

**WESTCAS**  
**2015 Annual Conference**  
**June 17-19, 2015**

**State Reports**



*“The Voice of Water Quality in the Arid West”*

## WESTCAS STATE REPORT

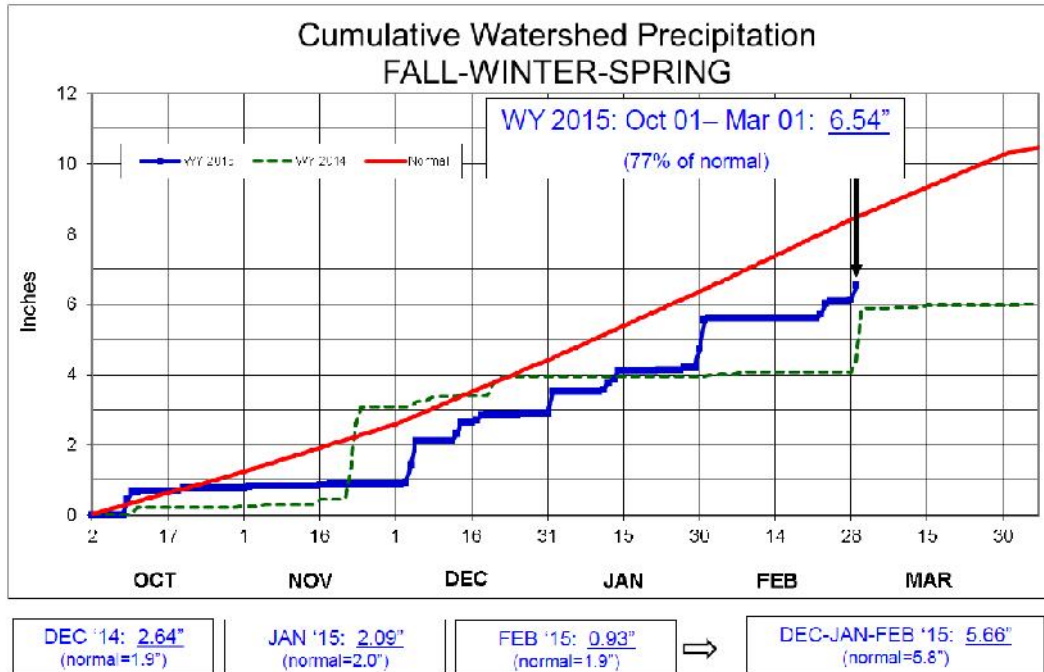
**STATE:** Arizona

**NAME OF PRESENTER:** Jim Kudlinski, Salt River Project

**DATE:** June 18, 2015

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

#### Salt River Project Watershed Precipitation for Winter Year 2015



#### Salt River Project Reservoir Levels (as of June 5, 2015)

Reservoir data							Back to top
	Elevation (feet)		% Full	Storage (in acre feet)		24 hr. Change	Rain (inches)
	Current	Remaining		Current	Available		
<b>Roosevelt</b>	2,100.77	50.23	47	772,558	858,974	-2,970	0.30
<b>Horse Mesa</b>	1,907.58	6.42	93	228,401	16,737	384	0.10
<b>Mormon Flat</b>	1,658.58	1.92	97	56,037	1,815	-235	0.03
<b>Stewart Mtn</b>	1,524.88	4.12	93	64,670	5,095	399	0.00
<b>Total Salt System</b>			<b>56</b>	<b>1,121,666</b>	<b>882,621</b>	<b>-2,422</b>	
<b>Horseshoe</b>	1,977.59	48.41	15	15,954	93,263	167	0.00
<b>Bartlett</b>	1,782.59	15.41	78	138,425	39,761	-323	0.00
<b>Total Verde system</b>			<b>54</b>	<b>154,379</b>	<b>133,024</b>	<b>-156</b>	
<b>Total reservoir system</b>			<b>56</b>	<b>1,276,045</b>	<b>1,015,645</b>	<b>-2,578</b>	
<b>Total system year ago</b>			<b>54</b>				

## **Governor Doug Ducey Issues Moratorium on Regulatory Rulemaking**

PHOENIX (Jan 5, 2015) – In his first official action, Arizona Governor Doug Ducey today issued an executive order implementing a moratorium on all new regulatory rulemaking by state agencies. Executive Order 2015-01 prohibits all state agencies from conducting any new rulemaking, except when changes to rules create efficiencies; protect public health and safety; are necessary to avoid violating a court order or federal law; and fulfill budgetary obligations. Each state agency must provide to the governor's office, no later than September 1, 2015, an evaluation of their rules and any recommendations to ensure consistency with the priorities and principles outlined in the order. The executive order is effective until December 31, 2015 (Source: Governor's Office)

## **Baggiore Selected Director of ADEQ's Water Quality Division**

PHOENIX (Feb. 23, 2015) – Trevor Baggiore has been selected as the new director of the Arizona Department of Environmental Quality's Water Quality Division. Baggiore had served as the division's deputy director since September 2014 and had been deputy director of the ADEQ Air Quality Division for four years before making the move to the Water Quality Division. Baggiore replaces Mike Fulton, who resigned last week to become deputy director of the Maricopa County Air Quality Department. Baggiore received his bachelor's degree in chemical engineering from Arizona State University in 2001, the same year he joined ADEQ as an intern. He received his master's degree in business administration from ASU in 2006 and is a registered professional engineer in Arizona. Before being selected deputy director of the Air Quality Division, Baggiore had been both a unit manager and section manager in the division for six years. (Source: ADEQ)

## **State of Arizona Legislative Accomplishments**

The 52<sup>nd</sup> Legislature adjourned the first regular session after 81 days (April 3, 2015). This legislative session was the shortest since 1968 and was the first Legislative session for Governor Doug Ducey, who was sworn into office on January 5, 2015. The session featured many bills spawned by the voter-approved Proposition 122 from the 2014 general election. These measures prohibit the state and political subdivisions from using personnel and resources to cooperate with federal rules, laws and authorities. Selected laws introduced by the 52<sup>nd</sup> Legislature and outcomes are provided below.

### **HB2658 Federal lands; Transfer; Study committee – ENACTED!**

Establishes a study committee to examine processes to transfer, manage, and dispose of federal lands within Arizona. The committee consists of the chairperson and vice chairperson of the House Committee on Agriculture, Water, and Lands; the chairperson and vice chairperson of the Senate Committee on Rural Affairs and Environment; and one member of the public who is appointed by the Governor.

### **SB1007 State plans; Carbon dioxide emissions – ENACTED!**

Authorizes the Arizona Department of Environmental Quality to adopt and enforce a plan to reduce carbon dioxide emissions from existing power plants in compliance with the Clean Air Act. It also establishes a legislative committee to evaluate various aspects of the plan, none of which are related to emissions reduction and public health.

### **SB1298 Rules; Counties; Flood Control Districts – ENACTED!**

Requires counties and flood control districts to adopt procedures regarding rulemaking and rule enforcement.

### **HB2161 Central Arizona Project Board; Membership – DIED!**

The board of directors of a multicounty water conservation district is required to include one non-voting member who is appointed by the Governor from a list of three persons holding elected tribal office for an Indian tribe in Arizona.

### **HB2508 Navigable Stream Adjudication Commission; Extension – ENACTED!**

This new law extends the scheduled expiration of the Arizona Navigable Stream Adjudication Commission (ANSAC) until June 30, 2020. ANSAC is a five-member committee that reviews whether state watercourses were navigable at the time of statehood. This determination is necessary to determine whether the state can relinquish the ownership of land within certain dry streambeds. Supported by the general business community, the bill passed the Legislature unanimously and was signed by the Governor.

### **HB2055 Sovereign Authority; Waters – DIED!**

Prohibits the state or any political subdivision from using any resource to enforce, administer or cooperate with changes made by the United States Environmental Protection Agency (EPA) to Waters of the U.S.

### **HB2058 Sovereign Authority; Federal Rules – DIED!**

Prohibits the state from funding any rule, policy or regulation issued by the federal government unless it has been affirmed by a vote of Congress and signed into law as prescribed by the United States Constitution.

### **HB2368 Sovereign Authority; Executive Orders; DOJ – DIED!**

Prohibits the state and political subdivisions from using resources to enforce, administer or cooperate with presidential executive orders or U.S. Department of Justice policy directives.

### **HB2176 Federal land relinquishment; Payments – VETOED!**

Directs the Attorney General to annually ask that most federal public lands (not national parks and military lands) be conveyed to the state by December 31, 2021. It authorizes the attorney general to initiate proceedings against the United States to force relinquishment of these lands.

### **HB2318 Transfer of public lands compact – VETOED!**

Seeks to establish and adopt a multistate compact for the states to gain control of federal public lands, including national parks, forests, wildlife refuges, and more. A similar bill was just defeated in Idaho.

### **SCM1004 Waters; Definition; Urging Congress – SENT TO SOS!**

Asks Congress to oppose an Environmental Protection Agency (EPA) rule that helps to clarify what waters are protected under the Clean Water Act, including the more than 90 percent of Arizona's streams that flow only seasonally or intermittently.

### **Budget**

The Arizona Department of Environmental Quality budget was increased by \$108,000; the Arizona Department of Water Resources budget was increased by \$713,000.

### **EPA awards \$2.5 million to Arizona to Improve Surface Water Quality**

SAN FRANCISCO (Mar. 20, 2015) – The Environmental Protection Agency awarded \$2.5 million to the State of Arizona for projects to help restore water quality in the state's polluted water bodies. With an additional \$1.6 million leveraged by the state for these activities, more than \$4 million is available this year to improve surface water quality.

Recent water quality data shows that a significant percentage of surface waters in Arizona are listed as impaired, or polluted, by the state. Extrapolating from Arizona's 2012 surface water assessment, which focused on a portion of the state's lakes and streams, 28 percent of stream miles and 74 percent of lake acres do not meet water quality standards. Water quality standards vary depending on how the water is used – from full body contact standards for waters designated for swimming to aquatic and wildlife standards for waters supporting fish and wildlife habitat. In Arizona, *E. coli* bacteria, metals, pesticides and fertilizers are the top sources of water pollution to surface water, such as rivers and lakes.

Most surface water pollution in Arizona comes from “nonpoint sources.” Runoff from irrigation, storms, recreational areas, such as golf courses, and agricultural lands flows over and through the ground, transporting natural and man-made pollutants into streams, lakes, rivers and wetlands. In contrast, a “point source” is any single identifiable source of pollution from which pollutants are discharged, such as a pipe, ditch or factory. These discharges are restricted by State or federal permits.

The Arizona Non-Point Source Program invests a significant portion of these funds in communities to achieve on-the-ground water quality benefits. One example is a project in the Upper Santa Cruz River (Mexico border to Saporí Wash) watershed to work with the community to reduce the most significant bacteria pollution sources in the watershed. Other focus watersheds for this funding include Oak Creek, Granite Creek, the San Pedro River and the San Francisco and Blue rivers (all focusing on *E. coli* issues), as well as the Little Colorado River Watershed (sediment) and the Boulder Creek watershed (zinc, lead, and arsenic).

Last year a portion funds were used in Sedona for a variety of projects to reduce nonpoint pollution from Sedona washes, including a community-driven effort to remove trash, litter, feces and diapers from the Oak Creek corridor. Outreach and education projects focused on responsible stewardship of Oak Creek and continuation of the highly successful Oak Creek Ambassadors program which educates visitors about the importance of keeping Oak Creek clean and supports collection of *E. coli* data.

The EPA also recently approved Arizona’s Nonpoint Source Management Plan, which outlines approaches for achieving water quality improvements in the state over the next five years. Highlights include accelerating project restoration timeframes, prioritizing polluted watersheds, and committing to measurable water quality goals such as improving water quality in 50% of monitored waters. The plan builds upon a previous 5-year plan, making several key improvements to help restore impaired waters, and protect unimpaired and healthy waters. (Source: EPA Region IX)

### **ADEQ releases draft Gila River TMDL for Boron and Selenium**

On April 23, ADEQ released the Gila River (Centennial Wash to Gillespie Dam) TMDL for Boron and Selenium for a formal 30 day public notice and comment period. Release of the draft TMDL completes a 2 ½ year study that was initiated by ADEQ to identify the sources of pollutants that are causing the Gila River to not attain its Aquatic and Wildlife-effluent dependent water (A&Wedw) designated uses for boron and selenium. In the TMDL, ADEQ identified discharges of agricultural irrigation return water, discharges of poor quality agricultural drainage water, and certain upgradient industrial discharges as the primary sources of pollutants contributing to the impairment. As proposed, the draft TMDL imposes stringent effluent limitations for boron and selenium for several upstream AZPDES dischargers and requests three irrigation districts: the Arlington Canal Company, the Buckeye Water Conservation and Drainage District, and the Roosevelt Irrigation District, to implement voluntary agricultural best management practices to reduce boron and selenium pollutant loadings. ADEQ expects to issue the final TMDL by the end of 2015.

### **City of Phoenix invests to protect water supplies**

PHOENIX (Jun. 2, 2015) – The Phoenix City Council has approved a three-year partnership with the National Forest Foundation (NFF) to help protect Phoenix’s water supply. The NFF’s work will consist of watershed improvement projects on National Forest lands in northern Arizona. Through the partnership, the city of Phoenix will invest \$200,000 per year in the Northern Arizona Forest Fund, a program developed by the NFF and Salt River Project (SRP) that is designed to improve forest health and water quality in the Salt and Verde River watersheds. Implementation of the Northern Arizona Forest Fund’s first two projects is already underway. One project is designed to reduce wildfire risk and protect endangered species habitat near the Happy Jack area on the Coconino National Forest. The other project will reduce erosion and sedimentation into Oak Creek by improving drainage from forest roads on the Coconino National Forest near Sedona. In 2016, the Northern Arizona Forest Fund will implement six high priority projects on all five National Forests in northern Arizona — the Apache-Sitgreaves, Coconino, Kaibab, Prescott, and Tonto National Forests. (Source: EV Tribune)

### **ADEQ Awards \$275,000 Environmental Stewardship Grant for Oak Creek**

PHOENIX (Jun. 5, 2015) – The Arizona Department of Environmental Quality (ADEQ) announced today that a \$275,000 grant has been awarded to the Oak Creek Watershed Council (OCWC) for continued educational outreach and cleanup efforts of the Water Quality Ambassadors program in Yavapai County.

ADEQ’s third grant in support of the ambassadors program has two goals in addressing polluted runoff to Oak Creek: measure the positive outcomes from the prior two grant awards and establish the foundation for a self-sustaining program. Oak Creek, from its headwaters to its confluence with Spring Creek in Oak Creek Canyon, is listed as impaired for *E. coli*.

With this grant, ADEQ will fund eight ambassadors who will continue face-to-face educational outreach in the area, waste removal and volunteer coordination to solidify the program for the future. To date, the ambassadors program has removed nearly three tons of trash from frequently visited Oak Creek recreational areas.

ADEQ’s Water Quality Improvement Grant program (WQIG) is funded through a partnership with the U.S. Environmental Protection Agency under the Clean Water Act. Since it began in 2000, our WQIG program has funded more than 150 projects reducing polluted runoff from many different sources throughout the state and had a significant impact on improving the health of our waterways. (Source: ADEQ)

### **ADEQ releases draft De Minimis General Permit for Public Comment**

On June 12th, ADEQ published the draft De Minimis General Permit (DMGP) for a formal 30 day public notice and comment period. Coverage under the DMGP applies to a range of low volume, low frequency discharges to waters of the U.S. such as potable or reclaimed water systems, subterranean dewatering, well development, aquifer testing, building and street washing, and hydrostatic testing of pipelines and tanks. De Minimis discharges must meet the applicable Surface Water Quality Standards, are generally of limited flow and/or frequency, and do not last continuously for longer than 30 days unless approved in advance by ADEQ. The 2015 draft includes 32 substantive changes from the 2010 version; including, coverage for discharges of Class A or B reclaimed water; providers of Class A or B reclaimed water are eligible for Area Wide Coverage; and submittal of Best Management Practice Plans to ADEQ for single source discharges to perennial or intermittent waters are no longer required. ADEQ expects to issue the replacement DMGP in late 2015.

## WESTCAS STATE REPORT

**STATE:** California

**NAME OF PRESENTER:** Sara Toyoda, City of Indio

**DATE:** June 18, 2015

### **Precipitation**

The unprecedented drought in California continues and there is no sign of relief. This year precipitation amounts reflect the ongoing drought. The California water year runs from October 1<sup>st</sup> to September 30<sup>th</sup>. As of April 30, precipitation is at 70 of the yearly average, runoff at 55 percent of average, snow water content at 2 percent of average and reservoir storage at 65 percent of average (State of California, 2015). The 2015 water year now moves into the summer months and these are typically drier months. With the snow water content so low, there will be very little runoff during the warmer months to alleviate the drought impacts. Governor Brown issued the first every mandatory water restrictions in the State. The statewide water conservation rate went up in April to 13.5 percent in April from 3.9 percent in March (State of California, 2015). The dire drought is brings with it new policy and implementation from the State. These do not come without controversy. One of the most important aspects of the situation will be the lessons learned from this unparalleled drought.

### **Legislation**

Governor Brown imposed the state's first mandatory water restrictions Executive Order B-29-15. The Order states that the State Water Resources Control Board (SWRCB) shall impose restrictions to achieve a statewide 25 percent reduction in potable urban water usage through February 28, 2016. In accordance with Governor Brown's directive, the SWRCB adopted emergency regulation on May 5, 2015, to reduce water use statewide by 25 percent. Part of the effort to reduce statewide water use focuses on urban water suppliers. These agencies are required to reduce water use by a specific percentage as compared to their water use in the same month in 2013. The standard percentage reductions range from 4 percent to 36 percent. (State Water Resources Control Board, 2015) A draft list of tiers can be found on the SWRCB website at [http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/drought/docs/emergency\\_regulations/supplier\\_tiers\\_20150428.pdf](http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/docs/emergency_regulations/supplier_tiers_20150428.pdf)

### **City of Riverside Lawsuit**

City of Riverside has filed a lawsuit to stop the SWRCB from imposing the mandatory restrictions. The SWRCB has proposed a 28 percent water reduction on the City as compared to the 2013 water usage. The lawsuit asks that a judge impose a temporary restraining order and injunction against the state rules. The City argues that the reduction rate assigned should not be 28 percent but four percent because the City has ample groundwater supplies and does not import any water. (Esquivel, 2015)

## **Capistrano Taxpayers Association, Inc., v. City of San Juan Capistrano**

Tiered rate structures charge customers a higher rate for using a higher amount of water. Each tier correlates to an amount of water usage and the higher the tier the higher the cost per unit of water. At least two-thirds of California water providers utilize some form of tiered rates including the City of San Juan Capistrano. Ratepayers sued San Juan Capistrano over the tiered rate structure. An appeals court ruled that the San Juan Capistrano rate structure was illegal opening serious questions about the validity of any tiered rate structure. Tiered rates are considered to be a very effective conservation tool. Studies estimate that these types of tiered rates reduce water consumption over time by up to 15 percent. The Court ruled that the rates violate Proposition 218 which prohibits government agencies from charging more for service than the cost to provide the service. However, the court allowed that tiered rates are legal as long as the agency can show that the tiered rates are tied to the cost of providing the water. (Stevens, 2015)

## **NPDES Trash Amendments**

The State Water Resources Control Board adopted Trash Amendments on April 7, 2015, as a way of reducing trash that ends up in waterways. The Trash Amendments establish a narrative water quality objective and prohibit the discharge of trash. The Amendments also include implementation requirements and a compliance schedule. There is an 18 month window to incorporate the Amendments into MS4 permits. Permittees will then have to install full capture systems to capture trash in stormdrains or use a combination of controls that is as effective. These must be installed in priority land use areas such as high density residential, industrial and commercial areas. Permittees will have ten years from the first implementing permit and fifteen after the effective date of the Trash Amendments to meet compliance. (State Water Resources Control Board, 2015)

## **Water Bond Proposition 1**

The On November 4, 2014, California voters approved Proposition 1, the Water Quality, Supply and Infrastructure improvement Act of 2014. This is a \$7.5 billion general obligation bond to fund water projects and programs statewide. Key funding areas include water reliability, water recycling, Integrated Regional Water Management, groundwater sustainability and flood management. Bond funds are distributed through competitive grants. (Association of California Water Agencies, 2014)

## **#droughtshaming**

There is an app for that. Some Californians have taken to social media to shame water wasters. Some apps have already been developed to facilitate #droughtshaming.

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State of California. (2013). *California Data Exchange Center*. Retrieved June 9, 2015, from Department of Water Resources: <http://cdec.water.ca.gov/cgi-progs/reports/EXECSUM>



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State Water Resources Control Board. (2015, April 8). *California Water Boards*. Retrieved June 9, 2015, from Control of Trash Entering Waterways in California: [http://www.waterboards.ca.gov/publications\\_forms/publications/factsheets/docs/trash\\_fs.pdf](http://www.waterboards.ca.gov/publications_forms/publications/factsheets/docs/trash_fs.pdf)

Stevens, M. (2015, April 20). *In a blow to water conservation, court rejects San Juan Capistrano's tiered rates*. Retrieved June 9, 2015, from Los Angeles Times: <http://www.latimes.com/local/lanow/la-me-ln-water-rates-case-20150405-story.html>

## **WESTCAS STATE REPORT**

**STATE:** Colorado

**NAME OF PRESENTER:** Scott Miller, Esq., Patrick, Miller & Noto, P. C.

**DATE:** June 18, 2015

### **Colorado Water Plan**

The Colorado Water Plan is still marching along towards finalization. This Plan is the result of an executive order issued by Governor John Hickenlooper on May 14, 2013. That order directed the Colorado Water Conservation Board to begin preparing such a plan in order to best plan for Colorado's water future. Currently, one draft of the Plan has been completed and was delivered to the Governor on December 10, 2014. A public comment period followed the first draft lasting until February 27, 2015. Statewide round tables for each of Colorado's nine river basins then commenced and a Statewide Basin Roundtable Summit took place on March 12, 2015. A second draft of the Plan will be released for public review on July 15, 2015. Following that, another public comment period will take place lasting until September 17, 2015. Afterwards, the final 2015 Colorado Water Plan is scheduled to be submitted to the Governor by December 10, 2015.

One of the most controversial aspects of the Plan involves the future of transmountain diversions. Various comment letters with opposing viewpoints have been submitted. Western Colorado entities generally have insisted that there is no more water to develop in the Colorado Basin for new transmountain diversions; while Eastern Colorado entities like Aurora Water have commented that there is little or no mention of transmountain diversions in the water supply projects and methods section and that the option should be recognized upfront as a viable option. How the Colorado Water Conservation Board approaches this controversial topic and the conflicting comments will become apparent next month when the next draft of the Plan will be presented.

### **Stormwater Collection - Senate Bill 15-212**

Senate Bill 15-212 provides that passive storm water detention facilities and post-wildland fire facilities presumptively do not injure water rights. The purpose of this Bill is to mitigate against litigation and establish an exemption from state water administration for regional stormwater management facilities (such as flood control detention, post-fire debris, and stormwater water quality management detention). Currently, stormwater management is covered and largely exempt if it occurs on "an individual site." Yet, stormwater management commonly occurs regionally and at multiple sites within a watershed. Thus, the need and purpose of this new law. However, according to the bill, water from these facilities cannot be put to beneficial use or form the basis for any claim for appropriation of the water. Furthermore, the bill allows a holder of vested water right to bring an action to determine if a storm water detention facility has caused material injury to their water rights, rebutting the presumption that such facilities do not cause injury. Senate Bill 15-212 was signed by Governor Hickenlooper on May 29, 2015.

## **Historic Consumptive Use – Senate Bill 15-183**

Senate Bill 15-183 passed and was signed by the Governor into law on May 4, 2015. This Bill directs the water court, when developing a “representative study period” for the historical use of a water right, to not include years of undecreed use of that particular right. The Bill also precludes the water judge from re-quantifying the historical consumptive use of a water right if it has already been quantified in a previous change of water right case. This Bill was amended on its third reading to apply only to new cases. Thus, for example, it did not apply to *Grand Valley Water Users Assoc., et al. v. Busk-Ivanhoe, Inc.*, 14SA303. This case was argued before the Colorado Supreme Court on June 2, 2015. A major issue within that case is a 22 year period of undecreed use by the City of Aurora. The Bill essentially eliminates the water court’s discretion to consider periods of undecreed use as a zero year when calculating historical use of a water right. Thus, if the Bill was applied to the Aurora case, which it is not, the Court would have been precluded from discounting Aurora’s historic consumptive use by the period of undecreed use.

## **Tailwater – Senate Bill 15-055**

Senate Bill 15-055 was signed into law by the Governor on March 26, 2015. This Bill concerns the State Engineer’s administration of tail water ditches. This is apparently in response to a State Engineer position in at least one of Colorado’s water divisions on the East Slope that they are able to require a certain amount of water to be delivered as return flows, contrary to historic practice. However, it is not a limitation on the State Engineer’s authority to administer water rights to prevent waste. Specifically, the Bill permits a person to use a tail ditch to return variable amounts of water to a stream, and the State Engineer shall not require the delivery of a minimum amount of water to the stream, except as required by a water court decree.

## **More marijuana and water issues**

Colorado has also been experiencing unique issues and interplay between water law and the legalization of marijuana. For example, House Bill 15-1278 was proposed specifying that using a water right that has been decreed for agricultural irrigation purposes for cultivation of marijuana at a retail or medical marijuana cultivation facility is not a change of a water right if the use of the water is required for the cultivation of marijuana as contemplated or required by the facility’s license. The bill, however, has been postponed indefinitely.

Additionally, a water right application before the Division 5 Water Court has raised an interesting issue. The case involves a water rights application filed by High Valley Farms, LLC which seeks the right to annually pump 2.89 acre-feet of water from the Roaring Fork River to irrigate 2,000 to 3,000 marijuana plants in its Basalt, Colorado facility. In a consultation report by the Division Engineer regarding this application, issued on November 19, 2014, the applicant was asked to explain how the claim for water rights can be granted in light of Colorado’s definition of beneficial use. Under Colorado statute, beneficial use means “the use of that amount of water that is reasonable and appropriate under reasonably efficient practices to accomplish without waste the purpose for which the appropriation is lawfully made.” The Division Engineer and the Court are raising the issue whether the appropriation is “lawful” despite the fact that the use is legal in Colorado. Briefing on this issue is set to occur in the near future.

## **Christo Project**

Lastly, the Colorado Supreme Court may soon be hearing the case of *Rags Over the Arkansas River v. BLM, et al.* This lawsuit involves an artist named Christo and his “Over the River” project. The project entails the suspension of nearly 5.9 miles of translucent fabric above the Arkansas River in eight sections throughout a 40-mile stretch of the river between Salida and Canon City, Colorado. The construction of the project will take twenty-seven weeks; and then will be on display for two weeks followed by a three month removal process. ROAR claims that the project threatens not only the natural beauty of the Arkansas River’s headwaters, but also the citizens, fish, and other wildlife in the area.

Rags Over the Arkansas River (“ROAR”) has filed a brief with the Colorado Supreme Court asking the court to reexamine the Colorado Court of Appeals decision that dismissed its lawsuit in February. ROAR argues that Colorado Parks and Wildlife failed to follow its own regulations when it approved the project. Interestingly, the appeals court agreed that the Colorado Parks and Wildlife did violate its own procedure when it approved the project, but ruled that it was “harmless error.” The group is asking the Supreme Court to decide if the error was, in fact, harmless. It thus appears this lengthy battle, which ROAR claims to have lasted seventeen years (since just after Christo and his late wife Jeanne-Claude first envisioned the controversial project in 1996) may finally conclude in Colorado’s highest court. In the meantime, the project is on hold until the litigation is resolved.

## WESTCAS STATE REPORT

**STATE:** Nevada

**NAME OF PRESENTER:** Brenda Pohlmann, City of Henderson, Department of Utility Services

**DATE:** June 17, 2015

### **Drought:**

In February of this year, the U.S. Agriculture Department declared most of the state of Nevada a disaster area due to the lingering drought. The primary counties affected include Carson City, Churchill, Clark, Douglas, Esmeralda, Humboldt, Lander, Lyon, Mineral, Nye, Pershing and Washoe, which is every county except for four in the eastern part of the state. The State Engineer ordered a fifty percent reduction in the amount of groundwater that can be pumped for crops in the Smith and Mason valleys, near the town of Yerington, which is where Nevada's largest agricultural producers are located. Historically the farmers relied on the Walker River with groundwater used only as a backup, but with so little snow in the mountains this past winter, there is very little surface water available and groundwater supplies are stretched thin also.

The City of Reno, which usually relies on water from the Truckee River, has had to use drought reserves for the second year in a row. According to the Truckee Meadows Water Authority, last summer was the first time in 20 years that Reno had to use their drought reserves.

In southern Nevada, water levels in Lake Mead continue to decline. Currently the elevation of Lake Mead is at 1,075.94 feet above mean sea level (MSL). In August 2015, the Bureau of Reclamation will use a computer model to project where the anticipated water level will be in January of 2016. If these projections indicate a water level drop to below 1,075 feet MSL, then shortage conditions will be declared. Under shortage conditions, the state of Nevada will see a 14,000 acre-foot (af) drop in its 300,000 af allotment. Fortunately, the state currently uses less than this amount due to conservation efforts that were put into place a number of years ago.

In addition to water quantity, 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 have dropped, the intakes have been drawing water from a zone closer to this epilimnion.

In order to avoid pumping water out of this warm shallower zone with poorer water quality, the Southern Nevada Water Authority (SNWA) has constructed a new intake capable of pumping water from Lake Mead at a deeper elevation of 1,000 feet. The new intake is anticipated to go on-line in August of this year. Since water levels are expected to continue to decline, SNWA is constructing a third pumping station capable of lifting and conveying water from the lowest elevations of the lake at approximately 860 feet.

**Stormwater:**

In the state of Nevada, the Nevada Division of Environmental Protection (NDEP) has been delegated Clean Water Act authority and as a result, usually conducts any stormwater audits of Nevada permittees. In 2011, however, EPA came into Nevada and did a statewide audit of the Nevada Department of Transportation (NDOT). NDOT received their final audit report in 2012 noting a number of deficiencies. NDOT did not hear from EPA again until 2014 when NDOT was given a copy of a Consent Decree from EPA. In the Consent Decree, EPA indicated their intent to take enforcement actions against NDOT which included millions of dollars in fines. NDOT met with EPA in February 2015 and has been working with them in an attempt to address the deficiencies and decrease the fines that EPA is currently assessing.

The Nevada legislature just completed the 2015 session wherein three bills submitted by NDOT to address EPA's concerns were passed. The bills included the creation of a new Environmental Division within NDOT that will be run by a Deputy Director and include the creation of 59 new positions.

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.

**Water Quality:**

Lake Mead suffered a microcystis bloom this spring similar to many surface water bodies throughout the southwestern part of the U.S. Initially there was concern that the outbreak would be blamed on nutrients in the wastewater discharges to the Las Vegas Wash. The most severe outbreak occurred however, in reaches of the lake that were nowhere near the Las Vegas Wash and appeared to have been unrelated to the wastewater discharge. SNWA continually monitored the concentrations of microcystis and looked for any indications of the microcystin toxin. Fortunately there was little to no release of the toxin. In addition, the two water treatment plants operated by SNWA use ozone to treat drinking water which is known to oxidize the toxins.

## WESTCAS STATE REPORT

**STATE:** New Mexico

**NAME OF PRESENTER:** Joshua Rosenblatt, City of Las Cruces Utilities

**DATE:** June 17, 2015

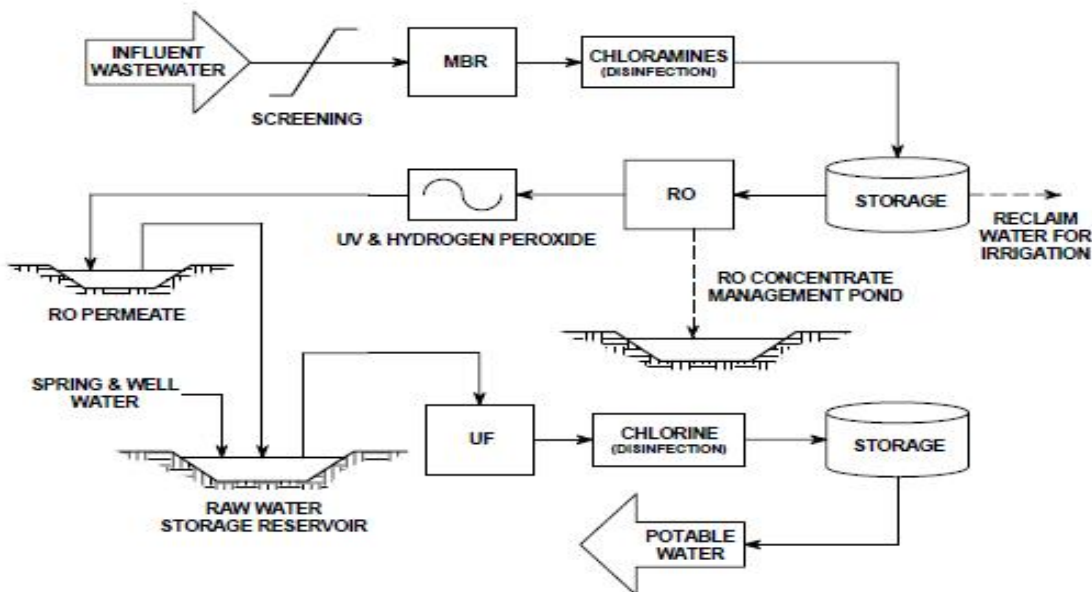
### Update Reclaimed Water Reuse Advances in New Mexico:

**Indirect Potable Reuse (IPR):** Treated Wastewater Injection into ground or surface water to provide blending and additional buffering with natural systems.

**Direct Potable Use (DPR):** Highly treated wastewater is treated to meeting both wastewater and drinking water standards through engineering processes and introduced directly into source water supplies.

**Cases:** Cloudcroft was the first “toilet to tap” permitted water system in New Mexico. It has long been functioning as indirect injection system providing recharge of the community well field aquifer. A DPR system is scheduled for completion this year. Treatment Process is outlined and illustrated as follows:

1. A membrane bioreactor (MBR) to initially treat water leaving the wastewater plant
2. Disinfection with chloramines
3. Reverse Osmosis (RO)
4. Ultraviolet (UV) and hydrogen peroxide (H<sub>2</sub>O<sub>2</sub>) treatment
5. Blending with springs and wells in a covered reservoir
6. Ultrafiltration (UF)
7. Disinfection with MIOX-produced hypochlorite.



**SOURCE:** World Wide Web: June 2015; NMED Website

<https://www.env.nm.gov/Water/WaterReuse.html> JRosenblatt

Rio Rancho - About 3 years later the regulators are satisfied with Rio Rancho's proving up of the 1 year pilot hydrogeologic study using potable water. The NM Environment Department has issued a permit to proceed. The ball is now in the Office of the State Engineers office where a decision about return flow credits is pending along with any final issues. Lastly there is a final funding for the advanced treatment system of approximately \$5M 1 MGD MBR system that was not fully funded pending permit finalization.

In an interview with a drinking water bureau manager, the current regulatory issues surround the absence of regulations of reclaimed wastewater as a *source water*. It is neither ground nor surface water and thus doesn't directly fit the defined agency offices in permitting and regulatory oversight ahead of the distributed Drinking water bureau. A think tank report is forth coming along with some field trips and statutes developed in Texas are under review in the development of establishing consistency in permit protocol, process monitoring and safeguards prior to delivery.

**Triennial Review:** In review of last year's report it was apparent that the New Mexico Triennial Review proceedings and deliberations are now 4 years old overlapping what should have been the next triennial review period. I guess we'll give *process its due*.

### **Knowledge Asset Management Model:**

At the spring meeting of the NM Municipal League Environmental Quality Association meeting we had the opportunity to meet the newly appointed State Engineer, Mr. Tom Blaine who had been serving as Director of Environmental Protection at the New Mexico Environment Department. An ongoing issue the regulated community of New Mexico has is the rate of turnovers and transfers combined with retirement causing delays in negotiations, interpretations, and overall renewal of developing working relationships.

Along those lines, an excellent presentation on evaluating, cataloging, and budgeting investment prioritization strategies in the staff knowledge bank, in terms of asset management was presented by Louis Martinez of the Albuquerque Bernalillo Water Authority. I found this evaluation of huge significant value and the scope and methodology implemented by Mr. Martinez was exceptional and presents a model at a time of increasing budget constraints, staff turnover and retirement "brain drain" a critical asset management tool for utility managers to prepare and defend HR budgets. Mr. Martinez was very open about his work and shared the accompanying power point slides with the group and extended his presentation to WESTCAS as well.



## WESTCAS STATE REPORT

**STATE:** Texas

**NAME OF PRESENTER:** Peggy Glass, Ph. D., Alan Plummer Associates, Inc.

**DATE:** June 17, 2015

The biggest news items in Texas are (1) the drought has broken (for the most part) and (2) the legislature has adjourned until 2017. Both of these are discussed below, along with updates on nutrient criteria and direct potable reuse in Texas.

### DROUGHT

In Texas, extreme drought conditions peaked in 2011. However, the state has continued to struggle with dry conditions in many parts of the state and, particularly, with reservoir capacity in the western part of the state, until May of this year. Then, in typical Texas fashion, an abnormally wet May (which is one of the wettest months to begin with) produced deluges that sent streams roaring out of their banks in many areas of the state.

At the start of 2015, 66% of the state was still in some stage of drought; 12% was still in an Extreme or Exceptional stage of drought. By early June only small areas of West Texas and the Panhandle were in drought conditions, and those conditions were very moderate. In June, 9% of the state was in the first drought stage (abnormally dry). Less than 1% of the state was in the second drought stage (moderately dry). None of the state was in a higher stage of drought. Reservoir conditions also improved significantly. The combined reservoir capacity of the state is approximately 31.5 million acre-feet (AF). In June 2015, the reservoirs held a water volume totaling 84% of their combined capacity. In comparison, six months ago the reservoirs held a water volume totaling 62% of their combined capacity. However, as with drought stage, there are still areas of concern. Eleven reservoirs in West Texas and the Panhandle still contain water totaling less than 20% of their respective capacities. When full, these eleven reservoirs contain approximately four million AF of water.

### TEXAS LEGISLATURE

The Texas Legislature only meets for five months every two years unless the Governor calls a special session. Therefore, when the Legislature is in session there is a whirlwind of activity, and anything can happen.

This year's legislative session was no different. However, most of their attention was focused on areas other than water. Water had been a focus of previous legislative sessions, and there appeared to be a general feeling that the results of the previous legislative actions should be allowed to play out before major additional measures were established. The bills that passed primarily did some fine-tuning to the State programs to develop, effectively manage, and beneficially use groundwater, brackish water, and seawater. Some relevant bills that passed were as follows:

- HB 30—The state is beginning to evaluate how to best use and manage brackish groundwater. This bill directs the Texas Water Development Board to study the development of brackish groundwater as a way to reduce the use of fresh groundwater.

- HB 655—Addresses several aspects of the regulatory program for Aquifer Storage and Recovery (ASR) projects. It addresses the relationship between ASR and surface water rights, establishes requirements related to ASR permits; grants the Texas Commission on Environmental Quality exclusive jurisdiction over the regulation of ASR projects, and clarifies that an ASR project does not have to obtain a permit from a local groundwater conservation district unless the volume recovered exceeds the volume authorized to be recovered.
- HB 1902—Modified regulatory requirements related to reuse of treated graywater and alternative on-site water.
- HB 1919—Amended the Parks and Wildlife Code to exempt certain water transfers by a political subdivision from prohibitions and permitting requirements associated with the transfer of invasive species into waters of the state.
- HB 2031—Encourages the development of marine seawater desalination projects by clarifying and simplifying regulatory requirements.
- HB 2230—Simplifies the permitting of injection wells used to dispose of non-hazardous brine from a desalination facility and non-hazardous drinking water treatment residuals.
- HB 4097—Requires the development of rules for the use of desalinated seawater for non-potable uses, authorizes diversions of water from the Gulf of Mexico for industrial purposes without notice or an opportunity for hearing, waives water availability requirements, establishes procedures for the issuance of permits to dispose of brine into the Gulf of Mexico as part of a project to desalinate seawater for an industrial process, and authorizes the issuance of a general permit for an injection well for the disposal of brine produced by the desalination of seawater.
- SB 912—Exempts local governments from requirements to report certain accidental spills of wastewater that have a volume of 1,000 gallons or less.

## **OTHER TOPICS OF INTEREST**

### **Water Quality Standards for Nutrients**

Texas adopted chlorophyll-a water quality standards for 75 reservoirs, and EPA approved approximately half of those standards. No action has been taken, so far, by the State regarding the reservoirs where EPA disapproved the standards.

The current focus of the State's efforts to develop nutrient water quality standards is standards for streams and estuaries. No substantive information has yet been provided on what the proposed approach will be. The next triennial revision is due in 2017. It is not yet known if stream and estuary nutrient standards will be proposed at that time.

## Direct Potable Reuse

There are currently two operational Direct Potable Reuse (DPR) projects in the state- the Colorado River Municipal Water District Big Spring project (started in spring 2013) and the City of Wichita Falls emergency DPR project (started in July 2014). The Wichita Falls project “repurposed” their advanced treatment facilities used for brackish surface water desalination (MF/RO) to provide advanced treatment for the wastewater. Their long-term plan is to convert back to treating the brackish water and to pipe the treated effluent to Lake Arrowhead for indirect potable reuse.

There are several DPR projects in the planning stages- El Paso, Laguna Madre Water District and San Angelo. Brownwood is permitted by the TCEQ to implement a DPR system, but the project is currently on hold. El Paso is currently piloting a DPR project and planning for start up to occur by the end of 2017.

The Texas Water Development Board just released the *Direct Potable Reuse Resource Document*, which can be accessed through its website:

[http://www.twdb.texas.gov/publications/reports/contracted\\_reports/doc/1248321508\\_Vol1.pdf](http://www.twdb.texas.gov/publications/reports/contracted_reports/doc/1248321508_Vol1.pdf)  
[http://www.twdb.texas.gov/publications/reports/contracted\\_reports/doc/1248321508\\_Vol2.pdf](http://www.twdb.texas.gov/publications/reports/contracted_reports/doc/1248321508_Vol2.pdf)

The document addresses a wide range of relevant topics, including constituents of concern, treatment strategies, risk assessment, pilot and bench-scale studies, and public outreach. While the document has a Texas focus, it is a great resource for anyone interested in pursuing DPR.