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Environmental Issues Impacting Arkansas/Missouri Municipal Utilities: SEMO-NEARK Annual Meeting Presentation

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I undertook a presentation at the May 9th SEMO-NEARK annual meeting in Norfork, Arkansas, titled:

Environmental Issues Impacting Arkansas/Missouri Municipal Utilities ("Presentation")

The *Presentation* focused on a variety of federal and/or state (Arkansas and Missouri) issues affecting municipal utilities.

The aspects of the municipality operations that were addressed include power, wastewater, and water facilities.

The specific issues addressed included:

- Arkansas Governmental Reorganization noting formation of the Department of Energy and Environment (which includes Arkansas Department of Environmental Quality ["ADEQ"], Public Service Commission, Tank Advisory Committee, State Geologists)
- Solar Energy
- AB 1636 (Arkansas)
- Allow schools to participate in Arkansas Energy Performance Contracting
- Contracts can go to 25 years
- SB 145 (Arkansas)
- Allows third party purchasing so a resident or business can host a solar energy system
- Solar size limit from 300 KW to 1000 KW
- Missouri Legislation
- Grants for Utility Projects (increased to \$3,000 per connection)
- Missouri Clean Water Law (exempting agricultural stormwater discharges and return flows from certain clean water permitting requirements in specific situations)
- Clean Water Act
- Addressing jurisdictional elements
- Noting Obama/Trump rule WOTUS interpretational proposed changes
- Does a Discharge to Groundwater Require an NPDES Permit?
- Addressing recent federal Appellate Court decisions including *Maui*
- Pending United States Court review
- Noting U.S. Environmental Protection guidance issued on the issue

- Reminder about broader Arkansas/Missouri jurisdiction
- Impacts of the groundwater/water U.S. issue
- Note referencing continued environmental organizations suits addressing groundwater until a United States Supreme Court resolution
- Arkansas Water Quality Trading Update
- Arkansas Antidegradation Update
- Arkansas Water Quality Standards/Minerals
- Arkansas Water Quality Standards/Nutrients
- U.S. Environmental Protection Agency (“EPA”) approval of Missouri Lakes Numeric Nutrient Standards
- Des Moines Waterworks Lawsuit against Three Iowa Drainage Districts Alleging Nitrate Issues
- Discussion of PFAS’s
- Noting pending lawsuits
- Introduced federal legislation
- States with numerical limits
- Finalization of EPA Resource Conservation and Recovery Act Pharmaceutical Rule (impact on water and wastewater utilities)
- Water Quantity/Equitable Apportionment
- Memphis v. Tennessee
- Is groundwater an interstate resource subject to equitable apportionment among the states?
- Mississippi Complaint challenging pumping by Memphis Light, Gas and Water
- U.S. Supreme Court appoints magistrate to determine whether Mississippi has sole authority and control over groundwater stored naturally within its borders
- Arkansas Medical Marijuana Rules
- Issues relevant to the municipal utilities
- Employee issues associated with the legal use of medical marijuana (note nondiscrimination provision and need to create safety sensitive positions as appropriate)
- Medical marijuana cultivation and dispensary use of water and wastewater services
- Significant energy consumption
- Clean Air Act/Arkansas (potential combination of Regulations 18, 19 and 26)
- Missouri/Arkansas Storage Tank Trust Fund (continuing importance)
- Cooperative Federalism
- EPA prioritization of greater control by the states
- Greater state responsibility but no additional federal resources
- Baseline statutes have not changed
- Environmental organizations challenging EPA decisions
- Criminal/Civil Enforcement including examples such as:
 - CERCLA Section 103 notification requirements
 - OSHA enforcement addressing tank entry and trenching issues
 - Continuing prosecution of knowing environment violations
 - Environmental Reporting (Employee First Amendment/Public Employer Retaliation Claim)
 - Brownfields (continuing importance of state programs)

A copy of the slides can be downloaded [here](#).