



**WESTCAS 2014 Fall Conference
October 29-31, 2014
Phoenix, AZ**

WESTCAS STATE REPORTS

STATE: Arizona

NAME OF PRESENTER: Jim Kudlinski, Salt River Project

DATE: October 30, 2014

KEY WATER ACTIVITIES INVOLVING STATE LEGISLATURE AND STATE & FEDERAL AGENCIES SINCE LAST CONFERENCE

EPA's Navajo Generating Station BART Decision Appealed

Clean Air, National Park Advocates Challenge EPA Failure to Protect Grand Canyon from Navajo Generating Station Pollution

Advocates Appeal Decision that Allows Controversial Coal Plant to Keep Polluting for Decades

GRAND CANYON NATIONAL PARK (Oct. 7, 2014) - Clean air and national park advocates today challenged a decision in federal court, issued by the U.S. Environmental Protection Agency (EPA), that allows one of the nation's oldest and dirtiest coal-fired power plants to continue polluting for decades to come.

Today, on behalf of National Parks Conservation Association (NPCA), Sierra Club, Grand Canyon Trust and Natural Resources Defense Council (NRDC) Earthjustice filed a petition with the Ninth Circuit Court of Appeals to review EPA's ruling, asking it to reconsider EPA's July decision on Navajo Generating Station (NGS).

For nearly 40 years, NGS has significantly damaged the air quality of local communities, as well as the Grand Canyon and 10 other national parks and wilderness areas across the Southwest. Yet earlier this year, EPA rejected the legal requirement to make the coal-fired power plant cut smog-forming nitrogen oxide by 85 percent over the next five years. Instead, it has approved a plan that only promises some level of cleanup sometime in the future – a plan that could let the coal plant pollute for at least another three decades. EPA contends it can water down the Clean Air Act requirements because coal plant is located on Navajo Nation lands.

“EPA’s decision is unconscionable,” said Kevin Dahl of the National Parks Conservation Association. “The Grand Canyon’s spectacular vistas are too often shrouded by pollution from one of America’s dirtiest power plants. The pollution that has plagued the region for generations should have ended with this EPA rule. Now we are left with more dirty air that mars this beautiful region and harms the millions of visitors and residents who breathe it.”

“Initially, EPA made the correct decision when it required pollution controls for the Navajo Generating Station that would clean up the air of some of this nation’s most beautiful and beloved parks, as well as provide numerous health benefits for surrounding communities. But the agency lost its way,” said Janette Brimmer, Earthjustice staff attorney. “Now EPA has decided to avoid compliance with the requirements of the law and allow industry to delay cleaning up this dirty old plant with potentially empty and unenforceable promises. We have filed this case to steer EPA back onto the path of the law.”

“Not only is the lawsuit a chance to reduce harmful emissions from a coal-fired power plant, but it provides an opportunity to promote and develop much-needed renewable energy projects,” said Tony Skrelunas, Grand Canyon Trust’s Native America Program Director. “We need to immediately begin pursuing a strategy for transitioning to renewable energy that will directly benefit the local communities and the tribes.”

“Navajo Generating Station is one of the most polluting coal plants in the country and has fouled world-renowned Grand Canyon for far too long,” said Sandy Bahr, chapter director for Sierra Club’s Grand Canyon Chapter. “EPA’s decision does not meet the requirements of the Clean Air Act and only delays vital clean air protections for the people of the region and our valued national parks and wilderness areas. EPA should not and cannot make special exceptions to one of nation’s dirtiest polluters.”

“The pollution from Navajo Generating Station is breathed in by millions across the Southwest,” said Noah Long, Legal Director of the Western Energy Project with the Natural Resources Defense Council. “This pollution can get deep into the lungs and cause serious health consequences, on top of its significant environmental and haze impact. EPA shouldn’t be in the business of figuring out how the Clean Air Act can avoid cleaning the air, particularly at a federally owned facility.”

NGS is the largest coal-fired power plant on the Colorado Plateau and one of the ten biggest polluters in the country. It is just 12 miles from the Grand Canyon and responsible for frequently polluted air that makes vistas hazy and unhealthy at the park. The coal plant is owned jointly by the federal government and several utilities, including Salt River Project which operates it. Under the Clean Air Act, EPA must restore natural air quality in America's iconic national parks and wilderness areas.

In addition to Grand Canyon, Navajo Generating Station impacts air quality at 10 additional national parks and wilderness areas. The plant's impacts include impairing visibility for roughly four months each year at the most impacted parks. National parks in the Four Corners region attract millions of tourists and are the backbone of regional economies. According to the National Park Service, the national parks in the Four Corners region most affected by Navajo's pollution annually generate a combined total of \$1.08 billion in spending. An epidemiological analysis shows that EPA's decision to let the coal plant continue polluting for decades will cost between \$13 million and \$34 million per year in public health impacts within the state of Arizona alone.

Source: Sierra Club

Environmental Council of the States Elects New Officers

PHOENIX (Sept. 19, 2014) - Arizona Department of Environmental Quality Director **Henry Darwin** was elected by his peers to be secretary-treasurer of the Environmental Council of the States (ECOS) for the coming year at the organization's fall meeting in Santa Fe, N.M., this week.

ECOS is the national non-profit, non-partisan association of state and territorial environmental agency leaders. The purpose of ECOS is to improve the capability of state environmental agencies and their leaders to protect and improve human health and the environment of the United States.

Darwin said one of the key projects he will be involved in is advancing the E-Enterprise for the Environment initiative, a joint project between the states and the U.S. Environmental Protection Agency to streamline and modernize the business of environmental protection throughout the country. ADEQ has been a national leader in these efforts by improving productivity and efficiency for the regulated community and the general public.

"Being an officer in ECOS provides a unique opportunity to influence environmental policy in the U.S. by allowing direct access to leadership at EPA, which is great news for Arizona," Darwin said.

Robert J. Martineau, Jr., commissioner of the Tennessee Department of Environment and Conservation, was elected president of ECOS and Martha Rudolph, director of environmental programs with the Colorado Department of Public Health and Environment, was elected vice president. The other board member is ECOS past President Dick Pedersen, director of the Oregon Department of Environmental Quality.

Darwin has been director of ADEQ since 2011 after serving as deputy director, acting director of the Water Quality Division, and Administrative Counsel for the agency. He has worked in each of agency's divisions – air quality, water quality and waste programs – during his 17-year career at ADEQ. Source: ADEQ.

National Association of Clean Water Agencies Elects New Officers

PHOENIX (July 31, 2014) - Water Quality Division Director **Mike Fulton** has been elected president of the national Association of Clean Water Administrators (ACWA) for the next year.

Mike had previously been vice president, secretary and member of the board of the association, a nonpartisan organization of state and interstate officials who implement surface water programs throughout the country. Members are generally those individuals who have day-to-day responsibility for protecting and maintaining the quality of our nation's waters. The organization works in conjunction with the U.S. Environmental Protection Agency to meet Clean Water Act objectives.

"It's a big honor to be president and chairman of the board of your peers for a national organization," Mike said. "This also helps us as a state to stay engaged nationally and influence EPA policy and to stay in tune with the perspectives of other states."

Mike succeeds Shellie Chard-McClary, water quality division director at the Oklahoma Department of Environmental Quality, as president. The association has 56 members, who represent each of the states and some interstate water groups. The ACWA board has 15 members, comprising one state representative of each of the 10 EPA regions, one interstate representative, and the current treasurer, vice president, president and most recent past president of the association.

"This is recognition by national water policy leaders of the great work and breadth of knowledge that Mike brings to the table," said ADEQ Director Henry Darwin. "He has a lot of insight on issues of national importance like the 'navigable waters' rules and developing a consistent approach to what constitutes 'waters of the United States.'"

In addition to navigable waters issues, Mike said ACWA will be dealing with a host of other challenges during the next year including nutrient levels in Chesapeake Bay, the Gulf of Mexico and other water bodies; finding solutions to close the gap between current EPA initiatives and budget realities, the gap between infrastructure needs for wastewater treatment plants and funding levels; and developing a national standard for e-reporting of monitoring data.

Mike has a Bachelor of Science degree in forest/watershed management from the University of Arizona. He has been with ADEQ since 1990 and, in addition to WQD director, he has served as director of the former tank programs division, deputy director of the waste programs division and director of ADEQ's southern regional office in Tucson.

During his ADEQ career he has focused on the cleanup of groundwater and soils at hazardous waste sites throughout Arizona, the management of solid and hazardous waste inspection and compliance programs and administration of brownfields, pollution prevention, underground storage tank and voluntary remediation programs.

Source: ADEQ.

EPA Announces \$25 Million to Improve Water Quality, Infrastructure in AZ

SAN FRANCISCO (October 9, 2014) – The U.S. Environmental Protection Agency announced \$25 million in funding to invest in Arizona for statewide improvements in local water infrastructure and the reduction of water pollution.

“In an arid environment, water is the most precious natural resource and we are working with our state and city partners to protect it,” said Jared Blumenfeld, EPA’s Regional Administrator for the Pacific Southwest. “This funding will help create construction jobs, develop infrastructure and conserve water and energy as Arizona adapts to climate change.”

The funds are directed to the Water Infrastructure Finance Authority of Arizona, which will use them to provide low-cost loans for safe drinking water projects and wastewater infrastructure improvements. WIFA’s Clean Water State Revolving Fund provides financing for municipal wastewater treatment projects, and its Drinking Water Revolving Fund provides financial assistance for drinking water infrastructure systems.

WIFA anticipates allocating a portion of this year’s funds for projects like the planned upgrade to Show Low’s wastewater treatment ponds that will replace the current ponds with an advanced aeration and sludge treatment facility designed to meet federal and state standards. In the town of Monte Vista, the state hopes to fund a drinking water system upgrade that would reduce the level of naturally-occurring arsenic to meet the new standards for water supplies.

Recent projects using revolving fund loans include Douglas’ solar-powered wastewater treatment system, installed to cut energy costs -- half of the facility’s annual energy needs are expected to be generated by solar. In Clarkdale, instead of building a costly new plant, the town purchased and refurbished a decommissioned wastewater treatment plant. Oro Valley installed advanced water meters to detect leaks, encourage conservation, and eliminate labor-intensive manual meter reading.

EPA has awarded over \$585 million in federal funding for Arizona’s clean water and drinking water revolving funds since the inception of the programs in 1988. The funds are used for a wide variety of water quality projects including watershed protection and restoration, water and energy efficiency, wastewater reclamation, and traditional municipal wastewater treatment systems including nonpoint source pollution control. The funds also support drinking water infrastructure, as well as drinking water plant operator training, and technical assistance.

The EPA's Pacific Southwest Region administers and enforces federal environmental laws in Arizona, California, Hawaii, Nevada, the Pacific Islands and 148 tribal nations -- home to more than 48 million people.

Source: EPA Region IX

ADEQ Awards Oak Creek Watershed Council \$120,040 Grant to Reduce Pollution in Oak Creek

PHOENIX (Oct. 22, 2014) – Arizona Department of Environmental Quality officials announced today that a \$120,040 grant has been awarded to the Oak Creek Watershed Council to assist in controlling polluted runoff into Oak Creek from primarily the Settler's Rest neighborhood in West Sedona.

The neighborhood is located near the top of Carrol Canyon, a popular spot near the Sedona Airport for hiking, people walking their dogs and horseback riding. The Carrol Canyon drainage typically moves runoff with elevated levels of nutrients, sediment and *E. coli* bacteria and shortly thereafter empties the stormwater into Oak Creek.

The grant is one of eight in Arizona this year administered by ADEQ's Water Quality Improvement Grant program (WQIG) to address polluted runoff from many different sources. Oak Creek, from its headwaters to its confluence with Spring Creek in Oak Creek Canyon, is listed as impaired for *E. coli*.

The funding will be used to develop best management practices in the Settler's Rest area like a series of retention basins and armored spillways and planting of native plants for soil retention and bioremediation. Outreach efforts will be made to encourage other residents and homeowner associations throughout Sedona to adopt similar practices. Erosion control work also will be performed and maintenance of dog waste stations to the extent that funding allows.

"This grant money will help restore water quality in one of the most beautiful and heavily visited tourist areas in the state," ADEQ Director Henry Darwin said.

ADEQ's WQIG program funded through a partnership with the U.S. Environmental Protection Agency under the Clean Water Act.

Source: ADEQ

Biosolids Proposed Rules

"ADEQ has published the Notice of Proposed Rulemaking for the Arizona Pollutant Discharge Elimination System - Disposal, Use, and Transportation of Biosolids (18 A.A.C. 9, Article 10). The Notice of Proposed Rulemaking is available here: <http://www.azdeq.gov/function/laws/draft.html#water>"

ADEQ's Biosolids/Sewage Sludge Management Program implements Section 405 of the Clean Water Act (33 U.S.C. 1345), A.R.S. § 49-255.03 and 18 A.A.C. 9, Article 10. ADEQ's biosolids rules require that any person applying, generating or transporting biosolids/sewage sludge in Arizona must register that activity. The rules are self-implementing by the person who uses, transports, applies biosolids to land, or places biosolids on a surface disposal site. Incineration of biosolids has been prohibited under R18-9-1002(G), since 2001. ADEQ is proposing to repeal the prohibition on incineration of biosolids, thereby allowing incineration as a means of disposal.

As a federally-delegated program, ADEQ's laws, rules, and program must comply with the U.S. Environmental Protection Agency's (EPA) requirements. EPA's rules on biosolids are in 40 CFR, Part 503 and include Subpart E on Incineration. With the repeal on the prohibition of incineration, ADEQ proposes to incorporate by reference Subpart E of the federal rules in order to properly regulate biosolids incinerators. An owner of an incinerator would have to comply with both Clean Water Act and Clean Air Act requirements, but the Clean Air Act rules are much more extensive and contain more restrictions."

Source: ADEQ 10/27/2014 11:45 AM MST

STATE: California

NAME OF PRESENTER: Sara Toyoda Prepared this Report

DATE: October, 2014

Precipitation/Drought

Drought conditions in California continue. Figure 1 shows the magnitude of the drought in the state. The California water year runs from October 1st to September 30th. As of September 30, the end of Water Year 2014, California statewide precipitation was at 55 % of average, runoff was 35 percent of average and reservoir storage was t 60 percent. (Department of Water Resources, 2014). The 2014 Water Year ended as the 3rd driest year in 119 years of record, based on statewide precipitation (Department of Water Resources, 2014). As of September 30, 2014, 58% of the state was classified as experiencing exceptional drought.

Response to the drought has been met with both voluntary calls for actions and new legislation. Water Conservation efforts in urban communities reached 11.5 percent statewide in August. This is up from 7.5 percent reported in July (Department of Water Resources, 2014).

Governor Jerry Brown also made funding available through the California Disaster Assistance Act to provide water for drinking and sanitation to households currently without running water. The executive order also extends the state's prohibition on price gouging during emergencies to the current stage of the drought, recognizing the on-going nature of the drought emergency (Department of Water Resources, 2014). Governor Jerry Brown signed a package of three bills that regulate now groundwater. Aquifers account for 30 – 40 percent of the state's water supply in normal years but close to 60 percent in drought years. These laws give local agencies power to restrict groundwater pumping and to impose fines and penalties. Local agencies must develop groundwater sustainability plans and have until 2040 to implement the plans (National Geographic, 2014).

A less publicized affect the drought has had on the State is the way California gets electricity. Normally the 20% of California's in-state energy generation comes from hydropower. The extreme dry conditions has reduced this to 10%. Natural gas and renewable energy are expected to be sufficient to meet peak electrical demand requirements. Power from wind generations surpassed power hydro generation for the first time (U.S. Energy Information Administration, 2014).

California Water bond

The California Water bond, originally set to go to vote in 2010, will be on the November 2014 ballot. The amount of the bond has fluctuated considerably since 2010. It was once at 11.14 billion but polls showed that voters would not support such a high amount. The final bond is set at 7.5 billion. However, it is intended to leverage local and regional funds to provide a total investment of 25 – 30 billion dollars for California water needs.

Funding areas included in the bond are:

- 810 million for water reliability
- 2.7 billion for water storage capacity
- 725 million for water recycling
- 900 million for groundwater sustainability
- 520 million for Safe Drinking Water
- 1.89 billion for Watersheds and Flood Management

(Association of California Water Agencies, 2014)

California residents will vote on the bond on November 4, 2014.

National Pollutant Discharge Elimination System

The State Water Resources Control Board (SWRCB) holds state authority for National Pollution Discharge Elimination System (NPDES) permits. Municipal MS4 permits, Industrial permits and construction permits have been issued for years. The SWRCB has introduced a new stormwater permit for drinking water systems. The regulations for the drinking water general NPDES permit are set for board adoption on November 4, 2014. According to stakeholder outreach from the SWRCB, the new permit was spurred, in part, for the due to the potential harm to surface waters from chlorine, pH and sediment (State Water Resources Control Board, 2014).

Water Challenges/Local Environmental Issues

Drought is currently the most pressing issue in California. The drought has resulted in an increase of new legislation aimed at conservation and sustainability. New legislation must be carefully reviewed and commented on to ensure that the legislation is necessary and if so, effective. Also, legislation should be reviewed to ensure that regulatory and financial burdens are considered.

Works Cited

- Association of California Water Agencies. (2014, September). *Facts About Proposition 1*. Retrieved from ACWA.com: <http://www.acwa.com/sites/default/files/post/2014-water-bond/2014/09/water-bond-toolkit2-fact-sheet.pdf>
- Department of Water Resources. (2014, October 1). *California Data Exchange Center*. Retrieved from California.gov: <http://cdec.water.ca.gov/cgi-progs/reports/EXECSUM>
- Department of Water Resources. (2014, September 19). *Governor Brown Streamlines Relief Efforts for Families With Drinking Water Shortages Due to Drought*. Retrieved from California.gov: <http://ca.gov/drought/topstory/top-story-14.html>
- Department of Water Resources. (2014, October 7). *Urban Water Suppliers Show Progress in August Water Conservation Report*. Retrieved from California.gov: <http://ca.gov/drought/topstory/top-story-15.html>
- Department of Water Resources. (2014, October 20). *Water Year 2014 ends as 3rd Driest in Precipitation*. Retrieved from California.gov: <http://www.water.ca.gov/waterconditions/index.cfm>
- National Geographic. (2014, September 17). *Amid Drought, New California Law Will Limit Groundwater Pumping for First Time*. Retrieved from News: <http://news.nationalgeographic.com/news/2014/09/140917-california-groundwater-law-drought-central-valley-environment-science/>
- State Water Resources Control Board. (2014, May 12). *Drinking Water System Discharges*. Retrieved from California.gov: http://www.swrcb.ca.gov/water_issues/programs/npdes/drinkingwatersystems.shtml
- U.S. Energy Information Administration. (2014, October 6). *Today in Energy*. Retrieved from California drought leads to less hydropower, increased natural gas generation: <http://www.eia.gov/todayinenergy/detail.cfm?id=18271>

STATE: Colorado

NAME OF PRESENTER: Scott C. Miller, Esq.

DATE: October, 2014

The following represents some of the current legislative and regulatory topics emerging from Colorado in the fields of water resources and water quality:

1. Colorado Water Plan (“CWP”) - Update.

Introduction

Timeline in a nutshell:

May 2013 - Governor issued an Executive Order directing the CWCB to produce a state-wide water plan.

May 2014 - Governor signed SB 14-115 into law, requiring legislative approval

July 2014 – All BIPs Published

Dec 2014 – Draft CWP due

Dec 2015 – Final CWP due

In May 2013, Colorado’s Governor John Hickenlooper signed Executive Order D2013-005 directing the Colorado Water Conservation Board (CWCB) to create Colorado’s first statewide water plan. Under the order, the CWCB must submit its first full draft of the Water Plan to the Governor by December 2014. In anticipation of this deadline, the CWCB publically released various draft sections of the Water Plan in March, May and September of this year. It also collected draft Basin Implementation Plans (BIPs) from the state’s nine Basin Roundtables in July. It is now working to solicit public and legislative feedback, review and combine the BIPs, conduct additional technical analysis, and finalize its first official Water Plan draft.

The CWP is a “bottom up,” not “top down” process reflected by the BIP’s to be incorporated into the CWP. These BIPs will be synthesized by the CWCB into the 1st draft of the statewide plan.

According to the executive order, the Colorado Water Conservation Board (“CWCB”) is then directed to work with the governor’s office to complete the final plan, over the course of 2015.

Development of the BIPs is overseen by “Basin Roundtables.” Note, the South Platte and Metro Denver basins collaborated on a joint BIP.

Somewhat controversial SB 14-115 requires the plan to be reviewed by the Water Resources Committee, which would then introduce a bill to approve or oppose the Plan. The plan would not be official policy unless the legislature passes a bill saying so and even then it would only be policy and would not carry the force of law. Requires public meetings in each basin and response to public comment when the plan is amended.

Some have concerns about SB 14-115 politicizing water.

Pitkin County Commissioner and Colorado Basin Roundtable member Rachel Richards said about SB 14-115:

“It brings so much politics into the issue. I think it will fall down to Front Range versus West Slope legislators. I have a hard time imagining any Front Range legislator running for re-election and saying he or she voted for a plan that did not include a new trans-mountain diversion of very significant magnitude. Source: <http://aspenjournalism.org/2014/02/08/schwartz-sponsors-bill-challenging-governors-water-plan-process>

Mike King, executive director of the Colorado Dept. of Natural Resources, which includes the CWCB. “We need to depoliticize the development of Colorado’s water. We need to remove it from the political pressures that are inherent in the legislative process and make it organic. Seventy-six years ago the general assembly delegated to the CWCB the express policy setting authority for the state’s water vision. I think it served the state well. And I think the CWCB has exercised that authority judiciously and appropriately throughout that period of time.”

Others believe the Legislature is giving appropriate deference to the CWCB and is facilitating, rather than hindering, the process.

Current Status of the Draft Water Plan

The draft BIPs released on July 31, 2014 all purport similar goals, including backing of Colorado’s agricultural industry, sufficient municipal and industrial supply to allow for critical economic state growth, storage projects that can alleviate emergency wildfires and droughts, and ample river flows for fish and recreation. However, the BIPs also identify statewide shortfalls in the water supplies available to adequately support these goals. The four West Slope Basin Roundtables (Colorado, Gunnison, Southwest, and Yampa/White), and the Rio Grande Basin Roundtable, all found sufficient “new” water supplies within their own basins through combinations of small water projects, conservation programs, and “willing seller” agricultural transfers. However, these basins strongly argue that they will only be able to meet their future water needs if no additional west to east trans-mountain diversion occur. Three East Slope Basin Roundtables (Arkansas, South Platte, and Denver Metro) report a total shortfall of between 200,000 and 600,000 acre-feet of water per year and a need for “new” supply sourced from outside their basins. They propose meeting their future water needs through conservation programs, “water-sharing” programs with East Slope farmers, and

additional trans-mountain diversions from the Colorado River basin. The North Platte basin is the only area of the state with projected population loss.

Right now, the IBCC is working to facilitate dialog between the Basin Roundtables on the controversial issues of west-to-east water transfers and dry-up of agricultural lands. The Committee is travelling around the state to hold public hearings on the Water Plan. It will present a summary the feedback from the hearings to the CWCB by November 1 of this year. The CWCB is working to compile and integrate the BIPs' technical information and policy recommendations, comments from members of the public and general assembly, and its own analysis into a full final draft of Colorado's Water Plan.

The current working draft chapters of the Water Plan do not endorse any specific projects. Rather, they advocate for implementing a broad combination of different projects and strategies to meet Colorado's current and future municipal, industrial, agricultural, environmental, and recreational needs. These include improving agricultural efficiencies, modernizing water infrastructure, developing new high-efficiency multi-purpose storage and other water projects, enforcing moderate levels of municipal conservation regulations, developing new reuse programs, implementing some new agricultural transfers, and developing some new trans-mountain diversion projects. However, the exact combination of projects and strategies varies according to basin area.

Conclusion and Implications

By 2050, Colorado's population is projected to nearly double from 5.5 million to 10 million. It is the fourth fastest growing state in the nation, and the headwaters of seven major river systems in the West. It is also the only Western state aside from Arizona with no formal statewide plan for long-term water usage. Until now, Colorado's de facto "water plan" was the prior appropriation water rights system. Going forward, Colorado's Water Plan will serve as the blueprint for meeting water needs for population growth and closing the increasing gap between water supply and demand. If the final Water Plan works as hoped, it should align the state's politics and resources behind the united interests of stakeholders and water users across all economic sectors and regions of Colorado. It should also expedite federal regulatory approvals of new state water projects by front-loading state activities. Lastly, it should protect Colorado's interstate water compact entitlements from curtailments as far as is possible. Because most of the rapid population growth will occur in the Front Range cities, the final Water Plan will likely have to include several strategies that some people find objectionable in order to be feasible. These include stricter conservation regulations in cities, some redirection of agricultural water to urban areas, and perhaps even additional water diversions through the mountains from the West Slope.

2. Bureau of Reclamation Marijuana Policy.

On May 16, 2014, the USBR issued a temporary policy clarifying its commitment to operate federal water projects consistent with the Controlled Substances Act (CSA), and that it will not approve the use of federal projects to store and deliver water for growing marijuana under state law. *Reclamation Manual, Temporary Policy (PEC TRMR-63)*, http://www.usbr.gov/recman/temporary_releases/pectrmr-63.pdf.

The policy announcement came in response to requests for a number of western water districts in states where voters have approved medicinal and recreational marijuana uses. This has particular application to Colorado, since in November 2012, voters in Colorado approved Amendment 64, a state constitutional amendment that decriminalized the personal use of marijuana for individuals at least 21 years of age. COLO. CONST. art. XVIII, § 16. Amendment 64 also initiated a regulatory scheme under which the newly legalized retail industry operates, including commercial growing and distribution operations.

Though the U.S. Department of Justice (DOJ) has declared a de facto truce on duly licensed operations that are compliant with a strong and effective state regulatory system, the USBR announced that it will not approve the use of federal projects to store and deliver water for growing marijuana under state law. USBR not an enforcement agency, its role upon discovering the use of water for a grow operation would be limited to documenting and reporting to the DOJ.

It is still unclear whether this policy will be applied to water districts and other contract holders who then sub-contract their water to marijuana cultivators, not for direct application, but for exchange or augmentations purposes.

Ancillary questions remain, such as whether the USBR could curtail direct water users who are knowingly using a federal project for marijuana operations in cases where the project water rights were decreed under state law; and whether the USBR policy should also apply to electric utilities supplying electricity generated from USBR hydropower facilities to large-scale indoor growing operations. These questions may or may not be answered since the USBR's policy is only temporary and set to expire on May 16, 2015.

3. Public Trust Doctrine Initiatives - Update.

The Public Trust Doctrine, as applied to water, is the concept that water of the state is the public property of all citizens; and that all private water rights are subordinate to the legally superior public use and enjoyment of water; and that state and local governments act as trustees of the water for the benefit of the people. Public Trust Doctrine initiatives in CO first attempted in 1992.

Two public trust initiatives in 2014 – Init. 89 & 103.

89 withdrawn; 103 denied by Colo Sup Ct. on a technicality (designated rep did not appear at a required hearing)

Initiative 103 - Sought to add a new section to Article XVI of the Colorado Constitution that would establish the public trust doctrine for the state's natural resources. Its provisions would declare Colorado's environment as common property and impose fiduciary obligations on the state government to defend such property.

Supporters of a "public trust" proposal focused on preserving Colorado's natural resources are gearing up for 2016. Proponents refiled the 103 proposal with the state's Legislative Council, the first step in the road to the ballot.

4. Regulation 31 (Basic WQ Stds).

The Colorado Water Quality Control Commission last amended Regulation 31 on September 11, 2012. Regulation 31 (5 CCR 1002-31) governs the basic standards and methodologies for surface water regulation by providing a classification system which establishes beneficial use categories together with basic standards, an antidegradation rule and numeric tables which define the conditions generally necessary to maintain and attain such beneficial uses. In addition, it establishes procedures for classifying the waters of the state, for assigning water quality standards, and for continued review of the classifications and standards.

The last time Regulation 31 was amended, controversies arose over compliance problems with water quality-based effluent limits that were below the technologically-feasible treatment levels for arsenic, as well as phosphorus and nitrogen, which would have required capital intensive measures for municipal wastewater treatment infrastructure. A working group formed to ask the Water Quality Control Commission to consider Temporary Modifications of the arsenic standard in certain stream segments. Municipalities sought region-specific standards, rather than a “one size fits all” statewide standard that would have been expensive to implement.

The Water Quality Control Commission is directed by the Colorado Water Quality Control Act to review all water quality classifications and standards at least once every three years. The rulemaking hearing for Regulation 31, the Basic Standards and Methodologies for Surface Waters, is scheduled for June 2016.

The Colorado Water Quality Forum organization has formed a “Basic Standards work group” to discuss and present potential issues for the 2016 Basic Standards rulemaking hearing. Fifteen work group meetings are scheduled in 2014-15 to discuss potential changes to the Basic Standards.

Issues to discuss include:

- Reg. 31.14 discharge permit provisions
 - Site-specific standards
 - Iron Pre-filtration Methodology
 - Arsenic
 - EPA Disapprovals
 - Temperature
 - Water Supply Iron, Manganese, Sulfate, Chloride, and/or antidegradation related to these parameters
 - Molybdenum
-

STATE: Nevada

NAME OF PRESENTER: Brenda Pohlmann

DATE: October 2014

Water:

Lake Mead is the source of approximately 90% of Southern Nevada's water supply. The southwest has experienced a period of prolonged drought resulting in a 130 foot drop in the lake's surface elevation from 1,216 feet above mean sea level (MSL) in 1998 to its current elevation of 1,081 feet above MSL as of October 23, 2014. In response to the on-going drought, the Department of the Interior along with the seven basin states that are parties to the Colorado River Compact developed guidelines in 2005 for responding to the drought and declining lake levels. The seven states included in the compact are Wyoming, Colorado, Utah, New Mexico, Arizona, Nevada, and California. The key provisions of the guidelines include the establishment of operating guidelines for Lakes Mead and Powell as their elevations decline (equalization), guidelines for shortages, provisions to encourage conservation and flexibility, and an agreement among the states to enter into consultation prior to any litigation.

In addition to shortage declarations, once the level reaches the 1,050 foot level, one of the two intakes operated by the Southern Nevada Water Authority's (SNWA) and the City of Henderson's water intakes will become inoperable. SNWA's second intake can operate to a depth of approximately 1,000 feet above MSL. SNWA is continuing construction of a third intake structure to draw raw water from Lake Mead at a depth of 860 feet. This project is currently behind schedule and is anticipated to be completed in late 2015.

Water quality is also affected by the lowering lake levels. The Las Vegas Wash discharges into Lake Mead carrying with it treated wastewater effluent, urban runoff and a small amount of groundwater that surfaces into the wash. This lower quality water tends to float on the surface of the lake in a zone referred to as the epilimnion throughout most of the year. When the drinking water intakes draw water from greater depths, the water is drawn from a zone beneath the epilimnion and is generally of higher quality and lower temperature. As the water levels drop, the intakes will eventually be drawing water directly out of the epilimnion. As a result, the raw water is expected to contain higher concentrations of contaminants.

Stormwater:

The Nevada Division of Environmental Protection (NDEP) conducted a program audit of the Las Vegas Valley's stormwater program in February 2014. The City of Henderson, City of Las Vegas, City of North Las Vegas, Clark County, and the Clark County Regional Flood Control District are co-permittees and the audit included each of the entities. At this point, NDEP has provided preliminary audit findings, but no official report. It is anticipated that the audit report will conclude that the municipalities have not been adequately funding their respective stormwater programs and will most likely suggest that more staff be hired.

EPA conducted a stormwater audit of the Nevada Department of Transportation (NDOT) in 2013. Similar to NDEP's findings when they audited the southern Nevada entities, EPA concluded that NDOT wasn't taking the stormwater program seriously and was severely underfunding it. As part of the on-going negotiations with EPA, NDOT will be hiring 10-12 new stormwater inspectors throughout the state of Nevada.

Wastewater:

The City of Henderson, City of Las Vegas, the City of North Las Vegas, and the Clark County Water Reclamation District (CCWRD) have initiated the application process in to renew their NPDES permits. NDEP issues the permits in five year cycles and although Henderson, Las Vegas, and CCWRD are not due to be renewed until 2016, the entities agreed to renew their permits one year early in order to have the permitting cycle coincide with North Las Vegas' permit which expires in April 2015. NDEP has indicated a preference for renewing all of the NPDES permits at one time. It is anticipated that there will be no significant changes to the permit.

STATE: New Mexico

NAME OF PRESENTER: Joshua Rosenblatt Prepared this Report

DATE: October, 2014

Triennial Review of Water Quality Standards and Revisions to Statute Proposed by NMED

The New Mexico State Environment Department has since released a revised Draft Proposed Revisions to the Assessment Process drew a lot of comments. The creation of a "Temporary Criteria" the NMED was revised to exclude the requirement of a Use Attainability Analysis. The revised draft still met petitioners and a hearing has been scheduled for April 14, 2015.

Environmental commenters felt that any flexibility in environmental standards was a breach of the NMED duties to "protect *and restore*" the quality of water under the CWA and undermined "the goal that all waters are swimmable and fishable."

Other petitioners included Freeport-McMoRan Chino Mines who seek to revise the solely hardness based Copper based toxicity standard to a site specific standard based on the inclusion of multiple parameters which drive copper toxicity. This methods provides all parties with a technologically defendable copper standard appropriate to the site.

Peabody Energy are intervening on the Selenium limit of 5 ppb for *wildlife habitat* since it is duplicative of the chronic standard for sensitive stages of *aquatic* life while many macrovertebrate forms of wildlife living in or drinking from surface waters justify consideration of retaining the 50 ppb standard for wildlife. Peabody also advances the removal of primary or secondary contact from man-made ponds for stock watering or fish cultivation or wetlands. The simplified argument is that these are primarily non-public man made vessels, which are neither waters of the US nor intended for primary contact and should, by the States own statute, remain outside unreasonable water quality criteria.

Developments in Aquifer Storage and Recovery

After 2+ years of development and active hydro-geological pilot demonstration using potable water, the City of Rio Rancho is close to being the first permitted direct injection and recovery ASR system in NM. Their permit has been issued and is currently under the 30 day public review period. The other existing facility is the Bear Canyon ASR which diverts winter surface water and utilizes an existing arroyo as a percolation system to the ground water aquifer for later well extraction to supplement summer demands. Daniel B. Stevens and Associates have been the consultants on these two projects and discussions with their staff indicated that 3 more ASR projects in New Mexico are under early planning stages. Discussions with D. B. Stevens ASR specialists Bob Marley and Amy Ewing indicate open interest in returning WESTCAS to present an update on ASR projects and state of the technologies and case studies around the nation. They were also encouraged to consider the benefits of WESTCAS membership.

On the legislative and political front a look at the topics to be presented at the annual Water Research and Resource Institute in November is entitled New Mexico's Water Future: Connecting Stakeholder Needs to Water Information. Topics include brackish water utilization, integrated agriculture systems, characterization of produced water, water planning and budgeting, and identification of law and policy options for best water management practices.

STATE: Texas

NAME OF PRESENTER: Dr. Peggy Glass

DATE: October, 2014

WATER QUALITY STANDARDS

The most relevant recent activities in Texas with respect to water quality standards relate to revisions that were made to the standards in 2014 and the development of criteria related to nutrient effects. The standards changes that reflect changes in policy are discussed below. In addition, there were adjustments to human health toxicity criteria and site-specific revisions to specific water body criteria and/or boundaries.

2014 Revisions to Surface Water Quality Standards

In February 2014, Texas adopted revisions to the Texas Surface Water Quality Standards. In September 2014, EPA issued a letter approving some of the proposed revisions. EPA has not yet taken action regarding other proposed revisions.

Approved Revisions--The most substantive policy change that was approved was the modification of temperature requirements related to some industrial discharges. A definition was added for "industrial cooling water areas". This is defined as "A designated area associated with a permitted wastewater discharge where numerical criteria are not applicable"... Neither segment specific criteria nor general criteria with respect to maximum temperature differentials apply.

Revisions Not Yet Acted On—The most substantive policy change that was not acted on was a proposal to create additional categories for recreational uses. The categories proposed were Primary Contact Recreation 1, Primary Contact Recreation 2, Secondary Contact Recreation 1, and Secondary Contact Recreation 2 with geometric mean *E. coli* criteria of 126/100 milliliter (mL), 206/100 mL, 630/100 mL, and 1,030/100 mL, respectively.

Development of Nutrient Criteria

The Texas Commission on Environmental Quality (TCEQ) has revised the order in which it proposes to develop numeric nutrient criteria. Criteria have been developed and approved by EPA for 39 reservoirs (approximately half of the significant reservoirs in Texas). The next focus for criteria development was to be streams. However, that has now been revised so that estuaries will be the next focus for criteria development. This is based on the rationale that what happens upstream affects the estuaries; and there need to be criteria for downstream waters to guide the development of criteria for upstream waters.

WHOLE EFFLUENT TOXICITY

TCEQ is proposing to modify the endpoint reported for chronic Whole Effluent Toxicity (WET) test results pursuant to requirements in Texas Pollutant Discharge Elimination System (TPDES) permits from No Observed Effect Concentration (NOEC) to the 25% Inhibition Concentration (IC₂₅). The first permit with this change has been drafted and submitted to the US Environmental Protection Agency (EPA) Region 6 for review.

NATIVE MUSSELS

A number of native mussels are being proposed for listing as threatened or endangered species. There is very little information about the range and habitat of these species; so, it is not known what waters may be affected by the listing. There is also not a clear method for determining whether these species are present or “could be present”. Work is underway to address these concerns.