



MANAGEMENT BOARD

Information Summary

January 14, 2009

Subject

Upcoming 2009 Legislative Issues

Policy Question

What will AMWUA's position on water-related legislative proposals be, once legislation is introduced?

Summary

Each year, in advance of the upcoming legislative session, AMWUA staff prepares a summary of water-related legislation that may come before the Arizona State Legislature. These summaries provide a brief overview of possible legislation. If the legislation is introduced, a more in-depth analysis is developed, providing detail on key provisions of the bill and identifying possible policy issues.

Once the legislation is introduced, AMWUA staff and the AMWUA Water Resources Advisory Group (WRAG) review the legislation and assess its relation to the AMWUA Board Resolutions and Issue Papers and their potential impacts on water management. Based on this analysis, recommendations regarding an AMWUA position are then forwarded to the AMWUA Management Board and the Board of Directors for action. Board members are apprised of the status of the legislation at monthly Board meetings and through the Legislative Summary, which is posted to the AMWUA Web site on Friday afternoons during the legislative session.

Considerations

There are a number of water-related legislative issues under consideration for the 2009 Legislative Session. A brief summary of these issues is contained in the attachment to this agenda item.

AMWUA Sustainability Legislation/CAGR Revenue Bonding Legislation

At the November meeting, the AMWUA Board of Directors directed staff to combine the AMWUA sustainability legislation with the CAGR revenue bonding legislation into a single bill. AMWUA representatives and CAWCD representatives will coordinate the development and implementation of a legislative strategy to ensure the passage of the legislation.

AMWUA staff and CAWCD staff have been meeting jointly with legislators to secure support for the legislation. To date, legislators have been receptive to the need to address the issues contained in the draft proposal. Senator-elect John Nelson, in-coming chair of the Senate Natural Resources, Infrastructure and Public Debt Committee, has agreed to sponsor the legislation. The draft proposal has been forwarded to legislative staff so the proposal can be prepared for introduction. AMWUA and CAWCD staff will have an opportunity to review the legislation in advance of the actual introduction of the legislation.

The concerns of most stakeholders have been addressed. However, a few private water companies have expressed concern that basing the proposed fee for member service areas on the amount of water in the designation and not on the amount of water actually consumed is problematic. Some of these water providers who have, or are in the process of obtaining, a Designation of Assured Water Supply have a large replenishment obligation, but do not have the rate base necessary to provide the funding to support the membership fee resulting from that replenishment obligation at this time. Discussions continue to determine if a resolution can be reached. AMWUA staff has been working with these stakeholders to assure that any proposal to address the designated private water companies' concerns is acceptable to AMWUA members who belong to the CAGR. D.

Key Issues

There are two issues that are of concern at this time. The first issue relates to the regulation of effluent. The Arizona Department of Water Resources (ADWR) has proposed legislation that would prohibit the transfer of effluent across basin boundaries. The second issue relates to the priority that Arizona Water Banking Authority (AWBA) would have to excess Central Arizona Project (CAP) water.

Prohibition on the Transfer of Effluent across Basin Boundaries

ADWR has proposed legislation that would prohibit the transfer of effluent across basin boundaries. The legislation does provide for certain exceptions:

- Existing transfers of effluent may continue.
- A water provider may transport effluent away from the groundwater basin or Active Management Area (AMA) in which the effluent was treated if:
 - ◆ The water provider's service area is located in the groundwater basin or AMA in which the effluent was treated and in the groundwater basin or AMA to which the effluent is transported.
 - ◆ The water provider owns or operates both the sanitary sewer in which the effluent was originally collected and the sewage treatment facility at which the effluent was treated.
 - ◆ The effluent will be used within the water provider's service area.

- A person may transport effluent away from the groundwater basin or AMA in which it was treated pursuant to a water exchange if the person giving the effluent will use the water received in exchange for the effluent in the same groundwater basin or AMA in which the effluent was treated.
- A person may transport effluent away from the groundwater basin or AMA in which it was treated pursuant to a permit issued by the Director. The Director must issue a permit if the person demonstrates to the satisfaction of the Director that one of the following applies:
 - ◆ It is not feasible to use or store the effluent in the groundwater basin or AMA in which it was treated.
 - ◆ Any negative impacts that will result to the groundwater basin or AMA in which the effluent was treated are outweighed by the benefits that will result to the groundwater basin or AMA to which the effluent will be transported.
 - ◆ The effluent will be transported for the purpose of mitigating potential damage that may be caused by the transportation of groundwater into the groundwater basin or AMA in which the effluent was treated.

The Director shall determine the duration of any permit and may include any conditions in the permit that the Director determines are appropriate.

ADWR has stated that the goal of this legislation is to prevent a *public resource* from being captured as a private commodity. ADWR believes that reclaimed wastewater is NOT a commodity – it is a public resource. ADWR believes that the decision in the John F. Long case supports ADWR’s position. ADWR says that it simply wants to ensure that this critical public resource remains available within the groundwater basin where it is generated.

ADWR requested comments on the effluent transportation prohibition by January 7, 2009. AMWUA has traditionally opposed any efforts to regulate effluent and has sent the attached letter to the Director of ADWR expressing its opposition and concerns. In short, no showing of any effluent-related statewide crisis has been articulated or demonstrated. AMWUA believes that effluent is best managed by the entity that generates it. Effluent provides critical flexibility in the effective management of the AMWUA members’ water supplies.

Arizona Water Banking Authority Priority

The Arizona Water Banking Authority (AWBA) is statutorily required to store excess CAP water for specified purposes, including to secure water for Indian Settlements and to protect municipal and industrial water users during times of drought. Additionally, the AWBA has a legislatively-approved contractual obligation to store 1.2 million acre-feet of excess CAP water for interstate water banking purposes.

Under current law, all water orders by CAP customers must be met, including orders for excess CAP water, before the AWBA may store CAP water. AWBA is last in line to receive excess CAP water. Presently, the AWBA cannot meet its statutory and contractual obligations because excess CAP water orders by others exceed available CAP supply.

The proposed legislation would:

- Allow the AWBA to access CAP excess water that is set aside by CAWCD for AWBA purposes at a higher priority than is currently allowed.

The AWBA purposes include firming municipal and industrial water supplies, meeting the State's obligations for Indian settlements and meeting contractual obligations for interstate water banking.

Meeting the obligations of the AWBA is critical to management and security of our current and future water supplies. Arizona must be able to fulfill its obligations to the Indian Water Settlements Act to assure that our water supplies will be secure in the future. Banking water to meet municipal demand in times of drought is essential to assuring that our residents will have no disruption to their water supplies.

Prior Committee Action

The AMWUA Board has taken no formal position on 2009 legislative proposals.

Recommendation

- AMWUA staff recommends continued opposition to any legislation that would regulate effluent.
- AMWUA staff recommends support for the legislation that would raise the priority of the AWBA for excess CAP water.

Attachment

Attachment A - Overview of Potential 2009 Water-Related Legislation

Attachment B - Letter to Director Guenther Regarding Opposition to the Effluent Legislation