Public Policy Agenda Number 2

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MEETING DATE: March 1, 2018

AGENDA ITEM: Update on 2018 State Legislative Session and Possible Consideration of a Recommendation that the Board take Action on State Legislation and Policy Issues that Could Affect CAP, including but not limited to HB 2203 and HB 2551

RECOMMENDATION: See attached document and proposed staff recommendations

FINANCIAL IMPLICATIONS: None.

LINKAGE TO STRATEGIC PLAN, POLICY, STATUTE OR GUIDING PRINCIPLE:
CAWCD 2016 Board of Directors Strategic Plan
- Leadership & Public Trust: Relationships – Improve relationships with customers and stakeholders
- Leadership & Public Trust: CAP Board Leadership – Equip Board members to effectively represent CAP and its positions
- Water Supply: Optimize reliability and sustainability of CAP water supply

PREVIOUS BOARD ACTION/ACTIVITY:
November 2, 2017: Public Policy Committee previewed and discussed the draft proposed 2018 State Legislative Agenda.

December 7, 2017: Board adopted 2018 State Legislative Agenda.

February 1, 2018: Board adopted a position of support for SB 1508 (water; desalination action plan), which, as introduced, is identical to HB 2551.

ISSUE SUMMARY/DESCRIPTION: This report describes CAP’s state legislative agenda and provides an update on those issues. In addition, this update reports on and requests guidance on bills being considered by the State Legislature.

See attached documents and issue descriptions.
SUGGESTED MOTION:
I move that the Public Policy Committee recommend that the Board adopt a position on the following pending state legislation of interest to CAP: (staff recommendations in parentheses)

HB 2203 wildland fuel loads; watershed protection (MONITOR + Seek Amendment)
HB 2551 water; desalination action plan. (SUPPORT)

Attachments.
The 53rd State Legislature’s Second Regular Session began on Monday, January 8, 2018. February 21 is the 45th day of the session. 1,165 bills, including memorials and resolutions, have been introduced.

With regard to Sen. Gail Griffin’s water omnibus (S.B. 1507), Sen. Griffin told the Senate Natural Resources, Energy and Water (NREW) Committee that the legislation was necessary to introduce as drafted prior to the deadline to introduce bills. She acknowledged that more public input would be necessary and the bill, including Rep. Rusty Bower’s identical House bill, were a work in progress and amendments would be developed in the legislative process.

Sen. Griffin and Rep. Bowers held hearings for their water-related legislation over the course of several committee meetings. At the February 12 Energy, Environment, and Natural Resources (EENR) Committee, Rep. Bowers said there currently is no agreement on the issues of forbearance and DCP. He said the idea was to have Sen. Griffin’s bill and his bill go through the process with identical language, and urged committee members to pass the water-related bills through committee with the understanding that more changes were to come, depending on results of further discussions.

During the week of February 12, both bills passed their respective committees with amendments. The House passed H.B. 2512 on February 21 by a vote of 33-27.

The following State Legislative Issues Update outlines the status of the Board-approved 2018 Legislative Agenda, as well as other relevant state legislation and issues.

**CAP Authorities**

Monitor legislative and regulatory efforts that seek to diminish or otherwise modify CAP’s contractual authorities.

**Status as of February 21, 2018:**

S.B. 1507 *(water program amendments)*, is Sen. Gail Griffin’s “water omnibus” contains several water-related provisions. Rep. Rusty Bowers introduced an identical companion bill, H.B. 2512 *(water program amendments,)*. The provisions applicable to CAWCD include:

- CAWCD notification to the ADWR Director regarding discussions/negotiations with the U.S.; and,
- Prohibition of CAWCD claiming sovereign immunity protection in lawsuits brought by a CAP contractor or subcontractor.
Both bills contain provisions related to a wide range of state water issues, including:

- Requirement of ADWR Director to develop a Desalination Action Plan.
- Transfer of Natural Resource Conservation Districts (NRCD) to a division under the authority and direction of the Arizona Department of Forestry and Fire Management, and the addition of the State Forester as a nonvoting ex officio member on the Arizona Water Protection Fund Commission.
- Modification of the definition of effluent.
- Right to use groundwater withdrawn pursuant to an irrigation grandfathered right to water plants in containers on or above the surface of the ground.
- Review of an inadequate water supply determination made by a county outside an Active Management Area.
- Requirement to obtain legislative authorization prior to the transportation of water out of the state.
- Requirement for ADWR to adopt rules to calculate extinguishment credits in the Pinal Active Management Area.
- Development of a sixth management period from 2025 to 2035 for each Active Management Area.

On February 1, the CAWCD Board adopted a position of “MONITOR” for both bills.

Update: Sen. Griffin scheduled hearings for S.B. 1507 in the Senate NREW Committee on February 5, 12, and 15, but did not take official action until February 15 when the bill passed the committee, 5-3, with amendments. Likewise, Rep. Bowers scheduled H.B. 2512 in his committee on February 6 and 8 for discussion, but did not vote on the bill until February 13.

During the week of February 12, Sen. Griffin released several proposed amendments to S.B. 1507 relating to the following provisions:

- CAWCD notification to the ADWR Director regarding negotiations - The amendment fixed a typo to clarify that the notification requirement is reciprocal between CAWCD and the ADWR Director. The amendment was adopted to S.B. 1507 as well as H.B. 2512.
- Legislature and Governor approval of out-of-state water transportation - The amendment removed reference of “Colorado River water” that was included as part of the water sources that cannot be transported out of state. Under current state law, ADWR cannot approve transportation of water that has been allocated by federal law or interstate compact (i.e. Colorado River water), so the amendment was corrective in nature. The amendment was adopted to S.B. 1507 as well as H.B. 2512.
State Legislative Issues Update

- **Requirement of ADWR Director to develop a Desalination Action Plan** – The amendment requires ADWR, when evaluating desalination in the state, to consider “the sources of brackish groundwater.” This amendment was adopted to S.B. 1507, as well as H.B. 2512. Sen. Griffin’s committee also passed an amendment to S.B. 1507 that adds requirements of the director when analyzing and evaluating underground brackish water that is located in a county adjacent to the Colorado River.

- **Addition of a sixth management period in the state’s Groundwater Code** – The amendment made technical corrections to the proposed language contained in the bill. The amendment was adopted S.B. 1507 as well as H.B. 2512.

- **Changes to address Pinal AMA groundwater issues** – The amendment provides the statutory calculation for extinguishment credits in the Pinal AMA. However, Sen. Griffin’s committee adopted an amendment that revised the calculation, effective through December 31, 2021. ADWR Director Tom Buschatzke testified that the amendment to the Senate bill has the consensus language developed by the stakeholder group. In this regard, S.B. 1507 and H.B. 2512, as amended by their respective committees have similar amendments, but they were not identical until H.B. 2512 was amended on the House floor on February 21.

- **Adequate Water Supply changes for counties outside of the CAP service area** – The amendment addresses the concern in the bill’s proposed language that an adequate water supply requirement adopted by a county located outside an AMA could sunset without action by the County Board of Supervisors. The amendment provides that the Board has to unanimously vote to not readopt the provision in order for it to no longer be effective. The amendment was adopted to S.B. 1507 as well as H.B. 2512.

- **Transfer of NRCD administration to the State Forester** - The amendment makes a technical correction and added January 1, 2020 as the effective date of the transfer. The amendment was adopted to S.B. 1507 as well as H.B. 2512. The House bill was later amended on the Floor to change the effective date to a retroactive date of July 1, 2018.

- **Use of groundwater for containerized plants as a non-irrigation use** – The amendment: 1) clarifies the use of groundwater for containerized plants pursuant to an irrigated groundwater right is limited to within an AMA; and 2) removes “plant research or plant breeding” as a permissible uses under the proposed changes to law. The amendment was adopted to S.B. 1507 as well as H.B. 2512.

Sen. Griffin also released a proposed amendment to S.B. 1507 that would have required CAWCD to prepare an annual report on complaints, but it was not offered in committee. Rep. Bowers did not have a similar proposed amendment for H.B. 2512. This amendment has not been added to any legislation to date.
S.B. 1507, as amended, passed the Senate NREW Committee on February 15 by a vote of 5-3. The bill awaits Caucus and Floor action. H.B. 2512, as amended, passed the House EENR Committee on February 13 by a vote 6-3. The House bill was brought to the Floor on February 21 to add amendments that make the bill identical to the version of S.B. 1507 that was passed by the Senate NREW Committee on February 15. Except for the retroactive effective date of July 1, 2018 for the NRDC transfer, both omnibus bills are identical at this point in time. H.B. 2512 was passed by the House, 33-27, on February 21 and now awaits assignment in the Senate.

**CAP Position on S.B. 1507 and H.B. 2512: MONITOR.**

S.B. 1516 *(central Arizona project; sovereign immunity)*, sponsored by Sen. Griffin, stipulates that CAWCD cannot assert sovereign immunity protection in lawsuits brought by a CAP contractor or subcontractor to enforce a water delivery contract. S.B. 1516 does not have a House companion bill, but the CAWCD sovereign immunity provision is included in Rep. Bowers’ larger water bill, H.B. 2512.

**Update:** On February 15, S.B. 1516 was amended to add the provision of CAWCD’s reciprocal notification requirement to ADWR. This amendment is consistent with the amendments on this topic that was added to the larger water bills, S.B. 1507 and H.B. 2512. At the Senate NREW Committee hearing, General Counsel Jay Johnson made a presentation on sovereign immunity as requested by Sen. Griffin.

S.B. 1516, as amended, passed the Senate NREW Committee on February 15, by a 6-2 vote. The bill awaits Caucus and Floor action.

**CAP Position on S.B. 1516: MONITOR.**

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**Protect Lake Mead**

*Continue to support water conservation and similar efforts that protect the water elevation in Lake Mead and help to avoid Colorado River shortage, including implementation of the Lower Colorado River Basin Drought Contingency Plan, or DCP.*

*Support legislation as needed to implement multistate agreements relating to the Colorado River, including the DCP.*

*Continue to promote CAP’s Protect Lake Mead campaign to raise awareness and support for cooperative efforts that are aimed at improving water elevations in the reservoir.*

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**State Legislative Issues Update**

**Status as of February 21, 2018:**


*Update:* H.J.R. 1001 was assigned to the House EENR Committee, but did not receive a hearing.

**Arizona Water Resources**

Continue to collaborate with various stakeholders on efforts to address in-state and interstate water resources.

Monitor legislative actions that directly impact CAP water supplies and operations.

Monitor legislative efforts that encourage in-state water conservation activities, including the use of residential rainwater harvesting systems.

**Status as of February 21, 2018:**

**S.B. 1508 (water; desalination action plan),** sponsored by Sen. Griffin, requires the ADWR Director to draft a Desalination Action Plan for the state by September 30, 2019, with updates every two years. It requires the director to identify areas of brackish groundwater in the state, including areas that would benefit from the use of treated brackish groundwater, and evaluate costs, including those related to brine disposal. The plan also can review binational agreements or projects. As introduced, **H.B. 2551 (water; desalination action plan),** sponsored by Rep. Bowers, is the identical House companion bill to S.B. 1508.

*Update:* S.B. 1508 was amended to require that, when ADWR is evaluating desalination factors, it must consider the sources of brackish groundwater. It also adds requirements of the director when analyzing and evaluating underground brackish water that is located in a county adjacent to the Colorado River, including that the director cannot include this source of water in the state desal plan if it is deemed to be Colorado River water. Furthermore, the amendment stipulates that any conclusion of the director regarding the brackish water source in these counties has no force in administrative and judicial proceedings. The bill, as amended, passed the Senate NREW on February 15 by an 8-0 vote, and awaits Caucus and Floor action.

H.B. 2551 was amended with the same provision for the ADWR director to consider the sources of brackish groundwater, but the provision regarding consideration of on-River
Counties was not. The bill passed, 9-0, the House EENR Committee on February 13, and awaits Floor action.

On February 20, H.B. 2551 was amended on the House Floor to conform the bill to the Senate amendments that were adopted by the Senate NREW Committee to S.B. 1508 on February 15. The bill passed the House, 59-0, on February 20 and awaits assignment in the Senate.

**CAP Position on S.B. 1508: SUPPORT.**

**Recommended CAP Position on H.B. 2551: SUPPORT.**

**S.B. 1509 (water; interstate sales),** sponsored by Sen. Griffin, requires that, in addition to the approval of ADWR Director, for anyone to transfer Arizona water out of state, approval of the Legislature (through enactment) and the Governor is necessary. It also modifies current law to specify that the water for transportation out of state includes “surface water, groundwater, Colorado River water or other water.” S.B. 1509 does not have an identical House companion bill.

*Update:* S.B. 1509 bill was amended to remove the reference to “Colorado River water.” Current state law already prohibits transportation of water allocated by federal law or interstate compact (i.e. Colorado River water), so the amendment was corrective in nature. The bill, as amended, passed the Senate NREW Committee on February 15 by a 5-3 vote, and awaits Caucus and Floor action.

**CAP Position on S.B. 1509: MONITOR.**

**S.J.R. 1001 (Colorado basin project act; anniversary),** sponsored by Sen. Griffin, notes the 50th anniversary of the signing of the Colorado River Basin Project Act and lists some of its beneficial impacts on Arizona. Rep. Bowers does not have a companion resolution.

*Update:* S.J.R. 1001 passed the Senate NREW Committee unanimously on February 12. The resolution awaits Caucus and Floor action.

**CAP Position on S.J.R 1001: SUPPORT.**

**S.C.R. 1031 (water management; sources; policies; support),** sponsored by Sen. Griffin, recognizes some of Arizona’s achievements in water management and
expresses the Legislature’s support for ongoing efforts to secure future water sources. Rep. Bowers does not have a companion resolution.

Update: S.C.R. 1031 passed the Senate Natural Resources, Energy & Water Committee unanimously on February 12 and awaits Caucus and Floor action.

CAP Position on S.C.R. 1031: SUPPORT.

Multi-Species Conservation Program (MSCP) Funding

Support the Arizona Game and Fish Department's efforts to collect and maintain revenues sufficient to continue its annual contribution toward the costs of the MSCP.

Monitor legislative and executive proposals that impact dedicated annual state funding of the MSCP.

Status as of February 21, 2018:

H.B. 2203 (wildland fuel loads; watershed protection), sponsored by Rep. Mark Finchem, allows a mayor or a chairman of a county Board of Supervisors to determine that a "catastrophic wildland fuel load" exists on state or federal land located within the municipal or county boundaries. In making that determination based on specified factors, they are required to notify the federal or state agency and demand development of an abatement plan that they deem suitable within 30 days of notification. The governing body can consult with the county attorney or state Attorney General to devise lawful remedies, including emergency abatement, if the state or federal agency does not respond in a timely manner or otherwise indicates that abatement will not occur.

The bill also expands the duties of the State Forester to include providing for watershed protection and enhancement, in consultation with the ADWR director. The State Forester also is authorized to take specified actions for the purposes of watershed protection and enhancement, including removing certain woody biomass or entering into cooperative agreements with municipalities or counties to do so.

In review of the bill, CAP staff concludes that the bill’s provisions are broad enough to impact MSCP mitigation lands along the Colorado River. MSCP lands in Arizona are deeded or leased to the Arizona Game and Fish Department and therefore would fall under the provisions. CAP staff recommends an amendment to exclude those MSCP lands in Arizona from the bill’s provisions.
State Legislative Issues Update

Update: H.B. 2203 passed the House, 37-22, on February 15. The bill was assigned to the Senate NREW Committee and awaits a hearing.

Recommended CAP Position: MONITOR + Seek Amendment.

Funding of State Water Agencies and Commissions

Support the efforts of the Arizona Department of Water Resources and the Arizona Water Protection Fund Commission to secure sufficient state General Fund appropriations in order to carry out statutory functions.

Monitor legislative actions that propose to use funds available to the Arizona Water Banking Commission for other purposes.

Status as of February 21, 2018:

For the Arizona Department of Water Resources (ADWR), the Governor proposed a total budget of $26,604,400, which is the same level as FY 2018.

On February 7, the House Appropriations Subcommittee on Public Safety, Infrastructure, and Resources reviewed ADWR’s budget as proposed by the Governor. ADWR Director Tom Buschatzke spoke on general budgetary issues, including funds, workforce, and responsibilities. The director spoke to the Governor’s proposal to change the name of ADWR’s special line item, “Lower Colorado River Litigation Expenses,” ($500,000) to expand its uses to lawsuits beyond Navajo Nation v. Interior litigation. He explained the proposed change is related to the reality that there is always potential for Arizona to be sued, pointing out this was the case in 2000 before the 2007 Guidelines were adopted. There was no action taken by the Subcommittee, which is typical of this type of hearing.

S.B. 1039 (appropriation; Arizona water protection fund) would appropriate $1,000,000 to the Fund in FY 2019. The bill was heard in the Senate Natural Resources, Energy & Water Committee on January 22, and passed unanimously, 7-0.

Update: On February 20, the Senate Appropriations Committee amended the bill to reduce the appropriation to $400,000. The bill passed the committee, 10-0, and awaits Caucus and Floor action.

CAP Position: SUPPORT.
Central Arizona Groundwater Replenishment District (CAGRD)

Monitor any proposed CAGRD-related legislation to ensure its operations are not adversely impacted.

Promote awareness of CAGRD’s statutory functions, operations, and funding to inform lawmakers of its critical contribution to Arizona’s water management and economic development.

No update to report at this time.

If you have any questions or would like more information regarding any of the issues contained in this report, please contact CAP Public Affairs, 623-869-2425.
State Legislative Update

Public Policy Committee
March 1, 2018

Jeff Gray
Legislative Affairs Manager

Legislative Update

• 1,165 bills have been introduced this legislative session.

• The deadline to hear bills in house of origin has passed (February 16).

• Last day to hear bills in committee is March 22.

• Tim Dunn was appointed to fill Don Shooter's House seat, and will serve on the House Energy, Environment and Natural Resources Committee.
CAP Authorities

- Monitor legislative and regulatory efforts that seek to diminish or otherwise modify CAP’s contractual authorities.

- Sen. Griffin’s water omnibus, S.B. 1507, and companion H.B. 2512, passed respective committees the week of February 12.

- The House passed H.B. 2512 on February 21 by a vote of 33-27.

- Provisions applicable to CAWCD:
  - CAWCD notification to the ADWR Director regarding discussions/negotiations with the U.S.;
  - prohibition of CAWCD claiming sovereign immunity protection in lawsuits involving a CAP contractor or subcontractor.

- Several amendments were adopted.

Amendments to S.B. 1507 and H.B. 2512

- CAWCD notification to the ADWR Director regarding negotiations – amendment clarifies the notification requirement is reciprocal.

- Requirement of ADWR Director to develop a Desalination Action Plan – amendment requires ADWR director to consider sources of brackish groundwater in the plan.

- Legislature and Governor approval of out-of-state water transportation - amendment removes reference of “Colorado River water.”


- Changes to address Pinal AMA groundwater issues – amendment provides the statutory calculation for extinguishment credits in the Pinal AMA. Senate NREW adopted a similar amendment to revise the calculation, effective through December 31, 2021.

- Adequate Water Supply changes for counties outside of the CAP service area – amendment addresses concern of the automatic sunset of adequacy requirement.

- Transfer of NRCD administration to the State Forester - amendment makes a technical correction and adds effective date of January 1, 2020. H.B. 2512 was later amended to add a retroactive effective date of July 1, 2018.

- Use of groundwater for containerized plants as a non-irrigation use – amendment clarifies applicability to AMAs and removes “plant research or plant breeding” as a permissible uses.
CAP Authorities

- Monitor legislative and regulatory efforts that seek to diminish or otherwise modify CAP’s contractual authorities.

**S.B. 1516 central Arizona project; sovereign immunity**

- S.B. 1516 stipulates that CAWCD cannot assert sovereign immunity protection in lawsuits brought by a CAP contractor or subcontractor to enforce a water delivery contract.
- S.B. 1516 does not have a similar stand-alone House companion bill.
- The bill was amended to include CAWCD’s reciprocal notification requirement to ADWR on discussions/negotiations with the United States. Amendment is consistent with what is currently included in the water omnibus bills.
- S.B. 1516 passed the Senate Natural Resources, Energy and Water Committee, 6-2, on February 15, and awaits Senate Floor action.
- **CAP Position: MONITOR**

Protect Lake Mead

- Continue to support water conservation and similar efforts that protect the water elevation in Lake Mead and help to avoid Colorado River shortage, including implementation of the Lower Colorado River Basin Drought Contingency Plan, or DCP.
- Support legislation as needed to implement multistate agreements relating to the Colorado River, including the DCP.
- Continue to promote CAP’s Protect Lake Mead campaign to raise awareness and support for cooperative efforts that are aimed at improving water elevations in the reservoir.

**H.J.R. 1001 lower Colorado drought contingency agreement**

- H.J.R. 1001 was assigned to the House Energy, Environment, and Natural Resources Committee, but did not receive a hearing.
Arizona Water Resources
► Continue to collaborate with various stakeholders on efforts to address in-state and interstate water resources.
► Monitor legislative actions that directly impact CAP water supplies and operations.
► Monitor legislative efforts that encourage in-state water conservation activities, including the use of residential rainwater harvesting systems.

S.B. 1508 water; desalination action plan
• S.B. 1508 requires the ADWR Director to draft a Desalination Action Plan for the state by September 30, 2019, with updates every two years. H.B. 2551 is the identical House companion to S.B. 1508.
• S.B. 1508 was amended to include ADWR evaluation requirements relating to the sources of brackish groundwater. H.B. 2551 was amended on the House Floor on February 20 to conform to the Senate version.
• S.B. 1508 awaits Caucus and Floor action. H.B. 2551 passed the House, 59-0, on February 20, and awaits Senate assignment.
• CAP Position on S.B. 1508: SUPPORT
• Recommended CAP Position on H.B. 2551: SUPPORT

S.B. 1509 water; interstate sales
• S.B. 1509 requires approval by the Legislature, through enactment, and the Governor before Arizona water can be transported out of state. It also specifies that the water for transportation out of state includes “surface water, groundwater, Colorado River water or other water.”
• S.B. 1509 does not have an identical House companion bill.
• The bill was amended to remove the reference to “Colorado River water.”
• As amended, the bill passed the Senate Natural Resources, Energy & Water Committee on February 15, by a 5-3 vote. Awaits Floor action.
• CAP Position: MONITOR
Arizona Water Resources

► Continue to collaborate with various stakeholders on efforts to address in-state and interstate water resources.
► Monitor legislative actions that directly impact CAP water supplies and operations.
► Monitor legislative efforts that encourage in-state water conservation activities, including the use of residential rainwater harvesting systems.

S.J.R. 1001 Colorado basin project act; anniversary

► S.J.R. 1001 notes the 50th anniversary of the Colorado River Basin Project Act and lists some of its beneficial impacts on Arizona.

► The resolution passed the Senate Natural Resources, Energy & Water Committee unanimously on February 12.

► Bill awaits Floor action.

► CAP Position: SUPPORT

Arizona Water Resources

► Continue to collaborate with various stakeholders on efforts to address in-state and interstate water resources.
► Monitor legislative actions that directly impact CAP water supplies and operations.
► Monitor legislative efforts that encourage in-state water conservation activities, including the use of residential rainwater harvesting systems.

S.C.R. 1031 water management; sources; policies; support

► S.C.R. 1031 recognizes some of Arizona’s achievements in water management and expresses the Legislature’s support for ongoing efforts to secure future water sources.

► The resolution passed the Senate Natural Resources, Energy & Water Committee unanimously on February 12.

► Bill awaits Floor action.

► CAP Position: SUPPORT
Multi-Species Conservation Program (MSCP) Funding

- Support the Arizona Game and Fish Department’s efforts to collect and maintain revenues sufficient to continue its annual contribution toward the costs of the MSCP.
- Monitor legislative and executive proposals that impact dedicated annual state funding of the MSCP.

H.B. 2203 wildland fuel loads; watershed protection

- H.B. 2203 would allow a city (mayor) or county (CBOS) to require state and federal agencies to develop an abatement plan if the city or county determines that a fuel load exists on lands within their boundaries.
- Bill’s broad provisions have implications on MSCP mitigation lands in Arizona, which are deeded or leased to the Arizona Game and Fish Department.
- Staff recommends an amendment to exclude MSCP lands from bill’s provisions.
- Bill passed the House, 37-22, and awaits Senate assignment.
- **CAP Recommended Position: MONITOR + Seek Amendment**

Funding of State Water Agencies and Commissions

- Support the efforts of the Arizona Department of Water Resources and the Arizona Water Protection Fund Commission to secure sufficient state General Fund appropriations in order to carry out statutory functions.
- Monitor legislative actions that propose to use funds available to the Arizona Water Banking Commission for other purposes.

S.B. 1039 appropriation; Arizona water protection fund

- S.B. 1039, which would appropriate $1,000,000 to the Water Protection Fund in FY 2019.
- On February 20, the Senate Appropriations Committee reduced the appropriation in the bill to $400,000. The bill passed, as amended, by a vote of 10-0.
- Awaits Floor action.
- **CAP Position: SUPPORT**
State of Arizona
House of Representatives
Fifty-third Legislature
Second Regular Session
2018

HOUSE BILL 2203

AN ACT

AMENDING TITLE 9, CHAPTER 4, ARTICLE 8, ARIZONA REVISED STATUTES, BY ADDING SECTION 9-500.41; AMENDING TITLE 11, CHAPTER 2, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 11-269.20; AMENDING SECTIONS 37-1302 AND 37-1303, ARIZONA REVISED STATUTES; RELATING TO FIRE MANAGEMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 9, chapter 4, article 8, Arizona Revised Statutes, is amended by adding section 9-500.41, to read:

9-500.41. Catastrophic wildland fuel loads; determination; notice; plan to abate; emergency abatement; definitions

A. The mayor of a city or town may determine that a catastrophic wildland fuel load exists on state or federal land located within the boundaries of the city or town. In evaluating whether a catastrophic wildland fuel load exists, the mayor may consider:

1. Tree density and overall health of forested areas, including the fire regime condition class.
2. Insect and disease infestation, including insect and disease hazard ratings.
3. Fuel loads.
4. Forest or range types.
5. Slopes and other natural characteristics of an area.
6. Watershed protection criteria.
7. Weather and climate.
8. Any other factor the mayor determines is relevant under the circumstances.

B. Except as provided in subsections F and G of this section, on determining that a catastrophic wildland fuel load exists, the mayor of the city or town shall do all of the following:

1. Consult with the city or town attorney or the attorney general.
2. Notify, by personal service or certified mail, the federal or state agency that manages the land on which the catastrophic wildland fuel load exists. The notice of determination required by subsection B, paragraph 2 of this section shall include:
   1. A detailed explanation of the basis for the determination that a catastrophic wildland fuel load exists.
   2. A demand that the federal or state agency make a plan to abate the catastrophic wildland fuel load.
   3. A specific date, at least thirty days after the date on which the notice is received, by which the federal or state agency that manages the land must abate the catastrophic wildland fuel load or produce a plan to mitigate the catastrophic wildland fuel load that is reasonably acceptable to the city or town.

C. The mayor of the city or town may enter into a plan with the federal or state agency that manages the land on which the catastrophic wildland fuel load exists to abate the catastrophic wildland fuel load.
E. If the federal or state agency does not respond by the date provided in the notice of determination or otherwise indicates that the federal or state agency will not abate the catastrophic wildland fuel load, the mayor of the city or town shall notify and consult with the city or town attorney and the attorney general.

F. If the mayor of the city or town determines, pursuant to subsection A of this section, that a catastrophic wildland fuel load exists on federally managed land and finds that the catastrophic wildland fuel load adversely affects or constitutes an immediate threat to the public health, safety and welfare of the people of the city or town, the mayor, in consultation with the city or town attorney and the attorney general, shall pursue all remedies allowed by law.

G. If seeking emergency abatement of a catastrophic wildland fuel load pursuant to subsection F of this section, the mayor of the city or town shall attempt, as much as possible, to:

1. Coordinate with state and federal agencies.

2. Obtain the advice of professionals, including professionals in the private sector, with expertise in abating catastrophic wildland fuel loads.

H. This section does not limit the authority of this state to manage and protect wildlife pursuant to title 17 or the power of a city or town prescribed by section 9-240, subsection B, paragraph 21.

I. For the purposes of this section:

1. "Catastrophic wildland fuel load" means a condition on state or federal land in which natural resources and biota have been mismanaged or neglected to such an extent as to cause either:

   (a) The threat of a catastrophic wildfire demonstrated by:

      (i) Stand density, basal area or ground fuel load that is greater than one hundred fifty percent of land health standards.

      (ii) An insect or disease infestation that is severe enough to threaten the mortality of at least twenty percent of the trees in the area.

   (b) A condition in the area that threatens any of the following:

      (i) The quantity or quality of a city's or town's water supply.

      (ii) The health, safety or welfare of a city's or town's citizens.

      (iii) The air quality of a nonattainment area as defined in section 49-401.01.

   (iv) Vegetative resources that are necessary to support land health and authorized livestock grazing.

2. "Federal agency" includes the:

   (a) United States Bureau of Land Management.

   (b) United States Forest Service.

   (c) United States Fish and Wildlife Service.

   (d) National Park Service.
Sec. 2. Title 11, chapter 2, article 4, Arizona Revised Statutes, is amended by adding section 11-269.20, to read:

11-269.20. Catastrophic wildland fuel loads; determination; notice; plan to abate; emergency abatement; definitions

A. The Chairman of the Board of Supervisors or the County Sheriff may determine that a catastrophic wildland fuel load exists on state or federal land located within the boundaries of the county. In evaluating whether a catastrophic wildland fuel load exists, the Chairman or the County Sheriff may consider:

1. Tree density and overall health of forested areas, including the fire regime condition class.
2. Insect and disease infestation, including insect and disease hazard ratings.
3. Fuel loads.
4. Forest or range types.
5. Slopes and other natural characteristics of an area.
6. Watershed protection criteria.
7. Weather and climate.
8. Any other factor that the Chairman or the County Sheriff determines is relevant under the circumstances.

B. Except as provided in subsections F and G of this section, on determining that a catastrophic wildland fuel load exists, the Chairman of the Board of Supervisors or the County Sheriff shall do all of the following:

1. Consult with the County Attorney or the Attorney General.
2. Notify, by personal service or certified mail, the federal or state agency that manages the land on which the catastrophic wildland fuel load exists.
3. Provide a copy of the notice of determination to the Governor, the Attorney General and, if the catastrophic wildland fuel load exists on federal land, the congressional delegation of this state.

C. The notice of determination required by subsection B, paragraph 2 of this section shall include:

1. A detailed explanation of the basis for the determination that a catastrophic wildland fuel load exists.
2. A demand that the federal or state agency make a plan to abate the catastrophic wildland fuel load.
3. A specific date, at least thirty days after the date on which the notice is received, by which the federal or state agency that manages the land must abate the catastrophic wildland fuel load or produce a plan to mitigate the catastrophic wildland fuel load that is reasonably acceptable to the county.

D. The Chairman of the Board of Supervisors or the County Sheriff may enter into a plan with the federal or state agency that manages the
LAND ON WHICH THE CATASTROPHIC WILDLAND FUEL LOAD EXISTS TO ABATE THE CATASTROPHIC WILDLAND FUEL LOAD.

E. IF THE FEDERAL OR STATE AGENCY DOES NOT RESPOND BY THE DATE PROVIDED IN THE NOTICE OF DETERMINATION OR OTHERWISE INDICATES THAT THE FEDERAL OR STATE AGENCY WILL NOT ABATE THE CATASTROPHIC WILDLAND FUEL LOAD, THE CHAIRMAN OF THE BOARD OF SUPERVISORS OR THE COUNTY SHERIFF SHALL NOTIFY AND CONSULT WITH THE COUNTY ATTORNEY AND THE ATTORNEY GENERAL.

F. IF THE CHAIRMAN OF THE BOARD OF SUPERVISORS OR THE COUNTY SHERIFF DETERMINES, PURSUANT TO SUBSECTION A OF THIS SECTION, THAT A CATASTROPHIC WILDLAND FUEL LOAD EXISTS ON FEDERALLY MANAGED LAND AND FINDS THAT THE CATASTROPHIC WILDLAND FUEL LOAD ADVERSELY AFFECTS OR CONSTITUTES AN IMMEDIATE THREAT TO THE PUBLIC HEALTH, SAFETY AND WELFARE OF THE PEOPLE OF THE COUNTY, THE CHAIRMAN OR THE COUNTY SHERIFF, IN CONSULTATION WITH THE COUNTY ATTORNEY AND THE ATTORNEY GENERAL, SHALL PURSUE ALL REMEDIES ALLOWED BY LAW.

G. IF SEEKING EMERGENCY ABATEMENT OF A CATASTROPHIC WILDLAND FUEL LOAD PURSUANT TO SUBSECTION F OF THIS SECTION, THE CHAIRMAN OF THE BOARD OF SUPERVISORS OR THE COUNTY SHERIFF SHALL ATTEMPT, AS MUCH AS POSSIBLE, TO:

1. COORDINATE WITH STATE AND FEDERAL AGENCIES.
2. OBTAIN THE ADVICE OF PROFESSIONALS, INCLUDING PROFESSIONALS IN THE PRIVATE SECTOR, WITH EXPERTISE IN ABATING CATASTROPHIC WILDLAND FUEL LOADS.

H. THIS SECTION DOES NOT LIMIT THE AUTHORITY OF THIS STATE TO MANAGE AND PROTECT WILDLIFE PURSUANT TO TITLE 17 OR THE POWER OF A CITY OR TOWN PRESCRIBED BY SECTION 9-240, SUBSECTION B, PARAGRAPH 21.

I. FOR THE PURPOSES OF THIS SECTION:
1. "CATASTROPHIC WILDLAND FUEL LOAD" MEANS A CONDITION ON STATE OR FEDERAL LAND IN WHICH NATURAL RESOURCES AND BIOTA HAVE BEEN MISMANAGED OR NEGLECTED TO SUCH AN EXTENT AS TO CAUSE EITHER:
   (a) THE THREAT OF A CATASTROPHIC WILDFIRE DEMONSTRATED BY:
      (i) STAND DENSITY, BASAL AREA OR GROUND FUEL LOAD THAT IS GREATER THAN ONE HUNDRED FIFTY PERCENT OF LAND HEALTH STANDARDS.
      (ii) AN INSECT OR DISEASE INFESTATION THAT IS SEVERE ENOUGH TO THREATEN THE MORTALITY OF AT LEAST TWENTY PERCENT OF THE TREES IN THE AREA.
   (b) A CONDITION IN THE AREA THAT THREATENS ANY OF THE FOLLOWING:
      (i) THE QUANTITY OR QUALITY OF A COUNTY'S WATER SUPPLY.
      (ii) THE HEALTH, SAFETY OR WELFARE OF A COUNTY'S CITIZENS.
      (iii) THE AIR QUALITY OF A NONATTAINMENT AREA AS DEFINED IN SECTION 49-401.01.
      (iv) VEGETATIVE RESOURCES THAT ARE NECESSARY TO SUPPORT LAND HEALTH AND AUTHORIZED LIVESTOCK GRAZING.
2. "FEDERAL AGENCY" INCLUDES THE:
   (a) UNITED STATES BUREAU OF LAND MANAGEMENT.
(b) UNITED STATES FOREST SERVICE.
(c) UNITED STATES FISH AND WILDLIFE SERVICE.
(d) NATIONAL PARK SERVICE.

Sec. 3. Section 37-1302, Arizona Revised Statutes, is amended to read:

37-1302. Powers and duties of state forester; rules; legislative presentation; acceptance of federal law

A. The state forester is designated as the agent of the THIS state of Arizona and shall administer this chapter. The state forester shall:

1. Exercise and perform all powers and duties vested in or imposed on the Arizona department of forestry and fire management.

2. Adopt rules necessary to discharge the powers and duties of the Arizona department of forestry and fire management, including rules that create efficiencies, protect the public health and safety and prescribe budgetary obligations.

3. Subject to title 41, chapter 4, article 4, appoint an assistant director to the office of the state fire marshal, a state fire training officer and a state fire resource coordinator, all of whom serve at the pleasure of the state forester.

4. Subject to title 41, chapter 4, article 4, employ, determine the terms and conditions of employment of and prescribe the duties and powers of administrative, professional, technical, secretarial, clerical and other persons as may be necessary in the performance of the Arizona department of forestry and fire management's duties. The compensation of department employees shall be as determined pursuant to section 38-611.

5. Contract for the services of outside advisors, consultants and aides as may be reasonably necessary.

6. Perform all management and administrative functions assigned or delegated to this state by the United States relating to forestry and financial assistance and grants relating to forestry.

7. Identify sources of information relating to forest management, including wildfire prevention, mitigation, suppression and recovery and administrative and judicial appeals and litigation with respect to timber sales and forest thinning projects in this state, and develop procedures for compiling and distributing that information.

8. Take necessary action to maximize state fire assistance grants, including establishing timelines for using grant monies and reallocating lapsed grant monies to other projects.

9. Conduct education and outreach in forest communities by explaining the wildfire threat to private property caused by the lack of timber harvesting, forest thinning, land management and watershed protection and enhancement.

10. Monitor and conduct forestry projects and wildfire prevention, mitigation and suppression activities.
11. Assist in the development of the forestry products industry in this state.

12. Intervene on behalf of this state and its citizens in administrative and judicial appeals and litigation that challenge governmental efforts supported by the state forester if the state forester determines that intervention is in the best interests of this state.

13. Annually develop and implement a comprehensive statewide wildfire response plan for the deployment of state, county, municipal, fire district, volunteer fire association and private fire service provider contract resources to wildfire suppression activities. The statewide wildfire response plan shall take into account anticipated fire conditions and fire severity and may include prepositioning resources as necessary. The state forester shall consult with federal land management firefighting agencies, state and county emergency agencies, municipal fire departments, fire districts, statewide fire district and statewide fire chiefs associations, volunteer fire departments and private fire contractors in the development of the comprehensive statewide wildfire response plan, the implementation of standards for training and certification for all classes of wildland fire and hazard personnel and the implementation of standards for wildland fire apparatus and equipment that are deployed under cooperative agreements with the state forester.

14. Provide necessary oversight to ensure standardized training and certification for all classifications of firefighters to be deployed to any incident.

15. Develop recommendations for minimum standards for safeguarding life and property from wildland fires and fire hazards, preventing wildland fires and alleviating fire hazards.

16. Develop recommendations for minimum standards for the storage, sale, distribution and use of dangerous chemicals, combustibles, flammable liquids, explosives and radioactive materials in wildland-urban interface areas.

17. Consult with the department of public safety, the department of emergency and military affairs and local governments regarding the establishment of fire evacuation routes and community alert systems.

18. Make recommendations for minimum standards for the creation of defensible spaces in and around wildland-urban interface areas as authorized by existing county and municipal laws and ordinances.

19. IN CONSULTATION WITH THE DIRECTOR OF WATER RESOURCES PURSUANT TO TITLE 45, CHAPTER 1, ARTICLE 15, PROVIDE FOR WATERSHED PROTECTION AND ENHANCEMENT.

B. During the first regular session of each legislature, the state forester shall present information to the legislative committees with jurisdiction over forestry issues. The state forester shall collaborate with, and invite the participation of, relevant state, federal and local
governmental officers and agencies. A written report is not required, but the presentation shall include information concerning:

1. Forestry management, including the current conditions of the forests in this state on federal, state and private property as affected by federal, state and local public policies, climatic conditions, wildfire hazards, pest infestations, overgrowth and overgrowth control policies and methods and the effects of current federal policy on forest management and impacts on forest land management.

2. The wildland-urban interface, including the effects of county and municipal zoning policies and wildfire hazards on public and private property.

3. Wildfire emergency management and all hazard response issues, including:
   (a) Intergovernmental and interagency primacy, cooperation, coordination, roles and training of federal, state and local forestry, firefighting and law enforcement agencies.
   (b) Channels and methods of communicating emergency information to the public.
   (c) The roles of governmental and nongovernmental disaster relief agencies and organizations.
   (d) The level of federal, state and local emergency funding.

C. The state forester may:
   1. Furnish technical advice to the people of this state on forestry and land management matters.
   2. Do all other acts necessary to take advantage of and carry out the provisions of the act of Congress described in subsection D of this section.

D. This state accepts the provisions of the cooperative forestry assistance act of 1978 (P.L. 95-313; 92 Stat. 365; 16 United States Code chapter 41) providing for federal forestry assistance programs to states.

Sec. 4. Section 37-1303, Arizona Revised Statutes, is amended to read:

37-1303. Suppression of wildfires; powers and duties of state forester; entry on private lands

A. The state forester shall have authority to prevent, manage or suppress any wildfires on state and private lands located outside incorporated municipalities and, if subject to cooperative agreements, on other lands located in this state or in other states, Mexico or Canada. If there is no cooperative agreement, the state forester may furnish wildfire suppression services on any lands in this state if the state forester determines that suppression services are in the best interests of this state and are immediately necessary to protect state lands.

B. In exercising the authority to prevent, manage or suppress wildfires, if the state forester declares a prohibition on fire-causing
activities and fireworks, the state forester shall post a notice of the action on the state forester's website and provide a copy of the notice to the news media and the original declaration to the Arizona state library, archives and public records. The notice shall clearly state the types of prohibited activities, where they are prohibited and whether permits that are issued by other governmental entities are affected by the action.

C. The state forester may request the governor to declare a wildland fire emergency pursuant to section 35-192. If liabilities are authorized under both sections 35-192 and 37-1305, the authorization under section 37-1305 must be exhausted before any liabilities may be incurred under section 35-192.

D. The state forester may enter into cooperative agreements with other state and federal agencies, departments and political subdivisions and any person for:

1. THE prevention and suppression of wildfires.
2. Assistance with fire and nonfire national and state emergencies and multiagency logistical support in this state and other states.
3. Activities pursuant to the wildfire suppression assistance act (P.L. 101-11; 103 Stat. 15; 42 United States Code sections 1856m through 1856o) in Mexico and Canada.
4. ASSISTANCE WITH REMOVING NONNATIVE WOODY BIOMASS OR OVERGROWTH OF WOODY BIOMASS, OR BOTH, OR OTHER CATASTROPHIC WILDLAND FUEL LOADS AS DEFINED IN SECTIONS 9-500.41 AND 11-269.20 PURSUANT TO SUBSECTION G OF THIS SECTION.

E. The state forester may enter private lands in performing the duties under this section.

F. The state forester may enter into agreements to utilize USE private landowners' equipment and personnel if the fire is on or adjacent to such private landowners' property.

G. THE STATE FORESTER MAY DO BOTH OF THE FOLLOWING FOR THE PURPOSES OF WATERSHED PROTECTION AND ENHANCEMENT:

1. REMOVE NONNATIVE WOODY BIOMASS OR OVERGROWTH OF WOODY BIOMASS, OR BOTH, OR OTHER CATASTROPHIC WILDLAND FUEL LOADS AS DEFINED IN SECTIONS 9-500.41 AND 11-269.20 FROM STATE LANDS.

2. ENTER INTO COOPERATIVE AGREEMENTS WITH CITIES, TOWNS OR COUNTIES TO REMOVE NONNATIVE WOODY BIOMASS OR OVERGROWTH OF WOODY BIOMASS, OR BOTH, OR OTHER CATASTROPHIC WILDLAND FUEL LOADS AS DEFINED IN SECTIONS 9-500.41 AND 11-269.20 FROM CITY, TOWN OR COUNTY LANDS.


G. I. Within a wildfire management area, the state forester or the designated wildfire incident commander is not responsible for the safety or actions of any person or private entity contracted to provide wildfire protection services for private property.
State of Arizona
House of Representatives
Fifty-third Legislature
Second Regular Session
2018

HOUSE BILL 2551

AN ACT

AMENDING TITLE 45, CHAPTER 1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 45-118; RELATING TO THE DEPARTMENT OF WATER RESOURCES.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 45, chapter 1, article 1, Arizona Revised Statutes, is amended by adding section 45-118, to read:

45-118. Desalination action plan; report

A. The director shall prepare a desalination action plan that includes all the following:

1. An identification of areas within this state where brackish groundwater exists in significant amounts.

2. An estimate of the cost to treat and deliver the brackish groundwater for an economically viable use.

3. An identification of areas of this state that would benefit from the use of the treated brackish groundwater.

4. An identification of potential funding sources for the treatment and delivery of the brackish groundwater.

5. An evaluation of the feasibility and cost of disposal of the brine product that results from treating brackish groundwater.

6. An evaluation and analysis of issues related to the sources of the brackish groundwater identified in the desalination action plan, including any potential impacts that might occur to the water supplies of water users in the area of the brackish groundwater if the groundwater is withdrawn and treated for use.

B. A desalination action plan may also identify and evaluate potential binational agreements or projects related to the treatment of brackish groundwater or sea water using the criteria prescribed in subsection A of this section.

C. If the director determines there is significant brackish water underground in a county adjacent to the Colorado River, the director shall include in the desalination action plan an analysis and evaluation of the source of the underground water. Whether the water is being used and, if the water is being used, the purposes for which it is being used. If the director concludes that the likely source of the water is Colorado River water, the director shall not address that water in the desalination action plan. Any conclusion made by the director as to the source of the water is not binding for any purpose and does not create a presumption of the legal character of the water in any administrative or judicial proceeding.

D. The director shall submit the initial desalination action plan on or before September 30, 2019 to the governor, the president of the senate, the speaker of the house of representatives, the members of the senate natural resources, energy and water committee, or its successor committee, and the members of the house of representatives energy, environment and natural resources committee, or its successor committee, and shall provide a copy of the report to the secretary of state. The director shall submit subsequent reports on the desalination action plan and its results by December 31 every two years there-after.