

ARIZONA HOUSE OF REPRESENTATIVES  
Fiftieth Legislature – First Regular Session

**COMMITTEE ON AGRICULTURE AND WATER**

Minutes of Meeting  
Thursday, March 17, 2011  
House Hearing Room 5 -- 9:00 a.m.

Chairman Jones called the meeting to order at 9:09 a.m. and attendance was noted by the secretary.

**Members Present**

Mrs. Barton  
Mrs. Brophy McGee  
Mr. Gallego

Mrs. Judd  
Ms. Miranda C  
Mrs. Pancrazi

Mr. Urie  
Mr. Crandell, Vice-Chairman  
Mr. Jones, Chairman

**Members Absent**

None

**Committee Action**

SB1566 - DPA S/E (5-3-0-1)

**CONSIDERATION OF BILLS**

**SB1566 - exempt wells; emergency use - DO PASS AMENDED S/E**  
**S/E: emergency groundwater transfer**

**Vice-Chairman Crandell moved that SB1566 do pass.**

**Vice-Chairman Crandell moved that the Jones five-page strike-everything amendment dated 3/10/11 (Attachment 1) be adopted. The motion carried.**

Rodney Loehr, Majority Intern, explained that the Jones five-page strike-everything amendment dated 3/10/11 (Attachment 1) to SB1566 allows groundwater to be transported away from a groundwater basin that is outside of an Active Management Area (AMA) under drought emergency circumstances. The strike-everything amendment permits an exempt well to be drilled inside of an AMA only if the water is to be used for livestock purposes in the event of a water shortage (Attachment 2).

Mrs. Judd asked how often this emergency measure can be used. Mr. Loehr stated that he does not know but will contact her when he obtains the information. Mrs. Judd asked if the well is a permanent well; Mr. Loehr replied in the affirmative. Mrs. Judd stated her concern that once a

well is drilled, the purpose of that well can be amended at a later date. Mr. Loehr explained that the operation of the well can be rescinded if any violation of the original terms of use occurs.

Mr. Urie asked what the proper procedure is for declaring an emergency and approving the drilling of a well. Mr. Loehr stated that in 1999, Governor Hull declared a drought emergency which is still in effect. He cited page 4, subsection B, of the Jones strike-everything amendment (Attachment 1) relating the following requirements:

1. The Governor has declared an emergency due to lack of precipitation or a water shortage pursuant to section 35-192.
2. The groundwater to be transported will be withdrawn from a well that is in existence as of the date of the Governor's declaration of emergency.
3. If the groundwater to be transported will be withdrawn from a well within the incorporated area of a city or town, the city or town has consented to the groundwater withdrawal.
4. If the groundwater to be transported will be withdrawn from a well within the boundaries of a political subdivision, however designated, established pursuant to Title 48, Chapter 17 or 19, the political subdivision has consented to the groundwater withdrawal.
5. If the groundwater to be transported will be withdrawn from a well within the boundaries of a county for use in another county, the county from which the groundwater will be withdrawn has consented to the groundwater withdrawal.
6. The groundwater to be transported will be transported only by motor vehicle or train.
7. The groundwater transportation is necessary to provide water supplies for domestic purposes, stock watering or potable municipal water service purposes in a location included in the emergency declaration.
8. The groundwater to be transported will be used only for domestic purposes, stock watering or potable municipal water service purposes.
9. The county, city, town or other political subdivision within which the transported water is to be used has implemented an emergency conservation plan sufficient to prevent nonessential use of the groundwater.
10. The groundwater to be transported will not be used in an active management area.

Mr. Urie stated that if any of the entities listed within the requirements do not agree, the water is not transported. Mr. Loehr replied that is his understanding.

Senator John McComish, sponsor, described a situation when a small community of about 30 homes that have livestock lost animals during a water interruption in Tempe. He explained that SB1566 is a result of this situation and addresses the concerns of his constituents to prevent future harm to the animals. A constituent attempted to obtain permission to drill a solar well a few years ago but was unsuccessful and requested that Senator McComish draft legislation as a solution.

Mrs. Pancrazi asked if this issue requires legislation or if it can be addressed through the city or county. Senator McComish explained that approval was received from the City of Tempe a few years prior but state laws conflicted and, as a result, SB1566 is the solution to move forward.

Vice-Chairman Crandell asked when the specific event of water disruption took place. Senator McComish deferred to Mr. Nicpon.

Mrs. Judd asked who would own the well and if property would be purchased on which to drill the well. Senator McComish explained that the well would be drilled on an individual's private property and would be shared with the community in the case of an emergency.

Chairman Jones asked if there will be more than one well. Senator McComish stated that a single well of limited capacity would be drilled.

Stanley Nicpon, representing self, testified in support of SB1566, stating that he is a member of the Community Emergency Response Team (CERT) and is trained by the fire department to respond to any crisis. He explained that the requested well is a solar well used to aid livestock in the case of an emergency. Humans cannot survive 72 hours without water and animals cannot survive without water for more than 24 to 48 hours.

Chairman Jones asked what prompted the modification to eliminate the restriction to the use of solar wells. Mr. Nicpon stated that he is unsure but that the well would be for emergency use only and is restricted to a maximum of 35 gallons per minute. Chairman Jones asked if Mr. Nicpon objects to potential changes regarding the capacity of the well. Mr. Nicpon stated that solar wells have a maximum capacity of 35 gallons per minute.

Vice-Chairman Crandell asked when the emergency event took place that prompted the legislation. Mr. Nicpon stated that the event took place approximately 20 years ago during the summer. Vice-Chairman Crandell asked what resource was used during that event. Mr. Nicpon stated that he is not sure what sources were used during the shortage to obtain water. Discussion ensued regarding emergency water distribution and the liabilities involved.

Vice-Chairman Crandell asked if any other emergencies have taken place since the aforementioned emergency 20 years prior. Mr. Nicpon stated that approximately two years ago, the City of Tempe burst a pipe in a well that left the City without water for about 10 hours.

Bas Aja, Arizona Cattlemen's Association, testified in opposition to the Jones five-page strike-everything amendment dated 3/10/11 (Attachment 1) to SB1566, stating that in the case of an emergency all restrictions should be removed. He explained that vast differences exist between each animal's need for water. Mr. Aja stated that the Arizona Cattlemen's Association does not oppose the need for the well, but opposes the provisions regarding the drought emergency. He asserted that the language is vague regarding "lack of precipitation" and objected to the use of the term "notwithstanding."

Chairman Jones asked if the term "notwithstanding" is language from the bill or the amendment. Mr. Aja stated that the language is in Session law. Discussion ensued regarding crafting language without the use of the term "notwithstanding."

Mrs. Pancrazi asked Mr. Aja if his concern is that the definition of "emergency" can be changed and that a Session law is only valid for one year. Mr. Aja answered in the affirmative and offered suggestions for language to eliminate the term "notwithstanding." Mr. Aja suggested not adopting the Jones strike-everything amendment and amending SB1566 with a Floor amendment.

Chairman Jones asked if Mr. Aja's primary concern is the bill becoming part of statute instead of Session law. Mr. Aja answered in the affirmative. Chairman Jones asked if an amendment to change the bill to Session law instead of statute would suffice. Mr. Aja agreed.

Mrs. Pancrazi asked if a verbal amendment can be offered to make the necessary change to the bill. Chairman Jones explained that a verbal amendment cannot be substantive in nature and the change required is substantive. Mrs. Pancrazi asked if Chairman Jones will agree to make the change through a Floor amendment; Chairman Jones agreed.

Senator McComish stated that he does not want SB1566 to become Session law. He explained that if a well is drilled and then the bill approving that well is not passed every year, the well will have to be filled in and then re-drilled if the bill is passed the following year. He asked if there is a way to allow part of the bill to be Session law and another to become statute. Chairman Jones answered in the affirmative.

Mrs. Barton asked if there is an existing well. Chairman Jones explained the two different portions of the bill regarding the transporting of water and the drilling of a well for the case of an emergency in Tempe. Mrs. Barton opined that care needs to be taken with the exact language used in the bill so that it cannot be interpreted for an unintended use.

Mr. Loehr offered a point of clarification regarding the drought emergency groundwater transfer provision, stating that it became Session law nine times with the use of the term "notwithstanding."

Chairman Jones stated that he will offer an amendment on the Floor to make the requested changes.

Discussion ensued among the Members regarding the definition of "emergency" and whether to make the provisions part of Session law or statute.

Vice-Chairman Crandell announced the names of those who signed up in support of SB1566 but did not speak:

Bridget Manock, Manager of Legislative Affairs, Central Arizona Project

Jeff Gray, Legislative Liaison, City of Phoenix

**Vice-Chairman Crandell moved that SB1566 as amended do pass. The motion carried by a roll call vote of 5-3-0-1 (Attachment 3).**

## **PRESENTATIONS**

### **Arizona's Water Future: Challenges and Opportunities**

Sharon B. Megdal, Ph.D., Director, The University of Arizona Water Resources Research Center (WRRC), Water Sustainability Program, distributed a copy of the presentation to the Members and stated that the WRRC Mission is *to promote understanding of critical state and regional water management and policy issues through research, community outreach and public education* (Attachment 4). She stated that the WRRC is committed to:

- assisting communities in water management and policy

- educating teachers, students and the public about water
- encouraging scientific research on state and regional water issues

WRRC's focus on water policy:

- water pricing
  - WIFA Survey Data and new study using water company data
  - private/public water company differences
- environmental water needs
  - conserve to enhance
  - Arizona Environmental Water Needs Assessment Report and Methodological Guidebook
- water planning and meeting future water needs
- US-Mexico Transboundary Aquifer Assessment Program
- seminars and lectures
- Arizona Project WET (Water Education for Teachers) based at the WRRC
- annual conference - Desalination, Yuma, April 26-27, 2011
- educational programs
  - Arizona Water Policy class - bring in experts
  - Water Policy Certificate Program
  - Master's in Water, Society and Policy

Water management and policy are shaped by:

- resource availability
- location of water demands and supplies
- economics
- historic and current legal/institutional framework
  - the nature of involvement of multiple governmental and non-governmental entities, including the extent of centralized versus decentralized decision making
- politics of area
- public values
- information (context is important)

Surface Water/Groundwater Management Achievements:

- Major strides have been made by the State and its water management partners in securing water supplies for the Active Management Areas (AMAs):
  - Groundwater Management/Conservation
  - Central Arizona Project
  - Assured Water Supply Program
  - Underground Storage and Recovery Program (Recharge Program)
  - Arizona Water Banking Authority
  - Central Arizona Groundwater Replenishment District (CAGRDR)
  - Colorado River Management

Water Management Issues and Challenges:

- growth and the need for additional supplies (competition)
- drought/climate variability

- Water - Energy Nexus
- water management outside the AMAs, including water quantity assessments
- water quality
- use of effluent for potable and other water needs
- access to and utilization of renewable supplies
- transboundary water issues
- the surface water/groundwater interface
- riparian areas and other environmental considerations related to water
- outstanding Indian water rights settlements
- conservation programs
- recovery of stored water
- CAGR and replenishment
- water cost/pricing
- water planning

Many are working to address these challenges:

- understanding the situation and issues
  - Water Resources Development Commission
  - tradeoffs and options
- development of partnerships
  - economies of scale
  - funding arrangements
  - voluntary arrangements/transactions
  - the universities can and would like to be helpful
    - o connecting research to the needs of decision makers
    - o educating the next generation of professionals
    - o engagement/outreach – all stakeholders

Dr. Megdal answered questions regarding the following:

- the effects of cloud seeding on other water supplies
- drought and precipitation
- tree rings and water's affect on growth
- desalination
- groundwater and aquifers

### **Water Quality in Arizona**

Linda Taunt, Deputy Director, Water Quality Division, Arizona Department of Environmental Quality (ADEQ), provided a copy of the presentation to the Members (Attachment 5). She stated that the focus of her presentation will be pesticides, nutrients, salinity and reclaimed water.

Arizona's Water Resources:

- Surface Water
- Groundwater
- Reclaimed Water
- Stormwater

#### Environmental Quality Act (EQA) of 1986:

- driven by discovery of massive sites of groundwater contamination by industrial solvents and agricultural pesticides
- EQA establishes:
  - ADEQ as an agency
  - Three new state water quality programs
    - Aquifer Protection Permit (APP)
    - Pesticide Contamination Prevention
    - Water Quality Assurance Revolving Fund (WQARF) or “State Superfund”
- Water Quality Program Components
  - prevention
  - monitoring and assessment
  - compliance and enforcement
  - remediation

#### Groundwater Protection:

- Aquifer Protection Permit (APP) Program
- all aquifers in Arizona are protected for drinking water
- aquifer water quality standards are the same as the Safe Drinking Water Act Maximum Contaminant Levels (MCLs)
- discharge facilities must obtain permit coverage - Individual Aquifer Protection Permit or a General APP Permit
- Individual permits employ Best Available Control Technology (BADCT) essentially industry standards
- General permits rely on best management practices or BMPs

#### Surface Water Protection:

- ADEQ administers federal Clean Water Act responsibilities under the Arizona Pollutant Discharge Elimination System Permit (AZPDES) Program.
- Surface water quality standards are based on the type of water and the intended uses.
- Facilities seeking to discharge to “waters of the US” require AZPDES permit coverage - either individual or general permits.
- Traditional emphasis of AZPDES program:
  - chemical pollutants
- Now, increasing emphasis on:
  - biological impacts
  - physical integrity impacts
  - nonpoint sources
  - stormwater

#### Assessing Water Quality:

- ADEQ monitors water quality statewide
- assesses surface waters for meeting standards and identifies “impaired waters” every two years
- primary pollutants causing impairment:
  1. metals

2. turbidity/sediment
3. nutrients (nitrogen, phosphorus)
  - irrigation return flows
  - manure handling
  - onsite waste treatment systems
4. microbial contamination
5. pesticides
6. low oxygen, low pH

#### Restoring Impaired Waters

- programs to protect water quality
- develop Total Maximum Daily Load (TMDL) plan to reduce loads
- establishing effective partnerships with landowners and agencies to implement watershed based projects
- Since 2000, \$14 million in Water Quality Improvement Grant monies granted to watershed improvement projects throughout state.

#### Pesticide Contamination Prevention Program:

- EQA - established program to prevent groundwater pollution, such as the major DBCP and EDB problems discovered in the late 1970s.
- Joint Program with Arizona Department of Agriculture - agricultural pesticides are screened for mobility and persistence.

#### Livestock Grazing:

- Pollutants of concern
  - nutrients, bacteria, sediment
  - stream stability
- Regulatory Oversight
  - surface water grazing permit requiring use of best management practices
- Improving watershed health
  - timing, location and intensity of grazing
  - installation of rangeland improvements
  - implementing land treatments

#### Concentrated Animal Feeding Operations (CAFOs):

- approximately 150 CAFOs statewide
- largest operations
  - cattle feeding 130,000 head
  - hogs 163,000 swine
  - eggs 3.2 million hens
- Pollutants of concern
  - nutrients, bacteria, sediment, odors, vectors

#### Septic Tanks:

- serve about 20 percent of Arizona's population - especially rural Arizona
- approximately 10,000 new systems permitted each year
- linked to both groundwater and surface water contamination by nitrogen/nitrate

- cause usually is high density
- APP program requires alternative system technologies that reduce nitrogen in new, high-density developments

Salinity:

- irrigated agriculture and other water uses concentrate salts in soils, groundwater, and surface water in desert basins
- EPA recommends levels below 500 ppm for drinking

Reclaimed Water/Grey Water:

- 90 percent of reuse occurs in just four states, Arizona being one
- about 20 percent of Arizona reclaimed water goes to irrigated agriculture

In response to a question, Ms. Taunt provided information regarding the federal regulation of pesticides.

Without objection, the meeting adjourned at 11:30 a.m.

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Charly Laube, Committee Secretary  
June 9, 2011

(Original minutes, attachments and audio on file in the Office of the Chief Clerk; video archives available at <http://www.azleg.gov>)