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Legislative Summary

May 27, 2005

FINAL

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ARIZONA MUNICIPAL WATER USERS ASSOCIATION
2005 Legislative Summary
47th Legislature First Regular Session

TABLE OF CONTENTS

SENATE BILLS – 2005	May 27	1
S 1067	Appropriation; Zuni Water Settlement	1
S 1190	Exempt Wells	3
S 1235	Water; Central Arizona Groundwater Replenishment District Omnibus	4
S 1336	Rural Water Legislative Study Committee	7
S 1522	Environmental Protections; Budget Reconciliation	10
HOUSE BILLS – 2005	May 27	12
H 2174	Drought Emergency Water Transfers Assured and Adequate Water Supply Administration Fund	12
H 2277	Water Providers; Water Plans	13
H 2323	Tax Credits; Water Conservation Systems	17
H 2643	Lower Colorado River Basin Multi-Species Conservation Plan	18
H 2720	Water; General Industrial Use Permits	20
H 2728	Arizona Water Settlements Act	21
HOUSE MEMORIALS AND RESOLUTIONS – 2005	May 27	23
HCM 2007	Central Arizona Project Water Priority	23
APPENDICES		25
Appendix A	Arizona Department of Water Resources Executive Budget	25

* Indicates change from previous week.

S 1067 Appropriation; Zuni Water Settlement

(Flake, Bee, Blendu, Jarrett; O'Halleran) The sum of \$1,569,000 is appropriated as the state's share of the Zuni Indian Tribe Water Rights Settlement Act of 2003.

Status

Referred to Senate Approp, NRRRA, Rules.
Do pass with technical amendment from Senate NRRRA.
Do pass with amendment from Senate Approp.
Do pass with technical amendment from Senate Rules.
Do pass with amendment from Senate COW.
Passed Senate, 18 - 11.

Referred to House NRA, Approp P, Rules.
Do pass with amendment from House NRA.
Do pass from House Approp P.
Do pass from House Rules.
Do pass from House COW without House NRA amendment.
Passed House, 33 - 26.

Vetoed by Governor.

AMWUA Position

Support.

18 February: *Como siempre*, the amendment raided the Heritage Fund to pay for the state's share of the Zuni settlement. Does anybody know how many times the Heritage Fund has been raided since its inception?

1 April: The amendment overturned the raid on the Heritage Fund. The funds are now to come from the general fund.

22 April: Since House COW approved S 1067 without the NRA amendment, the raid on the Heritage Fund is back on.

6 May: Evidently, it was the raid on the Heritage Fund that led to the veto. Legislators are looking for a new source of money outside of the general fund. However, it was reported that state revenues will now exceed initial projections by \$170 million. As the budget battle continues, one senses it's all a matter of "principles." Too bad pragmatism isn't one of them.

13 May: SB 1552 (Environmental Protections; Budget Reconciliation) was used as the vehicle to fund the Zuni settlement. Monies will now be swept from the watercraft licensing fund.

S 1190 Exempt Wells

(Flake, Arzberger, Blendu; O'Halleran) This legislation, which has no impact on existing exempt wells, will, as of January 1, 2006, limit the ability to drill a new exempt well if any part of the land on which it is located is within 100 feet of an operating distribution system of a municipal provider with an assured water supply designation (AWS). An exception is provided if the property owner demonstrates to the Arizona Department of Water Resources that written verification of service availability has not been received within 30 days of a request or the cost of connecting exceeds the cost of drilling and equipping or if a necessary easement cannot be obtained from an adjacent landowner.

Status

Referred to Senate NRRA, Rules.
Do pass from Senate NRRA.
Do pass from Senate Rules.
Do pass with amendments from Senate COW.
Passed Senate, 24 - 4.

Referred to House NRA.
Do pass from House NRA.
Do pass from House Rules.
Do pass from House COW.
Voted back on House COW calendar for further amendment.
Do pass with amendment from House COW.
Passed House, 48 - 11.

Returned to Senate for concurrence.
Senate concurred.
Passed Senate, 26 - 4.

Signed by Governor. Laws 2005, Chapter 254.

AMWUA Position

Support. As you are well aware, an exempt well is one with a pump capacity of 35 gallons per minute or less and is exempt from all regulatory requirements of the Groundwater Code even though it is still eligible for all of its protections. If this bill passes the Legislature and is signed into law by the Governor, would that solve the problems with exempt wells? Absolutely not. As noted, this bill deals only with new exempt wells. Existing exempt wells would still be exempt from water quality requirements and the water management obligations of the Groundwater Code while still enjoying all of its regulatory protections. Nevertheless, the proposed legislation is an incremental step in the right direction in the

management of exempt wells within municipal providers' water service areas. It is worthy of support.

4 February: The bill passed unanimously. Kudos to all who have devoted so much time and effort to this legislation over the past two years or so. Well driller interests were, understandably, the only ones to testify in opposition. They cited economic impacts and private property rights concerns. Of perhaps greatest concern to them was their fear that this bill might turn out to be the first step in regulating exempt wells. First, the active management areas and then the entire state. They were assured by the sponsor that this bill would not be any such vehicle.

11 February: Arizona Department of Environmental Quality. *¡Escuche!* The Arizona Department of Water Resources does not consider monitoring wells as exempt wells. In addition, the reader is invited to go to the AMWUA Web site (www.amwua.org) and navigate to the 2005 Water Policy Resolution B and Issue Paper B which speak to exempt wells.

18 February: One of the COW floor amendments limited the provisions of this bill to existing active management areas. *Ni modo*. The establishment of new active management areas is highly unlikely. The other amendment satisfied the Department of Environmental Quality (see 11 February note) and, at the request of the Department of Water Resources, service area maps will be digitized so the Department of Water Resources can accurately determine if any part of the land on which the new exempt well is located is within 100 feet of an operating distribution system of a municipal provider with an assured water supply designation. Not that this makes me nervous, but.....

22 April: The House COW amendment provides a fourth exemption for drilling an exempt well within 100 feet of an assured water supply municipal provider's distribution system. It is called the "Household Security/Anti-Terrorism/Non-Governmental Interference/Survivalist" exemption. If a landowner can't qualify under any of the other three exemptions, an exempt well may be drilled if the landowner provides written verification from the municipal provider that the landowner shall not receive or request water service from the municipal provider while the exempt well is operational. If the landowner or any subsequent landowner receives water service, the exemption is revoked. Moreover, the director shall not consider any impacts a proposed non-exempt well may have on an exempt well drilled pursuant to this exemption in determining whether to grant a permit for the non-exempt well.

S 1235 Water; Central Arizona Groundwater Replenishment District Omnibus

(Flake, Arzberger; Brown, Chase, Mason, O'Halleran, Rios P.) The Central Arizona Groundwater Replenishment District is required, every ten years, to prepare a new Plan of Operation and submit it to the Arizona Department of Water Resources for approval. In developing the new Plan of Operation it became apparent some legislative changes to the Central Arizona Groundwater Replenishment District statutes were required. The

Central Arizona Groundwater Replenishment District staff, the Arizona Department of Water Resources, and the Central Arizona Groundwater Replenishment District Stakeholder Working Group met a number of times over the past year to develop legislative concepts and potential language for this session to support Central Arizona Groundwater Replenishment District's new Plan of Operation. SB 1235 is the result, and its provisions include:

a. Recalculation of the replenishment reserve target or the amount of water the Central Arizona Groundwater Replenishment District must store underground as a hedge against a future interruption in replenishment supplies.

b. Allow the use of water in the replenishment reserve before 2030, but only with the approval of the director of the Arizona Department of Water Resources.

c. Allow the Central Arizona Groundwater Replenishment District to levy an activation fee to be used by the Central Arizona Groundwater Replenishment District to acquire water rights and develop infrastructure necessary to meet its replenishment obligations.

d. A clarification that a Central Arizona Groundwater Replenishment District member must continue to replenish its groundwater use even if its assured water supply designation has been revoked or terminated.

e. Provide the Central Arizona Groundwater Replenishment District with additional financial protection against municipal providers that fail to pay their replenishment taxes.

f. Provide the Central Arizona Water Conservation District the authority to use the long-term storage credits it accrued using state demonstration funds for the benefit of Central Arizona Groundwater Replenishment District members located in the county from which the state demonstration funds were collected.

Status

Referred to Senate NRRA, Rules.

Do pass from Senate NRRA.

Do pass with technical amendment 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, 48 - 11.

Returned to Senate for concurrence.

Senate concurred.

Passed Senate, 23 - 5.

Signed by Governor. Laws 2005, Chapter 198.

AMWUA Position

Support. AMWUA was a member of the Central Arizona Groundwater Replenishment District Stakeholder Working Group and supports this consensus bill.

4 February: Unanimous support and no testimony in opposition. It brought back memories of the good old days with respect to the development and passage of major water legislation.

25 March: The House NRA amendment requires the director to review Central Arizona Groundwater Replenishment District's Plan of Operation if membership significantly exceeds the plan's projections or it appears Central Arizona Groundwater Replenishment District will be unable to acquire sufficient water to meet its obligations. The current statute is permissive.

Rural Water Legislative Study Committee

(Flake, Arzberger, Bee, Blendu, Cannell; Aguirre A., Brown, Chase, Mason, Paton) A ten-member rural water legislative study committee is established, five of which are appointed by the President of the Senate and five by the Speaker of the House. Six legislators will be involved, two from counties with a population of more than 175,000 persons but less than 250,000 persons and four from counties with less than 175,000 persons. Four members of the rural Arizona public will also be appointed, one who represents cities and towns, one who represents counties, one who represents the agricultural community and one who represents natural resource conservation districts. For rural Arizona, the committee shall evaluate information related to all water supplies and water use; determine the most effective methods of reclamation of water lost through natural processes; review options for developing alternative supplies of water; review opportunities for the reuse of water; identify the resources needed to enhance available supplies and infrastructure needs; and review information about the amounts of evaporation and transpiration from lands and foliage. The committee will submit a report of its findings and recommendations by December 31, 2006.

Status

Referred to Senate NRRA, Rules.
 Do pass with amendment from Senate NRRA.
 Do pass with technical amendment from Senate Rules.
 Do pass from Senate COW.
 Passed Senate, 24 - 3.

Referred to House NRA, Rules.
 Do pass with amendments from House NRA.
 Do pass with amendment from House COW.
 Do pass from House Rules.
 Passed House, 43 - 15.

Returned to Senate for concurrence.
 Senate refused to concur.
 Conference Committee Senate: Flake, Blendu, Cannell.
 Conference Committee House: Konopnicki, Mason, Brown.

House adopted conference report.
 Senate adopted conference report.
 Passed Senate, 25 - 4.
 Passed House, 58 - 0.

Signed by Governor. Laws 2005, Chapter 281.

AMWUA Position

No position at this time. Methinks this might be the “*el pozo negro*” within which any piece of proposed rural water legislation will be vetted before it can see the light of day.

11 February: The amendment added four members to the study committee---one from the Salt River Project (*no me digas*), one from the hard rock mining industry in rural Arizona, one from an irrigation district in rural Arizona, and one who has experience in marketing or developing properties in rural Arizona. Only party tongue in cheek, the study committee, to provide additional resources and balance, should also include a member from a Multi-County Water Conservation District and a member representing municipal providers in a county with a population greater than 3,000,000 persons who are designated as having an assured water supply. The amendment also provided that the study committee will review measures to enhance the value of water rights and protect water rights in rural Arizona and identify opportunities for the conservation of water in rural Arizona.

Testimony offered and the discussion on the bill clearly indicated that S 1336 is the *El Pozo Negro*. To summarize the discussion: Rural Arizona's water problems can not be solved with piecemeal regulatory measures. The resources (presumably financial) and the hydrological data and information must be gathered before the "regulatory hammer" is lowered on rural Arizona. The regulatory hammer is in legislation that is now moving forward but without the necessary information. That was not how it was done in putting together the 1980 Groundwater Code for urban Arizona. Rural Arizona should be treated the same so they, too, can get it right the first time. Well....., not exactly. The 1980 Groundwater Code was not a discrete, three-step process of first resources then information and only then regulation. If anything, those three elements proceeded in tandem. In fact, if the regulatory framework or hammer wasn't in place, one can argue the necessary resources would never have been produced and the necessary information never gathered. Nevertheless, the discussion was pregnant with implications. If one "hears" between the lines, this was one of the first times (maybe the first) at the Legislature where there seemed to be a general consensus that additional water-related regulation was necessary for rural Arizona and, moreover, a comprehensive water code for rural Arizona was not off the table. Just go slow. *¡Despacio! ¡Despacio! Después de todo, no se tome Zamora en una hora.*

1 April: One of the amendments provided that the Committee review the effectiveness of the adequate water supply program and evaluate the need for regional cooperation on water management in rural Arizona. *No problema*. The others dealt with increasing the membership from 14 to 21. The ones dealing with adding four public members and the chairs of the Senate and House Committees relating to natural resources were adopted. The one adding five ex-officio members – the presidents of each of the three state-universities or the designees and the directors of the Arizona Department of Water Resources and the Department of Environmental Quality – was withdrawn for further work. *Los Rurales* were concerned that the university ex-officios would be unavoidably ignorant of the nuances of rural Arizona and would, therefore, be able to offer only opinions, not expertise. In fact, a member of the public who testified

made reference to an unnamed water expert from the University of Arizona as a case in point.

8 April: The House COW floor amendment establishes a technical advisory committee for the study committee. It will include the directors of the Department of Environmental Quality and the Arizona Department of Water Resources, a member from the cooperative extension of the University of Arizona College of Agriculture and Life Sciences, a member with extensive knowledge of forest watershed management, a climatologist, and four rural members with knowledge of hydrology and geology who are not employed by or affiliated with any governmental entity except cities, towns or counties in rural Arizona. No nasty feds.

22 April: The technical advisory committee is too big. Why an ag extension agent? Why a climatologist? The study committee should elect its chair and not have the chairs of the Senate and House natural resources committees act as co-chairs. *Tenemos un vino. ¿Hay queso?*

6 May: The adopted conference report was a slightly amended version of the Senate engrossed bill as sent to the House. This means that all of the amendments adopted in House NRA and COW have evaporated. There is now no formal, technical advisory committee for the study committee, though it "may request assistance from agencies, universities, and organizations." The study committee is no longer specifically directed to review the effectiveness of the adequate water supply program and to evaluate the need for regional cooperation on water management in rural Arizona. The additional four public members no longer exist. And, most interestingly, the chairs of the Senate and House Natural Resources Committee, who would have acted as co-chairs, are no longer guaranteed a seat on the study committee. (*¿Hay una sangre mala aqui?*) Instead, the legislative members of the study committee will now select a chair from among themselves. Heaven forbid that this study committee might produce something meaningful in the area of rural water resources management. *A mi ver, S 1336 es una raspa. No es cosa.*

S 1522 Environmental Protections; Budget Reconciliation

(Burns, Bee, Bennett, Blendu, Huppenthal) S 1522 is used as a vehicle to require the Arizona Water Banking Authority to present annual reports, on a fiscal year basis, to the Joint Legislative Budget Committee on the expenditure plan for monies received pursuant to each agreement for interstate water banking. Among other items, each report shall include the amount of and specific use and justification for all planned expenditures to bank or provide water for another state and for Arizona and the amounts of water purchased. The Water Quality Assurance Revolving Fund (WQARF) is assured an annual funding amount of \$18 million of which \$15 million is transferred from corporate income taxes. S 1552 requires the transfer of only \$11 million in FY 2005-06 and states that monies from the transaction privilege and severance tax clearing account shall not be deposited into WQARF in FY 2005-06. In additions, S 1522 suspends the statutory requirement to deposit \$5 million from the general fund into the Water Protection Fund (WPF) for FY 2005-06. Funding will be as specified in the general appropriations act.

Status

Referred to Senate Approp, Rules.
Do pass from Senate Approp.
Do pass from Senate Rules.
Do pass with amendment from Senate COW.
Passed Senate, 28 - 1.

Passed House, 52 - 4.

* **Signed by Governor. Laws 2005, Chapter 332.**

AMWUA Position

No position. How can the Water Bank say no? And once again WQARF and the WPF take the hit. As it now stands it appears that zero will be the amount for the WPF in the general appropriations act.

22 April: The companion bill in the House is H 2773. It and S 1522 are identical to S 1396 / H 2735 previously vetoed by the Governor during the first budget go-round.

13 May: The Senate COW amendment removed all of the new reporting requirements identified in the above bill summary, which is a positive. Instead, it now "merely" states that "[A]ll monies received through an interstate water banking agreement with the state of Nevada that are not used to purchase or store water or otherwise fulfill contractual obligations with the state of Nevada are subject to legislative appropriation." Wonder what this means for the Water Protection Fund, which is statutorily authorized to receive the in lieu tax payments that are part of the price

Nevada pays for the water that the Water Bank stores on her behalf? Moreover, the new language is unclear. What does "otherwise fulfill contractual obligations" entail? Is the new language essentially a command to use it in the year you get it or lose it in the next legislative session? Or would "otherwise fulfill contractual obligations" negate this possibility? Nevertheless, the opportunities for mischief appear legion.

* Indicates change from previous week.

**H 2174 ~~Drought Emergency Water Transfers~~
Assured and Adequate Water Supply Administration Fund**

(O'Halleran) Regardless of Arizona statutes restricting the transportation of groundwater away from a groundwater basin, the director of the Arizona Department of Water Resources may approve such transportations in drought emergencies when specified conditions are met. Session law only.

Status

Referred to House NRA, County-Muni, Rules.
Do pass from House NRA.
Do pass from House County-Muni.
Do pass from House Rules.
Passed House, 58 - 0.

Referred to Senate NRRA, Rules.
Do pass with striker from Senate NRRA.
Further referred to Senate Approp.
Do pass with amendment from Senate Approp.
Do pass from Senate Rules.
Passed Senate, 21 - 6.

Returned to House for concurrence.
House concurred.
Passed House, 48 - 12.

Signed by Governor. Laws 2005, Chapter 217.

AMWUA Position

Support.

11 March: Since a drought emergency is unlikely this year, H 2174 was used as the vehicle to carry H 2177, which failed to make it out of the House. In addition to establishing the Assured and Adequate Water Supply Administration Fund to cover the costs associated with the Assured and Adequate Water Supply Programs, the striker, in session law, also directs the director of the Department of Water Resources to review the assured and adequate water supply rules to identify statutory or rule changes that would make the application process under those more efficient. The director will be assisted in this task by the stakeholders---subdividers and water providers.

H 2277 Water Providers; Water Plans

(O'Halleran, Hershberger, Landrum Taylor) A new Article 13, "Public Water System Planning and Reporting Requirements," is added to Title 45. It requires all public water systems in the state to prepare and submit to the director of the Arizona Department of Water Resources a system water plan that includes a water supply plan, a drought preparedness plan, and a water conservation plan. Plans are due for large water providers (greater than 75 connections) by January 1, 2007, and for small water providers (less than 75 connections) by January 1, 2008. Updates are required every five years.

The "water supply" plan shall evaluate the water supply needs in the service area and propose a strategy to meet those needs. It shall include a list and description of service area lands, sources of supply, well locations, and storage and treatment facilities; maps of existing transmission and distribution facilities; monthly system production data by water source; interconnections with other systems; and an analysis of present and future water supply demands for the next five, ten, and 20 years.

The "drought preparedness" plan shall include drought or emergency response stages and a plan of action that the public water system will take to respond to a drought or water shortage condition including a public information and education program, a conservation program, and adoption of specific water supply or water demand management measures for each drought stage. These measures will include, but not be limited to, customer incentives, emergency rate structures and surcharges, voluntary and mandatory water use restrictions, and the curtailment of nonessential water uses.

The "water conservation" plan shall include both demand and supply management measures including a reduction in lost and unaccounted for water; water rate structures that encourage efficient use of water, such as increasing block rate schedules and seasonal rates, but not flat rates or decreasing block rates; programs for efficient water use or use of alternative supplies; a continuing education program; and codes, ordinances, or conditions of service that require the use of appropriate water conserving technologies and promote water use efficiency and avoid waste.

An extensive and detailed annual report from each public water system is also required unless it already files pursuant to §45-632. Failure to file an annual report carries a maximum penalty of \$150. The director will also perform random audits. The director can require suspected violators to appear at an administrative hearing and the director may issue a cease and desist order and recommend a civil penalty. The bill also provides for the issuance of temporary restraining orders and preliminary or injunctive relief.

Status

Referred to House NRA, County-Muni, Rules.
Do pass with s/e amendment from House NRA.
Do pass with s/e amendment from House County-Muni.
Do pass from House Rules.
Do pass with amendments from House COW.
Passed House, 47 - 9.

Referred to Senate NRRA, Rules.
Do pass with amendment from Senate NRRA.
Do pass from Senate Rules.
Do pass from Senate COW.
Passed Senate, 17 - 10.

Returned to House for concurrence.
House concurred.
Passed House, 46 - 14.

Signed by Governor. Laws 2005, Chapter 223.

AMWUA Position

~~No position at this time which does not mean neutral.~~

Support. H 2277, as it now stands, is a positive step forward for water resources management in rural Arizona that will help to ensure its growth and economic vitality.

21 January: This unfunded state mandate and consultants' full employment act, which attempts to statutorily implement and make mandatory many of the recommendations and suggestions in the Governor's Drought Preparedness Plan and Statewide Water Conservation Strategy, is undergoing extensive revisions. Little has been heard from non-active management areas water providers who will be the most extensively impacted by this bill. In the active management areas, municipal water providers already file an annual report and the Arizona Department of Water Resources has indicated that if one is an assured water supply designated provider, one has already met the "water supply" portion of the system water plan. Furthermore, the "conservation plan" looks very similar to the best management practices conservation program for municipal providers in active management areas. Still, the proposed intrusion by the state in water rate making procedures should prove quite problematic to proponents of local government and local control. And, of course, the Arizona Department of Water Resources will have the necessary resources and staff to handle all of the increased responsibilities involved. *No creo que si*. The bill also lacks meaningful enforcement provisions. The intent is that public opinion will force any backsliders or non-cooperators to do the right thing. As for funding for rural providers, we shall see.

11 February: The s/e measurably improved the bill. If a municipal provider in an active management area is designated as having an assured water supply by the Arizona Department of Water Resources, the provider is exempt from the water supply portion of the system water plan. Also, it now expressly states that a violation of this article (Article 13) does not constitute a violation of Chapter 2 (Groundwater Code). The sponsor indicated there would be an additional meeting or two to resolve differences. He specified there would be changes in infrastructure identification requirements because of homeland security concerns (others may be necessary) and that the language on metering would be reworked (could be a problem here). Active management area municipal providers have indicated to the sponsor and the Arizona Department of Water Resources that it is unnecessary and burdensome for municipal providers who have conservation plans and are subject to the conservation requirements of the Groundwater Code and its management plans to have their conservation plans scrutinized through the system water plan process of H 2279. Testimony offered by Coconino County and the City of Flagstaff was positive, as was that of the general public. Testimony offered by AMWUA, the cattlemen, and a representative of a number of smaller, rural communities all noted that H 2279 was a "work in progress" and that they were more than eager to resolve the bill's problems in order to keep it moving. Read that as nobody at this time is willing to take the blame or credit for messing with a bill that is strongly supported by the Governor. *El tiempo da buen consejo. Ahorita, no vale la pena.* Will close this note with part of the testimony of a member of the public from the Benson area. She spoke in favor of the bill and identified recognition of the "7 P's" as critical. They are: Poor Prior Planning Promotes Piss Poor Performance.

28 February: The s/e amendment in House County-Muni definitely improved the bill from the perspective of municipal water providers in active management areas. If a large municipal water provider is regulated under the conservation requirements of the Groundwater Code, it will not have to file a conservation plan under the provisions of H 2277. However, H 2277 is still a work-in-progress. Continued efforts to make the bill less "onerous" to rural Arizona can be expected. That would be a mistake. Onerous provision is a virtual oxymoron in the context of this bill and would be an actual one if the proposed Department of Water Resources Office of Water Conservation and Drought Mitigation is funded. The only concern directly expressed at the hearing came from Phelps Dodge. Evidently Phelps Dodge qualifies as a community water system and does not want the industrial water use component of its deliveries under any kind of looking glass. *Muy interesante.*

11 March: Under the amendments adopted by House COW, a small municipal provider regulated under the Groundwater Code would also not have to file a conservation plan if it can demonstrate that because of growth projections it is likely that it will be regulated as a large municipal provider by 2012. As you may recall, community water systems are required to develop a water supply plan to evaluate its water supply needs and how it will satisfy those needs. The plan will include "...A list and description of service area lands, sources of supply, including emergency sources, well registration numbers and water levels at the well sites, if known, and storage and treatment facilities." The amendment, however, provided that "The list shall not include water levels at well sites that are sources of supply for hard rock mining or metallurgical

processing or industrial uses related to hard rock mining or metallurgical processing." Remember Rule #2: Mines are exempt. A final amendment is more problematic. Previously, community water systems had to annually report the estimated quantity of effluent generated from a wastewater treatment facility, assuming it had one. With the amendment, the amount generated has to be reported only if some of the effluent is used. A chance to get a handle on the amount of effluent that is unused in rural Arizona may have been lost.

1 April: The amendment was technical. No testimony was offered. No discussion. No questions. Unanimous vote. *Con grasa.*

H 2323 Tax Credits; Water Conservation Systems

(Gray C; Giffords) Provides tax credits of up to \$200 per house to home builders who plumb to capture all graywater sources and stub out for a future graywater system and up to \$1,000 to homeowners who install graywater and/or water harvesting systems.

Status

Referred to House Ways&Means, NRA, Rules.
Do pass with amendment from House Ways&Means.
Do pass from House NRA.
Do pass from House Rules.
Do pass with amendment from House COW.
Passed House, 39 - 17.

Referred to Senate NRRA, Rules.
Do pass from Senate NRRA.
Do pass from Senate Rules.
Do pass with amendment from Senate COW.
Passed Senate, 22 - 7.

Returned to House for concurrence with Senate amendments.
House concurred.
Passed House, 44 - 6.

*

Signed by Governor. Laws 2005, Chapter 292.

AMWUA Position

No position. Identical to S 1483.

18 February: The amendment removed language that arguably could have terminated the program if in any calendar year the tax credits claimed exceeded \$1.5 million. New language now caps the total amount of tax credits in any calendar year at \$500,000 to builders for graywater systems, \$500,000 to homeowners for graywater systems, and \$500,000 to homeowners for water harvesting systems. All program categories will be administered on a first come, first served basis.

18 March: The COW amendment raised the total tax credit pot to \$5.5 million per year instead of \$1.5 million.

13 May: The Senate COW amendment apparently reduced the total tax credit pot from \$5.5 million per year to \$750,000 per year. There is only so much money in the money box for all the "worthy" bills found therein.

H 2643**Lower Colorado River Basin Multi-Species Conservation Plan**

(O'Halleran, Robson, Weiers J.; Bee, Miranda B.) The Multi-Species Conservation Plan (MSCP) is a comprehensive program for the protection of 27 covered species and their habitats in the Lower Colorado River Basin. The purpose of the MSCP is to comply with the Endangered Species Act and, thereby, protect existing and future activities associated with Colorado River water use and power production. It is estimated that the cost of the MSCP will be in the neighborhood of \$620 million, of which Arizona's share will be about \$80 million. H 2643 does not carry a two-thirds requirement because the fees and surcharges are permissive. This legislation sets forth how Arizona's share may be divided among Arizona beneficiaries (water and recreational users for example) and how the funds will be administered. The bill's elements include:

1. A possible increase in the fee for watercraft registration and identification of the disposition of such fees.
2. Establishment of a fish and habitat management fund administered by the Arizona Game and Fish Department.
3. A possible surcharge on Colorado River fishing stamps (permits) and identification of the disposition of such surcharges.
4. Possible establishment of a Colorado River water use fee to be collected by the Arizona Department of Water Resources from entities having Colorado River water contracts and identification of the disposition of such fees.
5. Establishment of a Lower Colorado River Multi-Species Conservation Program Fund under the Central Arizona Water Conservation District (CAWCD).

Status

Referred to House NRA, Approp P, Rules.
Do pass with amendment from House NRA.
Do pass with amendment from House Approp P.
Do pass from House Rules.
Do pass from House COW.
Passed House, 45 - 10.

Referred to Senate NRRA, Rules.
Do pass from Senate NRRA.
Do pass from Senate Rules.
Passed Senate, 23 - 6.

Signed by Governor. Laws 2005, Chapter 78.

AMWUA Position

Support. The reader is invited to go to the AMWUA Web site (www.amwua.org) and navigate to 2005 Water Policy Resolution F and Issue Paper F which speak to the Multi-Species Conservation Plan.

18 February: Approp P?

25 February: The amendment clarified that the Colorado River water use fee would not apply to persons who have entered into agreements with the Central Arizona Water Conservation District and other parties for participation in the Multi-Species Conservation Plan. The director would also have to consult with users prior to setting any such fee.

4 March: The amendment in House Approp P clarified that all funds collected under the bill shall be used only for activities and administrative costs directly related to the Multi-Species Conservation Program.

1 April: The way in which the Legislature is dealing with H 2643 is overwhelming evidence of the value of the stakeholder process for crafting water-related legislation in Arizona. Arizona water law and politics is often byzantine and, insofar as the issue is water and contrary to popular myth as well, the Legislature prefers consensus rather than conflict.

H 2720 **Water; General Industrial Use Permits**

(Boone) Session law allows a general industrial use permit, issued in the Phoenix Active Management Area, to be extended for up to seven years if it would expire on or before August 5, 2005, and could not be renewed because the site of the use is now within the exterior boundaries of the service area of a private water company. The general industrial use permit would also have to be part of a water exchange contract for Central Arizona Project water entered into prior to January 1, 2007. The general industrial use permits to be exchanged must also total less than 2,000 acre-feet and the Central Arizona Project water must be used directly on golf courses. Notwithstanding the seven-year extension, the extension will terminate four years after the date on which the general industrial use permit would have otherwise expired if within that four-year period construction of a pipeline to transport the Central Arizona Project water to the golf courses has not substantially commenced.

Status

Referred to House NRA, Rules.
Do pass from House NRA.
Do pass from House Rules.
Passed House, 55 - 0.

Referred to Senate NRRA, Rules.
Do pass from Senate NRRA.
Passed Senate, 29 - 0.

Signed by Governor. Laws 2005, Chapter 236.

AMWUA Position

No position at this time. This session law is an update of a session law passed in 2002 dealing with the same issue. At that time, AMWUA testified we would not oppose the bill so long as we could be assured that the legislation established no legal precedent, was merely a bridge to eventual Central Arizona Project water use by the golf courses and that if for any reason whatsoever the Central Arizona Project water failed to materialize, the golf course must seek an alternative supply. AMWUA was so assured by the bill's supporters and sponsor. The private water company was Citizen's (now American Water), and the golf courses were in Sun City. Obviously, the assurances we were given didn't hold any water. Progress on the use of the Central Arizona Project water and construction of the pipeline have been stymied because of (you guessed it) lawsuits over who will be responsible for the costs involved. Will pigs ever fly?

H 2728 **Arizona Water Settlements Act**

(Weiers J, Allen J, Chase, Mason, Nelson, O'Halleran, Prezelski, Robson; Bennett, Flake) H 2728 makes the changes in Arizona water law necessary to comply with the terms and agreements of the Arizona Water Settlements Act (P.L. 108-451) recently passed by Congress and signed into law by the President. Briefly, the legislation will establish the obligation to develop a "firming" program to ensure that 23,724 acre-feet of agricultural priority the Central Arizona Project water made available to Arizona Indian tribes shall, for a 100-year period, be delivered during water shortages in the same manner as water with a M&I priority is delivered during water shortages. The director of the Arizona Department of Water Resources will appoint a study commission to determine the most feasible and economical firming program option(s) and recommend any legislative changes, if necessary. The legislation also establishes what are called Southside Protection Zones. In these zones, south of the Gila River Indian Community, non-Indian groundwater withdrawals must be replenished if they exceed certain amounts determined on a per-acre basis. An initial replenishment bank of 15,000 acre-feet will be formed financed with general fund monies and or pump taxes. The legislation also establishes a Gila River Maintenance Area and a Gila River Maintenance Area Impact Zone. In these areas, an attempt will be made to essentially preserve, to the extent possible, the 1999 water use status quo. For example, existing uses are grandfathered and, with some exceptions and subject to various conditions, agricultural use is frozen and no new dams can be constructed if higher than 25 feet or greater than 50 acre-feet in capacity. Near Tucson, the San Xavier Indian Reservation will be protected from the impacts of new non-exempt, non-Indian wells if they are located within two miles of the exterior boundaries of the reservation and the director determines that the projected withdrawals from the well(s) over the initial five-year period of withdrawals will cause a water level decline of 10 feet or more at any point on the exterior boundaries of the reservation.

Status

Referred to House NRA, Rules.
Do pass with amendment from House NRA.
Do pass from House COW.
Passed House, 59 - 0.

Referred to Senate NRRA, Rules.
Do pass from Senate NRRA.
Do pass with technical amendment from Senate Rules.
Do pass from Senate COW.
Passed Senate, 27 - 1.
Returned to House for concurrence.
House concurred.

Passed House, 59 - 0.

Signed by Governor. Laws 2005, Chapter 143.

AMWUA Position

Support.

25 February: The NRA amendment transferred the enforcement provisions from the general effective date of the legislation to a conditional enactment based on final approval by the Secretary of Interior of all components of the Arizona Water Settlement Act by December 31, 2010. A floor amendment conformed and clarified some of the language in the bill to the language in the Arizona Water Settlement Act itself. More amendments are likely because H 2728 appears to be one of those proverbial "works in progress."

* Indicates change from previous week.

HCM 2007 Central Arizona Project Water Priority

(Mason and 36 others) As a condition of obtaining Congressional approval for the construction of the Central Arizona Project, Arizona was forced to accept a limitation on its water entitlement to Colorado River water that effectively gives the Central Arizona Project lowest priority in times of shortage. HCM 2007 urges the Congress of the United States to enact legislation that would restore Central Arizona Project's equal priority with respect to Colorado River water.

Status

Referred to House NRA, Rules.
Do pass from House NRA.
Do pass with amendment from House COW.
Passed House, 54 - 1.

Referred to Senate NRRA, Rules.
Do pass from Senate NRRA.
Do pass from Senate COW.
Passed Senate, 21 - 8.

AMWUA Position

Support.

11 March: Upon getting word of the memorial, the state of California, led by the Metropolitan Water District, threw a *berrinche grande*. Consequently and understandably, the amendment measurably "softened" the memorial. It used to say that Arizona "was forced to accept a limitation on its water entitlement...." It now says Arizona "accepted a limitation on its water entitlement....in exchange for commitment on the part of the federal government to augment Colorado River water supplies...." In addition, all references to restoring Arizona's equal priority with respect to Colorado River water and the Central Arizona Project have been removed. Instead, Congress is urged to take such actions as are required to construct or improve regulatory storage facilities in the lower Colorado River system, operate the Yuma desalter, and augment the flow of the Colorado River.

1 April: There was a fair amount of discussion on this memorial. The Central Arizona Project did a good job of explaining the backgrounds of the issues, especially the Yuma desalter and what it means for the Central Arizona Project. The reader is invited to go the AMWUA Web site at www.amwua.org and link to Water Policy Resolution 05.1 and Issue Paper 05.1. Interestingly, the Arizona Department of Water Resources was neutral. I guess the ninth floor still prefers its margaritas without salt.

APPENDICES

Appendix A – Arizona Department of Water Resources Executive Budget

Arizona Department of Water Resources
Fiscal Year 2006 Operating Budget Request
000's Omitted

Fiscal Year 2005 Base Budget	14,198.9
Restore General Fund Appropriation Temporarily offset by other funding sources which are no longer available.	1,763.5
Water Conservation and Drought Mitigation To establish a statewide Office for Water Conservation and Drought Mitigation to carry out measures developed by the Governor's Drought Task Force.	1,500.0
Technical Staff for Hydrology and Groundwater Programs To fill authorized but unfunded positions in technical areas.	877.6
Additional Funding for Rural Water Studies To provide additional funds for studies and technical assistance to communities.	700.0
Rent Standard Adjustment To provide for contractual rent increases.	90.2
Risk Standard Adjustment To fund the increase in risk management charges.	64.5
Cost Recovery and Funding Alignment Measure Reduction of General Fund appropriation based on proposed legislation to establish an equitable and reliable fee-for-service structure to offset the operating costs of the programs associated with Water Recharge and Recover, Assured and Adequate Water Supply.	(875.8)
	<u>18,318.9</u>

**Arizona Municipal Water Users Association
Selected Bills of Municipal Interest
47th Legislature First Regular Session**

Senate Bills - 1

as of: May 27, 2005

No.	Title	Sponsor	Senate				3rd Read	House				Conf Comm	Gov Sign	
			Committees	CoW	3rd Read	Committees		CoW	3rd Read					
1067	Appropriation; Zuni Water Settlement	Flake, Bee, Blendu, Jarrett; O'Halleran	Approp	NRRA	Rules		Passed 18-11	NRA	Approp P	Rules		Passed 33-26		Vetoed by Governor
1190	Exempt Wells	Flake, Arzberger, Blendu; O'Halleran	NRRA	Rules			Passed 24-4	NRA	Rules			Passed 48-11	Passed Senate 26-4	Chapter 254
1235	Water; Central Arizona Groundwater Replishment District Omnibus	Flake, Arzberger; Brown, Chase, Mason, O'Halleran, Rios P.	NRRA	Rules			Passed 30-0	NRA	Rules			Passed 48-11	Passed Senate 23-5	Chapter 198
1336	Rural Water Legislative Study Committee	Flake, Arzberger, Bee, Blendu, Cannell; Aguirre A., Brown, Chase, Mason, Paton	NRRA	Rules			Passed 24-3	NRA	Rules			Passed 43-15	Passed Senate 25-4, House 58-0	Chapter 281
1522	Environmental Protections; Budget Reconciliation	Burns, Bee, Bennett, Blendu, Huppenthal	Approp	Rules			Passed 28-1					Passed 52-4		Chapter 332

Legend
+++++ indicates AMWUA support
----- indicates AMWUA opposition
***** indicates neutral or no position by AMWUA

**Arizona Municipal Water Users Association
Selected Bills of Municipal Interest
47th Legislature First Regular Session**

House Bills - 1

as of: May 27, 2005

No.	Title	Sponsor	House				3rd Read	Senate				Conf Comm	Gov Sign	
			Committees	CoW	Committees	CoW		Committees	CoW	3rd Read				
2174	Assured and Adequate Water Supply Administration Fund	O'Halleran	NRA	County-Muni	Rules		Passed 58-0	NRRA	Rules	Approp		Passed 21-6	Passed House 48-12	Chapter 217
2277	Water Providers; Water Plans	O'Halleran, Hershberger, Landrum Taylor	NRA	County-Muni	Rules		Passed 47-9	NRRA	Rules			Passed 17-10	Passed House 46-14	Chapter 223
2323	Tax Credits; Water Conservation Systems	Gray C.; Giffords	Ways & Means	NRA	Rules		Passed 39-17	NRRA	Rules				Passed House 44-6	Chapter 292
2643	Lower Colorado River Basin Multi-Species Conservation Plan	O'Halleran, Robson, Weiers J.; Bee, Miranda B.	NRA	Approp P	Rules		Passed 45-10	NRRA	Rules			Passed 23-6		Chapter 78
2720	Water; General Industrial Use Permits	Boone	NRA	Rules			Passed 55-0	NRRA	Rules			Passed 29-0		Chapter 236
2728	Arizona Water Settlements Act	Weiers J., Allen J., Chase, Mason, Nelson, O'Halleran, Prezelski, Robson; Bennett, Flake	NRA	Rules			Passed 59-0	NRRA	Rules			Passed 27-1	Passed House 59-0	Chapter 143
2735	Environmental Protections; Budget Reconciliation	Robson, Pearce, Tully, Weiers J.	Approp B	Approp P	Rules									Vetoed by Governor
HCM 2007	Central Arizona Project Water Priority	Mason and 36 others	NRA	Rules			Passed 54-1	NRRA	Rules			Passed 21-8		

Legend

- +++++ indicates AMWUA support
- indicates AMWUA opposition
- ***** indicates neutral or no position by AMWUA