

**SUBCOMMITTEE ON WATER**

**Chair: Julie Carter (AZ)**

**Vice-Chair: Robert Caccese (PA)**

**Date: Monday, September 25, 2023**

**Time: 1:00 PM – 3:00 PM MDT**

**Macleod A3, TELUS Centre**

**113th Association of Fish & Wildlife Agencies Annual Meeting**

**Calgary, Canada**

**Committee Charge:** Identify, support, and communicate science, legal, policy and public involvement

issues related to water that are of importance to fish and wildlife; and to support and build on

recommendations from AFWA Drought Forum.

**Agenda**

1:00 pm Call to Order/Review Agenda/Approval of Minutes – *Julie Carter, AZ*

1:05 pm Introductions – *All*

1:10 pm Virtual Pre-Meeting Recap – *Julie Carter (AZ)*

* Julie Carter provided a recap of the virtual pre-meeting.
* The SOW was reminded that the AFWA drought forum led to the formation of the SOW.
* The group was provided with an update from the Instream Flow Council. The final feasibility assessment report for the Instream Flow and Water Level Conservation Training center will be available soon.
* Participants were provided an overview of the Western States Water Council Water Data Exchange Program (WaDE)’s decision support and planning tool. The Western States Water Data Access and Analysis Tool (WestDAAT) streamlines the sharing of water data among western states. This was funded by a support grant from waterSMART. In the longer term, the intention is to make this tool available nationwide.

1:25 pm National Fish Habitat Partnership Update with a Focus on Water Elements – *Ryan Roberts, AFWA / Christopher Estes, Life Member*

* Started with National Fish Habitat Action Plan, which was signed in 2006
* Focus was on conserving fish habitat at the national scale
* In 2020, NFHP was codified in Title II of the American Conservation Enhancement Act
* For FY24, the board has approved a list of over 130 priority projects and submitted it to the Secretary of Interior. The Assistant Secretary approved the list on September 23.
* Now NFHP is awaiting the FY24 budge to determine how many of its priority projects will be funded.
* Work is underway to prepare for the 2025 national fish habitat assessment, led by the science and data committee. This will be the third iteration, following assessments in 2010 and 2015.
* The Science and Data committee has provided several different options for the assessment. The NFHP board will make a decision at its December meeting.
* The 2023 Waters to Watch, a campaign to highlight 10 NFHP projects annually, will be announced shortly.
* A NFHP coordinator workshop will be held this December at the NFHP meeting in December.

Water Elements

* Title II has a variety of elements that relate to water and the ability to conserve, protect, restore and enhance water for fish and wildlife habitats.
* Section 201
* Section 210 focuses on water rights and provides FHPs with the authority to acquire water rights.
* Science and Technical components section—a portion of this funding can be passed through for science and technical assistance from the states.
* None of the attendees have explored the using NFHP funding for acquiring or leasing water rights.
* So far, no NFHP projects have dealt with the acquisition of land or water.
* Board to develop guidance alongside the FWS

1:45 pm BIL/IRA Fish Passage Check-in – *All*

* A BIL/IRA fish passage workshop is being planned for December. Is there interest in attending?
* The 2024 fish passage NOFO will be published soon. The focus will be on transformational projects and there will be differences in the minimum and maximum funding amounts available. 2-year awards may also be made.
* The BLM has received $6M per year for aquatic restoration. The BLM has a long-term goal to develop a stream restoration guide for BLM lands.

Aquatic invasives funding

* The NDERR project rapid response fund $4M/year
* Resources for stopping aquatic invasions
* Horizon scans to identify the highest risk species that may establish in an area
* YY consortium- may be BIL funding for this
* Looking for input on what is and isn’t working regarding state/federal coordination on fish passage. AFWA will develop a survey.

2:05 pm Government Affairs Update – *Ali Schwaab, AFWA / Julie Carter, AZ*

* Community and Hydropower Improvement Act
  + Last year we cohosted a webinar with the IFC on proposed FERC hydropower reform legislation.
  + Earlier this year, Senators Cantwell and Daines introduced the Community and Hydropower Improvement Act. The bill would amend the Federal Power Act to improve the licensing process for non-federal hydropower projects. It would implement many of the licensing reform proposals developed by the Uncommon Dialogue on Hydropower, River Restoration, and Public Safety that we discussed via webinar last year.
  + We have been working with our partners at TNC and TU to communicate states’ concerns about the legislation in its current form.
  + We have also heard that the UCD has provided some draft amendments to Cantwell and Daines offices but have not been provided with these and so we do not know to what extent they address the concerns states raised.
* Rotenone
  + EPA is requiring a 21d inhalation study for the re-registration of rotenone.
  + CLS, the sole registrant, has been in communication with EPA and received another 90-day extension while several remaining issues are resolved.
  + CLS has pointed out that the EPA risk assessment had used erroneous data including an application rate above that allowed on the EPA-approved label for the powder and that aerial applications of the powder are specifically prohibited on the EPA-approved label.
  + EPA had new concerns with the need for a developmental toxicity study with rabbits.
  + Additionally, the EPA had concerns with the dermal absorption of rotenone by applicators. CLS believes that this can be resolved by doing additional applicator monitoring studies.
  + We will continue to keep you informed as things develop further
* Antimycin
  + USGS bought the patent for Fintrol and will begin producing again. They have offered to hold a webinar for those interested.
* Project Partnership Agreement (PPA) Reform
  + Current PPA structure is preventing some states from entering into projects with USACE.
  + The main issues are the indemnification clause and the requirement to fund OMRRR in perpetuity.
  + AFWA is working with ICWP and others to advocate for PPA reform via WRDA 2024. Next steps are a Dear Colleague letter and a Partners letter.
* WRDA 2024 Requests
  + Please send any WRDA2024 request in to AFWA.
* WOTUS Rule
  + Conforming rule removes the significant nexus test and requires adjacent wetlands to have a continuous surface water connections to be considered under federal jurisdiction.
  + It also revises the adjacency test when identifying federally jurisdictional wetlands, clarifies that interstate wetlands do not fall within the interstate waters category, and clarifies the types of features that can be considered under the “additional waters” category.
* s404 Proposed Rule
  + The Environmental Protection Agency (EPA) is proposing the Agency's first comprehensive revision to the regulations governing Clean Water Act (CWA) section 404 Tribal and State programs since 1988.
  + The primary purpose of the proposed revision is to respond to longstanding requests from Tribes and States to clarify the requirements and processes for assumption and administration of a CWA section 404 permitting program for discharges of dredged and fill material.
  + The proposed revisions would facilitate Tribal and State assumption of the section 404 program, consistent with the policy of the CWA as described in section 101(b), by making the procedures and substantive requirements for assumption transparent and straightforward.

2:20 pm Roundtable on State, Province, and Partner Water/Drought Issues – *All*

* states discussed a variety of water issues they are dealing with, including: droughts and low water levels and their impacts on hatcheries and stream surveys (MO, WI, AZ), flooding in other areas (NV), withdrawals for agriculture (SC) and lithium projects (NV), PFAS and consumption advisories (AK, NC, WI), algal blooms (OH, NC), and saltwater intrusion (NC). There were also positive developments highlighted, including: more rain in some areas (CA), dam removals (CA, NC), watershed studies and data collection underway (AR, OR), wetland restoration and protection projects (OH), and state water program acquisition of instream water rights (OR).

2:40 pm Roundtable on SOW Work Plan – *All*

* Participants agreed to keep existing objectives.

3:00 pm Wrap-Up Discussion and Adjourn – *Julie Carter (AZ)*

* Action items for FWRPC
  + While there are no formal actions to advance at this time, the subcommittee would like to communicate to the board: Its thanks to state fish chiefs and directors for enabling their Instream Flow Council Members to attend the technical workshop on lotic waters. It would also like to encourage state fish chiefs and wildlife chiefs to support staff attendance at the Instream Flow Council’s biennial meeting planned for next March in Gulfport, MS. This is especially important as many state IFC representatives are new.