitation, and replacement activities, among others. The program would receive about \$100 million per year.

Second, the bill would authorize \$700 million for BOR to work with state and local entities on storage, conveyance, and water reuse projects. BOR's share of such projects would be the lesser of 50% of the project's total cost or \$15 million.

Third, the bill would direct the USGS to establish an open water data system to improve water data availability, enhance data use, and ensure timely distribution of water data and information. The bill would authorize "such sums as are necessary" for this program.

Fourth, the bill would require the EPA to lead an inter-agency effort that would include BOR, the USDA, and others to develop National Drought Resilience Guidelines for states, local governments, and water agencies. The guidelines would create a framework of non-regulatory recommendations to help strengthen drought preparedness efforts.

Fifth, the bill would authorize "such sums as are necessary" to create a new EPA grant program that would help water systems carry out various efforts, including projects to conserve water and improve water quality. The grants would provide up to 50% of project costs.

Other notable provisions would: (1) authorize DOI to transfer ownership of BOR projects to non-federal entities; (2) re-authorize the Water Resources Research Act (WRRRA) to authorize \$9 million per year through 2020 for water supply research and other purposes at the water resources research institutes; (3) re-authorize the Water Desalination Act of 1996, and provide \$6 million per year through 2020 for the DOI to study desalination and water reuse; and (4) authorize the Corps to review reservoir operations, at the request of non-federal sponsors, to determine if operational changes are needed.²³

²³<http://napolitano.house.gov/press-releases>.

FY2016 Budget

On February 2, President Obama released his \$4 trillion FY2016 budget request. “The ideas I offer in this Budget are designed to bring middle-class economics into the 21st Century,” he said. The request also focused on climate change and energy and is intended to support Obama’s Climate Action Plan with investments aimed at accelerating carbon pollution reductions and building partnerships with communities to develop greater resilience to climate change.²⁴

The DOI would receive \$13.2 billion, a \$959.2 million increase over FY2015 levels. DOI’s funding for Indian water rights settlements would increase \$73 million to \$244.5 million, with \$136 million from the BOR and \$67.7 million from the BIA. This amount includes \$40.8 million for DOI-wide technical and legal support and \$203.7 million for settlement implementation. Moreover, the budget seeks an increase of \$16.9 million in the budgets of the BOR, BIA, BLM, FWS, and the USGS to strengthen DOI’s capacity to meet its trust responsibilities and partner with tribes on water issues.

BOR would receive about \$1.1 billion, a \$31.4 million cut from the current enacted level. BOR’s budget for Water and Related Resources, its principal operating account, would be \$805 million, a \$173 million cut. Of this amount, funding for rural water projects would fall \$28.5 million to \$36.5 million. BOR’s WaterSMART programs would receive \$58 million, a \$7.5 million increase. Funding for notable WaterSMART programs includes \$5.2 million for the Basin Studies Program and \$23.3 million for the WaterSMART Grants program, representing respective increases of \$1.3 million and \$4.4 million. Title XVI Water Reclamation and Reuse Program funding would fall \$1.5 million to \$20 million.

The request estimates that FY2016 appropriations from the Reclamation Fund will total \$856 million, a \$58 million cut from 2015 levels. The Fund’s receipts, most of which are derived from mineral leasing revenues on federal lands, are projected to remain flat around \$1.8 billion for FY2016. Because the Fund accrues more money than is appropriated, the request estimates that it will have an unobligated balance of \$15 billion by the end of 2016.

The USGS would receive \$1.2 billion, a \$149.8 million increase. USGS’ Landsat activities would grow \$24.3 million to \$77.6 million and include funding for the maintenance and operation of ground systems and satellite operations. The request also details USGS’ plan to work with the NASA to develop a sustained land imaging program that would extend Landsat for another 20 years. The plan includes three simultaneous activities. The first is a new small, “free flyer” satellite with a thermal imager that would launch as soon as feasible, likely in 2019, and would operate in conjunction with a European Sentinel-2 satellite or with Landsat 8. The second activity would be the development of Landsat 9 as a rebuild of Landsat 8, with a target launch date of 2023. The third activity entails ongoing investments in technology development and systems innovation to reduce risk in next generation missions, including Landsat 10.

²⁴<http://www.whitehouse.gov/sites/default/files/omb/budget/fy2016/assets/message.pdf>.

USGS's water resources efforts would increase \$11.6 million to \$222.9 million. USGS also plans to consolidate the budget structure for these efforts from seven existing programs into four. The restructuring is intended to help USGS be more transparent and efficient, and to have a balanced focus on monitoring, research, and assessments, while maintaining the diverse expertise needed to respond to evolving science needs.

The new categories include the: (1) Water Availability and Use Science Program, which would receive \$46.7 million; (2) Groundwater and Streamflow Information Program, which would get \$73.5 million; (3) National Water Quality Program, which would receive \$96 million; and (4) WRRRA Program, which would get \$6.5 million. Under this structure, the Cooperative Water Program (CWP) will be divided into the first three categories, while the National Streamflow Information Program will be divided among the first and second categories.

House Water and Power Budget Oversight Hearing

On March 24, the House Natural Resources Committee's Subcommittee on Water, Power, and Oceans held an oversight hearing on President Obama's FY2016 budget request for BOR and the USGS water resources program. Under the request, BOR would receive \$1.1 billion, a \$31.4 million cut, while USGS's water efforts would increase \$11.6 million to \$222.9 million.

Subcommittee Chair John Flemming (R-LA) said the BOR "...has allowed our Western states to flourish both economically and culturally for over a century.... Many of the fruits and vegetables that we see in grocery aisles are directly related to irrigated agriculture served by the projects. The agency is still being financed by water and power users under the century-old 'beneficiaries-pay' rules, but some of its programs are being financed by American taxpayers. It is indeed a legitimate question to determine the federal nexus for some of these grant programs, including the removal of residential grass or the exchange of toilets throughout the West."

Ranking Member Jared Huffman (D-CA) discussed his state's historic drought conditions and said: "The Administration and Congress can't make it rain, nor can any amount of anti-Endangered Species Act hyperventilation or anti-environment scapegoating.... What we can do is support municipalities, farmers, fish and wildlife, and recreation through water saving conservation, reuse, and recycling infrastructure projects. Though I think we can and must do more, I do want to commend the Administration for putting forward a budget request that includes some smart investments in conservation and water reuse." Huffman also cited the Title XVI water reuse program and the WaterSMART Grant program as "models" for doing more with less, and expressed support for increases in funding for USGS scientific advancements related to water.

BOR Commissioner Estevan López said the request for his agency seeks \$437.7 million for water and power facility operations, maintenance, and rehabilitation activities, he stated: "Reclamation's highest priority is the safe, efficient, and reliable operation of its facilities." He also said the budget includes "...\$112.5 million for the planning and construction of five recent Indian water rights settlements." BOR's Native American Affairs Program is funded at \$10.9 million for

activities with tribes, including technical assistance, Indian water rights settlement negotiations, implementation of enacted settlements, and outreach to tribes. Other notable expenditures include \$88.1 million for dam safety, \$5.2 million for its Basin Studies Program, \$2.5 million for drought response, \$20 million for the Title XVI program, and \$23.4 million for the WaterSMART Grants program.

William Werkheiser, Associate Director for Water, USGS, said: “Water managers need trustworthy and scientific data to make informed decisions as they face competing demands for water.... A primary focus of USGS water programs remains stabilizing the nation’s streamgaging network [the Cooperative Water Program (CWP) and the National Streamflow Information Program (NSIP)]. Streamgages are a vital national resource, providing critical information for flood and drought forecasting, long-term flood protection, water supply, pollution control, and emergency management.” Werkheiser also said USGS is seeking additional funding to increase the number of streamgages and said streamflow information is “...one of the most requested types of water information that USGS provides, averaging over 45 million requests on the web each month.”

During the question and answer portion of the hearing, Rep. Grace Napolitano (R-CA) expressed concern about federally owned streamgages that were abandoned in recent years and asked if they would be re-instated. Werkheiser said the budget would re-start some streamgages and that states and other partners have re-instated additional abandoned gages.²⁵

Drought/Rural Water Projects

On February 6, the BOR announced how it will spend \$96.9 million it received for a variety of water-related activities under the “Cromnibus” (H.R. 83), which set federal funding levels for the remainder of FY2015. Of the total amount, \$50 million will support western drought projects, including specific projects in Arizona, California, Idaho, Nevada, New Mexico, and Washington. Another \$4 million will support Native American programs, while \$14 million will be split between the WaterSMART Grants Program, the Title XVI Water Reclamation and Reuse Program, and drought response and planning efforts.

A total of \$31 million will support five Congressionally authorized rural water projects, including: (1) \$10.3 million for the Garrison Diversion Unit in the Pick-Sloan Project in North Dakota; (2) \$6.8 million for the Rocky Boy’s/North Central Montana Rural Water System in Montana; (3) \$6.6 million for the Fort Peck Reservation/Dry Prairie Rural Water System in Montana; (4) \$6.6 million for the Lewis and Clark Rural Water System in South Dakota, Iowa, and Minnesota; and (5) \$700,000 for the Eastern New Mexico Water Supply Project.

The remaining \$15.9 million will support a variety of projects for water conservation and delivery (\$8 million); fish passages and fish screens (\$4 million); facility operation, maintenance and rehabilitation (\$2.9 million); and environmental restoration and compliance (\$1 million).²⁶

²⁵<http://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=398113>.

²⁶<http://www.usbr.gov/newsroom/newsrelease/detail.cfm?RecordID=48727>.

Senate Hearing on Water-Related Bills

On June 18, the Senate Subcommittee on Water and Power held a hearing on several bills relating to water rights and funding for water projects, including the Bureau of Reclamation Transparency Act (S. 593); an amendment to the Colorado River Storage Act (S. 1305) authorizing use of the active capacity of Fontenelle Reservoir; a bill on the Northport Irrigation District in the State of Nebraska (S. 1291); the Clean Water for Rural Communities Act (S. 1552); and the Water Supply Permitting Coordination Act (S. 1533).

The Water Rights Protection Act (S. 982) would prohibit the Secretaries of the DOI and Agriculture from conditioning their permits, leases, or use agreements on the transfer of water rights to the U.S., and require them to develop water planning instruments consistent with state law. Ryan Yates, American Farm Bureau Federation, emphasized the long history that “developed systems to fairly appropriate often scarce water resources to users. Because water is the lifeblood for all farm and ranch operations, we are greatly concerned that some agencies in the federal government apparently wish to bypass or ignore the established system of water rights.” He gave specific examples of federal encroachment from the proposed USFS groundwater directive and the EPA’s “Waters of the United States” rule.

Charles Stern, Natural Resources Specialist, Congressional Research Service, testified about the expansion of the federal reserved water rights doctrine following the *Winters* (1908) case, which has since been applied to other federal land reservations. Federal agencies that hold water rights do not have clear guidance on the limitations of those rights as they seek to meet federal management objectives. Adam Schempp, Director of the Western Water Program at the Environmental Law Institute, warned that the language of S.982 is broad, ambiguous, and internally inconsistent, making it difficult for courts to interpret and agencies to implement. Sections 3 and 5(a) in particular could lead to fewer land use or occupancy agreements with the federal agencies. Dionne Thompson, Deputy Commissioner, External and Intergovernmental Affairs, BOR, agreed, adding that “S. 982 threatens the Federal Government’s longstanding authority to manage federal lands and associated water resources, uphold proprietary rights for the benefit of Indian tribes, and ensure the proper management of public lands and resources.”

The Authorized Rural Water Projects Completion Act (S. 1365) directs the Secretary of Interior to expedite construction of authorized rural water projects with designated Reclamation Fund spending. Stern testified that “future water supply needs are likely to outstrip the availability of future federal appropriations.” He observed that section 301 regarding separate funding for Indian water rights projects “is notably broad” relative to past bills, and could “potentially fund a wide range” of Indian water rights settlements.

Jerry Meissner, Chairman of the Dry-Redwater Regional Water Authority, testified that ten years and \$4 million has been invested to bring clean drinking water to his rural Montana community. The Reclamation Fund was established as a source for constructing water projects in the West, and S. 1365 “paves a pathway to actual construction of these authorized rural water systems.”

Tony Willardson, Executive Director of the WSWC, testified that the unallocated portion of the Reclamation Fund is approaching \$15 billion, and growing by about \$1 billion per year. Many rural communities continue to wait for the completion of projects authorized many years ago, and it is difficult to explain why the projects can't be funded with a small fraction of the Reclamation Fund's annual receipts. Willardson also emphasized the Western States' commitment to Indian water rights settlements, which also benefit adjacent water users, and noted that funding of infrastructure for Indian water rights greatly facilitates those settlements.²⁷

Thompson emphasized the Administration's ongoing support of rural water projects and Indian water rights settlements, but noted other priorities competing for the same funds, including aging infrastructure, environmental compliance and restoration actions. While the Administration supports the goals of S. 1365, it believes the funding should be discretionary. BOR's goal is to advance construction of projects that meet the most urgent water supply needs in the shortest time given budgetary constraints, followed by those rural water projects that address Indian water supply needs.

House Hearing on Water-Related Bills

On June 25, the House Subcommittee on Water, Power and Oceans held a hearing on four Western water bills, the Bureau of Reclamation Transparency Act (H.R. 1107), the New Mexico Navajo Water Settlement Technical Corrections Act (H.R. 1406), the Fontenelle Reservoir storage capacity amendment to the Colorado River Storage Project Act (H.R. 2273), and the Dam Authorization, Maintenance, and Safety Act (H.R. 2749).

BOR Commissioner Estevan López, testified about the BOR's development of an Infrastructure Investment Strategy (Strategy) to assess asset management, rehabilitation and replacement. BOR's draft Strategy is consistent with H.R. 1107, which incorporates changes that reflect BOR's 2014 testimony on prior S. 1800. Over two-thirds of BOR's facilities are "transferred works" managed by non-federal project beneficiaries, but the initial Strategy focuses on "reserved works" constructed, owned and operated by the BOR. BOR's Strategy informs its annual budget for routine preventative maintenance for workplace hazards and safety, as well as site specific, high level maintenance and replacement of infrastructure, including dam safety, seismic retrofitting of buildings, and security upgrades. One of BOR's main funding challenges is cost sharing with operating partners of varying economic strength.

Tom Davis, General Manager, Yuma County Water User's Association, testified that H.R. 1107 increases transparency by consolidating various BOR reports that affect water user organizations repaying infrastructure construction, operation and maintenance costs on transferred works. BOR assesses the safety and maintenance needs on transferred works, and the water user organizations perform and pay for necessary maintenance. Federal facilities exceeding 50 or even

²⁷See page 41.

100 years of operation require costly replacement or rehabilitation, but are vital for power generation, flood control, agriculture and drinking water, economic development and wildlife habitat.

Jackson Brossy, Executive Director, Navajo Nation's Washington Office, testified in support of H.R. 1406, and noted that the technical corrections to the law authorizing the Navajo-Gallup Water Supply Project are clarifications needed to help build the Navajo Nation's water infrastructure. Brossy testified about 4,000 homes without water, the lack of water resources for future growth, and the need for Congressional assistance to resolve outstanding Indian water rights claims for the Navajo Nation in Utah and Arizona through fair and equitable settlements. He said the lack of settlements impairs the ability of the Navajo Nation to deliver water across its 27,000 square mile expanse. The corrections primarily relate to the delivery of and funding for conjunctive use of surface and groundwater.

Jon Rubin, General Counsel, San Luis & Delta-Mendota Water Authority, testified in support of H.R. 2749, which would enable BOR to consolidate dam safety improvements with other dam modifications, reducing long term taxpayer burden for planning, design and construction projects. Rubin highlighted the necessity for dam modifications to improve water supply reliability and volume amidst ongoing drought. California's Central Valley Project in particular has been impacted not only by drought, but also by legislative action and policy decisions intended to improve conditions for fish populations, which are continuing to decline as drought degrades the aquatic ecosystem. Consolidating dam improvements meet urban, agriculture and wildlife needs.

Harry LaBonde, Director, Wyoming Water Development Office, testified in support of H.R. 2273, an amendment that adds riprap (a layer of large rock) erosion protection to the bottom portion of the upstream face of the Fontenelle Dam embankment. LaBonde stated that upgrading the riprap protection is an efficient way to increase usable storage in the drought-affected Colorado River Basin without building new reservoirs.

Oregon Natural Resources Council Action v. U.S. Bureau of Reclamation

On August 21, a 9th Circuit panel affirmed a district court decision in *Oregon Natural Resources Center Action v. U.S. Bureau of Reclamation*, No. 12-35831, that BOR was not required to obtain a CWA §402 permit for waters transferred through a drain as part of the Klamath Irrigation Project. The water flows from the Lower Klamath Lake, through the Klamath Straits Drain, and into the Klamath River. The 9th Circuit panel stated that although the discharge into the river includes some runoff and spring-fed streams from another basin, most of the water originates from the Klamath River. The drainage is "essentially an improved version of a previously existing natural waterway," the panel said, and if the pumping stations and headgates of the drainage were removed, water would still flow from Lower Klamath Lake into the Klamath River.

In August 2012, the district court adopted the magistrate judge's report and recommendation that BOR was exempt from the permit requirement under EPA's Water Transfers Rule, 40 CFR §122.3(I). The 9th Circuit panel relied instead on a subsequent "meaningfully distinct" test from a

2013 U.S. Supreme Court decision in *Los Angeles County Flood Control District v. Natural Resources Defense Council*, 133 S. Ct. 710. In that case, the Supreme Court held that “no pollutants are ‘added’ to a body of water when water is merely transferred between different portions of that water body.” The panel found this a “simpler path” than deciding whether the Water Transfers Rule is properly within EPA’s authority, as is the issue before the 2nd Circuit in *Catskills Mountains Chapter of Trout Unlimited v. EPA*, No. 14-01991.

Following the *L.A. County Flood Control* decision, and based on the district court record, the panel held that the drain did not add any pollutants to the water, the Lower Klamath Lake and Klamath River were not meaningfully distinct water bodies, and BOR was not required to obtain a permit under the CWA.

On November 12, the 9th Circuit Court of Appeals rejected a petition for rehearing by environmentalists in *Oregon Natural Resources Council Action v. U.S. Bureau of Reclamation*.²⁸ In their petition, the environmentalists argued that the status of the Klamath water bodies was in dispute, and the question of whether the waters are meaningfully distinct is a factual issue that should have been remanded to the trial court for further proceedings. The November 12 order states: “The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc.”

Clean Water Act/Corps of Engineers/Environmental Protection Agency

Waters of the United States Rulemaking

On January 28, Rep. Paul Gosar (R-AZ) introduced the Waters of the United States (WOTUS) Regulatory Overreach Protection Act of 2015 (H.R. 594) to require the EPA and Corps to withdraw their proposed rule regarding CWA jurisdiction. One hundred fourteen other Representatives co-sponsored the bill, including House Appropriations Committee Chair Hal Rogers (R-KY) and House Agriculture Committee Ranking Member Collin Peterson (D-MN).

In addition to withdrawing the rule, the bill would prohibit EPA and the Corps from using the rule, the now-withdrawn draft guidance the agencies developed in 2011, and any “...successor document, or any substantially similar proposed rule or guidance, as the basis for any rulemaking or decision regarding the scope or enforcement of the [CWA].” The bill further specifies that using such documents “...shall be grounds for vacating the final rule, decision, or enforcement action.”

Going forward, the rule would require EPA and the Corps to consult with state and local officials to develop recommendations for a regulatory proposal that would identify those waters that are covered and not covered under the CWA, consistent with U.S. Supreme Court rulings. In developing these recommendations, the bill would require the agencies to consult with state and local officials that represent a “broad cross-section” of regional, economic, and geographic perspectives,

²⁸*Western States Water*, #2155, September 4, 2015.

and consider state and local input regarding the “...differences in State and local geography, hydrology, climate, legal frameworks, economies, priorities, and needs.” It would also require the agencies to explore with state and local officials whether federal CWA objectives can be attained by means other than through a new regulatory proposal.

Within a year after the bill’s enactment, EPA and the Corps would be required to publish a draft report in the *Federal Register* for public comment that describes the recommendations developed with states and local officials. The agencies would only be able to include a recommendation in the draft report if there is a consensus. If consensus is not possible, the draft report must identify those areas where consensus was reached, those areas where consensus was not made, and the reasons for continuing disagreements. A final report addressing the comments the agencies receive would be due to Congress two years after the bill’s enactment.²⁹

Of note, the WSWC’s latest comments on the rule call for the creation of a state-federal workgroup to revise and refine the proposal. The WSWC has also expressed concerns about the lack of state consultation in the rule’s development. As the WSWC’s CWA position notes, consultation is needed to address the hydrologic and legal differences that exist across the West and to avoid conflicts with state authority.

On February 4, the House Transportation and Infrastructure (T&I) and Senate Environment and Public Works (EPW) Committees held a rare joint hearing on the CWA jurisdiction rule that the EPA and Corps proposed.

T&I Chairman Bill Shuster (R-PA) said: “The rule undermines the federal-state partnership under the [CWA]. This...is the basis of the Act’s success...in improving our water quality.... This rule wrongly assumes that states and local governments...don’t know how, or don’t care about protecting their waters.... This rule is an ‘end-run’ around Congress - another example of overreach by this Administration. This was twice rejected under the Democrat majority. This was also twice rejected by the Supreme Court.... Not all waters need to be subject to federal jurisdiction, and states should have [the] primary responsibility regulating waters within their individual boundaries.”

T&I Ranking Member Pete DeFazio (D-OR) said new guidance is needed because the current jurisdictional guidance documents are “...confusing, overly narrow, costly, and have been characterized by industry as a ‘hodgepodge of ad hoc and inconsistent jurisdictional theories.’” Nevertheless, DeFazio said: “I agree that the initial draft of this...rulemaking was somewhat garbled and confusing. That is a fair criticism, and one that the agencies must address before they issue their final rule.” He also said the rulemaking should be transparent, that it should move quickly, and should ensure that it “...does not expand Federal authority over waters never-before covered....”

EPW Chair James Inhofe (R-OK) criticized the rule for expanding CWA authority beyond Congressional limits. He also criticized the agencies for basing the rule on an EPA scientific report

²⁹*Western States Water*, #2122, January 16, 2015.

on water connectivity that was incomplete when the agencies published the rule for public comment in March 2014. “You finalized that report in January 2015,” he said. “Unsurprisingly, the scientists found that all water is connected. Every child is taught about the water cycle in elementary school. But, Congress did not give EPA and the Corps the authority to regulate the water cycle. So your report has no relevance to your legal authority.”

EPW Ranking Member Barbara Boxer (D-CA) said the rule is “...about providing clean water for families and businesses. It only focuses on those waters that the science clearly shows have an impact on water quality. It is time to restore much-needed certainty, consistency, and effectiveness to the [CWA] and put the nation back on track toward clean, healthy waters for all.”

The first panel of witnesses consisted of EPA Administrator Gina McCarthy and Assistant Secretary of the Army (Civil Works) Jo-Ellen Darcy. McCarthy said the rule “...continues to reflect the states’ primary and exclusive authority over water allocation and water rights administration, as well as state and federal co-regulation of water quality.” She also said it excludes groundwater for the first time, reduces jurisdiction over ditches, and maintains current exemptions. Moreover, she said the final rule will “reflect” the recommendations set forth in EPA’s connectivity report, and will provide \$388 million to \$514 million in annual benefits that will outweigh the rule’s \$162 million to \$278 million in estimated costs.

Darcy made similar points, noting that the agencies “...are in the process of fully evaluating the body of public comment and considering that input as a final rule is being developed.... I am focused on ensuring that the final rule will achieve the goal of providing greater predictability, consistency, and effectiveness in the process of identifying those waters that are not jurisdictional....”

In answering questions from Boxer, both McCarthy and Darcy said the following waters would not be regulated under the rule: isolated puddles, isolated ponds not connected to another water body, artificially irrigated areas, reflecting and summer pools, and water-filled depressions incidental to construction. Shuster, who said thirty-four states have opposed or asked EPA to withdraw the rule, said the agencies have not sufficiently partnered with the states in developing the rule. McCarthy noted that the states asked the agencies to promulgate a rule instead of guidance, and that two-thirds of the states provided “robust” comments that the agencies are considering.

McCarthy also responded to various questions from other representatives and Senators, many of whom said the rule does not clarify the scope of CWA jurisdiction and could adversely impact existing exemptions. She promised that those waters that are not regulated now will be clearly outlined as exemptions with “much more specificity” in the final rule. She further said the rule will likely be finalized this spring, but did not provide a date.

During a second panel, Oklahoma Attorney General Scott Pruitt said the rule improperly expands the CWA and should be withdrawn, noting: “When the states are cut out of the loop...landowners are left lobbying distant federal bureaucrats when the system wrongs them – and wrong them it will.” Sallie Clark, a Commissioner with El Paso County in Colorado, and Florida

Commissioner of Agriculture Adam Putnam made similar comments. Clark testified on behalf of the National Association of Counties and Putnam testified on behalf of the National Association of State Departments of Agriculture.

Conversely, Lemuel Srolovic with the New York Attorney General's Office testified in favor of the rule, saying it will provide needed clarity following the U.S. Supreme Court's ruling in *Rapanos*. Timothy Mauck with the Clear Creek County Colorado Board of County Commissioners also said the rule will protect ephemeral streams from irresponsible development.³⁰

On April 3, the EPA and the Corps sent their proposed rule on CWA jurisdiction to the OMB for inter-agency review. EPA also announced that it will finalize the rule this spring.

In an April 6 blog post, EPA Administrator Gina McCarthy and Assistant Secretary of the Army (Civil Works) Jo-Ellen Darcy said their agencies have held over 400 meetings with stakeholders across the country to discuss the rule and received over 1 million comments. "In the final rule, people will see that we made changes based on those comments, consistent with the law and the science," they said. "We've worked hard to reach a final version that works for everyone - while protecting clean water."

Darcy and McCarthy also said they are considering the following changes to the rule: (1) "better defining how protected waters are significant," in light of Justice Kennedy's "significant nexus" test in the U.S. Supreme Court's *Rapanos v. United States* decision; (2) "defining tributaries more clearly;" (3) providing "certainty in how far safeguards extend to nearby waters;" (4) "being specific in the protection of the nation's regional water resources;" (5) "focusing on tributaries, not ditches;" (6) "preserving [CWA] exclusions and exemptions for agriculture;" and (7) "maintaining the status of waters within Municipal Separate Storm Sewer Systems."³¹

In related news, Darcy and EPA Deputy Assistant Administrator for Water Ken Kopocis wrote the WSWC on March 27, in response to comments the WSWC submitted in October 2014 regarding the rule. Among other things, the WSWC's comments had asked the agencies to convene a state-federal workgroup to help revise and implement the rule, and outlined a number of areas in the rule where further clarification is needed, including how the agencies will determine "significance" and the jurisdictional status of "other waters." The WSWC's letter also asked the agencies to withdraw a related interpretive rule regarding CWA agricultural exemptions under CWA Section 404(f)(1).

Darcy and Kopocis said they appreciated the WSWC's comments and "...will carefully consider [them] and all comments received...when deciding what changes to make to the final rule." They also noted that the Consolidated and Further Continuing Appropriations Act, which became

³⁰<http://transportation.house.gov/calendar/eventsingle.aspx?EventID=398554>. *Western States Water*, #2122, January 16, 2015.

³¹<http://blog.epa.gov/epaconnect/2015/04/your-input-is-shaping-the-clean-water-rule/>.

law in December, instructed them to withdraw the agricultural interpretive rule, which they did on January 29. “The exemptions from [CWA] permits for discharges of dredged and/or fill material will continue to apply for normal farming, silviculture, and ranching activities, as well as for other qualifying agricultural activities under 404(f)(1),” they said. “Withdrawal of the interpretive rule also does not impact the agencies’ work to finalize their rulemaking to define the scope of the [CWA].”³²

On April 15, the House Transportation and Infrastructure Committee reported the Regulatory Integrity Protection Act (H.R. 1732), which would require EPA and the Corps to withdraw their proposed CWA jurisdiction rule and develop a new rule. In crafting the new rule, the bill would require the agencies to consult with states and local governments and to “...seek to reach consensus...on how to define the term ‘Waters of the United States’ as used in the [CWA].” Among other things, the bill would require that such consultation “...recognize, preserve, and protect the primary rights and responsibilities of the States to protect water quality under the [CWA], and to plan and control the development and use of land and water resources in the States.”

Committee Chair Bill Shuster (R-PA) introduced the bill, which was reported on a largely party-line 36-22 vote, with all but two Democrats voting against the bill. While the bill is expected to pass the House, its future is less certain in the Senate, where it is unclear whether its supporters have the 60 votes needed to overcome an almost certain filibuster or the two-thirds majority needed to overcome a likely presidential veto.³³

On April 30, Senator James Inhofe (R-OK), Chair of the Senate EPW Committee, introduced the Federal Water Quality Protection Act (S. 1140), directing the EPA and Corps to issue a revised rule redefining WOTUS.

The bill is cosponsored by Senate Majority Leader Mitch McConnell (R-KY), as well as Senators John Barrasso (R-WY), Joe Donnelly (D-IN), Heidi Heitkamp (D-ND), Pat Roberts (R-KS), Joe Manchin (D-WV), Roy Blunt (R-MO), Shelley Moore Capito (R-WV), Deb Fisher (R-NE), Mike Rounds (R-SD) and Dan Sullivan (R-AK).

“A few years ago, Congress rejected a bill that would have removed the term ‘navigable water’ from the CWA. Last April, EPA and the Corps of Engineers proposed an even greater expansion of federal authority. I am proud of the bipartisan work that...will refocus EPA and the Corps on the job Congress gave them – protecting navigable water from pollution,” said Senator Inhofe.

Senator Donnelly declared, “No one wants cleaner water or better land conditions than the families who live on American farms. This is why it is incredibly important that the EPA rewrite the [WOTUS] rule with input from the people who live and work on the land and alongside these

³²*Western States Water*, #2118, December 19, 2014 and #2108, October 14, 2014.

³³*Western States Water*, #2134, April 10, 2015.

waters every day. I am proud to work on this bipartisan legislation because Democrats and Republicans can agree that the EPA needs to consult with states, small businesses, and farmers on something so critical as defining ‘Waters of the United States’ in a common sense way – something they failed to do the first time.”

Senator Roberts, Chair of the Senate Agriculture Committee, stated: “I’m proud to lead agriculture’s charge in pushing back against EPA’s egregious federal overreach. Complying with the [WOTUS] rule is consistently the number one concern I hear from farmers and ranchers across the country. The last thing rural America needs to worry about is more burdensome and costly federal oversight down on the farm. Our farmers and ranchers’ job is to take care of the land and natural resources. The federal government doesn’t have to tell them to do that.”

Senator Heitkamp observed, “North Dakota is in the middle of an historic wet cycle, impacting farmers across our state with flooding and pooling water. We have to make sure that EPA takes these unique conditions into account and proposes a rule to regulate water that actually considers what is happening on farmers’ land. Our bipartisan bill would address these concerns and help provide clarity to producers in North Dakota and across the country without confusing federal regulations standing in their way.”

In revising the rule, the legislation directs the agencies to follow a number of principles in clarifying that the CWA is intended to protect WOTUS from pollution. Those that should be included are traditional navigable waters and interstate waters; streams identified on maps at the scale used by EPA to identify potential sources of drinking water; streams with enough flow to carry pollutants to a navigable water, based on a quantifiable and statistically valid measure of flow for that geographic area; wetlands situated next to a WOTUS that protect water quality by preventing the movement of pollutants to navigable water; and areas unlawfully filled without a required permit.

Waters that should not be included are waters located below the surface of the land, including soil water and groundwater; waters not located within a body of water (such as a river, stream, lake, wetland), including channels that have no bed, bank or ordinary high water mark or surface hydrologic connection to traditional navigable water; isolated ponds, stormwater and floodwater management systems; wastewater management systems; municipal and industrial water supply management systems; agricultural water management systems; streams that do not have enough flow to carry pollutants to navigable waters; prior converted cropland; and areas lawfully filled pursuant to a permit or areas exempt from permitting.

WOTUS would not be defined on the basis of use by an organism, including a migratory bird; the supply of water to a groundwater aquifer and the storage of water in an isolated waterbody; the water cycle, including the supply of water through evaporation, transpiration, condensation, precipitation, overland flow, and movement of water in an aquifer.

The bill specifically directs that the agencies consult with the states under Federalism Executive Order 13132, undertake economic analyses under the Regulatory Flexibility Act, comply

with the Small Business Regulatory Enforcement Fairness Act and the Unfunded Mandates Reform Act, and comply with Executive Orders 12866 and 13563 on improving regulation.

The bill addresses many of the concerns regarding consultation with the states raised by the WSWC.

On May 12, the House approved the Regulatory Integrity Protection Act (H.R. 1732), requiring the EPA and Corps to withdraw their proposed WOTUS rule³⁴ by a 261-155 vote, including twenty-five Democrats. The bill requires the agencies to withdraw the regulatory proposal and any related rule³⁵ within 30 days, and to go through a collaborative and transparent consultation process with state and local stakeholders, beginning within the next 3 months. The bill also requires the agencies to further consider public comments, economic analyses, the EPA Science Advisory Board report on “Connectivity of Streams and Wetlands to Downstream Waters,” and “recognize, preserve, and protect the primary rights and responsibilities of the States to protect water quality...and to plan and control the development and use of land and water resources in the States.”

The Administration has threatened to veto the legislation, defending the agencies’ “extensive public engagement process” and stating the proposed WOTUS rule is an improvement over the existing confusion. Rep. Peter DeFazio (D-OR), while opposing the WOTUS rule as proposed, agreed that the final rule might be better than the current regulatory confusion. He believes that there is no rush to repeal the proposed rule before the process is complete. Congress can reject the final rule within 60 days under the Congressional Review Act.

A related Senate measure, Federal Water Quality Protection Act (S.1140), would set criteria for any WOTUS rule affecting the jurisdictional reach of the CWA. The Committee on EPW held a hearing on S.1140 on May 19. Susan Metzger, Kansas Department of Agriculture, Mark Pifher, Southern Delivery System, Colorado Springs Utilities, and others testified. On May 20, the Committee held a hearing titled “Oversight of Scientific Advisory Panels and Processes at the EPA.”

Also pending before the EPW Committee are two Senate bills: Defending Rivers from Overreaching Policies Act (S.1178), introduced on April 30, by Senator Jeff Flake, and the Defense of Environment and Property Act (S.980), introduced on April 16, by Senator John Barrasso.

The findings of S.1178 indicate that the WOTUS rule was premature due to the current lack of scientific “consensus regarding the best methods or metrics to quantify or predict hydrologic or chemical connectivity.” Without this consensus, there is insufficient information to determine which hydrologic connections are scientifically significant. The bill proposes the temporary creation of a 9-member Supplemental Scientific Review Panel and a 15-member Ephemeral and Intermittent Stream Advisory Commission. Both the Panel and the Commission would consist of unpaid, bipartisan-appointed experts in the biogeosciences. The Commission members would have

³⁴(79 *Fed. Reg.* 22188, April 21, 2014).

³⁵(e.g. RIN 2040-AF30).

additional expertise with the CWA permitting process, as well as balanced representation of the interests of developers, agriculture, timber, energy, mineral, environment, recreation, State and local elected officials and agencies, and the general public.

The Panel would have a year to make majority recommendations on scientifically sound metrics, accounting for regionally-variable flows, to quantify degrees of connectivity between traditionally navigable waters and other bodies of water. The Commission would then be appointed and would have an additional six months to develop criteria to define a significant nexus to traditional navigable waters, using the metrics developed by the Panel, ensuring that the criteria account for regional variability of water bodies and wetlands. The EPA and Corps would be prohibited from making or implementing any WOTUS rule until receipt of the Commission's final report.

S. 980 focuses on the definition of "navigable-in-fact" waters and excludes isolated water bodies and wetlands without a continuous surface water connection, and natural or man-made channels with intermittent or ephemeral water flow as drainage from periodic rainfall. The bill would prohibit the promulgation of WOTUS rules or guidance without express Congressional authorization. For determinations of CWA jurisdiction, the bill would mandate payment of double damages for regulatory takings (diminishing fair market value/economic viability), and expedited judicial review of determinations affecting State and individual water use or development. The bill would prohibit the aggregation of waters to determine Federal jurisdiction, and groundwaters are expressly considered State waters.

On May 19, the Senate EPW Committee held a hearing on the Federal Water Quality Protection Act (S. 1140). Senator Dan Sullivan, noted that "three-fifths of the states oppose the proposed rule along with more than 300 trade groups and associations." The WOTUS rule affects "many waters that Congress never intended to be jurisdictional" and forces industry, local governments and businesses "to wrangle with the federal government to obtain costly permits and approval." Sullivan stated that while waters need to be protected, states must be allowed the opportunity to be co-regulators.

Mark T. Pifher, on behalf of the National Water Resources Association, expressed concern that the draft WOTUS rule fails "to recognize the geologic, hydrologic, and climatic differences that exist across this country." Pifher said "a one size fits all approach" is impossible "to uniformly and equitably enforce." The WOTUS rule offers "no opportunity for a case-by-case jurisdictional determination," creating serious problems in an era "of droughts, floods and fires" where water infrastructure needs are increasing. Costly, time-consuming permitting barriers will unnecessarily constrain new projects and repairs without providing correspondingly significant benefits to water quality.

Susan Metzger, Assistant Secretary for the Kansas Department of Agriculture noted that "Kansas averages 15 inches [of rainfall] per year, generating little runoff and making connectivity in our western stream network tenuous and episodic." Because each state's hydrology is variable

and unique, Federal agencies should “use existing State expertise to determine which marginal waters fall under Federal jurisdiction.” Metzger pointed to Kansas’ “track record of progressive and innovative protection” of its waters. S. 1140 “acknowledges that an exclusion of waters from Federal jurisdiction does not mean such excluded waters lack protection through State regulation and management.”

Professor Patrick Parenteau, Vermont Law School, believes that “S. 1140 is a deeply flawed bill that is based on bad science, bad law, and bad policy” that will “make a bad situation worse and spawn yet more conflict, confusion, and litigation that will take years, perhaps decades, to untangle.” He gave specific examples of ambiguous new terms “that have no scientific grounding” and that will lead to new disagreements and litigation over their meaning and effect. He said the WOTUS rule “is solidly grounded in the latest watershed science” and was “strongly endorsed” by the Science Advisory Board. Parenteau said history proves states cannot fill in the gap to protect water quality without CWA jurisdiction.

Robert J. Pierce, Wetland Training Institute, Inc. and formerly with the Corps, provided some historical context (beginning with the Rivers and Harbors Act of 1899) for the “ever-continuing geographical expansion of regulation under the direction of the EPA.” Pierce emphasized that the Corps has had no administrative authority to determine the geographic limits of Section 404 of the CWA since Attorney General Civiletti’s 1979 memo on Congress’ intent to confer final administrative authority on EPA. Providing concrete examples of episodic desert water flow and unintended consequences of jurisdictional reach, Pierce commented on S.1140 on a nearly line-by-line basis, either supporting, correcting or negating the underlying assumptions of the language based on his 40 years of experience implementing Section 404 from its inception in 1975.

Senator James Inhofe dismissed the sweeping statements of support for the WOTUS rule, condemning EPA’s “grassroots lobbying campaign” and its “closed doors” rulemaking. The EPA ignored its duty to engage with state and local governments and small businesses impacted by the rule, while simultaneously reaching out to audiences with messages that the rule would change nothing for farmers, but that drinking water was in danger without the rule. Inhofe pointed out that S. 1140 does not re-write EPA’s rule, but provides further principles and guidance to focus on relevant bodies of water, pollution rather than migratory species, and partnership with states and small businesses that are affected by the rule.

Also on May 19, the Senate Small Business and Entrepreneurship Committee heard testimony relating to the potential economic implications of the Administration’s proposed WOTUS rule.

Senator David Vitter (R-LA) noted that contrary to EPA and Corps’ conclusions “that the proposed rule will not have a significant economic impact on a substantial number of small entities,” the WOTUS rule expands jurisdiction over the types and numbers of waterbodies, representing “a direct threat to private property rights.” The agencies shut small business out of the rulemaking process while expanding their authority to tell “small businesses what they can do on their own

land,” shouldering aside state and local zoning commissions despite a lack of knowledge about the local implications.

Several witnesses testified of the direct impacts of the WOTUS rule on small businesses, including farmers, builders, and the hunting and fishing industry. Charles Maresca, with the Office of Advocacy, U.S. Small Business Administration, testified regarding direct effects of increased costs, pointing to the agencies’ own economic analysis indicating that permitting and mitigation costs alone would rise between \$20 million and \$114 million annually under the new rule. Maresca noted the baseline from which to assess the rule’s economic impact should have been the 2008 guidelines following the Supreme Court’s abrogation of the existing rule.

Elizabeth Milito, from the National Federation of Independent Business (NFIB), declared the agencies’ certification “is patently false” given the agencies’ own documentation of a 3% increase in jurisdictional wetlands (a figure NFIB believes is “far too conservative”). Small businesses face increased uncertainty over whether to make beneficial use of their property for development when even a temporary amount of water at any point during the year could create presumptive jurisdiction, resulting in cost prohibitive permits (over \$270,000) – with experts, legal counsel and development delays – or devastating fines of up to \$37,500 per day.

Darcy Maulsby, a fifth-generation farmer and small-business owner from Iowa, gave an example of temporary storm-generated ponds in various locations on his farm that are dry during most of the rest of the year. The WOTUS rule would create uncertainty about the extent of EPA’s jurisdiction over typically dry farmland. The cost “to obtain permits, along with fees for both lawyers and technical consultants is beyond the means of most farmers and ranchers and creates an undue burden for...largely family-owned operations.”

Randy Noel from the National Association of Home Builders testified that “government regulations account for up to 25% of the price of a single-family home.” Builders and developers have “tight budgets and timeframes” and need a straightforward “regulatory structure that is consistent, predictable, timely,” and protects “true aquatic resources” instead of “every minor pond or ditch.” The WOTUS rule adds “another layer of red tape” for the home building industry, which is “generally ill-equipped to make their own jurisdictional determinations and must hire outside consultants to secure necessary permits and approval.”

Benjamin H. Bulis, from the American Fly Fishing Trade Association, testified that streams that were once polluted and uninhabitable are “now home to robust populations” of prized fish, and “drinking water is safer and healthier.” He said failure “to protect our headwater streams and wetlands” might “destroy the \$200 billion...hunting and fishing industry” and cause the loss of 1.5 million jobs, many of which are located in rural areas.

On May 27, the EPA and the Corps submitted their final Clean Water Rule to be published in the *Federal Register*. The EPA stated that the final rule does not “protect any types of waters that have not historically been covered by the CWA; add any new requirements for agriculture; interfere

with or change private property rights; regulate most ditches; change policy on irrigation or water transfers; address land use; cover erosional features such as gullies, rills and non-wetland swales; or include groundwater, shallow subsurface flow and tile drains.” EPA pointed out that a permit under the CWA “is only needed if water is going to be polluted or destroyed,” and that “activities like planting, harvesting, and moving livestock have long been exempt” from CWA regulation, “and the Clean Water Rule doesn’t change that.”

The EPA hosted an informational conference call on May 27, following the release of the final rule. When asked about the expansion of jurisdiction over ephemeral streams from the 2008 guidelines for tributaries, the EPA responded that it previously exerted jurisdiction over ephemeral streams on a case-by-case basis, and the WOTUS rule was merely a “clarification” of that existing jurisdiction, not an expansion. A construction stakeholder inquired about the impossibility of meeting turbidity limits for water quality protection, and the EPA indicated that it was looking at the storm-water program to make adjustments as needed for practicality while still protecting water quality. Prairie potholes are not jurisdictional by rule, but will be considered for their effects as a unit on a case-by-case basis. Prior converted croplands are still excluded from jurisdiction as under the previous rule.

Texas Governor Greg Abbott said: “The EPA’s latest regulatory overreach represents a new level of absurdity by attempting to define ditches and ponds as part of the ‘navigable waters’ under the CWA. It is clear this rule serves the sole purpose of enabling the federal government to regulate businesses and property owners on an increasingly granular level. The EPA’s action is contrary to multiple rulings by the U.S. Supreme Court limiting its jurisdiction, and represents yet another power grab by the Obama Administration seeking to impose heavy-handed regulations on every facet of the lives of Americans.”

Kansas Governor Sam Brownback: “This final rule from the EPA continues a pattern of federal overreach, by asserting broader federal jurisdiction over local water and land use. We will carefully review this rule to understand the full effect of this encroachment into an area where states should – and are – taking the lead to protect and preserve water quality. Such an expansion of the EPA’s regulatory power will have a significant, negative effect on Kansas. Kansas already has laws in place to protect waters that fall under state jurisdiction. Not only is this rule an overreach..., it is a costly infringement on state’s rights without providing any significant benefit. Now, federal agencies will expect Kansas to implement an onerous policy that was developed with little meaningful input from the states and other stakeholders. I will continue to work with other Governors and our state’s federal officeholders to address this rule and protect the rights of Kansas land owners and businesses.”

Nebraska Governor Pete Ricketts: “Today’s decision by the EPA and the Army Corps of Engineers to release the final WOTUS rule is bad policy. It is clear the Administration failed to listen to the concerns of Nebraska’s agriculture and business communities. This rule has the potential to saddle our farmers, ranchers, and other businesses with a huge, unwarranted regulatory burden. It should be scrapped.”

Wyoming Governor Matt Mead: “I am disappointed at the lack of consideration for the law and procedure. The Administrator ignored requests to consult with states and develop a rule that complies with the law and protects water. This rule has wide ranging impacts. I am frustrated the EPA has again stepped out of the bounds of its authority and has disregarded the role and concerns of the state.”

On June 10, the Senate EPW Committee voted 11-9 to advance the Federal Water Quality Protection Act (S. 1140) to the Senate floor. The bill is aimed at curtailing the jurisdictional reach of the Administration’s pending WOTUS final rule. The EPW voted down five amendments proposed by Democrats that would have allowed the EPA and Corps to ignore portions of the legislation that increased costs or interfered with the ability of the EPA or Corps to protect drinking water. Republicans on the EPW Committee rejected these amendments to the bill. Senator Barbara Boxer (D-CA) called it a “sad day for the Environmental Committee,” stating that S. 1140 is “ripping the heart out of” the CWA that has done a great job for 40 years of cleaning up the country’s water and sharing that responsibility equally among the states. Senator Ben Cardin (D-MD) said that rather than preventing the EPA and Corps from carrying out their responsibilities on clean water, Congress should clarify its will. Senator John Barrasso (R-WY) stated that our nation’s waterways can be preserved with reasonable regulations that still respect the differences between state waters and federal waters. Barrasso took aim at the final WOTUS rule, calling it “worse than the proposed rule,” and pointing out that any concessions made by the agencies in the final rule – for ditches and the outer boundaries of federal reach – are outweighed by other changes that greatly expand the agencies’ authority. Senator Tom Carper (D-DE) suggested that instead of passing S. 1140, perhaps a “report to Congress on how to ensure communities are not harmed unintentionally by” the new WOTUS rule would be more helpful to keep the EPA on track.

On June 10, the Senate Judiciary Committee held a hearing on “Examining the Federal Regulatory System to Improve Accountability, Transparency and Integrity.” Chairman Chuck Grassley (R-IA) highlighted the EPA’s recently finalized WOTUS rule as an example of the problem of “agencies going through the motions of notice-and-comment rulemaking” without meaningful interaction with the public. Grassley said that “Instead of attempting to address the legitimate concerns raised during the open comment period, the EPA and its allies in the professional advocacy community pushed a narrative that portrayed critics of the rule as misinformed, nutty, or in favor of water pollution.” Grassley pointed out the agencies are supposed to remain objective, but the EPA’s “efforts to drive support of its own rule – while belittling the concerns of the public – indicate that it had a clear end-goal in mind, regardless of public opinion or the rule’s impact.” The EPA’s efforts to sway public opinion while Congress considers legislation to block the WOTUS rule raises concerns about agency overreach and accountability, particularly in light of thirty years of increasingly heavy deference by Courts to agency interpretations under the Chevron doctrine. The lack of agency accountability to Courts and Congress is impacting the U.S. economy, especially small businesses entrepreneurs that “operate in a regulatory environment that provides little relief from excessive red tape, and one that offers little certainty upon which to base risk and investment.”

On June 29, 2015, the EPA and the Corps published their final rule regarding jurisdiction and the CWA definition of WOTUS in the *Federal Register*.³⁶ Three lawsuits challenging the rule were immediately filed by eighteen states in U.S. District Courts in North Dakota, Texas and Ohio. Another nine states filed a lawsuit the following day in the U.S. District Court in Georgia.

Despite the EPA's repeated assurances that the WOTUS rule does not expand its jurisdiction, states filing suit interpret the rule as a clear threat to their primacy over water resources, as well as to CWA principles of cooperative federalism. The states allege that the rule reaches beyond the constraints imposed by the Supreme Court in cases like *Riverside Bayview*, *SWANCC*, and *Rapanos*, and further that it is arbitrary and capricious. States believe it violates the notice and comment provisions of the Administrative Procedures Act, and some also consider it a violation of the 10th Amendment and limits on Congressional Commerce Clause powers.

The meaning of "Waters of the United States" affects which waters agencies can require such things as Water Quality Standards, TMDLs, and NPDES and Section 404 dredge/fill permits. Applications for permits are already costly, time-consuming and uncertain (with punitive fines for failure to obtain permits).

Briefly, the states/plaintiffs allege that the new WOTUS rule will only exacerbate these problems. The states' use of, and management over, waters will be burdened by the increased regulation, requiring expenditure and commitment of additional state resources. The states also object to the failure of the agencies to consult with the states prior to publishing the proposed rule, and the expansion of federal jurisdiction as displacing state authority over water quality and related land and water resources. Further, states allege the Corps' released an Environmental Assessment when an Environmental Impact Statement was merited, prior to the publication of the WOTUS rule.

The states allege the final WOTUS rule expands per se jurisdiction over intrastate non-navigable waters and wetlands, as well as ephemeral streams, floodplains and channels that are usually dry. The final rule also fails to account for the unique hydrologic circumstances of the states, and fails to account for frequency and duration of flows. Further, the rule claims per se jurisdiction over neighboring waters regardless of a significant nexus or continuous surface connection. Moreover, the rule references 100-year floodplains, many of which are not mapped in the affected states. Finally, the rule imposes onerous requirements for jurisdictional determinations on individual landowners who lack the necessary expertise to assess whether or not a permit is required.

In *North Dakota, et al. v. EPA et al.*, thirteen states (North Dakota, Alaska, Arizona, Arkansas, Colorado, Idaho, Missouri, Montana, Nebraska, Nevada, New Mexico, South Dakota, and Wyoming) challenge the WOTUS rule for unlawful expansion of the agencies' jurisdiction over state land and water resources beyond the limits established by Congress under the CWA. They seek declaratory and injunctive relief for violations of the Administrative Procedures Act (APA), the CWA, the National Environmental Policy Act (NEPA), the Commerce Clause and 10th Amendment.

³⁶(80 *Fed. Reg.* 37,053).

In *Texas, et al. v. EPA et al.*, three states (Texas, Louisiana, and Mississippi) challenge the WOTUS rule as an unconstitutional and impermissible expansion of federal power over states, their citizens and property owners. The complaint emphasizes that the CWA was intended to protect water quality, not to regulate states' water and land use. They seek relief for violations of the APA, CWA, Commerce Clause, and 10th Amendment. In *Ohio and Michigan v. U.S. Army Corp of Engineers et al.*, the two states seek relief for violations of the APA, CWA, Commerce Clause, and 10th Amendment.

In *Georgia et al. v. McCarthy et al.*, nine states (Alabama, Florida, Georgia, Kansas, Kentucky, South Carolina, Utah, West Virginia, and Wisconsin) request an injunction preventing the enforcement of the WOTUS rule and an order for the agencies to draft a new rule that does not infringe on states' primary responsibility to manage and protect intrastate waters and lands. The lawsuit seeks relief for violations of the APA, CWA, Commerce Clause, and 10th Amendment.

Of note, on July 2, fourteen industry groups filed suit in the U.S. District Court in Texas. In *American Farm Bureau Federation et al. v. EPA et al.*, the industries – which include farming, ranching, forestry, mining, petroleum, transportation, building, and manufacturing – seek injunctive relief for violations of the APA, CWA, Commerce Clause, and 5th Amendment due process protections.

Pending House and Senate appropriations legislation include a number of policy riders. One rider, S. 1645 §421, prohibits modifying the definition of waters under the jurisdiction of the CWA. On July 14, all eleven Republican members of the Senate EPW Committee sent a letter to EPA Administrator Gina McCarthy asking for an explanation of the legal basis for the WOTUS rule. The letter notes EPA's lack of response to a similar request from Senator Dan Sullivan (R-AK) following a March 4 hearing on the proposed rule, stating: "The final rule raises even more questions regarding its legality."

The letter observes, "In fact, it appears that EPA is once again rewriting a statute to meet its policy goals despite repeated warnings from the Supreme Court against such actions.... Based on our review of the final rule, it appears to rely on 'unheralded power' that fails to fall 'within the bounds of reasonable interpretation.'" The letter quotes the Supreme Court in *Rodriguez v. United States*, 480 U.S. 522, 526 (1987), stating: "...it frustrates rather than effectuates legislative intent simplistically to assume that whatever furthers the statute's primary objective must be the law." Also quoting the Court from *Utility Air Regulatory Group v. EPA*, 573 U.S., slip opinion at 19 (2014): "When an agency claims to discover in a long-extant statute an unheralded power to regulate 'a significant portion of the American economy,' we typically greet its announcement with a measure of skepticism. We expect Congress to speak clearly if it wishes to assign to an agency decisions of vast 'economic and political significance.'"³⁷

³⁷See also *Brown v. Williamson*, 529 U.S., at 159.

The Senators noted that the final rule no longer relies on effects to interstate or foreign commerce to establish jurisdiction, while “Congress’ Commerce Clause authority extends to (1) channels of interstate commerce, (2) instrumentalities of interstate commerce, and (3) activities that substantially affect interstate commerce. *United States v. Lopez*, 514 U.S. 549 (1995).” The 11-page letter goes on to ask four questions: (1) Which prong of the Commerce Clause is EPA relying on to promulgate the final rule? (2) How is the final rule an exercise of this authority when none of the scientific studies cited by EPA even identify whether the waters studied are navigable or not? (3) How is the final rule an exercise of this authority when the final rule extends to activities that do not affect navigation or interstate commerce? and (4) How intrastate, geographically isolated, non-navigable water has an effect on navigable water as a highway of commerce such that it may be subject to regulation as an exercise of Congress’ authority over navigation? The letter goes on to ask questions about EPA’s final rule in light of the Court’s decisions in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers (SWANCC)* 532 U.S. 159 (2001) and *Rapanos v. United States*, 547 U.S. 715 (2006).

With respect to groundwater, the letter notes the final rule and Technical Support Document (TSD) clearly asserts jurisdiction based on contribution of flow. “It calls ground-water a ‘hydrologic flowpath,’” and discusses vernal pools that “typically lack permanent inflows from or outflows to streams and other water bodies,” but can be “connected temporarily to such waters via surface or shallow subsurface flow (flow through) or groundwater exchange (recharge).” TSD, at 344. Again, a series of specific questions follow.

Regarding flood control, the letter states: “Under the final rule, retention and attenuation of flood waters, is sufficient to establish jurisdiction. Flood control is not a mission granted EPA or the Corps under the CWA. In various flood control acts, Congress gave the Corps authority to provide assistance to states and local governments to mitigate flood damages through cost-shared projects, including reservoirs and levees. The Corps’ flood control authorities are not regulatory.... Nothing in the legislative history of the CWA suggests it includes flood control authority.” More questions follow.

Of note, regarding the CWA legislative history, the letter refers to Section 101(g), added in 1977, and quotes Senator Malcolm Wallop (R-WY) in a floor statement saying: “This amendment came immediately after the release of the Issue and Option Papers for the Water Resource Policy Study now being conducted by the Water Resources Council. Several of the options contained in that paper called for the use of Federal water quality legislation to effect Federal purposes that were not strictly related to water quality. Those other purposes might include, but were not limited to Federal land use planning, plant siting and production planning purposes. This ‘State’s jurisdiction’ amendment reaffirms that it is the policy of Congress that this act is to be used for water quality purposes only.”

Committee Chair James Inhofe (R-OK) declared, “This final rule tramples the Constitution, Supreme Court precedent, and the language of the statute itself. I am not surprised that 28 states have already filed lawsuits to stop this unlawful encroachment of state authority over land and water.” The letter requested a response by August 13, 2015.

As of July 21, sixty-eight plaintiffs had filed ten complaints in eight district courts, challenging the Clean Water Rule³⁸ published by the EPA and Corps on June 29, 2015. On July 21, the EPA and Corps filed a motion in *Murray Energy Corporation v. EPA*, 1:15-cv-110 (N.D. W. Va.), requesting a temporary stay of all proceedings pending a ruling on a separate forthcoming motion to the Multi-District Litigation (MDL) Panel to consolidate the ten complaints based on 28 U.S.C. §1407. The EPA and Corps argue that the lawsuits have similar claims challenging the same rule, and proceeding separately would be unnecessarily duplicative, wasteful of judicial resources, and raises the potential of inconsistent results, “leading to confusion and legal uncertainty.” Similar motions to stay proceedings are expected in the other nine cases. Also on July 21, the State of Indiana and the North Carolina Department of Environment and Natural Resources joined *Georgia v. EPA*, 2:15-cv-79 (S.D. Ga.), raising the number of plaintiffs from 9 to 11 in that lawsuit.

On July 21, the eleven states in the *Georgia v. EPA* (S.D. Ga.) case filed a motion for preliminary injunction in an effort to stop the implementation of the Clean Water Rule defining the WOTUS,³⁹ which is scheduled to go into effect August 28, 2015. On August 10, the thirteen states in *North Dakota v. EPA* (D. N. Dak.) filed a similar motion. On August 12, the Southern District of Georgia held a hearing on the *Georgia v. EPA* preliminary injunction motion. The states in *North Dakota v. EPA* requested an expedited hearing for August 24.

The states argue that the WOTUS rule will drastically alter the states’ administration of water quality programs, such as CWA Water Quality Standards, CWA §404, and NPDES programs. States would have to expend money from their budgets that cannot be recovered. The states also argue that the WOTUS rule will irreparably harm their sovereign authority to regulate intrastate waters and lands. The states submitted individual declarations in support of their motions, including from WSWC members Pat Tyrrell (WY), Todd Sando (ND), and Tom Stiles (KS). Pat Tyrrell describes the impact of the newly required CWA permits on over 20,000 critical stock reservoirs located largely in dry washes and upland draws, which efficiently capture and utilize ephemeral flow. The new regulatory burden conflicts with Wyoming’s own established law and policy regarding the allocation of stock water, one of Wyoming’s two highest preferred uses of its water.

Todd Sando described North Dakota’s extensive infrastructure projects that will be impacted by the WOTUS rule, such as drinking water pipelines that cross a landscape replete with geographic features bearing indicators of bed, bank, and ordinary high water marks, or prairie potholes, but otherwise isolated from traditional navigable waters. New requirements to obtain CWA §404 permits will in turn trigger NEPA requirements, adding expense and delay to the state’s water projects, hindering the state’s ability to serve the public.

Tom Stile’s declaration states that the WOTUS rule increases federal jurisdiction to five times the stream miles previously covered, the majority of which are ephemeral streams. Based on past experience analyzing designated uses of classified waters, Kansas is well aware of the resource-

³⁸(80 *Fed. Reg.* 37,054).

³⁹(80 *Fed. Reg.* 37,054).

intensive and time-consuming burden of determining which waters are now jurisdictional and what designated uses apply to those waters. The WOTUS rule raises the status of short-duration marginal waters to require TMDL development, a waste of time and resources for no environmental gain, and places added strain on monitoring programs to inventory and report on state water quality and status.

Senator James Inhofe (R-OK), Chairman of the EPW Committee, sent a letter to Assistant Secretary Jo-Ellen Darcy, Army for Civil Works on July 27, seeking clarification of Corps internal memos that indicate the Corps did not actively participate in the development of the WOTUS rule (80 Fed. Reg. 37054). Senator Inhofe's letter references Corps internal memoranda from April 27 and May 15, which repeatedly note that the Corps had no role in the analyses underlying the conclusions described in the Technical Support Document (TSD). The Corps memos also question: (1) jurisdiction over dry stream beds and isolated waters; (2) TSD support for determinations of significant nexus, and the use of threshold distances to determine significant nexus; (3) the use of remote sensing to determine ordinary high water marks; and (4) identification of ditches that are relocated tributaries. Relying on the memos, Senator Inhofe asks Darcy to confirm the logical conclusion that the Army has no record of field observations supporting the various determinations in the final WOTUS rule. Inhofe stated that the memos confirm his suspicions that the WOTUS rule is not based on Corps experience and expertise, and lacks factual, technical and legal support.

Administrator Gina McCarthy, EPA, has stated that she and Darcy discussed the Corps' concerns and that she understood they were fully addressed through the interagency process and satisfied prior to the final rule's release.

On July 28, attorneys general and other officials from thirty-one states wrote EPA and the Corps requesting they postpone the August 28 implementation of the WOTUS rule for at least nine months to allow for appropriate judicial review. Absent a court injunction, implementation would "cause immediate harm to the states" as co-regulators, due to the costly and disruptive burdens of increased permitting and compliance requirements.

Agricultural groups made a related plea for delay in a July 30 letter. With the new definitions and complex concepts, the groups said it will be challenging for the agencies' staff to implement the rule in a consistent and timely manner. Citing an early example of regional misinterpretation of the rule, the letter recommends fully training staff prior to implementation. The letter also notes that, given recent news of internal Corps disagreement with the rule and the role of the Corps in making jurisdictional determinations, inconsistencies between the agencies will further complicate implementation. "The regulated community needs to know how the CWA's jurisdiction will be determined...in a timely, predictable and consistent manner. Based on the information currently available, it appears that neither Agency is yet able to meet these goals.... We are particularly concerned that hasty implementation will only make matters worse by further increasing the long-standing jurisdictional confusion the rule was intended to resolve."

On July 30, McCarthy and Darcy issued a memo stating that the final WOTUS rule provides "clear and comprehensive direction regarding the process for conducting jurisdictional

determinations,” and that there is no need for a new manual or guidance for their field staff to implement the rule. The memo also states that the agencies will establish an automated tracking system for all determinations, making key information public for transparent and effective implementation. The agencies will develop a memorandum of understanding outlining their respective roles and responsibilities in coordinating implementation of the rule. Further, they will convene a workgroup to evaluate existing tools and procedures and to identify necessary changes to reduce costs, delays and frustration in federal permitting, presenting options for consideration by the end of 2015.

On July 31, the Northern District of Oklahoma granted EPA and the Corps’ motion requesting the *Oklahoma v. EPA* proceedings be stayed pending a ruling from the Judicial Panel on Multi-District Litigation on consolidating the ten WOTUS cases before various federal courts.

On August 27, the U.S. District Court, Southeastern North Dakota, granted a preliminary injunction in *North Dakota et al. v. EPA*, enjoining the enforcement of the EPA and Corps Clean Water Rule (WOTUS),⁴⁰ scheduled to go into effect on August 28. As a preliminary matter, the court determined that it had original jurisdiction rather than the court of appeals because the statutory basis for court of appeals jurisdiction (33 USC §1369(b)(1)) is absent: (1) the rule has only an attenuated connection to any actual permitting process; and (2) the discretion of the States over pollution disposal into waters remains unchanged.

The court also held that the thirteen States that are parties to the lawsuit are likely to succeed on their claims on two separate grounds: (1) EPA may have violated its Congressional grant of authority; and (2) EPA may have failed to meet Administrative Procedures Act (APA) requirements in promulgating the rule. The court noted that the WOTUS rule suffers from the same fatal defect described by Justice Kennedy in the *Rapanos v. United States* case, namely, that the rule “allows EPA regulation of waters that do not bear any effect on the ‘chemical, physical, and biological integrity’ of any navigable-in-fact water.” The tributary definition allows for regulation of any remote area that has a trace amount of water as long as bed, banks, and ordinary high water mark exist, which was precisely Justice Kennedy’s concern, the court said. Also the rule’s definitions include “vast numbers of waters that are unlikely to have a nexus to navigable waters within any reasonable understanding of the term.”

Under the APA requirements, the court found that the agencies’ Technical Support Document lacks a rational connection between the facts and the rule, which asserts jurisdiction over remote and intermittent waters. “No evidence actually points to how these intermittent and remote wetlands have any nexus to a navigable-in-fact water.” The court also found the distance-based jurisdiction over waters within 4,000 feet of navigable waters is arbitrary and lacks any connection to the scientific data. Further, the court found that the final rule was not a “logical outgrowth” of the proposed rule, released for public comment, particularly with regard to the expanded definition of “neighboring” waters that substituted geographical distances for the ecological and hydrological concepts in the proposed rule.

⁴⁰(*Fed. Reg.* 37,054-127).

In balancing the potential harms and public interest, the court found that “the risk of harms to the States is great and the burden on the agencies is slight.” The States’ harm includes both loss of sovereignty over intrastate waters as well as monetary losses from costly jurisdictional studies, lost tax revenue from stalled projects, and costs of expanded CWA §401 certification processes, none of which are recoverable from the United States. The public benefit of increased certainty as to what constitutes jurisdictional waters for some is outweighed by the broader public benefit of ensuring that “federal agencies do not extend their power beyond the express delegation from Congress.”

EPA, in a statement on the litigation, declared: “The Clean Water Rule is fundamental to protecting and restoring the Nation’s water resources that are vital for our health, environment, and economy.... Since publication of the rule in the *Federal Register*, numerous lawsuits were filed challenging the regulation, and several parties sought preliminary injunctions to delay implementation of the rule. This week, United States District Courts in Georgia and West Virginia agreed with the Agencies that legal challenges to the Rule could only be brought in the United States Court of Appeals for the 6th Circuit and therefore denied the requests for preliminary injunction. On August 27, the District Court for North Dakota found that it had jurisdiction and granted the request of a number of States and issued a decision preliminarily enjoining the Clean Water Rule.”

The statement continues, “Under the order issued..., the parties that obtained the preliminary injunction are not subject to the new rule, and instead continue to be subject to the prior regulation. In light of the order, EPA and the Corps will continue to implement the prior regulation in the following States: Alaska, Arizona, Arkansas, Colorado, Idaho, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, and Wyoming. In all other respects [i.e., States], the rule is effective on August 28.”

One day after issuing a preliminary injunction of the Clean Water Rule: Definition of WOTUS, on August 27, the district court in *North Dakota et al. v. EPA* ordered additional briefing on the scope of the injunction. The thirteen states supported a consistent, nationwide injunction for the nationwide rule, citing EPA’s repeated assertions that “uniform applicability, consistency, and predictability were driving forces in the need for and development of the rule.” The states provided several citations to cases with injunctions that extend beyond the court’s territorial jurisdiction, particularly where the lawfulness of an agency rule is at issue. The states also argued for a preservation of the status quo across watersheds and geopolitical boundaries until final resolution of the case, particularly since the injunction mirrors the final remedy of setting aside the WOTUS rule as unlawful and enjoining the agencies from enforcing the rule.

EPA and the Corps interpreted the injunction ruling to be limited to the thirteen party states alleging the irreparable harm to sovereignty over intrastate waters and unrecoverable monetary losses. Nineteen states are not challenging the rule, the agencies argued, and other district courts have determined that jurisdiction belongs before the 6th Circuit rather than the respective district courts, or that the cases should be stayed until a decision is reached by the Judicial Panel on Multi-district Litigation on whether to consolidate the district court cases. The agencies provided citations

to cases where injunctions against agency rules were limited in scope to the parties seeking the injunction. The agencies also argued that it would be inconsistent for the court to rule that CWA §509(b)(1) for consolidating review of EPA rules does not apply and subsequently expand the injunctive relief beyond the specific harms alleged by the states in this case.

The States party to the North Dakota suit included: Alaska, Arizona, Arkansas, Colorado, Idaho, Missouri, Montana, Nebraska, Nevada, South Dakota, Wyoming, the New Mexico Environment Department and the New Mexico Office of the State Engineer. According to a September 2 Roundup Report from the Conference of Western Attorneys General (CWAG), the multi-state coalition challenged the rule for illegally removing water and land resources from state control and placing them under the control of the federal government. Attorney General Wayne Stenehjem of North Dakota said, “I am very pleased by today’s ruling [August 27], which protects the state and its citizens from the serious harm presented by this unprecedented federal usurpation of the state’s authority.... This is a victory in the first skirmish, but it is only the first. There is much more to do to prevent this widely unpopular rule from ever taking effect. Still, I remain confident that the rule will be declared unlawful once all the issues have been presented.” Colorado Attorney General Cynthia H. Coffman stated, “Colorado has primary responsibility to protect and manage its own water resources, and it takes that responsibility seriously. EPA cannot simply ignore state sovereignty as it continues to reach further into state affairs.”

On September 4, the U.S. District Court of North Dakota issued an order limiting the scope of its August 27 injunction, preventing the WOTUS rule from taking effect, to the plaintiff states in *North Dakota et al. v. EPA*. The court found that, while there are compelling reasons in favor of both extension and limitation of the injunction, the interests of other sovereign states and the rulings of other courts would be undermined by extending the preliminary injunction beyond the thirteen states that are parties to the case.

The U.S. District Courts in West Virginia and Georgia denied preliminary injunctions due to a lack of subject matter jurisdiction in *Murray Energy Corp. v. EPA* and *Georgia et al. v. EPA*. The U.S. District Court in Oklahoma deferred decisions on two additional cases until the Judicial Panel for Multi-district Litigation decides whether to consolidate the district court cases.

On September 8, the States of Texas, Louisiana and Mississippi filed a motion for preliminary injunction in *Texas et al. v. EPA*. The states requested that the U.S. District Court for the Southern District of Texas enjoin the effectiveness of the WOTUS rule pending the outcome of litigation. In support of the request, the states noted: (1) that the rule now in effect immediately infringes upon their sovereignty over their lands and intrastate waters; (2) the rule fundamentally redefines the scope of and burden on the states’ delegated permitting programs under the CWA; (3) that the EPA and Corps failed to respond to the states’ August 20 and 27 requests to stay the rule; (4) the Corps memo, revealed on June 30, questions whether the WOTUS rule can withstand judicial scrutiny; and (5) the rule has been enjoined for thirteen other states.

On September 30, the Senate Environment and Public Works Subcommittee on Fisheries, Water and Wildlife held a hearing on “Oversight of the Army Corps of Engineers’ Participation in the Development of the New Regulatory Definition of ‘Waters of the United States.’” Senator James Inhofe (OK-R) called the rule “completely unfounded,” noting that most administrative rules start with a factual record that supports increased federal control, a record that can be reviewed and evaluated. “That did not happen in the waters of the United States rulemaking.” He pointed to the recent August 27 injunction in the District of North Dakota, stating that the rulemaking record is “inexplicable, arbitrary, and devoid of a reasoned process.” He also turned to the internal Corps’ memos stating that the final WOTUS rule is not “reflective of Corps experience or expertise.” Senator Inhofe requested that the Administration withdraw the arbitrary and capricious rule “rather than put the American people through years of confusion while the rule challenges wend their way through the courts.”

Assistant Secretary Jo-Ellen Darcy, Army for Civil Works, provided documents requested in Senator Inhofe’s July 27 letter.⁴¹ She testified that “the Army considered all the input received from the Corps throughout the drafting, vetting, and interagency review process.” She noted that the documents were considered internal deliberative documents and weren’t released outside the Army, but the issues were discussed with the EPA during the interagency review process. As a result of these discussions, important changes and technical edits advocated by the Corps were made to the rule, such as “inclusion of the 100-year flood plain in section (a)(8), modification to the ditch exclusion in section (b)(3)(ii), and inclusion of a flexible grandfathering provision in the preamble.” Assistant Secretary Darcy emphasized that the documents contain sensitive information exempt from the Freedom of Information Act, and requested that appropriate steps be taken to safeguard the documents from disclosure outside the Committee or to the public.

On October 9, the 6th Circuit Court of Appeals granted a preliminary injunction, issuing a nationwide stay on the implementation of the EPA’s and the Corps’ June 29 Clean Water Rule interpreting “Waters of the United States.” On October 13, the Judicial Panel on MDL denied the agencies’ motion to consolidate the nine actions in seven U.S. District Courts, noting that the cases turn on questions of law, whether EPA and the Corps exceeded their statutory and constitutional authority in promulgating the Clean Water Rule, and without questions of fact the parties would gain little convenience by consolidating. The MDL Panel also pointed to the procedural difficulty of consolidating cases with different holdings on jurisdiction. On October 14, the agencies also filed a motion to stay the proceedings in the District Court of North Dakota until the 6th Circuit makes a jurisdictional determination, citing judicial efficiency. Plaintiff states opposed the stay given that the District Court of North Dakota already determined it has proper jurisdiction. The 6th Circuit scheduled oral arguments on December 8, for the parties to address the question of whether jurisdiction on the WOTUS challenges belongs before the 6th Circuit Court of Appeals rather than the district courts.

⁴¹*Western States Water*, #2150, July 31, 2015.

The House Oversight and Government Reform Committee continued its investigation into the development of the Administration's Clean Water Rule defining the "Waters of the United States." On October 28, Rep. Jason Chaffetz (R-UT), Chair, wrote Assistant Secretary of the Army for Civil Works Jo-Ellen Darcy and Howard Shelanski, Administrator, White House Office of Information and Regulatory Affairs, requesting that individuals who participated in the rulemaking be available for transcribed interviews no later than November 11. The letters repeat previous document requests, adding the "...Committee will consider the use of compulsory [means]" to obtain documents not voluntarily produced.

On November 3, a Senate motion failed for cloture limiting debate on S. 1140, to withdraw the WOTUS rule, but approved S.J. Res. 22, a joint resolution of congressional disapproval, by a vote of 53-44. The House is expected to approve a similar resolution.

Senator Lisa Murkowski (R-AK), Chair of the Interior, Environment and Related Agencies Appropriations Subcommittee, which has jurisdiction over EPA funding, indicated that the WOTUS rule ranks near the top of the regulatory issues of concern for Republicans.

On November 10, organizations representing construction, real estate, mining, agriculture, transportation, forestry, manufacturing and energy industries wrote a letter to Senators opposing the Federal Water Quality Protection Act, S. 1140. They expressed disappointment in the Senators' vote against the bill, and noted that the Senators' November 3 letter to the EPA and the Corps, requesting implementation guidance for the final rule, underscores the need for S. 1140. "We do not believe that EPA's final rule can be fixed without further legitimate and transparent rulemaking process. No amount of the 'clearer and concise implementation guidance' you call for in your letter can address the flaws in the final rule, because, unless and until a court of law orders it vacated or remanded, EPA will assert the final promulgated rule is the law of the land."

Also on November 10, the U.S. District Court of North Dakota denied the EPA and Corps' motion to stay the case until the 6th Circuit Court of Appeals' ruling on original jurisdiction to review the WOTUS rule under 33 USC §1369(b)(1). The District Court noted that the agencies would be required to compile the administrative record relating to the rule regardless of which court hears the case, that there is little judicial efficiency to be gained by delaying that process, and that a decision by the 6th Circuit may not be binding on the District Court of North Dakota. The District Court set a scheduling order that requires the agencies to file a certified index of the administrative record by November 20, a deadline that precedes the 6th Circuit's oral arguments scheduled for December 8.

On December 10, a three-judge panel in the 6th Circuit Court of Appeals heard oral arguments on the question of whether jurisdiction over the challenge to the EPA's Clean Water Rule (WOTUS) belongs in the district courts or the 6th Circuit. States argued that the Section 509(b)(1) criteria for appellate court jurisdiction did not apply to this case. One judge asked questions about the precedent of the challenge to EPA's regulation of pesticide spraying, which bypassed the District Courts in *National Cotton Council v. EPA* (2009). Another judge pressed on the value of having the cases heard together in a single venue given the nationwide application of the rule.

On December 22, the Sierra Club filed a motion to intervene as a defendant, in addition to the EPA and Corps, in *North Dakota et al. v. EPA et al.*, U.S. District of North Dakota. The Sierra Club notes that while its interests overlap with the agencies' interests, in some cases the Clean Water Rule falls short of the "full reach of the CWA." The Sierra Club is simultaneously challenging the agencies' limited construction of the CWA in other lawsuits. Citing the declarations of its members in Michigan, Minnesota and Tennessee, the Sierra Club argues that its members' interests in CWA protections for water bodies where they live, work and recreate would be impaired if the Court implemented a narrow interpretation of jurisdiction over wetlands, streams and marshes.

Among its other arguments, the Sierra Club states that adjacent and tributary waters "have always been subject to jurisdiction under the CWA and relevant case law," and that the standardized definitions under the new Clean Water Rule obviate the need for case-by-case determinations of waters defined as jurisdictional by rule. "[I]n these respects," the Sierra Club asserts, "the new jurisdictional rule does not expand the reach of the CWA; it merely serves to streamline and clarify for interested parties and the public." The Sierra Club "...asks to intervene in order to defend those aspects of the Rule that it supports, and to defend the CWA's full jurisdiction from improper limitation."

Jurisdictional Rule/Proposed Groundwater Directive

On April 14, the House Natural Resources Subcommittee on Water, Power, and Oceans held a hearing titled: "Proposed Federal Water Grabs and their Potential Impacts on States, Water, and Power Users, and Landowners." The hearing focused on the CWA jurisdictional rule EPA and the Corps have proposed, as well as the USFS proposed groundwater directive and the draft ski area clauses the agency proposed for its Special Uses Handbook.

"This Administration has a history of rolling out ill-explained and ill-informed Washington, DC-knows-best proposals in recent years only to stand down later after hearing backlash from the public," said Subcommittee Chair John Fleming (R-LA). "The people who depend on multiple uses of our waters and public lands have felt they've played the Whack-a-Mole game with these Administration proposals.... These proposals...have been drafted under the guise of... 'clarifying'...the authority of federal agencies. Only in Washington, DC would 'clarification' mean federal expansion."

Conversely, Subcommittee Ranking Member Jared Huffman (D-CA) argued that the concerns Republicans have raised about the CWA rule are unreasonable. "This approach is premised on a straw man argument that the Obama administration is somehow bent on a radical, power-hungry quest to illegally assert authority over virtually every drop of water in the country," he said. "That is nonsense. The simple reality is that [the CWA rule] is very narrowly tailored.... The draft rule is not an expansion of authority." Huffman further noted that the USFS has placed the groundwater directive on hold, but said that "...Congress has directed the USFS in numerous laws to help manage and protect groundwater resources on National Forest System lands, so it is an issue that needs attention, but right now it seems to me that it is really rather moot."

USFS Deputy Chief Leslie Weldon discussed her agency's proposed groundwater directive: "We have heard loudly and clearly the concerns [about] both the content and our approach to the [groundwater directive]. Recognizing the importance of the need for full transparency and for close coordination with other jurisdictions and stakeholders, we are not moving forward with the proposal at this time. Rather, we have shifted our efforts to actively engaging in a productive and in a collaborative dialogue with states, tribes, and other stakeholders to develop a new proposal that will better protect against groundwater contamination, improve environmental analysis, reduce uncertainty and costs associated with potential litigation, and increase efficient use and conservation of groundwater."

Weldon continued: "Last December, [USFS] Chief Tidwell issued a letter to regional foresters directing them to engage with their state governors to address their concerns. The agency is also working with the [Western States Water Council] to develop better policy.... These discussions have been positive and fruitful. We look forward to continuing this work and will not move a new proposal until we have successfully engaged with states, tribes, and other interests, including working closely with Congress."

As for the ski areas clause, Weldon said the USFS published the proposal in June for public comment and is evaluating the comments it received as it considers proposed revisions. "We believe the final clauses will provide for sufficiency of water, while addressing the concern of not inhibiting market forces associated with water resources," she said. "The intent will be to make sufficiency of water a requirement of the permit holder."

Weldon was the only Administration witness to testify, although the BOR did submit written testimony regarding the CWA rule. While stressing that EPA and the Corps are the "appropriate entities" to discuss the proposed rule, BOR said that it "...shares the interest of our stakeholders in preserving our shared ability to operate and maintain facilities and deliver water and power. To this end, we were pleased that EPA and the Corps have included a proposed exclusion in the rule for ditches excavated wholly in uplands and draining only uplands, with less than perennial flow." BOR also expressed appreciation that the rule "does not change" existing CWA exemptions and exclusions for agriculture and for agricultural stormwater discharges and return flows from irrigated agriculture.

WGA Executive Director Jim Ogsbury testified during a separate panel, which included witnesses from a range of stakeholder organizations. He said: "Whatever the issue at hand, WGA's position on federal water regulation is the same: agencies must recognize state authority in water management." He also said the Governors' "principal concern" about the federal actions discussed during the hearing is that "...they inadequately recognize the fact that states have the authority and the competency to manage water resources."

In discussing the USFS groundwater directive, Ogsbury praised the agency's announcement that it has stopped working on the proposed groundwater directive to engage with the states, saying: "We applaud this development and this commitment." He also discussed the proposed CWA rule,

stating: “Western Governors differ about the substance of the...rule.... WGA is concerned that the rulemaking process did not involve meaningful consultation with the states during the draft rule’s development. Western Governors continue to appeal to federal agencies to be treated as authentic partners at the earliest stages of rulemaking and throughout the process because of the potential impact of these rules on state authority.”⁴²

Jurisdictional Determination

On December 11, the U.S. Supreme Court agreed to hear *U.S. Army Corps of Engineers v. Hawkes Co. Inc.*, appealed from the 8th Circuit, to consider whether a jurisdictional determination that a wetland qualifies for CWA protection constitutes a final agency decision subject to judicial review. In *Hawkes*, the Corps determined that a Minnesota property was subject to CWA permitting rules. The owner challenged the determination and costly permitting process, seeking to mine peat moss from wetlands to use in landscaping. The 8th Circuit held that the jurisdictional determination was a final agency action that could be challenged under the Administrative Procedures Act. This created a split from the 5th Circuit, which ruled the opposite way in 2014 in *Kent Recycling Services LLC v. U.S. Army Corps of Engineers*. The Corps is not required to issue jurisdictional determinations, and the Administration has argued that doing so merely provides a landowner with information without creating any obligations, and should not be considered a final agency decision.

Clean Water Act/Environmental Protection Agency

Connectivity Report

On January 15, the EPA released its report on the connectivity of different water bodies. The report analyzed over 1,200 peer-reviewed publications and summarized current scientific understanding about connectivity and mechanisms by which streams and wetlands, by themselves or in aggregate, affect the physical, chemical, and biological integrity of downstream waters. EPA developed the report to inform the CWA jurisdiction rule that it proposed with the Corps in March 2014. As a scientific report, the document does not consider or set forth legal standards for CWA jurisdiction, or establish EPA policy.

The report concluded that: (1) streams, regardless of frequency of flow, are connected to downstream waters and “strongly influence” their function; (2) wetlands and open waters in riparian areas and floodplains are physically, chemically, and biologically integrated with rivers through functions that improve downstream water quality; (3) many wetlands and open waters located outside of riparian areas and floodplains provide physical, chemical, and biological functions that could affect the integrity of downstream waters, even when lacking surface water connections, and that evaluations of the connectivity and effects of individual wetlands or groups of wetlands are

⁴²<http://naturalresources.house.gov/calendar/eventsingle.aspx?EventID=398242>. *Western States Water*, #2132, March 27, 2015.

possible through case-by-case analysis; (4) the physical, chemical and biological environment, as well as human activities, determine variations in the degree of connectivity that support stream and wetland functions that affect the integrity and sustainability of downstream waters; and (5) “the incremental contributions of individual streams and wetlands are cumulative across entire watersheds, and often their effects on downstream waters should be evaluated within the context of other streams and wetlands in that watershed.”⁴³

Of note, the WSWC had urged EPA to finalize the report before taking any further action to finalize or refine the CWA jurisdiction rule.⁴⁴

Tribal Treatment as States

On June 18, the EPA held a conference call with representatives from Alaska, Colorado, Oklahoma, South Dakota, and Wyoming to discuss proposed rulemaking to fully engage tribes in the Impaired Water Listing and TMDL Program by obtaining TAS under CWA §303(d) and §518.

J.D. Strong, Executive Director, Oklahoma Water Resources Board, expressed the concern that EPA’s efforts to streamline the process for tribes might skip over important steps that could be especially problematic for states like Oklahoma and Alaska with significant non-reservation based tribes. In particular, the geographic jurisdictional area of the applying tribe must be established early in the process, with early notice to and pre-consultation opportunities for the states, so that both states and tribes can evaluate potential obstacles (e.g., existing TMDL regulations) before significant costs are incurred. Strong and Michelle Hale, Division of Water Director, Alaska Department of Environmental Conservation, agreed that language acknowledging the unique non-reservation tribes should be explicitly written into the rule, including references to the 2005 Transportation Act (P.L. 109-59).

Trisha Oeth, Administrator, Colorado Water Quality Control Commission, raised concerns about potential effects where Colorado and the Southern Ute differ in their interpretation of P.L. 98-290 with respect to which entity has jurisdiction over surface or groundwater resources within the exterior reservation boundaries not held in trust for the benefit of the Tribe. EPA noted that it is aware of these unique situations, recommending that the states raise specific concerns again during the comment period.

Kent Woodmansey, Engineering Manager, South Dakota Department of Environment and Natural Resources, expressed concern about tribal authority over non-tribal members where tribes can determine which waters are impaired, impacting upstream users. EPA responded that tribes must first have water quality standards in order to exercise CWA §303(d) authority. That process requires notice to the states.

⁴³<http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=296414#Download>.

⁴⁴*Western States Water*, #2110, October 24, 2014.

Nephi Cole, Wyoming, asked if EPA intends to reach out to the Governors individually prior to publishing the proposed rules in the *Federal Register* as required by Executive Order 13132. Similar to the development of the WOTUS rule, EPA believes the monetary threshold did not trigger consultation with the states. Strong questioned the authority EPA relied on to “conduct tribal consultation and coordination on the planned proposed rulemaking” in 2014, and how that differs from consultation with the states. EPA stated that tribes were not provided actual language from the proposed rule, nor were they asked to help draft the rule; the tribes had no special status in EPA’s outreach efforts.

On August 7, the EPA published a proposed interpretive rule that would revise its 1991 interpretation of the CWA provision regarding treatment of tribes in a manner similar to a state (TAS)⁴⁵. The EPA proposes to streamline how tribes apply for TAS for the water quality standards program and other CWA regulatory programs. The proposed rule would reduce the burden on applicant tribes and facilitate tribal involvement in the protection of reservation water quality. In the past, EPA has followed a cautious approach that requires applicant tribes to demonstrate inherent authority to regulate water and activities on their reservations under principles of federal Indian common law.

With further congressional and judicial guidance, EPA proposes to definitively conclude that Section 518 includes an express delegation of authority by Congress to eligible Indian tribes to administer regulatory programs over their entire reservations. This reinterpretation would eliminate the need for applicant tribes to demonstrate inherent authority, and would align the CWA TAS with the similar language for tribal regulation under the Clean Air Act.⁴⁶

Gold King Mine

On August 5, an EPA team of employees and contractors investigating water quality for treatment and remediation at the abandoned Gold King Mine in Silverton, Colorado, triggered a breach in a loose rock and debris plug that released approximately three million gallons of contaminated, yellow mine drainage water. The wastewater contained high levels of heavy metals, including aluminum, arsenic, cadmium, cobalt, copper, iron, lead, manganese, mercury, molybdenum, nickel and zinc, according to emergency declarations. Within one week, the plume traveled down the Animas River and into the San Juan River through Colorado, New Mexico and into Utah toward the Lake Powell reservoir. East of Shiprock, New Mexico, the leading edge of the plume was no longer visible due to dilution and suspended sediment.

On August 9, the Navajo Nation issued a declaration of emergency, as the San Juan and Colorado Rivers traverse its northern region. Bottled drinking water and portable toilets were transported to affected Navajo communities. Farmers and ranchers shut down water irrigation and

⁴⁵(80 *Fed. Reg.* 47430).

⁴⁶<http://www.gpo.gov/fdsys/pkg/FR-2015-08-07/pdf/2015-19351.pdf>.

pumping, leading to concerns about how long their crops and livestock would survive, particularly in light of the already dry conditions.

On August 10, Colorado Governor John Hickenlooper declared a state of disaster emergency, coordinating response efforts and allocating \$500,000 from Colorado's Disaster Emergency Fund to pay for the response and technical teams. State agencies were working with EPA to sample water quality, assess impacts on people and the environment, advise local health officials on water safety, and provide technical assistance to identify long-term solutions for the mine site.

Also on August 10, New Mexico Governor Susana Martinez declared a state of emergency response, authorizing \$750,000 for resources and services to protect public health, safety, welfare and property, and directing state agencies to provide any necessary assistance. Earlier, the New Mexico Environment Department issued emergency orders, and on August 7, requested and received a separate \$500,000 in emergency hazardous waste funding.

On August 12, Utah Governor Gary Herbert announced a state of emergency, mobilizing state resources for Utah agencies implementing the Emergency Operations Plan to assist the affected local communities, with funding from the state's Disaster Recovery Restricted Account.

EPA activated its Emergency Operations Center to coordinate efforts internally and with officials in Colorado, New Mexico, Utah, the Navajo Nation and the Southern Ute tribe. EPA made statements that river water quality returned to normal levels after the plume of contaminants passed, but that some contamination was expected to settle into the river sediment and could be released during subsequent high flow events.⁴⁷

On September 9, Rep. Lamar Smith (R-TX), Chairman of the House Committee on Science, Space and Technology, opened a hearing, entitled *Holding EPA Accountable for Polluting Western Waters*. He chided EPA as "unable to achieve its core mission of protecting the environment." Smith stated, "Over the last year, EPA has proposed some of the most expensive and burdensome regulations in its history. These rules will cost American families billions of dollars, all for little impact on climate change. These rules also will diminish the competitiveness of American workers around the world. The same government agency that has proposed these rules recently caused an environmental disaster that had adversely impacted three states in the Mountain West.... Today, we will examine how this disaster, which negatively affected thousands of people, occurred and why the warning signs that should have prevented it from happening were negligently dismissed. Had EPA exercised the same care in making their decisions as an ordinary prudent person, this whole incident could have been avoided. The EPA should be held accountable."

EPA Assistant Administrator for Solid Waste and Emergency Response, Mathy Stanislaus, testified on the Gold King Mine release and subsequent EPA response saying: "EPA has taken responsibility to ensure that it is cleaned up appropriately [and] is working closely with response

⁴⁷<http://www2.epa.gov/goldkingmine>.

agencies and state, local and tribal officials to ensure the safety of citizens, respond to concerns, and to evaluate impacts to the environment.... We are committed to helping the people throughout the Four Corners Region who rely on the affected rivers for their drinking water, irrigation water and recreation. We know how important it is to them. EPA is committed to finding out the causes of the release and taking the steps necessary to help ensure that nothing like this release happens again.”

Stanislaus noted that there are an estimated 23,000 legacy hardrock mines in Colorado alone and only a little over 25% have been addressed by the Colorado Division of Reclamation, Mining and Safety. “Water draining from these mines occurs when mining operations in the mountainsides alter the hydrology of the area and combine with natural springs, pulling water into mine tunnels. The water reacts with iron disulfide (pyrite) and oxygen to form sulfuric acid (acid rock/mine drainage). The resulting acidic water dissolves naturally occurring heavy metals such as zinc, lead, cadmium, copper and aluminum and results in water containing these metals flowing out of the mine adits (openings used for access or drainage).”

When mining operations in the Upper Animas Watershed ceased, many of the mines were left discharging contaminated water into streams and rivers. In 1991, Sunnyside Gold Corporation, the last big mine in the region ceased operations and subsequent to an agreement with the State of Colorado installed three mine plugs in the American Tunnel that drained its mine. Under a 1996 settlement agreement, Sunnyside also began clean up of nearby mines, and treatment of metal-laden waters draining into upper Cement Creek, a tributary to the Animas River. Waters flowing out of the Gold King, Red and Bonita Mines increased substantially with the plugging of the American Tunnel. Under a 2002 amendment to the settlement agreement, Sunnyside turned over its water treatment operations to Gold King, but the treatment plant stopped operating in mid-2004 due to a number of technical and financial issues.

On August 5, EPA was conducting an investigation of the Gold King Mine and work was underway to dewater the mine to allow access to assess mine conditions and appropriate mine mitigation measures. While excavating, “a portion of the bedrock crumbled and pressurized water began leaking above the mine tunnel. The leak quickly turned into a breach releasing approximately three million gallons of water.... EPA and Colorado officials informed downstream jurisdictions within Colorado the day of the event and before the plume reached drinking water intakes and irrigation diversions. The following day, other downstream jurisdictions were notified....”

Dennis Greaney, President of Environmental Restoration LLC (one of EPA’s contractors working at the mine) also testified. He stated, “We stand firmly behind our project management team and labor force there. That said, as professionals who have dedicated our careers to cleaning up the environment, we were heartbroken by the mine release to the Animas River.... We are passionate about our work and proud and honored to have provided services in some of our nation’s largest responses including the Deepwater Horizon spill.... We are proud of our track record on the thousands of environmental and emergency response projects we have worked on over the years.”

Also testifying at the hearing were Dean Brookie, Mayor, Durango, Colorado and Donald Benn, Executive Director of the Navajo Nation Environmental Protection Agency, as well as Mark Williamson, Geochemical Solutions LLC.⁴⁸

On August 31, the House Oversight and Governmental Reform and Natural Resources Committees sent letters to EPA and Environmental Restoration LLC, and the Colorado Division of Reclamation, Mining and Safety advising that the committees “are reviewing how EPA responded to and handled the incident, the subsequent cleanup, and the threat of another waste spill in the area.” In the letter to EPA Administrator Gina McCarthy, the committees state: “On August 5, 2015, the [EPA] caused the spill of mine waste from a mine in San Juan County, Colorado, into the regional river system. According to media reports, EPA’s operation of heavy equipment on the site led to the spill. The plume of mine waste, which measured as long as 80 miles at one point, eventually spread as far as the San Juan River in Utah, which forms the border between San Juan County and the Navajo Nation. The media identified several hazardous contaminants in the plume, including arsenic, lead, and cadmium.... Despite knowing that the spill of mine waste was an imminent possibility for more than one year, EPA has struggled to respond to the disaster,” with delayed communication to tribal and state officials.

To better understand the circumstances, the letters requested documents, communications and media relating to the Gold King project studies, plans and activities – the toxic spill in August – as well as the subsequent response, clean up, and investigative or review efforts. The committees also requested EPA documents and information relating to monitoring and decisionmaking relating to Gold King and related mines, and any documents or communications that addressed possible violations of environmental laws. Both letters requested the information be sent no later than September 14.

Congressional oversight hearings on the Gold King Mine release continued on September 16, with the Senate Environment and Public Works Committee addressing the cause, and EPA’s response and impacts. Chairman James Inhofe (R-OK) stated, “It is clear EPA knew that there was likely to be a significant amount of water behind the collapsed Gold King mine entrance and that there was a risk of a blowout. Given these facts, it is unclear why EPA and the contractor did not exercise more care when working at the Gold King site. EPA has said that it has already spent \$8 million responding to the spill.... When I was chairman of this Committee in 2006, we passed a bipartisan bill that would have promoted the cleanup of these sites by Good Samaritans...as Chairman for a second time I again look forward to working with my colleagues from Colorado and New Mexico as they contemplate new legislative proposals.”

Ranking Member Barbara Boxer (D-CA) declared, “It is important for us to understand the root causes of the blowout...so future accidents can be prevented. EPA has already begun the process of improving its mine cleanup activities.... It is also important to understand that acid mine drainage is not a new problem. It has plagued this watershed in Colorado for nearly a century. In

⁴⁸science.house.gov/legislation/hearings.

fact, EPA was at the site at Colorado's request to help find solutions to the long-standing problem of acid mine contamination. The mines in this area leak more than 330 million gallons of acid mine drainage into the Animas River each year – that is more than 100 times the amount released during the Gold King Mine spill.”

She continued, “Some argue that waiving liability for cleanups is needed to address abandoned mine pollution. These so called Good Samaritan approaches – unless they are very carefully crafted – are not the solution to the problems we face at the Gold King Mine and thousands of other mines across the nation. Without adequate oversight of clean ups, even well-intentioned efforts can have disastrous results and cost taxpayers even more money. Some of the solutions that are available to us include using existing authority to facilitate cleanups, providing sufficient resources to EPA and the Federal land managers, requiring adequate oversight of cleanups, and working to pass reforms that ensure the polluter pays, not the taxpayer.”

Senator Michael Bennet (D-CO) testified, “Although the EPA was working to clean up the mine, there's no denying that they caused the spill. That's entirely unacceptable. It's also clear that the agency was slow to communicate with local governments, and didn't obtain water quality results or bring water to farmers who needed it quickly enough.... Following a crisis like this, it's tempting to point fingers and we must hold people and agencies responsible.... We also need to put it in context. The blowout released 3 million gallons of acid mine drainage. This same amount of polluted water was already being released from the Gold King Mine about every week.... There are more than 23,000 abandoned mines in Colorado, including 400 in the San Juan Mountains. We need solutions to address the acid mine drainage coming from all of these old abandoned mines.... We also need to pass Good Samaritan legislation to encourage counties, nonprofits, and companies to clean up abandoned mines. We worked with Senator Boxer, Senator Mark Udall, and the EPA to establish guidance for Good Samaritans to allow them to do cleanup work without being liable under the Clean Water Act. Unfortunately, this didn't provide enough certainty and hasn't encouraged action.”

Senators Bennet and Cory Gardner (R-CO) intend to introduce a bipartisan Good Samaritan bill. Similarly, Senators Tom Udall (D-NM) and Martin Heinrich (D-NM) were working on mining reform legislation.

Senator Gardner also testified stating, “We must also remember this spill had an impact on the Southern Ute Indian Tribe, Ute Mountain Ute, and the Navajo Nation.... The Colorado Department of Public Health and the Environment was the first to notify the City of Durango of the Gold King release [and] the Colorado Department of Natural Resources was the first to notify the Southern Ute Indian Tribe of the release on August 5th. The La Plata County Sheriff closed public access to the Animas River on August 6th. Where was the EPA during this initial notification and closure of the River?” He added, “In the first few days following the spill, it was largely state, local and tribal officials responding.... Along with the confusion over EPA's lack of notification, frustration began regarding the need for a timely release of a simple, straightforward interpretation of the water quality monitoring data from the EPA.... From the outset I've said that EPA should be

held to the same standard as EPA would hold a private company.... Lastly..., this spill shows a greater need for legislation that would allow Good Samaritans the opportunity to assist with cleaning up these abandoned mines across the West.”

Senator Tom Udall (D-NM) also testified. “In the West, rivers are our lifeblood – our drinking water and irrigation.... The Animas River means ‘River of Souls.’ The San Juan River is also an important part of Navajo tradition, and Navajos have a saying ‘water is life.’ This is a disaster on many levels – to our water, our economy, and our culture.... This is a long-term problem, and it requires long-term legislation.... We are introducing legislation...to ensure compensation for those who have had losses and damages. To require EPA – and others – to identify the risks of more spills by assessing mines for clean-up. And to require that EPA has contingency plans in place, and alert downstream stakeholders about mine clean-up activity. This disaster is also a wake-up call to reform the 1872 mining law.... When my father was Interior Secretary, mining reform was his greatest unfinished business.”

Senator Martin Heinrich (D-NM) testified, “It is high time that we overhaul our abandoned mine cleanup policies to make future disasters less likely.” He noted, “There are estimates that 40 percent of Western watersheds have been polluted by toxic mining waste and that reclaiming and cleaning up abandoned mines could cost upwards of \$32-\$72 billion dollars.... A comprehensive approach to mining reform should include the establishment of a Hardrock Reclamation Fund, funded by a fair royalty on public minerals; Good Samaritan authority to allow third parties to cleanup mine sites they had no role in creating; and a comprehensive survey of abandoned mines and a plan to clean them up. I appreciate the value of the hardrock mining industry. My father and my mother’s father both made a living in hardrock mining...but passing long overdue reforms...is critical if we want to address the root cause of this disaster, stop future disasters, and protect the health of our communities, our land, and our water.”

EPA Administrator Gina McCarthy testified, “This was a tragic and unfortunate incident, and the EPA has taken responsibility to ensure that it is cleaned up appropriately. The EPA’s core mission is to ensure a clean environment and protect public health, and we are dedicated to continuing to do our job...and to hold ourselves to the same high standard we demand from others.... I want to clarify that the EPA was working with the state of Colorado to take action at the Gold King Mine to address both the potential for a catastrophic release and the ongoing adverse water quality impacts caused by the significant mine discharges into the Upper Animas Watershed...approximately 330 million gallons of contaminated water...each year...100 times more than the estimated release from the Gold King Mine.... I think it is important to note, that all across the country, our Superfund program has successfully cleaned up more than 1,150 hazardous waste sites and successfully responded to or provided oversight for thousands of removal actions to protect human health and the environment. That reflects our long-standing commitment to protect human health and the environment.... All of the affected residents of Colorado and New Mexico and members of the Southern Ute, Ute Mountain Ute, and Navajo Nation Tribes can be assured that the EPA has and will continue to take responsibility to help ensure that the Gold King Mine release is cleaned up.”⁴⁹

⁴⁹www.epw.senate.gov.

On September 17, the House Committees on Oversight and Government Reform, and Natural Resources, held a joint hearing on the August 5 Gold King Mine spill. EPA Administrator Gina McCarthy testified that EPA was “conducting an investigation to assess mine conditions,” ongoing water discharges, dewater the mine, and assess the feasibility of further remediation.⁵⁰ Her testimony paralleled that presented the day before at the Senate hearing.

Larry Wolk, Executive Director, Colorado Department of Public Health and Environment, testified that the water quality in Cement Creek and the Animas River had been affected by heavy metal loads from mine drainage for years. The waters were routinely tested by the Water Quality Control Division prior to the spill, and closely monitored following the spill. The Division continued to monitor the levels, but the Animas River returned to pre-release levels within a week of the spill. “At this time we do not anticipate adverse health effects from...skin contact or incidental and unintentional ingestion.” Colorado also continues to monitor long-term impacts on aquatic life, wildlife, and of metals deposited in sediments. “The Gold King spill only serves to underscore the issues faced by many states, particularly in the West, where thousands of legacy mines affect the quality of our rivers and streams....” He pointed out that tackling the legacy mine issues requires significant resources.

Mike Olguin, Southern Ute Indian Tribe Council, testified about the tribe’s response to the spill and its observations as it worked with state and federal responders. Colorado informed the tribe of the spill on August 5. The tribe implemented its own emergency management plan, as well as participating with the Southwest Incident Management Team to coordinate with affected tribes and states in the absence of a federal presence. Mr. Olguin noted the importance of relationships between state, tribal and local governments, especially as each was able to share information well in advance of EPA’s communications. The tribe’s 15-year active water quality sampling and monitoring allowed it to share historic and post-release water quality data, as well as historic data on aquatic life, which will allow the tribe “to assess the bioaccumulation of toxins in the aquatic life in the River.” He acknowledged, “We can all learn from mistakes made and, based on a thorough evaluation of the incident and response, hopefully, EPA, the Tribe, and other responders can improve emergency response preparedness.” The problem has been 100 years in the making. “We hope that the new light being shined on the long-standing problem of acid mine drainage in the Animas River basin will cause interested parties to develop a permanent solution.”⁵¹

Navajo Nation President Russell Begaye called the two-day delay before EPA notification “a violation of the government-to-government relationship,” and further expressed concern that the media received “faster and fuller” information well ahead of the Navajo Nation. In contrast, EPA staff was quick to enter Navajo communities to encourage members to sign settlement of claims under the Federal Tort Claims Act, before the extent of damages and injuries could be fully assessed. Begaye requested that the more than 300 abandoned hard rock mines in the Upper Animas Mining District be designated as a Superfund site. He noted that the contaminated water in the District has

⁵⁰*Western States Water*, #2156, September 11, 2015.

⁵¹*Western States Water*, #2157, September 18, 2015.

been monitored for over 20 years, and EPA has continually postponed listing the District on the National Priorities List to allow for a community-based collaborative clean up effort. Navajo Nation farmers and ranchers face not only dead crops and the need to purchase fruit, vegetables and alfalfa that they would ordinarily be able to grow for themselves, but they also face the future stigma of contamination of their crops and livestock grown and raised along the San Juan River.

Ryan Flynn, New Mexico Secretary of Environment, addressed EPA's struggles to coordinate internally among its staffers and three Regional Offices, as well as externally with state and tribal personnel. New Mexico first heard about the spill from the Southern Ute Tribe rather than EPA. He contrasted EPA's slow response, contradictory information, and withholding of important water data with New Mexico's immediate and well-organized response: notifying farmers, ranchers and public water systems to close ditches and intakes, providing water testing, issuing health advisories, and continually updating San Juan County residents.

Technical Evaluation of the Gold King Mine Incident

On October 22, the BOR released its report, Technical Evaluation of the Gold King Mine Incident. The report, requested by the EPA, was peer reviewed by the USGS and the Corps. BOR found that the conditions at Gold King are "surprisingly prevalent" among abandoned mines, and that the "standards of practice for reopening and remediating flooded inactive and abandoned mines are inconsistent from one agency to another."

The Gold King Mine release "was due to a series of events spanning several decades," with the final events including an "inadequately designed closure of the mine portal in 2009 combined with a misinterpretation of the groundwater conditions when reopening the mine portal in 2014 and 2015." The misinterpretation, relating to the level of adit seepage in downstream excavations and assumptions about similar water elevation in the mine, led to the "development of a plan to open the mine in a manner that appeared to guard against blowout, but instead led directly to the failure." Although a similar plan was successful in another location in 2011, the critical step considered but omitted at Gold King was the use of a drill rig to bore into the mine from above to directly determine the water level prior to excavating. BOR's report found that had this step been done, the excavation plan would have been revised, and the blowout would not have occurred.

The report further notes that the current practice for abandoned mine remediation focuses on environmental issues "with little appreciation for the engineering complexity," understanding of dam-like hydraulic forces, downstream consequences of failure, analysis of geologic and hydrologic conditions, continued monitoring of structural performance, or understanding complex groundwater systems in interconnected mines. The report makes recommendations for EPA and others, particularly with regard to prudent engineering considerations, to preclude the occurrence of similar incidents. The Corps peer reviewer noted the absence in the report of non-technical reasons for the spill, specifically the breakdown in EPA internal communications and disregard for the EPA project leader's recommendation to wait for BOR's technical input before excavating the mine.⁵²

⁵²<http://www.usbr.gov/docs/goldkingminereport.pdf>.

Drought

Senate Energy and Natural Resources Committee Hearing

On June 2, the Senate Energy and Natural Resources Committee held a hearing on the “status of drought conditions throughout the western United States and actions states and others are taking to address them.” Among the drought issues addressed were the context of the current drought in the larger 100-year, 1,000-year or even 10,000-year climate record; conservation, desalinization and other water resource methods; collaboration at all levels in lieu of costly litigation; and federal legislation and regulation that aids rather than hinders efforts to address drought problems. Given tight federal budgets and the primary role of Western states in managing water resources, Chairwoman Lisa Murkowski (R-AK) asked about the most appropriate role for the federal government. Murkowski noted that, if drought is the new normal going forward, then “we have a lot of work ahead of us.”

Senator Maria Cantwell (D-WA) stated that a paradigm shift is necessary. We need more collaborative water-sharing agreements, more flexible drought operations, better leveraging of science and technology, and better planning for the future, instead of reacting to emergencies. “I want to make sure that our federal agencies are working hand-in-hand with the states, to provide relief and assistance,” Cantwell said.

Thomas Buschatzke, Director, Arizona Department of Water Resources and a WSWC member, testified about Arizona’s struggles and successes with its Groundwater Management Act and its Underground Storage and Recovery program, resulting in the storage or “banking” of nine million acre-feet of water for Arizona and other states in the Colorado River Basin. Buschatzke noted that the long-term impact of higher temperatures and lower precipitation is already being felt with lower snowpack and earlier melting, lower reservoir and groundwater recharge levels, threatened production of hydroelectric power, soil compaction and subsidence, seawater intrusion along coasts and estuaries, wildfire potential, and expansion of invasive plant species. He testified that federal regulations under the ESA have hamstrung forest management efforts to minimize wildfires and maximize watershed health. Federal efforts in one state can impair the flexibility of other states to deal with the drought. The states have the primary role in surface and groundwater allocation and typically lead efforts to prepare for drought. The key concerns of local water managers are population growth; lack of information on water availability and use; energy sector water needs and effects on water quality; potential impacts of climate change; and effects of extreme droughts and floods.

Michael Connor, Deputy Secretary, DOI, testified that the ongoing drought has necessitated extraordinary measures and new agreements, facilitating unprecedented levels of cooperation. The DOI has encouraged conservation efforts by jointly funding programs like WaterSMART and Pilot System Conservation. The department’s bureaus responsible for significant land management participate in the National Drought Resilience Partnership and WestFAST, both of which address drought issues and impacts. Connor described the contributions of the USGS, Fish and Wildlife Service, National Park Service, Bureau of Land Management, and BIA to monitor drought

conditions, collaborate with state, tribal and local stakeholders, and to relieve the effects of drought. “Some in the communities we serve have told us, ‘we don’t want money, we want our water,’” Connor said. “We have heard them and are using every tool available to provide water this year while continuing efforts to improve conditions in future years.”

Tom Loranger, Water Resources Program Manager, Washington State Department of Ecology and a WSWC member, testified about various water management efforts, including mitigation programs, leases, voluntary reductions by senior water rights users, rainwater storage by utilities, and curtailment orders to junior water users to maintain instream flows.

Cannon Michael, representing the Family Farm Alliance, testified about the vast acres of farmland left fallow, and permanent crops (grapes, trees) plowed under or kept alive but not producing by mining groundwater resources. Despite the persistent myth that farmers consume 80% of water supplies, the “water footprint” is much smaller. The California Department of Water Resources breaks down water use as 10% urban, 41% agricultural, and 49% environmental management. Michael provided seven specific examples of successful technology, collaboration, and management efforts for the federal government to consider when seeking ways to address drought and water management, and offered four key water policy challenges that stand out: (1) inflexible water management; (2) low standards of accountability for environmental water management; (3) ESA implementation that does not benefit species (endangered or otherwise) and harms local communities; and (4) aging water infrastructure.

James D. Ogsbury, Executive Director, WGA, testified that the western states are making the most of limited water resources through water conservation, water re-use, augmentation, reclamation of brackish waters, desalination, precision irrigation technologies and basic soil stewardship. They are raising public awareness of drought conditions. Through the Western Governors’ Drought Forum, WGA is developing a framework for state, industry, community and environmental leaders to share best practices on drought. Businesses regard water as a major constraint on siting new operations. Local water managers and stakeholders emphasize collaboration and flexible legal structures for moving water to where it is needed most. Federal reservoirs and water infrastructure are crucial, necessitating streamlined permitting and funding. Data collection and drought science analysis by federal agencies are essential to understand and manage drought. Active forest and rangeland management helps prevent wildfires and promote healthy landscapes, which in turn helps maintain clean, reliable water supplies.

Western Water and American Food Security Act

On July 16, the House approved the Western Water and American Food Security Act (WWAFSA) (H.R. 2898), by a 245-176 vote, including five Democrats. Titles I - VI of the bill would provide emergency drought relief in California through several means. Titles I and II adjust the management of water for protected fish species in times of drought to increase water quality and quantity for the Central Valley Project and require ongoing review of data and biological opinions.

The bill would authorize alternatives in the implementation of biological opinions to increase water supplies without a negative impact on the long-term survival of protected fish species.

Title III would authorize operational flexibility for Central Valley Project water deliveries with expedited permits, water transfer approvals, and project approval decisions by agency heads. It also provides for emergency environmental reviews, as well as conservation and alternative management of infrastructure to increase water supplies. Section 307, authorizes flexibility in managing stormwater in the early part of the water year, and emphasizes that federal actions must be consistent with state law.

Section 313 would repeal the San Joaquin River Restoration Settlement Act and permit a warm water fishery suitable for fish species other than salmon and trout to satisfy the settlement and various other laws. Title IV authorizes the Temperance Flat Reservoir Project on the San Joaquin River, including a feasibility study, and federal-local agreements relating to the construction of the project.

Title V acknowledges California water rights laws governing water rights priorities and honors senior water rights in the operation of the Central Valley Project. The bill would require that federal actions under the WWAFA not result in the involuntary reduction of water supply for designated water users. It also provides for Central Valley Project allocation percentages for Sacramento Valley contractors, subject to how wet or dry the previous year was, as well as the priorities of other water rights. The bill directs the DOI to develop and implement an annual water rescheduling program for agricultural water service contractors in the Central Valley Project.

Title VI would make several amendments to the Central Valley Project Improvement Act (P.L. 102-575). Section 605 would prohibit the Secretaries of Commerce and the Interior from distinguishing between natural and hatchery-spawned fish in the Sacramento-San Joaquin Delta rivers when making ESA determinations about fish species there.

Title VII is the Water Supply Permitting Coordination Act, which would establish the BOR as the lead agency for coordinating all project reviews, analyses, opinions, statements, permits, licenses, or other approvals and decisions required under federal law to construct new surface water storage projects. It also names BOR as the point of contact for state agencies, Indian tribes and others regarding proposed projects, and lays out the responsibilities of coordinating agencies for permits and decisionmaking.

Title VIII is the BOR Project Streamlining Act, which directs the acceleration of new project feasibility studies within three years of initiation, the expedited completion of reports for existing feasibility studies, and the acceleration of projects. The bill provides for a coordinated environmental review process, including responsibilities of state/local project sponsors as joint lead agencies, the identification and participation of federal, state, tribal and local agencies with jurisdiction over a project, and project study review, reporting and transparency requirements. It provides for accelerated resolution of issues that delay completion of the environmental review

process. Section 806 would require an annual “Report to Congress on Future Water Project Development” that identifies project reports, proposed project studies, modifications to projects or studies, and expedited completion of reports and determinations.

Title IX is the Accelerated Revenue, Repayment, and Surface Water Storage Enhancement Act, allowing for early repayment on contracts for federally-developed water supplies at the request of the contractor. A percentage of the receipts generated from early repayments would go into a Reclamation Surface Water Storage Account to be used to fund the construction of new surface water storage projects.

Title X would amend the Reclamation Safety of Dams Act to authorize additional feasible project benefits, such as increasing conservation storage capacity through new or supplemental construction, in conjunction with existing activities, to promote more efficient management of water and water-related facilities.

Title XI is the Water Rights Protection Act. The bill would prohibit the Secretaries of the DOI and Agriculture from conditioning land use permits or agreements upon water rights transfers, limitations or encumbrances, or upon the water user’s application for or acquisition of a water right in the name of the United States. The bill would prohibit the assertion of jurisdiction over groundwater resources unless it is consistent with state laws and policies governing the protection and use of groundwater resources. It would also prohibit the agencies from infringing on the rights and obligations of a state in evaluating, allocating, and adjudicating the waters of the state originating on or under, or flowing from, land owned or managed by the federal government.

Section 1104 recognizes the longstanding authority of the states relating to evaluating, protecting, allocating, and adjudicating groundwater. It would require the two agencies to coordinate with the states for any federal rulemaking, policy, directive, management plan, or other similar federal action to ensure they are consistent with and impose no greater restrictions than state groundwater laws and programs. Section 1105 makes clear that the Water Rights Protection Act neither limits nor expands federal reserved water rights or Indian water rights.

On July 22, twenty-two California and Oregon House Democrats sent a letter to Senators Feinstein and Boxer expressing concerns about the recently-passed WWAFFSA (H.R. 2898). The bill “does nothing to solve California’s water crisis or address the drought impacting Oregon and states throughout the west,” but instead pre-empts state water law, reduces management flexibility, undermines existing state and federal agency collaborative efforts, eliminates protections for salmon and other endangered species, and rolls back fundamental environmental laws. The letter adds that tribes, environmental groups, fishermen and recreational employers also opposed H.R. 2898. It concludes with a commitment to work with the senators on federal drought legislation that would not harm the “economies, farmers, communities, and environments of California, Oregon, and other Western states.”

Drought Recovery and Resilience Act

On July 22, Senator Barbara Boxer (D-CA) introduced the Drought Recovery and Resilience Act (S.1837) to provide drought assistance and improve water supply reliability in California, other western states and the nation. The bill's findings recognize state primacy in water law and the primary responsibilities of states and local interests in developing water supplies, but that the federal government should participate and cooperate in these projects. The findings acknowledge that drought affects the entire western United States, and that federal solutions should respect state, local and tribal laws and not pit states against one another.

Title I would apply Reclamation Fund appropriations toward water reclamation and reuse projects, infrastructure, WaterSMART assistance, cleanup of polluted groundwater, other drought relief efforts and shutting down marijuana operations stealing water. Sections 103 and 104 would apply unappropriated FY2015 funds toward state and tribal assistance grants and infrastructure loans through the EPA. Title II includes the Reclamation Infrastructure Finance and Innovation Act (RIFIA) leveraging private investment in water resource infrastructure and establishing new financing opportunities. Section 231 would authorize cost-share agreements for eligible projects, and Section 241 would provide for title transfers of certain federal facilities to local authorities. The Innovative Stormwater Infrastructure Act in Section 251 provides grants to increase water supply through stormwater capture.

The Restoring America's Watersheds Act, Title III, creates a USFS "Water Source Protection Program," with states and tribes, for National Forests west of the 100th Meridian. Section 311 covers improvements to reservoir operations. Section 320 expands investments in infrastructure that reduce evaporative losses. Section 323 provides a pilot program for competitive land leases for solar and wind energy projects. Section 391 directs the USGS to establish and maintain an open water data system to facilitate the exchange of water information, to identify information gaps, and to leverage and support existing shared databases. Title IV, the Water Innovation and Prize Competition Act, rewards low-energy desalination breakthroughs and other technology advances. Section 411 directs the Natural Resources Conservation Service and BOR to provide guidance and technical assistance, including hydrological forecasting, to water and power delivery authorities to improve water use efficiency and conservation practices.

Forest Service

Groundwater Directive

USFS Chief Tom Tidwell paused action on and asked his agency's regional foresters and other officials to reach out to states, tribes, the public, and the media regarding the intent of the USFS's proposed groundwater management directive. The USFS says the directive is intended to prevent contamination or adverse impacts to groundwater resources on USFS lands by providing a consistent systematic approach for the evaluation and monitoring of activities proposed on such lands. While the agency says the directive is not intended to interfere with state water allocation,

the WGA has expressed concern that the directive could have significant implications for state groundwater resources management.

“[W]e will not move forward until we are confident that we have identified and can address the concerns raised through the public comment and tribal consultation processes,” Tidwell said in a December 15 letter to USFS officials. “I have directed my staff to take the time necessary to engage with...states and tribes that have commented on the proposed...directive to make sure that we fully understand the nature of their concerns. In addition, after we consider and address all comments received we will develop a revised proposed directive that will be published...for public comment and engagement with all interested parties.”

At the WSWC’s invitation, the USFS has engaged with the WSWC in an ongoing conversation about the directive.⁵³

On March 12, House Natural Resources Committee Chairman Rob Bishop (R-UT) wrote the USFS, urging it to permanently withdraw the proposed groundwater directive to create a comprehensive approach for agency efforts regarding groundwater. While Bishop notes that the USFS had placed the directive on a temporary hold to conduct further outreach with states and other stakeholders, he said the agency should permanently withdraw the directive “... to allow states to continue their longstanding groundwater management.”

Bishop also said withdrawal is warranted because a number of unanswered questions remain about the policy, citing a series of questions the WGA sent the USFS in July 2014. Bishop said WGA’s questions were “legitimate” and raised six additional questions: (1) Whether the USFS believes that state agencies are not fulfilling their groundwater responsibilities and why the BLM had not proposed a similar policy if there is a problem with state groundwater management? (2) What problems prompted the USFS to propose the directive? (3) What existing water rights applications prompted the directive’s requirement that the USFS evaluate water right applications on lands adjacent to USFS land? (4) Whether the USFS has examined how the directive will impact agreements between states, citing a memorandum of understanding that Wyoming has created with the agency? (5) How will the directive’s presumption that surface and groundwater are connected protect water rights and “the communities and livelihoods that depend on [them]”? and (6) Would the groundwater directive lead to a permitting system?”

Bishop further said: “In light of the fact that [these] questions remain, we believe the Forest Service has failed to justify the need for this new policy. The end result has been uncertainty and growing distrust between the Forest Service and state and local governments. Since putting this proposal on a temporary hold only increases uncertainty, we urge you to withdraw this misguided and unnecessary policy on a permanent basis.”

⁵³*Western States Water*, #2108, October 14, 2014.

Five other Republican leaders of the Committee signed the letter, including Committee Vice Chairman Cynthia Lummis (R-WY); Representatives Tom McClintock (R-CA) and Doug LaMalfa (R-AZ), the Chair and Vice-Chair of the Subcommittee on Federal Lands; and Representatives John Fleming (R-LA) and Paul Gosar (R-AZ), the Chair and Vice-Chair of the Subcommittee on Water, Power, and Oceans.⁵⁴

On June 19, the USFS published a Notice of Withdrawal of Proposed Directive in the *Federal Register*, stating that the groundwater proposal does not adequately meet USFS needs. The USFS “will engage in a public conversation to develop revised proposed directives.” While conservation organizations and tribes responded favorably to the proposed directive, “States and a number of other organizations raised concerns that the proposed directive would exceed the Agency’s authorities and infringe on State authorities to allocate water.” The withdrawal will allow for conversations with States and other citizen groups, and the USFS will use their input to “develop new proposed directives to create a consistent approach to evaluating and monitoring effects to groundwater resulting from actions on [USFS] lands.”

Subsequent to a hearing on various water bills before the Senate Energy and Natural Resources Subcommittee on Water and Power held on June 18, the WSWC was asked to respond in writing to a question from Senator Jeff Flake (R-AZ) regarding the USFS and WSWC conversations related to the proposed groundwater directive, which has since been withdrawn. The WSWC in its formal comments on the directive criticized the USFS for failing to substantively consult with the states, and questioned federal statutory authority for the directive, as well as various provisions. However, the WSWC has also praised the USFS for its willingness since to engage the states in meaningful discussions. In a July 6 response, WSWC staff outlined conversations with the USFS and actions related to ensuring that state authority over groundwater is respected.

Hydraulic Fracturing

On May 29, Wyoming and Colorado filed a motion for a preliminary injunction to halt the implementation of the BLM’s 2015 hydraulic fracturing regulations, seeking to maintain the status quo until the case is decided on its merits. The states were pursuing the injunction on the grounds that the rule exceeds the BLM’s jurisdiction as limited by Congress, leading to the irreparable harm of an immediate loss of the states’ “exclusive sovereignty over hydraulic fracturing.” The motion briefly reviewed the history of BLM’s limited authority to regulate fracking, explained how the BLM’s new fracking rule duplicated the states’ regulations, and outlines the financial and irreparable harms the rule is expected to cause. The motion rejects the BLM’s claims to authority under the Federal Land Policy and Management Act and various mineral leasing acts and Indian mineral statutes, arguing that the Safe Drinking Water Act and 2005 Energy Policy Act expressly grant to

⁵⁴<http://naturalresources.house.gov/news/documentsingle.aspx?DocumentID=398115>. *Western States Water* #2124, January 30, 2015.

states the authority to regulate hydraulic fracturing. A hearing was scheduled for June 23, and the BLM was scheduled to begin enforcement of its rule on June 24.⁵⁵

On June 23, the U.S. District Court of Wyoming stayed the implementation of the BLM's Hydraulic Fracturing Rule, pending the BLM's submission of its Administrative Record, which was due June 22. The Rule was originally scheduled to take effect June 24. Wyoming, Colorado, North Dakota and other petitioners sought a preliminary injunction to postpone enforcement of the Rule until the end of the case. Following the lodging of the Administrative Record and an opportunity for petitioners to file additional citations in support of the injunction, the Court will rule on the preliminary injunction motions.

On September 30, the U.S. District Court of Wyoming issued a nationwide preliminary injunction in *Wyoming et al. v. Department of Interior et al.*, 2:15-cv-43, enjoining the BLM from enforcing its final rule relating to hydraulic fracturing on federal and Indian lands.⁵⁶ The fracking rule focuses on well bore construction, chemical disclosures, and water management. Implementation of the rule was temporarily stayed on June 23, pending the submission of the administrative record, which was lodged on August 27.⁵⁷ The Court found that Congress did not grant or delegate to BLM the necessary authority or jurisdiction to regulate fracking on federal, state or tribal lands. Congress specifically removed related authority from the EPA with the 2005 Energy Policy Act, the Court said, and BLM cannot regulate hydraulic fracturing contrary to the unambiguously expressed intent of Congress without additional Congressional action.

On December 10, the Administration appealed the September 30 nationwide injunction of BLM's fracking rule⁵⁸ by the U.S. District Court of Wyoming. A coalition of environmental groups is also asking the 10th Circuit Court of Appeals to reverse the decision. States assert that they are in the best position to regulate fracking; that BLM's rule is unnecessarily duplicative of state regulations; and that Congress unambiguously removed authority from agencies to regulate fracking with the 2005 Energy Policy Act.⁵⁹

Indian Water Rights

Legislative Process

On February 26, House Natural Resources Commission Chair Rob Bishop (R-UT) wrote the Departments of Justice and the DOI to outline the process the Committee will follow when considering legislation to authorize Indian water rights settlements during the 114th Congress.

⁵⁵*Wyoming and Colorado v. US Department of the Interior and Bureau of Land Management*, U.S. District Court Wyoming, Case 2:15-cv-00043-SWS.

⁵⁶(80 *Fed. Reg.* 16,128, March 26, 2015).

⁵⁷*Western States Water*, #2145, June 26, 2015.

⁵⁸(80 *Fed. Reg.* 16,128).

⁵⁹*Western States Water*, #2162, October 23, 2015.

“The Committee recognizes that settlements to these matters are generally preferable to protracted litigation, which does little to provide water supply and financial certainty for settling and other parties,” Bishop said. “Importantly, settlements, if crafted correctly, can also provide relief to the United States from burdensome legal obligations and benefit all American taxpayers. The Committee recognizes that the Executive branch is charged with implementing existing Indian water rights settlement criteria and procedures designed to meet these goals.” Bishop further noted: “[I]t is important that the proposed settlements, their proposed legislation and the federal costs associated with them be fiscally responsible and justified in order to protect the American taxpayer and future Tribal needs.”

Going forward, Bishop said the Departments, in concurrence with the Office of Management and Budget, must “...play a significant and initial role in certifying and explaining the Administration’s support of the financial aspects of legislation...to the Committee. Put simply, your Departments must convey support for and forward the settlements and the proposed authorizing legislation, specifically including federal spending levels, before any Committee consideration takes place.”

More specifically, Bishop said the Departments must take the following steps before the Committee will act on a settlement bill: (1) both Departments must affirm that a settlement adheres to the federal government’s Criteria and Procedures (C&Ps), which outline federal participation in settlement negotiations; (2) both Departments must affirm that a settlement satisfies C&P federal cost criteria and represents “...a net benefit to the American taxpayer compared to the consequences and costs of not settling litigation;” (3) Department of Justice must have “...conveyed to a court and all settling parties have agreed, in writing, to the settlement pending a legislative resolution;” (4) both Departments and the settling parties must approve, in writing, the authorizing legislation; (5) both Departments must consent to testify on authorizing legislation; (6) both Departments must list the legal claims being resolved; and (7) settlements and authorizing legislation “...shall not include financial authorization for claims already settled by Congress or claims that have no legal basis.”

If the Departments follow this process, starting with the Administration proposing and supporting settlement legislation, Bishop said, “...it is my intent to then introduce the...legislation at the Administration’s request and consider such legislation in the Committee at the appropriate time. In conclusion, it is my intent that your actions prior to the Committee consideration will determine whether negotiated settlements proceed in the legislative process.”⁶⁰

Of note, some Congressional experts have opined that the letter is an attempt to create a path in which settlements can move forward and still comply with Congressional earmark bans. In recent years, there has been some uncertainty about whether settlement bills qualify as earmarks, which has prevented settlement legislation with significant federal funding requirements from moving forward in the House.

⁶⁰http://naturalresources.house.gov/uploadedfiles/waterrightsletter2_26_15.pdf.

Administration Settlement Processes

On March 4, the WSWC held a call with Pam Williams and Fain Gildea of the Secretary of the Interior's Indian Water Rights Office (SIWRO) to discuss DOI initiative to re-evaluate its approach to Indian water rights settlements. Representatives from ten states participated in the call, which focused on four broad topics: (1) whether a stable funding source for settlements would be useful; (2) the role and structure of the SIWRO; (3) criteria for negotiating or evaluating settlements; and (4) the roles of DOI's agencies and bureaus in settlements, particularly the USGS.

State participants generally supported a settlement funding mechanism, but asked about how such a mechanism would interact with Congressional budgetary and appropriations requirements. Some participants also supported additional resources for the SIWRO, which currently consists of only Williams and Gildea. Williams further noted the President's FY2016 budget request would provide an increase in funding that would allow the SIWRO to hire additional staff. Of note, at least one additional call with the DOI is envisioned to discuss its re-evaluation effort.⁶¹

Agua Caliente Band of Cahuilla Indians

On March 20, the U.S. District Court for the Central District of California found that the Agua Caliente Band of Cahuilla Indians has reserved water rights that include groundwater. The ruling is part of an ongoing action the tribe brought against the Coachella Valley Water District and the Desert Water Agency in California's Coachella Valley near Palm Springs over rights to water in the area, which relies heavily on groundwater for drinking water needs. The ruling is the first of three phases of the litigation. Subsequent phases will be contingent on the ruling and will potentially quantify the tribe's right.

In reaching its decision, the court cited the U.S. Supreme Court's 1908 decision in *Winters v. United States* and subsequent cases, which have held that the federal government impliedly reserves water rights for tribes and other federal purposes when it withdraws land from the public domain for a federal purpose. In interpreting these cases, the court said: "No case interpreting *Winters* draws a principled distinction between surface water physically located on a reservation and other appurtenant water sources."

Given this line of reasoning, the court then found: "Any attempt to limit appurtenant water sources to surface water fails as a matter of law and logic. For example, California law recognizes that groundwater rights are inextricably linked to the overlying land." The court also cited the U.S. Supreme Court's ruling in *Cappaert v. United States*, which curtailed groundwater pumping to protect federal reserved rights to surface water located in Devil's Hole National Monument, an underground cave. "[F]ederal law, at least by implication, treats surface water and groundwater similarly," the court said. "Taken together, these authorities suggest that groundwater provides an appurtenant water source, in the *Winters* sense.... Appurtenance...must provide some legal limitation

⁶¹*Western States Water*, #2125, February 6, 2015.

to impliedly reserved water rights; but persuasive authority suggests that limit should not be drawn between surface and groundwater sources.... Rights to the groundwater underlying the reservation are appurtenant to the reservation itself. [T]he...federal government impliedly reserved groundwater, as well as surface water, for the Agua Caliente when it created the reservation.”

The court rejected the water districts’ arguments that the tribe had not shown that a reserved right to groundwater was needed to accomplish the purpose of its reservation. The districts also argued that reserved rights only exist if necessary to fulfill the primary purpose of a reservation, citing the U.S. Supreme Court’s decision in *United States v. New Mexico*, which addressed reserved rights for National Forest land.

However, the court said these arguments “...hinge on an unduly restrictive reading of...*New Mexico*, and a misapprehension of that case’s subsequent application by the 9th Circuit to cases which involve tribal rights.... [T]he 9th Circuit has held...*New Mexico* only establishes useful guidelines for tribal reservation cases, and courts should instead focus on the broader command that *Winters* rights encompass only that amount of water necessary to fulfill the purpose of the reservation, no more.... The reservation’s purpose [is] to provide the Agua Caliente with a permanent homeland. The 9th Circuit has specifically emphasized such a purpose’s elasticity; a tribal reservation’s reason for being is not etched in stone, but shifts to meet future needs. Despite Defendants’ insistent reliance on *New Mexico*, that case’s reasoning simply does not impact [the first phase] of this litigation. Of course, delineating the reservation’s purpose will ultimately dictate the breadth of the Tribe’s *Winters* rights, but the Agua Caliente’s reservation, at a minimum, provides [it] with a homeland for now and for the future, and *Winters* ensures a federal right to appurtenant water to realize that end.”

Notwithstanding its holding and the ongoing nature of the case, the court certified its ruling for interlocutory appeal so the parties can ask the 9th Circuit to review its ruling. “Whether *Winters* rights extends to groundwater, in light of California’s correlative rights legal framework for groundwater allocation, effectively controls the outcome of this case,” it said. “Substantial ground for difference of opinion exists on the legal question - state supreme courts are split on the issue and no federal court of appeals has passed on it. Additionally, the Supreme Court’s decision in *Cappaert* specifically avoided deciding the issue [and] it chose instead to construe distant groundwater as surface water. In this case, it is undisputed that the groundwater at issue is not hydrologically connected to the reservation’s surface water, so it sits uncomfortably outside *Cappaert*’s explicit holding.” The Desert Water Agency has since petitioned the 9th Circuit to review the decision.⁶²

Of note, the court rejected the tribe’s claim to an aboriginal right to groundwater with a “time immemorial” priority date, reasoning that an 1851 federal law regarding the validation of tribal land claims in California had extinguished such a right. A series of seven executive orders dated 1865-1881 created the tribe’s reservation pursuant to federal statutory authority.⁶³

⁶²<http://www.dwa.org/getdoc.cfm?id=455>.

⁶³<http://www.aguacaliente.org/content/News%20&%20Events/?showStoryID=84>.

Senate Oversight Hearing

On May 20, the Senate Indian Affairs Committee held an oversight hearing on “Addressing the Needs of Native Communities through Indian Water Rights Settlements.” Witnesses at the hearing included Michael Connor, DOI Deputy Secretary; Jay Weiner, Montana Assistant Attorney General; Mark Macarro, Chairman of the Pechanga Band of Luisena Mission Indians in California; and Steven Moore, NARF Senior Staff Attorney in Colorado. The witnesses and senators agreed that settlements are preferable to costly litigation between the Indian tribes and the United States, individual states and private water users.

Senator John Barrasso (R-WY) expressed concern that the settlements “go beyond merely quantifying” the tribal water rights to include state and federal funding to address infrastructure needs, which represent additional “costs to taxpayers and to other tribes” that also have to “fight for appropriations for their needs.” Although the settlements allow more thoughtful balancing of tribal and local community interests than litigation, and “open the door to building new relationships” between parties that “have at times been bitter enemies,” Secretary Connor acknowledged that implementing the settlements is challenging when funding is limited. Senator Jon Tester (D-MT) indicated that the sticking point for Congress to approve a settlement would be the cost to the federal government. Macarro noted that some federal officials with long-term institutional knowledge are approaching retirement, leading to a significant loss in the decades-long settlement process, and Senator John McCain (R-AZ) pointed out that with the ongoing drought, the status quo over uncertain water rights “cannot work much longer.”

San Luis Rey Indian Water Rights Settlement Act

On October 28, the House Natural Resources Subcommittee on Water, Power and Oceans held a hearing on amendments to the 1988 San Luis Rey Indian Water Rights Settlement Act (H.R. 1296). The bill amends the 1988 Act to reflect a recent agreement between the federal government and other parties in an attempt to bring a final resolution to over 45 years of litigation and uncertainty regarding water rights.

The five San Luis Rey Mission Bands have unquantified reserved water rights with early priority dates in the late 1800s, but the federal government subsequently contracted to supply municipal and water district users from the same water resources, leading to conflict. The 1988 Act provided a framework for settlement that included the DOI providing 16,000 acre-feet of water annually to the bands, but would not become effective until the tribes entered a settlement agreement with the federal government that resolved all claims, controversies and issues. The parties reached an agreement in December 2014, making the 16,000 acre-feet supplemental to the tribes’ reserved water rights, once determined, while removing some of the federal government’s liability and removing it as a required party in future proceedings.

Letty Belin, Counselor to the Deputy Secretary, DOI, testified on Administration efforts to negotiate and implement Indian water rights settlements, improve settlement terms and reduce

federal costs. She noted approval of the San Luis Rey Mission Bands' settlement would not require any new federal spending. The 1988 Act established a fund sufficient for the infrastructure needed to provide a reliable water source for the tribes. She also expressed appreciation for the "...Committee's support of the longstanding policy of the United States that disputes regarding Indian water rights should be resolved through negotiated settlement rather than through litigation."

Landsat

On July 27, the WSWC forwarded Council members an invitation to participate in the Landsat Advisory Group's (LAG) analysis of future requirements for Landsat data. The important feedback would inform the DOI and the USGS about non-federal users' needs for future Landsat missions. The LAG is a subcommittee of the DOI's National Geospatial Advisory Committee (NGAC), and the WSWC is represented as a LAG member. For water resource purposes, WSWC members were encouraged to emphasize the need for the thermal band at a 30-meter resolution, with a minimum eight-day return time (ideally four days), and a swath width of 115 miles (185km).

River Basins

Klamath River Basin

Klamath Water Recovery and Economic Restoration Act

On January 8, Senators Ron Wyden (D-OR) and Jeff Merkley (D-OR) reintroduced the Klamath Water Recovery and Economic Restoration Act (S. 133) to address longstanding water disputes in the Klamath River Basin located along the border between California and Oregon. The bill would authorize the federal government to implement three related agreements involving various federal agencies, California, Oregon, tribes, counties, irrigators, and conservation and fishing groups. Collectively, the agreements would address a wide range of issues, including tribal water rights claims, ESA protections for salmon, and the potential removal of three privately owned dams.

The bill is similar to S. 2379, which Wyden and Merkley introduced last Congress. While that bill cleared the Senate Energy and Natural Resources Committee, no companion legislation was introduced in the House, due in part to concerns about the agreements' dam removal provisions. Senators Barbara Boxer (D-CA) and Dianne Feinstein (D-CA), who co-sponsored S. 2379, have also co-sponsored the new legislation.⁶⁴

Klamath Basin Restoration Agreement

On December 31, the Klamath Basin Restoration Agreement (KBRA) expired without the necessary Congressional authorization proposed as part of the Klamath Basin Water Recovery and Economic Restoration Act (S.133). Under the proposal, the Tribes that have been parties to the

⁶⁴*Western States Water*, #2090, June 9, 2014.

KBRA agreed to reduce their reserved rights to water in exchange for extensive restoration of the Klamath River, including the controversial removal of four hydroelectric dams. The KBRA, signed in 2010, is one of three water-sharing agreements between State, Tribal, local and Federal governments, as well as irrigators, industry and conservation groups in the Klamath Basin.

DOI's Secretary Sally Jewell expressed her disappointment that S.133 did not pass before the KBRA terminated. "In crafting these agreements, a diverse and committed group of coalition parties set aside ideology and years of conflict for the hope of long term progress and sustainability for tribes, the fishery and irrigated agriculture in the region.... [W]e still believe the future of the basin lies with negotiated agreements and we will work hard with the parties to find ways to achieve their collective goals while they take necessary steps to protect the long-term interests of the people of the Klamath Basin and the important natural resources on which they depend for their cultural, economic and spiritual livelihood." The KBRA deadline was extended once in 2014, but some parties to the agreement expressed reluctance to do so again.

Basin Water Supply and Demand Studies

Colorado River

On May 12, the BOR published its 448-page, "Moving Forward: Phase 1 Report," identifying "future opportunities and potential actions" regarding existing and future water resources of the Colorado River Basin. The Report represents BOR's effort to build on the next steps outlined in its 2012 Colorado River Basin Water Supply and Demand Study. "Based on insights from data collection, case studies, and exploring the successes and challenges of existing programs," three multi-stakeholder workgroup reports are contained in Chapters 3, 4 and 5. A quick overview of each workgroup's "Opportunities for Potential Future Actions" is contained in the Executive Summary.⁶⁵

The Municipal and Industrial Water Conservation and Reuse Workgroup looked at historical trends and future plans to identify opportunities and challenges. Although there was "significant population growth" over the past couple of decades in the "major metropolitan areas" served by Colorado River water, those cities have implemented a variety of conservation, efficiency and reuse measures: metering and billing, public outreach, residential indoor practices, outdoor landscaping practices, and conjunctive management of surface and groundwater. As a result, the per capita demand has decreased over time, "partially attenuating the effect of population growth," and municipal and industrial water use "has either remained stable or decreased" for many of these areas. Future opportunities vary based on cost of water supplies and conservation measures, "public acceptance, laws and regulations, and other factors."

The Agriculture Water Conservation, Productivity, and Transfers Workgroup sought to provide context to the Basin Study's assumption "that an additional 1 million [acre feet per year] of water savings could be achieved through conservation" by 2060. Reducing agricultural water use

⁶⁵<http://www.usbr.gov/lc/region/programs/crbstudy/MovingForward/index.html>.

is a “considerable task.” Almost 70% of the Colorado River use is agricultural. Significant conservation measures have already been implemented, and any reduction of “agricultural production impacts local economies as well as national food security.” Current agricultural conservation measures vary and include “conveyance system improvements, on-farm efficiency improvements, and consumptive use reductions...” The amount of water use per acre has remained relatively constant historically while productivity has increased basin-wide by 25% since 1980. Future water use efficiencies in the Basin depend on the location, crops, and economic considerations, and efforts to improve reliability and flexibility for producers.

The Environmental and Recreational Flows Workgroup sought “integrated solutions...intended to benefit...consumptive and non-consumptive uses,” including increasingly vulnerable “water-dependent ecological systems, recreation and hydropower generation.” The workgroup reviewed four existing site-specific programs in the Basin “that contribute to the protection or improvement of ecological and recreational resources,” and identified “concepts that could be applied in...other parts of the Basin.” The workgroup found “common scientific uncertainties” hindering the understanding of relationships between water “flow and ecological and recreational values,” but that current programs implementing a variety of mechanisms are effective. The workgroup also found that “opportunities exist to expand or implement new environmental and recreational flow programs,” and based on existing experience, these programs will be most beneficial and successful with broad support from cooperative, multi-interest parties on a voluntary basis rather than mandatory regulations.

Santa Fe Basin

On September 10, the BOR released a study of the Santa Fe Basin that shows the water supply is likely inadequate to meet future projected demands. The study identified vulnerabilities in the Santa Fe watershed system due to climate change impacts. With input from the local public, the study identified potential strategies to adapt to expected changes in water supplies due to various climate change scenarios. The mitigation strategies selected for further study include the use of reclaimed water, water conservation, direct injection and infiltration for aquifer storage and recovery, and obtaining additional water rights. The study was co-funded by BOR and the City and County of Santa Fe. The study partners’ goal was to improve the resilience of the Santa Fe watershed and the communities the watershed supports. The study is part of the DOI’s WaterSMART Basin Study Program, a “sustainable water initiative that uses the best available science to improve water conservation and help water resource managers identify strategies to narrow the gap between supply and demand.”⁶⁶

Hood River

On December 14, the BOR announced the release of the Hood River Basin Study, which assesses current and future water supply and demand in the basin in Oregon and adjacent areas. The

⁶⁶<http://www.usbr.gov/watersmart/bsp/docs/finalreport/SantaFe/Santa-Fe-Basin-Final.pdf>.

study is part of the WaterSMART Program, the DOI's sustainable water initiative that seeks to use the best available science to improve water conservation and help water resource managers identify strategies to narrow the gap between supply and demand. The basin relies heavily on snowmelt at the beginning of the summer and glacial melt from Mount Hood during August and September. Streamflow during the summer months is already inadequate to meet the competing demands for water, and an anticipated 30% population growth from 2010 to 2040 will increase those demands. Warming temperatures are expected to accelerate the speed of snowpack and glacial melting, which will provide a short-term increase in water supply, but a long-term loss of water storage. The study developed 38 alternatives to address the basin's supply-demand imbalance and provide a framework for resilience in the face of persistent water shortages. Six of those alternatives were selected for further evaluation based on their ability to conserve water, recharge groundwater, and store surface water.⁶⁷

Yakima River Basin Water Enhancement Project Phase III Act

On June 25, Senator Maria Cantwell (D-WA) introduced the Yakima River Basin Water Enhancement Project Phase III Act (S. 1694), which amends P.L. 103-434 to authorize water management improvements. Various sections of Title XII would be amended by the bill. The amendments generally: (1) provide for self-sustaining harvestable populations of native fish throughout their historic distribution range; (2) add municipal, industrial and domestic uses as additional purposes of the project; (3) strike specific numeric annual water conservation goals and allow the project manager to instead calculate the amounts of water conserved and, with the advisory committee, determine whether and how the conserved water will be delivered or stored; (4) authorize additional appropriations for modifications and improvements within the project; (5) add details and limitations about federal, state and local cost-sharing for project work; (6) improve reliability and resiliency in years of drought; and (7) authorize studies to consider measures that further project purposes on tributaries to the Yakima River (in addition to Taneum Creek).

The bill also adds three new sections at the end of Title XII. Section 1213 authorizes grants and cooperative agreements to accomplish the purposes of Phase III. Section 1214 (together with an amendment to Section 1202 definitions) incorporates the management plan described in the 2012 "Final Programmatic Environmental Impact Statement and Integrated Water Resource Management Plan, Yakima River Basin, Water Enhancement Project, Benton, Kittitas, Klickitat, and Yakima Counties."⁶⁸ The bill sets forth the Secretary of Interior's responsibilities in implementing the management plan, breaking them down into initial, intermediate and final development phases. Section 1215 mandates that the Secretary of Interior retain operational control to store, deliver, conserve and reuse project water supplies "to obtain maximum operational use and flexibility to meet all appropriated and adjudicated water rights."

⁶⁷www.usbr.gov/watersmart/bsp.

⁶⁸(77 *Fed. Reg.* 12076).

On November 19, the Senate Committee on Energy and Natural Resources voted to report S. 1694 with amendments. Since the bill's introduction in July 2015, Senator Cantwell and her staff have worked with the Yakama Nation, farmers and irrigation districts, conservation groups, state and local governments, and community members to improve the bill. Changes to the bill include: (1) how the Integrated Plan is defined and carried out; (2) ensuring broad public participation and oversight; (3) additional provisions supporting water conservation targets and water transfers; (4) additional provisions regarding studies to evaluate feasibility, benefits and environmental impacts of projects in the basin; and (5) clarification of drought resilience activities to support irrigation districts and communities throughout the basin. Senator Cantwell called the bill "a national model for watershed management, providing drought relief and resilience in one of Washington's most productive agricultural regions," encouraging the federal government to support the communities and governments that have "worked together to develop this innovative and locally-driven solution."⁶⁹

States

California

Executive Orders/Drought

On April 1, California Governor Edmund ("Jerry") Brown issued an executive order requiring his state's first-ever statewide mandatory water reduction to combat historic drought conditions. The order follows a drought state of emergency Brown issued last year, which called for a voluntary 20% reduction in water use, and last month's approval of a \$1.1 billion emergency drought package. At the time of Brown's announcement, extreme to exceptional drought covered most of California and snowpack levels in the Sierra Nevada were around 6% of normal, their lowest level in recorded history.

"Today we are standing on dry grass where there should be five feet of snow," said Brown from Echo Summit in the Sierra Nevada Mountains, where he announced the order. "This historic drought demands unprecedented action.... As Californians, we must pull together and save water in every way possible."

The order directs the State Water Resources Control Board to implement a mandatory 25% reduction in water usage in cities and towns across the state to save about 1.5 million acre-feet of water over the next nine months. Local agencies will determine how to help water users reduce their consumption. The order also calls on local water agencies to adjust their rate structures to implement conservation pricing, and requires agricultural water users to report more water use information to state regulators. Additionally, the order authorizes actions to streamline state review and approval of water infrastructure projects, voluntary water rights transfers, and emergency drinking water projects.

⁶⁹*Western States Water*, #2151, August 7, 2015.

Other notable parts of the order will: (1) replace 50 million square feet of lawns with drought tolerant landscaping; (2) create a temporary, statewide consumer rebate program to replace old appliances with more water and energy efficient models; (3) require campuses, golf courses, cemeteries and other large landscapes to cut water uses; (4) prohibit new homes and developments from irrigating with potable water unless water-efficient drip irrigation systems are used; (5) ban the watering of non-ornamental grass on public street medians; and (6) make permanent monthly reporting of water usage, conservation, and enforcement actions by local agencies.⁷⁰

On November 13, California Governor Jerry Brown issued Executive Order B-36-15, building on previous executive orders as part of California's ongoing response to drought. The order requires officials and agencies to expedite temporary projects to capture water if El Niño storms bring heavy rains, including groundwater recharge projects. The order also authorized the California Water Resources Control Board to extend mandatory water conservation through October 2016. Governor Brown stated: "California is experiencing a range of extreme weather events such that the state must simultaneously prepare for a fifth year of drought and the possibility of major winter storms driven by the warming trend in the Pacific Ocean known as El Niño." The executive order waived parts of the California Environmental Quality Act to facilitate water-capture efforts, but the Water Resources Control Board and Regional Water Quality Control Boards must ensure that any efforts to divert water to capture rain don't violate water rights or harm fish and wildlife.⁷¹

California Emergency Drought Relief Act of 2015

On July 29, Senator Dianne Feinstein (D-CA) introduced the California Emergency Drought Relief Act of 2015 (S.1894) to provide short-term water supplies to drought-stricken California. Title I directs the Secretaries of the DOI and Commerce to provide the maximum quantity of water possible to the Central Valley Project and other communities by approving projects and operations on an expedited basis to meet Governor declared drought emergencies. The bill favors strategies that increase water deliveries while avoiding jeopardy to endangered fish. Title II would provide funding and guidance for various fish recovery and protection projects.

Title III lays out eligibility and feasibility requirements for California cities, water districts and desalination facilities applying for long-term water supply projects funding. Desalination and water reuse are heavily emphasized, but competitive funding for other projects includes groundwater recharge, stormwater capture, and agricultural or urban water conservation and efficiency. Under Section 311, the bill would provide support for the construction or expansion of federal and non-federal storage projects, including authorization for agreements, funding, cost sharing, and feasibility and public benefits requirements. Under Section 321, the bill would provide various programs and assistance for conservation and water efficiency, including product label standards for WaterSense, partial retention of water conserved on BOR projects, grants for rural water projects, conservation at military installations, and funding to the Drug Enforcement Administration to combat water theft

⁷⁰<http://gov.ca.gov/home.php>. *Western States Water*, #2132, March 27, 2015.

⁷¹https://www.gov.ca.gov/docs/11.13.15_EO_B-36-15.pdf.

for illegal marijuana cultivation. Section 328 directs the USGS to establish and maintain an open water data system to quantify the availability, use of, and risks to water resources throughout the United States, to facilitate the open exchange of water information, and to integrate water data and information into an interoperable, national, geospatially referenced data framework.

Title IV includes the Reclamation Infrastructure Finance and Innovation Act (RIFIA), which would authorize new financing, funding and investment opportunities for infrastructure in the contiguous western United States. Section 421, would amend the 2009 Public Land Management Act to share costs needed to expand and construct non-federal water storage and conveyance facilities, with emphasis on recycled water, efficient use, flood control, hydroelectric power generation, environmental benefits, and integrated regional water management. Section 431 would amend the Reclamation Wastewater and Ground-water Study and Facilities Act to authorize grant funding for new non-federal water recycling and reuse projects. Section 441 would establish a “Federal Support for State and Local Drought Solutions Fund” in the Treasury, to spend on cost-share projects and Reclamation infrastructure loan guarantees, with funds deposited between 2026 and 2050. S. 1894 was referred to the Senate Energy and Natural Resources Committee, while S.1837 was referred to the Senate Finance Committee.

On December 21, a half dozen Northern California members of the House, all Democrats, wrote Senator Dianne Feinstein (D-CA) expressing concern over being excluded from negotiations over California water supply and drought legislation and denied an opportunity to review drafts and offer input. They specifically raised issues such as altering the ESA, related biological opinions regarding the Delta, the CWA, accelerated Central Valley Project contractor repayments, and state water law. They noted the failed attempt by Republicans to include very controversial, “secretly” drafted water provisions in the Omnibus appropriations bill, and expressed concern over “this closed process.” They requested a complete current draft of the legislation and any updates. The letter was signed by Mark DeSaulnier, Anna Eshoo, Jared Huffman, Doris Matsui, Jerry McNerney, and Mike Thompson.

Regarding the letter, Feinstein said: “In my 23 years in the Senate, this is the most difficult bill I’ve tried to put together. We’ve been working hard over the past several months with dozens and dozens of interested parties, asking for input and incorporating it. Candidly, this type of letter isn’t helpful.” She added, “We need a bill that can pass both the House and Senate and is agreeable to at least a dozen different, often conflicting constituencies. We’ve included numerous ideas from many different groups – including legislation from members of the California delegation who signed this letter – and all of that language has to be vetted. I disagree with anyone who thinks speed is more important than accuracy. Everyone with a hand in California water has strong opinions, and I respect that. But what we’re doing is creating a bill to help communities running out of water, protect threatened and endangered species, provide funding for long-term projects and improve efficiencies in the Central Valley Project and the State Water Project. This is not a simple process.”⁷²

⁷²<http://www.eenews.net/greenwire/2015/12/22/stories/1060029908>.

Feinstein disavowed any knowledge of Republican attempts to include language in the omnibus bill, stating: “There were at least a half-dozen items in the bill that I had rejected and that would have drawn objections from state or federal agencies – some of them would likely violate environmental law. Several more provisions were still being negotiated and hadn’t been reviewed by state or federal stakeholders.”⁷³

Colorado

Colorado Water Plan

On November 19, Colorado Governor John Hickenlooper, joined by WSWC members James Eklund, Director, Colorado Water Conservation Board (CWCB) and John Stulp, Senior Advisor to the Governor, released the completed Colorado Water Plan – developed through a collaborative public process over two and a half years. “This is how Colorado works: together, in partnership, to tackle head-on our toughest challenges,” said Hickenlooper. “Today we turn a new page on Colorado’s long and adversarial history on water. Colorado’s Water Plan shows us how we can move forward together to ensure we continue to enjoy sufficient supplies for our vibrant cities, productive farms and incomparable environment.”

A video accompanying release of the plan, narrated by Stulp and Kate McIntire (CWCB), declares: “Water is at the very heart of what makes Colorado the envy of the world.... But water in Colorado is under strain...” as more people “eager to share its lifestyle” come, and “...more demand for water to grow food, to irrigate lawns, to produce energy, and for household needs is producing unprecedented water challenges. And changing climate may further limit water supplies. Scientists suggest this may lead to longer and deeper drought.... What is expected to be wide variability in future precipitation could leave Colorado with a major water supply gap.... Fire in turn threatens our water supplies and damages our water quality.”

Eklund said, “This is a moment for Coloradans to be proud. For 150 years water has been a source of conflict in our state. More recently, that story is changing, and Colorado’s Water Plan – a product of literally thousands of meetings and conversations across our state – is the best evidence yet for a new way of doing our water business. We are talking to one another. We are forging relationships. Even those who may see water-related issues from very different perspectives have worked hard to understand other points of view. And that kind of understanding leads to an environment of civility that helps us cooperate in fashioning solutions.”

The planning process began with Basin Roundtable discussions in 2005, involving water providers, agricultural organizations, environmental groups, the General Assembly, local governments and the business community. Since 2013, plan drafts received more than 30,000 public comments. The completed plan represents a consensus view that Colorado must take a strategic, proactive and statewide approach to water or risk leaving decisions and actions to other interests,

⁷³December 11 Press Release at www.feinstein.senate.gov.

including the federal government and other states. The plan directly addresses water supply and use challenges and highlights necessary near-term actions, including efforts to conserve and store water, additional reuse and recycling, and providing more options to agriculture to avoid permanent “dry-up” of farm and ranch operations.

The plan includes a set of measurable objectives that help provide a sense, statewide, of progress towards achieving the goals Colorado has set for addressing its water challenges. It also sets out a framework to discuss any future project proposals to move more water between basins.

“Colorado’s Water Plan leaves no mystery as to what Colorado’s water challenges are and why we have to address them as we grow the next five million people in the state,” said Jim Pokrandt, Director, Community Affairs, Colorado River Water Conservation District and chairman of the Colorado River Basin Roundtable. “It is now up to all of us to take this information and fashion a balanced approach to meeting the water supply gap while protecting current water users on the Colorado River system, the West Slope’s recreational economy and the environment.”

“We all need to be willing to experiment, try new ideas, and even be willing to fail,” said Jim Lochhead, Denver Water CEO/Manager. “The important thing is that this is our opportunity to move the state forward to chart a path toward water security.”⁷⁴

New Mexico

In-Stream Flows

On November 18, the Audubon New Mexico conservation group announced a one-year donation of 100-acre-feet of water from the Pueblo Sandia to improve in-stream flows in the Rio Grande, to offset low flows and improve riverbank habitat.

Sandia Governor Isaac Lujan stated: “The Rio Grande is sacred to the people of Sandia Pueblo, as is the environment it provides. With ever increasing demands put on the river, Sandia offers this water as a dedication to the inherent value the river has to all people and the habitat it supports. Sandia hopes this donation can be used as an example of what can be done for the health of the river and the community when stakeholders work together.”

Audubon will manage the water for conservation purposes. The effort is part of a conservation project initiated in May 2015, when Audubon hosted a roundtable of federal, state and local agencies, experts, and stakeholders to discuss ways to restore flows to the Rio Grande, with the goal of implementing a pilot program to dedicate water to environmental uses in 2016. The Sandia donation is the first environmental use of a large volume of water not directed by state or federal agencies.

⁷⁴<http://coloradowaterplan.com/>.

Severe Weather

On December 27, New Mexico Governor Susana Martinez declared a state of emergency in response to a massive statewide snowstorm, dropping more than 16 inches of snow in some parts of the state. High winds and blowing snow made several roads impassable, particularly in the eastern half of the state, and the National Guard was activated to assist stranded motorists and respond to other emergencies.

Oklahoma

Water Conservation/Water Planning

On October 23, Governor Mary Fallin praised Oklahoma’s “Water for 2060” Advisory Council for its diligent work to develop a blueprint for drought-proofing Oklahoma. The Advisory Council’s final report includes twelve key recommendations to help achieve a state-wide goal of consuming no more freshwater in 2060 than was consumed in 2012. The Council based its recommendations on best practices in use in Oklahoma and incentive programs in place in other states. The information was supplemented with an analysis of data from the 2012 Oklahoma Comprehensive Water Plan and estimates of the cost-effectiveness of various measures for enhancing water use efficiency and the use of alternative sources of supply.

“I am pleased to receive the advisory council’s final report and recommendations for encouraging prudent water use measures across all of Oklahoma’s major water use sectors,” said Fallin. “Oklahoma is truly unique in setting such an ambitious goal for water efficiency, conservation, recycling and reuse. I look forward to reviewing the recommendations put forward to determine our next steps in ensuring that all Oklahomans have access to fresh water resources for decades to come, while at the same time promoting continued economic development and improved quality of life in our state.... I am encouraged by the advisory council’s analysis that it is indeed possible to achieve the Water for 2060 goal through increased conservation and the use of non-traditional sources to offset future growth in demand.”

The report is a product of interactive dialogue with water users and collaborative discussions to determine approaches that can effectively promote water efficiency efforts by all Oklahomans. In addition to its sector-specific recommendations, the report suggests development of public education and outreach materials, a statewide water conservation campaign, and an Oklahoma water efficiency portal to help achieve the 2060 statewide water use goal – while continuing to meet the needs of Oklahoma’s growing population and preserving economic development goals.⁷⁵

⁷⁵www.owrb.ok.gov/supply/conservation.php.

Oklahoma/Texas

Flooding

Following serious flooding events in May, the Governors of Oklahoma and Texas signed emergency declarations enabling relief efforts in their respective states. Heavy rainfall, flash floods, tornados, hail storms and strong winds wreaked havoc on homes and businesses statewide and claimed more than 20 lives. The Oklahoma State Emergency Operations Plan was activated on May 6, and the Texas State Operations Center went into elevated activation on May 4.

On May 26, Oklahoma Governor Mary Fallin issued an amended executive order declaring a state of emergency across all 77 counties, increased from the 44 counties earlier. Three of those counties were approved by Federal Emergency Management Agency (FEMA) for disaster assistance. Also on May 26, Texas Governor Greg Abbott issued his fourth Emergency Disaster Proclamation this month, bringing the total number of Texas counties listed to 46. While swollen rivers caused widespread damage, the heavy rainfall also filled lakes and reservoirs, causing some to speculate that the drought affecting much of Texas since 2011 has come to an end.

On December 27, Texas Governor Greg Abbott declared a state of disaster in four counties impacted by severe weather and on December 28, Oklahoma Governor Mary Fallin extended a state of emergency due to winter storms and flooding across the state. She also issued an executive order to allow oversized vehicles to transport storm relief materials and supplies.

Oregon

On June 27, Oregon Governor Kate Brown issued Executive Order 2015-09 directing state agencies that own or manage land or facilities to establish their baseline use of water and identify short-term actions that can curtail or end any non-essential uses of water for landscaping, encourage their employees to reduce non-essential water use inside their buildings, and work to reduce non-essential water consumption by 15% by the end of 2020. The executive order directs the Water Resources Department and Office of Emergency Management to work with other state and federal agencies, tribal and local governments, and other stakeholders to update the state's drought plan and prepare for future droughts. Governor Brown also directed agencies to reach out to the public to encourage voluntary conservation and to convey the agencies' efforts to do the same.

Utah

Water Use/Legislative Audit

On May 6th, the State of Utah Office of the Legislative Auditor General released a report entitled, "*A Performance Audit of Projections of Utah's Water Needs.*" The report was critical of the water data used to project water needs for future Utahns, and suggested that the Utah Division of Water Resources (DWR) was investigating expensive water projects, like the Bear River Project and the Lake Powell Pipeline, that may not be needed if the underlying data are not reliable.

The audit was requested by lawmakers and pushed by environmental advocacy groups that argue the projects are a waste of taxpayer money. The auditors found that the baseline data used to estimate how much water is being used by the state's population were based on water use reports provided by Utah's water districts, but that those figures were not verified or questioned, and had many inaccuracies. Utah DWR Director and WSWC member Eric Millis agreed that Utah needed a more sophisticated system that could measure water use across the state, and better methods for validating results. "Obviously we know that data that we're getting is not perfect," Millis said. "I believe that this audit gives us good opportunities to improve not only the data coming in, [but also] the processes that we use to gather, process, analyze and report that data."

Recommendations from the audit included providing authorities to Utah's water agencies to verify water use reporting, implementing universal metering, and reallocating water costs from property taxes to actual water bills that utilize conservation pricing structures. Other suggestions included more frequent updating of local water basin plans, hiring more staff at the water agencies to work on water use estimates and projections, training for local water district staff, emphasizing and including greater water conservation in future water use scenarios, and working to include better estimates of transfers between water use sectors. State lawmakers distributed the report to several subcommittees to study and make recommendations.

Water Supply Outlook

The Natural Resources Conservation Service's (NRCS) weekly water and climate update for February 26 found that abnormally dry and drought conditions existed in every western state. Exceptional drought scattered across California, Nevada, Texas, and Oklahoma, while extreme drought was found in those states and in Arizona, Idaho, Kansas, New Mexico, Oregon, Utah. Abnormally dry, moderate, and severe conditions were found throughout much of the West.

Going forward, the update predicted that drought would persist or intensify in much of the West. Drought was also expected to develop along the coasts in Oregon and Washington and in eastern North Dakota and South Dakota. However, drought conditions were expected to improve in parts of Colorado, Idaho, Kansas, Oklahoma, Texas, and Wyoming.

With respect to snowpack levels, the update found that the largest snow water equivalent (SWE) deficits (below 50% of normal) were in Washington and Oregon, as well as in much of Arizona, Nevada, and southern New Mexico, with some basins in these states reporting SWE levels in the single digits. Most of the remaining basins in the West also reported levels below 89% of normal, although some basins in Colorado, Idaho, Montana, New Mexico, and Wyoming reported levels above 90% of normal.⁷⁶

On December 24, the USDA's Water and Climate Update noted that much of the West had many mountain SNOTEL stations reporting more than 200% of average precipitation for the week

⁷⁶<http://www.wcc.nrcs.usda.gov/ftpref/support/drought/dmrpt-20150226.pdf>.

of December 17-23, with significantly-above-average snowpack in Nevada, Idaho, California, Oregon and Washington. A few stations in Montana, Wyoming, Utah, Colorado, Arizona and New Mexico were reporting near to below average precipitation. Most of the precipitation fell along the California and Oregon coast, and over the Cascades and Sierra Nevada. While long-term severe drought conditions continue, most drought designations were expected to improve in the coming months.

National Oceanic and Atmospheric Administration

National Water Center

On May 26, the NOAA and its federal partners opened the National Water Center at the University of Alabama. The new facility is a collaborative operations center for agencies and academics to develop predictive science in weather forecasting, extreme hydrologic events (droughts/floods), hazard mitigation, and the protection and restoration of finite water resources. The National Water Center will serve as a research clearinghouse to improve data for water management decisions. In summer, the University of Alabama and federal agencies will begin work on a “new high resolution, near real-time hydrologic simulation and forecasting model.”

“As America’s environmental intelligence agency, NOAA is committed to transforming our observations into actionable information that enable people to make smart decisions. By bringing academia, managers, industry, forecasters and scientists together, we’ll be able to better understand real-world needs and support the growing demand for water related information,” said NOAA Administrator Kathryn Sullivan.⁷⁷

Weather Forecasting/Data

On July 14, the House Committee on Science, Space, and Technology, Subcommittee on Environment, held a hearing on Advancing Commercial Weather Data: Collaborative Efforts to Improve Forecasts, Part II, following a May hearing on the same topic. Chairman Jim Bridenstine (R-OK), noted that the purpose of the hearings was to understand how the NOAA uses weather data to enhance their forecasting ability, how and where they get the necessary data, and how their processes can be improved. He stated that our current satellite infrastructure is fragile, and a gap in satellite data remains a very real threat. “This underscores the need to augment our space-based observing systems by incorporating alternative modes of data collection,” Bridenstine said, including purchasing commercial weather data from private satellite sources.

Chairman Lamar Smith (R-TX), expressed concern about the present limitations of severe weather forecasting, noting that we depend heavily on the accuracy and timeliness of those forecasts to protect lives and property. Large satellite programs that provide forecast data are at risk of not meeting crucial schedule commitments, potentially delaying satellite launches. Smith referred to the

⁷⁷http://www.noaanews.noaa.gov/stories2012/20120221_nwc.html.

Weather Research and Forecasting Innovation Act (H.R. 1561) passed in May, which prioritizes weather research at NOAA's research facilities. The bill prompts NOAA to acquire commercial data and seek private sector weather solutions.

NOAA Deputy Administrator Manson Brown testified on two key points when evaluating potential commercial supplier models: (1) the value of the "free and open" data policy in the U.S. and current global data sharing arrangements; and (2) the need for pre-purchase demonstration of data quality, sufficiency and reliability. NOAA's weather research is aided by data from radars, aircraft, radiosondes, oceanic buoys and satellites, which show complex ocean-atmosphere interactions that drive the one-to-seven day forecasts. An accurate forecast three or more days in advance requires measurements by satellites and in situ sensors across the globe.

The World Meteorological Organization's (WMO) Resolution 40 ensures free and open access to weather data worldwide, and NOAA's ability to monitor global weather and environmental phenomena that affect the U.S. also depends on near-real-time access to trustworthy weather data from other nations. In turn, the U.S. is required to provide essential weather data, sourced with tax-payer dollars, freely and without restriction as a public good. NOAA supports a free and open data policy. With the reciprocity of global sharing, NOAA receives three times more meteorological data than it provides to the international community.

By NOAA's assessment, no commercial entity can replace the benefits of the international government satellite systems. NOAA spends at least \$20 million annually to purchase commercial data, but that data must be validated as accurate and reliable. Before any policy changes are enacted regarding reliance on commercial data sources, it is essential that NOAA obtain high assurances about the quality of the data to meet international data sharing requirements.

Bridenstine shared his concerns about the free and open data policy, stating that "it could prevent markets from forming, thwart innovation, reduce the quantity of data available, perpetuate the existing government monopoly and cause costs to balloon." He believes the policy could negatively affect our ability to accurately and timely predict weather events. Bridenstine noted that NOAA contracts with some private entities where they are prohibited from giving data away for free, and that our international obligations may be more nuanced than the current interpretation. Brown pointed out that there are very specific exceptions regarding non-sharing of limited types of data in the WMO Resolution 40 that allows NOAA to enter into those agreements.

RESOLUTIONS AND POLICY POSITIONS

From time to time, the WSWC 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. All WSWC positions are also vetted through the WGA.

In 2015, the WSWC adopted the following positions:

Position No. 378 focuses on the energy-water nexus stating: “continuing water and energy nexus research and development is needed to further our understanding and evaluate the effectiveness of different policies and programs given various future scenarios.”

Position No. 379 supports state and federal applied research and hydroclimate data collection programs that would assist water agencies at all levels of government in adapting to climate variability and change.

Position No. 380 opposes any and all efforts that would establish a federal ownership interest in groundwater not otherwise recognized or allowed under state law, or diminish the primary and exclusive authority of States over groundwater, and declares that federal agencies should work cooperatively with appropriate state agencies and officials to address federal needs involving groundwater through state laws and authorities.

The WSWC revised and readopted the following sunseting positions:

Position No. 381 strongly supports Administrative and Congressional action to expedite construction of authorized rural water supply projects in a timely manner, including projects that meet tribal trust and other federal responsibilities – recognizing and continuing to defer to the primacy of western water laws and tribal settlements in allocating water among users.

Position No. 382 supports the use by a state of available authorities to protect the water quality of the receiving water body in a water transfer, and generally supports EPA’s determination that water transfers, without the addition of a pollutant, do not require a NPDES permit.

Position No. 383, the WSWC “Vision on Water” was re-adopted during the July meeting in Lake Tahoe, Nevada without any changes, but was under review and changes were made at the October WSWC meeting.

Position No. 384, is the revised and adopted Vision statement, which focuses on ensuring that the West has an adequate, secure and sustainable supply of water of suitable quality to meet its diverse economic and environmental needs now and in the future.

Position No. 385 urges the Administration and the Congress to give a high priority to the allocation and appropriation of sufficient funds for a number of federal water and climate data collection and analysis 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 decisionmakers and stakeholders, with significantly adverse consequences.

Position No. 386 urges the Administration and the Congress to support federal drought preparedness, prediction and early warning programs including, but not limited to NIDIS, under the NOAA, and other programs designed to improve our forecasting and response capabilities.

Position No. 387 urges and encourages the Administration and the Congress to permanently authorize Title I activities under the Reclamation States Emergency Drought Relief Act, and provide for adequate appropriations to meet priority needs and continue the Reclamation Drought Response Program.

Position No. 388 urges the Corps to recognize the legal right of the States to the development, use, control, distribution and allocation of the States' surface waters and that any policy of the Corps to require storage contracts to access natural flows within a reservoir boundary would be a violation of States' rights.



**POSITION
of the
WESTERN STATES WATER COUNCIL
regarding
Integrating Water and Energy Planning and Policy
Tulsa, Oklahoma
April 17, 2015**

WHEREAS, the West enjoys diverse and abundant energy resources, including renewable and non-renewable resources, but water is scarce in much of the region and may or may not be sufficient for all proposed uses; and

WHEREAS, power plant cooling and other energy resource development and related water requirements can be significant on state, local and westwide scales; and

WHEREAS, the West is a leader in the planning, development, diversification, management and protection of the Nation's water and energy resources; and

WHEREAS, in the West, maintaining adequate and sustainable supplies of clean water and energy present interrelated challenges given a growing population, increasing water and energy demands, and an uncertain climate subject to multi-year drought and other extremes; and

WHEREAS, an integrated approach to water and energy resource planning, development, diversification, management and protection is necessary to achieve a thriving and sustainable future for the West; and

WHEREAS, effectively planning for the future requires gathering and integrating data and information on past, present and future water and energy supplies and demands, including embedded demands by different sectors/uses and users; and

WHEREAS, in general, current water use data (especially consumptive water use data) are not sufficient for detailed and comprehensive analyses to support many water/energy decisions and policymakers' needs; and

WHEREAS, the Western Governors' Association (WGA), Western States Water Council (WSWC), Department of Energy (DOE), Sandia National Laboratories (and other DOE laboratories), Western Interstate Energy Board (WIEB), Western Electric Coordinating Council (WECC), Electric Reliability Council of Texas (ERCOT) and others have worked collaboratively to develop a better understanding of water and energy supplies and demands; and

WHEREAS, public-private partnerships are increasingly important in addressing our future water and energy challenges; and

WHEREAS, there is a continuing need for federal and state water and energy resource agencies, public utility commissions, and other planners, regulators and policymakers to better define and consider the nexus between water and energy resources in their respective areas of jurisdiction; and

WHEREAS, continuing water and energy nexus research and development is needed to further our understanding and evaluate the effectiveness of different policies and programs given various future scenarios.

NOW THEREFORE BE IT RESOLVED, that western water and energy planners, policymakers, managers and regulators should consider the following:

- (1) integrating water and energy policies and engaging water and energy planners to maximize program and project effectiveness and efficiencies;
- (2) supporting new and continuing data gathering, analyses and research related to better understanding water and energy supplies and demands, and related science;
- (3) promoting integrated water and energy conservation and use efficiency;
- (4) seeking to minimize economic, environmental and other costs of providing adequate, reliable and sustainable supplies of water and energy;
- (5) expanding public education, engagement and outreach to highlight the importance, vulnerability and interrelated nature of our water and energy resources;
- (6) ensuring decisions related to the siting, construction and operation of water and energy development projects include an evaluation and appropriate consideration of the interrelated impacts of such development;
- (7) tailoring the use of alternative cooling technologies and other energy-related options to the availability of water, and the related opportunity costs related to other water uses;
- (8) seeking to develop a diversified portfolio of water and energy resources and assets to maximize reliability and flexibility;
- (9) taking advantage of synergies and economies of scale related to integrating water and energy conservation, development and protection programs and projects;
- (10) evaluating and integrating life-cycle costs related to water and energy supply development, conveyance and transmission;
- (11) integrating short and long-range water and energy supply planning;
- (12) promoting the development and use of “smart” technologies for management of water and energy demands and production; and
- (13) ensuring that the West maintains sustainable, reliable and robust infrastructure systems necessary to deliver adequate supplies of clean water and energy to meet present and future needs.



**RESOLUTION
of the
WESTERN STATES WATER COUNCIL
SUPPORTING FEDERAL RESEARCH ON
CLIMATE ADAPTATION**

**Tulsa, Oklahoma
April 17, 2015**

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

WHEREAS, much of the West's water infrastructure was designed and constructed prior to our current understanding of climate variability and change, often from short hydrologic records from the first half of the 20th century;

WHEREAS, impacts of climate variability and change can include increased frequency and intensity of severe weather (droughts and floods), reduction of mountain snowpacks, changes in timing and amount of snowmelt runoff, and changes in plant and crop evapotranspiration resulting in changed water demand patterns; and

WHEREAS, climate variability and change are additional stressors 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 climate variability and change; and

WHEREAS, the Council has over the years co-sponsored several workshops to gather input on climate adaptation and research needs, including research on extreme events; and

WHEREAS, these workshops and various federal reports have helped in 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 include subjects such as evaluation of modifications to reservoir flood control rule curves, evaluation of the adequacy of existing federal hydroclimate monitoring networks, improvements to extreme precipitation observing networks and forecasting capabilities, development and improvement of applications for remote sensing data (satellite imagery), preparation of reconstructed paleoclimate datasets for drought analyses, and development of new guidelines for estimation of flood flow frequencies; and

NOW, THEREFORE, BE IT RESOLVED that the Western States Water Council supports state and federal applied research and hydroclimate data collection programs that would assist water agencies at all levels of government in adapting to climate variability and change.



**POSITION
of the
WESTERN STATES WATER COUNCIL
on
STATE PRIMACY OVER GROUNDWATER
Tulsa, Oklahoma
April 17, 2015**

WHEREAS, groundwater is a critically important natural resource that is vital to the economy and environment of the arid West;

WHEREAS, the Desert Land Act of 1877 and the United States Supreme Court in *California Oregon Power Co. v. Beaver Portland Cement Co.*, 295 U.S. 142 (1935) recognize States have exclusive authority over the allocation and administration of rights to the use of the groundwater within their borders and States and their political subdivisions are primarily responsible for the protection, control and management of the resource;

WHEREAS, the Congress has created and the U.S. Supreme Court has recognized federal reserved rights to surface water, but no federal statute has addressed nor federal appeals court explicitly recognized any federal property or other rights related to groundwater; and

WHEREAS, the regulatory reach of federal statutes and regulations, including but not limited to the Clean Water Act, Endangered Species Act, Multiple-Use Sustained-Yield Act, National Environmental Policy Act, Organic Administration Act (USFS), Reclamation Act of 1902, Safe Drinking Water Act, Wild and Scenic Rivers Act, Wilderness Act and the Comprehensive Environmental Response, Compensation, and Liability Act, were never intended to infringe upon state ownership or control over groundwater; and

WHEREAS, States recognize the importance of effective groundwater management and are in the best position to protect groundwater quality and allow for the orderly and rational allocation and administration of the resource through state laws and regulations that are specific to their individual circumstances; and

WHEREAS, working cooperatively with their federal partners, states have shown that they have the ability and authority to address federal needs regarding groundwater within existing legal frameworks, including but not limited to memoranda of understanding, water rights compacts, stipulations, and other methods; and

WHEREAS, the conditions affecting groundwater supplies, demands, and impairments vary considerably across the West and within individual states; and

WHEREAS, federal efforts to exert control over or ownership interests related to groundwater or otherwise infringe upon or supersede state groundwater management are contrary to federal law and threaten effective groundwater management and protection; and

WHEREAS, nothing stated in this position is intended to apply to the interpretation or application of any interstate compact.

NOW THEREFORE BE IT RESOLVED, states have exclusive authority over the allocation and administration of rights to the use of the groundwater located within their borders and are primarily responsible for allocating, protecting, managing and otherwise controlling the resource; and

BE IT FURTHER RESOLVED, that the Western States Water Council opposes any and all efforts that would establish a federal ownership interest in groundwater not otherwise recognized or allowed under state law, or diminish the primary and exclusive authority of States over groundwater; and

BE IT FURTHER RESOLVED, that federal agencies should work cooperatively with appropriate state agencies and officials to address federal needs involving groundwater through state laws and authorities.



Position No. 381
Revised and Readopted
(formerly Position No. 343, June 8, 2012)

RESOLUTION
of the
WESTERN STATES WATER COUNCIL
regarding the
RURAL WATER SUPPLY PROJECT/INFRASTRUCTURE NEEDS
Stateline, Nevada
July 10, 2015

WHEREAS, in the West, water is indeed our “life blood,” a vital and scarce resource the availability of which has and continues to circumscribe growth, development, our economic and environmental well-being and quality of life; and

WHEREAS, across the West, rural and tribal communities are experiencing water supply shortages due to drought, declining streamflows and groundwater supplies, and inadequate infrastructure, with some communities hauling water over substantial distances to satisfy their potable water needs; and

WHEREAS, often water supplies that are available to these communities are of poor quality and may be impaired by naturally occurring and man-made contaminants, including arsenic and carcinogens, which impact communities’ health and their ability to comply with increasingly stringent federal water quality and drinking water mandates; and

WHEREAS, at the same time, many rural and tribal communities in the West are suffering from significant levels of unemployment and simply lack the financial capacity and expertise to finance and construct needed drinking water system improvements; and

WHEREAS, there are eight authorized and active rural water projects located in Montana, New Mexico, North Dakota, and South Dakota that have yet be completed at an estimated cost of around \$2.6 billion - while costs continue to increase due to delays, inflation and the rising costs of materials and labor - and at current levels of funding could completion of some project could be delayed beyond 2063; and

WHEREAS, there is a Federal responsibility to complete authorized rural water projects, particularly those intended to fulfill in part a solemn Federal promise and trust responsibility to compensate States and Tribes for lost resources as a result of the construction of Federal flood control projects and other actions; and

WHEREAS, recognizing Federal budget constraints, a modest increase in Federal expenditures would expedite completion of authorized projects and in the long run save taxpayer money while inadequate funding levels and untimely appropriations only increase delays and Federal costs and perpetuates rural and tribal communities' hardships; and

WHEREAS, authorizing the increased use of Reclamation Fund revenues to expedite completion of these projects fulfills both financial and moral obligations that some beneficiaries have waited decades to see honored; and

WHEREAS, the Congress enacted the Rural Water Supply Act of 2006 (P. L. 109-451) and established the Bureau of Reclamation's Rural Water Supply Program authorizing the agency to work with rural communities, states and tribes, to assess potable water supply needs and identify options to address those needs through appraisal investigations and feasibility studies; and

WHEREAS, federal expenditures for rural water projects actually generate significant returns on the investment through increased national and local economic benefits, as well as improvements in quality of life; and

WHEREAS, Reclamation Fund receipts are largely derived from water and power sales, project repayments, and receipts from public land sales and leases, as well as oil and mineral-leasing and related royalties, from western lands adjacent to rural and tribal communities; and

WHEREAS, western States are committed to continuing to work cooperatively with the Department of Interior and Bureau of Reclamation to meet our present rural water needs in the West for present and future generations, within the framework of state water law, as envisioned in Reclamation Act of 1902; and

WHEREAS, under the Reclamation Act of 1902, the Reclamation Fund was envisioned as the principle means for financing federal western water and power projects with revenues from western resources – but these receipts are only available for expenditure pursuant to annual appropriation acts; and

WHEREAS, with growing receipts – in part due to energy development and high energy prices across the rural West – and declining federal appropriations for Reclamation Act purposes, the unobligated balance grows larger and larger (and is expected to soon exceed \$16 billion), while the money is actually spent elsewhere for other federal purposes contrary to the Congress' original intent; and

WHEREAS, the WSWC has a long-standing policy in support of using receipts accruing to the Reclamation Fund for authorized projects, including rural and tribal water supply projects;

NOW THEREFORE BE IT RESOLVED, that the Western States Water Council strongly supports Administrative and Congressional action to expedite construction of authorized rural watersupply projects in a timely manner, including projects that meet tribal trust and other federal responsibilities -- recognizing and continuing to defer to the primacy of western water laws and tribal settlements in allocating water among users.

BE IT FURTHER RESOLVED, that the Council recommend that the Administration and the Congress investigate the advantages of converting the Reclamation Fund from a special account to a true revolving trust fund with annual receipts to be appropriated for authorized purposes in the year following their deposit (similar to some other federal authorities and trust accounts).



Position No. 382

(See also No. 342, revised and reaffirmed June 8, 2012)

(See also No. 316, revised and reaffirmed July 17, 2009)

(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
Stateline, Nevada
July 10, 2015
(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 122.3(i)) 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

(See also No. 342, revised and reaffirmed June 8, 2012)

(See also No. 316, revised and reaffirmed July 17, 2009)

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

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;

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

WHEREAS, the United States Court of Appeals in the case of *Friends of the Everglades v. South Florida Water Management Dist.*, 570 F.3d 1210 (11th Cir. 2009), upheld EPA's Water Transfer Rule holding it to be a reasonable construction of the Clean Water Act and therefore entitled to deference by the Federal Courts, and on which decision the United States Supreme Court subsequently denied a Petition for Writ of Certiorari;

NOW, THEREFORE, BE IT RESOLVED that the Western States Water Council generally supports EPA's amendment to its Clean Water Act regulations as codified in 40 CFR 122.3(i).

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. 383
Readopted
(formerly Position No. 344, June 8, 2012)

A VISION ON WATER

Adopted by the

Western States Water Council

July 10, 2015

Our Present Condition

Water in the West is an increasingly scarce and precious resource, given population growth and an expanding range of often competing economic and ecological demands, as well as changing social values. Surface and ground water supplies in many areas are stressed, resulting in a growing number of conflicts among users and uses. A secure and sustainable future is increasingly uncertain given our climate, aging and often inadequate water infrastructure, limited knowledge regarding available supplies and existing and future needs and uses, and competing and sometimes un-defined or ill-defined water rights. Effectively addressing these challenges will require a collaborative, cooperative effort among states and stakeholders that transcends political and geographic boundaries.

Our Vision

- State primacy is fundamental to a sustainable water future. Water planning, policy, development, protection, and management must recognize, defer to, and support state laws, plans, and processes. The federal government should streamline regulatory burdens and support implementation of state water plans and state water management.
- Given the importance of the resource to our public health, economy, food security, and environment, water must be given a high public policy priority at all levels.
- An integrated and collaborative approach to water resources management is critical to the environmentally sound and efficient use of our water resources. States, tribes, and local communities should work together to resolve water issues. A grassroots approach should be utilized in identifying problems and developing optimal solutions.
- Any approach to water resource management and development should accommodate sustainable economic growth, which is enhanced by the protection and restoration of significant aquatic ecosystems, and will promote economic and environmental security and quality of life.
- There must be cooperation among stakeholders at all levels and agencies of government that recognizes and respects national, regional, state, local and tribal differences in values related to water resources and that supports decision-making at the lowest practicable level.



Western States Water Council

A VISION ON WATER

Position No. 384 adopted on October 9, 2015

Our Mission

To ensure that the West has an adequate, secure and sustainable supply of water of suitable quality to meet its diverse economic and environmental needs now and in the future.

Our Present Condition

Water in the West is an increasingly scarce and precious resource. Population growth, competing economic and ecological demands, and changing social values have left surface and ground water supplies stressed in many areas. This has increased the number and complexity of conflicts among users and uses. A secure water future is becoming more costly and increasingly uncertain given our unpredictable climate, aging and often inadequate infrastructure, data limitations regarding water supplies and demands, competing or poorly defined water rights, and a constantly evolving regulatory landscape. Effectively addressing these challenges will require stronger collaboration and cooperation that transcends political and geographic boundaries between states, federal agencies, tribes, and local communities.

Our Principles

- Water must be elevated to a higher public policy priority given the importance of the resource to our public health, economy, food security, environment, and western way of life. We must cultivate a western water conservation ethic through greater understanding of, and appreciation for, water's value.
- State primacy is fundamental to a sustainable water future. Federal water planning, policy development, regulation, protection, and management must recognize, defer to, and support state water laws, plans, policies, programs, water rights administration, adjudication and regulation, compacts and settlements. Rather than attempt to dictate water policy, the federal government should engage states early in meaningful consultation and contribute its fair share of funding to support implementation of state water planning and management, thus avoiding, or at least minimizing, the need for federal regulatory mandates.
- An integrated, collaborative, and grassroots approach to water resources management is critical to the environmentally sound and efficient use of our water resources. States, federal agencies, tribes, and local communities should work together to identify water problems and develop optimal solutions at the lowest appropriate level. Striving for cooperation rather than litigation, we must recognize and respect national, state, regional, local and tribal differences in values related to water resources.

- Sustainable water resource management and development should yield long term economic growth, enhanced protection and restoration of significant aquatic ecosystems, and improved economic and environmental security and quality of life.
- A secure and sustainable water future will be determined by our ability to maintain, replace, expand and make the most efficient use of critical water infrastructure. We must preserve and improve existing infrastructure, as well as encourage and support innovative water supply strategies and new storage options to better balance supplies with demands.
- All levels of government must prioritize the collection, analysis and open sharing of reliable data regarding water availability, quality, and usage given its importance to research for sound science and data driven decision making.



Position No. 385
(See also No. 345, 320, 284, 256, and 235)
Adopted as revised October 9, 2015

**POSITION
of the
WESTERN STATES WATER COUNCIL
regarding
FEDERAL WATER AND CLIMATE DATA COLLECTION AND ANALYSIS
PROGRAMS
Manhattan, Kansas
October 9, 2015**

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 and sound decision-making demands accurate and timely data on precipitation, temperature, evapotranspiration, soil moisture, snow depth, snow water content, streamflow, groundwater, water quality and similar information; and

WHEREAS, the demands for water and related climate data continue to increase, 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 other climate-related events; (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 (USGS) Cooperative Streamgaging Program and National Streamflow Information Program (NSIP), which are funded through the Department of Interior; (4) Landsat thermal data, archived and distributed by the USGS, and other remotely-sensed data acquired through the National Atmospheric and Space Administration (NASA) and its water-related missions; (5) USGS ground water measurement and

monitoring; (6) the National Oceanic and Atmospheric Administration's (NOAA) National Weather Service and Climate Programs Office; and (7) the Environmental Protection Agency's National Environmental Information Exchange Network (NEIEN); and

WHEREAS, state-of-the-art technology has been developed to provide real or near real-time data in formats that can be shared and used by different computer programs 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, the lack of capital investments in water data programs has led to the discontinuance, disrepair, or obsolescence of vital equipment needed to maintain existing water resources related data gathering activities; and

WHEREAS, there is a serious need for adequate and consistent federal funding to maintain, restore, modernize, and upgrade federal water, weather and climate observation programs, not only to avoid the loss or further erosion of critical information and data, but also to address new emerging needs, 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 decisionmakers and stakeholders, with significantly adverse consequences.



Position No. 386

Readopted

(formerly Position No. 346, October 12, 2012)

**POSITION
of the
WESTERN STATES WATER COUNCIL
regarding
DROUGHT PREPAREDNESS, PREDICTION AND EARLY WARNING PROGRAMS
Manhattan, Kansas
October 9, 2015**

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 western states have a long history of promoting drought preparedness, planning and response programs, in cooperation with federal agencies; and

WHEREAS, in the West, water is often scarce even in “wet” years and drought is a recurring threat to our environment, economy and way of life – affecting not only the West, but also the Nation; and

WHEREAS, three of the top five national natural disasters, in terms of economic losses, have been droughts, and the current exceptional drought in California and extreme to severe conditions along the West Coast and elsewhere highlight the need for greater attention to developing more comprehensive and coordinated drought prediction, preparedness, planning and response programs at all levels; and

WHEREAS, the Western Governors’ Association has taken a lead role in identifying needs and best management practices through an ongoing series of forums, webinars and reports; and

WHEREAS, there is a need for maintaining and improving existing monitoring networks that help provide drought early warning signals, as well as for tracking the impacts of drought; and

WHEREAS, there is a continuing need for developing new monitoring technologies, such as remote sensing, that provide more timely data on water availability and better spatial coverage for assessing drought impacts; and

WHEREAS, early drought warning systems facilitate early drought assessment and mitigation efforts to minimize drought impacts; and

Position No. 386
Readopted
(formerly Position No. 346, October 12, 2012)

WHEREAS, there is a need for continuing federal research to develop new predictive capability for precipitation at intraseasonal to interannual time scales – such as research on the influence of other ocean-atmosphere interactions on the El Niño-Southern Oscillation (ENSO), the only factor now providing some limited understanding of precipitation and temperature prediction; and

WHEREAS, there is a continuing need for a permanent federal role in coordination of research programs related to drought early warning and prediction;

NOW THEREFORE BE IT RESOLVED, that the Western States Water Council urge the Administration and the Congress to support federal programs including but not limited to the National Integrated Drought Information System (NIDIS), under the National Oceanic and Atmospheric Administration (NOAA), and other programs designed to improve our forecasting and response capabilities.



Position No. 387

Readopted

(formerly Position No. 347, October 12, 2012)

**POSITION
of the
WESTERN STATES WATER COUNCIL
regarding
BUREAU OF RECLAMATION DROUGHT RESPONSE PROGRAM
Manhattan, Kansas
October 9, 2015**

WHEREAS, the Western States Water Council is a policy advisory body representing eighteen states and since its inception, the Council has been actively involved in national drought preparedness, planning and response, as well as related policy and program development and implementation; and

WHEREAS, in the West, water is often scarce even in “wet” years and drought is a recurring threat to our environment, economy and way of life - affecting not only the West, but also the Nation; and

WHEREAS, three of the top five national natural disasters, in terms of economic losses, have been droughts, and the current exceptional drought in California and extreme to severe conditions along the West Coast and elsewhere highlight the need for greater attention to developing more comprehensive and coordinated drought prediction, preparedness, planning and response programs at all levels; and

WHEREAS, the Western Governors’ Association has taken a lead role in identifying needs and best management practices through an ongoing series of forums, webinars and reports; and

WHEREAS, the Reclamation States Emergency Drought Relief Act of 1991 (43 U.S.C. 2214(c)) and subsequent reauthorizations, under Title I, provide only temporary authority for some critical Reclamation actions; and

WHEREAS, Reclamation’s current Drought Response Program supports a proactive approach to drought and provides financial assistance to water managers and users to: (1) develop drought contingency plans; (2) implement drought resiliency projects to build the capacity of communities to mitigate and respond to drought – increasing the reliability of water supplies, improving water management and operational flexibility, facilitate voluntary sales, transfers or exchanges of water, and provide benefits for fish and wildlife and the environment; and (3) undertake emergency actions to minimize losses due to drought through temporary construction activities and other activities, including water purchases and the use of Reclamation facilities to convey and store water; and

Position No. 387
Readopted
(formerly Position No. 347, October 12, 2012)

WHEREAS, there is a continuing need for making permanent the temporary authority allowing Reclamation the flexibility to continue delivering water to meet authorized project purposes, meet environmental requirements, respect state water rights, work with all stakeholders, and provide leadership, innovation, and assistance; and

NOW THEREFORE BE IT RESOLVED, that the Western States Water Council strongly supports legislation to permanently authorize Title I activities under the Reclamation States Emergency Drought Relief Act, and provide for adequate appropriations to meet priority needs and continue the Reclamation Drought Response Program.

BE IT FURTHER RESOLVED that the Council urge and encourage the Administration and the Congress to assess and consider the need for a comprehensive national drought preparedness and response program on par with federal efforts to address other natural disasters such as hurricanes, tornadoes and similar extreme events.



Position No. 388
Readopted
(formerly Position No. 348, October 12, 2012)

**POSITION
of the
WESTERN STATES WATER COUNCIL
regarding
STATES' WATER RIGHTS AND NATURAL FLOWS
Manhattan, Kansas
October 9, 2015**

WHEREAS, the Western States Water Council strongly supports preservation of the States' inherent right to develop, use, control, and distribute water; and

WHEREAS, States have exclusive authority over the allocation and administration of rights to the use of surface water located within their borders and are primarily responsible for protecting, managing and otherwise controlling the resource; and

WHEREAS, States are in the best position to protect and allow for the orderly and rational allocation and administration of the resource through state laws and regulations that are specific to their individual circumstances; and

WHEREAS, the Flood Control Act of 1944 specifically declared the policy of Congress to recognize the interests and rights of the Missouri River Basin States in determining the development of the watersheds within their borders and likewise their interests and rights in water use and control, and to preserve and protect to the fullest extent established and potential uses of the rivers' natural flows, those flows being the natural flows that would pass through the states in the absence of the U.S. Army Corps of Engineers dams; and

WHEREAS, the federal government has long recognized the right to use water as determined under the laws of the various states; and

WHEREAS, the various states have the authority and duty to manage permitting of stored water to supplement natural flows; and

WHEREAS, federal agencies in the western states, such as the Bureau of Reclamation, generally recognize western water laws and natural flows through reservoir operations, with releases from storage that supplement natural flows, and water service contracts that supplement natural flow; and

Position No. 388
Readopted
(formerly Position No. 348, October 12, 2012)

WHEREAS, representatives of the U.S. Army Corps of Engineers have indicated that all waters entering its Missouri River mainstem reservoirs are stored waters to be allocated and controlled by the U.S. Army Corps of Engineers without recognition of the States' rights to natural flows being separate from the captured floodwaters stored within those reservoirs.

NOW, THEREFORE, BE IT RESOLVED, that the Western States Water Council urge the Army Corps of Engineers to recognize the legal right of the States to the development, use, control, distribution and allocation of the States' surface waters.

BE IT FURTHER RESOLVED, that any policy of the U.S. Army Corps of Engineers to require storage contracts to access natural flows within a reservoir boundary would be a violation of the States' rights to develop, use, control, and distribute surface water.

BE IT FURTHER RESOLVED, that the Western States Water Council opposes any and all efforts that would diminish the primary and exclusive authority of States over the allocation of surface water.

*Nebraska abstained from voting on the position in October 2012.

RULES OF ORGANIZATION

Preamble

The Western States Water Council is a government entity, an instrumentality of each and every participating state, established to fulfill a number of governmental purposes on behalf of those states, including advising the governors on planning, conservation, development, management and protection of their water resources. As outlined herein, Council membership is comprised of States with member representatives appointed by the Governors of each participating State. The activities of the Council are subject to the control and supervision of the Governors of member States through their appointed representatives. The Council is funded by dues from member States, set by an Executive Committee, which also controls expenditures.

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, in order to ensure that the West has an adequate, sustainable supply of water of suitable quality to meet its diverse economic and environmental needs now and in the future.

Article III - Interstate Water Transfer 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, and advise Council member states and governors as appropriate.
- (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.
- (6) Encourage collaboration among federal, state, tribal and local governments, public and private water resources associations and water-related non-governmental organizations.

Article V - State Membership and Member State Representatives

- (1) The Council shall consist 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. 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. The Executive Committee may also confer Associate Member status on states as described in section (4) below. Any state may withdraw from membership upon written notice by its Governor.
- (2) Member state Governors may appoint not more than three member state representatives to the Council, but may name any number of standing alternate representatives.
- (3) Member state representatives (members) and alternate representatives (alternates) so appointed may designate other individuals to represent them and participate in Council meetings and other activities provided that such designations are made in writing prior to the event by letter or email.

(4) Associate Membership may be granted for a period of up to three years, during which time a state's appointed representatives may participate as observers in Council activities and receive all information disbursed by the Council. However, Associate Member states shall have no vote in Council matters.

(5) If any state fails to pay the appropriate level of dues established by the Executive Committee of the Council, the privileges afforded by virtue of its membership to participate in Council activities and to receive all information dispersed by the Council may 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 the annual regular summer meeting to be held 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 scheduled regular 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 in writing by letter or email an alternate to temporarily act on his/her behalf in his/her absence.

(2) The Executive Committee shall determine whether or not States are eligible for participation as members or associate members of the Council.

(3) The Executive Committee of the Council shall set annual dues for Council participation and may, by unanimous vote, confer the status of Associate Member of the Council upon states it deems

eligible. 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, authorize and establish fees for participation in Council activities by non-member states and non-member state representatives (non-members).

(4) The Executive Committee shall annually adopt a budget and oversee all Council expenditures and activities.

(5) The Executive Committee may establish other committees, subcommittees and work groups which shall have such authority as may be conferred upon them by action of the Council.

Article X - Voting and Policy Development

(1) Each state shall have one vote. Since state delegations consist of more than one person, but each state has only one vote, the Executive Committee member for each state shall be responsible as an internal state matter for coordinating and communicating the official position of the state relative to voting on proposed policy positions. An email message is sufficient to meet this requirement. Whenever a person who is not a Council representative is attending on behalf of a Council representative at a regular or special meeting, either in person or via conference call, a written notification to this effect must be provided to the Council offices to assure that the person is serving in the appropriate capacity.

(2) A quorum shall consist of a majority of the member states (excluding associate member states).

(3) No recommendation may be issued or position taken by the Council except by an affirmative vote of at least two-thirds of all member states, with the exception of the following:

(a) Recommendations and external policy positions concerning out-of-basin interstate transfers require a unanimous vote of all member states; and

(b) Action may be taken by a majority vote of all member states on all internal administrative matters.

(4) 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 regular meeting of the Council. Further delays in voting on such matters may be obtained only by majority vote.

(5) The Council shall consider external policy positions for adoption at its three regular meetings held each year. No external policy matter may be brought before the Council for a vote unless advance notice of such matter has been mailed or emailed to each member of the Council at least 30 days prior to one of the Council's regular meetings.

(6) At the discretion of the Chair, in those instances where circumstances warrant consideration of an external policy position outside of the regular meetings, the Executive Committee may adopt positions at special meetings (including by conference call) provided that proposed positions are mailed or emailed to each member of the Executive Committee at least 10 days prior to the special meeting or conference call.

(7) Any proposed external policy positions can be added to the agenda of a regular or special meeting by unanimous consent of those states represented at the meeting provided that a quorum exists.

Article XI - Policy Coordination and Deactivation

With regard to external positions adopted at special meetings or added to the agenda of a 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 WGA Executive Director, 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 the Chair, 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 - Dissolution

In the event of the dissolution of the Council, to the extent practical the assets of the Council shall be liquidated in a timely manner and evenly divided among those member states in good standing, at the time of the dissolution.

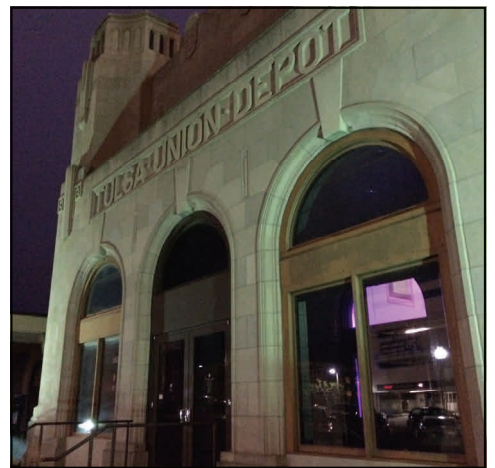
Article XVI - Amendment

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.

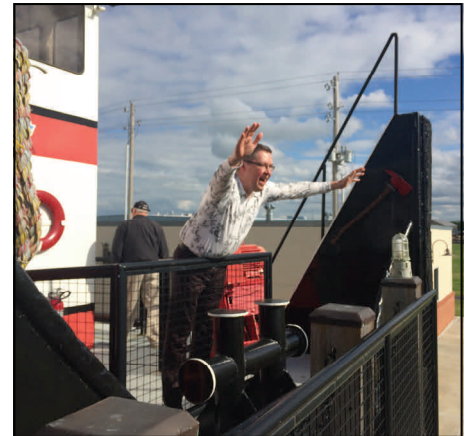
Glossary of Acronyms

BIA	Bureau of Indian Affairs
BLM	Bureau of Land Management
BOR	Bureau of Reclamation (also known as “Reclamation”)
Corps	U.S. Army Corps of Engineers
CWA	Clean Water Act
DOI	Department of the Interior (also known as “Interior”)
EPA	Environmental Protection Agency
EPW	Senate Environment and Public Works Committee
ESA	Endangered Species Act
FWS	Fish and Wildlife Service
NARF	Native American Rights Fund
NASA	National Aeronautics and Space Administration
NIDIS	National Integrated Drought Information System
NOAA	National Oceanic and Atmospheric Administration
NPDES	National Pollutant Discharge Elimination System
NPS	National Park Service
OMB	Office of Management and Budget
TAS	Treatment as States
TMDL	Total Maximum Daily Load
USDA	U.S. Department of Agriculture

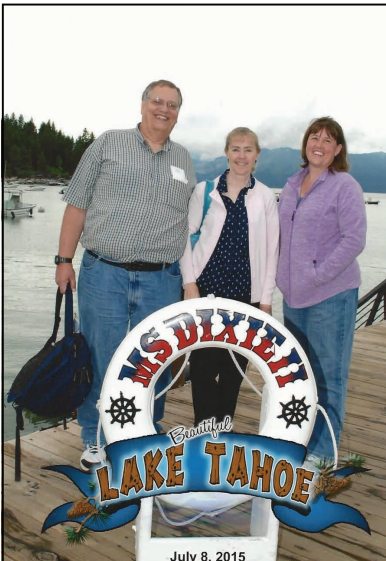
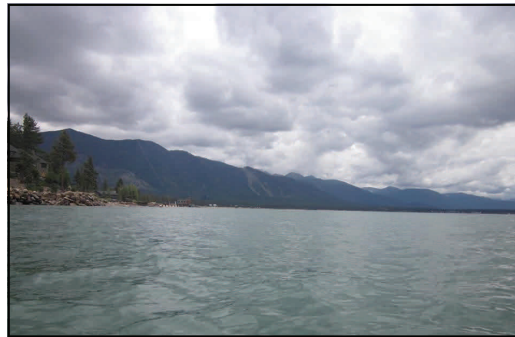
USFS	U.S. Forest Service
USGS	U.S. Geological Survey
WaDE	Water Data Exchange
WestFAST	Western States Federal Agency Support Team
WGA	Western Governors' Association
WOTUS	Waters of the United States
WSWC	Western States Water Council



**Spring Council Meetings
Tulsa, Oklahoma
April 15-17, 2015**



Summer Council Meetings & 50th Anniversary Stateline, Nevada July 8-10, 2015



Symposium on the Settlement of Indian Reserved Water Rights Claims Reno, Nevada August 25-27, 2015





Fall Council Meetings Manhattan, Kansas October 7-9, 2015

