

**WESTERN STATES WATER COUNCIL**  
**Summer Meetings - Medora, North Dakota**

**Western States Water**  
Special Report #1782  
July 14, 2008

The Council meetings on July 9-11, in addition to the extended discussions surrounding proposed and sunseting positions, covered a wide variety of topics and presentations. At the Full Council Meeting, Dale Frink, State Engineer and Secretary to the State Water Commission discussed water issues in North Dakota. He began by describing the relative roles of North Dakota's two complementary water agencies. The Office of the State Engineer is a regulatory and administrative entity charged with water rights administration. The State Water Commission, in contrast, develops water projects and infrastructure. Greater energy extraction in the state has increased tax revenue and the amount of money available for water projects. One exciting project is the Southwest Pipeline, which brings water from Lake Sakakawea on the Missouri River to Dickinson and other communities, including Medora, in the southwestern part of the state. The Red River Valley water supply project is another facility that will deliver water to eastern parts of the state. The Province of Manitoba, Canada, is concerned about biota transfer and water quality issues related to other projects due to the potential to introduce water drawn from the Missouri River Basin into the Hudson River Basin.

Next, Robert Shaver, Director of the Water Appropriations Division, discussed water resource management in North Dakota, with an emphasis on ground water. Glaciated aquifers cover a significant part of the state and provide valuable sources of clean water. However, these aquifers are relatively thin (50-60 feet thick) with a modest buffering capacity during drought. The Division's objectives are to maximize beneficial use, protect the rights of prior appropriators, and prevent sustained ground water mining. One major challenge to managing the aquifers relates to the inability to predict future climatic events.

Dennis Fewless, North Dakota Department of Health, discussed water quality challenges in the state. Monitoring surface and ground water resources remains critical because significant quantities of drinking water come from both sources. The state currently monitors aquifers for pesticides, herbicides, and nutrient contamination. One major water quality issue relates to the Devils Lake outlet project. In light of EPA's recent water-to-water transfer rule, some are concerned about the need to issue a permit for the outlet. The Province of Manitoba is concerned about the project, but due to the length of the river between the outlet project and the Canadian border (several hundred miles), Manitoba's request that water flowing into Canada meet drinking water standards may be unrealistic. Other water quality issues pertinent to North Dakota relate to effluent concentration during corn ethanol production and nutrient contamination associated with feedlot operations.

Tony Kramer, Natural Resources Conservation Service, provided an update on the 2008 Farm Bill's water conservation measures. It increases conservation program spending by \$4.2B (38%). Key changes relate to the Agricultural Water Enhancement Program (AWEP) and Environmental Quality Incentives Program (EQIP). Another big change occurred in the Conservation Security Program, which is now the Conservation Stewardship Program (CSP). Previously, the program was administered on a targeted watershed basis. Now, it is open to all farms regardless of location. There is also a new payment limit, which reduces the sum participants can receive from \$450,000 to \$300,000 over a six-year period.

The final speaker was Matthew Larsen, newly named Associate Director for Water, U.S. Geological Survey (USGS). He spoke about his background, experience and positions at USGS. He reiterated earlier USGS comments about the Water for America Initiative and the agency's commitment to follow Congress' directive to better inform and coordinate with stakeholders on proposed water assessment studies.

During Committee Reports, Weir Labatt recognized the organization of the Western Federal Agency Support Team (West FAST) and thanked its members, many who were in attendance, for their efforts. A declaration of cooperation was signed during the meetings. Further, the West FAST team met with WSWC officers and staff to discuss applications for a liaison position to be jointly funded by a number of the agencies. The individual will work out of the WSWC office, and help coordinate mutual efforts involving the Council and federal agencies. Hopefully, the federal liaison position will be filled later this summer or early in the fall.

The Council's working committees met on Thursday and in addition to the proposed and sunseting positions acted on by the Council, addressed a number of issues and listened to a number of presentations

by guests and members. The Water Resources Committee was chaired by Phil Ward of Oregon. It began with a presentation by Kris Polly, Deputy Commissioner for the Bureau of Reclamation. He observed that growth in the Intermountain West is expected to add 16 million people over the next 20 years, or about 4 million new households, increasing water demands by some 4 million acre-feet of water. He mentioned the Secretary of the Interior's Water for America Initiative, and its \$31.9M budget request with components related to planning for the Nation's water future, protecting and conserving our water resources, accelerating compliance with the Endangered Species Act, and expanding the Water 2025 Challenge Grant program. There is about \$11M for grants, \$4M for field services and \$8M for new basin studies (with a 50% local cost share). He said that Reclamation has created a website to gather thoughts and comments on the initiative at <http://www.usbr.gov/wfa/comment/index.cfm>. People can join a list server at [join-wfa@listserver.usbr.gov](mailto:join-wfa@listserver.usbr.gov). Kris added that the Administration has requested legislation to authorize the Secretary to approve title transfers for non-controversial water projects. He also addressed the canal breach in Fallon, Nevada and subsequent legislation to assess the safety of facilities. He reiterated Reclamation's commitment to work with the Council and other federal agencies as part of the WestFAST team, and pointed to cooperation between Reclamation and the Army Corps of Engineers in working on Folsom Dam in California on the American River. The agencies' cooperative efforts saved an estimated \$1B. He praised the Council for its well-written letter in support of loan guarantees. The Committee also discussed the WGA's June 2008 "Next Steps" Report, which was prepared by the Council and adopted by the western governors during their recent annual meeting in Jackson, Wyoming. The report is available online at [http://www.westgov.org/wga\\_reports.htm](http://www.westgov.org/wga_reports.htm).

Other special guests addressing the Committee included: Darin Langerud, Director, North Dakota Atmospheric Resources Board; Ward Staubitz, USGS Cooperative Water Program Coordinator; and Michael Strobel, Director, National Water and Climate Center, USDA Natural Resources Conservation Service. Darin outlined the history of the State's program, research, operations and future projects. As a result of its weather modification activities, North Dakota has seen an increase in the frequency of rain events, average rainfall and total rainfall, as well as hail suppression benefits. The benefit-to-cost ratio from the latter has been calculated as 40:1 based on an analysis of target and control areas and crop insurance claims data. He also addressed the need for legislation authorizing a federal research program (S. 1807 and H.R. 3445), citing a National Research Council study. Ward Staubitz briefly added to Mr. Polly's comments on the Water for America Initiative, which includes a request of \$9M for USGS, with \$5M for the National Streamflow Information Program (NSIP) – including \$3M for streamgage upgrades – \$3M for mapping activities, and \$1M for the water use program (its first line-item request). The House Appropriations Committee mark includes only \$4.75M, with \$3M for NSIP and a directive that none of the money be spent on studies or assessments, citing a lack of communication with stakeholders. The Senate mark is not yet available. Ward also mentioned that there is a website for stakeholder comments at [http://water.usgs.gov/wsi/stakeholder\\_feedback.html](http://water.usgs.gov/wsi/stakeholder_feedback.html).

Lastly, Mike Strobel briefly summarized the snow survey and water supply forecasting program, which covers twelve western states, plus Alaska, including the Black Hills of South Dakota. The National Water and Climate Center's (NWCC) \$10.8M budget includes a staff of about 60, with 36 in the field and the rest in Portland, Oregon. The agency's budget has been flat for some time, increasing the workload of its staff, which operates 760 automated SNOTEL sites and over 1,200 manual sites, taking 16 million observations annually. NWCC also operates 146 stations in its Soil Climate Analysis Network (SCAN), measuring soil moisture, which is not a separate budget line item. Present funding limits their ability to operate and maintain new sites and stations. He noted a 2010 budget initiative proposes an additional \$11M request to install, and \$5M to maintain, a system expansion of 1,000 SNOTEL sites and \$6M to install and \$3.5M to operate another 2,000 SCAN stations. The outlook for such an expansion is uncertain. He concluded by summarizing the current water supply outlook for the western states, which can change abruptly, and has been mostly dry recently.

The Water Quality Committee began with an update from Roger Gorke (via telephone), Office of Water, U.S. Environmental Protection Agency (EPA). Mr. Gorke addressed six topics. First, he discussed EPA's preliminary report on adapting to climate change and encouraged states to take appropriate measures rather than wait for EPA direction. Second, he addressed the Ninth Circuit's decision in *Friends of Pinto Creek v. EPA* – also known as the Carlota Mine case (see WSW #1745). The Carlota Copper Company filed a petition for certiorari with the U.S. Supreme Court on June 6. The Court has not decided whether or not to grant Carlota's petition. Third, Roger updated the group on the status of agency rulemaking during the final months of the current administration. Rules that are already "in the pipeline" will proceed, but no new rules which have

not already begun the administrative process will be promulgated. Fourth, he discussed the status of effluent dependent waters and the Wyoming package, which were also discussed at the D.C. meetings. EPA is still working to incorporate concepts like “net environmental benefit” in the decision-making process. Fifth, Roger discussed rulemaking on secondary dischargers, with an emphasis on nutrients. Finally, he said EPA and the Corps of Engineers are meeting to discuss *Rapanos*. Discussions will include refining the definitions for “adjacency” and “traditional navigable waters.” Joan Card, Chair of the Water Quality Committee, also discussed an internal memorandum by EPA concerning the agency’s Clean Water Act enforcement post-*Rapanos* and a critical letter issued to EPA Administrator Johnson by Rep. Oberstar (D-MN) and Waxman (D-CA). Ms. Card also discussed the Water Quality Committee’s role under the Council’s “Next Steps” report, which includes issues related to financing water and wastewater infrastructure.

The Legal Committee began with a roundtable discussion on legal developments in member states. John Utton of New Mexico then gave an update on Indian water rights settlements, including pending settlements, the possibility of modifying the 21<sup>st</sup> Century Water Commission Act (H.R. 135) to include tribal participation, and the option of using the Reclamation Fund to finance Bureau of Reclamation facilities associated with Indian water rights settlements. The Committee also discussed the impacts of agricultural-to-urban water transfers on rural communities and U.S. Forest Service (USFS) ground water policy. Pat O’Toole of the Family Farm alliance discussed some of the legal, practical, and social implications of these water transfers and Mark Pifher, Legal Counsel for the City of Aurora, Colorado, gave a municipal perspective. The discussion was well received and Bill Staudenmaier, Chair of the Legal Committee, suggested an effort to explore ag-to-urban issues as part of the Committee’s 2009 work plan. The Committee also heard from Jean Thomas, Watershed, Fish, Wildlife, Air, and Rare Plants, U.S. Forest Service, who discussed the agency’s internal ground water policy. USFS manages 193 million acres of lands, much of which is in the West. USFS lands are located at the headwaters of many western rivers and regional aquifer systems. The USFS ground water program began in 2005 and Christopher Carlson, USFS Ground Water Program Leader, is developing a policy document which will be part of the USFS Manual for geologic resources. In addition, USFS recently produced a “Technical Guide to Managing Ground Water Resources,” which is available online at <http://www.fs.fed.us/publications>. Finally, Council staff updated the Committee on its consolidated report, “Water Laws and Policies for a Sustainable Future: A Western States’ Perspective,” including the possibility of publication. Staff also mentioned future projects, which includes work on domestic wells, the water/energy nexus, and agricultural-to-urban water transfers.

Jean Schafer, North Dakota Water Education Foundation, and Mary Massad, Southwest Water Authority, hosted the Council on a field trip that included a visit to Theodore Roosevelt National Park, which borders Medora. The Park Service guide noted that the Badlands of North Dakota had been carved and shaped by wind and water erosion, including the Little Missouri river, which also provides important riparian habitat for large cottonwoods and many species of wildlife. Next, the Council visited the Bully Pulpit Golf Course, which has an elaborate system for diverting, storing and treating water from the Little Missouri River for seasonal irrigation. Pumping generally occurs during the winter when the level of dissolved minerals, especially sodium and carbonates, are lower. Water is stored in three small reservoirs and is treated with gypsum to improve the water quality for use on the course. The Council also toured Red Trail Energy’s corn ethanol plant, located near Richardton, North Dakota. Red Trail began producing ethanol in January 2007 and produces approximately 50 million gallons of ethanol annually. Each gallon of ethanol requires approximately three gallons of water, which is much more efficient than many plants in the Midwest. To produce this amount of ethanol, the plant annually uses 18-20 million bushels of corn and approximately 100,000 tons of coal from Montana. The plant employs 41 people and was recently honored by North Dakota Governor John Hoeven with the state’s 2007 “Project of the Year.” In addition to ethanol, the plant produces byproducts which are useful to local livestock producers. These include 162,000 tons of dried distillers grain or 402,000 tons of wetcake annually, which can feed 220,000 head of feeder cattle. The tour visited the Assumption Abbey/St. Mary’s Church in Richardton where the monks also work the land. The Abbey farms over three sections of land on the “Russian Ridge” that divides the Heart and Knife Rivers, which are tributaries to the Little Missouri River. The Abbey grazes about 300 head of cattle and raises some small grains for feed. The tour concluded with a visit to the Southwest Water Authority’s (SWA) offices in Dickinson. From this facility the Authority staff monitor and control water pumping and water supply along the Southwest Pipeline (which supplies municipal, commercial and some industrial water from Lake Sakakawea to the southwestern portions of North Dakota). SWA uses radio telemetry to operate pumping stations, storage reservoirs and tanks throughout the area.