



**WESTCAS 2018 Annual Conference
June 20-22, 2018
San Diego, CA**

WESTCAS STATE REPORTS

STATE: Arizona

PREPARED AND PRESENTED BY: Justin Bern, City of Tempe

DATE: June 2018

**KEY WATER QUALITY LEGISLATIVE & REGULATORY ACTIVITIES (IN CHRONOLOGICAL ORDER)
SINCE THE 2017 FALL CONFERENCE**

Arizona Chamber Foundation Policy Brief: “Water in Arizona: Our Past, Present and Future”

The Arizona Chamber Foundation held a meeting in January 2018 where Grady Gammage and Jon Kyl discussed the policy brief in detail. The document and accompanying panel discussion provided an interesting perspective on water policy and the history that will unquestionably inform future decisions in Arizona and the arid southwest. Contact Justin_Bern@Tempe.gov if you are interested in obtaining a copy of the 17-page policy brief.

Water Infrastructure Finance Authority (WIFA) News

- ***Elfrida Water Improvement District – Awarded \$85,000***

The Water Infrastructure Finance Authority of Arizona (WIFA) announced that it has closed an \$85,000 loan with Elfrida Water Improvement District to deepen a well. The District serves approximately 220 residential and four commercial customers in Elfrida, a small unincorporated community located in Cochise County, Arizona. Production of the Jefferson Road well has been declining, and the well is quickly depleted of water due to the ongoing drought. With the WIFA loan, the District will deepen the well, increasing the water system’s reliability and averting disruption in service. WIFA approved \$42,500 in forgivable principal to cover half of the project cost. The forgivable principal provided by WIFA allows Elfrida Water Improvement District to make these vital infrastructure improvements and lessen the economic impact to the District’s customers. In 2014, WIFA also awarded \$24,600 in planning and design technical assistance funding to develop a preliminary engineering report and environmental report for distribution system improvements.

- ***Walden Meadows Community Co-op – Awarded \$40,000***

The Water Infrastructure Finance Authority of Arizona (WIFA) announced that it has closed a \$40,000 loan with Walden Meadows Community Co-op to repair a well. In addition to supplying water to residents in Wilhoit served by the Co-op, the Co-op also supplies water to Thunderbird Meadows, a separate water system owned by Acme Water. In total, the Co-op serves water to approximately 400 customers south of Prescott in Yavapai County. On June 9, 2017, the system's primary well stopped working. Without this well, the Co-op was unable to provide water not only to the Walden Meadows customers but also the customers of Thunderbird Meadows. The proceeds of the loan will be used to pay for the emergency work performed to get the well repaired so that service could be restored. WIFA approved \$20,000 in forgivable principal to cover half of the project cost. The forgivable principal provided by WIFA allows Walden Meadows Community Co-op to make these vital infrastructure improvements and lessen the economic impact to the Co-op's customers, the ratepayers and residents.

- ***Pine Creek Canyon Domestic Water Improvement District - \$250,000***

The Water Infrastructure Finance Authority of Arizona (WIFA) announced that it has closed a \$250,000 loan with Pine Creek Canyon Domestic Water Improvement District to address high pressure in its water distribution system. Pine Creek Canyon Domestic Water Improvement District provides water service to nearly one hundred customers in the Portal IV subdivision in Pine, Arizona. Homes in the lower elevations of the subdivision experience high water pressure because of the 300-foot elevation difference from the system's well to the lower end of the subdivision. This high pressure in the water lines has also caused multiple major water losses in recent years. Utilizing the funding provided by WIFA, the District will replace failing Pressure Reducing Valves (PRVs) and their underground vaults so the new PRVs can be properly inspected and maintained. They will also replace isolation valves in the system so that repairs can be made without shutting off water to the entire system, preventing disruption in service.

- ***2018 Planning and Design Technical Assistance Awards Summary***

WIFA Awarded \$313,000 in technical assistance funding to 10 communities to complete the planning and design phase of infrastructure projects, of which half were "green" approaches. To name just a few:

- City of Scottsdale – Awarded \$35,000 to prepare an alternative stormwater management guidance handbook for Low-Impact Development (LID) and Green Infrastructure and has stretched the scope of the project by pulling together regional partners to enhance the effective reach of the program.
- Cibola Mutual Water Company – Awarded \$22,170 to perform a DBP-TTHM Reduction Study to optimize their distribution system
- Avra Water Co-op, Inc – Awarded \$11,040 to conduct a water main line looping project.

Arizona Water Watch Mobile App

The Arizona Water Watch (AZWW) Mobile App is for Arizona residents and visitors to help ADEQ scientists protect Arizona's beautiful waterbodies.

It is as easy as using your mobile device to snap a photo of a waterbody, answer "yes" or "no" to questions about the water, wildlife and trash in the area and submit your data. ADEQ uses your photo submissions and survey to more quickly discover and analyze water quality issues, update flow data and identify waterbodies for future studies.

AZWW mobile app provides users:

- An entry-level opportunity for volunteers of all ages to do environmental science
- A fun, educational activity to do with family, friends and classmates
- Access to higher-level citizen science volunteer opportunities

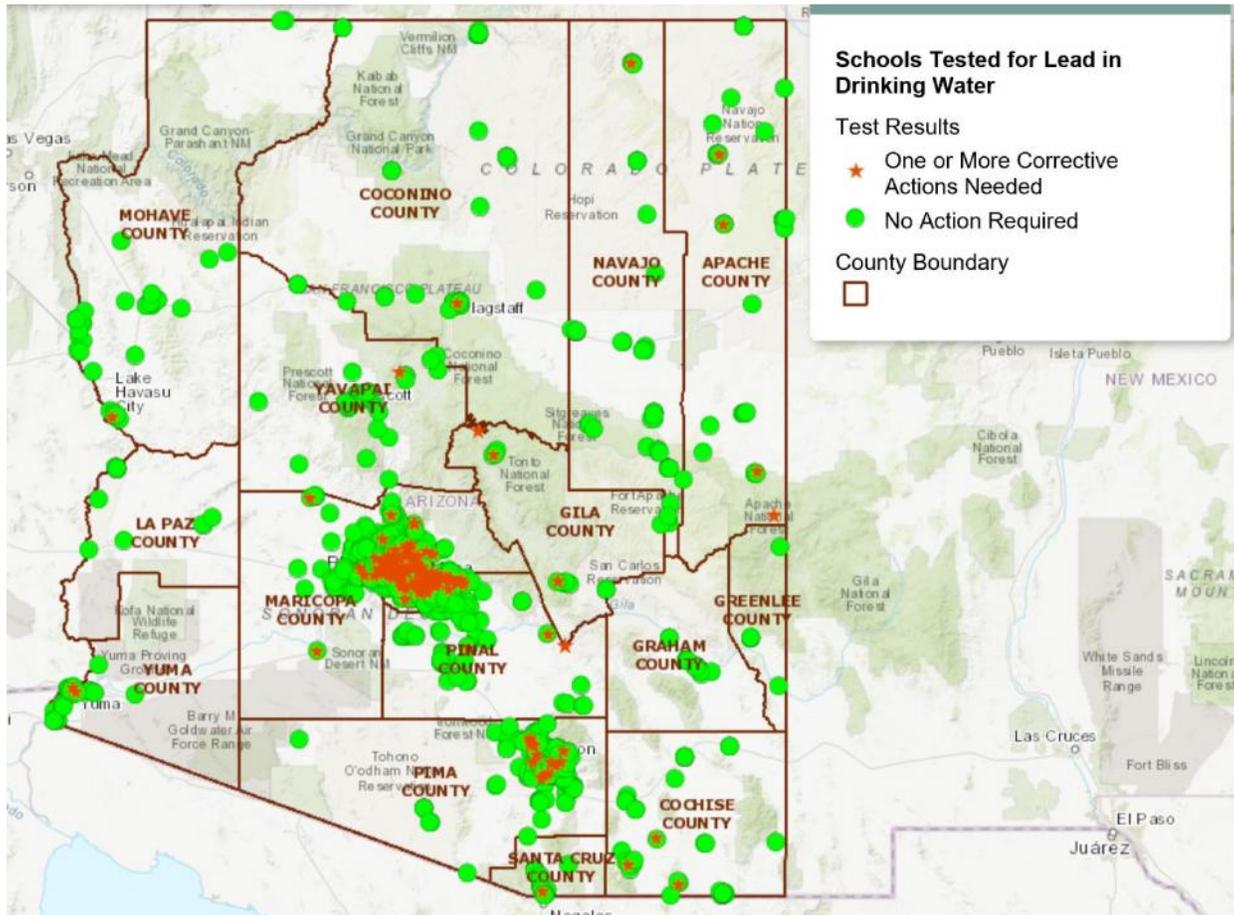
This app is receiving national attention for the use of the community and technology to help focus response and resources.

<http://www.azdeq.gov>

ADEQ Completes Lead Initiative in all Public Schools in Arizona

Out of an abundance of caution and to proactively protect Arizona's children, the Arizona Department of Environmental Quality (ADEQ) initiated a six-month, statewide screening program for lead in public school district drinking water. Thanks to the overwhelming support from elected officials, sister and local agencies, municipal public water providers and Arizona public school districts, and others this successful program has benefited Arizona's children's health and confirmed that drinking water in public school districts is not a common source of lead in Arizona. What we learned:

- Drinking water in public school districts is not a common source of lead in Arizona.
- Fixtures and piping are the source of lead for the small number of lead problems found in drinking water.



There were 16,125 samples taken from 14,782 fixtures for 1,427 schools from 180 school districts across Arizona, with the help of 14 analytical labs and six city partners. ADEQ and its partners collected 16,125 samples from 14,782 fixtures at all public school district schools, taking immediate corrective actions and retesting fixtures in buildings that tested higher than the screening level. 96 percent of all fixtures screened were found to be protective and required no corrective action. ADEQ has posted, online school results, fixture-by-fixture and interactive results maps and results by school district.

Source: <http://azdeq.gov/LeadScreeningProg>

Legislative Recap

Key water quality laws and appropriations status during the Second Regular Session of the 53rd legislative session are highlighted below.

HB 2352: Appropriation for Lead Screening in Charter Schools – Held in Committee

This bill appropriates \$100,000 from the general fund in addition to other appropriations for fiscal year 2018-2019 to ADEQ for screening for lead in drinking water in charter schools.

HB 2291: Groundwater Basin Department Survey – Held in Committee

This bill requires ADWR to conduct a survey of areas in the groundwater basin of the Upper Colorado River Planning area to determine the status and resiliency of groundwater supplies, and submit a report to the House Speaker, Senate President, legislators in affected areas, and relevant County Supervisors. ADWR would be required to gather extensive data, including well usage information. The bill also allows the County Board of Supervisors to recommend metering and monitoring of wells to ADWR.

SB 1039: Arizona Water Protection Fund Appropriation – Governor Signed

This bill as amended appropriated \$400,000 for fiscal year 2018-2019 from the state general fund for the Arizona Water Protection Fund. The Arizona Water Protection Fund is a state-run program that funds projects to protect and enhance water quality and quantity in Arizona's rivers, streams, and riparian areas. Some of these efforts include revegetation, erosion control, channel stabilization, research, and water conservation.

SB 1493: Authorizes ADEQ to establish CWA dredge and fill permit program – Governor Signed

Under current law, the United States EPA issues permits under the Clean Water Act for the discharge of dredged or fill materials into waters that meet the definition of Waters of the United States. This bill essentially authorizes ADEQ to establish a Dredge and Fill Permit Program that is consistent with and no more stringent than the federal program. ADEQ is pursuing this legislation in preparation to assume the responsibilities of the federal program.

SB 1494: Underground Injection Control Program – Governor Signed

The Underground Injection Control Program is a program primarily overseen by EPA in cooperation with ADEQ that regulates the underground injection or discharge of both hazardous and nonhazardous liquid and gas. This bill requires ADEQ to establish a permit program that meets the minimum federal requirements for permitting injection wells in Arizona and requires the ADEQ Director to adopt rules for that purpose. As Arizona looks at using brackish groundwater supplies, some have argued that deep underground injection of brine may be a means of making brackish desalination in Arizona more economically feasible.

Source: <http://www.amwua.org/where-we-stand#legislation>

ADEQ State Survey, Testing and Report of Water Systems that found PFOS/PFOA during UCMR3 Sampling

ADEQ contacted water systems to conduct screening for PFOS/PFOA at some sources with detects within those systems even if they tested below the new health advisory level. ADEQ sent the Drinking Water Section Manager, Daniel Czecholinski, to the PFOS/PFOA Leadership Summit in Washington, DC, to represent the Department, Arizona water systems and Region 9.

ADEQ sought additional comments, suggestions, challenges, or any other information from the regulated community that they could take on behalf of the water systems to the Leadership Summit in DC. Because of this close collaboration and study, the agency will develop a comprehensive PFOS/PFOA report that is set for publication this month.

Construction General Permit

ADEQ permit staff sent a draft Construction General Permit and crosswalk in March 2018 to replace the current permit that will expire on June 2, 2018. Also, the agency scheduled an informal stakeholder meeting in late March to discuss the draft language to gauge the level of support for several key changes. The changes that caused the most discussion among stakeholders were:

- Reassignment of responsibility of operators – the existing permit allows multiple operators to submit for permit coverage depending on activity which, in some cases, caused compliance issues in that there was no “one” responsible party. The proposed permit compels the owner of the project to be considered the permittee
- Routine Inspections – The requirement was once every 7 days and the proposed language requires routine inspections to be conducted once every 14 days
- The possibility of an exemption for sites that do not discharge to a Water of the U.S. – This language is not part of the permit but ADEQ proposed this option to stakeholders to gauge interest. The details related to notifications and MS4 responsibilities were not part of the discussion, but the concerns were acknowledged by ADEQ.

After the informal review period, ADEQ will consider any resulting comments and prepare the draft CGP and corresponding Fact Sheet for a formal 30-day public notice (PN) and comment period. The PN will be announced through [gov.delivery](#) and published in the Arizona Administrative Register (A.A.R) by the Arizona Secretary of State.

Arizona Surface Water Quality Standards Triennial Review Stakeholder Process Update –

The Arizona Department of Environmental Quality (ADEQ) Water Quality Division started the stakeholder engagement process in June of 2017. As a result of the process, the agency developed three independent workgroups with the goal of addressing key issues and producing final recommendations for consideration during the drafting on the surface water quality standards. The three workgroups are:

- Antidegradation and Effluent Dependent Waters
- Surface Waters and Designated Uses (Appendix B)
- Outstanding Arizona Waters

Use this link: <http://azdeq.gov/node/3933> to view all of the stakeholder proceedings including the minutes and recordings from each meeting and each of the final workgroup recommendations for each topic. ADEQ closed the informal stakeholder review process at the end of May 2018 and is expected to public notice the draft standards in July and then expect to codify in state rule by September 2018.

STATE: California

PREPARED AND PRESENTED BY: Zoe Rodriguez del Rey, Coachella Valley Water District

Date: June 2018

California Water Fix

Water from California's State Water Project (SWP) flows through the Sacramento San Joaquin Delta to supply water to California's Bay Area, San Joaquin Valley, Central Coast, and Southern California. Twenty-nine SWP contractors rely on the Department of Water Resources (DWR) to deliver water from the SWP. California's state Legislature recognizes the current water delivery system in the Delta, with its 700 mile web of waterways, sloughs, canals, and islands, supported by about 1,100 miles of earthen levees, is unsustainable. Threats of earthquakes, floods, subsidence, climate change, rising sea levels, and increasing regulatory constraints on water operations, as well as other risks and uncertainties in the Delta, are contributing to a decline in water supply reliability and a decline in ecosystem health.

The California WaterFix is a comprehensive solution proposed by state and federal agencies to ensure California has a reliable water supply for many years to come. It modernizes the decades-old delivery system through the building of three new intakes in the northern Delta away from endangered species habitats, along with two underground tunnels to carry water to the existing aqueduct system in the southern Delta. Two 40-foot wide tunnels located 150 feet below ground will carry diverted surface water by gravity, under the Delta, to pumping facilities south of the estuary. Water would be lifted into canals that flow several hundred miles through the state as far south as San Diego.

Recent updates:

- April 10, 2018 – the Metropolitan Water District Board of Directors voted 61 percent to 39 percent to provide additional financing necessary to allow for the construction of the full California WaterFix project.
- May 8, 2018 – the Santa Clara Valley Water District Board of Directors voted 4 to 3 to participate fully in California WaterFix.
- May 11, 2018 – DWR entered into a Joint Exercise of Powers Agreement with the Delta Conveyance Design and Construction Authority (DCA), forming a partnership for the design and construction of California WaterFix. The newly established [Delta Conveyance Office \(DCO\)](#) within DWR will provide oversight for the project. The DCA, a public agency composed of local public water agencies who are investing in California WaterFix, will be responsible for the design, construction, and delivery of the project. DWR will own and operate the project as part of the SWP once construction is complete.
- May 17, 2018 - the DCA held its initial Board Meeting on May 17, 2018. At the inaugural meeting, the DCA Board approved and signed the Joint Exercise of Powers Agreement.

For more information on Cal WaterFix including fact sheets, timelines, and maps visit

<https://www.californiawaterfix.com/>.

Long-Term Conservation Bills – Senate Bill 606 (Hertzberg) and Assembly Bill 1668 (Friedman)

On May 31, 2018, Governor Jerry Brown signed two long-term conservation bills, Assembly Bill (AB) 1668 and Senate Bill (SB) 606, creating a new structure for water suppliers to develop water efficiency strategies in California.

AB 1668 requires the State Water Resources Control Board (State Water Board) and the California Department of Water Resources (DWR) to adopt water efficiency regulations, outlines reporting requirements for water suppliers, and specifies penalties for violations. AB 1668 includes the following key provisions:

- Establishes water use objectives, standards and reporting requirements for indoor and outdoor residential water use, commercial, industrial, and institutional (CII) landscape areas, water losses, and other unique local uses.
- Revises the Agricultural Water Management Planning Act to increase the efficiency of agricultural water use.

- Requires DWR, the State Water Board, and other relevant stakeholders to identify small water suppliers and rural communities that may be at risk of drought and water shortage vulnerability and provide recommendations for drought planning.

SB 606 requires the State Water Board and DWR to adopt water efficiency regulations, outlines requirements for urban water suppliers, and specifies penalties for violations. The bill contains distinct provisions on water shortage planning and water loss reporting for urban wholesale water suppliers and establishes a bonus incentive for potable reuse water. SB 606 includes the following key provisions:

- Establishes urban water use objectives and reporting requirements for urban water suppliers by requiring an urban water supplier to calculate an aggregate urban water use objective.
- Substantially revises the requirements under the Urban Water Management Planning Act. Specifically, requires urban water suppliers to conduct annual drought risk assessments and to submit an annual report to DWR.
- Requires the adoption of a water shortage contingency plan, which must include certain elements, annual drought risk assessment procedures, and standard water shortage levels.

The pair of bills will require urban retail water suppliers to develop annual urban water use objectives based on a formula including an indoor residential water use efficiency standard, an outdoor landscape standard based on local conditions, and a leak loss standard, as well as other components. DWR and the State Board will be developing guidelines and methodologies on how to calculate urban water use objectives by October 2021 through a public process. The indoor residential standard was set by the Legislature and changes over time:

- 55 gallons per capita per day (GPCD) until January 1, 2025;
- 52.5 GPCD between January 2, 2025, and January 1, 2030; and
- 50 GPCD after January 1, 2030.

Urban retail water suppliers will be required to implement performance measures to increase water use efficiency among their commercial, industrial, and institutional consumers (CII) by educating those users regarding best management practices or conducting water use audits.

Proposed Amendment to the Recycled Water Policy

On May 9, 2018, the State Water Board announced that the Proposed Amendment to the Recycled Water Policy was available for public comment. California's Recycled Water Policy, which includes a "Mandate for the Use of Recycled Water," was adopted in 2009 and amended in 2013. In 2014, California adopted indirect potable reuse rules that provide detailed criteria for treatment processes, contaminants to test for, and how long treated water must remain underground.

State Water Board staff will accept written comments on the proposed amendment to the Policy for Water Quality Control for Recycled Water and the Draft Staff Report, including the Draft Substitute Environmental Documentation until 12:00 noon on Tuesday, June 26, 2018. A public hearing will be held on June 19 at 9:30 am at California EPA headquarters in Sacramento.

If adopted, the proposed amendments would:

- Remove statewide mandates for the use of recycled water, but retain the goals.
- Add a narrative goal to minimize the direct discharge of treated municipal wastewater to enclosed bays, estuaries and coastal lagoons, and ocean waters.
- Require recycled water producers to report recycled water use data annually.
- Require municipal wastewater treatment facilities to report monthly influent, treatment level, and volume of treated wastewater discharged.
- Clarify the requirement to comply with Water Code section 1211 (wastewater change petitions).
- Require regional water boards to identify groundwater basins where salt and nutrient management plans (SNMPs) have not yet been developed, but are still needed to achieve water quality objectives for salts and nutrients.
- Clarify the process for regional water boards to approve stakeholder-developed SNMPs.
- Require regional water boards to evaluate data from SNMPs periodically to determine whether updates are warranted.
- Remove monitoring for priority pollutants in recycled water used for landscape irrigation.

- Clarify the permitting and antidegradation analysis required for non-potable recycled water projects, groundwater recharge projects, and reservoir water augmentation projects.
- Provide permitting criteria intended to aid in compliance with Resolution No. 68-16 (the “Antidegradation Policy”) for eligible non-potable recycled water projects.
- Update the monitoring requirements for CECs for recycled water used for groundwater recharge and reservoir water augmentation, including adding bioanalytical screening using estrogen receptor-alpha and aryl hydrocarbon receptor.
- Require regional water boards to evaluate, and if necessary, update recycled water permits for consistency with applicable regulations, plans, and policies.
- Terminate coverage under existing regional water board general orders for non-potable recycled water use and encourage enrollment under statewide water reclamation requirements.

On March 6, 2018, the State Water Board adopted regulations setting requirements for the quality of treated recycled water that can be added to a surface water reservoir that is used as source of drinking water. The regulations also specify the percentage of recycled water that can be added and how long it must reside there before being treated again at a drinking water treatment facility. The State Water Board is also working on regulations for direct potable reuse that are expected by 2023.

Sustainable Groundwater Management Act

Signed into law by Governor Edmund G. Brown Jr. in 2014, SGMA is landmark legislation that empowers local agencies to manage groundwater resources sustainably. SGMA requires governments and water agencies of high and medium priority basins to halt overdraft and bring groundwater basins into balanced levels of pumping and recharge. Under SGMA, these basins should reach sustainability within 20 years of implementing their sustainability plans. For critically over-drafted basins, that will be 2040. For the remaining high and medium priority basins, the deadline is 2042. In areas where groundwater users and local agencies are unable or unwilling to sustainably manage their groundwater, SGMA authorizes State Water Board intervention. The long-term planning required by SGMA is intended to provide a buffer against drought and climate change and contribute to reliable water supplies regardless of weather patterns in the state.

Recent updates:

- SGMA established a process for local agencies to develop an Alternative in lieu of a Groundwater Sustainability Plan (GSP). An Alternative was required to be submitted to DWR for review by January 1, 2017. The first annual report submittal deadline was April 1, 2018.
- On May 18, 2018, the California Department of Water Resources (DWR) released a draft prioritization of groundwater basins. The 2018 SGMA Basin Prioritization is scheduled to be finalized by fall 2018 after a public comment period that runs through July 18. The 2018 SGMA Basin Prioritization is a reassessment of the 2016 update of Bulletin 118 Basin Boundaries.
- A second round of Basin Boundary Modifications opened in January and closes on June 30, 2018. Once the period closes, DWR will be accepting public comments for a period of at least 30 days. They anticipate getting draft modifications out by October of next year with final modifications released by the end of the year.

1,2,3-Trichloropropane Drinking Water Standard

On July 18, 2017, the State Water Board adopted a drinking water standard at 5 parts per trillion (ppt) for 1,2,3-Trichloropropane in tap water. The manufactured chemical, used historically in industrial cleaning solvents and some soil fumigant pesticides, is a recognized carcinogen that may cause cancer after long-term exposure. Commonly known as 1,2,3-TCP, it has been found in groundwater sources, primarily in California’s Central Valley. There is currently no Federal MCL for 1,2,3-TCP.

Following approval by the Office of Administrative Law (OAL), on December 14, 2018, the new regulation became effective for enforcement on January 1, 2018. Public water systems statewide began quarterly sampling for 1,2,3-TCP in January 2018. Systems will be in or out of compliance with the new standard based on the average of four quarters of sampling. If a water system's four-quarter average is above the 5 ppt standard, it must publicly notify its customers of the violation. The State Water Quality Control Board (SWQCB) will issue compliance orders for public water systems found in violation.

Based on 2015 data, the Division of Drinking Water has estimated that 103 water systems serving approximately 920,000 Californians have detected 1,2,3-TCP above 5 ppt in at least one drinking water source. Communities in several counties within the Central Valley are particularly impacted due to their reliance on groundwater and past use of pesticides containing 1,2,3-TCP in many agricultural areas. Public water systems are pursuing lawsuits against Shell and Dow, producers of the pesticide found to be the source of 123-TCP in some agricultural areas of the State, to fund treatment systems.

Mandatory Lead Sampling Program for Public Schools

The State Water Resources Control Board notified community water systems statewide on January 16, 2018, that they are now required to complete lead sampling on the drinking water supplies of public schools built before 2010. This new requirement took effect January 1, 2018, when AB 746 became law.

Community water systems are required to sample for lead in drinking water at public, K-12 schools and day care and preschools on public school properties. Water systems must complete this mandatory sampling by July 1, 2019. Water systems that fail to comply with the law may face enforcement action from the Division of Drinking Water. Water systems will conduct sampling at drinking fountains and faucets used for consumption and preparing food. A water system must report the testing results within two business days if any samples show lead levels above 15 parts per billion (ppb). Water systems have 10 business days to report results if samples show lead levels less than, or equal to, 15 ppb.

If a school's lead level exceeds 15 ppb, then the water system is required to sample water entering the school to help determine the possible source of lead. The school must also take several actions, including shutting down all fountains and faucets with high lead levels, providing potable drinking water until the situation is resolved, and notifying parents and guardians of students. Additional testing may be required to determine if all or just some of the school's fountains and faucets are required to be shut down. Public schools that requested and received sampling from their water systems under the voluntary program have met the requirements of AB 746 and do not need to be sampled again.

Standards for Cannabis Cultivation

On October 17, 2017, the State Water Board adopted a new statewide policy establishing strict environmental standards for cannabis cultivation in order to protect water flows and water quality in California's rivers and streams.

The policy applies to cannabis cultivation and is specifically designed to address Proposition 215, the Compassionate Use Act, which established the medical cannabis industry, and Proposition 64, the Adult Use of Marijuana Act, which legalized recreational cannabis cultivation, and possession and use of limited amounts of cannabis by adults over 21 years of age. The policy does not apply to personal cultivation for recreational use.

The new Cannabis Cultivation Policy establishes statewide requirements that will be implemented through a water quality permit known as the Cannabis General Order and as conditions for cannabis-related water rights referred to as Cannabis Small Irrigation Use Registrations. The policy protects California's waters from cannabis-related waste discharges, establishes protections for riparian areas and wetlands, and protects stream flows.

Statewide Toxicity Provisions

The State Water Board will propose the Establishment of the Water Quality Control Plan for Inland Surface Waters, Enclosed Bays, and Estuaries of California and Toxicity Provisions. The Provisions would establish numeric water quality objectives for both acute and chronic toxicity and establish a program of implementation to control toxicity. The Provisions would replace the State Water Board's previous proposal to control toxicity, the Draft Toxicity Policy. The next draft State Toxicity Plan is tentatively scheduled to be released for public comment in June 2018.

The new statistical method that will be required by the State Toxicity Plan, based on the preliminary draft State Toxicity Plan released in April 2017, is the Test of Significant Toxicity (TST). This test is already required by some Regional Water Boards.

The Southern California Alliance of Publicly Owned Treatment Works (SCAP) is arguing against the legality of the TST test method and the test method being written into NPDES permits. The TST test method is concerning because it has a big burden on agencies and it can lead to false positives. When toxicity is found, even if false, the agency has to investigate what is causing the toxicity by performing costly activities such as Accelerated Monitoring, Toxicity Reduction Evaluations (TRE), and Toxicity Identification Evaluations (TIE). False positives can also lead to permit violations or fines for the agency.

Agricultural Order for Eastern San Joaquin River Watershed

On February 7, 2018, the State Water Board adopted an order revising agricultural requirements for the Eastern San Joaquin River Watershed to reduce nitrate contamination of groundwater and surface water. The order revises waste discharge requirements for the Eastern San Joaquin River Watershed issued by the Central Valley Regional Water Quality Control Board in 2012. The watershed comprises an area of about one million acres of irrigated agriculture in the eastern San Joaquin Valley.

The order also establishes a model for all regional water boards to follow in their subsequent orders to reduce pollutants from irrigated agriculture around the State. The order directs the regional water boards to revise their agricultural orders to incorporate testing of drinking water quality for on-farm wells and address the long-term goal of improving groundwater and surface water quality through monitoring and controlling agricultural practices, specifically nitrogen management. The order also directs the regional water boards to require the reporting of nitrogen application to crops from fertilizers, organic soil amendments, and in irrigation water, as well as data on nitrogen removed when crops are harvested and taken from the fields.

Safe and Affordable Drinking Water Act/ Legislation to Implement a Water Tax

SB 623 was introduced to establish the Safe and Affordable Drinking Water Fund within the State Treasury that will be continuously appropriated to the State Water Resources Control Board to address safe drinking water and affordability issues in areas where systems fail to provide safe and reliable drinking water. Revenues for the Safe and Affordable Drinking Water Fund would come from four sources:

- Fertilizer fee
- Dairy fee
- Confined animal fee – excluding dairies
- Water tax based on meter size

Raw water, recycled water, and meters used exclusively for fire flow would be exempted from the water tax.

SB 623 failed passage at the conclusion of the 2017 legislative session, however at the start of the 2018 session SB 623 language was incorporated in a budget trailer bill that was introduced in February 2018. The Assembly Budget Subcommittee Number 3 passed the Administrations version of the budget trailer bill and then later rescinded this action, while the Senate Budget Subcommittee Number 2 approved action to fund drinking water needs initially through the State General Fund and Proposition 2 Rainy Day Funds in order to better define the scope of the funding need.

Due to the division in proposed funding efforts the Safe and Affordable Drinking Water Act Budget Trailer Bill was sent to Conference Committee, where the Conference Committee declined action to implement the Safe and Affordable Drinking Water Act and the related water tax. The Budget Conference Committee did allocate \$28.5 million to implement clean drinking water objectives. The Department of Finance and the Governor's office have committed to continue discussions to long term funding for the Safe and Affordable Drinking Water Fund throughout the summer.

Assembly Bill 2050 (Caballero) Small System Water Authority Act of 2018

AB 2050 proposes to merge noncompliant water systems into a larger and more robust public water system that can take advantage of improved economies of scale, streamlined managerial functions, and enhanced financial capacity.

The State Water Resources Control Board will be tasked with notifying chronically noncompliant systems that they are in violation of public health and safety. Each system is provided with an opportunity to develop a compliance plan, and if they are unable to approve the plan, the State Board will notify the Local Agency Formation Commission (LAFCO) that chronically noncompliant systems within the county will be dissolved and re-formed into one, or more than one, Small System Water Authority.

AB 2050 passed out of the Assembly on Wednesday, May 30, 2018. The bill will be double referred in the Senate to Senate Governance and Finance, and either Senate Environmental Quality or Senate Natural Resources and Water.

Senate Bill 998 (Dodd) Discontinuation of Residential Water Service

SB 998 seeks to specify under what circumstances a water service provider can discontinue water service due to nonpayment by a residential customer. Water providers are currently required to establish a policy that governs termination of water service for failure to pay for service. SB 998 would supersede the current process and require, in addition to posting a policy on a website, that a water provider may not terminate service for nonpayment for at least 60 days. At which time a customer must be contacted by telephone to discuss options. If the customer agrees to an alternative payment schedule and then fails to complete the payment, they are granted an additional sixty days, for a total of 120 days that a water provider may not terminate service. The bill contains a number of specific outreach efforts that must be conducted via telephone, mail and in-person.

In cases where an individual residing in the house receives a certification from a licensed medical professional that discontinuation of residential water service will be life-threatening, or an individual is receiving some form of state or local financial assistance, or have an income 200 percent below the federal poverty level, discontinuation of service may not occur. SB 998 also requires water providers to waive reconnection fees and offer a reduction in interest charges for disadvantaged residents and caps reconnection fees for all other residents.

SB 998 passed out of the Senate and will be triple referred within the Assembly. A coalition of statewide associations have been working to develop and advocate for amendments to SB 998 in order to make the bill more “workable”. However, now that three policy committees have taken up the bill in the Senate and the progress has been slow on meaningful amendments, the coalition will be moving to a straight oppose on the bill.

STATE: Colorado

PREPARED BY: Scott C. Miller, Esq., Patrick, Miller & Noto, P.C. and presented by Mike Eytel, Colorado River Conservation District

DATE: June 2018

Litigation:

Colorado Supreme Court rules that anti-speculation doctrine applies to replacement plans involving new or changed appropriations in designated basins, *Front Range Resources, LLC v. Colorado Ground Water Commission, 2018 CO 25*: Front Range Resources, LLC applied for a replacement plan in the Lost Creek Designated Ground Water Basin, seeking to divert water from its existing rights to recharge the Basin's alluvial aquifer. It then planned to withdraw that recharged water by constructing several new high capacity wells and increasing the production of its existing wells. After several parties opposed the plan, the application was eventually dismissed by the Ground Water Commission, and then appealed to the District Court. Around this time, Front Range entered into an option contract with the City of Aurora for the city to purchase all or some of this newly pumped water. On appeal, the District Court also rejected the plan, finding that the increased production wells and the construction of new wells triggered the anti-speculation doctrine. In Colorado, the anti-speculation doctrine requires that users must have a specific plan and intent to put water to a beneficial use. Here, the District Court ruled that because Front Range only had an option contract, there was no guarantee that the water would be beneficially used, and therefore the application was speculative. Consequently, the District Court granted a motion for summary judgment against Front Range. On review, the Colorado Supreme Court upheld the water court's decision, ruling that the anti-speculation doctrine applies to replacement plans involving new appropriations or changes to designated ground water rights. Using the same reasoning as the District Court, the Supreme Court found that Front Range could not demonstrate that it had a final plan to put the water to a beneficial use and therefore the application was speculative.

Legislation:

Colorado General Assembly passes several bills to increase allowable uses for reclaimed water: The Colorado General Assembly recently passed two bills, SB 18-038 and HB 18-1093, to codify rules promulgated by the water quality control commission concerning allowable uses of reclaimed domestic wastewater. Reclaimed water is domestic wastewater that has undergone secondary treatment by wastewater treatment works for subsequent reuses other than drinking water, as well as traditional treatment to meet water quality standards for certain uses. The bills were part of an overall push by the water quality control commission to expand the use of reclaimed water as a drought-mitigation strategy. The bills codified rules allowing for reclaimed domestic wastewater – defined into three categories based on water quality - for industrial hemp production (SB 18-038) and edible food crops (HB 18-1093). A third bill (HB18-1053) would have allowed marijuana cultivation as an allowed use for reclaimed wastewater, but did not pass. Both enacted bills allow the water quality control commission to develop more stringent standards if it determines that the existing rules do not adequately protect public health. Further, the bills authorize the water quality control division to develop best practice guidelines for this reclaimed water, and grants the department of public health (CDPHE) the power to grant variances for uses of reclaimed domestic wastewater.

Previously decreed water rights for flow-through structures for recreation and piscatorial uses are protected. A new provision was added to C.R.S. § 37-92-305 to clarify that absolute and conditional water rights decreed as of July 15, 2015 would be exempt from the Colorado Supreme Court's interpretation of "beneficial use" (or non-beneficial use in this instance) in the case of *St. Jude's Co. v Roaring Fork Club, LLC*, 351 P.3d 442 (Colo.2015). The *St. Jude's* case held that recreation and piscatorial use of water in man-made or enhanced flow-through water structures were not a recognized beneficial use of water under Colorado water law. However, before this ruling, there were hundreds, if not thousands, of these type of water rights decreed throughout the State; and the Supreme Court was silent about whether its ruling should apply retroactively. Thus, this legislation was intended to confirm that pre-existing water rights would be recognized and protected. Such grandfathered rights may be maintained through findings of reasonable diligence and "to make absolute," and augmentation plans related to such rights may be approved. However, any change of these rights must be limited to changes in points of diversion. The Colorado River Water Conservation District was instrumental in the passage of this legislation.

Bill introduces new process for reservoir releases for fish and wildlife mitigation: The Governor signed a bill on April 12, 2018 to create a new water court process to simplify permitting procedures for water users applying for storage rights. Under previous law, an applicant for a water right that also required a federal permit or license was required to submit a fish and wildlife mitigation proposal to the Colorado Water Conservation Board (CWCB) and Colorado Parks and Wildlife. Once approved by Parks and the CWCB, the plan was then communicated to every other agency for which the applicant was required to obtain a permit. To alleviate some of this excess bureaucracy, SB 18-170 established a water court process through which the owner of a water storage right can now comply with mitigation requirements by dedicating to the CWCB, pursuant to a corresponding water court decree, an amount of water for release in a designated stream reach. This plan allows the CWCB to better minimize and mitigate potential fish and wildlife impacts, while creating a smoother procedural process for water users.

Public Utilities Commission deregulates nonprofit water utilities: The Governor signed into law on April 2 a bill (SB 18-134) to simplify regulations on nonprofit water utilities. Under previous law, the Public Utilities Commission (PUC) instrumented simplified regulatory procedures to water companies serving fewer than 1,500 customers. As these companies were almost exclusively in rural areas, the PUC granted regulatory relief to ease extraneous costs. With this new law, the PUC expands those reduced regulatory procedures to all water companies designated as nonprofits, provided their rates, charges, and terms and conditions are "just and reasonable." This means that, while the PUC will be more hands off, it retains the power to hear complaints of unreasonable rates or policies, and to take action against the water company if necessary.

Colorado Water Quality Control Division/Commission Updates:

Regulation No. 11: On April 9, 2018 the Colorado Water Quality Control Commission held a public hearing on proposed changes to Regulation 11, the Colorado Primary Drinking Water Regulations. The changes, proposed by the Commission, include additions to the Level 1 and 2 Assessments, adding review of atypical events, system maintenance and storage procedures, and water treatment considerations that could impair water quality. The proposed amendment also reworks a significant portion of the regulation dealing with coliforms (specifically *E. coli*) to clarify the regulation and its restrictions on maximum contaminant levels.

Regulation No. 84: Last revised in 2013, Regulation 84 controls reclaimed domestic wastewater. On August 6, 2018, the Water Quality Control Commission will hold a public hearing on amendments to the regulation proposed by Denver Water. Denver Water supplies a large portion of the Front Range and is therefore influential on overall domestic water policy. The proposed changes to Regulation No. 84 include allowing the use of reclaimed water for toilet and urinal flushing and excluding marijuana cultivation from acceptable agricultural uses. The proposed changes note that “marijuana means all parts of the plant of the genus cannabis, whether growing or not, including the seeds” and that the Colorado Marijuana Enforcement Division holds the ultimate authority to authorize the use of reclaimed water for cannabis irrigation.

Regulation No. 61: The Colorado Water Quality Control Commission held a public hearing on a proposed change to Regulation No. 61 governing discharge permits. The proposed changes seek to streamline the procedural process by clarifying that only issues of law or fact raised during the permitting process may be raised at a subsequent adjudicatory hearing. The current language – “[o]nly issues of law or fact raised by the applicant or other person prior to the adjudicatory hearing may be raised at the adjudicatory hearing” – may seem straightforward, but there has been controversy as to exactly what time frame the rule intends to control. The rule has been interpreted, by the Commission, to mean only those issues raised during the permitting process (*i.e.*, the public comment period), however some applicants have put forth a reading that includes all time “prior to the adjudicatory hearing.” This amendment, proposed by the Commission, will solidify its position and work to prevent any other interpretations of the regulation.

Regulation No. 86: On May 7, 2018, the Commission held its triennial review informational hearing concerning Regulation No. 86, Graywater Control. The Colorado Water Plan has identified graywater as a necessary tool for long-term water sustainability, and this regulation outlines the ways in which graywater can be beneficially and safely used. Regulation No. 86 divides allowable graywater use into four categories: subsurface irrigation and indoor toilet/urinal flushing for both single-family and larger users. The Colorado Water Quality Control Commission outlined three topics for triennial review – small-scale use, potential inclusion of toilet tank sinks, and additional uses. Going forward, the Commission has outlined a goal to work with local jurisdictions to expand the regulation to allow for small-scale “laundry to landscape” surface irrigation and toilet tank sinks that have minimal piping and installation requirements. Additionally, the Commission has reached out to Denver and Pitkin County staff to evaluate the possibility of adding additional graywater uses including 1) irrigation of green roofs with restricted public access, 2) fire suppression for decentralized fire systems (*i.e.*, a fire tank for a single-family home), and 3) dust suppression for landfill sites.

1 The author wishes to acknowledge the research and drafting of John Sittler, associate for Patrick, Miller & Noto, PC, in support of this State Report.

STATE: New Mexico

PREPARED BY: Jane DeRose-Bamman, DeRose-Bamman Consulting

DATE: June 2018

Draft Revisions to Ground and Surface Water Protection Rules

NMED submitted a petition for revisions to the Ground and Surface Water Protection Rules (20.6.2. NMAC) in May 2017. This rule covers ground water quality standards, permitting requirements for discharges to groundwater, certification procedures for surface water discharge permits, abatement requirements, and underground injection control requirements. The hearing for the petition was held in November 2017. Proposed revisions include changing most of the ground water quality standards to match Safe Drinking Water Maximum Contaminant Levels (MCLs), adopting language to control vapor intrusion, allowing the state to issue variances for ground water permitting requirements for more than five (5) years and eliminating the exemption for permitting if a discharge meets groundwater standards through treatment or blending. A total of eleven parties participated in the hearing. The main issue during the hearing was the extension of the five-year limit for variances. The Water Quality Control Commission is waiting for the Hearing Officer's report and plans to begin deliberations in July 2018.

Texas v. New Mexico Lower Rio Grande Valley

The 1938 Rio Grande Compact and other "Downstream Compacts" allocated the Rio Grande water among Colorado, New Mexico, Texas, and Mexico. Annually, New Mexico's allocation is based on measurements at Otowi gage north of Santa Fe. New Mexico delivers Texas' allocation of Rio Grande water to Elephant Butte Reservoir, about 90 miles north of the state line. Built by the U.S. Bureau of Reclamation over 100 years ago, Elephant Butte Dam holds back water for what's called the Rio Grande Project—water the federal government must deliver to farmers in New Mexico and Texas, downstream cities, and Mexico.

More than 10 years ago, Texas alleged that by allowing southern New Mexico farmers to pump water from underground that is connected hydrologically to the river, New Mexico was reducing the amount of river water available to Texas. Texas filed suit that named Colorado and New Mexico as defendants. New Mexico filed a motion to dismiss the case, but in February 2017 the U.S. Supreme Court's special master—appointed to research the issues and report to the court—recommended the court reject that motion and allow the case to proceed to the U.S. Supreme Court. The special master's report also recommended that the Supreme Court hear claims by the federal government against New Mexico.

The U.S. government alleges that by allowing farmers to divert water from the river and pump it from below-ground, the state is illegally allowing people to either use water they're not supposed to, or use more water than they're allowed. The U.S. also alleges that New Mexico's diversions have interfered with its contractual obligations to deliver water to downstream users, including Mexico.

During 2017, Amicus briefs were filed by the Albuquerque Bernalillo County Water Utility Authority, City of Las Cruces, New Mexico Pecan Growers, New Mexico State University, City of El Paso, and State of Kansas. Elephant Butte Irrigation District and El Paso County Water Improvement District #1 filed motions to intervene, which were denied. On October 10, New Mexico's motion to dismiss Texas's complaint was denied. Additional motions were filed.

The case was argued before the Supreme Court on January 8, 2018. The Supreme Court issued a unanimous opinion on March 5, 2018. Justice Gorsuch started out the opinion with a quote: "Will Rogers reportedly called the Rio Grande "the only river I ever saw that needed irrigation." In its long journey from the Colorado Rockies to the Gulf of Mexico, many and sometimes competing demands are made on the river's resources." However, in the end, the Court agreed to hear two exceptions to the report concerning the scope of the claims the U.S. government can assert in the matter; all other exceptions were overruled; and the case was remanded.

STATE: Texas

PREPARED BY: Peggy Glass, Ph.D., Principal, Alan Plummer Associates, Inc., and Wayne Owen, Tarrant Regional Water District and Presented by Robert F. Adams, D.E., P.E., Principal, Alan Plummer Associates, Inc.

DATE: June 2018

Texas regulatory affairs have been relatively quiet recently, except for individual permittees with challenging problems. Some of the recent regulatory actions of note are as follows:

Triennial Review of Texas Surface Water Quality Standards: The proposed triennial revisions to the Texas Surface Water Quality Standards were adopted by the Texas Commission on Environmental Quality (TCEQ) on February 7, 2018 and submitted to EPA Region 6 for review and approval on February 27, 2018. The EPA 90-day review period ended before the end of May; but, as of June 5, 2018, the TCEQ has not been notified of any approvals, disapprovals, or requests for additional information. It can be noted that there are still some standards adopted by TCEQ in 2000, 2010, and 2014 that are still under review by EPA.

List of Impaired Waters prepared pursuant to Section 303(d) of the Clean Water Act: TCEQ issued the draft 2016 (that is not a typo) 303 (d) list for review and comment on May 4, 2018. Rumor has it that there was a lengthy discussion with EPA Region 6 about how phosphorus and nitrogen should be considered when looking at whether waters are impacted by excess nutrients. Texas adopted chlorophyll standards but not standards for phosphorus or nitrogen.

Dissolved salts continue to be an issue. Nine new segments were listed as impaired for Total Dissolved Solids (TDS), chloride, sulfate, or some combination thereof.

Regulation of Dissolved Salts: Because an increasing number of permittees are being challenged to regulate dissolved salts in their discharge, the Texas Association of Clean Water Agencies and the Water Environment Association of Texas have formed a coalition to work with TCEQ to develop methods for establishing standards for dissolved salts and methods for determining whether Reasonable Potential exists for violating water quality standards such that a permit limit or other regulatory measure should be imposed.

The development of standards for individual ions that are protective of aquatic life will have to be cognizant of EPA actions at the national level. Therefore, the Texas TDS coalition is working in coordination with the National Association of Clean Water Agencies (NACWA). NACWA members have identified this as a high priority, national issue.

Since the Texas draft water quality standards are currently out for review, no changes to standards for dissolved salts are expected until the next triennial review. However, that is probably the soonest that mutually acceptable standards could be agreed upon. In the interim, it is being explored whether some progress can be made in how existing standards are being applied in the development of permits. The TCEQ guidance document, Procedures to Implement the Texas Surface Water Quality Standards, is still being revised. Recommendations for changes to that document have been submitted to TCEQ.

Houston to Regulate 500 Year Flood Plain

The City of Houston recently updated floodplain regulations after massive flooding and damages occurred throughout Harris County and surrounding areas in recent years. The flood damages have resulted from major rainfall events; Hurricane Harvey (2017), the 2016 Tax Day Flood, and the 2015 Memorial Day Flood. The regulations were updated to better ensure the welfare and safety of the public and to increase the resiliency of communities as they recover and prepare for future rainfall events.

On April 4, the Houston City Council voted to modify regulations within Chapter 19 of the City Code of Ordinances to require new and substantial improvements (expanding an existing building footprint by 33 percent or more) to buildings within the 500-year floodplain be built two feet above the adjacent FEMA 500-year floodplain elevation. The FEMA 500-year floodplain refers to the limits of flooding from a rainfall event with a 0.2 percent chance of being equaled or exceeded in a given year. Other notable changes include requiring new and substantial improvements to critical facilities built in the 500-year floodplain to be built or floodproofed to 3-feet above the 500-year floodplain elevation and expanding the City's Zero Net Fill requirement to the 500-year floodplain for all new development and substantial improvements. The more expansive regulated area, referred to as the "Houston Special Flood Hazard" area, includes FEMA flood zones A1-30, AE, AH, A, A99, X (shaded), and AO.

The new regulations will take effect Sept. 1. Similar code that requires new buildings in the 100-year floodplain within Harris County be built two feet above the 500-year floodplain elevation was approved by Harris County commissioners Dec. 5 and made effective Jan. 1. Fill is no longer accepted as a means to elevate structures within the 100-year floodplain. Instead, open foundations, such as piers, or continuous foundation walls with properly sized and located openings may be utilized. The Harris County code does not affect lands that lie within municipalities such as the City of Houston.

Update on Construction General Permit TXR150000

The TCEQ renewed the Texas Pollutant Elimination System (TPDES) Construction General Permit TXR150000 on March 5, which authorizes the discharge of stormwater runoff from construction sites.

Requirements for Ongoing Construction Activities

With the renewal of a general permit, all Operators of large construction sites (greater than 5 acres) with ongoing construction activities authorized under the 2013 General Permit must apply to renew their coverage. To renew authorization, Operators must submit a Notice of Intent (NOI) within 90 days of the March 5th effective date of the 2018 General Permit. This 90-day grace period for authorization renewal ends June 3, 2018. If submitting the NOI online, the application fee is \$225. If submitting a paper NOI via mail, the application fee is \$325.

With the renewal of TXR150000, the following significant changes should be noted:

- By Sept. 1, all NOIs, Notices of Termination (NOT) and Low Rainfall Erosivity Waivers (LREW) **must** be filed electronically.
- The 2018 permit includes the 2014 and 2015 amendments to the federal effluent limitation guidelines (Code of Federal Regulations Chapter 40 Part 450) requiring specific minimization of pollutants in discharges, channel and streambank erosion, soil compaction, and topsoil disturbance.
- The benchmark monitoring level for Total Suspended Solids (TSS) was reduced to 50 mg/L for stormwater discharges from concrete batch plants to be consistent with the 2016 Multi-Sector General Permit (TXR050000) for Industrial stormwater discharges.
- The definition of impaired waters was clarified to include both waters listed in the 303(d) list and Category 4 and 5 water bodies in 305(b) of the *Integrated Report of Surface Water Quality*.