



Public Notice Pursuant to A.R.S. § 38-431.02

**ARIZONA MUNICIPAL WATER USERS ASSOCIATION
MANAGEMENT BOARD**

MEETING NOTICE AND AGENDA

Wednesday, March 14, 2018 – 10:00 a.m.

**Arizona Municipal Water Users Association
Board Conference Room
3003 North Central Avenue, Suite 1550
Phoenix, Arizona 85012**

A. Call to Order

B. General Business—Items for Discussion and Possible Action

1. Approval of the Minutes from the February 14, 2018 Meeting
2. Schedule Next Meeting Date: Wednesday, April 11, 2018, 10:00 a.m.
3. 2018 Legislative Update
4. AMWUA Annual Action Plan
5. Presentation on Proposed Alamo Dam Release

C. Management Board Members' Updates

D. Executive Director's Report

E. Future Agenda Items

F. Adjournment

*The order of the agenda may be altered or changed by the AMWUA Management Board.

More information about AMWUA public meetings is available in the AMWUA office, online at www.amwua.org/what-we-do/public-meetings, or by request.

Arizona Municipal Water Users Association

MANAGEMENT BOARD

MEETING MINUTES

February 14, 2018

VOTING MEMBERS PRESENT

Mr. Kevin Artz, Avondale, Chairman
Mr. Chris Hassert for Mr. Jake West, Mesa
Mr. John Knudson, Chandler
Mr. Craig Johnson, Glendale
Ms. Karen Peters, Phoenix
Ms. Kathy Rall for Mr. Brian Biesemeyer, Scottsdale
Ms. Holly Rosenthal, Tempe
Mr. Javier Setovich, Goodyear
Mr. Mike Weber, Peoria

VOTING MEMBERS NOT PRESENT – EXCUSED

Ms. Jessica Marlow, Gilbert

OTHERS PRESENT

Gretchen Baumgardner, Tempe	Brett Fleck, AMWUA	Diana Piña, AMWUA
Jessica Blazina, Avondale	Lacey James, Avondale	Michael Schiffer
Cynthia Campbell, Phoenix	Sam Jaskolski, AMWUA	Tony Staffaroni, CAP
Gregg Capps, Chandler	Pat Kossan, AMWUA	Warren Tenney, AMWUA
Brian Draper, Mesa	Brian Payne, AMWUA	Theresa Ulmer, Ulmer Consulting
Alan Dulaney, Peoria	Haley Paul, Gilbert	Carol Ward-Morris, AMWUA
Kathy Ferris, AMWUA	Stuart Peckham, SRP	

A. Call to Order

Mr. Artz called the meeting to order at 10:03 a.m.

B. General Business – Items for Discussion and Possible Action

1. Approval of the Minutes from the January 10, 2018 Meeting

Upon a motion by Mr. Johnson and second by Ms. Peters, the AMWUA Management Board unanimously approved the January 10, 2018 meeting minutes.

2. Next meeting scheduled: Wednesday, March 14, 2018, 10:00 a.m., in the AMWUA office
3. 2018 Legislative Update

Mr. Tenney reviewed a presentation to provide an update on current legislation.

Mr. Tenney stated that SB 1507 and HB 2512: water program amendments, identical omnibus bills, have been introduced by Senator Griffin and Representative Bowers. He said these bills do not include the language that was agreed upon during negotiations between the Arizona Department of Water Resources (ADWR) and key legislators; however, negotiations are still occurring that will determine how things unfold over the next few months. Both bills include language on the following issues: desalination action plan, interstate transportation of water, containerized plants and irrigation grandfathered rights, Pinal Active Management Area (AMA) extinguishment credits, AMA management plans beyond 2025, effluent definition, natural resource conservation districts, adequate water supply requirements, sovereign immunity for the Central Arizona Water Conservation District (CAWCD), and interstate agreements.

Mr. Tenney noted that neither SB 1507 nor HB 2512 address the issue of forbearance programs, which was an item the Governor's Office had requested be included in the water bill. Mr. Tenney reported that AMWUA has been voicing to the legislature its overall concerns with the two bills: the proposed language raises questions rather than clarifies and is regressive in some cases; the proposed language includes the same language that AMWUA actively opposed two years ago regarding adequate water supply requirements (Sierra Vista); and the challenges facing Arizona's Colorado River water are not addressed. He also detailed AMWUA's concerns regarding each issue within each bill.

Ms. Peters asked if the U.S. Bureau of Reclamation has weighed in on the forbearance issue and whether or not there is an interference with CAWCD's Section 5 contract. Ms. Ferris said Reclamation agreed with ADWR that the Tribes are a contractor under the 2007 guidelines and have the ability to create intentionally created surplus (Tribal ICS).

Mr. Tenney discussed that the issues included in SB 1507 were also each introduced as individual component bills: SB 1508, SB 1509, SB 1510, SB 1511, SB 1512, SB 1513, SB 1514, SB 1515, and SB 1516. He stated that AMWUA staff recommends opposing SB 1507, HB 2512, and the individual component bills. He said the bills are moving and as they move forward, AMWUA should support ADWR's position unless it negatively impacts AMWUA members. He also emphasized the importance of having an overall water package rather than individual bills, as was agreed upon during the Governor's Water Solutions Conversation.

Ms. Peters commented that it is disappointing and surprising that the bills introduced do not reflect the urgency of the situation and the need to act on Colorado River issues. She

said this will cause the AMWUA members to be even more aggressive looking ahead and preparing for shortage.

Mr. Knudson noted that a bill regarding construction wages that could drive up construction costs for the cities that may be important to AMWUA. Mr. Payne said AMWUA is following a number of bills—including the one Mr. Knudson was referring to—that were not included in the Management Board packet. Mr. Payne stated that this bill [HB 2429] has not gone forward and he does not think it will move forward, but AMWUA will continue to monitor it. Mr. Tenney said while AMWUA does not assume the bill will go forward, the Management Board may vote to go on the record as having a position.

Mr. Tenney reviewed other introduced legislation of interest to AMWUA. AMWUA recommends monitoring the following bills:

- SB 1475 and HB 2581: would develop standard measures to define ecological water needs in Arizona, problematic due to language and impact to water rights.
- SB 1493: would allow the Arizona Department of Environmental Quality (ADEQ) to establish a Dredge and Permit Program consistent with the federal program, meaning the State would take responsibility for the program rather than the U.S. Environmental Protection Agency (EPA).
- SB 1494: ADEQ would establish a permit program to meet the minimum federal requirements for injection wells. ADEQ would take the responsibility for the program as a state rather than have it be under the EPA.
- HB 2552: would establish a desalination action study committee to look at impediments to using high salinity water.
- HB 2556: would require the ADEQ Director to review existing limitations with high salinity water and determine potential for improving its quality for supplementing supplies.
- HB 2608: would require annual reporting of groundwater withdrawals in Mohave County.

Ms. Peters commented that, years ago, Phoenix was opposed to the change that required ADEQ to take on the National Pollutant Discharge Elimination System (NPDES) from EPA for reasons due to capability and resources. She said the EPA did not charge for NPDES permits, but ADEQ does and she sees a pattern that the same will occur with the Dredge and Permit Program and the Underground Injection Control permit program if SB 1493 and SB 1494 are passed into law.

Upon a motion by Ms. Peters and a second by Mr. Johnson, the AMWUA Management Board unanimously approved to recommend that the AMWUA Board of Directors take the following legislative positions:

Oppose: SB 1507 & HB 2512 and the individual component bills. As bills move forward, support ADWR's position unless it negatively impacts AMWUA's members.

Monitor: SB 1475 & HB 2581, SB 1493, SB 1494, HB 2552, HB 2556, HB 2608, HB 2429

4. Analysis of Water Transfers

Mr. Payne shared a presentation overviewing his analysis on water transfers in Arizona, *The Transfer and Movement of Water in Arizona*. Mr. Payne explained what water transfers are, what they mean for Arizona and its future, and highlighted the three types of transfers explored in the analysis: Colorado River mainstem transfers, groundwater transportation transfers, and sever and transfers. Regarding groundwater transportation transfers, Mr. Payne gave an example of the City of Scottsdale acquiring 1,200 acres in the Harquahala Valley, which would allow Scottsdale to wheel approximately 3,600 acre feet of water per year through the Central Arizona Project (CAP).

Mr. Weber asked if the water rights involved in the City of Scottsdale example are Type 2 rights. Ms. Ferris said this water right is not an irrigation grandfathered right because the Harquahala Valley is outside of an AMA, but rather located in an irrigation non-expansion area. She said state statute specifies a certain quantity of water that can be transferred by a political subdivision after they buy the land.

5. Contract for Reprinting of Landscape Plants for the Arizona Desert Publication

Mr. Tenney stated that AMWUA's popular publication, *Landscape Plants for the Arizona Desert*, is currently being updated and will be reprinted this Fiscal Year. He reported that after receiving three bids, AMWUA has selected a printer and is currently taking orders to determine the exact quantity to be printed. He noted that AMWUA will recover the cost of printing and delivery from the organizations placing orders as they will be invoiced for their order's share; however, because the cost of printing will be over \$30,000, AMWUA Board approval is required. .

Mr. Weber asked if any significant changes are included in the update to the publication. Ms. Ward-Morris stated that no major changes to the book are planned for this reprint other than AMWUA updating the botanical and common names of the plants in coordination with the recent update of ADWR's Phoenix AMA regulatory plant list

Ms. Rosenthal asked which edition this reprint of *Landscape Plants* will be. Ms. Ward-Morris said this reprint will be the sixth edition of the book and noted there are currently more than 1.5 million copies of it in circulation.

Mr. Setovich asked how this expense appears in the budget. Ms. Ward-Morris said this expense will not appear in AMWUA's budget because it is a pass-through expense. She added that AMWUA takes orders, coordinates with the printer, pays the printer, and then recovers the cost of printing and delivery only from the members and partners.

Upon a motion by Mr. Weber and second by Mr. Johnson, the AMWUA Management Board unanimously voted to recommend that the AMWUA Board of Directors approve

the Executive Director to enter into a contract based on the estimate provided for the reprint of *Landscape Plants for the Arizona Desert*.

6. AMWUA Quarterly Financial Statements – Second Quarter

Mr. Tenney reported that AMWUA's second quarter Statement of Revenues and Expenses show that AMWUA is operating efficiently within its resources and is roughly \$9,000 under budget as of December 2017.

Upon a motion by Mr. Johnson and a second by Mr. Setovich, the AMWUA Management Board unanimously voted to recommend that the AMWUA Board of Directors accept the quarterly financial statements as presented.

C. Board Members' Updates

The Management Board members were invited to report on water activities in their city/town.

Goodyear: Mr. Setovich reported that the City of Goodyear will be getting a new city manager on February 20th: Julie Arendall from the City of Peoria.

D. Executive Director's Report

Mr. Tenney reported that last week, the CAWCD Water Quality Standards Task Force met for an update on the effort to develop a water quality standard for non-project water introduced into the CAP canal. At the meeting, Mr. Tenney gave an update on AMWUA's stakeholder group's efforts and emphasized the concern of overanalyzing every possible scenario of non-project water being introduced and the importance of regular reviews of the water quality standard and allowing known projects to move forward so we can learn from them. Leslie Meyers of the U.S. Bureau of Reclamation also noted the importance of creating flexibility while recognizing the risk. The Task Force requested that CAWCD staff develop a proposal for how to proceed, present it at a meeting in March, and then allow one month for stakeholders to respond. Mr. Tenney said the understanding is that CAWCD staff will build from AMWUA's stakeholder proposal.

Mr. Tenney stated that CAWCD's Excess Water Task Force presented a recommendation that incorporates AMWUA's proposal for better accounting of excess water to the CAWCD Board and will be voted upon at the March 1st meeting. AMWUA voiced appreciation to the Excess Water Task Force and staff for working with them.

Mr. Tenney reported that at this week's Groundwater Users Advisory Council meeting, ADWR staff stated that the 4th Management Plan for the Phoenix AMA will be further delayed due to staffing changes.

E. Future Agenda Items

There were no requests for future agenda items.

F. Adjournment

With no further items to discuss, upon a motion by Ms. Peters and a second by Mr. Setovich, Mr. Artz unanimously adjourned the meeting at 11:06 a.m.

MANAGEMENT BOARD
INFORMATION SUMMARY
March 14, 2018

2018 Legislative Update

STRATEGIC PLAN REFERENCE

Objectives – Safeguard Water Supplies; Reinforce Groundwater Management; Prepare for Impacts of Drought & Shortage; Augment Supplies; Elevate the Benefit of Water Reuse; Minimize Financial Impacts

Collaboration – Legislature; Arizona Department of Water Resources; Salt River Project; Central Arizona Project; Water Community

SUMMARY

The legislative session is moving forward. The next major legislative deadline is March 23rd, the last day for House consideration of Senate bills and Senate consideration of House bills, though still subject to exceptions.

This summary will first discuss the key water legislation introduced this session. It will then discuss other legislation the Board has taken a position on that is moving through the legislative process. The remainder of this summary will review legislation which at the present time appears to be not moving forward. AMWUA staff would be pleased to answer any questions Board members may have regarding the bills included in this summary and any others.

RECOMMENDATION

It is recommended that the AMWUA Management Board discuss and ask questions regarding legislation impacting AMWUA's members. Depending on legislative action before the March 14, 2018 meeting, the AMWUA Management Board may be asked to provide direction regarding legislation to the AMWUA Board.

Key Water Legislation

SB 1507 & HB 2512: Water program amendments (Griffin, Bowers).

The most substantive portions of these omnibus water bills do the following: (1) Requires the Arizona Department of Water Resources (ADWR) Director to prepare a desalination action plan and present it to key state leaders; (2) In addition to the Director, the Legislature must approve any transportation of water from the State, whether it be surface water, groundwater, or other water; (3) Allows persons holding a certificate of irrigation grandfathered right to exercise that right to withdraw groundwater for containerized plants; (4) Provides detailed criteria for the ADWR Director to calculate the volume of extinguishment credits for the extinguishment of grandfathered rights in the Pinal Active Management Area (AMA); (5) Creates an additional 10-year active management plan-the Sixth Management Plan from 2025 to 2035; (6) States that for the purposes of ADWR's informational materials, the word "effluent" should be defined as "recycled water"; (7) Places oversight of the Division of Natural Resource Conservation in the Arizona Department of Forestry and Fire Management; (8) Allows the board of supervisors in a non-AMA county that has adopted a mandatory 100-year adequate water supply requirement to vote unanimously to not readopt the requirement; (9) States that a multi-county water conservation district (i.e. Central Arizona Water Conservation District (CAWCD)) shall not assert the defense of immunity in litigation brought by a water user to enforce the terms of a water delivery contract or subcontract; and (10) Requires both ADWR and CAWCD to inform the other if one is a party to discussions or negotiations of interstate agreements involving Colorado River water.

The House version of this bill, H.B 2512, passed the House on a largely party-line vote on February 21st.

The Senate version of this bill, S.B. 1507, was amended on the floor on March 1st. The amendments are as follows: (1) Removes the requirement that the Legislature approve water transfers out of the state and instead requires notification of key legislative leaders; (2) Removes the effluent provision; (3) Removes the sovereign immunity provision; and (4) Removes the requirement for ADWR and CAWCD to notify the other involving agreements and negotiations. Even with the amended changes, the bill failed to pass the full Senate on March 5th by a 15–15 vote.

AMWUA Position: Oppose SB 1507, HB 2512, and the related individual component bills. As these bills move forward, AMWUA recommends supporting ADWR's position unless it negatively impacts AMWUA members.

SB 1508 & HB 2551: Water; desalination action plan (Griffin, Bowers). These bills require the ADWR Director to prepare a desalination action plan that, among other things, considers costs of brackish water treatment, and identifies areas of the State where brackish groundwater exists and areas that could benefit from treated brackish supplies. The plan may also evaluate potential bi-national agreements or projects with respect to ocean desalination. The Director must submit a report to designated state leadership by September 30, 2019. As amended, the language

requires an evaluation of the sources of brackish water, as well as impacts to water supplies of users in the area if water is withdrawn and treated. Desalination has an important role to play in Arizona's water management. However, this language appears to codify what the State is largely already doing as part of the Governor's Water Augmentation Council.

The bill passed the full House on February 20th. An identical version passed the Senate on February 22nd.

AMWUA Position: Oppose

SB 1509: Water; interstate sales (Griffin). Under current law, a person may not transport water from Arizona to another state without approval from the Director of ADWR. As introduced, this bill stated that in addition to the Director, the Legislature must approve any transportation of water from the State, whether it be surface water, groundwater, Colorado River water, or other water. Although the intent of this bill was positive, there were concerns that the bill raised issues under the Commerce Clause of the United States Constitution. On March 1st, the bill was amended to only require a notice to the President of the Senate and the Speaker of the House of Representatives when the ADWR Director receives an application to transport water out of state. The amended bill failed in a vote of the Senate on March 5th, but AMWUA staff understands that the bill will be reconsidered.

AMWUA Position: Oppose

SB 1510: Irrigation grandfathered right; containerized plants (Griffin). This bill states that in an initial Active Management Area, a person who holds a certificate of irrigation grandfathered right may exercise that right to withdraw groundwater to water plants in containers on or above the surface. Among other things, the bill also requires the right holder to separately measure any groundwater used for watering plants in containers and groundwater for irrigation; however, the total amount of water may not exceed the amount allowed by the irrigation water duty for the farm. This proposal was among the issues discussed as part of the Governor's workgroups last year. A slightly amended version of this bill passed out of the Senate on February 22nd.

AMWUA Position: Oppose

SB 1511: Pinal AMA; groundwater; extinguishment credits (Griffin). This bill provides detailed criteria for the ADWR Director to calculate the volume of extinguishment credits for the extinguishment of grandfathered rights in the Pinal AMA. Under the 100-year assured water supply rules, a farmer within an AMA with irrigation rights can choose to extinguish those rights anytime in exchange for what is called an "extinguishment credit" that can be used to demonstrate a 100-year assured water supply for new development. The last two legislative sessions, AMWUA opposed bills that sought to weaken the ADWR Director's authority and would have caused increased groundwater pumping in the Pinal AMA. During the Governor's Water Solutions Conversation, water users in the Pinal AMA came to a compromise with each other and ADWR on the amount of credits received upon extinguishment. AMWUA staff understands that

in its current form, the language in this bill is essentially the compromise that was reached. The amended form of this bill passed the Senate on February 22nd.

AMWUA Position: Oppose

SB 1512: Active management areas; sixth management period (Griffin). This bill creates an additional 10-year active management plan—the Sixth Management Plan from 2025 to 2035—under the Groundwater Management Act for each initial Active Management Area. The bill includes language that virtually mirrors the statutory guidance for the previous management plans. The bill also allows the ADWR Director to approve administrative variances from irrigation water duties or conservation requirements for the Fifth and Sixth Management Plans, which is similar to provisions found in statute for previous management plans. The State proposed during the Governor’s Water Solutions Conversation to extend the safe-yield goal for three 10-year management periods. Having only one ten-year period provides a marginal increase in certainty. For this reason, AMWUA staff supports adding additional management periods. Arizona’s successful economy is directly linked to our planning and investing in our water resource planning.

This bill failed in a vote of the Senate on March 5th, but AMWUA staff understands that the bill will be reconsidered.

AMWUA Position: Oppose

SB 1513: Effluent; recycled water; definition (Griffin). This bill states that for the purposes of ADWR’s informational materials, the word “effluent” should be defined as “recycled water.” ADWR has raised concerns that this bill could create confusion based on the various regulatory meanings for “effluent”, “remediated”, “reuse”, and “recycled”. This bill passed out of the Senate on February 22nd; however, this provision was removed from the larger Senate water package bill on March 1st.

AMWUA Position: Oppose

SB 1514 & HB 2596: Natural resource conservation districts; administration (Griffin, Toma). These bills place oversight of the Division of Natural Resource Conservation in the Department of Forestry and Fire Management. It currently resides in the State Land Department. This bill passed out of the relevant House committee on February 13th. The Senate and House both passed this bill on February 22nd.

AMWUA Position: Oppose

SB 1515 & HB 2553: Adequate water supply; county review (Griffin, Bowers). This bill essentially allows a county that is not in an Active Management Area, through a unanimous vote of the county board of supervisors, to vote not to readopt the 100-year adequate water supply water requirement if certain conditions are met. The conditions, which relate to the county or largest city in the county, include participation in the following: groundwater recharge, reclaimed water

reuse, water conservation programs, and use of low water use plants in certain publically owned areas. The bill states that the board of supervisors must review and may, by a unanimous vote, not readopt the 100-year requirement within five years of the bill's effective date, and at least every ten years thereafter.

The Senate passed this bill on February 22nd, and the House on February 20th.

AMWUA Position: Oppose

SB 1516: Central Arizona Project; sovereign immunity (Griffin). This bill states that a multi-county water conservation district (i.e. CAWCD) shall not assert the defense of immunity under the Eleventh Amendment in litigation brought by a water user to enforce the terms of a Central Arizona Project (CAP) water delivery contract or subcontract. The Senate version of this bill passed out of committee on February 15th, but has not moved since that time. Similar language was removed from the broader Senate water package on March 1st.

AMWUA Position: Oppose

Other Legislation

SB 1039: Arizona water protection fund (Griffin). This bill, as amended, appropriates \$400,000 from the state general fund in fiscal year 2018-19 to the Arizona Water Protection Fund. The Arizona Water Protection Fund is a state-run program that funds projects to protect and enhance water quality and quantity in Arizona's rivers, streams, and riparian areas. Some of these efforts include revegetation, erosion control, channel stabilization, research, and water conservation. This bill passed the Senate on February 27th.

AMWUA Position: Support

SB 1493: Environmental quality; dredge, fill permits (Griffin). Under current law, the United States Environmental Protection Agency (EPA) issues permits under the Clean Water Act for the discharge of dredged or fill materials into waters that meet the definition of Waters of the United States. This bill essentially authorizes the Arizona Department of Environmental Quality (ADEQ) to establish a Dredge and Permit Program that is consistent with, and no more stringent than, the federal program. The bill lists requirements for the rules ADEQ would adopt to implement the program. ADEQ and the State are pursuing this legislation as a means of attempting to have EPA assign responsibility to the State over this federal program. To date, only Michigan and New Jersey have obtained authority from EPA to oversee this program at the state level. AMWUA staff understands that the Governor's Office is supporting this bill along with the business community. This bill passed out of the Senate as amended on February 20th.

AMWUA Position: Monitor

SB 1494: Environment; underground injection control program (Griffin). The Underground Injection Control Program is a program primarily overseen by EPA in cooperation with ADEQ that regulates the underground injection or discharge of both hazardous and nonhazardous liquid and gas. This bill requires ADEQ to establish a permit program that meets the minimum federal requirements for permitting injection wells in Arizona and requires the ADEQ Director to adopt rules for that purpose. ADEQ and the State are pursuing this legislation as a means of attempting to have EPA assign responsibility to the State over this federal program. To date, only four individual Underground Injection Control permits have been issued in Arizona, primarily for mining purposes. As Arizona looks at using brackish groundwater supplies, some have argued that deep underground injection of brine may be a means of making brackish desalination in Arizona more economically feasible. AMWUA staff understands that the Governor's Office is supporting this bill along with the business community. This bill passed out of the Senate as amended on February 20th.

AMWUA Position: Monitor

HB 2203: Wildland fuel loads; watershed protection (Finchem). This bill authorizes a mayor, chairman of the board of supervisors, or a county sheriff to make a formal determination that a "catastrophic wildland fuel load" exists on state or federal land located in the borders of the city, town, or county. After making this determination, the relevant official must consult with the political subdivision's attorney or the attorney general, and notify relevant state and federal officials, including as necessary a demand to the relevant state or federal agency that it address the issue. The bill instructs the mayor, chairman, or a county sheriff to enter into a plan with the federal or state agency to abate the condition. If the mayor, chairman, or county sheriff determines that the condition exists on federal land and that it poses an immediate threat to the public health, safety, and welfare of the city, town, or county, the official must coordinate with relevant state and federal officials, and in consultation with legal counsel and the attorney general, must pursue all remedies allowed by law. The bill also authorizes the state forester to remove non-native woody biomass or overgrowth biomass from state lands, and enter into agreements with cities, towns, or counties to do so. This bill is of interest due to the connection between watershed health and water quantity and quality. This bill passed the House on February 15th.

AMWUA Position: Monitor

HB 2556: Environment; water quality; brine (Nutt and six others). This bill directs the Arizona Department of Environment Quality (ADEQ) Director, in coordination with the ADWR Director, by December 1, 2019 to "review existing data on the use and reuse of high salinity water and identify locations in this state, including hydrologically isolated areas, as potential sources for supplementing water supplies in this state." The bill also directs the ADEQ Director to post the report on ADEQ's webpage. This bill passed the House on February 20th.

AMWUA Position: Monitor

Legislation That Appears to Be Not Moving Forward

SB 1229: Water infrastructure finance authority; appropriation (Mendez and 16 others). This bill appropriates \$30 million from the state general fund to the Water Infrastructure Finance Authority (WIFA). WIFA is a state agency that provides low-interest loans to water providers. This bill has not moved.

AMWUA Position: Monitor

SB 1475 & HB 2581: Ecological water; program; fund (Dalessandro, Gabaldon, and others). These bills establish the Ecological Water Stewardship Program and directs the ADWR Director to adopt rules to carry out its mission. The bills direct the ADWR Director to establish a set of standard measures to define ecological water needs in Arizona, including criteria for examining the relationship between ecological water and groundwater and surface water in Arizona. The bills direct the Director to take all reasonable steps necessary to monitor, maintain, improve and restore the surface water systems of Arizona. After making a determination of the ecological water needs for each watershed or subwatershed, the Director would publish a preliminary report that includes a determination of the ecological water and monitoring methods necessary to maintain and restore freshwater ecosystems. If the Director determines in any watershed or subwatershed that there is insufficient ecological water, the Director shall take all steps necessary to appropriate any unappropriated water to maintain the ecological water requirements or acquire by purchase or lease existing water rights.

These bills would put into statute several provisions touching on water rights that AMWUA staff finds problematic. However, AMWUA staff believes these bills are likely dead for this session.

AMWUA Position: Monitor

HB 2214: WQARF; appropriation (Gabaldon). This bill appropriates \$15 million from the general fund to the Water Quality Assurance Revolving Fund (WQARF) in addition to any other appropriations made in Fiscal Year 2018-2019. WQARF is a state-sponsored program established by the Legislature to clean up hazardous soil and groundwater contamination. This bill has not moved.

AMWUA Position: Support

HB 2291: Groundwater basin; department survey (Cobb). This bill requires ADWR to conduct a survey of areas in the groundwater basin of the Upper Colorado River Planning Area to determine the status and resiliency of groundwater supplies, and submit a report to the House Speaker, Senate President, legislators in affected areas, and relevant County Supervisors. ADWR would be required to gather extensive data, including well usage information. The bill also allows the County Board of Supervisors to recommend metering and monitoring of wells to ADWR. This bill has not been assigned to a committee and has not moved.

AMWUA Position: Monitor

HB 2352: Appropriation; lead screening; charter schools (Engel and 14 others). This bill appropriates \$100,000 from the general fund in addition to other appropriations for Fiscal Year 2018-2019 to ADEQ for screening for lead in drinking water in charter schools. This bill has not been assigned to a committee and has not moved.

AMWUA Position: Monitor

HB 2410: Geologists; landscape architects; regulatory repeal (Mosley). This bill eliminates certain Board of Technical Registration requirements and related statutory language for geologists and landscape architects. This bill is similar to provisions in a bill from 2016 that sought to deregulate the professional geological practice. The 2016 bill resulted in a legislative compromise that resulted in the voluntary licensure of geologists. Under current law, geologists make certifications under the groundwater code. This bill has not moved.

AMWUA Position: Oppose

HB 2429: Public works contracts; prevailing wage (Cardenas and 14 others). This bill states that a public works contract that is valued at two hundred fifty thousand dollars or more shall contain a provision requiring the wages paid by the contractor or any subcontractor to be at least the prevailing rate of wages for work of a similar nature in the state or political subdivision in which the project is located. AMWUA staff does not anticipate that this bill will move forward this session.

AMWUA Position: Monitor

HB 2552: Desalination action study committee (Bowers). This bill establishes a 13-member desalination action study committee comprised of political leaders and representatives from relevant agencies, water users, and other stakeholders. The bill directs the committee to (1) Consider state statutory or regulatory impediments to using high salinity water, (2) Consider the economic impact resulting from the amount and effect of high salinity water, and (3) Submit a report regarding the committee's activities, findings and recommendations on or before December 31, 2018. To date, this bill has not moved.

AMWUA Position: Monitor

HB 2608: Well reporting; Mohave, La Paz basins (Cobb). This bill requires the owner of a well in one of four groundwater basins located in Northwest and Western Arizona to annually report groundwater withdrawals, if the well was drilled on or after January 1, 2012 and the well has a capacity of more than 100 gallons per minute. The bill states that a well owner that does not use a meter can maintain records of the estimated water use. The bill requires reporting for a period of three years, and the bill is repealed after December 31, 2020. This bill has not moved.

AMWUA Position: Monitor

MANAGEMENT BOARD

INFORMATION SUMMARY

March 14, 2018

AMWUA Annual Action Plan

STRATEGIC PLAN REFERENCE

Operational Principles – Manage an Efficient and Effective Association

SUMMARY

The AMWUA Board of Directors approved the Strategic Plan for 2016-2020 at its September 2016 meeting. The current annual plan gave detail on how the Strategic Plan would be accomplished from February 2017 through Fiscal Year 2018. Most of the achievements under the current action plan were touted in the Accomplishments 2017 pamphlet that was distributed in January 2018.

Since most of the current plan is still relevant, AMWUA staff decided to update rather than make a completely new annual plan to guide AMWUA’s efforts through Fiscal Year 2019. The Water Resources Advisory Group provided feedback to the Fiscal Year 2019 action plan being presented.

The annual plan highlights areas of focus for AMWUA, but it is certain that during the time period of this annual plan AMWUA will also need to address other issues that arise. This was obviously the case this last year with the Governor’s Water Solutions Conversation.

The annual plan lists alphabetically key action areas, which include Adjudication, Augmentation, Central Arizona Groundwater Replenishment District, Colorado River Drought & Shortage, Demand Management & Sustainability, Finances & Water, 4th Management Plan and Beyond, Legislation, Regional Recharge Efforts, Recovery Implementation Plan, System Use Agreement, and Water Reuse Rules.

RECOMMENDATION

The Management Board is encouraged to review the proposed annual plan and to provide comments and feedback.

Upon discussing the annual plan, it is requested that the Management Board direct AMWUA staff to incorporate comments from the Management Board and to recommend to the AMWUA Board of Directors approval of the annual plan through Fiscal Year 2019 upon receiving the AMWUA Board’s feedback.

MANAGEMENT BOARD

INFORMATION SUMMARY

March 14, 2018

Presentation on Proposed Alamo Dam Release

STRATEGIC PLAN REFERENCE

Objectives – Safeguard Water Supplies
Collaboration – Central Arizona Project

SUMMARY

The U.S. Army Corps of Engineers proposed a release of water from Alamo Dam, which is on the Bill Williams River. Previous releases from Alamo Dam have caused high turbidity to the Central Arizona Project (CAP) system since the Bill Williams River flows into the Colorado River right next to CAP’s Mark Wilmer Pumping Station. In turn, this high turbidity has created operational problems for the CAP, AMWUA cities’ and others’ treatment facilities, and recharge projects. The proposed new release from Alamo Dam raises again turbidity and potential operational problems.

The Central Arizona Water Conservation District (CAWCD), Arizona Game & Fish Department, and municipalities have expressed concern to the Corps about these issues. While the Corps has made some improvements to their proposed release, concern remains with the uncertainty of what would happen with a release. CAWCD and Arizona Game & Fish have filed separate actions seeking an injunction in Federal court.

Marcus Shapiro, Water System Supervisor in CAWCD’s Operations Group and Rhett Billingsley, Senior Attorney have agreed to give a presentation to update the Management Board on this proposed release from Alamo Dam.

RECOMMENDATION

The Management Board is encouraged to discuss the proposed Alamo Dam release.

ATTACHMENT

- February 8, 2018 CAP letter to U.S. Army Corps of Engineers



February 8, 2018

Via FedEx and E-Mail

U.S. Army Corps of Engineers
Los Angeles District
ATTN: Pam Kostka, CESPL-RGN-L
915 Wilshire Blvd., 13th Floor
Los Angeles, CA 90017
Email: pamela.k.kostka@usace.army.mil

Subject: Draft Environmental Assessment for the Alamo Dam Flushing Flow Release

Dear Ms. Kostka:

The Central Arizona Project (CAP) is submitting these comments on the Draft Environmental Assessment for the Alamo Dam Flushing Flow Release (Draft EA), which was made available for public comment on January 10, 2018. CAP supplies water to millions of Arizona residents and businesses through municipal water treatment plants, as well as to agricultural customers, Indian tribes and recharge facilities. The Colorado River is the source of water for the CAP and our intakes are located in Lake Havasu adjacent to the mouth of the Bill Williams River. Due to this proximity, the proposed high flow release from Alamo Dam will have a significant impact on the quality of the water supply for CAP and its water users.

Detrimental impacts to the CAP System from high flow events on the Bill Williams River are well documented. For example, in 2010, the Corps conducted flood control releases from Alamo Dam at maximum discharge rates of approximately 2,000–3,000 cubic feet per second (cfs) that resulted in elevated turbidity levels in Lake Havasu near the mouth of the Bill Williams River. These turbidity levels, which resulted from sediment discharges into Lake Havasu, had significant negative consequences for CAP infrastructure, source water quality, recharge project operation and municipal water treatment. Should the Corps conduct the proposed 5,000 cfs high flow release, we expect dramatic adverse water quality impacts in Lake Havasu and the CAP system as a result.

CAP previously raised these and other concerns, such as the Corps' unjustified deviation from the requirements of the 2003 Water Control Manual for Alamo Dam, in telephone communications with the Corps and in a comment letter sent to the Corps on the proposed high flow release dated December 14, 2017 ("December 2017 Comment Letter"), a copy of which is included with these comments. See Appendix A. Unfortunately, the Corps ignored the information provided by CAP when evaluating the potential effects of the project. Rather than taking a hard look at the environmental consequences of the project, the Corps has improperly narrowed the project area and the scope of alternatives and environmental impacts evaluated in the Draft EA and excluded any analysis of impacts to CAP and its water users. As a result, the Draft EA fails to comply with NEPA and related Council on Environmental Quality (CEQ) and

Corps regulations. A more detailed discussion of our concerns with the Draft EA is provided below.

The information provided with this letter clearly establishes that the Proposed Alternative will have significant impacts on the human environment—impacts that the Corps appears to have purposely ignored in preparing the Draft EA. Before proceeding with the proposed high flow releases, the Corps must, at a minimum, prepare a revised EA addressing the issues and supporting documentation discussed in this letter. Furthermore, unless there are changes to the Proposed Alternative to eliminate its significant downstream impacts on water quality, NEPA requires the Corps to prepare an environmental impact statement (EIS) before proceeding with the proposed high flow releases.

As discussed below, the purpose and need of the proposed action can be achieved without causing injuries to CAP and its customers. To avoid unnecessary litigation, CAP requests that the Corps work with CAP to develop reasonable alternatives to the Proposed Alternative that would accomplish the purpose and need of the project without significant impacts to CAP and its water users. Should the Corps adopt the Proposed Alternative, CAP is prepared to pursue all legal remedies available to prevent implementation of the Proposed Alternative.¹

Background on NEPA Requirements

NEPA is a procedural statute intended to ensure environmentally informed decision-making by federal agencies.² NEPA requires federal agencies to prepare an EIS before taking major federal actions significantly affecting the quality of the human environment.³ An agency may prepare an EA to determine whether an EIS is needed.⁴ If an agency concludes in its EA that the proposed action will not have a significant environmental impact, then it may issue a finding of no significant impact (or FONSI) and proceed without further study.⁵ However, if the EA shows that the agency's action "may" significantly affect the environment, then the agency must prepare an EIS.⁶

¹ CAP notes that the comment period on the Draft EA closes February 10, 2018 and the Proposed Alternative is expected to conclude by March 15, 2018. Given that the Proposed Alternative contemplates up to a week of increased flow, the discharge could begin as early as March 5, 2018. This leaves only three weeks between the closing of the comment period and the beginning of the increased discharge. CAP has serious concerns that the Corps will have enough time to fully and completely respond to its concerns, consult with CAP, modify the proposed action, and issue a lawful decision.

CAP also objects to the speed at which this decision is being made. The Corps has had notice of the need for the proposed maintenance of the Alamo Dam for decades. Despite having ample time to consult and coordinate with CAP and its customers, the Corps now appears to be intent on fast-tracking the Proposed Alternative without consideration of the downstream effects. The Corps' lack of planning does not constitute an emergency that would justify its refusal to consult and coordinate with CAP and its customers.

² See *W. Watersheds Project v. Abbey*, 719 F.3d 1035, 1045 (9th Cir. 2013).

³ See *Kern v. U.S. Bureau of Land Mgmt.*, 284 F.3d 1062, 1067 (9th Cir. 2002).

⁴ 40 C.F.R. §§ 1501.4(b) and 1508.9.

⁵ *Abbey*, 719 F.3d at 1050 (citing *Te-Moak Tribe of W. Shoshone of Nev. v. U.S. Dep't of Interior*, 608 F.3d 592, 599 (9th Cir.2010)).

⁶ *Abbey*, 719 F.3d at 1050.

Under NEPA's requirement that agencies evaluate "any adverse environmental effects which cannot be avoided should the proposal be implemented,"⁷ an EA must address "the environmental impacts of the proposed action and alternatives."⁸ Federal agencies must take a "hard look" at a proposed project's environmental impacts.⁹ This hard look requires a full and fair discussion of both the direct and indirect effects of a proposed agency action.¹⁰ An agency "cannot avoid preparing an EIS by making conclusory assertions that an activity will only have an insignificant impact on the environment."¹¹

NEPA also requires agencies to "study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources."¹² Agencies must give full and meaningful consideration to all reasonable alternatives.¹³ Although an agency's obligation to explore reasonable alternatives is less under an EA than an EIS, an EA must include a discussion of reasonable alternatives.¹⁴ "The existence of a viable but unexamined alternative renders an EA inadequate."¹⁵

The Draft EA Too Narrowly Defines the Project Area and Fails to Consider the Full Scope of Effects of the Proposed Alternative

The Draft EA improperly and unlawfully defines the Project Area as terminating at the mouth of the Bill Williams River despite the Corps being informed by CAP's December 2017 Comment Letter and other communications from CAP that the proposed high flow releases will have significant impacts on water quality in Lake Havasu near the intake for CAP's Mark Wilmer Pumping Plant. In the December 2017 Comment Letter, CAP explained that flood control releases from Alamo Dam in March 2010 resulted in elevated turbidity levels in Lake Havasu above Parker Dam (53.4 nephelometric turbidity units (NTU) at CAP intakes). CAP further explained that the elevated turbidity levels had significant negative consequences on CAP and its customers, including impacts on CAP infrastructure, the shutdown of two groundwater recharge operations, maintenance and infrastructure impacts for CAP agricultural customers, and impacts to municipal water treatment plants receiving CAP water.¹⁶

As a result of the increased turbidity and attendant sedimentation caused by the March 2010 releases, CAP customers reported numerous detrimental effects. CAP customers reported maintenance difficulty and plugging concerns in drip irrigation systems. Municipal water treatment plants reported large increases in total organic carbon, turbidity, and raw water

⁷ 42 U.S.C. § 4332(C)(ii).

⁸ 40 C.F.R. § 1508.9(b).

⁹ *Abbey*, 719 F.3d at 1045.

¹⁰ 40 C.F.R. § 1502.1; 40 C.F.R. § 1508.8; *Barnes v. U.S. Dept. of Transp.*, 655 F.3d 1124, 1136 (9th Cir. 2011).

¹¹ *Ocean Advocates v. U.S. Army Corps of Engineers*, 402 F.3d 846, 864 (9th Cir. 2005).

¹² 42 U.S.C. § 4332(E).

¹³ *Native Ecosystems Council v. U.S. Forest Serv.*, 428 F.3d 1233, 1245 (9th Cir.2005).

¹⁴ *N. Idaho Community Action Network v. U.S. Dept. of Transp.*, 545 F.3d 1147, 1153 (9th Cir. 2008); 40 C.F.R. § 1508.9(b)

¹⁵ *Abbey*, 719 F.3d at 1050.

¹⁶ See Central Arizona Project, *Summary of 2010 Alamo Dam Release* (July 2010).

alkalinity, increasing the chemicals necessary to treat CAP water. Based on communications with customers, CAP estimated the total additional costs to water treatment plants from the increased turbidity to be approximately \$500,000.¹⁷

In addition to increased costs, higher chemical levels provided other challenges for the plants. Increases in chlorination led to greater quantities of disinfection by-products, many of which are regulated to avoid potential negative health effects. Indeed, two of the municipal treatment plants reported that after they increased chemical amounts, compliance with federal regulations for Total Trihalomethanes (TTHM) became a major issue.¹⁸

The impacts of the March 2010 release on CAP and its customers resulted from releases at discharge rates of 2,000-3,000 cfs—rates that were significantly lower than the Proposed Alternative. Again, the impacts to Lake Havasu water quality and CAP operations from the 2010 Alamo Dam releases are well documented and well-known by the Corps. We have included a summary report and a graph depicting the impact of the 2010 releases on the CAP water supply. See [Appendix B](#). In addition, the United States Geological Survey (USGS) published a study of the impacts of the 2010 releases on the quality of water in the Bill Williams River and Lake Havasu above Parker Dam.¹⁹ See [Appendix C](#). That study also documented elevated turbidity levels in Lake Havasu near CAP's Mark Wilmer Pumping Plant.

There is also evidence of the adverse impact of earlier high flow releases from Alamo Dam on water quality in Lake Havasu and, consequently, on the CAP water supply. In 2009, the USGS published a study of the impacts to water quality in the Bill Williams River and Lake Havasu resulting from high flow releases from Alamo Dam in 2005 and 2006. See [Appendix D](#).²⁰ That study recognized that elevated discharges in the Bill Williams River result in the delivery of more sediment to Lake Havasu and cause a turbidity plume to form at the mouth of the Bill Williams River and spread into the lake.²¹ The study further recognized that CAP's water intake is located in Lake Havasu near the mouth of the Bill Williams River and that elevated turbidity levels between 20 and 50 NTUs can require CAP to shut down operations at Mark Wilmer Pumping Plant, preventing the diversion of Colorado River water into the CAP System.²² The study concluded that turbidity levels at the CAP intake increased to 184 NTU following releases between 5,000 and 7,300 cfs from Alamo Dam in 2005.²³

CAP has previously raised its concerns over the impact of high flow releases from Alamo Dam on its operations and customers. On February 19, 2010, CAP sent a letter to the Corps raising

¹⁷ *Id.*, pp. 6-7.

¹⁸ *Id.*

¹⁹ Wiele S. M., Macy, J. P., Darling, H.L., Hart, R.J., and Hautzinger, A.B., Discharge and Sediment Concentration in the Bill Williams River and Turbidity in Lake Havasu During and Following High Releases from Alamo Dam, Arizona, in March and April 2010: U.S. Geological Survey Open-File Report 2011-1129, 11 pp. (2011 USGS Report).

²⁰ Wiele, S.M., Hart, R.J., Darling, H.L., and Hautzinger, A.B., Sediment Transport in the Bill Williams River and Turbidity in Lake Havasu During and Following Two High Releases from Alamo Dam, Arizona, in 2005 and 2006: U.S. Geological Survey, Scientific Investigations Report 2009-5195, 22 pp. (2009 USGS Report).

²¹ 2009 USGS Report, p. 1.

²² *Id.*

²³ See *id.*, pp. 6 and 18.

concerns over the then-proposed March 2010 release (February 2010 Comment Letter). See [Appendix E](#). That letter provided a detailed list of impacts of concern to CAP based on our experience with Alamo Dam releases greater than 2,000 cfs. That letter also included a reference to prior discussions between the Corps and stakeholders of alternative Alamo Dam releases at rates at or below 2,000 cfs that would allow for the lowering of Alamo Lake levels without creating significant water quality problems in Lake Havasu.

The Proposed Alternative would increase discharge rates from the current 20-50 cfs required under the 2003 Water Control Manual to 5,000 cfs—rates similar to the 2005 release rates that had severe impacts on turbidity levels in Lake Havasu. However, despite having all of the above information available to it, the Corps arbitrarily and capriciously defined its Project Area to exclude any analysis of impacts to Lake Havasu and CAP operations in violation of its obligations under NEPA. To ensure that the Corps is properly considering the direct and indirect effects of the Proposed Alternative, the Project Area and the scope of the affected environment evaluated must be expanded, at a minimum, to include Lake Havasu and the CAP system.

Based on the above studies and CAP's experience with prior high flow releases from Alamo Dam, CAP expects that the Proposed Alternative and the resulting water quality impacts to Lake Havasu and CAP's water supply will, at a minimum, have the following adverse impacts on CAP and its water users:

- Municipal water treatment plants receiving CAP – Elevated turbidity levels will cause increased chemical, power, and disposal costs for municipal water treatment plants receiving CAP water, as well as increased customer complaints. Additional total organic carbon (TOC) and higher raw water alkalinity will also cause increased treatment costs.²⁴ Furthermore, some municipal customers have reported to CAP that the potential long duration of elevated turbidity levels will cause some water treatment plants to decrease production or even shut down, which could make it difficult for those water providers to meet customer demand during those periods.
- CAP Recharge Operations – Groundwater recharge is an important component of Arizona's water management strategy. Elevated turbidity reduces infiltration rates, causes increased maintenance (e.g., mechanical removal of silt accumulation), and can cause these facilities to shut down. As mentioned above, two recharge operations were forced to shut down as a result of the 2010 releases from Alamo Dam.
- CAP Infrastructure – Increased turbidity can cause CAP pump seals to wear out prematurely. Replacement costs and outage times associated with seal

²⁴ For example, the City of Phoenix, a CAP customer, has notified the Corps that the Proposed Alternative would likely hinder its ability to supply potable water to its service area. Letter from City of Phoenix, Water Services Department, to US Army Corps of Engineers, dated January 10, 2018. The City of Phoenix's letter explains that because of other scheduled water treatment plant operations, it will be difficult to process the increased turbidity and sedimentation that will result from the flushing flows proposed. The City of Phoenix has requested that the Corps postpone the release until March 2019 to allow it to complete its maintenance and rehabilitation of the Deer Valley Water Treatment Plant and to schedule other plant maintenance to accommodate the increased treatment requirements that will result from the Proposed Alternative.

replacements are significant and affect the reliability of our operations. In addition, sediments in turbid water settle throughout the canal system and require expensive mechanical removal.

- CAP Agricultural Customers – Water with increased turbidity can negatively impact irrigation systems, e.g., plugging drip irrigation systems.
- CAP Operations and Power Costs – To mitigate the above-described damage to CAP infrastructure and customers, CAP will be forced to shut off operations at Mark Wilmer Pumping Plant to avoid the worst of the elevated turbidity levels in Lake Havasu. CAP will be forced to instead release water from storage in Lake Pleasant to satisfy delivery obligations. However, the water quality damage can only be partially mitigated. Drawdown restrictions in the Lake Pleasant operating criteria limit CAP from fully avoiding the water quality impacts of the Alamo Release. CAP anticipates that it will shut down Mark Wilmer operations for 5-6 days. Curtailing pumping at Mark Wilmer will impact out energy management portfolio and result in estimated additional power costs to CAP of \$80,000/day for each day that Mark Wilmer is shut down. Consequently, the Proposed Alternative will have an adverse economic impact on CAP power costs of approximately \$480,000.

A more detailed summary of the anticipated effects of the Proposed Alternative on CAP and its water users is included with this letter. See Appendix F.

These impacts are at least indirect effects of the elevated release rate, i.e., they are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.²⁵ But the Project Area has been defined to exclude consideration of these effects. CAP suggests that the Corps use a Project Area similar to the study area for the 2009 USGS Report, which consisted of the Bill Williams River below Alamo Lake and Lake Havasu between the mouth of the Bill Williams River and Parker Dam.²⁶

Furthermore, although not always required for an EA, given the broad range of stakeholders that could have been interested in the Proposed Alternative (including CAP and its municipal and industrial, agricultural and tribal customers), the Corps should consider proceeding with a formal scoping process before preparing a revised Draft EA. That process would have helped the Corps to avoid defining the Project Area too narrowly and its consequential failure to consider the significant impacts that will be caused by the Proposed Alternative. The scoping process will assist the Corps in determining whether to issue a FONSI or proceed with preparation of an EIS.

²⁵ See 40 C.F.R. § 1508.8(b). Given the fact that CAP's Mark Wilmer Pumping Plant is located directly adjacent to the mouth of the Bill Williams River, these effects are arguably direct effects, i.e., caused by the action at the same time and place. The Corps was only able to ignore the effects of the proposed action on Lake Havasu and the CAP system by improperly defining the Project Area as terminating at the mouth of the Bill Williams River. *Id.* § 1508.8(a)

²⁶ See 2009 USGS Report, p. 2.

The Draft EA Fails to Consider Other Feasible and Reasonable Alternatives to the Proposed Alternative

NEPA requires the Corps to consider reasonable alternatives to a proposed action that will accomplish the project's purpose and need. The Draft EA states that the purpose of the proposed flushing flows is to facilitate maintenance inspections of the upper conduit and the sill. Because the sill is always under a substantial depth of water, the Draft EA states that the purpose of the proposed flushing flows is to remove accumulated sediment to ensure that all structures are visible and to lower the water surface elevation to reduce the depth of the water, increasing diver safety and reducing cost.²⁷

The alternatives, i.e., the possible approaches to achieve the purpose and need, that the Corps considered in the Draft EA were:

- Dredging plus Alamo Dam Release – Release of significant amount of water followed by suction dredging of the sill
- Dredging plus Natural Draw Down – Natural draw down of water followed by manual dredging and inspection of the sill
- No Action Alternative
- Proposed Alternative – Flushing flow not to exceed 5,000 cfs with ascending and descending release rates and total release time not to exceed 20 days

The Corps excluded the first two “dredging” alternatives: the first was determined not to be feasible and the second was determined not to accomplish the project purpose and need. Consequently, the Corps only analyzed the effects of the No Action Alternative and Proposed Alternative in the Draft EA.

The Corps' alternatives analysis does not comply with its obligations under NEPA. Based on the information provided above, it is clear that there are other reasonable alternative release rates and patterns that would accomplish the stated purpose and need of the project. For example, the United States Fish and Wildlife Service's (USFWS) Biological Opinion (Appendix D of the 2003 Water Control Manual for Alamo Dam (Water Control Manual)), which provides that Endangered Species Act (ESA) coverage for Alamo Dam operations, specifically addresses drawdowns to facilitate maintenance of the outlet tunnel at the dam and provides for a six-month drawdown beginning in June with releases no greater than 1,000 cfs. This alternative complies with the Water Control Manual and, based on past releases, would minimally impact CAP and its water users. Indeed, there may be other release rates that will accomplish the project purpose and need with minimal impact to CAP and its water users. There is no reason why releases must approach 5,000 cfs to lower the lake elevation sufficiently to achieve diver safety and reduce project cost—the stated purpose of the project.

In short, there are obviously other alternatives that would allow the lake elevation to be lowered without flushing massive quantities of sediments into Lake Havasu and forcing the CAP to shut down its pumping plant. A suite of reasonable alternatives involving various release rates,

²⁷ Draft EA, § 1.5.

durations and timing should be analyzed in a revised Draft EA, in which the resulting downstream turbidity and sediment discharges into Lake Havasu are analyzed.

The Proposed Alternative Does Not Comply with the Water Control Manual for Alamo Dam

The Water Control Manual details the manner in which the Corps will conduct upper conduit inspection and maintenance. The Manual expressly provides that “inspecting the upper portion of the outlet tunnel would not be scheduled until the lake level recedes low enough, through normal operations of the dam, to allow installation of the bulkhead.” Water Control Manual at VII-11 (emphasis added). Approval for any deviation from this procedure must be obtained from the South Pacific Division Commander, or his designee. *Id.* at VII-12-13.

The Proposed Alternative clearly deviates from the requirements of the Water Control Manual, and the Draft EA fails to explain how the Proposed Alternative falls within any excepted deviations for maintenance purposes. This is a serious error given that the operation of the dam must comply with the Water Control Manual, and no amendment to the manual is being proposed as part of the action.

In the December Comment Letter, CAP posed a number of questions to the Corps regarding the proposed release and the compliance with the Water Control Manual. Those questions remain unanswered and are included below as part of our comments on the Draft EA.

Section 7-03(c) of the Water Control Manual (Adopted Operating Plan) specifies that releases will be between 10 and 50 cfs when the lake elevation is below 1125 feet. Plate 7.02 also indicates that drawdown should occur as part of normal releases of 40-50 cfs. The proposed releases are a significant deviation from the prescribed reservoir operation rules.

Section 7-15(b2) of the Water Control Manual identifies emergency situations that may arise and presumably may justify deviations from the guidelines. CAP is unaware of an emergency situation at Alamo Lake. Indeed, the Corps had a plan to inspect the outlet works in April 2017 that it abandoned.

Section 7-16 (Deviation from Normal Regulation) provides that any deviation from the approved operating plan must be approved by the South Pacific Division commander. CAP has seen no evidence of such approval, nor is this approval mentioned in the Draft EA.

Appendix E to the Water Control Manual further states: “Deviations from approved Water Control plans are intended to address unique and unforeseen circumstances.” The stated purpose and need of the project is hardly a unique or unforeseen circumstance. The Draft EA notes that the Corps has been aware of the need to perform the proposed maintenance activities for many years and has had time to plan accordingly. There is no emergency that requires drawdown of the lake using the flows and timing in the Proposed Alternative.²⁸

²⁸ Appendix E to the Water Control Manual, *Guidance on the Preparation of Deviations from Approved Water Control Plans* (CESPD R 1110-2-8) (Sept. 12, 2002), provides a detailed procedure by which deviations must be sought, and expressly requires that the Corps coordinate with other agencies and

The USFWS Biological Opinion (Appendix D of the Water Control Manual), which provides ESA coverage for Alamo Dam operations, specifically addresses drawdowns to facilitate maintenance of the outlet tunnel at the dam and provides for a six-month drawdown beginning in June with releases no greater than 1,000 cfs. Plate 7.02 is consistent with the Biological Opinion. The proposed release does not conform to the Biological Opinion for operation of Alamo Dam. As noted above, the Corps has known about the need to conduct this maintenance for many years and could have begun gradual releases in June 2017 as described in the Biological Opinion.

Furthermore, the Corps' deviations from the Water Control Manual could require preparation of an EIS. In circumstances where there are "proposed major changes in the operation and/or maintenance of completed projects," the Corps NEPA regulations provide that such actions normally require an EIS.²⁹ The regulations provide that district commanders may consider using an EA if early studies and coordination show that a particular action is not likely to have a significant impact on the environment.³⁰ However, there is no reasonable basis for the Corps to assert that a change in release operations for lake levels below 1,100 ft from 20-50 cfs to 5,000 cfs is not a major change in the operation of the facility or that the proposed change will not have a significant impact on the environment.

The Corps Has Changed the Hydrograph of Proposed Flows from What Was Previously Discussed with CAP

Hydrographs

The hydrograph previously provided to CAP differs from the Hydrograph in the Draft EA. The duration of flows has been increased (see below). The Draft EA fails to explain the purpose for extending the duration of the release if the initial hydrograph was sufficient for flushing the sill for maintenance purposes.

document the deviation's predicted effect on other agencies and individual interests. Water Control Manual at E-5. At least insofar as the CAP is concerned, this has not occurred. Moreover, Appendix E to the Water Control Manual also requires a District legal opinion be prepared and the request for a deviation to include "any other information that may be pertinent." *Id.* Again, there is no evidence that a legal opinion has been obtained, and the significant, detrimental impacts to CAP and its customers clearly presents pertinent information that bears upon the deviation request.

²⁹ See 33 CFR 230.6(d).

³⁰ *Id.*

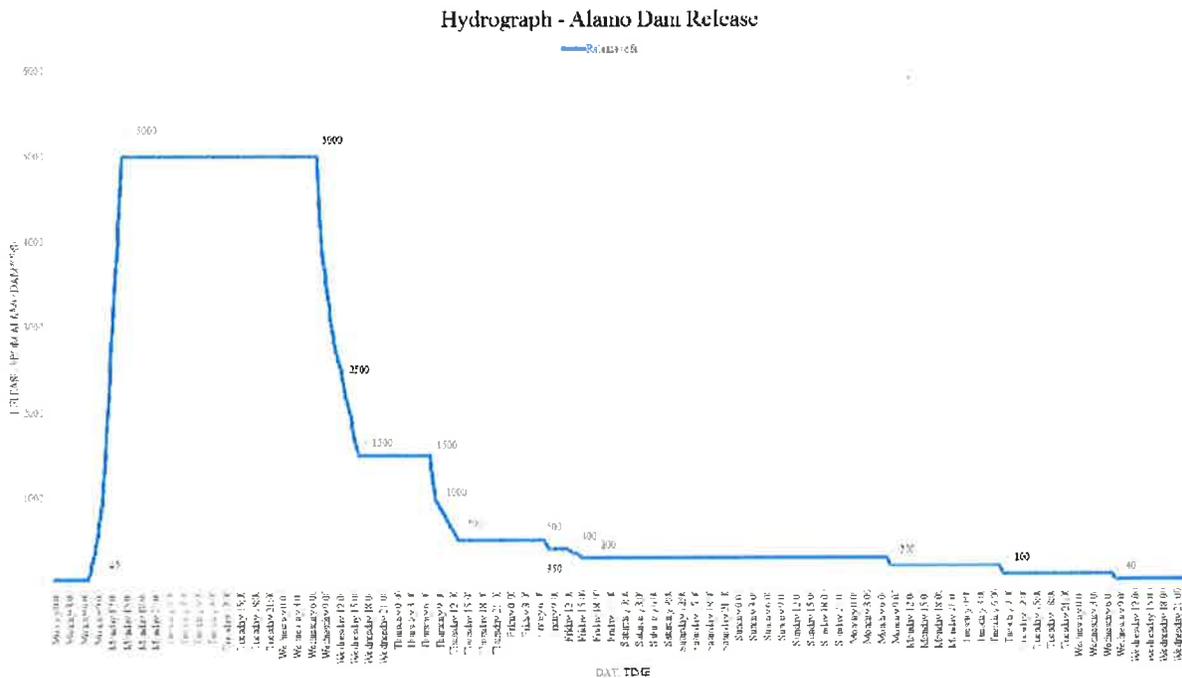


Figure 1. December 2017 proposed hydrograph for 2018 flushing flow from Alamo Dam.

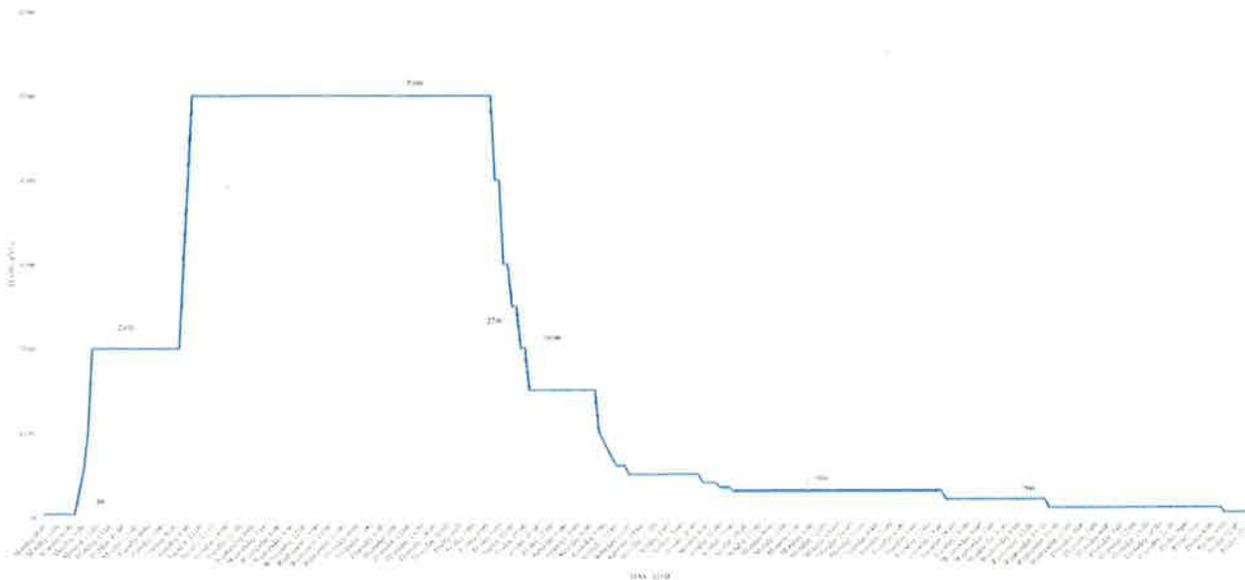


Figure 2. Draft EA Proposed hydrograph for 2018 flushing flow from Alamo Dam.

The increased duration of the high flow release potentially increases the duration and the magnitude of the negative water quality impacts. However, the Draft EA does not include an

analysis of the difference in flows between the two hydrographs. Furthermore, the analysis of the effects of the releases under the hydrograph included in the Draft EA is inadequate and fails to support the Corps' conclusion that the effects of the releases below Planet Ranch will be "negligible." Based on prior experience with releases from Alamo Dam and the information discussed earlier in this letter, that conclusion is clearly wrong.

The Draft EA Fails to Consider the Full Scope of the Affected Environment and Potential Impact of the Proposed Alternative

The Draft EA incorrectly concludes that certain aspects of the human environment to be analyzed under NEPA are not affected by the project and excludes them from analysis. The Corps must incorporate review of these environmental resources into a revised Draft EA.

Earth and Water Resources

The Draft EA states that "the proposed release of 5,000 cfs is well within the operational range considered in [the Water Control Manual and associated EIS]. This volume of water is also well within the normal range of conditions for the downstream watershed. Therefore, earth resources and water quality will not be affected by the proposed release." This statement is false. As discussed above, information available from prior releases clearly shows that the proposed release will have a significant adverse impact on the water quality in the Bill Williams River, Lake Havasu, and subsequently the CAP system.

Utilities

The Draft EA states that "no impacts to utilities will occur." This is likewise false. The proposed releases from Alamo Dam will have a significant impact on CAP, which is the largest bulk raw water provider in Arizona, and numerous municipal water providers that depend on CAP water deliveries for a substantial portion of their water supplies. The Corps cannot rely on its improper and overly narrow description of the Project Area to support its conclusion that no impacts to utilities will occur. The reality is that utilities exist immediately downstream of the Bill Williams estuary and are reasonably and clearly within the affected area of the Proposed Alternative in the Draft EA. These documented impacts are well known to the Corps and to ignore them is plainly arbitrary and capricious.

Tribal Impacts

A large portion of the CAP water supply is allocated to Indian tribes and communities in Arizona, which either use that water directly or, in some cases, lease that water to other water users, including municipal water providers. The water quality impacts to the CAP water supply likely to result from the Proposed Alternative will impact these Tribes' use of their water supplies for irrigation, recharge, municipal water supply and many other uses. However, there does not appear to have been any tribal consultation by the Corps or other cooperating agencies regarding potential impacts of the Proposed Alternative in preparing the Draft EA.

Conclusion

The Draft EA fails to comply with NEPA, related CEQ and Corps regulations, and the Water Control Manual for Alamo Dam. The Corps has improperly narrowed the project area and

environmental impacts evaluated in the Draft EA by excluding any analysis of impacts below the mouth of the Bill Williams River, such as those to CAP and its water users. The impacts of high flow releases from Alamo Dam to water quality in Lake Havasu and to CAP and its water users are well documented and cannot be ignored by the Corps in evaluating the environmental impacts of the project under NEPA. Furthermore, the Corps has failed to consider a reasonable range of alternatives to the Proposed Alternative. This includes exploring the alternative of gradual releases, as outlined by the Water Control Manual, and/or modifying the timing of the proposed release to minimize the impacts.

Before proceeding with the proposed high flow releases, the Corps must, at a minimum, prepare a revised Draft EA addressing the issues discussed in this letter. In preparing a revised Draft EA, CAP requests that the Corps work with CAP to develop reasonable alternatives to the Proposed Alternative that would accomplish the purpose and need of the project without significant impacts to CAP and its water users.

Sincerely,



Theodore C. Cooke
General Manager

cc: Rene Vermeeren, U.S. Army Corps of Engineers
Jon Sweeten, U.S. Army Corps of Engineers
Leslie Meyers, U.S. Bureau of Reclamation
Terry Fulp, U.S. Bureau of Reclamation