



**WESTCAS 2017 Annual Conference
June 21-23, 2017
San Diego, CA**

WESTCAS STATE REPORTS

STATE: Arizona

PREPARED AND PRESENTED BY: Justin Bern, City of Tempe

DATE: June 2017

KEY WATER QUALITY LEGISLATIVE & REGULATORY ACTIVITIES (IN CHRONOLOGICAL ORDER) SINCE THE 2016 FALL 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 draft 2017 annual report is: <https://new.azwater.gov/water-initiative>

Preliminary 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.

ADEQ Provides Fish Consumption Advisory Map Tool

Since the last update, the Arizona Department of Environmental Quality (ADEQ) and the Arizona Game and Fish Department (AZGFD) issued fish consumption advisories for largemouth bass at Scott Reservoir and Willow Springs Lake. ADEQ has also recently provided a new mapping tool for the public to easily search regional lakes to obtain more information about fish advisories before they visit areas of interest. (See additional map) Source: [ADEQ Fish Consumption Advisory Map Tool](#)

ADEQ begins Lead Initiative in all Public Schools in Arizona

ADEQ is committed to the health of Arizona's children and safe drinking water in schools. ADEQ is coordinating 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 is funding this six-month, fast-track screening program in an effort to collect and test 14,000 drinking water samples from 7,000 school buildings statewide

To ensure maximum reach for the screening program and overall success, it is critical that participating schools join the sampling team and collect drinking water samples. Collecting school drinking water samples for lead screening is simple. ADEQ will provide all samplers with a toolkit including sample instructions, collection containers and prepaid shipping boxes to mail the samples to contracted laboratories for testing at **no cost** to schools. (See additional handout)

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

Legislative Recap

Key water quality laws and appropriations completed during the 53rd legislative session are highlighted below.

HB 2094: Small Water Systems Fund - PASSED

Expands grant eligibility to assist nearly 60 systems currently not meeting federal safe drinking water standards. In partnership with the Arizona Corporation Commission and the Water Infrastructure Finance Authority, ADEQ now has authority to provide grants for small water companies to maintain healthy and reliable water for their customers. The bill expands eligibility for small systems, serving 10,000 or fewer people (previously limited to 500 or fewer connections), which often are the sole water provider in a rural area and lack the customer base and revenue required for costly upgrades. It also allows grants to be issued directly to owners (previously only interim operators or managers), like small municipalities and some rural schools, to fund necessary infrastructure upgrades to comply with safe drinking water standards. Finally, it protects the interests of Arizona's smaller, rural communities and the State through its structure, which requires consultation between ADEQ and ACC in recommending systems to receive grant funding.

HB 2193: Groundwater Resource Management Task Force - No Movement

Establishes a 9-member Groundwater Resources Management and Land Credit Task Force to establish a framework and criteria for a property development credit program to encourage appropriate donation, acquisition and use of conservation areas that will provide support for maintenance of groundwater in exchange for development credits usable on private land suitable for development. The Task Force is required to submit a report of its findings and recommendations to the Governor and the Legislature by December 31, 2017 and self-repeals October 1, 2018. Under this concept, a party could receive development credits to offset water use and development impacts on private developable land in exchange for donating or transferring property for conservation areas. These credits could be purchased and sold to different parties. This bill failed to move this session.

HB 2330: Water Augmentation Systems No Movement

This bill introduced a proposed tax credit for the installation of a "Residential Water Augmentation System," which is defined as either a rainwater harvesting system or a residential graywater system. The proposed tax credit was equal to 25 percent of the cost of the system up to a maximum of \$1,000. The tax credit would have been available through January 1, 2026. The bill limited the annual amount for the tax credit that the state could allow to \$250,000. A similar tax credit for graywater systems was in place for tax years 2007 through 2011. This bill passed out of the House Ways and Means Committee, but failed to move thereafter.

HB 2231: Desalination Study Committee - No Movement

Establishes a 9-member Desalination Study Committee to review data collected from operating desalination plants and study opportunities for other desalination projects in Arizona. The Committee is required to submit a report of its findings and recommendations to the Governor and the Legislature by December 31, 2017 and self-repeals October 1, 2018. This bill would have established a nine-member desalination study committee comprising members of the Legislature and subject matter experts. The committee would collect information on desalination within Arizona, review data from desalting plants in operation, and study opportunities for desalination projects in Arizona. This bill failed to move this session.

HB 2130: Maximum Daily Load Program Report - No Movement

The Department of Environmental Quality is required to submit a report to the Governor and the Legislature detailing progress made under the maximum daily load program by September 1 of each year. The Maximum Daily Load program is administered by ADEQ to help impaired lakes and streams meet water quality standards for their intended uses. The program applies to impaired waters listed by the State in accordance with the federal Clean Water Act. This bill passed out of the relevant House committees, but failed to move further.

HB 2193: Groundwater Resource Management Task Force - No Movement

This bill would have created a task force comprising members of the Legislature and several representatives of different stakeholder groups. The task force would establish a framework for a property development credit program to encourage the donation, acquisition and use of land for conservation areas that would support the maintenance of groundwater and other ecological resources. Under this concept, a party could receive development credits to offset water use and development impacts on private developable land in exchange for donating or transferring property for conservation areas. These credits could be purchased and sold to different parties. The task force would submit a report to the Governor and Legislature by the end of 2017. This bill failed to move this session.

SB 1124: Arizona Water Protection Fund Appropriation - No Movement

This bill as amended appropriated \$500,000 for fiscal year 2018 from the state general fund for the Arizona Water Protection Fund. The Arizona Water Protection Fund is a state-run program that funds projects to protect and enhance water quality and quantity in Arizona's rivers, streams, and riparian areas. Some of these efforts include revegetation, erosion control, channel stabilization, research, and water conservation. This bill passed through the Senate and the relevant House committees, but was not voted on by the full House.

SB 1184: Appropriation to Arizona Geological Survey - PASSED

This bill appropriated \$941,000 from the General Fund to the Arizona Geological Survey (AGS) for fiscal year 2018. The AGS collects, records, maintains and makes available old and new data on the geologic materials and processes in Arizona. This includes data that is vital to understanding groundwater pumping issues, subsidence, and water quality issues in Arizona. This bill was signed by the Governor on May 8th.

SJR 1001: Colorado River Joint Resolution - No Movement

This Senate Joint Resolution recognized that 2017 was the 95th anniversary of the 1922 Colorado River Compact, which is one of the primary documents that governs the Law of the River. This resolution was meant to be a placeholder for approving Arizona's participation in the Drought Contingency Plan (DCP), if agreement was reached for how DCP would be implemented in Arizona. For several reasons, that did not occur during this legislative session.

Source: http://www.amwua.org/pdfs/2017_Legislative_Review.pdf

Reclaimed Rules Rewrite

During the May 2, 2017 stakeholder meeting, a tentative schedule for rulemaking is a new proposed rule public noticed in June 2017 for a 30-day comment period. Following the PN period, the anticipated final rule will be implemented in December 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 19, 2017. ADEQ invited local stakeholders to a meeting to discuss “Key Principles” and “Design Elements” that should be included in the letter to the EPA.

Stormwater Permitting Goes Paperless with myDEQ

Multi Sector and Construction General Permits went electronic on June 1, 2017

New features of myDEQ are:

Notices of Intent

Notices of Termination of permit coverage

- SMART NOI (online) application is no longer available after close of business May 31, 2017
- NOI paper application will not be accepted after close of business May 31, 2017

Submittal of electronic discharge monitoring reports (e-DMRs) as well as email reminders

APP permits on myDEQ for SMRF submittals

Triennial Review Stakeholder Meeting

During 2017 WESTCAS Conference: The Arizona Department of Environmental Quality (ADEQ) Water Quality Division is holding this 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 will provide an overview of the proposed rulemaking timeline, solicit stakeholder input and develop stakeholder working groups.

STATE: California

PREPARED AND PRESENTED BY: Ivory Reyburn, Coachella Valley Water District

DATE: June 2017

California Drought

On April 7, 2017, Governor Brown's Executive Order B-40-14 ended the drought state of emergency in all but four California counties. Emergency drinking water projects will continue to address diminished groundwater supplies in four counties; Fresno, Kings, Tulare, Tuolumne. The order maintains water reporting requirements and prohibitions on wasteful practices in the entire state that were established in the previous Executive Order B-37-16, which built on the conservation accomplished during the historical drought and implementation of the Governor's Water Action Plan. A stakeholder engagement process resulted in a framework report released on April 7, 2017, titled *Making Water Conservation a California Way of Life, Implementing Executive Order B-37-16*. Urban water suppliers are required to meet new water use targets rather than measuring water savings as a percentage reduction from a chosen baseline. This new strategy allows regional approaches to be developed that are best suited for the local community.

Report: *Making Water Conservation a California Way of Life, Implementing Executive Order B-37-16*

http://www.water.ca.gov/wateruseefficiency/conservation/docs/20170407_EO_B-37-16_Final_Report.pdf

Fact Sheet: California's Emergency Drought Declaration Lifted

http://www.water.ca.gov/wateruseefficiency/conservation/docs/Drought%20Lifted%20fact%20sheet_final.pdf

Oroville Dam and Spillway

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. DWR has successfully managed outflow and Lake Oroville levels while crews work 24 hours a day to repair erosion areas, place large rocks and pour concrete into the eroded gullies, remove large amounts of eroded debris, and construct or improve access roads. However, Oroville Dam remains fully operational.

The California Department of Water Resources (DWR) is actively monitoring the status of the Oroville Dam, the gated flood control and emergency spillways, Hyatt Powerplant, related structures, and progress of emergency response and repair activities. This work will continue throughout the spring, summer, and into the fall of 2017 to ensure both spillways are safe to operate by the next flood season.

The efforts and achievements above occurred following the wettest January and February in 110 years of Feather River hydrologic record. Lake Oroville received an entire year's average runoff of 4.4 million acre-feet in about 50 days during those two months.

This winter over 3.6 million acre-feet volume of reservoir inflow (equivalent to the entire storage capacity of Lake Oroville) has been safely released from Lake Oroville through the significantly damaged gated flood control spillway. Full state, federal, and local resources have been marshaled to help manage Lake Oroville operations, assess the problems, and rapidly fix them. Dam experts with the U.S. Army Corps of Engineers, Federal Energy Regulatory Commission Dam Safety, the California Division of Safety of Dams, and independent dam safety engineers remain actively engaged in managing the situation.

Lead Sampling in California Schools Drinking Water

The State Water Resources Control Board's Division of Drinking Water (DDW), in collaboration with the California Department of Education, has taken the initiative to begin testing drinking water in schools (K-12) for lead. As a result of a permit action by the DDW, schools that are served by a municipality, water district, mutual water company, or other public water system may request assistance from their public water system to conduct water sampling for lead and to provide technical assistance if an elevated lead sample site is found.

Lead rarely occurs naturally in California's drinking water sources, but may become present when water passes through older plumbing fixtures or solder containing lead that connects plumbing. Schools that are served by a public water system are not required to test their water for lead under the current Lead and Copper Rule.

As of April 28, 2017, a total of 876 schools have either provided a copy of their request letter to DDW, or they have already sampled and submitted the results to DWD. Schools can make a request to the public water system any time prior to November 1, 2019.

The Centers for Disease Control reports that lead exposure can affect nearly every system in the body. Even low levels of lead in blood have been shown to affect cognitive abilities, including IQ, the ability to pay attention, and academic achievement. The effects of lead exposure cannot be corrected; therefore, it is important to prevent lead exposure entirely.

Test of Significant Toxicity (TST) Method Challenged

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.

The legal complaint states; "In the context of whole effluent toxicity (WET) testing under the Clean Water Act, testing methodologies cannot be used or required until properly promulgated by USEPA and incorporated into federal regulations at 40 Code of Federal Regulation Part 136".

Statewide Nutrient Criteria: “Biostimulatory Substances”

The State Water Resources Control Board (SWRCB) is proposing to adopt a statewide water quality objective for biostimulatory substances with implementation program as an amendment to the Water Quality Control Plan for Inland Surface Water, Enclosed Bays and Estuaries of California (ISWEBE Plan). The Biostimulatory Substances Amendment could include: a statewide numeric objective or a statewide narrative objective (with a numeric translator), and various regulatory control options for point and non-point sources.

The existing statutes and regulations are in various forms such as regional narrative or numeric nutrient objectives, an objective in the State Ocean Plan, water quality orders, and TMDLs which were adopted or are under development by various Regional Water Boards. Currently, there are approximately 32 TMDLs statewide which list nutrients as toxicants or eutrophication-related effects on beneficial uses.

It is anticipated that a comprehensive program to implement the water quality objective for biostimulatory substances will be established in three phases as three amendments to the ISWEBE Plan; 1) wadeable streams, 2) lakes, 3) estuaries, enclosed bays, and non-wadeable rivers. Each phase would reflect implementation unique to the three different water body types. If the Biostimulatory Substances Amendment establishes a numeric water quality objective, rather than a narrative water quality objective, then potentially each subsequent phase would also establish a new numeric water quality objective. The latter depends on whether the numeric water quality objective is developed from factors unique to the different types of waterbodies.

1,2,3,-Trichloropropane Drinking Water Standard

California has proposed the first 1,2,3 TCP primary drinking water Maximum Contaminant Level (MCL) in the nation of 5 ppt, 0.000005 milligrams per liter. The existing Public Health Goal (PHG) of 0.7 ppt is based on chronic exposure and is not a regulatory requirement. Health and Safety Code section 116365, and supporting regulation, requires the State Water Resources Control Board (SWRCB) to set the MCL at a level that is as close as feasible to the corresponding PHG, placing primary emphasis on the protection of public health, to the extent technologically and economically feasible. The best available technology (BAT) is Granular Activated Carbon (GAC), but alternative technologies could be permitted. The public comment period closed April 21, 2017 and the new regulation is proposed to take effect July 1, 2017 and water systems would be required to begin compliance monitoring in January 2018. Water agency comments opposed the State's failure to provide a reasonable compliance period for the proposed MCL.

WOTUS and California's Proposed Procedures for Discharges of Dredged or Fill Material to Waters of the State

State Water Resources Control Board (SWRCB) believes there is a need to strengthen protection of waters of the state that are potentially no longer protected after the Clean Water Rule was rescinded. In 2016, SWRCB was working on Draft Procedures for Discharges of Dredged or Fill Materials to Waters of the State to be included in the Water Quality Control Plan for Inland Surface Waters and Enclosed Bays and Estuaries and Ocean Waters of California (ISWEBE Plan). All work is currently on hold at the state level. California's regulated community anticipates an increase of protection for wetlands, ditches, and ephemeral streams in light of recent events regarding the federal Waters of the U.S. (WOTUS) rule.

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 Maximum Contaminant Level (MCL) for Cr-6 (10 ppb). Requests for time to achieve compliance must include a compliance plan. Compliance plans were submitted by June 30, 2016. The compliance plans describe actions and milestones the public water system with take to come into compliance by the "earliest feasible date".

Over 200 water systems have been identified to have water sources with Cr-6 levels above the MCL and need to implement provisions of their compliance plans in order to meet the Cr-6 MCL before January 1, 2020. Best Available Technologies (BAT) to reduce Cr-6 levels in drinking water are reverse osmosis, ion exchange and reduction coagulation filtration. Some water systems are now evaluating a promising alternative treatment technology to reduce Cr-6 to Cr-3 that would have less social, economic and environmental impacts.

The court is considering a petition against the State Water Board from the California Manufacturers and Technology Association and Solano County Taxpayers Association and has received opening supplemental briefs from both parties. Based on its preliminary November 2016 ruling, the court plans to remand the Cr-6 MCL to the State to correct deficiencies in the State's economic feasibility analysis. It is unknown whether the court will withdraw the Cr-6 MCL as part of the remand or leave the MCL operative while the State corrects the deficiency. The final ruling is expected mid-2017.

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 were due much earlier; January 1, 2017.

The deadline to become a GSA was June 30, 2017. A GSA formation table and other information can be viewed on DWR's SGMA Portal: <http://sgma.water.ca.gov/portal/>

STATE: Colorado

PREPARED AND PRESENTED BY: Scott C. Miller, Esq., Patrick, Miller & Noto, P.C.

DATE: June 2017

2017 Legislative Update:

HB17-1008: Graywater Regulation Exemption for Scientific Research. This bill allows water utilities, Colorado institutions of higher education, and public/private entities contracting on their behalf to collect, treat, and use graywater in a manner that departs from the normal requirements of the Water Quality Control Commission's graywater regulations, if such use is for the purpose of scientific research. This exemption is subject to the further requirements that the entity 1) collect and use the graywater in accordance with the terms and conditions of the decrees, contracts, and well permits applicable to the use of the source water rights or source water and any return flows, and 2) utilize a graywater treatment works system that incorporates a secondary water supply, such as a municipal water supply, to provide an alternative source of water if any portion of the system does not function properly; however, this subsection (2)(b) does not apply to scientific research involving the use of graywater exclusively for irrigation purposes.

HB17-1219: This bill extends the Colorado Water Conservation Board's lease-fallowing pilot program. The CWCB administers a program to demonstrate the practice of fallowing agricultural irrigation and temporarily leasing the rights to the conserved water to municipal, environmental, industrial, recreational, or other agricultural uses. The bill expands the number of these pilot projects the CWCB is allowed to administer.

HB17-1233: This bill expands a law protecting historic consumptive use of water rights that engage in a state-sponsored conservation program. The size of a water right is determined through its actual consumptive use—the "paper decree" amount is an upper limit, and the size of actual right is often smaller when determined by reference to actual use. Thus, without this law, right holders would be disincentivized from conserving water because it would diminish the size and value of their right. An identical bill was passed previously, but it only applied in Divisions 4, 5 and 6—this bill extends that law to Divisions 1 and 2. This is significant because those are the state watersheds east of the continental divide, where roughly 85% of the state's population resides.

HB17-1190: This bill was passed in an effort to address certain concerns and uncertainties created by the Colorado Supreme Court decision in *St. Jude's v. Roaring Fork Club*, 351 P.3d 442 (Colo. June 29, 2015). This case held that diversions for recreation, piscatorial and aesthetic uses in a flow-through structure did qualify as "beneficial uses" under Colorado's Water Right Determination and Administration Act of 1969. HB17-1190 "grandfathered" existing absolute and conditional water right decrees for such purposes, thus essentially limiting the Supreme Court decision to prospective application only. This bill started out with much broader ambitions but was heavily pared down by time of passage.

SB17-036: Limits evidence allowed in groundwater decision appeals to that which was presented at the initial proceeding before the Colorado Groundwater Commission or the State Engineer. Prior to this bill, parties could introduce new evidence on appeal to the district court. This had the effect of prolonging many groundwater proceedings into what was effectively a battle of attrition, for better or for worse. Agricultural advocates see this as a win for farmers who, at least according to the argument, were often priced out of proceedings over the value of their water rights by more well-heeled interests.

SB17-117: Recognizes industrial hemp production as a beneficial use under state law. This presents an interesting issue of federal-state power balance—since hemp is still outlawed under the Controlled Substances Act, farmers who use water from federal reclamation projects located within the state theoretically do so at the risk of losing those rights.

Water Quality Control Commission Updates.

Regulation No. 43: On-Site Wastewater Treatment System Regulation. It is currently estimated that roughly 20% of the population of Colorado utilizes an OWTS. Assuming an average usage of 50 gallons/person/day, this equates to over 50 million gallons of wastewater per day that must be treated and dispersed by an OWTS. In 2016 alone, the number of OWTS permits issued by local agencies in Colorado was roughly 5000, with over two-thirds of these permits being for “new” construction. Accordingly, Regulation No. 43 received a significant overhaul this year, with updates effective June 30, 2017. Themes of the revisions include:

- More definition and flexibility for sites that have a high content of rock in the soil profile
- Additional flexibility within the requirements for imported sand media used to obtain vertical separation and for treatment media in an OWTS
- More defined standards for pressure distribution systems, mound systems, sand filters, and evapotranspiration and evapotranspiration/absorption (ET/ETA) systems to ensure that design specifications will be in compliance with accepted industry standards, thus providing a consistent expected level of treatment and system longevity
- More clarity to various sections of the regulation in order to reduce confusion for both practitioners and local regulators

303(d) Listing Methodology. An Administrative Action Hearing was held in March 2017 to consider updates to Colorado’s 303(d) Listing Methodology for 2018. A workgroup met monthly throughout 2016, whose proposed changes were incorporated into the draft 2018 Listing Methodology presented at the March hearing. The Commission has not yet adopted the updates proposed at the hearing, but some notable potential updates to the listing methodology include:

- Temperature: adoption of a method which relies on the concept of “degree days”, which integrates both the magnitude of temperatures over the standard, as well as the duration, in days, experienced by the aquatic community. Temperature excursions (air, low flow and shoulder season) are evaluated after the warming event is 3 considered. If temperatures exceed the number of ‘degree-days’ specified, and the dates that exceed temperature standards do not have applicable excursions, the division recommends that the segment be placed on the 303(d) List as impaired for temperature.
- E. coli: proposal that the only averaging period be a 61-day rolling geometric mean, as opposed to the current scheme where data is averaged over two-month intervals, over the summer and winter seasons (May-Oct) and over the entire period of record to determine attainment.

- Delisting requirements: Downward revision of the number of water samples required for a chemical parameter for delisting. The division also proposed to add a table that specifies the required samples for delisting other parameters such as lake chemistry, temperature, fish tissue, etc.
- Iron, manganese and sulfate water supply standards: Addition of language to the Listing Methodology to explain how “new or increased sources of these pollutants” are examined
- Assessment of data collected after wildfires, floods or other catastrophic events: Proposed guidelines for assessing data collected after a fire, flood or other catastrophic event. Proposed language includes timeframes and considerations for when data may be considered representative for assessment purposes.
- Aquatic life: Language to fine tune aquatic life assessments and to address the upcoming recalibration of the MMI tool, revised index periods, language regarding representativeness of data and provisions to allow for alternate sampling methods into the methodology.

Regulation No. 63: Pretreatment Regulations. Effective March 1, 2017, Section 63.4, Implementation, now clarifies that the Water Quality Control Division’s pretreatment program, i.e. this regulation, will be implemented in a manner complimentary to the EPA’s implementation of federal pretreatment regulations. At this time, Colorado does not have delegation of the federal pretreatment program from EPA, and complimentary implementation will include avoiding unnecessary redundancies in oversight and documentation, and focusing on areas of the pretreatment program where EPA lacks the State’s broad authority or where additional action is needed in order to effectuate the purposes of this regulation. These purposes include preventing the introduction of pollutants into publicly owned treatment works (POTWs) which interfere with the operation of a POTW or pass through the treatment works without receiving effective treatment or otherwise be incompatible with such works; and to improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges. The Commission emphasizes that Regulation 63 continues to fully authorize the Water Quality Control Division to implement a statewide and comprehensive pretreatment program.

WQCC Regulation No. 32 Arkansas River Basin and Regulation No. 36 Rio Grande Basin:

Triennial review and rulemaking of the water quality classifications and standards for the Arkansas River and Rio Grande Basins. This effort requires compilation of recent water quality parameters including biological, physical, chemical, and other related data that have been collected throughout the river basins. This compilation of data from streams, lakes, and reservoirs will be the basis of the division’s recommendations to the Water Quality Control Commission (WQCC) for maintaining or modifying water quality classifications and standards in these basins. Upcoming events:

- Regulation Nos. 32 and 36 Issues Formulation Hearing - November 13, 2017
- Regulation Nos. 32 and 36 Rulemaking Notice and Proposal - February 12, 2018
- Regulation Nos. 32 and 36 Rulemaking Hearing - June 11, 2018

STATE: Nevada

PREPARED BY: Brenda Pohlmann, City of Henderson

DATE: June 2017

Drought:

Due to the on-going drought, Nevada Governor Brian Sandoval issued Executive Order 2015-03 on April 8, 2015 establishing the Nevada Drought Forum which was made up of representatives from various state agencies including the Division of Water Resources and the state climatologist. Other members include representatives from research organizations and the Southern Nevada Water Authority. The forum was chaired by Leo Drozdoff, Director of the Nevada Department of Conservation and Natural Resources. The forum was established to develop recommendations that could improve Nevada's overall drought response and long-term resilience. Key areas that were focused on by the forum include water conservation, Nevada water law, monitoring and research, financial and technical assistance, supply augmentation, information sharing and outreach and drought declarations.

As a direct result of the recommendations made in the December 15, 2016 report prepared by the forum, there were a number of bills presented at the Nevada legislature that dealt with water and sought to amend existing water laws. By the end of the 2017 legislative session, which wrapped up on June 6, 2017, there were at least ten bills introduced that pertained to water law and conservation. Of the bills that passed, of note were the following:

Assembly Bill (AB)138: authorizes the collection of rainwater for nonpotable domestic use from the rooftop of a single-family dwelling and authorizes the collection for use by wildlife if the collection doesn't conflict with any existing water rights;

AB209: makes changes to water rights forfeiture rules in basins within a county under a declaration of drought by the Governor;

Senate Bill (SB)47: requires the state engineer to prepare a water budget and calculate and maintain an inventory of water for each basin located in whole or in part of the state. The inventory must include the total amount of water appropriated in the basin in accordance with permitted water rights, an estimate of the groundwater used by domestic wells in the basin, and an estimate of the amount of all groundwater that is available for appropriate in the basin.

Nevada received above normal amounts of rain this winter season. In the northern part of the state, the mountains have record setting snowpack and the Natural Resource Conservation Service (NRCS) Water Supply Outlook for the state is predicting that the summer streamflow may set new record highs based on their May 1st forecast. Snowpack measurements at the end of April set records on Carson and Sonora Pass with other sites above 8,000 feet also breaking records. As a result, some of the Tahoe ski areas are still open.

The water year-to-date precipitation is currently 200-220 percent of average in some areas near Tahoe, 142-148% in the northern basin areas and 118% in Eastern Nevada. "This year, 2017, is already the wettest water year on record in the Lake Tahoe and Walker basin," said Jeff Anderson, state hydrologist for NRCS Nevada. "The Carson and Truckee basins are getting very close to their water year precipitation records as well." The climate conditions drought monitor has declared that Nevada is no longer officially considered to be in drought. Most of the state is currently considered as receiving normal amounts of precipitation with one area still identified as being abnormally dry.

Due to the wet winter season, southern Nevada is experiencing a mild reprieve from the concern about shortage declaration on the Colorado River. Lake Mead is the source of approximately 90% of Southern Nevada's water supply and the source of this water is primarily from the snowpack that accumulates in the mountains in the upper Colorado River basin. In response to the on-going drought, the Department of the Interior along with the seven basin states that are parties to the Colorado River Compact developed guidelines in 2005 for responding to the drought and declining lake levels. The seven states included in the compact are Wyoming, Colorado, Utah, New Mexico, Arizona, Nevada, and California. The key provisions of the guidelines include the establishment of operating guidelines for Lakes Mead and Powell as their elevations decline (equalization), guidelines for shortages, provisions to encourage conservation and flexibility, and an agreement among the states to enter into consultation prior to any litigation.

One provision of the guidelines is the declaration of shortage on the river when the elevation of Lake Mead declines to 1,075 feet above mean sea level (MSL). At that point, Nevada, as well as Arizona will see reductions in the amount of water that can be diverted from the system. In September 2016, the elevation of Lake Mead was at 1,078 feet MSL. At that point, the Bureau of Reclamation's 24-month projections that the lake elevation would be below 1,075 MSL at the end of calendar year 2018, at which time shortage conditions would be declared.

This year the Upper Colorado River basin received 117% of average precipitation which resulted in above-average inflows into the Lower Colorado River Basin reservoirs. The Lower Colorado River Basin is currently at 53%, up 3% from this time last year. As a result, the elevation of Lake Mead is projected to be 1,080 at the end of 2017 and at 1,097 at the end of 2018.

Although the conditions look more favorable at this time, the water purveyors in southern Nevada are still looking for new opportunities to increase conservation. Recently, the member agencies of the Southern Nevada Water Authority, which includes Henderson, Las Vegas, North Las Vegas and Boulder City, passed updated conservation ordinances. These ordinances further restrict the number of days that turf can be spray irrigated in the summer months and also places restrictions on the installation of decorative water fountains.

STATE: New Mexico

PREPARED AND PRESENTED BY: Jane DeRose-Bamman, Albuquerque Bernalillo County Water Authority

DATE: June 2017

Gold King Mine Spill

The State of New Mexico sued the U.S. Environmental Protection Agency (EPA) in U.S. District Court in May 2016 over the Gold King Mine Spill. Also, New Mexico filed a bill of complaint in the Supreme Court against the State of Colorado in June 2016. Responses were filed. In November 2016, the State of NM amended its complaint against EPA and added two more parties. Briefings were submitted in May 2017. Waiting for the Court to decide on the motion to dismiss.

In addition, in September 2016, EPA approved listing the Bonita Peak Mining District on the National Priorities List (NPL). Waiting to see if funding is attached to the listing. In February 2017, Utah and New Mexico sent a letter to EPA regarding further actions. https://www.env.nm.gov/wp-content/uploads/2016/09/EPA-Region-8-LETTER-Debra-Thomas-UT-NM-Outreach_2-22-17.pdf

NMED continues to convene the Gold King Mine Advisory Committee monthly to address community concerns. As an example, an updated Exposure and Risk dashboard for Animas River and San Juan River below the Animas River confluence may be viewed at: <https://www.env.nm.gov/wp-content/uploads/2016/01/Animas-San-Juan-Risk-Dashboard.pdf>

The updated long-term monitoring plan may be viewed at: https://www.env.nm.gov/wp-content/uploads/2016/01/GKM-Long-Term-Monitoring-Plan-for-2017-Final_5-5-2017.pdf

Funding has been awarded that supports, in part, five elements from the LTMP 2016: Element #6 Water Table Mapping; Element #7 Groundwater Quality Monitoring; Element #10.1 Aquatic and Riparian Habitat Assessment; Element #12.2 Informational Conference and Element #13 Community Outreach and Involvement. <https://www.env.nm.gov/wp-content/uploads/2016/01/Animas-San-Juan-Spring-Runoff-Preparedness-Plan-2017-FINAL05-5-2017.pdf>

The Second Annual Conference on Environmental Conditions of the Animas and San Juan Watersheds with Emphasis on Gold King Mine and Other Mine Issues is scheduled for June 20-22, 2017, at San Juan College in Farmington, New Mexico. <https://animas.nmwri.nmsu.edu/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 (Water Quality Standards) rule as part of the state's Triennial Review in September 2016. The revisions became effective on March 2, 2017. Waiting for EPA approval.

Among other changes, the revisions included adoption of a temporary standards procedure. The 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. NMED is working with an EPA contractor to prepare the Temporary Standard documentation for the 22 POTWs that discharge to nutrient impaired streams. The reports from the contractor are expected by the end of 2018.

Utility Operator Certification Program moved to Drinking Water Bureau

Staff overseeing Utility Operator certification program were moved to the Drinking Water Program in July 2016. The staff are partially funded by the state's Water Conservation Fee (WCF) Fund. The WCF is funded by Water Systems based on one-thousand gallons of water produced. The fund should pay for the analytical costs and sample collection costs for water system compliance monitoring and operator training. The regulated community has been trying to get a balance and expense report. NMED completed a report for FY13/FY14 and plans to issue biennial reports from this point forward. However due to staffing shortages, NMED doesn't have any target date set for the release of the FY15/FY16 report. Questions remain as to which water systems are not paying and how the drinking water funds will be spent on wastewater operations and operator training.

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

The Monitoring, Assessment, and Standards Section of the NMED Surface Water Quality Bureau (SWQB) has 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. Besides a new name, the draft Comprehensive Assessment and Listing Methodology (CALM) incorporated a new approach for assessing nutrients in wadeable perennial streams. NMED worked with Tetra Tech 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. The new name caught the regulated community by surprise and municipalities were late in responding to the proposal. Municipalities are asking for a delay in implementation until additional dialogue occurs.

New Concepts in Nutrient and E. coli TMDLs

The NM Water Quality Control Commission adopted TMDLs for nutrients and E. coli in November which incorporated new concepts still resulting in very stringent wasteload allocations. The concepts are: use of the geometric mean criterion instead of the maximum criterion for WLA calculations for E. coli, reserving of a portion of the WLA for future growth if the POTW is not discharging at design capacity (FG-WLA) and accounting for the load from the upstream watersheds (B-LA). The affected TMDLs are for the Jemez River Watershed, Lower Pecos River, and Rio Ruidoso.

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. Major revisions include changing all ground water standards to match Safe Drinking Water Maximum Contaminant Levels (MCLs), adopting language to control vapor intrusion, eliminating the exemption for permitting if a discharge meets groundwater standards through treatment or blending and increasing fees to better fund the program. There is a question as to whether the Water Quality Control Commission has the authority to regulate vapor intrusion. The hearing is scheduled for November 2017.

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.

STATE: Texas

PREPARED AND PRESENTED BY: Dr. Peggy Glass

DATE: June 2017

Following are highlights of some water- and wastewater-related issues currently of interest in Texas.

IMPLEMENTATION OF TOTAL DISSOLVED SOLIDS WATER QUALITY STANDARDS

The Texas water quality agency established water quality standards for dissolved salts (total dissolved solids, chloride, and sulfate) many years ago. These standards are becoming a greater and greater challenge as time goes by. Factors contributing to the challenge include drought conditions, conservation, reuse, a need to develop additional water supplies—potentially by treating brackish groundwater or seawater, severe limitations on options for disposal of the brine reject, and increasing pressure by U.S. Environmental Protection Agency (EPA) Region 6 to do assessments and impose permit limits for dissolved salts in Texas Pollutant Discharge Elimination System (TPDES) permits. A workgroup has been created involving representatives of the Texas Water Conservation Association (TWCA) (National Water Resources Association affiliate), Water Environment Association of Texas (WEAT) (Water Environment Federation affiliate) and Texas Association of Clean Water Agencies (TACWA) (National Association of Clean Water Agencies affiliate) to seek an approach to management of dissolved salts that is both environmentally sound and practical. The state agency has been approached and appears open to the idea of setting up an advisory committee to work on this issue.

TRIENNIAL REVISION OF WATER QUALITY STANDARDS

The next triennial revision of water quality standards and the associated implementation procedures in Texas is scheduled for 2017-2018. The official draft and request for comments are expected to be published late Summer 2017. There are still portions of the 2014 revisions that have not been addressed by EPA. TCEQ and EPA have agreed on how Reasonable Potential will be determined with respect to Whole Effluent Toxicity (WET) testing.

COMMENTS ON U.S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS

At the urging of the President, EPA invited public comments on regulations that could be repealed, replaced, or modified to reduce regulatory burdens. TWCA submitted comments suggesting revisions to the following regulations:

- Water quality standards for bacteria,
- Management of dental amalgam,
- Anti-backsliding,
- Cyanobacterial toxins and perfluorinated compounds,
- Standardized monitoring framework for drinking water supplies,
- Aquatic life criteria for conductivity,
- Whole effluent toxicity (WET) testing,
- Test of Significant Toxicity (TST) WET method, and
- Numeric nutrient criteria.

AQUATIC LIFE CRITERIA FOR CONDUCTIVITY

TACWA and WEAT submitted a comment letter to the EPA on the proposal to use biological field sampling to develop water quality standards for conductivity. The letter made the points that conductivity is not an appropriate parameter for predicting impacts on aquatic life, the field-based method proposed by EPA for developing the criteria has serious flaws, and the development of field-based criteria is not practical in an area as large and ecologically diverse as Texas.

BIOSOLIDS MANAGEMENT

There was a strong push from certain parties during the recent legislative session to prohibit land application of sludge (as there was in the previous session). The primary bill (and there were others) would have allowed County Commissioners to prohibit land application of all classes of biosolids in the county. It was a "bracketed" bill (i.e., it would have only applied to one county); but, if it had been successful, other counties would be expected to follow suit. However, the bill was not passed.