



AMWUA

2001

LEGISLATIVE SUMMARY

MAY 11, 2001

FINAL

**amwua**  
arizona municipal water users association

ARIZONA MUNICIPAL WATER USERS ASSOCIATION

2001 Legislative Summary  
45<sup>th</sup> Legislature First Regular Session

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Sine Die: 10 May at 12:49 pm.

\* Indicates change from previous week.

**S 1296 WELL DRILLING**

(Guenther) This bill is designed to streamline the procedures for filing a notice of intention to drill a well, the issuance of a drilling card to the well driller and notification of the issuance of the drilling card to the person who filed a notice of intention to drill. (The well driller and the person filing the notice need not be the same.) Once notice is received by the person filing the notice, the well driller may drill the well.

Status

Referred to Senate NRAE, Rules.

AMWUA Position

No position. No longer tracking. See 23 February note.

Non-controversial. This was the only issue proposed for the Omnibus Bill.

26 January: Is a one issue Omnibus Bill an oxymoron?

23 February: This bill will become a vehicle for a striker establishing regulations for raffles conducted by nonprofit organizations where gambling devices are used.



**S 1360****MOBILE HOME PARKS; WATER SERVICE**

(Solomon, Richardson, Bowers) The legislation provides that for a mobile home park with a master water meter in which the landlord separately charges for water, the master meter operator shall read and record the sub meter at each space in the mobile home park and provide a monthly copy of the completed recording form to the utility that provides water to the mobile home park through the master meter. The utility shall bill each residential lot user at its prevailing basic service single family residential rate. The landlord shall pay for all water delivered through the master meter that exceeds by seven percent the difference between the master water meter reading and the sub meter readings. The utility shall pay the landlord two-thirds of the basic service single family residential rate but at least \$3.50 monthly for the service of maintaining the landlord's water system, including the sub meters, reading the sub meters and reporting the monthly readings.

**Status**

Referred to Senate Commerce, Rules.  
Do pass with amendment from Senate Commerce.  
Do pass from Senate Rules.  
Do pass from Senate COW  
Passed Senate, 28 - 2.

Referred to House Com-Econ, Energy-Tech, Rules.  
Withdrawn from House Com-Econ.  
Do pass with striker from House Energy-Tech.  
Do pass from House Rules.  
Do pass from House COW.  
Passed House, 33 - 23.

Returned to Senate for action on House amendments.  
Senate refused to concur.

Free conference committee  
Senate: Solomon, Hamilton, Valadez, Verkamp  
House: Hatch-Miller, Graf, Soltero

Passed Senate, 16 - 12.  
Failed House, 23 - 31.

House agreed to reconsider.  
Passed House, 47 - 10.

\*

**Signed by Governor. Laws 2001, Chapter 351.**

## AMWUA Position

No position.

As introduced, AMWUA was concerned that this bill would unjustly benefit landlords of some mobile home parks at the expense of the city that delivers water to the landlord's water system. The strikers establish a study commission to look at the subject so a no position stance is appropriate at this time.

16 February: This bill could be *veneno puro*. If a mobile home park landlord charges separately for water there must be a separate meter for each user. The landlord cannot charge more than the prevailing basic service single family residential rate charged by the utility that delivers water to the landlord through a master meter. The landlord may pay more for the water than the landlord collects from tenants because the water delivered to the master meter is charged at the commercial rate. Landlords have been known to raise rents to cover their losses. (Is this legit?) This bill will solve that problem for mobile home parks by shifting it to the utility. And not only does the landlord not have to pay for lost or unaccounted for water in the landlord's water system (the utility pays), the utility must rebate to the landlord two-thirds of the money it collects so the landlord can "maintain" the landlord's water system. Sounds like another "Landlord Relief Act."

There may also be more to this bill than just reaches the eye. We will see.

23 February: Yes folks, this is another "Bill from Baja." Evidently, there is a long standing dispute between one of the mobile home *pesaditos* and Tucson Water over commercial vs. residential rates. As a result detritus floats *a norte*. The bill will likely emerge from the Senate and will have to be dealt with in the House. The League will be directly involved. The bill has lots of problems. One of the most egregious is municipal subsidization of what are essentially private water systems. If there are more than 15 connections serving more than 25 people in the mobile home park, it is a community water system for purposes of the Safe Drinking Water Act. Such a community water system can petition the state for water quality monitoring assistance and if this bill passes, the customers of certain municipal water providers will subsidize any necessary improvements to such private water systems. Municipal water providers maintain their distribution systems up to and including the meter that is read by the municipality. Infrastructure beyond that point is the responsibility of the property owner. Indeed, mobile home park owners/landlords could end up profiting on the backs of municipal water providers. And note we are talking about "municipal" water providers. It appears other types of water providers have been written out of the bill. Why?

Other questions abound. Who will check the mobile home park metering systems for accuracy to industry standards? Who is the master meter operator who is supposed to read each sub-meter? The landlord or the municipal water provider? Is the mobile home park owner considered a water provider and at some

level of service subject to ACC authority? Could this bill have the effect of regulatory oversight avoidance? In any event, this bill illustrates the inherent problems involved with attempting to impose state legislation on matters best left to the jurisdiction of local government.

2 March: Nothing has changed. Be prepared for a House exercise. They say you don't have to be crazy to work at the Legislature, but it sure helps. The facts, although interesting, are irrelevant. Inserted in this note is the text of an e-mail sent to Senators Solomon, Richardson and Bowers and the reply from Senator Solomon.

From: Bob McCain [mailto:jrm@amwua.org]  
Sent: Sunday, February 25, 2001 1:46 PM  
To: 'rsolomon@azleg.state.az.us'; 'erichard@azleg.state.az.us';  
'rbowers@azleg.state.az.us'  
Subject: SB 1360 MOBILE HOME PARKS; WATER SERVICE

25 February 2001

Dear Senators Solomon, Richardson and Bowers:

On behalf of the Arizona Municipal Water Users Association (AMWUA), the members of which are the Cities of Chandler, Glendale, Goodyear, Mesa, Peoria, Phoenix, Scottsdale, Tempe and the Town of Gilbert, I must express our members' deep concerns and misgivings about SB 1360---Mobile Home Parks; Water Service.

As you are aware, SB 1360 provides that for a mobile home park with a master water meter in which the landlord separately charges for water, the master meter operator [Is this the landlord or the municipal water provider?] shall read and record the sub meter at each space in the mobile home park and provide a monthly copy of the completed recording form to the municipal water provider that provides water to the mobile home park's master water meter. The municipal water provider shall bill each residential lot use at its prevailing basic service single family residential rate. The landlord shall pay for all water delivered through the master meter that exceeds by seven percent the difference between the master water meter reading and the sum of the sub meter readings. The municipal water provider shall pay the landlord two-thirds of the basic service single family residential rate but at least \$3.50 monthly for the service of maintaining the landlord's water system, including the sub meters and reporting the monthly readings.

Traditionally, municipal water providers maintain their distribution systems up to and including the meter that is read by the municipal water provider. (In this case the meter is the master meter.) Infrastructure beyond that point is the responsibility of the property owner. (In this case the landlord of the mobile home park.) Under the provisions of SB 1360, not

only may the municipal water provider be held financially responsible for the lost and unaccounted for water in the landlord's private water system, the municipal water provider will have to rebate to the landlord at least two-thirds of the money it collects so the landlord can "maintain" the landlord's private water system. What is the logic of this move? Indeed, AMWUA is very concerned that mobile home park landlords could end up profiting on the backs of the ratepayers of municipal water providers. And note here SB 1360 bill only deals with "municipal" water providers. It appears other types of water providers, such as private water companies, have been written out of the legislation. Again, what is the logic of this move?

Other questions abound. If SB 1360 was to become law, who would be responsible for insuring that the mobile home park water system meets industry standards? Would there be a financial audit of the rebates received by the landlord? What is the interface, if any, between these systems and the Arizona Corporation Commission? Are many of these mobile home parks actually community water systems for purposes of the Safe Drinking Water Act and eligible to petition the state for water quality monitoring assistance?

SB 1360 is an example of what AMWUA calls a "Baja Bill." Its genesis is evidently a long-standing dispute between an owner of a mobile home park and the City of Tucson over commercial vs. residential rates. AMWUA is unaware of any similar dispute involving our members. SB 1360, if enacted, might have the unintended consequence of creating such disputes in "Alta Arizona." AMWUA urges and hopes that the City of Tucson will be able to resolve its problems with the landlord thereby making SB 1360 moot.

Thank you in advance for listening to our concerns about SB 1360. I personally apologize for not contacting you sooner, but we were unaware of the bill until the day after it passed out of Senate Commerce, and then a scant week later it was out of Senate COW. Considering the glacial speed at which local governments generally respond, I'm sure you can understand my tardiness. I also want to apologize for contacting you via e-mail. It is impersonal, but rapid, and time may be of the essence. If you have any questions please contact me at your convenience.

Yours truly

Bob McCain  
AMWUA Program Director

RE: SB 1360 MOBILE HOME PARKS; WATER SERVICE From: Ruth Solomon  
[rsolomon@azleg.state.az.us]  
Sent: Monday, February 26, 2001 1:58 PM  
To: 'Bob McCain'  
Subject: RE: SB 1360 MOBILE HOME PARKS; WATER SERVICE

It's my understanding that none of the cities that you represent have an issue with working out agreements with parks that have master meters. There are very few of them in the first place because, as you know, its only the oldest parks that are on the master meter system. Other than Tucson, I don't know of any other place where a disagreement on metering exists.

RS

9 March: The members of AMWUA remain hopeful, if not optimistic, that the City of Tucson and the landlord of the mobile home park will be able to resolve their dispute and achieve an acceptable, if not satisfactory, outcome. For your information, attached to the end of the Summary is the text of a letter on SB 1360 sent to members of the House Committees on Commerce & Economic Development and Energy, Utilities & Technology.

16 March: It appears that a tentative agreement has been reached between the primary protagonists. Landlords of mobile home parks will be treated like landlords of multi-family housing units with respect to billing and charging their tenants for water. While this resolution may not be in the best interests of water conservation because it fails to directly link a tenant's individual water use with its cost (an issue that may need to be addressed in the future), a municipal provider's responsibility ends at the master meter. Municipal providers will not have to do the billing for mobile home park tenants nor rebate a portion of the monies collected to the landlord as was proposed in SB 1360. But a word of caution is in order. Remember, this blivet bubbled up from Baja. It ain't over til it's over.

30 March: *Se lo dije.* It ain't over til it's over. It seems the landlord didn't want to be treated like a landlord of a multi-family housing unit after all. He still wanted the municipal provider to do the meter reading and billing. Well...when in doubt, create a study commission. *¡Aliviáname!* An interesting little bit of *chisme*---the landlord who is doing all the kvetching apparently doesn't even have sub-meters in his mobile home park. This can only mean that he "plans" to put in sub-meters if this bill were to become law or that he is carrying somebody else's water. Now just who could that be?

6 April: Well aren't we lucky. We now have a joint legislative study committee on water services in mobile home parks. It is comprised of six legislators, three municipal providers, two mobile home park types, one representative of mobile home park residents, one from RV parks and one from the ACC. The study committee will make its report by December 15, 2001 and will study issues involving master water

metering in mobile home parks including the number and type of water systems used in mobile home communities, the cost of providing water, water metering services and providing and maintaining the infrastructure for master meter communities, and an analysis of distribution systems involved in master water meter mobile home communities. Multi-family housing was originally included but was removed from the study committee and its charge at their request.

**S 1363      PRESCOTT ACTIVE MANAGEMENT AREA**

(Bennett; Blendu, Flake) Notwithstanding certain other provisions of the Assured Water Supply (AWS) rules and session laws dealing with the issuance of Certificates of Assured Water Supply (CAWS) in the Prescott Active Management Area, the Director of DWR shall process and issue a CAWS if the Director has previously found that there is sufficient water available to support a CAWS for the development and the applicant has made a substantial capital investment for infrastructure. The application also has to be for the final phase of a multiphased development for which CAWS have been issued for prior phases; and, the applicant is seeking a CAWS for no more than ten-acre feet of water per year.

Status

Referred to Senate NRAE, Rules.

AMWUA Position

No position.

2 February: All this for 10 acre feet? There's got to be a better way!



**S 1375      ~~SEWAGE CONNECTION REQUIREMENTS~~ CITY PUBLIC BUSINESS SCOPE**

(Bowers) Cities and counties may not require a property owner to connect to a municipal sewer or wastewater system if the property owner has an existing alternative sewage system.

Status

Referred to Senate NRAE, Rules.  
Do pass with strike everything amendment from Senate NRAE.  
Do pass from House Rules.  
Do pass with amendment from Senate COW.  
Passed Senate, 17 - 11.

Referred to House County-Muni, Rules.  
Failed House County-Muni.

AMWUA Position

No position.

The bill, as originally drafted, had significant, negative water quantity and water quality management implications. The amendments in Senate NRAE and COW appear to have negated those implications to a large degree. See 9 March note.

2 February: Septic tanks per chance? Potentially, this bill could have significant water management implications. If so, folks in the Prescott AMA and on the Governor's Water Management Commission might want to pay particular attention to this bill.

23 February: The strike everything amendment provides that:

"If a municipality provides any form of public service as provided in subsection A of this section to property outside the corporate boundaries of the municipality, the municipality shall not use the service as a condition to require the property owner to accept additional service from the municipality or for the property owner to sign an annexation petition pursuant to section 9-471. The municipality shall not discontinue any existing public services to a property if the property owner elects not to receive additional services or does not sign an annexation petition pursuant to section 9-471."

Since this is a Title 9 issue, as opposed to a Title 45 or 49 issue, the League is taking the lead and is engaging in continued negotiations with the sponsor. From the language, it appears that the intent of the prohibition is to deal only with those property owners currently receiving service. Arguably, it would not prohibit a municipality from requiring new water and service hook-ups as a condition of annexation and vice versa so long as the property owner is not receiving any existing

services. Whether the proposed language actually does that or not may be debatable. Further, what are the “public services” covered under this section 9-471? Just water and sewer? *No creo que si*. What does “outside the corporate boundaries” mean? Are county islands excluded or included? It should be noted that the strike everything amendment makes an exception for hook-ups required by DEQ to protect the public health.

9 March: The Senate COW amendment changed the NRAE striker as follows: “If a municipality provides any form of public service as provided in subsection A of this section to property outside the corporate boundaries of the municipality, the municipality shall not ~~use the service as a condition to require the property owner to accept additional service from the municipality or for the property owner to sign an annexation petition pursuant to section 9-471.~~ The municipality shall not discontinue any existing public services to a property if the property owner elects not to receive additional services or does not sign an annexation petition pursuant to section 9-471.” Do we still have a problem?

**S 1402      MULTI-SPECIES CONSERVATION PROGRAM APPROPRIATION**

(Guenther, Arzberger, Bowers; Carruthers) Appropriates \$165,000 for the Lower Colorado River Multi-Species Conservation Program.

Status

Referred to Senate NRAE, Approp, Rules.  
Do pass from Senate NRAE.  
Do pass from Senate Rules.  
Passed Senate, 22 - 7.

Referred to House NRA, Approp, Rules.  
Do pass from House NRA.

AMWUA Position

Support.

The development of the Lower Colorado River Multi-Species Conservation Program is intended to allow federal and nonfederal entities in the Lower Colorado River Basin to comply with the endangered species act without adversely impacting current and planned water diversions and power production in the basin.

2 February: \$165,000 is evidently Arizona's share of this year's cost of participation in the Lower Colorado River Multi-Species Conservation Program (MCP) pursuant to the terms of the joint participation agreement signed by DWR, Arizona Game and Fish Commission, the U.S. Department of Interior, U.S. Bureau of Reclamation, U.S. Fish and Wildlife Service, and the states of California and Nevada. The MCP is designed to conserve habitat and work toward the recovery of certain endangered species within the 100-year floodplain of the lower Colorado River and attempt to reduce the likelihood of additional species being listed as endangered. The MCP is also designed to accommodate current water diversions and power production and optimize opportunities for future water and power development, to the extent consistent with law.

**S 1454      DEQ; FEE STANDARDS**

(Guenther, Bowers; Flake, Blendu, Huffman) By the end of 2002, the DEQ Director must establish by rule a consistent method for setting fees and determining direct and indirect costs. The method for setting fees shall consider compliance with statutory authority, statutory limitations in setting a fee, current and expected revenues from all sources, efficiency factors, and current and forecasted activity level or workload.

Status

Referred to Senate NRAE, Rules.

AMWUA Position

No position at this time.

S 1519

**~~GROUNDWATER TRANSPORTATION FROM THE HARQUAHALA IRRIGATION NON-EXPANSION AREA (INA) ASU EAST HEMP STUDY~~**

(Hamilton, Guenther) This legislation seeks to amend that portion of the Groundwater Code which governs the transportation of groundwater from the Harquahala INA into the AMAs. The bill would allow lessees of irrigated land in the INA to transport groundwater from leased irrigated land in the INA into the AMAs. Current law only provides owners, as opposed to lessees, with the right to transport. It would also allow groundwater which will be transported to be withdrawn from any location within the INA, not just from the appurtenant irrigated land. AMA well-spacing requirements would apply. Further, any person, not just political subdivisions, could purchase or lease irrigated land in the INA and transport groundwater withdrawn from within the INA.

Status

Referred to Senate NRAE, Rules.  
Do pass with amendment from Senate NRAE.  
Do pass from Senate Rules.  
Do pass from Senate COW.  
Passed Senate, 16 - 13.

Referred to House NRA, Rules.  
Do pass with amendment from House NRA.  
Passed House, 35 - 22.

Returned to Senate for action on House amendments.  
Senate concurred.  
Passed Senate, 19 - 11.

VETOED.

AMWUA Position

No position. The strike everything amendment in Senate NRAE morphed it into a bill concerning industrial hemp production. Normally, SB 1519 would no longer be tracked in the Summary, but since it is still at least tangentially related to water, an eye will be kept upon it.

No position since the proposed lease amendment means the bill need not be considered as major water legislation. (See 9 February note.) However, DWR is apparently considering an amendment which would deal with well spacing and the impacts of multiple wells. Such could make this major water legislation. Well spacing and impacts of multiple wells are issues before the GWMC.

By resolution dated January 11, 2001, the AMWUA Board of Directors urged the Legislature to refrain from considering any major water legislation this session pending recommendations from the Governor's Water Management Commission. This bill is a major piece of water legislation which 1) concerns the rights to transport groundwater into a safe-yield AMA; 2) essentially nullifies the doctrine of appurtenancy which requires groundwater to be withdrawn from the land to which the right is appurtenant; and, 3) may, due to the proposed well concentration, present a risk of subsidence in an area with AMA water transportation infrastructure.

19 January: This bill is being supported by Vidler Water Company which owns a number of parcels of land in the Harquahala INA, and it may have a swamp to cross. Ideological opposition seems to be first jelling around the bill's provision that would essentially do away with the doctrine of appurtenancy. Some are concerned about the precedent that might set for the rest of Arizona's water statutes. Generally, groundwater has to be withdrawn from the land to which the right is appurtenant. In other words, the withdrawal right is tied to the land. Concentrating withdrawals pursuant to scattered parcels of irrigated land from one location is generally viewed unfavorably regardless of whether it is consistent with geo-hydrological or economic reality. Unfortunately, if you are a supporter of this bill, the word on the mall is that where Vidler wants to concentrate its pumping is in some kind of proximity to an area prone to land subsidence and also near the CAP aqueduct. *¡Hijole!* Will keep you informed.

2 February: For your information, attached to the end of the Summary is the AMWUA Legislative Issue Paper entitled "The Governor's Water Management Commission." It is the background paper to the AMWUA Legislative Resolution referenced above.

9 February: The bill was held to prepare an amendment which would remove almost all of the proposed language and retain only that provision which would allow a political subdivision to lease as well as own land from which the groundwater is transported. The bill may no longer be major water legislation. And then, why not the "what's fair is fair" rule? Why not extend the lease provision for political subdivisions to other groundwater basins from which groundwater may be withdrawn for transportation to an AMA?

9 March: The word is that this bill is dead for this session. (As Yogi Berra has been quoted, "If we don't make some changes, the status quo will remain the same.") Parties involved will be meeting in the interim to discuss what DWR "needs" with regard to well spacing. DWR proposed an amendment which would have established a two-mile buffer zone on either side of the CAP canal in which pumping would have been more restricted than elsewhere in the Harquahala INA. I'm still unsure whether the amendment spoke to a well spacing issue or a subsidence control issue or both. Moreover, there is some indication that some folks believe that Vidler could

already legally do what they wanted to do---concentrate their withdrawals pursuant to many, scattered parcels of irrigated land from locations that make economic and hydrological sense, not just from each separate parcel of irrigated land.

In any event, a strike everything amendment for the legalization of industrial hemp cultivation has been prepared for S 1519. Talk about delicious irony!

16 March: The strike everything amendment states that ASU-East's School of Agri-Business and Resource Management may study the feasibility and desirability of industrial hemp production in this state. If they do this study, a report on the findings will be submitted to the powers that be. *¡Andale hué!* Just think, if we link this to Growing Smarter, Agricultural Preservation Districts and the Governor's Water Management Commission, we may be able to save the family farm! *¡Se busca...Alivio total!*

## SCM 1001 DRINKING WATER ARSENIC STANDARD

(Bundgaard) Declares that the EPA is proposing to reduce the drinking water standard for arsenic by an incredible ninety per cent to 5ppb based on incomplete and flawed studies of health effects, careless economics and little understanding of the technology available to deal with arsenic removal. The cost could be considerable to consumers particularly in small water systems, and the memorial prays Congress to give the EPA enough time to review information related to the arsenic rule making process so that the agency can produce a rational, well-researched, cost-effective standard that is in the best interests of the public.

### Status

Referred to Senate NRAE, Rules.  
Do pass with amendment from Senate NRAE.  
Do pass from Senate Rules.  
Do pass from Senate COW.  
Failed Senate, 15 -15.

### AMWUA Position

Support.

The proposed standard has been set at 10ppb, not 5ppb. Nevertheless, it is still debatable whether 10ppb is supported by documented, sound scientific studies.

23 February: The amendment referenced the proposed standard.

16 March: SCM 1001 may have failed on a tie vote because of public health/environmental concerns coupled with a feeling that SCMs are expensive to prepare and are merely meaningless "postcards" to Washington.

## SCM 1002 GLEN CANYON DAM

(Guenther, Bowers, Bennett; Carruthers, Cannell) Urges that Members of Congress oppose any effort to breach or remove Glen Canyon Dam or to drain Lake Powell.

### Status

Referred to Senate NRAE.  
Do pass from Senate NRAE.  
Do pass from Senate COW.  
Passed Senate, 23-7.

Referred to House NRA, Rules.  
Do pass from House NRA.  
Do pass from House Rules.  
Passed House, 54 - 6.

### AMWUA Position

Support.

Removing Glen Canyon Dam or draining Lake Powell can hardly be argued as beneficial to the interests of Colorado River water users and power users in Arizona.

2 February: Some words of paranoia: Let's hope we do not end up further enhancing the standing of Dave Wegner and the Glen Canyon Institute---the man and the organization leading the charge for the removal of Glen Canyon Dam. When the Glen Canyon Institute began to try to seek a spot on the public agenda for the removal of the dam, such a clamor arose that a congressional hearing on the matter was held in 1998. "By all accounts, the congressmen against Glen Canyon Dam's removal wanted a public forum in which to ridicule the idea. The plan backfired: It wound up giving the Glen Canyon Institute credibility. An op-ed piece in *The New York Times* a short while later stated that the idea of restoring the canyon might not be so ludicrous after all." ("River Interrupted." *Condé Nast Traveler*, January, 2001, p. 217.)

2 March: For your information, the seven Senators voting no were Hartley, Lopez, Richardson, Rios, Solomon, Valadez and Gnant.



## **SJR 1001 COLORADO RIVER SURPLUS GUIDELINES**

(All 30 Senators; All 60 Representatives) This joint resolution ratifies the proposal of the seven Colorado River Basin states regarding the adoption of interim surplus guidelines by the Secretary of the Interior for the Colorado River system. It also approves the reparation and forbearance agreement between the State of Arizona and the Metropolitan Water District of Southern California (MET) regarding the implementation of the interim surplus guidelines on the Colorado River.

### Status

Referred to Senate NRAE, Rules.  
Do pass from Senate NRAE.  
Do pass from Senate Rules.  
Do pass from Senate COW.  
Passed Senate, 30 - 0.

Referred to House NRA, Rules.  
Do pass with amendment from House NRA.  
Do pass from House COW.  
Passed House, 50 - 4.

Returned to Senate for action on House amendments.  
Senate refused to concur.

Free conference committee.  
Senate: Guenther, Arzberger, Bennett, Brown  
House: Gleason, Chase, O'Halleran

Senate adopted conference report.  
Passed Senate, 30 - 0.

Returned to House for action on conference report.  
Passed House, 48 - 5.

\*

**Signed by Governor.**

### AMWUA Position

Support.

13 April: Under the reparation and forbearance (R&F) agreement between DWR and MET, Arizona agrees to waive its right to surplus water from the Colorado River legally available to it under the terms of the 1944 Colorado River Contract between Arizona and the Secretary of Interior and the decree in Arizona v.

California. In return, MET agrees to reduce its order for Colorado River water over a 15-year period to comply with the conservation requirements of the California Colorado River Water Reduction Plan, the plan designed to get California down to its 4.4 million acre foot entitlement. (California's diversions have been as much as 5.2 million acre feet.) MET also agrees that in the event that a shortage is triggered because of the new interim surplus guidelines, MET will reduce its use of Colorado River Water by up to a total of 1,000,000 acre feet and direct that water for use in Arizona to prevent any shortage. In other words, MET gets 15 years to wean itself off of what is essentially Arizona's unused apportionment by having the Secretary increase the likelihood of surpluses through implementation of the new interim surplus guidelines without having to worry that Arizona will claim its share of those surpluses. In return, Arizona, who really didn't foresee itself as a "big" surplus water user, gets a million acre foot CAP shortage insurance policy, something it didn't have before. Sounds like everybody would think this acceptable. Not!

Quite a dog fight, almost *una la grilla*, developed over SJR 1001 between DWR and the CAWCD. The CAWCD felt the R&F agreement between DWR and MET altered the terms of the CAWCD's (and its subcontractors) contractual relationship with the Secretary of Interior for delivery of CAP water. In other words, CAWCD would be bound by the R&F agreement and, moreover, its rights would be waived without its consent. CAWCD wanted to become a party to the R&F agreement or at least a third party beneficiary (whatever that is). DWR was firm in its opposition to both approaches because, I think, DWR believes it is the State of Arizona that maintains the sovereign interest in the waters of the Colorado River, not the CAWCD. Furthermore, to allow CAWCD a direct role in the R&F agreement might cause all other users of Colorado River water to demand equal treatment, a procedural nightmare.

Neither DWR nor CAWCD were without merit. The CAWCD was concerned that the R&F agreement might not be enforced to protect them and that the R&F agreement might be modified in the future in an unacceptable manner by DWR without CAWCD's input. Of particular concern was the belief that legal precedent would be set that the State could alter contractual rights to the Colorado River without consent of the affected party. DWR countered that the State already has the right to alter such contractual rights if such rights are subject to the aforementioned 1944 contract as is the CAP. (DWR may be right, and that should grant us all great comfort.)

A compromise was finally reached. The amendment provides that the State will enforce the R&F agreement and if ever amended, etc., such will not be effective unless ratified and approved by the Legislature. The amendment also states the SJR 1001 is an action in response to unique and extraordinary circumstances and shall not establish any precedent as to whether the Arizona Legislature may or may not alter rights to Colorado River water under contracts between the Secretary of the Interior and individuals, irrigation districts, corporations, state departments, agencies, boards, commissions or political subdivisions of Arizona, without their consent. In other words, this issue need not be made ripe and so it is prudent to leave it for another day, if ever.

27 April: No real dispute over the compromise. The refusal to concur allows the text of the R&F agreement between the State and MET to be inserted in the

SJR. Some thought this a necessary and prudent step to take because the R&F agreement has passed only the Executive Committee of MET, not the full board, and the Legislature itself may sine die before MET's board next meets.



\* Indicates change from previous week.

## H 2020 BUCKEYE GROUNDWATER EXEMPTION

(Gleason) Under the Groundwater Code, the Arlington Canal Company, the Buckeye Water Conservation and Drainage District and the St. John's Irrigation District are exempt from agricultural water conservation requirements because they are located within a statutorily described "waterlogged area." This exemption expires in 2009. Evidently the waterlogging condition still exists. This bill seeks to have this exemption extended another 10 years.

### Status

Referred to House NRA, Rules.  
Do pass with technical amendment from House NRA.  
Do pass from House Rules.  
Do pass from House COW.  
Passed House, 48 - 6.

Referred to Senate NRAE, Rules.  
Do pass from Senate NRAE.  
Do pass from Senate COW.  
Passed Senate, 30 - 0.

Signed by Governor. Laws 2001, Chapter 38.

### AMWUA Position

No position.

Since water logging still exists, extending the exemption for another 10 years does not, at this time, appear harmful to water management in the Phoenix AMA. Positions may change, however, if the Governor's Water Management Commission (GWMC) decides that the exemption makes the achievement of safe yield more difficult.

26 January: The Governor, in her address to the Legislature, indicated that she hoped the Legislature would refrain from considering significant amendments to the Groundwater Code this session, and await recommendations from her recently-established Governor's Water Management Commission (GWMC) due to issue its report late this year. Evidently, H 2020 is not considered a significant amendment since

DWR does not oppose this bill. Yet a question arises. One of the issues raised by DWR before the GWMC is whether the Groundwater Code's water conservation requirements should apply to all sources of water, not just groundwater. Conservation requirements do not now apply to surface water use. Unsurprisingly, drainage groundwater withdrawn and used in the water logged area at a turf facility (golf course for example) or a riparian habitat is currently accounted for as surface water in determining compliance with conservation requirements. H 2020 would extend this exemption through 2019. Can anyone spell "disconnect"?

**H 2068      GROUNDWATER TRANSPORTATION FROM THE HARQUAHALA IRRIGATION NON-EXPANSION AREA (INA)**

(Gleason) This legislation seeks to amend that portion of the Groundwater Code which governs the transportation of groundwater from the Harquahala INA into the AMAs. The bill would allow lessees of irrigated land in the INA to transport groundwater from leased irrigated land in the INA into the AMAs. Current law only provides owners, as opposed to lessees, with the right to transport. It would also allow groundwater which will be transported to be withdrawn from any location within the INA, not just from the appurtenant irrigated land. AMA well-spacing requirements would apply. Further, any person, not just political subdivisions, could purchase or lease irrigated land in the INA and transport groundwater withdrawn from within the INA.

Status

Referred to House NRA, Rules.

AMWUA Position

Oppose.

By resolution dated January 11, 2001, the AMWUA Board of Directors urged the Legislature to refrain from considering any major water legislation this session pending recommendations from the Governor's Water Management Commission. This bill is a major piece of water legislation which 1) concerns the rights to transport groundwater into a safe-yield AMA; 2) essentially nullifies the doctrine of appurtenancy which requires groundwater to be withdrawn from the land to which the right is appurtenant; and, 3) may, due to the proposed well concentration, present a risk of subsidence in an area with AMA water transportation infrastructure.

19 January: This bill is being supported by Vidler Water Company which owns a number of parcels of land in the Harquahala INA, and it may have a swamp to cross. Ideological opposition seems to be first jelling around the bill's provision that would essentially do away with the doctrine of appurtenancy. Some are concerned about the precedent that might set for the rest of Arizona's water statutes. Generally, groundwater has to be withdrawn from the land to which the right is appurtenant. In other words, the withdrawal right is tied to the land. Concentrating withdrawals pursuant to scattered parcels of irrigated land from one location is generally viewed unfavorably regardless of whether it is consistent with geo-hydrological or economic reality. Unfortunately, if you are a supporter of this bill, the word on the mall is that where Vidler wants to concentrate its pumping is in some kind of proximity to an area prone to land subsidence and also near the CAP aqueduct. *¡Hijole!* Will keep you informed.

2 February: For your information, attached to the end of the Summary is the AMWUA Legislative Issue Paper entitled "The Governor's Water Management Commission." It is the background paper to the AMWUA Legislative Resolution referenced above.

9 February: The bill is now moving as S 1519.

**PROVISIONAL WATER MANAGEMENT AREA**

(Huppenthal) This bill provides for an election to establish a provisional water management area (PWMA) in which groundwater is withdrawn from a single aquifer which is not within an Active Management Area (AMA). At the same election, 70% of the qualified electors, 70% of the land owners and 70% of the well owners within the PWMA must approve a water management charter that will contain a system for determining the type and amount of water use that is permissible for each existing user of the aquifer, a system for determining whether any new use of the aquifer is permissible and the type and amount of that new use, provisions to authorize and regulate the sale, lease or other marketing of the aquifer's groundwater and its use, and other provisions to regulate the use of water from the aquifer. Notwithstanding any other provision of Arizona water law, a water management charter approved in the election will govern the management of groundwater in the PWMA.

Status

Referred to House NRA, Rules.  
Withdrawn from House NRA.  
Referred to House Health, Approp.

AMWUA Position

No position. No longer tracking. See 2 March note.

Even though this bill only applies to areas outside of AMAs, any effort that would essentially and permanently trump Arizona's non-AMA groundwater laws, limited though they might be, should be viewed with extreme caution. The problem the bill is supposed to solve is unknown at this time, but the solution proposed seems akin to cutting butter with a chain saw.

23 February: Has become a vehicle for a striker.

2 March: The bill now appropriates money to buy and distribute bicycle helmets for kids that are on AHCCCS.



**NOTE: NOW SEE H 2524 FOR THE NEXT ITERATION OF H 2362**

**H 2362 STATE LAND DEPARTMENT BUSINESS ENHANCEMENTS**

(Flake, Cooley, Gleason; Guenther) A SLD “housekeeping” bill was strike everything amended in Senate COW as follows below:

Forty-fifth Legislature Guenther  
First Regular Session H.B. 2362

**GUENTHER FLOOR AMENDMENT**

**SENATE AMENDMENTS TO H.B. 2362**  
(Reference to House engrossed bill)

Page 8, after line 22, insert:

“Sec. 10. Title 37, chapter 2, Arizona Revised Statutes, is amended by adding Article 20, to read:

ARTICLE 20. STATE LAND, WATER AND WILDLIFE AFFECTED BY FEDERAL AGREEMENTS

37-620.31 Municipal and county authorities relating to state resources; limitations

A. COUNTIES, CITIES AND TOWNS MAY ENTER INTO AGREEMENTS WITH FEDERAL AGENCIES THAT AFFECT STATE LAND, WATER OR WILDLIFE LOCATED IN WHOLE OR IN PART WITHIN THE JURISDICTION OF THE COUNTY, CITY OR TOWN. ANY AGREEMENT UNDER THIS SUBSECTION SHALL NOT BECOME EFFECTIVE OR ENFORCEABLE UNTIL WRITTEN CONSENT IS OBTAINED FROM THE GOVERNOR AND EACH OF THE FOLLOWING AS REQUIRED:

1. THE STATE LAND COMMISSIONER IF THE AGREEMENT AFFECTS THE USE OR MANAGEMENT OF STATE LAND.

2. THE GAME AND FISH COMMISSION IF THE AGREEMENT AFFECTS THE MANAGEMENT OF WILDLIFE.

3. THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES IF THE AGREEMENT AFFECTS THE USE, TRANSFER, ENCUMBRANCE OR MANAGEMENT OF ANY WATER RIGHTS OR WATER RESOURCES OWNED BY ANY PERSON OR ENTITY OTHER THAN THE COUNTY, CITY OR TOWN.

B. A COUNTY, CITY OR TOWN SHALL NOT ENACT ANY ORDINANCE, RULE OR TAX RELATING TO THE FOLLOWING:

1. THE MANAGEMENT, HARVEST, USE OR CONSERVATION OF WILDLIFE WITHOUT THE WRITTEN CONSENT OF THE GAME AND FISH COMMISSION AND THE GOVERNOR.

2. THE MANAGEMENT OF STATE LAND WITHOUT THE WRITTEN CONSENT OF THE STATE LAND COMMISSIONER AND THE GOVERNOR.

3. THE USE, TRANSFER, ENCUMBRANCE OR MANAGEMENT OF ANY WATER RIGHTS OR WATER RESOURCES OWNED BY ANY PERSON OR ENTITY OTHER THAN THE COUNTY, CITY OR TOWN WITHOUT THE WRITTEN CONSENT OF THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES AND THE GOVERNOR.”

Amend title to conform

3/30/01  
4:16 PM  
S: SA/jas

## Status

Do pass from Senate COW.

## AMWUA Position

Oppose.

Dealing just with the water issue, that a municipality would have to get the Governor's and DWR's consent on agreements with federal agencies and whenever it enacts an ordinance or rule or makes a zoning decision concerning another's use, transfer, encumbrance or management of its water rights or resources, especially within the municipality's corporate limits, is unacceptable.

6 April: This stealth amendment, described as micro-surgery with tactical nukes, surfaced late Friday afternoon and passed Senate COW Monday morning. It has the support of the State Land Department (SLD) and the Arizona Game and Fish Department (AGFD) and, by implication, the Governor. Evidently, the SLD feels that agreements being developed in this state between local jurisdictions and federal agencies regarding Endangered Species Act (ESA) issues will affect the use and management of state lands without any input from the SLD. Ditto for the AGFD with respect to critter management, harvest (taking?), use or conservation. And then there is the whole issue in subsection B of ordinances, rules (zoning?) and taxes which, it appears from the language, need not have anything to do with the enforcement of agreements with federal agencies that affect state land, water or wildlife located in whole or in part within the jurisdiction of the local government. DWR will probably not oppose the amendment (how could it?) and have denied any parentage or participation. We take them at their word.

Nevertheless, the veto authority given DWR over certain aspects of municipal water management decisions is unacceptable and some claim unconstitutional. It has been reported that the Governor's office is backing off a bit indicating that the amendment goes too far. The sponsors of the amendment recognize that the amendment has water-related problems, as is typical of stealth amendments, and have indicated they will be addressed. Indeed, there is a concerted effort, with legislative support, to remove any references to water rights or resources from the amendment when it is next worked. However, it is possible that the institutional scope of the bill will be expanded to include irrigation districts, agricultural improvement districts (SRP) and multi-county water conservation districts (CAWCD).

The primary target of the bill appears to be Pima County's (*Otra vez, un mil gracias Baja*) "Sonoran Desert Conservation Plan which, for all practical purposes, is a Habitat Conservation Plan under Section 10 of the ESA. Leafheads also claim that the amendment would gut municipal efforts to limit such

things as hunting in established Mountain Preserves. It has been reported that H 2362, as amended, will either be referred to another committee in the Senate for hearing or for hearing before a Senate-House conference committee. On the other hand, it may already be dead. Stay tuned; it could be *una lucha libre a todo dar*.

13 April: See H 2524.



**NPDES PRIMACY**

(Huffman, Blendu, Graf, Landrum, Gullett, Allen, Miranda, Binder, O'Halleran; Guenther) This is the bill that the Arizona Department of Environmental Quality (DEQ) had introduced to provide the statutory foundation and funding that will allow it to assume primary permitting and enforcement responsibility (commonly referred to as "primacy") from the U.S. Environmental Protection Agency (EPA) for the National Pollutant Discharge Elimination System (NPDES) permit program for discharges to the waters of the United States.

Status

Referred to House Env, County-Muni, Rules.  
Do pass with amendment from House Env.  
Do pass with amendment from House County-Muni.  
Do pass from House Rules.  
Do pass from House COW.  
Passed House, 31 - 25.

Referred to Senate NRAE, Approp, Rules.  
Do pass with amendment from Senate NRAE.  
Do pass from Senate Approp.  
Do pass from Senate Rules.  
Do pass from Senate COW.  
Passed Senate, 20 - 9.

Returned to House for action on Senate amendments.  
House concurred.  
Passed House, 42 - 16.

\*

**Signed by Governor. Laws 2001, Chapter 357.**

AMWUA Position

Support.

Consensus has been achieved and issues identified below satisfactorily resolved. See 9 March note below.

At the present time [January 12, 2001], most affected interests, including the members of AMWUA, are sympathetic with DEQ's desire to change its statutes in such a way to provide the State with the authority to assume primacy. However, there are a number of significant issues that must be clarified before DEQ can expect support. For illustrative purposes, some of these issues are:

- Clarification of DEQ's authority to impose fines, take enforcement action and implement a program that is no more stringent than EPA's.
- Clarification that like EPA's program, the costs of DEQ's program will not be directly borne by the permittees.
- Clarification that DEQ will take enforcement action against a third party if that third party's action caused an illegal discharge by the holder of a permit issued by DEQ.
- Clarification that DEQ will not automatically assume EPA's role in any consultations that may be required by the Endangered Species Act.
- Clarification that DEQ's administration of the NPDES program will be subject to a performance audit within 3 to 5 years after primacy is assumed.

19 January: Until recently, DEQ was reluctant to pursue primacy unless there was an Arizona consensus by the affected parties that primacy was in the best interests of the State and that DEQ would not act as nothing more than an "arm" of EPA. Last year, DEQ informed the affected parties that it was going to draft legislation and pursue primacy. A "stakeholder" group was formed in the fall that provided a "sounding board" for DEQ's proposed changes to its statutes. Many in the group feel (rightly or wrongly is irrelevant) that DEQ has dismissed their input and has consistently resisted other than minor changes to its proposed legislation. In any event, the legislation was introduced and a "drafting subcommittee" has been formed to solve the remaining, outstanding issues prior to legislative hearing. AMWUA is cautiously optimistic that, even with some difficulty, consensus ultimately will be achieved.

2 February: Progress is being made in the drafting subcommittee. Consensus appears to have been reached concerning DEQ's scope of legal authority and that state NPDES primacy will not be funded by fees. The interface between NPDES primacy and pretreatment programs has also been addressed. The remaining issues are:

a. Vicarious Liability: Although not, strictly speaking an NPDES issue alone, "vicarious" liability is a major issue. As an example, on several occasions in the recent past, contractors for the Arizona Department of Transportation have been working in the public rights-of-way and in the process have severed sewer mains causing the discharge of raw sewage into the environment. DEQ proceeded with enforcement action against the owner/operator of the sewer main not the contractor who caused the illegal discharge. AMWUA and its member cities support legislation to require DEQ to take the appropriate enforcement action against the third party for these kinds of third party actions. Additionally, in other parts of the country, EPA has attempted to make NPDES permittees responsible for water quality violations caused by third parties. Limits included in an NPDES permit should only be included to the extent necessary to remedy any violations caused by the permittee's discharge. HB 2426 should be clarified to provide that an NPDES permittee would not be required to offset

pollution caused by other point or non-point sources. DEQ continues to oppose any attempts to limit what they perceive as their enforcement discretion.

b. Endangered Species Act: DEQ has indicated that primacy will mean that consultation required by the Endangered Species Act between EPA and the U.S. Fish & Wildlife Service will no longer be required for State-issued NPDES permits to non-Federal facilities. AMWUA and its member cities believe that HB 2426 should clearly indicate that DEQ would not assume this responsibility on behalf of EPA. DEQ maintains that this kind of provision would raise a “red flag” to EPA. The Department maintains that this can be adequately addressed in the delegation agreement with EPA, and the posture appears to be one of “trust us”.

c. Legislative Review: Given the radical change in the State’s regulation of water quality related activities that would result from primacy, and the substantial State investment in the program, AMWUA and its members believe consideration should be given to a mandatory Legislative review or audit of its performance under primacy within 3 to 5 years after the State assumes the program. DEQ opposes this requirement.

d. Effect On Other State Programs: AMWUA and its members believe HB 2426 should be clarified so that an NPDES permit is separate and distinct from an aquifer protection permit or a reuse permit, which are presently required as a matter of State law. In some cases, it may be possible that the terms and conditions of a State-issued NPDES permit may adequately protect groundwater quality and an aquifer protection permit may be unnecessary. The drafting subcommittee is hopeful that session law can be included in HB 2426 which would remedy this problem.

16 February: Everyone is still talking and negotiating in an attempt to reach a consensus amendment before the House Counties and Municipalities hearing. The strike-everything amendment in House Environment did not adequately address the issues of non-responsible party liability (previously referred to as vicarious liability) and DEQ’s interface with the Endangered Species Act. Discussions are continuing. The legislative review language in the amendment could be improved but the direction is promising. The effect of NPDES primacy on other DEQ programs has been partially remedied though the issues concerning the scope of the upset defense and the permit as a shield are still on the table. But again, resolution prognosis appears positive. For your information, attached to the end of the Summary is the text of a letter sent to members of the House Environment Committee.

The only testimony in direct opposition to NPDES primacy was offered by the Center for Law in the Public Interest and the Sierra Club. In essence they argued the “gorilla in the closet.” That is, state primacy is a charade because the oversight role of EPA means it still ultimately calls the shots. That being the case, they asked (rhetorically?) why should or why would the state want to assume the added costs and responsibilities associated with primacy without the requisite authority?

23 February: The probability that a bill can be lovingly crafted with which everyone can coexist is quite high. Next Tuesday hearing in House Counties and Municipalities should tell the tale.

2 March: It appears consensus has been achieved.

9 March: Consensus and a satisfactory resolution has been achieved, but keep your fingers crossed. As they say in Roatán, “Jus because de waters be calm don’t mean no be alligators.” The following items summarize the consensus reached and indicates where further effort will be required.

Scope of Legal Authority: Originally, DEQ proposed legislation that would considerably broaden their authority and provide the legal capability to develop and implement a program more stringent than the program required by Federal law and regulations. Presently, HB 2426 has been more narrowly crafted and DEQ agreed to pursue the legal authority necessary to develop and implement a program that is limited in scope to the authority necessary to obtain primacy from EPA.

Program Funding: Presently, EPA does not charge a permit applicant any fees related to administration of the NPDES permit program, and DEQ consistently indicated that they would rely on existing EPA grant funds and additional State appropriations to fund the additional effort necessary (approximately 9 additional FTE’s) to administer an AZPDES program. Originally, DEQ proposed legislation that would provide them the authority to charge a permit applicant a permitting fee. DEQ eventually agreed to statutory language that prohibits DEQ from charging any fees for an AZPDES permitting action.

Non-Responsible Party Liability: In some instances in the recent past, DEQ has initiated enforcement action against a permittee for permit violations caused by a third party whose actions were neither directly nor indirectly within the control of the permittee. This issue is related to both the AZPDES program and the Aquifer Protection Permit (APP) program currently authorized under State law. DEQ consistently maintained that a violation of a permit, regardless of the identity of the person who caused the violation, was ultimately the responsibility of the permittee. While HB 2426 does not provide complete protection for a permittee, it does indicate that in the event of a violation of either an APP or an AZPDES permit, a court will consider the extent to which the violation was caused by a third party when determining the amount of any civil penalties.

Pretreatment Program Authority: Originally, DEQ proposed legislation that would provide them with the independent authority to develop and implement an industrial pretreatment program in those instances where a permittee does not develop its own program. DEQ eventually agreed to statutory language that provides for the DEQ oversight necessary to require permittee development and enforcement of a local pretreatment program consistent with Federal laws and regulations.

Endangered Species Act: Initially, DEQ indicated that primacy meant that consultation required by the Endangered Species Act (ESA) would not be required for State-issued AZPDES permits, but steadfastly resisted any attempts to memorialize this position in HB 2426 because DEQ maintained that this would raise a “red flag” with EPA and jeopardize delegation of the NPDES program. DEQ eventually admitted that some ESA-related activity would be required, and agreed to language in HB 2426 which limits any permit conditions associated with threatened or endangered species to those conditions required by the ESA. This issue is expected to be the

subject of additional negotiations with EPA as the memorandum of agreement is developed.

Legislative Review: HB 2426 provides for a hearing by the Governor's Regulatory Review Council on the memorandum of agreement before the memorandum of agreement is submitted to EPA Region 9. In addition, the Legislature's committee of reference is required to review the implementation and administration of the AZPDES program five years after the program is initiated by DEQ.

Other Issues: There are several other issues that have been adequately addressed in HB 2426 insofar as the AZPDES program is concerned. To the extent that these issues should also have been considered for the APP program, DEQ has steadfastly refused to consider any modifications to their authority on this count. Further legislation will be required.

All in all a positive outcome, and the parties involved all deserve kudos. It highlights what many consider a hallmark of the Arizona water community---not only the ability to work together and seek consensus but the desire and commitment to achieve it as well.

23 March: As can be seen from the vote, primacy barely squeaked through. Why is unknown. Perhaps a measure of complacency was at work. Party affiliation does not seem to provide a complete explanation---7 Dems voted in the majority and 9 Republicans voted against H 2426. Of the Dems in favor 5 are from predominately rural districts which may hint at ESA concerns. Of the Republicans opposed, your guess as to why would be appreciated. (Budget impact?) The 16 Dems in opposition (and some Republicans?), it appears, may have been sympathetic to the argument that state primacy is really only a charade because the oversight role of EPA means it still ultimately calls the shots. That being the case, why should or why would the state want to assume the added costs and responsibilities associated with primacy without the requisite authority?

6 April: The love-fest carries on with the exception of the Sierra Club which continues to raise its concerns about funding, the "no more stringent than" provisions and citizen suits. The Approp hearing next week could be crucial, not only substantively (\$) but politically (spats between the House and Senate over who is and who is not moving whose bill).



## H 2524      **MANAGEMENT OF STATE LAND AND RESOURCES**

### Status

Do pass with strike everything amendment from Senate NRA&E.  
Do pass from Senate Rules.  
Do pass with amendment from Senate COW.  
Passed Senate, 20 - 8.

Returned to House for action on Senate amendments.  
House concurred.  
Passed House, 52 - 0.

### AMWUA Position

Oppose.

13 April:      Arguably, the strike everything amendment to H 2524 is a “new and improved” iteration of H 2362. But considering where H 2362 started, calling H 2524 new and improved is almost damning with faint praise. Nevertheless, all direct references to water and DWR have been removed. Cities, towns and counties are prohibited from entering into agreements with the feds “...that limit, restrict or conflict with any statute, rule or order pertaining to the use, management or value of wildlife, lands, or resources [water?] owned or controlled [What does “controlled mean?”] by this State.” To determine whether an agreement limits, restricts or conflicts with any statute, rule or order pertaining to the use, management or value of wildlife, lands or resources, consultation is specifically required with the State Land Department (SLD) if State lands are involved, Game & Fish (G&F) if the management of wildlife is involved and any other appropriate state agency if the agreement affects any other land in which the State holds a real property interest. Moreover, any ordinance, rule or order that limits, restricts or conflicts with Title 17 (Game and Fish) or rules adopted pursuant to Title 17 may not be enacted or issued, period. The amendment also states that it should not be construed to limit the authority of local jurisdictions to administer and enforce provisions of law for which authority is expressly granted under State law. That’s nice, but what about the converse? Does it mean that the amendment can be construed to limit the authority of certain cities to administer and enforce provisions of law for which authority is not expressly granted under State law? “Charter” cities have the right to administer and enforce provisions of law unless authority is expressly prohibited under State law.

Local jurisdictions that testified were uniformly opposed to the amendment. Support came from the Governor’s office, G&F, SLD and their clients. Those in favor bemoaned the fact that they felt ignored and left out of the agreements being discussed between local jurisdictions and the feds. They stated they only wanted cooperation, coordination and consultation, not veto power. Opponents responded that if that is what the agencies only want, why doesn’t the amendment say so instead of raising concerns about preemption and judicial relief? Who is it that once said legislation is often

a solution in search of a problem? In any event, discussions continue with further compromise expected.

27 April: The Senate COW amendment removed provisions dealing with requirements that must be met by counties and municipalities before entering into agreements with the Feds that affect lands, wildlife or resources owned or controlled by the state. In addition, the provision prohibiting the enactment or issuance of any ordinance, rule or order that limits, restricts or conflicts with Title 17 (Game and Fish) or rules adopted pursuant to Title 17 was also removed. The bill now only modifies and updates several procedures of the SLD relating to fees, land sales and notice requirements.

ISSUE A. GOVERNOR'S WATER MANAGEMENT COMMISSIONBackground

The performance audit of the Arizona Department of Water Resources (DWR) conducted by the Auditor General and released on April 23, 1999 addressed DWR's efforts to ensure a long-term water supply for the state and concluded that a number of statutory restrictions and exemptions limit Arizona's ability to achieve the statutory goal of safe yield by 2025 in the Phoenix and Tucson metropolitan areas. The report recommended establishing a study commission to address the State's ability to achieve the safe yield goal. Rita Pearson-Maguire, the DWR Director, did not dispute the audit's finding in her written response to the audit.

Many in the Arizona water community involved in the development of the Third Management Plan required by the 1980 Groundwater Management Act (GMA) had already reached much the same conclusion. Considerable interest was expressed in evaluating the current Groundwater Code and management plan provisions and in developing better tools for achieving safe yield in the safe yield Active Management Areas. In the Summary of Hearing and Findings on the Third Management Plan (TMP), the Director noted this interest and supported the establishment of a study commission to provide focus on regional and local management actions necessary to ensure a sustainable water supply.

Governor's Water Management Commission

On May 2, 2000, at the Conference on the 20<sup>th</sup> Anniversary of the Groundwater Management Act, the Governor formally announced the establishment of her Water Management Commission.<sup>1</sup> The Governor's Water Management Commission (GWMC) is tasked to:

1. Review the Active Management Areas' (AMA) water quantity management goals, policies and programs.
2. Determine the adequacy of water management programs to meet AMA goals.
3. Identify other water management issues which should be addressed at the State or regional levels.

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<sup>1</sup> Executive Order 2000-7

4. Develop recommendations to the Governor and the Legislature on appropriate changes in statute, rules or DWR policies and programs.

The 45-member GWMC has begun its work and shall submit an interim report on or before June 1, 2001, and final report to the Governor on or before December 1, 2001 which, in preparation for the 2002 legislative session, shall contain the findings and recommendations of the Commission.

### DWR & AMA Agriculture

During development of the TMP, the AMA agricultural community raised a number of issues regarding the TMP's agricultural base conservation program and requested that its adoption be deferred and that alternative agricultural conservation programs be developed. In response to these concerns, the Director of DWR indicated she was willing to delay adoption of the base program under certain conditions agreed to by the AMA agricultural community. Prior to the GWMC's formal establishment and by letter agreement dated December 10, 1999, DWR and the AMA agricultural community<sup>2</sup> mutually agreed, among a number of conditions, that:

- The AMA agricultural community will support the establishment of the GWMC and will participate in its work.
- When DWR and the AMA agricultural community agree on additional alternative conservation programs, DWR will take steps to implement these programs. Where appropriate, DWR will request any necessary legislation, or refer to the GWMC the various components of the proposed alternative programs, and the AMA agricultural community will work with DWR to further these purposes.
- The AMA agricultural community and DWR will jointly support any legislation that is necessary to implement mutually agreed upon alternative agricultural conservation programs. The AMA agricultural community will not sponsor or support any major agricultural conservation program legislation without DWR's concurrence until the 2002 legislative session or the formal adoption of the TMP's agricultural base conservation program.

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<sup>2</sup> Members of the agricultural community in the AMAs which signed the letter agreement with DWR include the Salt River Valley Water Users' Association, the Salt River Project Agricultural Improvement and Power District, Maricopa-Stanfield Irrigation & Drainage District, Central Arizona Irrigation & Drainage District, New Magma Irrigation & Drainage District, and the Arizona Agri-Business Council.

## Recommendation

Considering the task facing the GWMC and that its final report and recommendations are not due until December 2001 and recognizing the mutually agreed upon conditions contained in the December 1999 letter agreement between DWR and the AMA agricultural community, the Arizona Municipal Water Users Association and its member cities should neither sponsor nor support any major water legislation involving Title 45 of the Arizona Revised Statutes without the consensus of the AMA water community until the 2002 legislative session.

JRM: cg  
h:\bob\leg-issue.01a



RE: HB 2426 ENVIRONMENT; NPDES PRIMACY

Dear Representative:

Section 402 of the Federal Clean Water Act establishes the authority for the U.S. Environmental Protection Agency (EPA) to issue and enforce National Pollutant Discharge Elimination System (NPDES) permits authorizing the discharge of pollutants into waters of the United States. As is the case with several other EPA programs, EPA may delegate primary enforcement responsibility, commonly referred to as “primacy”, to a State when it finds that the State has the legal authority, and financial and technical capability to implement a State permit program at least as stringent as the Federal program. A state delegated primacy state is responsible for issuing and enforcing permits under State law, with EPA oversight pursuant to a memorandum of agreement between EPA and the State.

Until recently, the Arizona Department of Environmental Quality (DEQ) was reluctant to pursue primacy unless there was an Arizona consensus by the affected parties that primacy was in the best interests of the State. However, last fall DEQ informed the affected parties that DEQ was going to draft legislation and pursue primacy. DEQ formed a “stakeholder” group to provide feedback on their efforts. After DEQ drafted the basic legislation in mid-December needed to assume primacy, introduced as HB 2426, a “drafting subcommittee” was established in an attempt to craft an amendment that would resolve the remaining issues.

The Arizona Municipal Water Users Association (AMWUA), the members of which are the Cities of Chandler, Glendale, Goodyear, Mesa, Peoria, Phoenix, Scottsdale, Tempe and the Town of Gilbert, has participated in the stakeholder and drafting subcommittee processes and we greatly appreciate DEQ’s efforts at inclusiveness. AMWUA is not only sympathetic to DEQ’s desire to have the State assume NPDES primacy, we support it as a matter of philosophy, but not as presently structured. DEQ’s proposed amendment to HB 2426, which will be offered as a strike everything amendment at the Committee meeting on Tuesday, does resolve a number of thorny issues, but it also has left unresolved some significant issues that must be settled. Some of the unresolved issues are primarily technical, some minor and some not so minor. Other issues are more policy oriented in nature. This letter addresses two policy issues important to AMWUA and its members---non-responsible party liability and the Endangered Species Act.

Non-Responsible Party Liability Contractors for the Arizona Department of Transportation working in public rights-of-way have severed sewer mains, causing the discharge of raw sewage. DEQ proceeded with enforcement action and imposed fines against the city as owner/operator of the sewer main as well as the contractor who caused the discharge. AMWUA and its member cities, and other municipalities throughout Arizona, support an amendment to HB 2426 requiring DEQ to take the appropriate enforcement action only against the responsible party for these kinds of discharges. The language in HB 2426 should be clarified to provide that an NPDES permittee would not be held responsible for pollution caused by others beyond the permittees control. In other parts of the country, EPA has attempted to make NPDES permittees responsible for mitigating water quality violations caused by others.

DEQ has asserted that these kinds of limitations on their enforcement discretion under State primacy are unacceptable to EPA. Apparently, DEQ and EPA agree that the government does not have to prove that the “violation” was at fault to prevail in a civil action against the violator. In other words, the government doesn’t have to prove that the person it takes enforcement action against caused the discharge. AMWUA is reminded of the struggle a few sessions back to repeal what many felt was the unjust and unfair “joint and several liability” funding foundation of the Water Quality Assurance Revolving Fund. Under joint and several liability, one responsible party could be held liable for all the environmental damage caused by all other responsible parties. Here the situation is even more egregious---a party held liable is not even responsible!

Non-responsible party liability is not an NPDES issue alone; the problem is applicable to other permits issued by DEQ. Consequently, it has been suggested that the parties concerned about non-responsible party liability seek relief in legislation with a wider scope, preferably in another bill or even next session. That is a possible course of action but one that is extremely problematic. It is AMWUA’s understanding (and we are sure we will be corrected if wrong) that any change to the State’s NPDES primacy statutes after delegation must be acceptable to EPA. What does that mean? Must EPA sign off before the Legislature can act? or does EPA have the right to nullify an act of the Legislature?

Endangered Species Act (ESA) DEQ has indicated that primacy will mean that a consultation required under Section 7 of the ESA between EPA and the US Fish & Wildlife Service (USFWS) no longer be required for NPDES permits, although an as yet undefined DEQ process with the Arizona Game and Fish Department (AGFD) has been mentioned as necessary by DEQ. AMWUA and its members are experienced in the difficulties of the Section 7 consultation process. Clearly, removing this EPA/USFWS role in the NPDES permit process would be a positive outcome, but only if another agency is not inserted as a substitute or an additional agency requiring additional coordination is not introduced.

AMWUA and its member cities have argued that HB 2426 should clearly indicate that DEQ/AGFD would not assume this role on behalf of EPA/USFWS, that permits are not delayed or rendered more costly while ESA issues are addressed, and that requirements are not imposed that are more stringent than federal law. DEQ, however, maintains that these kinds of provisions would raise “red flags” to EPA and that our concerns could be adequately addressed in the memorandum of agreement (MOA) with EPA. Subsequently, AMWUA suggested that the Legislature retain the right to approve the terms of the MOA. We were informed that such oversight could raise constitutional issues concerning the separation of powers between the executive and legislative branches but that DEQ would solicit public input on the draft MOA and agree to a hearing on the MOA by the Governor’s Regulatory Review Committee (GRRRC). While this offer appears positive on its face, we have yet to see the proposed language. A truncated GRRRC process with merely a “pro forma” public hearing is insufficient.

Every potential State-issued NPDES permittee must play close attention to the terms of the MOA concerning endangered or threatened species and critical habitats, i.e., ESA consultation. The MOA sets forth each party’s responsibilities with respect to the administration of the program, including EPA’s role as the oversight authority. While the issuance of a State permit is not a Federal action, the execution of the MOA is a Federal action and is subject to the Section 7 consultation process. In Texas, the MOA was the subject of a biological opinion issued by the USFWS pursuant to a Section 7. A review of the biological opinion indicates that assumption of NPDES primacy appears to include some significant responsibilities on the part of the State with respect to the review of any State permits which may affect an endangered or threatened species. In addition, while the process described in the Texas biological opinion does not approach the level of detail that is encompassed by a Section 7 consultation, the role of the USFWS in a primacy program appears rather important.

Terms of the NPDES primacy MOA between EPA and the Navajo Nation EPA, the most recent example of the EPA Region 9 position, present a troublesome model. For instance, the Navajo Nation EPA [read DEQ] will coordinate with the Navajo Nation Fish and Wildlife Department [read AGFD] on NPDES issues. (The Navajo Nation Fish and Wildlife Department has review authority to assure that projects for new facilities, including construction and operation, do not result in a take of endangered species. AGFD is not believed to have such authority.) The Navajo Nation EPA [DEQ] will then make an initial determination of effect on all endangered species that may be influenced by the issuance of the permit. This determination will be provided to USFWS and the EPA for their review. If the Navajo Nation EPA [DEQ] determines that the permit will not likely adversely affect an endangered or threatened species or critical habitat and USFWS disagrees with that determination, then the Navajo Nation EPA [DEQ] will consult with USFWS to identify adverse effects and eliminate them. If USFWS notifies EPA that adverse effects may not be eliminated prior to permit issuance, EPA will investigate. If EPA determines that endangered or threatened species or critical habitats will be adversely effected, then EPA is obliged to object to issuance of the permit and enter into a formal Section 7 consultation with the USFWS. If agreement can’t be achieved on how to prohibit adversely affecting endangered or threatened species or critical habitat, then the EPA may assume permit issuing authority, i.e., federalize the permit.

Presumably, the same kinds of issues with respect to ESA compliance will be the subject of negotiations between EPA and DEQ when the MOA is developed. It must be recognized that the role of the USFWS will be much more than minor and that the role of AGFD is completely undefined. Here in Arizona, with several endangered and threatened species inhabiting extended stretches of the State’s remaining perennial streams which are located primarily in rural areas, the future impact of the ESA in Arizona will remain significant, even under “primacy.”

AMWUA and its member cities thank you in advance for listening to our concerns about some of the issues involved with the State assuming NPDES primacy. We remain hopeful that resolution is possible. If you have any questions, please contact our office at your convenience.

March 5, 2001

The Honorable  
Arizona House of Representatives  
1700 West Washington  
Phoenix, Arizona 85007

RE: SB 1360 MOBILE HOME PARKS; WATER SERVICE

Dear Representative

On behalf of the Arizona Municipal Water Users Association (AMWUA), the members of which are the Cities of Chandler, Glendale, Goodyear, Mesa, Peoria, Phoenix, Scottsdale, Tempe and the Town of Gilbert, I want to inform you of our members' deep concerns and misgivings about SB 1360---Mobile Home Parks; Water Service. SB 1360 has been referred to the House Committees on Commerce & Economic Development and Energy, Utilities & Technology.

According to our understanding, SB 1360 is designed to resolve a long-standing dispute between an owner of a mobile home park and the City of Tucson over water rate charges. Perhaps the bill might do that but AMWUA believes it will create problems elsewhere in the state because in order to pass constitutional muster a state law must be of general applicability. SB 1360 is clearly applicable to Maricopa County as well as rural Arizona.

SB 1360 provides that for a mobile home park with a master water meter in which the landlord separately charges for water, the master meter operator shall read and record the sub-meter at each space in the mobile home park and provide a monthly copy of the recording to the municipal water provider that provides water to the mobile home park's master water meter. The municipal water provider shall then bill each space at its prevailing basic service single family residential rate. The landlord shall pay for all water delivered through the master meter that exceeds by seven percent the difference between the master water meter reading and the sum of the sub-meter readings. The municipal water provider shall rebate to the landlord two-thirds of basic service single family rate but at least \$3.50 monthly for the service of maintaining the landlord's water system, including the sub-meters and reporting the monthly readings.

Traditionally, municipal water providers maintain their water distribution systems up to and including the master meter. The master meter is installed and read by the municipal water provider and the landlord is billed accordingly. The landlord or someone the landlord hires, reads the sub-meters and then bills the tenants accordingly. The members of AMWUA believe their responsibility ends at the master meter. What the landlord does beyond the master meter and the maintenance of the mobile home park's water delivery system is the duty and responsibility of the landlord, not the municipal water provider. SB 1360 would alter this relationship. If the landlord of the mobile home park chooses to charge and bill tenants separately for water use, there must be a separate meter for every user and the landlord cannot charge more than the prevailing basic service single family residential rate charged by the municipal provider. These are requirements of state law, not municipal ordinance. Landlords of mobile home parks may have problems with the Mobile Home Parks Residential Landlord and

Tenant Act as written, but it is inappropriate to attempt to solve their problems on the backs of the ratepayers of municipal water providers. Indeed, one must acknowledge that if the landlord chooses to bill tenants individually and establish what amounts to a private water company, that is fundamentally the landlord's decision as a private entrepreneur.

AMWUA's members are uniformly troubled by SB 1360. AMWUA's members reject the idea that they should be held financially responsible for the first seven percent of the lost and unaccounted for water in the landlord's private water delivery system. A municipal water provider should not have to rebate to the landlord at least two-thirds of the money the municipal provider collects directly from the landlord's tenants so the landlord can maintain his or her private water company and help offset the administrative costs associated with reading the sub-meters and reporting the monthly readings to the municipal water provider. Indeed, the administrative costs associated with calculating, sending and collecting the bill now becomes the responsibility of the municipal water provider. Furthermore, why should SB 1360, as passed by the Senate, apply only to municipal water providers? Are there not other types of water providers, such as private water companies, that sell water to mobile home parks with a master meter and individual sub-meters?

SB 1360 is a disaster waiting to happen. If it were to become law, it may provide an enormous incentive for landlords to install sub-meters in those mobile home parks which currently do not have them. Who will perform a financial audit on what the landlords realize with the rebates they receive from the municipal water provider? Precedents may be established for other public utility services in mobile home parks as well as for other dwelling units that have master meters. SB 1360 will likely have numerous consequences, unforeseen and unintended for sure, but negative consequences nonetheless.

I look forward to discussing SB 1360 with you directly. In the meantime, thank you for your attention to our concerns. If you have any questions, please contact me at your convenience. We remain hopeful that the City of Tucson and the mobile home park owner will be able to resolve their dispute thereby making SB 1360 moot.

## 17 Thoughts To Get You Through The Governor's Water Management Commission Process

1. Indecision is the key to flexibility.
2. You can't tell which way the train went by looking at the track.
3. There is absolutely no substitute for a genuine lack of preparation.
4. The facts, although interesting, are irrelevant.
5. Someone who thinks logically is a nice contrast to the real world.
6. Things are more like today than they ever were before.
7. Anything worth fighting for is worth fighting dirty for.
8. Everything should be made as simple as possible, but no simpler.
9. I have seen the truth and it makes no sense.
10. If you can smile when things go wrong, you have someone in mind to blame.
11. The more you run over a dead cat, the flatter it gets.
12. There is always one more imbecile than you counted on.
13. This is as bad as it gets, but don't bet on it.
14. This is *deja moo* all over again.
15. The future ain't what it used to be.
16. You can observe a lot by watching.
17. Recommendations are solutions in search of a problem.

**ARIZONA MUNICIPAL WATER USERS ASSOCIATION  
SELECTED BILLS OF MUNICIPAL INTEREST  
2001 LEGISLATIVE SESSION**

SENATE BILLS - 1

as of May 11, 2001

NO.	TITLE	SPONSOR	SENATE					HOUSE					Gov. Sign.	
			COMMITTEES	CoW	3rd Read	COMMITTEES	CoW	3rd Read	Conf. Comm					
1296	Well Drilling	Guenther	NRAE ++++	Rules										
1360	Mobile Home Parks; Water Service	Solomon, Richardson, Bowers	Comm	Rules			Passed 16-12	Energy-Tech	Rules			Passed 47-10		Chap 351
1363	Prescott Active Management Area	Bennett; Blendu, Flake	NRAE ****	Rules										
1375	City Public Business Scope	Bowers	NRAE	Rules				County-Muni	Rules					
1402	Multi-Species Conservation Program Approp.	Guenther; Carruthers	NRAE +++++	Approp	Rules			NRA	Approp	Rules				
1454	DEQ; Fee Standards	Guenther; Flake	NRAE ****	Rules										
1519	ASU East Hemp Study	Hamilton, Guenther	NRAE	Rules			Passed 19-11	NRA	Rules			Passed 35-22		VETOED
SCM 1001	Drinking Water Arsenic Standard	Bundgaard	NRAE	Rules			FAILED 15-15							
SCM 1002	Glen Canyon Dam	Guenther; Carruthers	NRAE					NRA	Rules			Passed 54-6		
SJR 1001	Colorado River Surplus Guidelines	All Senators All Reps	NRAE	Rules			Passed 30-0	NRA	Rules			Passed 48-5		Governor Signed

Legend: ++++++ indicates AMWUA support  
----- indicates AMWUA opposition  
\*\*\*\*\* indicates no position taken by AMWUA

**ARIZONA MUNICIPAL WATER USERS ASSOCIATION  
 SELECTED BILLS OF MUNICIPAL INTEREST  
 2001 LEGISLATIVE SESSION**

HOUSE BILLS - 1

as of May 11, 2001

NO.	TITLE	SPONSOR	HOUSE					SENATE					Conf. Comm	Gov. Sign.
			COMMITTEES	CoW	3rd Read	COMMITTEES	CoW	3rd Read						
2020	Buckeye Groundwater Exemption	Gleason	NRA	Rules				NRAE	Rules			Passed 30-0		Chap 38
			*****											
2068	Groundwater Transportation	Gleason	NRA	Rules										
			----											
2263	Provisional Water Management Area	Huppenthal	Health	Approp										
			**** NO LONGER TRACKING											
2362	State Land Dept. Business Enhancements	Flake; Guenther												
			-----											
2426	NPDES Primacy	Huffman; Guenther	Env	County-Muni	Rules		Passed 42-16	NRAE	Approp	Rules		Passed 20-9		Chap 357
			-----											
2524	Management of State Land and Resources		NRA&H	Rules			Passed 52-0					Passed 20-8		
			-----											

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 ----- indicates AMWUA opposition  
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