



**WESTCAS 2016 Annual Conference
June 22-24, 2016
Santa Fe, NM**

WESTCAS STATE REPORTS

STATE: Arizona

NAME OF PRESENTER: Michael Ploughe for Jim Kudlinski, Salt River Project

DATE: June 23, 2016

KEY WATER QUALITY LEGISLATIVE & REGULATORY ACTIVITIES (IN CHRONOLOGICAL ORDER) SINCE THE 2015 FALL CONFERENCE

Water Augmentation Council Established

Established by Executive Order on December 16, the Water Augmentation Council was formed by Governor Doug Ducey to investigate water conservation opportunities, identify infrastructure needs, and develop funding opportunities to help secure Arizona's water future. The Council is made up of appointed members that represent a broad spectrum of water resource agencies, watershed management organizations, local governments, non-government organizations and the agriculture, mining and homebuilding industries. The Council meets on a routine basis and is required to submit an annual report to the Governor with recommended water policy or statutory changes. Council members and their organizational affiliations are provided below.

<u>Member</u>	<u>Representing</u>
Aja, Basilio	Arizona Cattle Feeders' Association
Atkins, Lisa	Arizona Land Department
Brown, David	Brown & Brown Law Offices, P.C.
Buschatzke, Thomas (Chair)	Arizona Department of Water Resources
Cabrera, Misael	Arizona Department of Environmental Quality
Comacho, Chris	Greater Phoenix Economic Council
Cook, Ted	Central Arizona Project
Doba, Ronald	Northern AZ Municipal Water Users Assoc.
Fabritz-Whitney	Freeport-McMoRan
Gammage, Grady	Gammage and Burnham
George, Maureen	Mohave County Water Authority
Graham Patrick	Nature Conservancy
Hamer, Glenn	Arizona Chamber of Commerce & Industry
Kamps, Spencer	Home Builders Assoc. of Central Arizona
Keeling, Rod	Arizona Wine Growers Assoc.

Kmiec, John
Lavis, Rick
Lombard, Cheryl
Lotts, Robert
Moore, Hunter
Noble, Wade
O'Connell, Virginia
Member

Southern Arizona Water Users Assoc.
Arizona Cotton Growers Assoc.
Valley Partnership
Arizona Public Service
Office of the Governor
Noble Law Office
Arizona Water Banking Authority
Representing

Porter, Sarah
Roberts, Dave
Smith, Mark
Sullivan, Craig
Tenney, Warren
Townsend, Phillip
Udall, Christopher

Kyle Center for Policy at Morrison Institute
Salt River Project
Yuma Irrigation District
County Supervisors Assoc. of Arizona
Arizona Municipal Water Users Assoc.
Sunland Chemical Company
Agribusiness & Water Council of Arizona

Source: http://www.azwater.gov/AzDWR/Arizona_Water_Initiative/

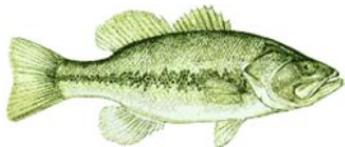
ADEQ Awards \$412,000 Water Quality Improvement Grant to AZGFD

On December 28, the Arizona Department of Environmental Quality (ADEQ) awarded a \$412,000 Water Quality Improvement Grant to the Arizona Game and Fish Department (AZGFD) to improve water quality in the San Pedro River, Little Colorado River and Oak Creek. As part of the agreement, AZGFD will provide \$274,000 in matching funds. All grant and matching funds will be used to protect and restore water quality and rangeland health in wildlife habitats identified by both agencies in the state's Nonpoint Source Management Plan. 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, the WQIG program has funded more than 150 projects from throughout the state.

Source: <http://legacy.azdeq.gov/function/news/2015/download/122815.pdf>

ADEQ Issues Three New Fish Consumption Advisories

On February 29, the Arizona Department of Environmental Quality (ADEQ) and the Arizona Game and Fish Department (AZGFD) issued fish consumption advisories for largemouth bass, flathead catfish and striped bass found in three central Arizona lakes.



Largemouth Bass
Apache Lake



Flathead Catfish
Bartlett Lake



Striped Bass
Lake Pleasant

Each species was listed due to the elevated levels of mercury in fish tissue. ADEQ recommends limiting consumption to less than 2.4 ounces per day (uncooked weight) for adults and 2.0 ounces per day for children (less than 12 years in age).

Source: <http://legacy.azdeq.gov/function/news/2016/download/022916.pdf>

ADEQ Reclaimed Water Rule Stakeholder Listening Sessions

The Arizona Department of Environmental Quality (ADEQ) is beginning the process to update and revise Arizona's rules governing the reuse of reclaimed and gray water. During the months of March, April and May, ADEQ hosted a series of stakeholder workshops and listening sessions in Tucson, Phoenix and Flagstaff. Arizona is one of four states that generate over 82% of the nation's reclaimed water. As a state, Arizona has the 2nd highest rate of reuse at 27.6 gallons per person, per day, but is 1st in the nation in integrating reuse into its water supply portfolio. In order to keep up with the rapidly advancing reclaimed water field, ADEQ is proposing, during fiscal year 2017, to revise the following rules:

Reclaimed Water Conveyances (18 A.A.C., Chapter 9, Article 6)

- R18-9-601. Definitions
- R18-9-602. Pipeline conveyances
- R18-9-603. Open water conveyances

Direct Use of Reclaimed Water (18 A.A.C., Chapter 9, Article 7)

- R18-9-701 & 702. Definitions & applicability of rules
- R18-9-703. Transition of permits
- R18-9-704. General requirements, including signage
- R18-9-705. Individual permit requirements
- R18-9-707. Individual permit with industrial wastewater influence
- R18-9-708. Overall general permit requirements
- R18-9-709 & 710. General permit renewal, transfer, revocation
- R18-9-711. General permit for private residential gray water use
- R18-9-712 - 716. General permits for Class A+, A, B+, and C water
- R18-9-717. General permit for blending facility
- R18-9-718. General permit for reclaimed water agent
- R18-9-719. General permit for other gray water use
- R18-9-720. Enforcement and penalties

Reclaimed Water Quality Standards (18 A.C.C., Chapter 11, Article 3)

- R18-11-301 & 302. Definitions and applicability
- R18-11-303 - 307. RWQS, Classes A+, A, B+, B, and C water
- R18-11-308 - 309. RWQS for industrial use and unlisted uses
- Appendix A. Table of allowed end uses

ADEQ has also stated that the proposed revisions *will not cover*:

- BADCT treatment requirements for WWTPs (under APP)
- Fees for reclaimed water permits (fee rules)
- Criteria for recharge of reclaimed water
- Development of certified operator classifications for reclaimed water distribution systems

As ADEQ gathers comments from stakeholders through listening sessions and/or e-mail, it will continue to update the stakeholders' issues matrix. Copies of the matrix and additional information on the proposal to revise the reclaimed and gray water rules can be found on ADEQ's web portal.

Source: <http://legacy.azdeq.gov/enviro/water/permits/reuserulemaking.html>

ADEQ Reissues AZPDES De Minimus General Permit

On April 13, the Arizona Department of Environmental Quality (ADEQ) reissued the Arizona Pollutant Discharge Elimination System, De Minimis Discharge General Permit (No. AZG2016-001). Commonly known as the De Minimis General Permit (or "DMGP"), the permit authorizes point source discharges to waters of the United States that are generally infrequent, low volume and/or short in duration, and are expected to meet applicable surface water quality standards. Some of the common discharging activities authorized under the renewed DMGP include:

- Potable water system installation and maintenance activities
- Subterranean dewatering
- Well development, testing, and maintenance
- Hydrostatic testing of pipes and vessels
- Reclaimed water system repair and pressure releases
- Residential cooling system condensate or overflow
- Charitable car washes
- Washing of building exteriors and streets
- Dechlorinated drainage from freshwater swimming pools, and
- Other discharges specifically determined to be De Minimis by ADEQ

The effective date of the permit is June 1, 2016, and is valid for a five year term. Copies of the permit, fact sheet and response to comments summary can be found on ADEQ's web portal.

Source: <http://legacy.azdeq.gov/environ/water/permits/gen.html#demi>

ADEQ Revises Underground Storage Tank (USTs) Program

On May 11, the Arizona Department of Environmental Quality (ADEQ) announced their plans to fund a new program to remove, free of charge, underground storage tanks (USTs). Based on authority provided during the 2015 legislative session, the new program enables ADEQ to remove old or unused tanks, conduct verification soil sampling near tanks removed, and develop a baseline assessment of the former UST site. To participate in this program, a person either must own the property on which the UST is located or owned or operated the UST at some point in the past. ADEQ will prioritize applications based on risk to the environment and the applicants' financial resources.

Source: <http://legacy.azdeq.gov/environ/waste/ust/statelead.html>

Draft 2016 Clean Water Act Assessment

On June 13, the Arizona Department of Environmental Quality (ADEQ) public noticed their draft 2016 Clean Water Act Assessment report. The draft Assessment includes data collected from July 1, 2010 through June 30, 2015, and provides a comprehensive analysis of water quality data associated with Arizona's surface waters in order to determine whether water quality standards are being attained and designed uses supported. The draft Assessment determines whether a water can be used safely for drinking water, recreation, fish consumption, irrigation and/or livestock watering, and whether it protects both aquatic life and wildlife. The draft Assessment also lists those surface waters proposed for the states 303(d) Impaired Waters list. The report is open for public comment until July 28.

Source: <https://www.azdeq.gov/node/1264>

2016 Legislative Recap

Key water quality laws and appropriations completed during the 52nd legislative session are highlighted below.

Small Water Systems Fund

ADEQ received an allocation of \$500,000 to be used for projects that will help small drinking water systems come into compliance. ADEQ plans to work in collaboration with the Water Infrastructure Financing Authority (WIFA) and the Arizona Corporation Commission (ACC) to maximize the use of these funds.

Increased Funding for WQARF

WQARF funding will increase 26% to \$14.2 million. The increase will allow the program to expand its critical role in identifying and cleaning up contaminated sites throughout the state.

myDEQ Continued Funding

ADEQ's on line system for filing APP and AZPDES reports and paying permit fees was increased allowing the program to expand.

HB 2325 (Environment; water quality amends)

This bill aligns lead content in pipe standards with existing federal standards in effect since 2014, eliminating confusion for the regulated community. The bill also directs existing water and wastewater operator certification fees to ADEQ, making the program self-sustaining.

SB 1256 (Drug Lab Remediation; assayers; repeal)

This bill transfers the drug lab remediation program to ADEQ. ADEQ will administer this program within the Waste Programs Division, to manage the remaining approximately 30 contaminated residential property cases.

HB 2666 (Governor's Economic Opportunity Office – WIFA)

As part of the Governor's intent to have government operate at the speed of business and reduce regulatory burdens, the Water Infrastructure Finance Authority (WIFA) has been incorporated into the Governor's Economic Opportunity Office (EOO). ADEQ will work with EPA, WIFA and the EOO to update existing delegation agreements to ensure a timely and consistent application of authority under the new office.

Source: <https://www.azdeq.gov/environmental-quality-bills-2016-arizona-state-legislative-session>

STATE: California

NAME OF PRESENTER: Steve Bigley, Coachella Valley Water District

DATE: June 23, 2016

California Drought

On May 9, 2016 Governor Brown issued a new Executive Order (B-37-16) that focuses on long-term water use efficiency. The order directs the California Department of Water Resources (DWR) to work with the State Water Resources Control Board (SWRCB) to develop new water use targets as part of a permanent framework for urban water agencies. The new long-term targets will be tailored to local conditions and will consider indoor residential per capita water use, local outdoor irrigation needs/climate, commercial, industrial and institutional water use, and water lost through leaks. The order directs the SWRCB to extend the emergency regulations through the end of January 2017.

On May 18, 2016, the SWRCB adopted revisions to the Extended Emergency Regulation for Urban Water Conservation. The revisions transition the mandates away from demand-based regulations to self-certification of the level of available water supplies. Districts will have until June 22, 2016 to submit their data that forms their new conservation standard.

California Water Fix

Cal Water Fix would create more flexibility to better balance water quality, fish protection, and water supply. It would allow the state and federal water projects to capture and store water during times of heavy rainfall and runoff, when diversions pose less risk to fish and water quality. Such opportunities are limited now because the existing south Delta pumps create unnatural flows that can be hazardous to fish. New intakes offer increased flexibility to the State Water Project (SWP) and Central Valley Project (CVP) to operate in "dual conveyance" with the existing pumps in the south Delta. Cal Water Fix would add new locations on the Sacramento River from which the SWP and CVP may divert water based on existing water rights, and no or expanded water rights are being sought.

On August 26, 2015, DWR and Reclamation submitted a joint petition for change in water right permit conditions (Petition) to the SWRCB to add points of diversion of water on the Sacramento River for the SWP and CVP. On September 24, 2015, DWR submitted an application for water quality certification under section 401 of the Clean Water Act (401 Application) to the SWRCB for the Cal Water Fix. On October 30, 2015, the SWRCB issued a combined public notice for the Petition and an evidentiary hearing on the Petition and a separate public notice for the 401 Application.

On May 16, 2016, DWR and Reclamation (collectively petitioners) submitted a status letter in response to the hearing officers' April 25, 2016 ruling letter. The petitioners indicate they are in confidential negotiations with several protestants, have no proposed permit conditions at this time, and have updated modeling related to the proposed project. The petitioners' letter and the updated modeling can be found on the SWRCB Cal Water Fix petition hearing website:

http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/california_waterfix

On May 31, 2016 the petitioners submitted their cases in chief, witnesses' proposed testimony, list of witnesses, statements of witnesses' qualification, and exhibits. All submissions to date (154 files) can be found on the SWRCB California Water Fix petition hearing exhibits website.

On June 1, 2016, DWR and Reclamation submitted testimony to the SWRCB as required for the upcoming public hearings on the request to add three new points of diversion to the SWP.

Drinking Water Regulation for Hexavalent Chromium

Senate Bill 385 was signed by the Governor on September 4, 2015. The new law became effective immediately and provides public water systems time to comply with the state's new MCL for Cr-6 (10 ppb). Requests for time to achieve compliance must include a compliance plan. Compliance plans are to be submitted by June 30, 2016. The compliance plans will describe actions and milestones the public water system with take to come into compliance by the "earliest feasible date".

Sustainable Groundwater Management Act (SGMA)

In 2014, California passed three legislative bills (SB 1168, AB 1739, AB 1319) that provide a framework for statewide sustainable groundwater management. SGMA strives to implement a bottom-up approach that provides local water managers the tools and authority they need to implement sustainable groundwater management practices through the creation of Groundwater Sustainability Agencies (GSAs). GSAs must be formed by June 30, 2017. GSAs are required to adopt Groundwater Sustainability Plans (GSPs) in accordance with adopted GSP Emergency Regulations to manage high and medium priority groundwater basins. The GSP regulations were required to be developed by DWR by June 1, 2016, after an extensive public engagement process. The California Water Commission unanimously approved the proposed GSP regulations, as written, on May 18, 2016.

The GSP regulations require GSAs to submit GSPs to DWR by January 31, 2020 or January 31, 2022, depending on the determination of overdraft conditions. Alternative GSPs are due much earlier; January 1, 2017.

Currently, local agencies are forming GSAs, resolving overlap issues, and planning work to submit GSPs or Alternatives. A GSA formation table and other information can be viewed on DWR's SGMA website:

<http://www.water.ca.gov/groundwater/sgm/index.cfm>

Drinking Water General NPDES Permit

Planned discharges are part of a water purveyor's essential operations to comply with the federal Safe Drinking Water Act and the California Health and Safety Code for providing reliable and safe drinking water. Surface water discharges also occur from pipe breaks, system failures, and emergencies. To provide coverage to discharges by water purveyors to waters of the United States in compliance with Clean Water Act section 402, the SWRCB adopted the Statewide General NPDES Permit for Drinking Water System Discharges to Waters of the United States on November 18, 2014.

It is the intention of the SWRCB to regulate all mandatory low-threat-type discharges from community water systems statewide with consistent regulation. The Regional Water Boards will no longer be regulating the mandatory low-threat-type discharges from drinking water systems that meet the criteria of the statewide permit; such as unplanned and emergency discharges, discharges from supply wells, and discharges from distribution systems.

If the water purveyor has coverage under a current Regional Water Board issued NPDES permit and the entire existing regulatory coverage is being replaced by the new Drinking Water System Discharge Permit, then the water purveyor will need to terminate coverage under the Regional Water Board permit and get coverage under the new general permit. If the water purveyor has coverage under a current Regional Water Board permit for discharges that will be covered in the new general permit and other discharges are NOT included in the new permit, then the water purveyor will need coverage under both permits.

The new general permit requires payment of an application fee and annual fees based on the number of service connections for the public water system in accordance with the following schedule.

Service Connections	Application Fee Only	Application and Annual Fee
15-999	\$100	
1,000-9,999		\$500
10,000+		\$2,062
Transmission Only		\$2,062

Recycled Water General Permit

On June 7, 2016, the SWRCB adopted the Water Reclamation Requirements for Recycled Water Use general order that becomes effective on August 6, 2016. The general order will replace the existing statewide permit for Recycled Water Use and is intended to make it easier to use non-potable recycled water for agriculture, landscaping irrigation and some industrial purposes. The general order isn't intended for uses that supplement drinking water supplies or recharge groundwater, and doesn't allow direct or indirect potable uses of recycled water.

The SWRCB intends that regulatory coverage under an old general order will be terminated within three years after adoption of the new general order (by June 7, 2019). This could be good or bad for the permit holder, depending on their obligations under their current permit. Enrollees should receive communication from the SWRCB or Regional Board regarding the transition process by June 30, 2016.

STATE: Colorado

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

DATE: June 23, 2016

Colorado Water Plan

On November 19, 2015, Governor Hickenlooper signed Colorado's long-awaited and first state-wide water plan. The Plan although not legally binding, represents an important policy making tool that identifies specific action items to address and manage Colorado's future water challenges. Throughout its voluminous text, the Plan identifies many future challenges will face Colorado in the water context, however, chief among these is a projected 500,000 acre-feet statewide municipal and industrial water supply shortage by the year 2050. In anticipation, the Plan has identified increased storage as a significant goal and sets forth an objective to attain an additional 400,000 acre-feet of water storage in Colorado in 2050. In the last Colorado legislative session, several bills have been proposed to put the Plan into action. For example, Senate Bill 16-174 which was signed on May 16, 2016, approved a \$5 million yearly transfer to the Colorado Water Conservation Board's construction fund to "implement the state water plan" by way of studies, programs, and projects. Additionally, House Bill 16-1256 tasks the Colorado Water Conservation Board with studying storage possibilities along the South Platte River. This bill aims to identify projects to reach the Plan's storage goals. The bill was signed on June 9, 2016.

Colorado Legislative Update. House Bill 16-1005, the Rainwater Bill, becomes law

After a failed attempt during last year's legislative session, Governor Hickenlooper signed a bill that allows but regulates precipitation harvesting on May 12, 2016. The bill often referred to as the Rainwater Bill legalizes the collection of rainwater from the rooftops in single family residences or multi-family residences of four or fewer units. The collection may occur in up to two enclosed rain barrels with a combined capacity of no more than 110 gallons. The water collected may be used for outdoor purposes on the property on which it is collected only. Furthermore, the bill requires the State Engineer to collect information on the impacts this practice has on existing water rights and extends the State Engineer's enforcement authority to curtail rain barrel use in instances of waste or injury to water rights or in times of drought. The State Engineer is then required to report back to the legislature in 2019 and 2022 on whether the use of rain barrels has caused any noticeable injury to downstream water rights. The bill officially takes effect on August 10, 2016, at which time Colorado will join the rest of the nation in legalizing this practice and specifically joins Arizona, Oklahoma, and Utah in allowing, but regulating, rain barrel use.

House Bill 16-1109, Colorado Water Rights Protection Act becomes law

On April 21, 2016, Governor Hickenlooper signed the Colorado Water Rights Protection Act into law. This bill works to protect state issued water rights on federal lands and was unanimously passed by the Colorado House and Senate. The bill itself confirms federal deference to state water law and that Colorado water rights are administered according to Colorado law and not administrative policies of the United States Forest Service or the Bureau of Land Management. Therefore, the new law makes it clear that if a federal agency wants to own water rights in Colorado, it must apply and go through the water court process like any other party. The bill also directs the Colorado State Engineer not to enforce or administer efforts by the United States Forest Service or the Bureau of Land Management that aim to require transfer of title of water rights to the agencies, or restrict use of the water rights as a condition to a right-of-way, special use permit, or other authorization. The bill does note, however, that the text does not grant, confirm, deny, or impact any legal authority of the federal government to impose bypass flow requirements in connection with a special use permit or other authorization. The Colorado Water Rights Protection Act takes effect on August 10, 2016.

House Bill 16-1228, Colorado Agricultural Water Protection Act signed into law

On May 18, 2016, Governor Hickenlooper signed House Bill 16-1228 into law. This bill allows the owner of an absolute irrigation water right used for agricultural purposes to lease half for other beneficial uses. Specifically, the owner of such a right can now apply in water court to change the use of the water right to an agricultural water protection right. This allows the holder to then lease, loan, or trade up to fifty percent of the water without designating the beneficial use to which the water will be applied, but only in the water division in which the historical consumptive use was located. Any water not being lease, loaned, or traded must be used for agricultural purposes. The bill directs the Colorado Water Conservation Board to develop minimum criteria and guidelines for the establishment of an Agricultural Water Protection Program and directs the State Engineer to develop rules governing the review of a substitute water supply plan for agricultural water protection water rights. These substitute water supply plans will be valid for one year and can be renewed twice without reapplying. A new application will be required every three years. The Colorado Agriculture Water Protection Act officially takes effect on August 10, 2016.

Hydraulic Fracturing cases

As reported in the last state report, the Colorado Supreme Court recently took on the issue of local versus state control of oil and gas activities including the storage of liquid waste products. Since then, the Colorado Supreme Court has ruled on the cases. On May 2, 2016, the Colorado Supreme Court issued its rulings in *City of Longmont v. Colorado Oil and Gas Association*, 2016 CO 29, __ P.3d __ (Colo. 2016) and *City of Fort Collins v. Colorado Oil and Gas Association*, 2016 CO 30, __ P.3d __ (Colo. 2016). In two very similar cases, the Colorado Supreme Court found that both municipalities' efforts to prevent hydraulic fracturing or the storage of its waste products from occurring within its city limits were preempted by state law because of an operational conflict. In both decisions, the Court found that neither Longmont's outright ban on hydraulic fracturing nor Fort Collins' five year moratorium on the process were expressly or impliedly preempted by the OGCA; instead, the Court reasoned that both were preempted because of *operational* conflict with application of the Act.

The Court found that Longmont's ban and Fort Collins' moratorium prevented operators from implementing the fracking process even if they abide by the statewide rules and regulations in place; thus, rendering those rules and regulations superfluous. Thus, the Colorado Supreme Court found that both measures materially impede the effectuation of the state's interest. The Court explained this decision by pointing out that "if left in place, [the ban and moratorium] could ultimately lead to a patchwork of regulation that would inhibit the efficient development of oil and gas resources." Consequently, the Court found that Colorado clearly has a strong interest in regulating hydraulic fracturing and allowing local authorities to issue differing bans or moratoria impedes this interest and is not allowed.

Water Quality Control Commission ("WQCC") Regulations update

On May 9, 2016, the WQCC held an informational meeting regarding proposed changes to Regulation #84 – Reclaimed Water Control Regulation. The areas of potential change that have been discussed are the additions of irrigation of crops for human consumption, indoor urinal and toilet flushing, and livestock wash-down as approved uses. Additionally, the meeting sought to address the accumulation of total dissolved solids ("TDS") in soil when plants are irrigated with reclaimed water—a major concern for many stakeholders. The WQCC has not yet scheduled a rulemaking hearing on the potential changes and because of the diverse stakeholder interests it is anticipated that multiple stakeholder meetings between the May 9, 2016, hearing and the potential, future rulemaking hearing will be necessary.

On November 9, 2015, the WQCC officially adopted Regulation 86: Graywater Control Regulation. The regulation officially became effective on December 30, 2015. Graywater is the water used in a residential, commercial, or industrial building that may be collected after the first use and put to second beneficial use. Under this regulation, approved graywater sources include water discharged from bathroom sinks, bathtubs, showers, and laundry machines. Graywater may not, however, include water discharged from toilets, urinals, kitchen sinks, dishwashers, and non-laundry sinks. The regulation outlines allowable use categories for graywater. These uses include outdoor, subsurface irrigation and indoor toilet and urinal flushing. Under Regulation 86, local governments may now adopt ordinances authorizing the use of graywater. The Colorado State Plumbing Board has also adopted rules and regulations allowing the use of graywater which became effective on February 14, 2016. Most recently, on May 2, 2016, the Denver City Council passed an ordinance that makes Denver the first city in the state to allow the use of graywater for residential, commercial, and industrial purposes. Denver's Board of Environmental Health is expected to approve rules and regulations later this summer describing how this program will be implemented. Participation in the program is voluntary.

Regulation #31

On June 13, 2016, the WQCC held a rulemaking hearing on Regulation 31 – Basic Standards and Methodologies for Surface Water and Regulation 61 – Discharge Permit System Regulations. Regulation No. 31 contains the statewide surface-water narrative and numeric standards for organic chemicals and radionuclides. It also contains the descriptions of use classifications and the table values that are the numeric criteria that are generally protective of the specific use classifications. At this hearing, the WQCC considered changes proposed include updating water temperature standards for Colorado's surface waters including the definition of existing quality, temperature shoulder season implementation, and acute values for the winter season. Other proposed changes include water quality standards for methylmercury, arsenic, nitrate, and acute chlorine, anti-degradation provisions, issues relating to downstream protection, and revisions to standards for discharge permits in conjunction with Regulation 61. At the time of going to press, the outcome of the rulemaking hearing was not known.

STATE: New Mexico

NAME OF PRESENTER: Aaron Chavez

DATE: JUNE 23, 2016

Gold King Mine Spill

On May 23, 2016 the State of New Mexico sued the U.S. Environmental Protection Agency and Mine Owners over the Gold King Mine Spill. The State of New Mexico on behalf of the New Mexico Environment Department, demands that the U.S. Environmental Protection Agency and the Colorado mine owners address the substantial threats from the mine in Colorado and to remediate continual contamination from the Gold King Mine. New Mexico Environment Department has requested full and just compensation for its environmental and economic damages caused by the spill.

The New Mexico Environment Department has requested the U.S. Environmental Protection Agency and Mine Owners to take responsibility for New Mexico's environmental and economic injuries. As a result, New Mexico has sued the parties base on violations of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9607(a), the Resource Conservation and Recovery Act ("RCRA") 42 U.S.C. § 6972 (a) the Federal Clean Water Act ("CWA"). 33 U.S.C. § 1365(h), and claims of negligence, gross negligence, public nuisance and trespass. The State of New Mexico seeks cost recovery, damages, and injunctive relief and attorney fees.

Since the spill, the New Mexico Environment Department has been responding to citizen concerns and maintaining safety oversight through an [emergency preparedness plan](#) and [long-term monitoring activities](#) for health, wildlife, water, agriculture, and sediment to ensure public safety. Currently there is a Gold King Mine Advisory Committee that meets monthly and brings in experts in numerous fields of concern and is a forum to community concerns.

On Thursday, June 9, 2016 the EPA held a public meeting in Farmington, New Mexico to discuss their proposal to make the Bonita Peak Mining District (BPMD) a "Superfund Site" by putting it on the National Priority List (NPL). To make the NPL, the EPA scores the proposed site using the Hazard Ranking System, which has been done. The BPMD district scored a 50 out of 100. The next step was a public comment period which ended, June 13, 2016. Once the public comment period was over the EPA assured a record of decision would be prepared. If the EPA approves the BPMD as a superfund site, they will publicly notice it on the National Registry.

WQCC/Triennial Review - New Mexico's Surface Water Quality Standards

The New Mexico Water Quality Control Commission ("WQCC") held the state's Triennial Review of surface water quality standards in Santa Fe from October 13-16, 2015. The last Triennial Review hearing was held in December 2009. The parties participating in the Triennial Review hearing were the New Mexico Environment Department Surface Water Quality Bureau ("NMED"), Amigos Bravos (a statewide river conservation organization), Chevron Mining, Inc., Freeport-McMoRan Chino Mines Company, and San Juan Water Commission ("SJWC"). Primary issues addressed by the parties during the hearing included:

1. adoption of a temporary standards or variance procedure;
2. upgrading nine stream segments with a secondary contact recreation designated use to a primary contact recreation designated given the absence of a Use Attainability Analysis ("UAA") showing the segments are not fishable/swimmable;

3. downgrading 29 ephemeral stream segments from primary contact recreation/marginal warmwater aquatic life designated uses to secondary contact recreation/limited aquatic life designated uses based on UAAs performed since the last Triennial Review;
4. objection to imposition of EPA's rebuttable presumption that all ephemeral waters are fishable/swimmable absent proof otherwise through a UAA;
5. repeal of the current hardness-based aquatic life criteria for aluminum and reversion to the pre-2009 total recoverable aluminum criteria; and
6. adoption of site-specific acute and chronic aquatic life criteria for copper (based on alkalinity concentration and dissolved organic carbon concentration) for certain surface waters located within the Chino Mines Smelter Tailings and Soil Investigation Unit in southwestern New Mexico.

The WQCC deliberated for one day in May and one day in June, and it plans to finish its deliberations and take final action at its August 2016 meeting. Although no final action has been taken, the WQCC to date has voted on the issues as follows:

1. Temporary standards. The WQCC has voted to adopt NMED's temporary standards proposal, with modifications proposed by SJWC. The new temporary standards provision will allow the WQCC to approve a time-limited and less stringent designated use and/or criterion for specified pollutant(s), permittee(s) and/or waterbody segment(s) reflecting the highest attainable condition during the term of the temporary standard. Temporary standards should lead to improved water quality over time and assist in full attainment of designated uses by providing time to implement adaptive management approaches that will improve water quality.

2. Recreation Designated Use for Nine Stream Segments. The WQCC adopted SJWC's position and rejected NMED's proposal to upgrade the recreation designated use for nine stream segments from secondary contact to primary contact. The WQCC rejected NMED's position that the stream segments must be upgraded because of the absence of UAA's showing that the secondary contact designation is appropriate. The WQCC agreed with SJWC that NMED did not provide any credible scientific evidence supporting primary contact designations for these stream segments. In New Mexico, primary contact means

any recreational or other water use in which there is prolonged and intimate human contact with the water, such as swimming and water skiing, involving considerable risk of ingesting water in quantities sufficient to pose a significant health hazard. Primary contact also means any use of surface waters of the state for cultural, religious or ceremonial purposes in which there is intimate human contact with the water, including but not limited to ingestion or immersion, that could pose a significant health hazard.

Activities such as boating, fishing and wading are considered to be secondary contact uses. NMED argued that such uses include a "potential" for primary contact and thus should be considered to be primary contact uses. The WQCC rejected the argument.

3. Ephemeral Stream Designations. The WQCC approved adding 29 stream segments to the list of ephemeral waters set out in 20.6.4.97(C) NMAC based on recent UAAs. These will be the first waters expressly designated as ephemeral in New Mexico. Currently, undesignated ephemeral waters, not yet the subject of a UAA, are considered to be intermittent waters and are assigned the more stringent designated uses of primary contact and marginal warmwater aquatic life. Because of the ephemeral designation, these 29 waters will be downgraded from primary contact recreation/marginal warmwater aquatic life designated uses to secondary contact recreation/limited aquatic life designated uses.

4. Rebuttable Presumption. For years, SJWC has objected to the imposition of EPA's rebuttable presumption that all ephemeral waters are fishable/swimmable absent proof otherwise through a UAA. Tens of thousands of ephemeral streams (dry arroyos) are found in New Mexico, but they are designated as intermittent streams by default unless a UAA is conducted. During this Triennial Review, SJWC asked the WQCC to form a work group or task force to investigate a means of avoiding the unwarranted adverse impacts of EPA's rebuttable presumption, including the time and money required to perform UAAs solely to demonstrate that ephemeral waters cannot sustain primary contact and marginal warm water aquatic life uses and criteria. The WQCC stated that it agrees with SJWC's position that EPA's rebuttable presumption is not appropriate in arid regions, but it rejected the proposal to form a work group or task force because of money constraints and the fact that SJWC's request was not a petition to make a change to the water quality standards. The WQCC encouraged SJWC to file a petition "post haste" to appropriately modify New Mexico's surface water quality standards. The problem with this direction is EPA's anticipated rejection of any such change to the water quality standards.

5. Aluminum Criteria. Amigos Bravos petitioned the WQCC to eliminate the current hardness-based aluminum criteria and revert to EPA's recommended criteria of 87 µg/l (chronic) and 750 µg/l (acute), which were the pre-2010 New Mexico criteria. During the Triennial Review hearing, Amigos Bravos withdrew its petition.

6. Site-Specific Copper Criteria. Freeport-McMoRan Chino Mines Company petitioned to add site-specific criteria for copper for certain waters located within the Chino Mines Site in the Mimbres Basin based on extensive copper toxicity testing. The WQCC has indicated it will approve this petition.

Proposed Construction General Permit – EPA has proposed the next Construction General Permit (CGP) for storm water discharges from construction activities. Since New Mexico is not a delegated state for the NPDES program, the CGP will apply directly in NM. In the proposed rule there are favorable alternative requirements for arid areas. There are some issues of concern, including a requirement that all entities working on a site have a combined Storm Water Pollution Prevention Plan; posting EPA contact information on a sign at the site so that the public can contact EPA and report storm water pollution; and compliance with Underground Injection Control regulations for infiltrating storm water.

Water Conservation Tax moved from Surface Water to Drinking Water

The misnomer tax is not associated with water conservation. The funds paid by permittees goes for State water quality testing, and operator certification. After years of attempting to get a full accounting of the balance and expense reports, the NMED has moved the program to the Drinking Water Bureau for budgetary benefits as the Drinking Water Bureau has more resources due to federal fund contributions. Entities have been notified by the Drinking Water Bureau that a full historic accounting shall be provided for and will be made annually moving forward. Questions remain as to how the drinking water funds will now be spent on wastewater operations and operator training.

Reclaimed Water Certification

There has been discussion in the development of a separate Reclaimed Water Operator certification. It is the common consensus that Level III and IV operators should be highly skilled and trained. The reclaimed water systems and treatment requirements should become inclusive of the existing licensure. The other side of the coin, this level of knowledge is missing and they need training. One concept is to invite some of our membership from other states as to how they addressed reclaimed water training. Inclusive as CEU's perhaps or separate license.

Regional Water Planning

In 1999 the Interstate Streams Commission (ISC) recognized the need for regional water plans from all sixteen planning regions and the ISC accepted regional water plans from 1999 to 2008 from the sixteen (16) regions. In 2013 the ISC created an "Updated Regional Water Planning Handbook" and in 2015 the ISC approved "Acceptance Criteria" for this current round of regional water planning updates. Updates to the State Water Plan are mandated every 5-years and a Common Technical Platform was used by the ISC to better support integration of the sixteen (16) regional water plans into the updated State Water Plan as required by state statute (72-14-3.1 N.M.S.A.).

ISC staff and contractors will complete the sixteen (16) Draft Regional Water Plan updates by June 30, 2016. The ISC's contractors will make some minor changes and revise each region's plan based on the received comments but the methodology used for the supply, demand, and population data will not change. Many of each region's comments will not be incorporated into the updated plans rather, they will be addressed by the ISC in a memo. The Final Regional Water Plan will be sent back to the regions and a conference call will be initiated to discuss the changes made to the final document. The Final Regional Water Plans will be introduced to the Interstate Streams Commission starting July 21, 2016 and conclude on November 17, 2016 for approval by the ISC.

STATE: Texas

NAME OF PRESENTER: Dr. Peggy Glass

DATE: June 23, 2016

As an introductory note, Texas is proceeding through its always-present cycle of drought–drought breaking–flooding. There are a few reservoirs in West Texas that are still seriously low; but, for the most part, especially in the eastern-half of the State, reservoirs are full and rivers are flooding. But, on to new news —

WHOLE EFFLUENT TOXICITY

Texas continues to make progress in securing more reasonable implementation procedures for whole effluent toxicity (WET). There have been on-going discussions (for several years, now) about what the criteria will be for when numerical permit limits for WET are imposed (also known as the Reasonable Potential, or RP, determination). In December 2015, the Texas Commission on Environmental Quality (TCEQ) and the U.S. Environmental Protection Agency (EPA) reached an agreement, in writing, on the RP determination process. Texas permittees concluded that process adopted is acceptable. That process is as follows:

- The results of tests during the most recent three years are evaluated.
- Whether a WET limit is included in the permit is based on the following criteria:
 - 0 failures in last three years= no limit
 - 3 or more failures in last three years= limit
 - 1 or 2 failures in last three years results in a permit with a three-year term that does not have a limit but does require quarterly WET testing. A WET test failure during that three-year term triggers monthly testing until three successive WET tests pass; testing then returns to quarterly.
- Permits that trigger the three-year term limit due to WET test failures will be reassessed when reissued using the same RP assessment criteria.

RESPONSE TO EPA INITIATIVES

Texas agencies are currently responding to two EPA initiatives:

- Proposed revisions to the National Pollution Discharge Elimination System (NPDES) rule.
- A joint report by EPA and the U.S. Geological Survey (USGS) on Protecting Aquatic Life from Effects of Hydrologic Alteration.

The types of comments being prepared are summarized below.

NPDES Rule Revision

As noted by Fred Andes (Federal Water Quality Coalition). These proposed rules have one provision of serious concern. It is proposed that, if a state-issued permit is not reissued after a specified period of time (either 2 or 5 years), there is a process by which EPA could issue the permit as an EPA NPDES permit. In Texas there have been permits that have required more than 5 years before they were reissued for valid reasons. Texas organizations are compiling comments on the proposed rule.

Protecting Aquatic Life from Effects of Hydrologic Alteration

The Water Environment Association of Texas, Texas Water Conservation Association, and Texas Association of Clean Water Agencies submitted comments on this report.

The primary concern with the report is that it states the Clean Water Act (CWA) can be used to regulate flow magnitude, timing, duration, frequency, and rate of change through water quality standards and permit provisions. This is simply not true. Additional concerns are that it would regulate flow even when there is, in fact, insufficient scientific data on which to base such regulations. In fact, sections of the report read as if any alteration of the natural flow regime is assumed to be negative.

Texas is aware of the need to manage instream flows and inflows to bays and estuaries. In 2007, Texas adopted State Senate Bill 3, which established a framework for developing appropriate standards for instream flows and inflows to bays and estuaries. In response, the TCEQ has implemented an ongoing, science-based adaptive-management process, which incorporates substantial stakeholder input, to establish environmental flow standards. This state process is highly preferable to the process envisioned in the EPA/USGS report.

TOTAL DISSOLVED SOLIDS – A CURRENT AND FUTURE ISSUE

The management of total dissolved solids (TDS) from both a regulatory standpoint and an environmental impact perspective is a challenge that exists now and will only increase in the future. In many respects, the current regulatory approach can be unnecessarily restrictive. However, there are real situations where excessive TDS are a significant potential environmental concern.

Management of TDS is a real concern with respect to oil and gas development and production, water reuse, development of brackish waters, industrial activity, and power generation.

There are large areas of Texas with extensive oil and gas production. Texas provides 25% of the total oil production in the U.S. The Barnett Shale formation in the Dallas-Fort Worth area may be the largest onshore natural gas field in the U.S. Most of the production of oil and gas is accompanied by the capture of associated formation waters that are saline — some have TDS concentrations exceeding 200,000 milligrams per liter. Currently, the only way to manage these waters is to dispose of them in deep wells. However, the deep wells have limited capacity.

Brackish waters could be a good water supply resource in areas such as Texas, if the TDS concentration could be reduced. However, the treatment techniques that reduce TDS produce a substantial volume of wastewater with much higher TDS concentration. Disposal of this wastewater is difficult and, if possible, usually very expensive.

Reuse projects increase TDS concentrations. Even a moderate increase in TDS can sometimes result in wastewaters that would exceed water quality standards in receiving streams.

There many more examples of TDS challenges (the effect of home water softeners on effluent discharge quality, for example). Solutions to these issues will require both technological advances and more regulatory flexibility, when it is environmentally protective to do so. Texas permittees are currently trying to develop ways to approach these issues. Suggestions will be appreciated.

NATIVE MUSSELS

Both the Texas Parks and Wildlife Department (TPWD) and the U.S. Fish and Wildlife Service (USFWS) have become concerned about preserving native freshwater mussels in Texas (as opposed to zebra mussels, which everyone wants to destroy!). Texas has a state listing program for threatened and endangered species. There 15 species of freshwater mussels listed as threatened on the State list. Twelve species are being considered for listing on the federal list; of these, 6 species are pending final decision. Approximately two-thirds of the State of Texas has been identified as known to, or having the potential to, have one or more of the state-listed species present.

If species are present, “take” of the species is prohibited. Take includes “destruction or adverse modification” of critical habitat. In addition, a relocation plan must be developed and implemented. The requirements to determine the presence or absence of listed species and to relocate mussels if they are present apply to any project requiring a 404 permit and any project that impacts the bottom of a channel or reservoir.

There are several concerns about this program that are being addressed by various Texas organizations. These include the following:

- The authority under which TPWD is implementing this program is the following broad general authorization, “. . . may require applicant to submit any other information that [TPWD] determines to be necessary to protect state resources.”
- The definitions of “adverse modification of habitat” and “critical habitat” are murky and still undergoing clarification.
- A project schedule can be significantly impacted by the time required to either confirm the absence of mussels or to develop, secure approval, and implement a relocation plan.

- There are large data gaps regarding where the mussels do, and do not, exist.
- There is no standardized survey method for mussels.
- There is insufficient guidance on the development and implementation of relocation plans.
- Successful relocation requires the presence of a suitable host for specific life stages. Identification of appropriate hosts is not available for 10 of the 15 state-listed species and 4 of the 6 potential federal-listed species.