

# Governor's Water Augmentation, Innovation and Conservation Council Desalination Regulation & Legal Issues Subcommittee October 18, 2019 Meeting Summary

**Time: 2:00pm – 4:00pm**

**Location: Arizona Department of Water Resources**

## *I. Welcome and Introductions*

The following were present: William Gladden, Steve Bales, Noel Carter, Joe Sigg, and Mike Pearce representing the Buckeye Water Conservation & Drainage District (BWCCD); Steve Moore, City of Yuma; Gretchen Erwin, City of Goodyear; Adrienne Soder and Scott Miller, Arizona Public Service (APS); Ken Seasholes, Central Arizona Project (CAP); Reed Blochberger, Salt River Project (SRP); Patrick Adams, Arizona Municipal Water Users Association (AMWUA); and Zack Richards, Cyndi Ruehl, Carol Ward, and Kelly Brown, Arizona Department of Water Resources (ADWR).

## *II. Identifying Regulatory & Legal Issues for Desalination Projects*

Zack Richards (ADWR) gave a quick introduction to the work previously accomplished by the Desalination Committee, including initial identification of regulatory and legal constraints.

Chairman Scott Miller explained that at a recent meeting of the Desalination Committee, there was extensive discussion of the Buckeye Waterlogged Area, which led to the formation of the subcommittee. The Subcommittee is charged to develop a comprehensive list of regulatory and legal impediments to desalination, not only in the West Salt River Valley, but statewide. Mr. Miller proposed that the subcommittee focus their discussion around the six sites identified previously by the committee and build on the issues identified by the committee.

Chairman Miller pointed out that brackish groundwater is, in fact, groundwater and is subject to the same regulatory constraints to its usage, including authority to pump, pre or post code wells, management plan criteria, annual reporting, impacts to surrounding water users, transportation limitations.

The Chairman invited those present to contribute their thoughts as to additional legal and regulatory concerns regarding a desalination project in the WSRV.

Items provided by the committee members for consideration are summarized as follows:

Should an entity use a Poor-Quality Groundwater Withdrawal Permit (PQGWP) and increase pumping in the Buckeye Waterlogged Area (BWA), farmers would need to deepen their wells to compensate for decreasing groundwater levels. This would result in higher costs for water per acre-foot in the BWA.

The BWCCD desires agreement, from the subcommittee or otherwise, that the water in the BWA has a component of a property right to the farmers, being surface water, and that it is not a common resource that should be construed or regarded as being available to be used by another entity for its own economic benefit. In light of this, the following questions were raised:

1. Does the brackish quality of the water under state law mean that it is available for exploitation by any interested entity?
2. If so, is that a proper regulatory safeguard for those who would be negatively impacted?

The BWCCD's position is that withdrawing large quantities of water from this area, particularly from wells located within or near the saturated floodplain Holocene alluvium, is a speculative investment on the notion that the water will always be characterized as groundwater.

There is an existing statute that states that in the event water is transferred between sub-basins, a water user from the sub-basin in which water was withdrawn can claim damages or harm as a result of the transfer. The City of Goodyear's position is that the water in the WSRV not be transferred out of the sub-basin.

Although it is poor quality groundwater, does that mean it has any lesser value than potable water? All water has value and none should be targeted as having less value and as being available to others. Effluent, poor quality groundwater, and potable water should all be considered if we are to meet goals.

Chairman Miller asked if the groundwater within the BWA should be treated similarly as other groundwater sources of better quality. Could it be regulated differently? For instance, there are provisions in the Waterlogged Area that allow for relief of replenishment obligations. It could allow for this water to be exempted from other things, as well.

Committee members offered the following additional suggestions:

Brackish groundwater could be useful for shoring up physical availability, but a change in statute would be required to relieve the replenishment obligation.

Transporting water will perhaps be the greatest regulatory hurdle for areas inside the AMAs. Transportation issues could be addressed in state law in order to move and deploy brackish groundwater supplies. Restrictions on transportation vary. The subcommittee will need to do additional work to provide clarity on this issue.

Even if regulations were not an impediment to the transportation of brackish groundwater, it may be necessary to incentivize its utilization, as the cost of treating it and moving it, by Arizona standards, is prohibitively expensive.

The Central Arizona Groundwater Replenishment District (CAGR) cannot use groundwater that is within the AMAs as a replenishment supply but can use a groundwater supply within a basin that is eligible for transportation as a source of replenishment. Identifying implications of transportation and physical availability of water will be key in discussions moving forward, particularly within urbanized areas of the state.

The City of Buckeye is already facing difficulties due to poor quality groundwater. The City is hoping for monetary relief in the treatment of water either within or outside of the BWA. The City hopes not to incur a replenishment obligation. They would prefer an exemption for either poor quality or the water logging conditions so they can treat and use of poor-quality water for residential purposes.

Incentivizing additional groundwater use may compete with safe yield goals. The subcommittee will have further discussion of where these ideas fit within the broader context, particularly in light of the parallel Council committees and Management Plan workgroups underway.

### *III. Items for the Desalination Committee*

Chairman Miller will take the information discussed in the meeting and work with ADWR to create an outline of the main concerns. This outline will then be presented in a second subcommittee meeting to determine if there are any further items to add or edit. These items will be shared with

the Desalination Committee meeting on January 16<sup>th</sup>. The Desalination Committee may or may not request that the subcommittee develop solutions to the listed concerns.

#### *IV. Next Steps & Next Meeting Date*

The subcommittee will meet a second time before the Desalination Committee meeting on January 16<sup>th</sup>. No official date for the subcommittee meeting has been announced as of yet.