

MEETING MINUTES

North Platte Decree Committee (NPDC) Meeting

1:00 p.m. Mountain Time, November 18, 2020

Microsoft Teams Meeting

Online Conference

1. Introductions

1.1. Committee Heads

Chair - Carlie Ronca representing United States Bureau of Reclamation

Tom Riley representing Nebraska Department of Natural Resources

Greg Lanning representing Wyoming State Engineer's Office

Erin Light (in place of Kevin Rein) representing State of Colorado Division of Water Resources

1.2. All Roll Call

Tom Riley – NE

Mike Follum – USBR

Jennifer J. Schellpeper – NE

David Merrell – USBR

Beth Eckles – NE

Levi Mickelsen – Basin Electric

Ryan Kelly – NE

Steve Smith – Enterprise
Irrigation District

Jeremy Gehle – NE

Melissa Mosier – Audubon
Nebraska

Tom Hayden – NE

Jim Ostdiek – NE

Dan Sternkopf – NE

Kari Burgert – NE

Greg Lanning – WY

Brian Pugsley – WY

Jeff Cowley – WY

Charlie Ferrantelli – WY

Rob Foreman – WY

Tylor Hanzlik – WY

Erin Light – CO

Carlie Ronca – USBR

Lyle Myler – USBR

2. Review Agenda

2.1. Carlie Ronca proposes Steve Smith to discuss Glendo contract to go as item 5.1 instead of 5.7 No objections. The meeting followed the revised agenda with the recommended change, and is **Attachment A**.

3. Approve Minutes from April 7, 2020 Meeting

NE – no issues with minutes

Jennifer Schellpeper noted the April 7, 2020 meeting minutes under agenda item 7, a motion was past accepting Wyoming’s activity reports. Ms. Schellpeper pointed out that prior to this spring the NPDC had never taken action to accept that report from WY. In spring of 2006 there was discussion that NPDC does not expect to take action on WY reports to either accept or approve.

WY – no issues with minutes

CO – no comment

Motion to approve minutes of April 2020 meeting made by Jennifer Schellpeper, Erin Light seconds motion, motion passes by unanimous vote.

The signature page for the April 7, 2020, NPDC meeting minutes is **Attachment B**.

4. Water Administration, Operational/Accounting, Allocation Issues, Other

4.1. Wyoming - Brian Pugsley

Water year 2020 was hot and dry. Basin snowpacks which started as average to above average but by April dropped off rapidly. April and May are normally some of our wettest months in Eastern WY. Numerous days of 100+ degree temperatures and stiff winds. Conditions can change rapidly, for example Saturday September 5th was 106 degrees, September 6th was 80 degrees, and then later on that day was the first snowstorm of the season. Peak flow at the Sinclair gage was 6600 cfs on June 3rd this year, with typical peak flows of around 7500 cfs, and a 30 year high in 2010 of 16,700 cfs and 30 year low of 1300 cfs in 2002. Average stream flows throughout the rest of the area. Irrigation districts started on April 29th and turned off on September 12th. Interstate Canal turned on April 23rd and turned off June 1st as they completed Inland Lakes transfer and hay run. They turned back on June 14th and then ran until September 12th. Casper Canal turned on May 1st and turned off September 30th. Replacement water was 6,204 acre-feet (AF). 5612 AF of replacement water was well replacement from 2019. Remainder was from May – August Water Year (WY) 2020 triangle tributaries. Replacement water came from 2800 AF from Wyoming Glendo account and 3400 AF from Wyoming Pathfinder account. September 2020 tributary replacement is 107 AF and will be put in at the first delivery of storage next year. Estimates for WY 2021 is approximately 233 wells that will need to be replaced next year. Environmental Account (EA) water was moved from Glendo to state line. Total in Pathfinder Modified account when started was 41,585 AF: 31,985 in EA and 9600 in Wyoming account. 37,000+ AF delivered to the state line.

Carry over storage is Wheatland #2 Reservoir - 46,000 AF, Wheatland #3 Reservoir - 34,000 AF, Gray Rocks Reservoir 79,000 AF, Hawksprings 3,607, Laprele 1,500 AF.

Overall, 2020 was hot and dry

No questions

4.2. Bureau of Reclamation – Lyle Myler

Overall system inflows from October – September was 1139.4 thousand acre-feet (KAF) which is 87% of average.

System storage at the end of September was 1634 KAF, which is 114% of average and 58% of capacity of 2.8 million acre-feet (MAF)

Ownerships as of September 30, 2020:

Kendrick 1,073.8 KAF, 89% full, 124% of avg

North Platte (Pathfinder + Guernsey) 411.1 KAF, 37% full, 97% avg

Glendo 131.2 KAF, 76% full, 100% avg

Inland Lakes 0.0 KAF, 0% full, N/A% avg

Guernsey Ownership filled March 15

Operational Account filled to 15,000 AF on March 20

Glendo Ownership filled March 24

Inland Lakes filled April 16th

Pathfinder filled May 15th

Kendrick Ownership filled May 24th, borrowed debt for early releases is 12,478 AF as of Sept 30th

Oct 1 allocation calculated supply 1.587 MAF – No allocation is expected, letter 10/14/2020. Will resume forecasts and allocations notices in February 2021.

Current and upcoming projects that will affect water operations:

1. Alcova spillway repair and Guernsey Powerplant (roller mounted) Intake gate repair. Alcova Reservoir was lowered 39 ft in October rather than the usual 10 ft. This resulted in higher than normal Gray Reef October releases up to 2900 cfs. Having the reservoir down below the spillway crest is facilitating construction activities “in the dry” directly downstream of the spillway gates. Starting December 15th, the reservoir will be brought back up to the winter operating level by the end of December. This will result in increased flows from Seminole Reservoir to Pathfinder and from Pathfinder Dam down to Alcova Reservoir. These water operations will only result in the movement of water between reservoirs and should not have any unusual affects to ownership. In addition,

Alcova Powerplant is releasing about 610 cfs daily average due to power unit test results which is above normal. Because of these higher than normal releases Glendo is high and we will be monitoring it throughout the winter. Current plan is to reduce Gray Reef outflow to 450 cfs from January through March to manage Glendo levels.

2. Guernsey Powerplant intake repair is currently building a crane pad at the reservoir. This project will require draining Guernsey Reservoir at the end of next September and keeping it empty Oct 2021 – March 2022. The Glendo low flow valve will be shut off, and Glendo to Guernsey gains will be passed downriver.

Questions

Brian Pugsley – any comment on the year being hot and dry?

Lyle Myler - Inflows were 87% of normal.

Brian Pugsley – How will the borrowed debt of 12,478 AF of the Kendrick account be repaid?

Lyle Myler - The annual fill requirement will allow for that additional fill.

4.3. Nebraska – Tom Hayden

Highlight of the year was what happened to Northport ID. They have been trying to change operations limit of 960 Acres for last 60 years. In the early 1950s took a long term low interest loan from Bureau which came with an ongoing limit despite payment. That is now an area limit to farmer production.

On January 10, 2019 President Trump signed a bill that if debt is paid you can have the 960 Acres limit waived. Legal change cost about \$47 / acre.

In May there were temperatures of 80 degrees and then in the summer months temperatures averaged at least 95 degrees. Temperatures reached over 100 degrees 10 days in June, 8 days in July, and 6 days in August. It got drier and drier and drier. April was a bad month for the valley which damaged early crops with 7 inches of snow and 12 degree temperatures which required replanting. Moisture accumulation in June, July, and August was 3 inches of rain. Then hail and frost and lots of wind and a lot of dry days. When Bureau released water out of Guernsey it really helped at Lewellen (about a 7 day travel time) which went up to about 3800 cfs. Location needs about 1200 to 1300 cfs which was starting to get low. Hail wiped out some locations. Majority of crops ended up pretty good. Beets aren't yet done. This year looks good for the beets.

4.4. Colorado – Erin Light

Common story is hot, dry, and windy. Wind really dried things out and irrigation went longer than normal. Typical turn off is July 4th weekend. Administration on Michigan River went into later part of July due to moisture concerns which is very unusual. Flows at Northgate as low as 50 cfs with high of 1890 cfs which is not unusual. On Michigan River flows got as low as 1 cfs which at the time was on call. Town of Walden could not get enough water into their intakes for the town, so a call was placed on the river. In dry summers like this storage water is used. As a result, reservoirs are going into spring with low storage. CDWR closely tracks the amount of water stored following a drought year. For those who may not be aware, Colorado met or exceeded their storage limit under the decree of 17,000 AF in 2003 following the 2002 drought and 2013 following 2012.

We issued several orders to install measuring devices and people are coming into compliance slowly with that. Colorado could not recall the number of diversion in North Platte River basin still needing measuring devices

Colorado goes through an abandonment process every 10 years. Last process was in 2010. A court process is used and it's keeping them quite busy. Colorado has embarked upon the 2020 process.

5. Informational Items

5.1. Enterprise Glendo Contract – Steve Smith Legal Counsel to ID Moved to 5.1 during agenda review

Enterprise is an irrigation district with about 4900 permitted acres in Nebraska with a Glendo Storage contract for 3000 AF per year renewed in 2009 for 40 years (2049). Enterprise is an old district from around 1887 and infrastructure is poor. Highest O&M costs in the area \$35/acre. In addition to high taxes. This district can no longer afford to continue to deliver water without bankrupting farms. Enterprise contract in 2009 limits use to irrigation which is what it always was. Contract allows unused Nebraska share water to be allocated to other users with no irrigation limits for other users, any other beneficial purpose downstream of Glendo. Existing contract provides the Bureau can permit purchase by 3rd parties. Now talking to Bureau about options on who and how to allocate the contract water to other users. Irrigators are limited to irrigation, but other users and the contract water are not limited for any specific beneficial use. No right of first refusal required. Existing contract permits Bureau to allow purchases by any 3rd party. District does not think the contract needs modified. Rarely has Enterprise called on its contract water. The Platte River Recovery Program is searching for reliable water. Currently talking with Bureau regarding what is easiest and most useful. Appears contract requires Nebraska would have to approve transfer, but Wyoming does not need to approve for Nebraska share water. Appears that law and contract allows this transfer.

Questions?

Jennifer Schellpeper – Does Nebraska need to approve this transfer?

Steve Smith - The 2001 stipulation and the supreme court decree specifically require any change in use be approved by Nebraska.

Jennifer Schellpeper – This would be with the Platte River Recovery Program who's interested in this extra water?

Steve Smith - Yes, but they have an entity (unnamed) with which this would be performed. Platte River Recovery Program has expressed the most interest in this extra water.

Jennifer Schellpeper – Would like to confirm that the Bureau does not see any issues with this?

Carlie Ronca – The Bureau has laid out a proposal from an initial perspective how this would work. The Bureau is envisioning a first right of refusal. There is a provision in the contract for 3rd parties but maybe not reading it the same as Enterprise. Bureau has authorities and contracts they have to abide by. Bureau does envision a path through, but Enterprise would need to agree to those terms. If Enterprise does want to move forward Reclamation anticipates some contract actions. It is a public process which doesn't occur until there is a draft contract. Bureau doesn't want public surprises so trying to involve others early. No deal breakers currently seen.

Jennifer Schellpeper – Pleased with early outreach. Have you talked with any irrigators in the basin if there are any concerns?

Steve Smith - We talked with Bureau and agreed based on contract and stipulation that there is a process to offer water to 3rd parties specifically mentioning other Glendo contractors for irrigation purposes. No limit on 3rd parties and beneficial use type. The Bridgeport ID and Mitchell ID and CNPPID [Central Nebraska Public Power and Irrigation District] are Glendo contractors. It is all within the existing contract and that is the Bureaus call. The contract itself lets the bureau negotiate prices with anybody for other purposes. Sent a letter November 13th on opinion that contract does not need to be amended which would involve significant additional effort.

Carlie Ronca - Bureau will look at letter and check their flexibilities.

- 5.2. Gering-Ft. Laramie/Goshen Canal – Reclamation, Carlie Ronca
Update since April 2020 meeting is the water season began with some reduction in flow. Typically, 1500 cfs can flow. With ribs and other modifications installed only 1215 cfs could flow. Both districts have been struggling with that.

One option being considered by the Districts is to modify ribs in tunnels 1 and 2.

Second option being considered by the District is to move to permanent repairs.

Third option recently discussed by the Districts is to pump directly from river the flow loss.

Any modification or work plan would need to be approved by Bureau, but no requests have been received.

5.3. Basin Electric Power Company – WY Levi Mickelson (BEPC)

Last update they were in a holding pattern for working through details of Johnson wells. Late September sent a request to State Engineer's Office requesting an assignment to revert wells back to Johnson Ranch. Late September Board of Control denied request stating that in order to change the appropriator name on the appropriation a petition for an amended certificate must be submitted and also the Johnson family would need to apply for a change of use and place to take the industrial right to any use they are wanting. Right now, waiting for family to respond. Have not heard anything. If the Johnson family chooses to complete the required applications, the process can move forward. Now in holding pattern waiting to hear from family.

Hopefully the amended certificate is not required before the change of use application gets out. Would like to do in parallel.

Questions?

Brian Pugsley – State understanding is that BEPC wants to walk away from those 4 wells (Levi - That is a correct statement) and Basin Electric is willing to do whatever needs to be done to work with the family to change that use. Family needs to petition Board of Control to change that use from industrial to irrigation. That petition to change that use will go hand in hand with that amended certificates. That's what the amended certificates will do is change that use. Is in holding pattern till Johnson's initiate this process.

Levi – Basin had hoped to break holding pattern by doing what they did by putting ball in Johnson's court. No plans to file for abandonment right now. If 5 years runs out that's the way it goes. Basin sees no current need to update in further meetings but will gladly do whatever is needed.

Brian Pugsley – The NPDC principals need to have a discussion regarding appendix 3 of decree. The Johnson well field is part of Basin's water supply as spelled out in the

decree. If Basin chooses not to use those things or turn them back, they are no longer available. That means Basin does not have that water supply available and if they come back, they would need to find that supply somewhere. Does the NPDC need to make amendments to Exhibit 3.

Levi – Basin is willing to do whatever needs to be done. Intent to keep water below reservoir full.

Brian Pugsley – NPDC needs to have this discussion down the road

Carlie Ronca – When do you think that will be ripe for discussion and is there any work that can be done ahead of time. What are thoughts on timing?

Brian Pugsley – Does not know. If Basin Electric does not have those wells as part of their arsenal, do we need to make a change to appendix 3?

Jennifer Schellpeper – Are these Johnson wells part of original decree or were they brought online in 2003?

Brian Pugsley – these wells were part of original decree. Maybe we need to form a committee to continue discussion of what needs to be done.

Carlie Ronca – Today's discussion is an advancement of this item that has been on agenda for some time. Usually an ad hoc subcommittee would be formed for research. If we don't form an ad hoc committee what else could we do.

Brian Pugsley – happy to chair committee to continue discussion.

Jennifer Schellpeper – happy to participate in committee but would prefer a homework discussion to the NPDC principals.

Levi Mickelsen – End of life of station should be kept in mind as 2042 which is best understanding today. Then what happens to the reservoir and all the water rights too?

Jennifer Schellpeper – You mean the end of life the station is going away and no more generation at gray rocks?

Levi Mickelsen – Yes, the station would shut down and Basin Electric would no longer need storage anymore. May be replaced by a different type of station so may continue water right.

Lyle Myler – Can we assign this question to an existing subcommittee like the control crest?

Carlie Ronca – Agrees. To Brian Pugsley is this appropriate?

Brian Pugsley – Agrees. Maybe should add some additional staff to the committee.

Jennifer Schellpeper – Add Jeremy Gehle to the subcommittee.

Carlie Ronca – Matt Wells would be appropriate and is already assigned. Possibly also Mike Follum as Water and Civil Works Branch Chief.

Erin Light – no comment on the matter

Motion that the control crest subcommittee be assigned the task to look at modifying Appendix 3 and Jeremy Gehle of Nebraska DNR be added to the group made by Jennifer Schellpeper. Greg Lanning seconds. No further discussion. Unanimous vote and passes.

- 5.4. Platte Alliance Water Supply – PAWS – WY, NE, and Reclamation
Nebraska – Tom Hayden has attempted to contact PAWS but could not locate anybody. No updates.

Reclamation – No updates but keep on agenda

Wyoming – No updates

- 5.5. Seminole pump/storage project – Reclamation – Carlie Ronca
This is a dual jurisdiction project with the project components on Reclamation land requiring Lease of Power Privilege and the rest requiring a FERC permit. A notice of intent to accept proposals, select lessee, and contract for pumped-storage hydroelectric power on Seminole Reservoir was published in the Federal Register on April 27, 2020. Written proposals were due by September 24, 2020 and only one proposal was received. Reclamation is currently reviewing the proposal and will then decide whether to recommend a Preliminary Lease Permit.

Black Canyon Hydro has a Preliminary Permit from FERC for this project: 3 year permit issued 8/19/2016 and 3 year extension granted on 8/8/2019. Black Canyon Hydro filed its request to use the Traditional Licensing Process on April 20, 2020. Black Canyon Hydro, LLC provided public notice of its request on April 18, 2020. In a letter dated June 23, 2020, the Director of the Division of Hydropower Licensing approved Black Canyon Hydro, LLC's request to use the Traditional Licensing Process. Black Canyon Hydro held a joint meeting and site tour on July 21, 2020 to discuss

their traditional licensing process with FERC. Black Canyon Hydro and FERC are currently working through the steps of the traditional licensing process.

In terms of the Lease of Power Privilege the Bureau published in notice of federal registry and on April 27, 2020 with written proposals were due by September 24, 2020. Black Canyon Hydro was the only proposal received. FERC has already issued their permit. Bureau is currently in review of Black Canyon Hydro proposal.

- 5.6. Modifying Decree in regards to the Consumptive Use Caps – WY – Jeff Cowley
One of the anchors holding us down to modifying consumptive use methods is the consumptive use caps listed in pages 22 – 24 of brown book which are tied to methods in Appendix 6, Exhibit A, and Exhibit B in the consumptive use methods which created those caps. It has been suggested to just remove the sentences of the cap instead of altering the decree. Still containing statements of a cap but getting rid of numbers. A similar effort was modifying the acreage cap as a group from the 226 total to smaller subdivision values. When we all agree it is fairly easy to change the decree.

The subcommittee has verbally agreed that we would like to make a 2020 version of consumptive use methodology verses the current older and cumbersome method. By removing those 2 sentences it would allow us to modify the method every year to what is best.

Jennifer Schellpeper – Nebraska would like to do a modification that does not need to approach the supreme court, so it is both a legal and technical question.

Jeff Cowley – who else should we approach and add to the discussion including Attorney Generals? Wyoming’s AG has already agreed that if everyone can agree on the language then it’s a very simple approach.

Jennifer Schellpeper – Nebraska has an internal lawyer on leave until March so opinion will take some time.

Greg Lanning – Wyoming AG Chris Brown will continue to work on it and cooperate with Nebraska AG. Subcommittee will continue to work on technical details.
More general discussion on cooperation.

Motion that the Consumptive Use Subcommittee continue technical discussion and engage with legal staff of both Wyoming and Nebraska in meetings about modifying decree language in order to accommodate changing methodologies in the Exhibit 6 and consumptive use caps stated in brown book pages 22-24 made by Jennifer Schellpeper. Greg Lanning Seconds. No further discussion. Unanimous vote to accept.

5.7. Enterprise Glendo Contract – Reclamation – moved to 5.1 per Agenda Review

6. Reports of Standing Subcommittees

- 6.1. Ground Water Wells Subcommittee (Chair: ~~Moser~~ – by Cowley)
No report and should be removed until such time as a hydrologic connectivity proposal is ready
- 6.2. Control Crest Subcommittee (Chair: Pugsley)
Has not met and no updates. Will report in April.
- 6.3. Consumptive Use Subcommittee (Chair: ~~Mosier~~ – by Schellpeper)
Report provided shortly before meeting.

Action Item 1 – Review the facts and Consumptive Use Subcommittee (CUSC) discussion outlined in this report and determine if and when the Above Guernsey Area survey will move forward and give direction to the CUSC on how to proceed consistent with the NPDC budget and disbursement procedures document and mindful of the currently agreed upon 10-year timeline.

Jeff Cowley - The new price tag is higher with additional mailing contact list. A new list of 2117 has been produced using GIS using 2019 parcel data being people who own a polygon that we actively measure every year. Initial list was 500-600. New estimate is \$55,000 for both surveys. Above Guernsey is approximately \$29,000 and triangle is \$26,000 separately. Survey is tied to current consumptive use Exhibit A method and we are attempting to find ways to replace that.

Quoting Exhibit B page 280 second paragraph “the survey is conducted every 5 years until such time that the NPDC may decide such surveys are no longer necessary”.

Wyoming does not feel it is needed to continue to perform the survey.

Jennifer Schellpeper – The survey is important to Nebraska. It is supposed to be performed every 5 years and by NPDC decision is now extended to 10 years. The survey is an independent indicator of things that might be changing in the basin that we don’t currently measure within the existing Exhibit A methodology. There could be changes occurring right now that we would not be aware of using the Exhibit A methodology. There is no methodology ready to be adopted. Even if open ET becomes available next year it may be several years till a new methodology is adopted. Possibly looking at a 15 year span between determination of change indicators that we know affect consumptive use. Nebraska would like to proceed with the survey to determine if change is occurring.

Procedurally this issue was not in consensus by the subcommittee so it's up to the NPDC to make a decision. The standing item is to extend 10 years which is this year, so a decision needs to be made. Subcommittee has discussed a 1 or 2 year extension to look at Open ET. Just looking at Open ET is not enough though. There would need to be a new method adopted within a couple years to replace the survey which is unlikely.

Charlie Ferrantelli – Open ET cost is currently unknown. May be cost prohibitive and we may need to pursue other methods. A new survey may be warranted but would look different than current survey. Public release is expected to occur during the 2nd quarter of 2021 and should provide a cost at that time.

Jeff Cowley – If open ET is cost prohibitive, we would have to pass on it and we may have to stick with current Exhibit A.

Greg Lanning – Can we redefine motion on Action Item 1 to be conditional on determine cost of Open ET within 1 year? Take action next fall.

Jennifer Schellpeper – In agreement to rewording depending on determination of cost of Open ET.

Charlie Ferrantelli – Dependency should also include validity of use of Open ET.

Greg Lanning – Wyoming is in a real budget issue with a 15% reduction.

Tom Riley – Nebraska understands budget issues but does not want to delay indefinitely but is willing to delay 1 year.

Motion to extend delay of survey not more than 1 year dependent on the cost determination of Open ET and its validity to replace Exhibit A methodology. Jennifer Schellpeper seconds motion.

Further discussion requested:

Charlie Ferrantelli – Do we have the flexibility to modify the past survey for our current needs or do we have to do same exact survey.

Jeff Cowley – farmers do not want to fill out entire 17 page survey

Charlie Ferrantelli – also add questions that might help for future methods

Tom Riley – Nebraska is willing to make changes as long as there's still comparison value to the past surveys

Charlie Ferrantelli – agree with maintaining an apples to apples comparison ability. Looking for better ways to fill out and easier response

Tome Riley – Nebraska agrees with attempting to increase participation of producers and get best information possible

Greg Lanning – Wyoming agrees with maintaining comparison.

Motion to extend delay of survey not more than 1 year dependent on the cost determination of Open ET and its validity to replace Exhibit A methodology. Also instruct subcommittee to review the survey.

Further discussion requested:

Jennifer Schellpeper – Subcommittee has reviewed modifications to the survey extensively in the past. Does not want to rehash old efforts. Is willing to look at additional questions to aid in future efforts which is a new request.

Greg Lanning – agrees and calls for vote on the original motion.

Motion to extend delay of survey not more than 1 year dependent on the cost determination of Open ET and its validity to replace Exhibit A methodology made by Greg Lanning. Jennifer Schellpeper seconds motion. No further discussion. Unanimous vote to carry motion.

Action Item 2 – Direct the CUSC to continue to meet and work on the development of a new methodology, holding two to three meetings prior to the spring 2021 NPDC meeting in order to further explore and discuss potential tools and resources that could be used to report consumptive use of irrigation water in the North Platte River Basin. CUSC members will investigate alternative resources and partnerships that may be available through, but not limited to, the University of Nebraska, the University of Wyoming, and OpenET.

Motion to approve action item number 2 to instruct the Consumptive Use Subcommittee to continue meeting made by Jennifer Schellpeper. Greg Lanning seconds motion. No further discussion. Unanimous vote to carry motion.

Action Item 3 - Discuss the creation of a committee to determine if and how the language regarding caps in the North Platte Decree could be modified. (covered in action item of 5.6)

Action Item 4 - Give direction to the CUSC regarding the suggestion that the NPDC hire an independent expert on consumptive use calculations to assist the CUSC in the review of the Exhibit 6 procedures, both current and potential future methods, including review of how OpenET could replace or be used to update the current methodology.

Clarified that Action Item 4 is only to look into hiring an expert and no specific expert is currently identified nor is a cost estimate available which is a major portion of the investigation.

Clarified that Wyoming would like to examine all possible modification methods before rushing into hiring an expert. Known experts to Wyoming are currently working on Open ET but could look outside that group. Looking for an independent entity to help work through new options.

Motion to give direction to the Consumptive Use Subcommittee to further the question of hiring an independent expert and defining what they would do and how it would help the Consumptive Use Subcommittee in its directive to develop a new methodology made by Jennifer Schellpeper. Greg Lanning seconds motion. No further discussion. Unanimous vote to carry motion.

Action Item 5 - Accept the Consumptive Use Subcommittee Report.

Question by Carlie Ronca – do we need to adopt Action Item 5 considering discussion of 3.2?

Jennifer Schellpeper – yes, prior practice is to adopt subcommittee reports but take no action on items within what was section 7 in the April 2020 NPDC minutes regarding Wyoming’s activity reports.

Motion to accept the consumptive use subcommittee report action item number 5 made by Greg Lanning. Erin Light seconds motion. No further discussion. Unanimous vote to carry motion.

The final Consumptive Use Subcommittee’s report is **Attachment C**.

- 6.4. Replacement Water Subcommittee (Chair: ~~Mosier~~ by Jennifer Schellpeper)
No written report. Replacement Water Subcommittee has been meeting as a subcomponent of the ongoing consumptive use subcommittee conversations on the survey. Discussion of consumptive use subcommittee reflects the conversations of the replacement water subcommittee. No action items.

No further discussion.

- 6.5. Finance Subcommittee (Chair: Cowley)
Balances as of September 30, 2020 are:
Nebraska - \$449
Bureau of Reclamation - \$4,600
Wyoming - \$9,800
Total - \$15,000 approximate

Attachment 1 [of Finance Subcommittee Report] is finance report for 07/01/2020 to 09/30/2020

Attachment 2 [of Finance Subcommittee Report] Wyoming has now assumed maintenance of 5 weather stations. Four for consumptive use and 1 in Lingle for replacement water calculations.

On March 17, 2020, Wyoming submitted an invoice for \$7,864.33 for the operations, maintenance, and equipment upgrade for the weather stations for the period April 2019 through March 2020. Attachment FSC-2 is the email from Diane Wilson showing that the transfers have been made and that invoice was paid on October 30, 2020. Please note the balances in Attachment FSC-1 do not reflect the above mentioned transfer of funds to Wyoming's account.

At April 2021 meeting Wyoming will be submitting invoice of regular maintenance of 5 weather stations which will include the purchase of the Alcova Devils Gate weather station. That station was purchased and moved and is now functioning.

One question last year was whether the Alcova station would be marked as a dead station. The website does clearly show the Alcova station as a dead station.

Item 2.2 September 23, 2020 received Flatt Water Group 20-2634 \$5484 covering July 2019 to June 2020. Total bill will be split up and paid by Nebraska Community Foundation (NCF).

Action Item 1 is to present report for NPDC acceptance.

Questions:

Greg Lanning – Are these charges typical? It is a substantial amount.

Jeff Cowley – Weather stations and database management are typical. Survey would be a substantial increase. Wyoming account is higher than Nebraska and Reclamation. The 2 others do not use it as a savings account paying on demand. Nebraska and Bureau pay into Wyoming account for weather station maintenance charges, so it is larger.

Motion to accept the financial report as presented and attached made by Greg Lanning. Erin Light seconds. No further discussion. Motions carries with unanimous vote.

The final Finance Subcommittee's report is **Attachment D**.

6.6. Official Files Subcommittee (Chair: ~~Mesier~~ by Jennifer Schellpeper)

Report was sent

Only Action Item is the Flat Water Group Contract for managing the document database of the NPDC and accept the Official File Subcommittee report. There are several standard file attachments to ensure the invoice gets paid.

Motion to approve both action items including approval of the Flat Water Group Invoice and accepting the subcommittee report made by Jennifer Schellpeper. Erin Light seconds. No further discussion. Motion carries by unanimous vote.

The final Official Files Subcommittee's report is **Attachment E**.

7. Exhibit 6, Paragraph D.3.: Report of Consumptive Use Calculations (Due May 15th) – NE Statement by Jennifer Schellpeper:

“Nebraska believes the original intent of the consumptive use cap remains an integral component of the Modified Decree even while we have continued to provide flexibility to WY in their annual reports as well as made alterations from other requirements of Exhibit 6 to Appendix G of the Modified Decree. Nebraska sees two over-arching issues that are impeding implementation of this cap as described in the Modified Decree documents: 1) scientific rigor of the current method, and 2) data transparency.

The scientific rigor of the current methodology was limited, even at the time of the drafting of the Modified Decree documents due to a lack of available historic data – this was recognized by the technical experts of both Nebraska and Wyoming at that time. Dr. Derrel Martin and Dr. Marvin Jensen wrote into Exhibit 6 the requirement to develop a new methodology within the first 10 years of implementing the Modified Decree. The described methodology update included evaluating a change from the Hargreaves method to Penman-Monteith calculations. The methodology included installation and maintenance of 4-6 weather stations across the basin above Guernsey Reservoir to collect the necessary data to evaluate this update and the NPDC has been collecting this data, reaching the goal of 4 stations this spring. The Exhibit 6 methodology review also includes evaluation of the refinement of the crop coefficients used in the methodology as well as the WY SEO irrigated acres data. The

documents even anticipate that other new methods not available at the time of the writing of the document could be explored by the NPDC. In addition to continuing to implement a methodology, no longer considered the most rigorous method by current scientific standards, the currently implemented method has been altered due to changes in available data. The first changes to the originally described reporting requirements and methodology occurred at the second NPDC meeting in October of 2002 when the due date for the report was changed from March 1st to April 15th due to the availability of NASS [National Agriculture Statistics Service] data. In later years the date was again changed to May 15th, and at the spring 2010 meeting, State Engineer Pat Tyrrell noted that the NASS data was “drying up” and that they had “stopped differentiating irrigated and non-irrigated lands”. Keeping consistent data sources and a consistent methodology to be comparable to the originally developed consumptive use caps has been an ongoing difficulty since the settlement was adopted. Generally, weather data has required replacement due to stations no longer existing or not measuring the necessary variables; acreages and yields have not been available due to NASS publication restrictions and survey methodology. Generally, Wyoming has done what they could to replace missing data as best they could, weather data has been replaced by nearby stations or gridded data; acreages and yields have been replaced by previous years’ data, more aggregated data, and unpublished data. Given these differences from the data used to develop the current consumptive use limitations it is difficult to know if the currently employed methodology is truly comparable to the consumptive use caps described in the Modified Decree.”

“Secondly, Nebraska believes that transparency is a vital component to continuing to work collaboratively with Wyoming in the development of a new methodology. Since the 2001 settlement, the NPDC has set a track record of ongoing collaboration and transparency about many issues, as described in the Exhibits to the Modified Decree. Folks working on the settlement, whom I worked with in the first decade of implementing the Decree, believed that a lack of transparency was a significant factor that led to the protracted litigation which began in the 1980’s and ended to 2001 on the courthouse steps. Particular to the calculation of consumptive use and the consumptive use limitations, Exhibit 6, to Appendix G of the Modified Decree describes that a database of all data collected in accordance with the Exhibit will be maintained by the NPDC to facilitate access by all members and calculations of consumptive use by both Exhibit A and potential alternative methods. One alternative method that has been discussed by the NPDC and CUSC over the past decade is the use of remote sensing technologies to calculate consumptive use. One necessary component to implement a remote sensing method, is the use of irrigated parcel data to define the areas where consumptive use is calculated in the remote sensed imagery. While two years of this data have been shared by Wyoming with Nebraska, there are multiple years of this data available that could be used to investigate the development of a new methodology. Nebraska believes that sharing

this data is not only a requirement of the Modified Decree documents, it is also necessary to meet the spirit and intent of the Modified Decree. In the past, an unwillingness to share data led to expensive and ongoing litigation, and Nebraska does not want to repeat those mistakes.”

“In summary, Nebraska believes the original intent of the consumptive use caps remains an integral component of the Decree even while we have continued to provide flexibility to WY in their annual reports as well as made alterations from other requirements of Exhibit 6. We expect that the NPDC will work efficiently to develop a new methodology that conforms to the original intent of annually monitoring consumptive use in WY and ensuring that it remains limited to pre-Decree levels.”

Questions

David Merrell – You just stressed the importance of the consumptive use caps but earlier agreed to remove the statement of consumptive use caps in the decree. Would you like to clarify?

Jennifer Schellpeper – Consumptive use caps are important to Nebraska, and some type of continued limitation in consumptive use is warranted. At the same time the methodology needs to be improved and it would be helpful to not have to go to the supreme court every time the cap values need changed. Therefore, Nebraska is agreeing to explore other options available to maintain a cap without requiring returning to the supreme court whenever a modification may be warranted.

Greg Lanning – received a letter from Jeff Fassett last year regarding same topic. Since Jeff retiring [Greg] has had a couple discussions with Jesse Bradley on same topic. Upon Jeff Fassett’s last day he [Jeff] also sent another letter [to Greg] regarding same topic. Wyoming wants to continue to have the moniker of a collaborative process and looks forward to working together toward common goals.

8. Review NPDC Representative & Subcommittee Membership

Nebraska – a letter was provided earlier and summarized below:

Jeremy Gehle – Replacement Water Subcommittee; replaces Melissa Mosier

Jennifer Schellpeper – Consumptive Use Subcommittee; replaces Melissa Mosier

Ryan Kelley – Official Files Subcommittee; replaces Melissa Mosier

Shelley Meyer – Added to Finance Subcommittee

Wyoming – no changes

Colorado – no changes

Reclamation – no changes

The updated NPDC Representative and Subcommittee membership list is **Attachment F**.

9. Meeting Summary

9.1. Future Agenda Items

Carlie Ronca – standard spring items will be added, any non-standard items to add?
Jennifer Schellpeper – update Enterprise Contract negotiations

9.2. Schedule Spring 2021 NPDC Meeting and Location

Jeff Cowley – The decree does require meeting before April 15th

Set at April 14th, 2021 - 1300 hours Mountain Time plan for virtual meeting.

9.3. Summary of Motions/Actions

MOTION to approve the April 7, 2020, NPDC meeting minutes: Jennifer Schellpeper motioned, Erin Light seconded, the motion carried.

MOTION that the Control Crest Subcommittee be assigned the task to look at modifying Appendix 3, and Jeremy Gehle of Nebraska DNR be added to the group, made by Jennifer Schellpeper. Greg Lanning seconds. No further discussion. Unanimous vote to accept. The motion carried.

MOTION that the Consumptive Use Subcommittee continue technical discussion and engage with legal staff of both Wyoming and Nebraska in meetings about modifying decree language in order to accommodate changing methodologies in the Exhibit 6 and consumptive use caps stated in brown book pages 22-24 made by Jennifer Schellpeper. Greg Lanning Seconds. No further discussion. Unanimous vote to accept. The motion carried.

MOTION to extend delay of Consumptive Use Subcommittee’s survey not more than 1 year dependent on the cost determination of Open ET and its validity to replace Exhibit A methodology. Jennifer Schellpeper seconds motion. The motion carried. Further discussion requested.

MOTION to extend delay of Consumptive Use Subcommittee’s survey not more than 1 year dependent on the cost determination of Open ET and its validity to replace Exhibit A methodology. Also instruct subcommittee to review the survey. Motion **not** voted upon. Further discussion requested.

MOTION to extend delay of Consumptive Use Subcommittee’s survey not more than 1 year dependent on the cost determination of Open ET and its validity to replace Exhibit A methodology made by Greg Lanning. Jennifer Schellpeper seconds motion. No further discussion. Unanimous vote to accept. Motion carried.

MOTION to approve action item number 2 to instruct the Consumptive Use Subcommittee to further explore and discuss potential tools and resources that could be used to report consumptive use of irrigation water in the North Platte River Basin, made by Jennifer Schellpeper. Greg Lanning seconds motion. No further discussion. Unanimous vote to accept. Motion carried.

MOTION to give direction to the Consumptive Use Subcommittee to further the question of hiring an independent expert and defining what they would do and how it would help the Consumptive Use Subcommittee in its directive to develop a new methodology made by Jennifer Schellpeper. Greg Lanning seconds motion. No further discussion. Unanimous vote to accept. Motion carried.

MOTION to accept the Consumptive Use Subcommittee's report action item number 5 made by Greg Lanning. Erin Light seconds motion. No further discussion. Unanimous vote to accept. Motion carried.

MOTION to accept the Financial Subcommittee's report as presented and attached made by Greg Lanning. Erin Light seconds. No further discussion. Unanimous vote to accept. Motion carried.

MOTION to approve the Official Files Subcommittee's action items including approval of the Flat Water Group invoice and accepting the subcommittee report made by Jennifer Schellpeper. Erin Light seconds. No further discussion. Unanimous vote to accept. Motion carried.