



ASSOCIATION *of*  
FISH & WILDLIFE  
AGENCIES

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## **FISH AND WILDLIFE COORDINATION ACT WORKING GROUP**

**Chair: Jen Sheehan (AR)**

**Vice-Chair: VACANT**

**Tuesday, September 26, 2023 – 10:00 AM to 12:00 PM**

**Room TBD**

**Calgary, Alberta Canada**

### **In-Person Meeting**

Call to Order – *Jen Sheehan, AR*

- Introductions
- Agenda Review
- Charge Review

Roundtable Discussion – *All*

- WRDA 24 – Project Partnership Agreements
  - Small agencies and towns along the upper miss having problems with PPAs
  - We discussed ongoing issues/complaints with PPAs including federal indemnification, the inability of some states to agree to PPA terms, maintenance and operation requirements of non-federal sponsors, and the need to secure fee title for ecosystem restoration projects
    - Examples of smaller projects that tie to PPA may be needed to show need for reform
    - After indemnification and OMRR, other issues listed above
    - Groundwater language? Give USACE authority over groundwater
      - CA has built it into regulations for state water control board – agency has role in groundwater sustainability program
        - County water districts are the ones putting in for PPA

- Jen S will share groundwater language
  
- Establishing State and Federal FWCA needs
  - States should be reimbursed for FWCA reviews - The USFWS did have the River Basins grants that were distributed to the states for FWCA work
    - Avenue to take advantage? Investigate further – How do we get it backed
    - Current MOU between FWS and USACE talks about responsibilities under FWCA, what they contribute – having report accompany other project documents to Congress
      - Due to staffing, those reviews have turned into letters – Always says under authority of FWCA. Even though letters state that – the agencies default to reviews under Sec 7 ESA and MBTA.
  
- Case study examples and suggestions
  - What would it look like if provided as a resource?
    - AZ still trying to figure out how it plays into projects at agency
      - Suggest flowcharts, see where it plugs into things, type of projects
      - Do states already have something through environmental review tools like natureserv? MDC has developers reach out and generate report. Agencies may not be aware of FWCA but checking the box.
      - *Action: MDC will share process. Contract through natureserv, many states do – some automate with natureserv generating a query.*
        - Focus of natureserv is species of conservation concern – But when MO does process, it goes through internal review and staff may comment on game species (if happening in fishery stream, known hunting spot etc), may request further review – but maybe only 5% of projects.
      - Federal grants available to develop solar/wind review tools – could develop into larger review tool with water data
  
- Increasing understanding of FWCA scope and engagement
  - Most federal actions that effect water trigger FWCA – districts can disagree on what constitutes federal action, but assume broad coverage. Case studies would help – Ones from FWS?
  - Jurisdictional determination – Is there precedent for jurisdictional determinations being reviewable under FWCA? If so then CWA jurisdictional determinations would be reviewable.
  
- FWCA reviews and BIL/IRA implementation
  - Trouble convincing at the local level that equal consideration is required

- AFS or TWS accommodate a workshop?
- NatureServ has biodiversity without boundaries conference – February or March. Usually gather states currently doing environmental review progs or considering them, including staff working on those.
- AZ has annual coordination meetings with BLM and USFS
  - Balance
- Corps district survey development
  - BOR is big player in CA – A lot of historic documents from 40s/50s from when dams were constructed. More education of local area leadership b/c a lot of power to control water.
  - AZ operations of Glen Canyon Dam – sits on FACA w/ states and tribes, everyone has chance to review revisions.
- CWA 404 Proposed Revisions
  - AR: Advised not to comment – We shouldn't be taking on assumption, and if we do DEQ implementation would be problematic.
    - AR legislature passed a law allowing DEQ to assume responsibility. One part time person trying to do 401s in AR and those get money.
  - Sackett effects –
    - MO: Jurisdiction under DNR not MDC, waiting for their internal interpretation first.
    - USACE has Sackett direction sent to divisions that Jen will share
  - National Association of Wetland Managers – AR strongly encourages states to establish relationships. Executive Director Marla Stelk was at North Am 2020.
    - Jen Sheehan is now ex officio board member
- FWCA additions –
  - AR has two interstate water compacts. Compact commissions have federally appointed chair – So do they trigger FWCA?
  - MDOT highlights Sec 4F of US DOT Act of 1966 – Jen will share language.
    - Provides for consideration of parks and recreation lands, waterfowl and wildlife refuges, and historic lands during DOT projects
      - Jen will send Jordan contacts

#### Next Steps/2023 Workplan/DEIJ Integration

- Use FWCA to pull in underserved/overlooked communities
- Increase and capitalize on public outreach about projects

#### Follow ups:

- Contact NCTC see about offering training course

- Jen sending canned talk on FWCA coordination
- WG explore proper venue and timing for FWCA workshop
- Seek a state legal opinion on projects would trigger FWCA/ state review
- Continue to develop and share training materials

Adjourn