



**WESTCAS 2017 Fall Conference
October 25-27, 2017
Tucson, AZ**

WESTCAS STATE REPORTS

STATE: Arizona

NAME OF PRESENTER: Justin Bern

DATE: October, 2017

KEY WATER QUALITY LEGISLATIVE & REGULATORY ACTIVITIES SINCE THE 2017 SUMMER CONFERENCE

Water Augmentation Council Established

Established by Executive Order on December 16, 2016 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. The link to the 2017 annual report is: <https://new.azwater.gov/water-initiative>

GWAC 2017 Recommendations

Desalination Committee Recommendation

- Continue to evaluate areas for feasibility of a desalination project, and then collaborate with local and regional stakeholders within the identified project area. Discuss funding opportunities with the Finance Committee and secure land and water contracts with the approval of ADWR.

Long Term Augmentation Committee Recommendation

- Consider projected planning areas with the greatest imbalances to the least utilizing heat maps, and hold local area meetings to review a draft product. This will be followed by a budget proposal and overseeing the Request-for-Proposal process until its completion.

Recycled Water Committee Recommendation

- Recommend that the Arizona Department of Environmental Quality end the prohibition on direct potable reuse. Reevaluate the 50% accrual of credits for storage of effluent in managed recharge facilities.

Finance Committee Recommendation

- Create timeline for establishing funding mechanisms for future water augmentation projects.

WIFA and ADWR Introduce Water Loss Control Pilot Project

The Water Infrastructure Finance Authority of Arizona (WIFA) and Arizona Department of Water Resources (ADWR) selected a variety of public and private systems outside of the Active Management Areas, based on their population size, percentage of water loss, and potential to implement water loss recommendations.

Water supply challenges and the need for continued conservation are driven by declining water supplies and aging utility infrastructure. In the United States, leaking pipes lose 2.6 trillion gallons of water annually, approximately 17% of the total water our country consumes. On a statewide basis, although less than the national average, Arizona estimates similar annual water losses.

Controlling water loss is an important and cost-effective part of water resource management for water utilities and state agencies. Due to the successful implementation of water loss control programs in other states, WIFA and ADWR decided to develop a program in Arizona. This project will take the first steps towards determining the feasibility of standardizing and promoting water loss auditing among utilities across the state.

Six drinking water systems have been selected, including four public utilities – the City of Kingman, Town of Clarkdale, City of Flagstaff and Pine-Strawberry Water Improvement District - and two privately-owned, ACC-regulated systems - Arizona Water Company - Pinewood and Global Water - Eagletail.

“Since investments in infrastructure are often necessary to reduce water loss, the Water Loss Control Pilot Project was a natural fit for WIFA and we are thrilled to provide funding,” said Ms. Incognito. “WIFA initiated this project to help communities both identify and resolve system losses through our funding programs.”

A water loss study broader in scope than this pilot project may be conducted in the future to gain more comprehensive knowledge of water loss in Arizona.

This contract will be funded with \$75,000 from WIFA’s Drinking Water State Revolving Fund Technical Assistance Set-Aside along with ADWR contributing \$25,000 through an interagency service agreement.

Source: <http://www.amwua.org/uploads/1504726067b6d3d.pdf>

ADEQ Update to the Lead Initiative for Public Schools in Arizona

ADEQ is committed to the health of Arizona’s children and safe drinking water in schools. ADEQ coordinated with multiple state and local agencies, public water systems and public schools to **proactively** conduct a statewide screening program for the presence of lead in school drinking water.

The purpose of this **proactive** school drinking water screening program is to identify whether school drinking water contains lead levels of concern for children's health, so that school districts can take appropriate actions to address any identified concerns.

ADEQ has completed the screening program and collected and tested 14,000 drinking water samples from 7,000 school buildings statewide.

The program has recently transitioned from screening and identifying schools with lead fixtures that tested above the standard to repairing and replacing the fixtures. The coordination of the next phase of the Lead Initiative will be headed-up by the State of Arizona School Facilities Board. The Board is situated to best facilitate the funding and ensure the appropriate actions are taken by school districts to reduce students' exposure to lead.

To see results from the initial and confirmation screening and ongoing updates for the program, go to the link below.

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

Reclaimed Rules Rewrite

In an effort to consider the many perspectives impacted by the revised rule, ADEQ established a "Recycled Water Quality Standards" Workgroup that includes emerging contaminant researchers, municipalities and regulatory advisors. The goal is to provide a thorough review of the proposed rule and workgroup recommendations will be submitted to ADEQ by October 31, 2017. Following the recommendations, ADEQ anticipates the final rule implementation to occur after the public notification process in late 2017.

The chief changes for 18 A.A.C. 9, Articles 6 and 7 in this rulemaking, include the following:

- Nomenclature and Restructuring Modifications;
- **Modification of the Prohibition Against Providing Reclaimed Water for Human Consumption**
- **Addition of Interim Permitting Criteria for Production of Potable Water from Reclaimed Source Water**
- Modification of Gray Water Permitting Requirements;
- Modification of Notice and Signage Provisions;
- Modification of Reporting Requirements;
- Modification of Permit Revocation Provisions;
- Repeal of Unnecessary Sections and Subsections;
- Modification of Permit Notice Requirements; and
- Other minor clarifications, grammatical changes, and technical and consistency modifications to implement the above listed overarching changes.

Waters of the US and Rule Review

ADEQ Response to WOTUS Stakeholder Letter:

On February 28, 2017, a Presidential Executive Order was released on “Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the ‘Waters of the United States’ Rule.” The order states that it is in the Nation’s interest to ensure that the Nation’s navigable waters are free from pollution, while at the same time promoting economic growth, minimizing regulatory uncertainty, and showing due regard to the roles of Congress and the States under the Constitution. The Order also directs the EPA and the Department of the Army to review the Clean Water Rule for consistency with these priorities and publish for notice and comment a proposed rule rescinding or revising the rule.

EPA solicited comments from states and local governments on the proposed revision of the Clean Water Rule, due June 19th 2017. ADEQ invited local stakeholders to a meeting to discuss “Key Principles” and “Design Elements” to be included in the ADEQ Letter.

The Arizona State Office of the Governor sent a response letter to the administrator of the EPA on June 16, 2017 that focused on clarity of definitions related to WOTUS and requesting flexibility and state authority to regulate and protect non-WOTUS state surface waters.

Contact Mary Zanga (Zanga.Mary@azdeq.gov) for a copy of the letter from Governor Ducey’s Office.

Triennial Review Stakeholder Process

The Arizona Department of Environmental Quality (ADEQ) Water Quality Division held a public meeting to begin the Triennial Review rulemaking process to modify ADEQ’s Surface Water Quality Standards in 18 A.A.C. 11. During the meeting, ADEQ provided an overview of the proposed rulemaking timeline, solicited stakeholder input and developed stakeholder working groups.

Proposed Rulemaking Timeline

- Workgroup meetings (July-November 2017)
- Complete Internal Draft (January 2018)
- Public Meeting (February 2018)
- File Proposed Rulemaking (June 2018)
- File Notice of Final Rulemaking (December 2018)
- Rule Effective (February 2019)

STATE: California

NAME OF PRESENTER: Ivory Reyburn

DATE: October, 2017

Oroville Dam and Spillway

Recovery after the Oroville Dam incident is top priority for the California Department of Water Resources (DWR). DWR's newly appointed Director, Grant Davis, is doing everything to meet the November 1, 2017 deadline to reconstruct the main spillway before the winter storm season.

A steady barrage of storms in early 2017 resulted in serious damage to the Lake Oroville spillways. This included a concrete failure on the lower chute of the gated flood control spillway, severe erosion under the gated spillway, and erosion in the areas on the hillside beneath the emergency spillway. Lake Oroville received an entire year's average runoff of 4.4 MAF in 50 days during January and February, 2017. The situation resulted in evacuation of nearly 200,000 residents downstream of the dam in Butte, Sutter, and Yolo Counties.

The latest update from the Lake Oroville Spillways Emergency Recovery Project states construction efforts remain focused on repairing and reconstructing the gated flood control spillway, known as the main spillway, by November 1, to ensure the system can safely accommodate potentially heavy inflows and releases this winter. Construction on the main and emergency spillways will continue into 2018, and is scheduled to be complete by November 1, 2018. It is anticipated that the full recovery and reconstruction costs will be greater than \$500 million.

Oroville Dam is awaiting approval of new dam license documents from the Federal Energy Regulatory Commission. However, there are only 2 Commissioners currently on the 5-member FERC board. To approve the new license there must be a quorum, or 3 Commissioners on the board. It is unclear when the Trump Administration will appoint another commissioner to the FERC board. Until that time the new license is still pending.

In early September, the Independent Forensics Team released an interim memo summarizing its current findings on the physical factors that caused the Lake Oroville spillway failure. A full report that will include human factors is expected later this fall. After reviewing the memo, DWR released a statement reiterating that protecting public safety is the state's top priority and expressing its commitment to apply lessons learned from the Lake Oroville spillways incident. DWR agrees with the Forensic Team's conclusions that dam owners need to reassess current procedures as visual inspections would not have caught what happened in February.

Drinking Water Regulation for Hexavalent Chromium

California became the first state in the nation to issue a drinking water standard for hexavalent chromium (Cr6) when it set the MCL at 10 parts per billion (ppb) in 2014. On May 31, 2017, the Superior Court of Sacramento County invalidated the maximum contaminant level (MCL) for Cr6, saying the state "failed to properly consider the economic feasibility of complying with the MCL." The court did "not decide whether the MCL is economically feasible," nor did it conclude whether the MCL was too high or too low. Rather, the court said the regulation did not adequately document why the MCL was economically feasible. On August 1, 2017, the State Water Resources Control Board (SWRCB) adopted a resolution to withdraw the current Cr6 MCL and this change became effective on

September 11, 2017 after approval from the State's Office of Administrative Law. Effected water systems have been notified that Cr6 compliance orders and plans are no longer applicable.

While the SWRCB disagrees with the court's decision, it decided not to appeal and instead begin the process for adopting a new MCL. The SWRCB is using data collected over the last three years since the standard was adopted to help craft a new MCL. Generally, regulation development takes between 18 and 24 months to complete.

1,2,3,-Trichloropropane Drinking Water Standard

On July 18, 2017, the State Water Resources Control Board (SWRCB) adopted a drinking water standard at 5 parts per trillion (ppt) for the regulation of the contaminant 1,2,3-Trichloropropane in tap water. Under the regulation, public water suppliers will be required to notify their customers and take corrective action when drinking water exceeds the allowable limit.

"1,2,3-TCP is not naturally occurring and too many Californians have been exposed to it for far too long, which is why it has been our top priority for standard setting this year," said Felicia Marcus, chair of the SWRCB. "This standard will better protect public health and allow communities and the state to get on with the job of getting it out of our water supplies."

The man-made chemical, used historically in industrial cleaning solvents and some soil fumigant pesticides, is a recognized carcinogen that may cause cancer after long-term exposure. Commonly known as 1,2,3-TCP, it has been found in groundwater sources, primarily in California's Central Valley.

The regulation will require that more than 4,000 public water systems statewide begin quarterly sampling for 1,2,3-TCP in their drinking water sources in January 2018. Systems will be in or out of compliance with the new drinking water standard based on the average of four quarters of sampling.

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

Test of Significant Toxicity (TST) Method

On December 19, 2016, a coalition of wastewater associations including the Southern California Alliance of POTWs (SCAP), the Central Valley Clean Water Association, the Bay Area Clean Water Agencies (BACWA) and the National Association of Clean Water Agencies (NACWA) filed suit against USEPA in federal court seeking to halt the use of an unapproved toxicity test method for compliance in California discharge permits.

USEPA has pressed California to require use of the test of significant toxicity (TST) to determine compliance with effluent limitations. Federal regulations do not identify the TST as an accepted test method, and the lawsuit alleges that use of the TST will result in higher costs to dischargers and potential enforcement jeopardy as a result of the increased frequency of false positives associated with the TST. There is a significant concern in the wastewater community that continued use of the TST in permits without additional quality assurance procedures, safeguards and compliance flexibility will result in an increase in reported violations due to false determinations of toxicity.

Meanwhile, some Regional Water Quality Control Boards continue to add the TST method to discharge permits including several recent permits approved within the Colorado River Basin of California.

Environmental Laboratory Accreditation Program (ELAP)

The State Water Resources Control Board (SWRCB) is proposing to change its Environmental Laboratory Accreditation Program (ELAP) regulations to use Volume 1 of The NELAC Institute's (TNI) 2016 documents as a requirement for laboratory accreditation. The proposed changes have received strong opposition from the laboratory community and feel that the costs and complexity associated with implementation of the TNI Standard would create a significant burden for small laboratories and potentially jeopardize the ongoing viability of many smaller laboratories around the state. Data from states, such as Florida and New York, mandating TNI requirements for laboratory accreditation showed laboratories, especially the smaller government-run municipality labs, to be dropping out of the program. The SWRCB has published preliminary draft regulations and is working with both its advisory bodies (the Environmental Laboratory Technical Advisory Committee and the state Agency Partners Committee) and the stakeholder community to revise sections of the standard that may be problematic for implementation by California laboratories. The rule making process is scheduled to begin in November 2017 with an anticipated SWRCB approval in March 2018. The new regulations, if approved, will be effective January 1st, 2019 with a three-year implementation period and will require all laboratory compliance by January 1, 2022.

Proposed Statewide Wetland Definition and Procedures for Discharges of Dredged or Fill Material

The State Water Resources Control Board (SWRCB) proposes a revised definition of wetlands and procedures for dredged or fill material. The proposal consists of: 1) a revised wetland definition; 2) a jurisdictional framework for determining if a feature that meets the wetland definition is a water of the state; 3) wetland delineation procedures; and 4) procedures for application submittal, and the review and approval of dredge or fill activities.

Revised wetland definition: an area is a wetland if: (1) the area has continuous or recurrent saturation of the upper substrate caused by groundwater, or shallow surface water, or both; (2) the duration of such saturation is sufficient to cause anaerobic conditions in the upper substrate; and (3) the area is dominated by hydrophytic vegetation or the area lacks vegetation. The procedures rely on same methods used by the Army Corps of Engineers to identify if wetland parameters are present.

The jurisdictional framework assists applicants in determining whether an area will be regulated if that area meets the parameters listed in the wetland definition. The jurisdictional framework is intended to exclude artificially-created, temporary features (like tire ruts) caused by human activity, from regulation, while still covering small, naturally-occurring features (seasonal wetlands and small vernal pools) that may be outside of federal jurisdiction. Supposedly, this framework will not expand SWRCB's jurisdiction beyond areas already under their jurisdiction.

The federal definition of a wetland requires a prevalence of hydrophytic vegetation; whereas the SWRCB's wetland definition does not require the occurrence of vegetation in order to classify an aquatic site as a wetland. If vegetation is present, however, the SWRCB's definition requires that the vegetation be hydrophytic vegetation.

The SWRCB is expected to consider the procedures in December 2017.

STATE: Colorado

NAME OF PRESENTER: Mike Eytel for Scott Miller, Esq.

DATE: October, 2017

Lawsuit seeks “personhood” for Colorado River: A lawsuit filed on September 25, 2017 is asking a federal court to recognize the Colorado River as a person; one with inalienable rights to “exist, flourish, regenerate, and restore.” The river is represented by Denver civil rights lawyer Jason Flores-Williams and environmental nonprofit Deep Green Resistance have been designated as “next friends” to acts as surrogates on behalf of the river. The Community Environmental Legal Defense Fund is advising on the lawsuit that is seeking judicial recognition of “legal personhood” for the river. If successful, the ruling would affect all seven Colorado River Basin states, as the ruling would be a federal recognition of the river’s legal status. The argument for personhood, slated for its first hearing on November 14, is that, if a corporation can be granted personhood status, surely a river is entitled to the same recognition. According to Flores-Williams, “[W]e know at this point scientifically that injuries to the environment are injuries to human beings, [but] the law hasn’t caught up to it yet.” Although this lawsuit faces opposition from a wide variety of groups, and critics believe a favorable decision would be tantamount to a destruction of our water legal system and a litany of lawsuits, there is precedent for such a ruling in other countries. Both India and New Zealand already recognize a river’s “personhood” and appoint permanent legal guardians to represent the river’s interests.

ATMs help alleviate water quality concerns: As far back as 15 years ago, the towns of Security, Widefield, and Fountain began looking for ways to diversify their water portfolios to ensure a stable and reliable supply of drinking water. That foresight paid off this year after the towns were forced to shut off their wells after testing revealed perfluorinated compounds (PFCs) contamination. In May 2016, the EPA changed the maximum allowable levels of PFCs from 400 parts per trillion (ppt) to 70ppt. These new standards meant that the groundwater was no longer safe for residents of those communities; this posed a problem as up to 30 percent of municipal water came from that groundwater supply during the summer months. Luckily, the towns had entered into an alternative transfer method (ATM) by which they leased water from farmers on the Caitlin Canal over a 10-year span. Those farmers followed up to 30 percent of their land and were then allowed to lease that water to municipalities under a pilot program. Win-win stores like that of Security-Widefield and Fountain have both farmers and municipalities hopeful that the program will be extended beyond its 2022 expiration date.

Colorado School of Mines studying potential health implications of produced water: Students at the Colorado School of Mines published a paper this fall in which they proposed that it is simply too early to determine the safety of produced water. Across the United States as a whole, more than 900 billion gallons of water per year are produced from oil and gas development. While there are understandably questions about the safety of this water, the School of Mines authors believe that we do not even have the technological methods available to test the water’s quality due to the incredible complex chemical makeup of produced water. Looking for contaminants in oil and gas wastewater was described as looking for a needle in a million haystacks. Only once we overcome this testing hurdle, the paper argues, can we begin to analyze the safety and potential use of produced water.

Gold King Mine – Two Years Later: The catastrophic Gold King Mine spill experienced its two year anniversary in August and, although the Animas River is doing much better, signs from the spill still remain. Since the spill, the USGS and other researchers have collected thousands of water samples and other data points to monitor the rebounding health of the river. The Animas River has more or less returned to normal; however, spring runoff the last two years still turned the river slightly orange as the increased water levels turned up old sediment. Field studies and computer simulation models have been used to compare pre- and post-spill water quality metrics. It was recently determined that water contamination at the old mine site contains lead levels as much as 100 times higher than the danger threshold for wildlife. The lead and other contaminants leach from waste-rock piles where they are absorbed by plants before making their way up the food chain to, eventually, mammals. The EPA has said it plans to take tissue samples from deer to assess the overall ecological harm still occurring from the spill. In addition to the ecological harms, the EPA is still facing lawsuits from various states and the Navajo Nation that saw their water supply turn bright orange just over two years ago. The Navajo Nation in particular is seeking \$162 million – \$3.1 million in reimbursement costs and another \$159 million for water development projects and monitoring. The EPA has reimbursed the Navajo Nation \$700,000 to date, but claims that the Animas returned to its pre-spill state in September 2015, thereby negating the rest of the Navajo Nation’s claims.

NISP wildlife mitigation plan approved by Colorado Parks and Wildlife: The Northern Integrated Supply Project (NISP) cleared a major hurdle in September when its wildlife mitigation plan was unanimously approved by the Colorado Parks and Wildlife Commission (CPW). NISP is a combined effort from 11 cities and 4 water districts that serve 240,000 residents along the Front Range. The goal of NISP is to capture and store excess water that leaves the state during wet years; the project would bring an estimated 40,000 acre-feet of new water to the Front Range by 2025. The CPW approved plan focuses on the health of both aquatic and terrestrial species. To protect native fish species, the plan includes minimum baseflows in the Poudre River, especially during the winter months, as well as special outlet towers on the planned Glade Reservoir that will better control the water temperature as it enters the Poudre River. In addition to the water specific elements of the plan, the Northern Water Conservancy District has agreed to purchase 1,380 acres on the west side of Glade Reservoir to provide critical elk habitat. Project participants are hopeful that groundbreaking will begin by 2021 and that NISP will be fully functional by 2025.

Money-for-water program an early success

A pilot program, launched in 2014, to pay farmers to fallow their fields has been called a success by both the farmers and the municipalities that have paid them. The “System Conservation Pilot Program” was started as a response to the ongoing drought conditions that have severely lowered Lake Mead and threatened a compact call by the Lower Basin states. To that end, the pilot program – which featured major municipal water providers and the Bureau of Reclamation – pooled \$11 million to pay farmers to leave their water in the river. Three years into the program, it’s working exactly as intended. The participating farmers are paid approximately \$200 per acrefoot, with some farmers fallowing as much as 1,700 acres for savings of 1,200 acre-feet. Although the initial program is essentially a drop in the bucket for the major water supply programs across the Colorado River Basin, the success of the program is encouraging for future water-savings efforts.

Colorado Water Quality Control Division/Commission Updates

Regulation No. 42: The state is currently proposing an update to Regulation No. 42 which would create site-specific groundwater standards for PFOA/POFS (also called PFCs, i.e., perfluorooctanoic chemicals). The proposed standard is 70 parts per trillion (ppt). That number is the EPA's health advisory level for PFOA/PFOS. Of the states that currently have PFOA/PFOS standards, Colorado would be the lowest with the exception of Vermont, whose standard is currently being challenged. No other Colorado River Basin states have PFOA/PFOS standards. The new standard would be site-specific, and only apply to groundwater within the specified geographic area. That geographic area includes the towns of Security-Widefield and Fountain, which were detailed above for using ATMs to alleviate their water supply problems caused by high levels of these chemicals.

Regulation No. 55: In the spring of 2017 the Colorado legislature adopted House Bill 17-1306 which directed the Water Quality Control Division to establish a grant program to test for lead in the drinking water at public schools. The grants are designed to both fund water quality improvement projects as well as voluntary lead testing. Regulation No. 55 is the Water Quality Control Division putting that bill into action by including specific definitions for public schools and defining five categories under which schools can receive grants, including new category five, voluntary lead testing. Regulation No. 55 provides that up to \$100,000 may be allocated, up from \$50,000, and provides that any funds not utilized in one category may be rolled over and redistributed into the remaining categories.

Regulation No. 93: The Colorado Water Quality Control Division has scheduled a public hearing on December 11, 2017 to discuss potential changes to the Section 303(d) List of Impaired Waters and Monitoring and Evaluation List. The list establishes those waters which require Total Maximum Daily Load (TMDL) restrictions to preserve their quality, as required by the Clean Water Act Section 303(d). A mandatory pre-hearing conference is slated for November 28, with the final rulemaking hearing occurring two weeks after that. All hearings and conferences will be held at the Department of Public Health and Environment in Denver.

Regulation No. 84: Denver Water Proposes to add new uses for reclaimed water. Denver Water is soliciting input from stakeholder for its proposition to add several new uses to the existing Regulation 84 that governs the uses of reclaimed water. The two new uses proposed by Denver Water are 1) toilet and urinal flushing and 2) cannabis cultivation. Those uses would join the established list that includes landscape irrigation, non-food crop agricultural irrigation, and fire protection, among others. A stakeholder meeting is scheduled for November 15, 2017, where Denver Water will present information to the Water Quality Control Division, provide technical evidence to support the new uses, and solicit additional comments from stakeholders. The November meeting is informal – no final decisions will be made – and the formal Water Quality Control Commission process is slated to begin in the Spring of 2018.

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

STATE: New Mexico

NAME OF PRESENTER: Jane DeRose-Bamman

DATE: October, 2017

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

The New Mexico Water Quality Control Commission ("WQCC") approved revisions to NM's Standards for Interstate and Intrastate Standards Waters (WQS) rule as part of the state's Triennial Review in September 2016. EPA approved the majority of the changes to the WQS on June 8, 2017 and then on August 11, 2017 amended the Technical Support Document (August 11, 2017 TSD).

The amendment was needed because EPA mistakenly approved recreational use upgrades for nine (9) segments, however, the WQCC didn't adopt the state's proposed upgrades. Based on the hearing record, the NM WQCC voted to retain the recreational use designations for the nine (9) perennial stream segments (secondary contact) because the state had not provided adequate justification supporting the proposed upgrades to primary contact. In the August 11, 2017 TSD, EPA concluded that the WQCC's position was unsupported and thus recommended that the WQCC adopt the primary contact use and applicable criteria consistent with the latest EPA guidance. Further discussion is needed.

EPA didn't take action on new segments for Freeport-McMoRan/Chino Mines which designated certain waters as ephemeral based on a study and established a segment specific copper criterion using the Water Effects Ratio (WER) approach. EPA stated that additional data during non-drought years are needed and the WER data needs to be analyzed differently.

NMED issued Comprehensive Assessment and Listing Methodologies (CALM) for the 2018/2020 listing cycle.

The NMED Surface Water Quality Bureau (SWQB) updated listing methodologies (previously called Assessment Protocols) for determining use attainment in order to develop the [State of New Mexico Clean Water Act §303\(d\)/§305\(b\) Integrated Report](#). The Comprehensive Assessment and Listing Methodology (CALM) incorporated a new approach for assessing nutrients in wadeable perennial streams. NMED worked with a consultant to analyze 20+ years of monitoring data to come up with new correlations. The current approach sets thresholds based on steepness and geology. The state moved away from assessing based on stream responses. Although municipalities asked for a delay in implementation until additional dialogue occurred, NMED issued the CALM in June 2017. NMED applied the approach in a TMDL that was public noticed in June 2017. Questions continue about designating waters that appear to be intermittent as perennial.

Draft Revisions to Ground and Surface Water Protection Rules

NMED submitted a petition for revisions to the Ground and Surface Water Protection Rules (20.6.2. NMAC) in May 2017. The hearing is scheduled for November 2017. Revisions include changing most of the ground water standards to match Safe Drinking Water Maximum Contaminant Levels (MCLs), adopting language to control vapor intrusion, allowing the state to issue variances for more than five (5) years and eliminating the exemption for permitting if a discharge meets groundwater standards through treatment or blending. The Municipal League is a party and has requested that the rules include an exemption from discharge permit requirements for ASR projects using drinking water as the source.

Texas v. New Mexico Lower Rio Grande Valley

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

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

The U.S. government alleges that by allowing farmers to divert water from the river and pump it from below-ground, the state is illegally allowing people to either use water they're not supposed to, or use more water than they're allowed. The U.S. also alleges that New Mexico's diversions have interfered with its contractual obligations to deliver water to downstream users, including Mexico. Under a 1906 treaty, the U.S. must deliver a certain amount of Rio Grande water to Mexico each year. The Bureau of Reclamation are in the process of reviewing the special master's report.

In June, the exceptions to the First Interim Report of the Special Master (February 13, 2017) were filed by all of the parties (United States, New Mexico and Colorado). In July all parties filed replies to the exceptions and in September all parties filed sur-replies (Sur-reply is an additional reply to a motion filed after the motion has already been fully briefed). Meanwhile amicus briefs were filed by ABCWUA, City of Las Cruces, New Mexico Pecan Growers, New Mexico State University, City of El Paso, and State of Kansas. Elephant Butte Irrigation District and El Paso County Water Improvement District #1 filed motions to intervene, which were denied. On October 10, New Mexico's motion to dismiss Texas's complaint was denied and the exception of the United States and the first exception of Colorado to the First Interim Report of the Special Master are set for oral argument "in due course".

New Mexico State Water Plan

New Mexico has 16 water planning regions, each with its own water plan. The New Mexico State Water Plan is based on the regional water plans. The regional water plans and the State Water Plan were last updated in 2003. Updates of the regional water plans were completed in 2017 and a new State Water Plan is expected to be complete in 2018.

STATE: Texas

NAME OF PRESENTER: Peggy Glass, Ph. D.

DATE: October, 2017

Things are actually pretty slow on the water front in Texas—unless you live in the upper Gulf Coast where Hurricane Harvey dumped an unprecedented amount of rain (approximately 50 inches). However, Houston and the Beaumont area seem to be drying out and returning to normal. Destruction was most extensive along the middle reach of the Gulf Coast where Harvey virtually obliterated small towns in the area. However, in those areas there has been a great sense of communities pulling together and quite a number of volunteers going down to help.

As a result of Hurricane Harvey, there is A LOT of renewed interest in flood control.

- There has been a meeting of the U.S. Army Corps of Engineers and the Texas Water Development Board to discuss the possibility of developing a Flood Plan for Texas.
- There is renewed interest in the “Ike Dike” to reduce the impact of storm surges on Galveston Island, Galveston Bay (and, hence, Houston), and Bolivar Island. If you are interested in what the Ike Dike might look like, go to Wikipedia.
- It has been suggested that state SWIFT funds, a program set up to fund water supply projects, might also be appropriately used for flood control.

TRIENNIAL REVISION OF WATER QUALITY STANDARDS

Most of the proposed revisions to the Texas Surface Water Quality Standards are minor adjustments based on site-specific studies. One change that has generated some discussion is the addition of four parameters to the list of toxics: epichlorohydrin, ethylene glycol, BPA, and methyl tert-butyl ether. These additions are a concern because there are not approved analytical methods in 40 CFR Part 136, and EPA has not developed recommended criteria.

The proposed revisions also provide for changes to the requirements to obtain a temporary standard (the temporary standard is referred to as temporary variance in the Clean Water Act). The changes to the temporary standard were made to comply with changes in federal rules. These changes to the requirements for a temporary standard could make it a practical alternative for some Texas permittees. The current provisions for a temporary standard in the Texas Surface Water Quality Standards are very restrictive; consequently, one has never been proposed in Texas.

MANAGING GREASE

The Texas Commission on Environmental Quality is revising its rules for managing biosolids and domestic septage. The revisions are partly driven by an entity requesting authorization to mix grease and biosolids for land application. The mixing was approved on an experimental basis. In case anyone asks, this is not a good idea.

STATE WATER PLAN

In 1996 the state initiated a “bottom-up” water supply planning process. The state was divided into 16 regional planning areas. A regional stakeholder committee works with the designated planning agency to develop a 50-year water supply plan. The 16 regional plans are combined into a state plan by the Texas Water Development Board. The plan is updated every five years. This process has been very effective, and the fifth cycle of planning has just been initiated.