



ARIZONA STATE SENATE

Fifty-Third Legislature, Second Regular Session

FACT SHEET FOR S.B. 1507

water program amendments

Purpose

Amends various programs relating to water supplies, conservation, watersheds and administration of laws relating to water.

Background

Arizona Department of Water Resources (DWR)

Created in 1980, DWR assumed the responsibilities of the Arizona Water Commission and the State Water Engineer relating to surface water, groundwater and dams and reservoirs (A.R.S. §§ [45-103](#) and [45-105](#)). DWR administers state water laws, except those related to water quality, which come under the jurisdiction of the Arizona Department of Environmental Quality (ADEQ). Arizona's water supplies consist of surface water, including Colorado River water and in-state rivers; groundwater; and reclaimed water (also known as effluent).

1980 Groundwater Code

DWR administers the 1980 Groundwater Management Act (Act), which established a comprehensive management framework to address groundwater rights, groundwater overdraft and conservation. The Act:

- a) created Active Management Areas (AMAs) in geographic areas where groundwater depletion was most severe;
- b) established a goal of safe yield for certain AMAs;
- c) required DWR to develop a series of five sequential management plans for each AMA, beginning in 1980 and ending in 2025;
- d) requires new subdivisions to demonstrate that a 100-year assured water supply is available to support the development; and
- e) outlines conservation requirements for various users.

Assured and Adequate Water Supply Requirements

Current law requires a developer to obtain a determination from the state regarding the sufficiency of water supplies before a subdivision can be marketed. The Director of DWR is required to evaluate the water supplies that will be used for a new subdivision based on the development's projected needs, the source of the water and the method of delivery. If the subdivision is inside an AMA, lots may not be sold unless the DWR Director determines that an *assured* water supply exists.

If the development is outside an AMA, and sufficient water exists to support the development, a certificate of *adequate* water supply is issued. If the water supply is determined to be *inadequate*, the property may still be sold, and information on the water supply must be included in documents provided at the initial sale of the property.

An adequate water supply can be demonstrated in one of two ways; 1) the developer has a water supply that is determined to be adequate or sufficient to supply the water needs of the development for 100 years; or 2) the development will be served by a city, town or private water company that has been designated by the DWR Director as having an adequate water supply.

Currently, the board of supervisors (BOS) of a county located outside an AMA may adopt an *adequacy provision*, by unanimous vote, requiring all new subdivisions to have an adequate water supply for the proposed development to be approved by the platting authority. If adopted, the provision applies countywide and may not be rescinded ([A.R.S. § 11-823](#)).

Grandfathered Rights, Extinguishment Credits and Groundwater Allowance

In an AMA, a person who was legally withdrawing and using groundwater as of the date of the designation of the AMA or who owns land legally entitled to be irrigated with groundwater has the right to withdraw or receive and use groundwater as determined by the DWR Director, known as grandfathered rights. There are three categories of grandfathered rights: 1) non-irrigation grandfathered rights associated with retired irrigated land; 2) non-irrigation grandfathered rights not associated with retired irrigated land; and 3) irrigation grandfathered rights ([A.R.S. § 45-462](#)).

An extinguishment credit is an amount of groundwater that can continue to be pumped, without a requirement for replacement or replenishment, after an existing grandfathered groundwater right is retired. The amount of the extinguishment credit is calculated based on a formula currently found in DWR rule. The amount can be counted as a source of water by a person who is seeking a certificate or designation of assured water supply.

Currently, a proposed subdivision can use a limited amount of unreplenished groundwater, which can be counted toward an assured water supply. This *groundwater allowance* is scheduled to be eliminated in 2025 (Arizona Administrative Code R12-15-725).

Natural Resource Conservation Districts

Currently, the Arizona State Land Department administers Arizona's Natural Resource Conservation District (NRCD) Program, which involves funding and technical assistance for 32 districts in Arizona ([A.R.S. Title 37, Chapter 6](#)). NRCDs work with the U.S. Department of Agriculture Natural Resource Conservation Service and Farm Service Agency to provide technical and financial assistance for conservation of soil, water and other natural resources.

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

County Water Adequacy Provision

1. Requires the BOS of a county that is not in an AMA and that has adopted an adequacy provision to review the adequacy provision:
 - a) within five years of the general effective date; and
 - b) at least every ten years thereafter, but not more than every five years.
2. Allows the BOS to vote on whether to continue the adequacy provision and specifies that if no vote is taken, the adequacy provision remains in effect.
3. Provides that the adequacy provision will remain in effect unless the BOS votes unanimously not to readopt the provision.
4. Provides that if the adequacy provision is not readopted:
 - a) the BOS will provide written notice to the State Real Estate Commissioner and the directors of ADWR and ADEQ; and
 - b) the adequacy provision has no further force only if specific water conservation measures, outlined in the bill, are in place at the time of the vote.

State Forester and NRCDs

5. Transfers administration of NRCDs from the State Land Department to the Arizona Department of Forestry and Fire Management (DFFM).
6. Establishes the State Forester as the State Natural Resource Conservation Commissioner and expands the duties to require:
 - a) public recognition of state water conservation measures or projects; and
 - b) promotion of the state's water related advancements and the impact on watersheds, forest health, multiple uses and stormwater runoff protection programs.
7. Provides for transfer of contracts, orders, judicial actions, and all personnel, property, records, data, obligations, and unspent appropriated monies from the State Land Department to the DFFM.
8. Adds the State Forester as an ex officio member of the Arizona Water Protection Fund Commission.
9. Contains a delayed effective date of January 1, 2020 for provisions related to the transfer of NRCD administration.

Desalination

10. Requires the DWR Director to prepare a desalination action plan that includes:
 - a) the location of significant amounts of brackish groundwater and potential uses of the treated water;
 - b) a cost benefit analysis for treatment and delivery of the water;
 - c) potential funding sources;
 - d) an evaluation of the feasibility and costs to dispose of the brine product that results from treating brackish groundwater;
 - e) an evaluation of issues related to the source of the brackish groundwater and impacts to the area if the water is withdrawn and treated for use; and
 - f) potential binational agreements or projects to treat brackish groundwater or sea water.
11. Requires the Director of DWR to consider, in counties adjacent to the Colorado River, the source of the underground water. If the Director concludes the likely source is Colorado River water, that water will not be included in the desalination action plan.
12. Establishes a due date for the initial plan of September 30, 2019, and requires an update on the plan and its results every two years.

Transporting Water Out of State

13. Modifies the existing application process for a person to withdraw, divert or transport water from Arizona by:
 - a) requiring a notice from DWR to the President of the Senate and the Speaker of the House of Representatives when the DWR Director receives an application to transfer water; and
 - b) specifying the sources of water subject to the application and approval process.

Pinal AMA Extinguishment Credits, Groundwater Allowance and Assured Water Supply

14. Outlines a formula to calculate extinguishment credits for grandfathered groundwater rights in the Pinal AMA, including a gradual reduction to the amount of the credit at five year intervals.
15. Requires the DWR Director to adopt rules for calculating extinguishment credits in the Pinal AMA by January 1, 2019. Exempts adoption of these rules from the standard administrative rulemaking process and provides the rules with an immediate effective date.
16. Eliminates the groundwater allowance for a certificate of assured water supply for a proposed subdivision in the Pinal AMA, as of September 1, 2018.
17. Requires the DWR Director to recalculate the amount of groundwater that is available for use in the Pinal AMA for purposes of determining an assured water supply.

Containerized Plants

18. Modifies restrictions that currently apply to the use of an irrigation grandfathered right (IGFR) in order to allow a person to use an IGFR to withdraw groundwater to water plants in containers that are on or above the surface of the ground if the plants are grown for:
 - a) sale or human consumption; or
 - b) use as feed for livestock or poultry.
19. Requires the amount of water used for containerized plants to be measured separately from groundwater used for an irrigation use on the certificated acres. The combined amount may not exceed the total amount allowed for the farm.
20. Allows a person to request separate certificates for those acres dedicated to containerized plants and for acres dedicated to irrigation uses.

Sixth Management Period

21. Establishes a sixth management period from 2025 to 2035 and requires the DWR Director to adopt a management plan for each AMA that outlines goals to achieve reductions in withdrawals of groundwater, including conservation measures and requirements for agricultural, municipal and industrial uses.
22. Requires the DWR Director to establish at least one advisory committee for each AMA.
23. Requires an evaluation of the effectiveness of the requirements of the fifth and sixth management plans and recommendations to either continue or revise the conservation requirements. Establishes a due date of December 31, 2030, for the DWR Director to submit the report to the Governor and the Legislature.

Miscellaneous

24. Requires Legislative Council to prepare proposed legislation to conform Arizona Revised Statutes to the changes made in this act for consideration during the next regular legislative session.
25. Makes technical and conforming changes.
26. Becomes effective on the general effective date, with a delayed effective date as noted.

Amendments Adopted by Committee

1. Modifies the steps that a BOS follows regarding review and voting on an existing county adequacy provision.
2. Provides an effective date for transfer of administrative responsibility for NRCDs.

3. Modifies information and sources of water to be included in the desalination action plan.
4. Removes Colorado River water from the list of sources of water subject to the application process for transporting water out of state.
5. For the Pinal AMA, eliminates the groundwater allowance, effective September 1, 2018, and outlines a formula to calculate extinguishment credits.
6. Removes the authority to use an IGFR for containerized plants grown for plant research or plant breeding.
7. Makes technical and conforming changes.

Amendments Adopted by Committee of the Whole

1. Removes sections regarding:
 - a) the definition of effluent;
 - b) Central Arizona Water Conservation District (CAWCD) sovereign immunity; and
 - c) reciprocal notification between DWR and CAWCD.
2. Removes the requirement for the Legislature and Governor to approve an application to transport water out of state.
3. Requires DWR to provide a notice to the Legislature when an application to transport water out of state is received.
4. Makes conforming changes.

Senate Action

NREW 2/15/18 DPA 5-3-0

Prepared by Senate Research

March 2, 2018

KK/lat