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Senate: NREW DPA 4-3-0-0 | 3rd Read 16-12-2-0

House: NREW DPA 6-4-0-0

SB 1221: basin management areas; appropriation

Sponsor: Senator Kerr, LD 25

Caucus & COW

Overview

Establishes a process to designate a basin management area (BMA) and an active BMA. Appropriates \$40 million from allocated state monies from the Arizona Rescue Plan Act (ARPA) of 2021 to the Arizona Department of Water Resources (ADWR) in FY 2025 to fund water conservation measures in a BMA.

History

The Groundwater Management Code (Code) was enacted in 1980 and established the statutory framework to regulate and control the use of groundwater. As part of the management framework, the Code designated active management areas (AMAs) and irrigation non-expansion areas (INAs) where specific regulations regarding withdrawal and use of groundwater apply (A.R.S. §§ [45-411](#), [45-411.03](#), [45-431](#), [45-554](#))(ADWR).

[Laws 2023, Chapter 133, Section 97](#) appropriated \$5,000,000 from the state General Fund to ADWR in FY 2024 for statewide water resources planning.

Provisions

Initiation Procedures of a BMA

1. Allows the designation of a BMA, in any location not included in an AMA, to be initiated by petition to the ADWR Director if signed by at least 15% of the registered voters who reside within the boundaries of the groundwater basin or subbasin and receive their drinking water from the groundwater basin or subbasin. (Sec. 1)
2. States that if a groundwater basin or subbasin is located in two or more counties, at least 15% of registered voters who reside within the boundaries of the groundwater basin or subbasin and receive their drinking water from the groundwater basin or subbasin must sign the petition. (Sec. 1)
3. Requires the petition form to be substantially similar to an initiative petition and the applicant for the petition to comply with statutory petition requirements. (Sec. 1)
4. Specifies that the duties required by the Secretary of State must be performed by the county recorders of the counties in which the registered voters of the groundwater basin or subbasin reside. (Sec. 1)
5. Prohibits a petition from being accepted more than 180 days after the date of submission of the application for petition. (Sec. 1)

<input type="checkbox"/> Prop 105 (45 votes)	<input type="checkbox"/> Prop 108 (40 votes)	<input type="checkbox"/> Emergency (40 votes)	<input type="checkbox"/> Fiscal Note
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6. Requires, on request of a county recorder, the ADWR Director to transmit to a county recorder any factual data concerning the boundaries of the groundwater basin or subbasin that can aid the county recorder in determining which registered voters are county residents and eligible voters of the groundwater basin or subbasin. (Sec. 1)
7. Requires the transmitted data to include a map of the residencies that receive drinking water from the groundwater basin or subbasin. (Sec. 1)
8. States that the ballot must remain unopened and be destroyed if residency or the origin of a resident's drinking water is not verified. (Sec. 1)
9. Requires, after receiving an application for petition, the ADWR Director to determine whether the groundwater basin or subbasin subject to the petition meets both of the following conditions:
 - a) land subsidence within the groundwater basin or subbasin due to groundwater withdrawal is endangering property or potential groundwater storage capacity; and
 - b) there has been accelerated decline in water levels within the groundwater basin or subbasin over the preceding five years as measured by at least 10 index wells. (Sec. 1)
10. Requires the ADWR Director to:
 - a) select index wells across the groundwater basin or subbasin to collect a basin-wide representative sample; and
 - b) measure each index well's static water level at the same time each year. (Sec. 1)
11. Specifies that each index well must show an accelerated decline of five feet or more annually. (Sec. 1)
12. Requires ADWR to conduct a cost benefit analysis of the increased water management to determine if the probable benefits to the local economy resulting from the proposed water management outweigh the costs. (Sec. 1)
13. Specifies that, if the ADWR Director determines that benefits outweigh the costs, the ADWR Director must transmit:
 - a) the petition to the county board of supervisors (BOS) in each county in which the groundwater basin or subbasin subject to the petition is located; and
 - b) a map of the groundwater basin or subbasin to the county recorder of each county. (Sec. 1)
14. Requires the map to be on a scale adequate to show with substantial accuracy where the boundaries of the groundwater basin or subbasin cross the boundaries of the county voting precincts. (Sec. 1)
15. Requires a county BOS to:
 - a) hold a public meeting to approve or deny a petition;
 - b) approve the petition by an affirmative vote of all members; and
 - c) hold a least three meeting upon approval of the petition. (Sec. 1)
16. Allows the ADWR Director to refer either of the following to the applicable county BOS for designation as a BMA:
 - a) an INA located outside of a basin or subbasin in which groundwater may be transported to an AMA; or
 - b) a basin in which ADWR has reported average declines in groundwater levels greater than 50 feet during the years 2000 through 2020. (Sec. 1)

17. Specifies that an INA or referred subbasin referred by the ADWR Director is not subject to the petition requirements but is subject to the meeting and voting procedure requirements. (Sec. 1)

Meeting Requirements

18. Requires the ADWR Director, if a petition is approved or the ADWR Director declares all basins or subbasins in an INA as a BMA, to hold a series of public meetings as follows:
 - a) the first and second meetings must be held at a location in the county in which the major portion of the proposed BMA is located no more than 60 days after the first publication of the notice of the meeting; and
 - b) the third meeting must be a joint legislative committee consisting of all members of the Senate and House of Representatives Natural Resources, Energy and Water Committees. (Sec. 1)
19. Requires the ADWR Director to:
 - a) give reasonable notice of each meeting;
 - b) post the notice on the ADWR and county websites; and
 - c) include a legal description and map of all lands to be included in the BMA. (Sec. 1)
20. Outlines data and information that must be presented by the ADWR Director at the first, second and third meetings. (Sec. 1)
21. Allows any person to appear at the meetings and submit oral or documentary information regarding the proposed action or modeling completed by ADWR. (Sec. 1)
22. Requires the ADWR Director, within 15 days after the joint legislative meeting adjourns, to determine whether the BMA petition procedures have been met. (Sec. 1)
23. Allows a party to seek judicial review of the ADWR Director's determination. (Sec. 1)
24. Requires the ADWR Director, if all requirements are met and no challenge has been filed, to declare a BMA established and file a true map of the BMA in the office of the county recorder of the county or counties in which the BMA is located. (Sec. 1)

Certificate of Groundwater Rights

25. Requires, within 15 months after a BMA is established, the ADWR Director to grant each water user who applies for a certificate of groundwater rights a certificate that entitles the user to the annual allocated amount of water as follows:
 - a) for municipal, industrial or residential users, a certificate of groundwater rights consistent with the maximum amount of groundwater withdrawn and used, in acre feet, in any one year in the five preceding years before the formation of the BMA; and
 - b) for agricultural users, a certificate of groundwater rights consistent with the higher of:
 - i. the average use of the agricultural groundwater user in acre feet over the preceding 10 years before the formation of the BMA; or
 - ii. the median use of the agricultural groundwater user in acre feet over the preceding 10 years before the formation of the BMA. (Sec. 1)
26. Outlines conditions for the ADWR Director to grant a certificate of groundwater rights for an agricultural user that has withdrawn and used groundwater for fewer than 10 years before the formation of a BMA. (Sec. 1)

27. Requires ADWR to increase the amount of water entitled to a user via a certificate of groundwater rights if the user has made substantial capital investment in the 12 months before the petition is circulated for a BMA designation. (Sec. 1)
28. Requires, for planned residential or mixed-use developments, a landowner to be granted a certificate of groundwater rights equal to the projected water demand of the development at build out. (Sec. 1)
29. Prohibits new groundwater pumping from occurring in a BMA, beginning after the petition is approved, except that a user with a certificate of groundwater rights can retire or diminish the groundwater user's withdrawal from an existing well and withdraw an equal amount of groundwater from a replacement well or existing well for the same use consistent with the groundwater user's certificated groundwater right on the same property or may do any of the following as long as there remains a net benefit of at least 10 percent to the aquifer:
 - a) withdraw intentionally recharged water; or
 - b) transfer a certificate of groundwater rights and the associated groundwater as prescribed. (Sec. 1)
30. Prohibits ADWR from requiring a groundwater user to meter any wells located in a BMA or reporting the user's groundwater use beyond the outlined requirements. (Sec. 1)
31. Allows a user to voluntarily acquire and report metering data. (Sec. 1)
32. Requires a groundwater user to annually report to ADWR an estimate of groundwater use based on pumping capacity and the power usage of the user's groundwater pumping. (Sec. 1)
33. Outlines what must be included in an application for a certificate of groundwater rights for municipal or industrial and agricultural groundwater use. (Sec. 1)
34. Specifies that any data submitted regarding a person's groundwater use is not public record. (Sec. 1)
35. Requires ADWR to issue a receipt of water conservation to a groundwater user. (Sec. 1)

Flexibility Accounts

36. Allows a person entitled to use groundwater pursuant to certificate of groundwater right to:
 - a) use groundwater in excess of the amount allowed by the right in a determined amount; or
 - b) use less than the amount allowed by the right in one accounting period and use the remaining amount allowed by the right in a succeeding accounting period. (Sec. 1)
37. Requires the ADWR Director to establish rules or the maintenance of a flexibility account for each certificate of groundwater right in a BMA. (Sec. 1)
38. Requires, if a person who is entitled to use groundwater pursuant a certificate of groundwater right uses solely groundwater during any accounting period, the ADWR Director to:
 - a) debit the account if the amount of groundwater used is greater than the amount of the annual allocation of the groundwater granted; or
 - b) credit the account if the amount of groundwater used is less than the amount of the annual allocation of groundwater granted. (Sec. 1)

39. Specifies conditions by which groundwater use must be registered as a credit or debit for a person who holds a certificate of groundwater right and uses a combination of surface water, effluent or groundwater. (Sec. 1)
40. States that the maximum excess amount of groundwater that a person can use must be equal to 50% of the annual allocation of water granted pursuant to a certificate of groundwater right. (Sec. 1)
41. Declares that a person is in violation of flexibility account rules if the flexibility account for the certificate of groundwater right is in arrears at any time in the excess of this amount. (Sec. 1)
42. Allows groundwater equal to the credit balance in the flexibility account to be used at any time. (Sec. 1)
43. Requires, if a certificate of groundwater right is conveyed in whole or in part, each acre-foot conveyed to carry with it a proportional share of any debits or credits in the flexibility account for the right. (Sec. 1)
44. Allows each person who owns a certificate of groundwater right that has a registered credit balance to its flexibility account to convey or sell all or a portion of the credit balance to any person who owns another certificate of groundwater right in the same groundwater basin or subbasin. (Sec. 1)
45. Requires the ADWR Director to be notified of the sale or conveyance of a credit balance within 30 days of the sale or conveyance. (Sec. 1)
46. Specifies that a sale or conveyance of a credit balance is only effective if the ADWR Director is notified. (Sec. 1).
47. Requires the ADWR Director, after receiving the notice, to register a deduction of the credit amount conveyed or sold from the conveyer's or seller's flexibility account balance and the corresponding addition to the conveyer's or purchaser's flexibility account balance. (Sec. 1)
48. Specifies the deduction and addition to the flexibility account balances are effective as of the date of the sale or conveyance. (Sec. 1)
49. Allows a person whose certificate of groundwater right has registered a credit balance to its flexibility account to extinguish all or a portion of a credit balance and establishes notification requirements. (Sec. 1)
50. States that the extinguishment of all or part of a credit balance is effective when the ADWR Director receives a notification. (Sec. 1)
51. Requires the ADWR Director to register a deduction of the credit amount extinguished from the flexibility account balance of the person who extinguished the credit balance. (Sec. 1)

Use of Municipal and Industrial Groundwater Rights

52. Allows the owner of a municipal and industrial groundwater right to:
 - a) use groundwater withdrawn for any nonagricultural use at any location in the BMA subject to the provisions governing transportation of groundwater;
 - b) withdraw groundwater only from wells outlined on the user's certificate of groundwater rights;

- c) request the ADWR Director to use a revised certificate of groundwater rights to reflect new or additional points of withdrawal or type of nonagricultural use; and
- d) lease all or part of the municipal or industrial groundwater right. (Sec. 1)

53. Allows the lessee to use groundwater withdrawn pursuant to the groundwater right if it is leased. (Sec. 1)

Use of Agricultural Groundwater Right

54. Allows the owner of an agricultural certificate of groundwater right to:

- a) use groundwater withdrawn for any agricultural use on any land described in the certificate of groundwater rights; and
- b) require the ADWR Director to issue a revised certificate of groundwater rights to reflect new or additional acres of land within the BMA on which the owner wishes to use groundwater for agricultural purposes. (Sec. 1)

55. States the right to use groundwater pursuant to the agricultural groundwater right is appurtenant to the acres of land described in the agricultural certificate of groundwater rights. (Sec. 1)

56. Specifies an agricultural groundwater right is owned by the owner of the land to which the groundwater right is appurtenant and may be leased for agricultural use with the land to which it is appurtenant. (Sec. 1)

57. Allows the owner or lessee of an agricultural certificate of groundwater rights to withdraw or receive groundwater from any location in the BMA subject to the provisions governing transportation of groundwater. (Sec. 1)

Conversion of Groundwater Rights

58. Allows an owner of an agricultural certificate of groundwater rights to convert all or part of the groundwater right to a municipal and industrial use. (Sec.)

59. Allows a municipal or industrial groundwater user to withdraw and use a converted agricultural groundwater right annually for municipal and industrial use as follows:

- a) if the municipal and industrial use is on land described in the agricultural certificate of groundwater rights, 90% of the amount of the agricultural groundwater right allocation; and
- b) if the municipal and industrial use is on land other than land described in the agricultural certificate of groundwater rights, 80% of the amount of the agricultural groundwater right allocation. (Sec. 1)

60. Requires a person who proposed to convert an agricultural groundwater right to notify the ADWR Director of the conversion and specified information. (Sec. 1)

61. Requires the ADWR Director, after receiving notice of a conversion of an agricultural groundwater right, to issue to the owner a revised agricultural certificate of groundwater rights for the remaining agricultural use, if any, and a new municipal and industrial certificate of groundwater rights. (Sec. 1)

Conveyance of Certificate of Groundwater Rights

62. Allows the owner of a municipal and industrial certificate of groundwater rights to sell or convey all or part of the groundwater right for any nonagricultural use in the same groundwater basin or subbasin. (Sec. 1)

63. Requires, within 30 days after a conveyance of a groundwater right, the conveyer and conveyee of the municipal and industrial groundwater right to notify the ADWR Director of the conveyance. (Sec. 1)
64. Outlines what must be included in the notice. (Sec. 1)
65. Requires the ADWR Director, after receiving notice of a conveyance of a municipal and industrial groundwater right, to issue to the conveyor a revised municipal and industrial certificate of groundwater rights for the portion of the groundwater right retained by the conveyor, if any, and issue to the conveyee a new municipal and industrial certificate of groundwater rights for the portion of the groundwater right conveyed. (Sec. 1)
66. Requires, if the owner of an agricultural certificate of groundwater rights conveys land described in the groundwater user's certificate, each acre conveyed to carry with it a proportional share of the annual allocation of groundwater granted. (Sec. 1)
67. Requires the conveyor and the conveyee, within 30 days after the conveyance of land described in an agricultural certificate of groundwater rights, to each notify the ADWR Director of the conveyance and outlines what must be included in the notice. (Sec. 1)
68. Requires the ADWR Director, after receiving notice of a sale or conveyance of an agricultural certificate of groundwater right, to issue to the conveyor a revised certificate for the portion of the groundwater right retained by the conveyor, if any, and issue to the conveyee a new agricultural certificate of groundwater rights for the portion of the groundwater right conveyed. (Sec. 1)
69. Allows the owner of an agricultural certificate of groundwater rights to sell or convey all or part of the right for agricultural use on other land in the same groundwater basin or subbasin. (Sec. 1)
70. Requires the conveyor of an agricultural certificate of groundwater rights and the conveyee, within 30 days after a conveyance, to notify the ADWR Director of the conveyance and outlines what must be included in the notice. (Sec. 1)
71. Requires the ADWR Director, after receiving notice of a sale or conveyance of an agricultural certificate of groundwater rights for use on other agricultural land, to issue to the conveyor a revised certificate of groundwater rights for the portion of the right retained by the conveyor, if any, and issue to the conveyee a new agricultural certificate of groundwater rights for the portion of the right conveyed. (Sec. 1)

Retirement of a Certificate of Groundwater Right

72. Allows an owner of certificate of groundwater rights to retire all or part of the groundwater rights. (Sec. 1)
73. Requires a person who proposes to retire all or part of a certificate of groundwater rights to notify the ADWR Director and outlines what must be included in the notice. (Sec. 1)
74. Requires the ADWR Director, after receiving notice of retirement of all or part of a certificate of groundwater rights, to issue to the person who retires the groundwater right a revised certificate of groundwater rights for the portion of the groundwater right not retired, if any. (Sec. 1)

Active BMA Designation

- 75. Allows the designation of an active BMA in any location that is designated a BMA to be initiated by a unanimous vote of each county BOS with geographic boundaries within the groundwater basin or subbasin. (Sec. 1)
- 76. Requires, if all county supervisors vote to designate an active BMA, the county BOS to call for an election:
 - a) on the question of designating an active BMA; and
 - b) for the election of three active BMA Council members. (Sec. 1)
- 77. Outlines election procedures for the active BMA Council. (Sec. 1)
- 78. Prescribes language to be included in the ballot. (Sec. 1)
- 79. Requires the council members' terms to begin on the date of filing the oath of office with the Secretary of State and to serve four-year terms. (Sec. 1)

Active BMA Council (Council)

- 80. Requires an active BMA Council to be established in each active BMA consisting of five members as follows:
 - a) three members who reside within the boundaries of the active BMA and who receive their drinking water from the groundwater basin or subbasin; and
 - b) two members who are Arizona residents and appointed by the irrigation districts whose boundaries overlap with the active BMA. (Sec. 1)
- 81. Outlines procedures for replacing Council members. (Sec. 1)
- 82. Specifies that Council members are not eligible to receive compensation but are eligible for reimbursement. (Sec. 1)
- 83. Outlines Council duties. (Sec. 1)
- 84. Specifies that a Council can only have those powers given to it by statute. (Sec. 1)
- 85. Prohibits the ADWR Director from taking any action in an active BMA not recommended by the Council. (Sec. 1)

Goals, Rights to Water and Termination Procedures

- 86. Allows specified goals of an active BMA and a Council to be determined by the Council. (Sec. 1)
- 87. Prohibits the designation of an active BMA from infringing on a water user's certificated water rights. (Sec. 1)
- 88. Allows an active BMA Council to require not more than a 2% annual reduction in water use as a part of an active BMA management plan. (Sec. 1)
- 89. Requires ADWR, in conjunction with a Council, to annually review the status of groundwater in the active BMA, estimate the amount of change in groundwater levels and submit an annual report to a Council by February 1. (Sec. 1)
- 90. Prohibits ADWR and a Council from:
 - a) requiring a groundwater user to meter any wells located in an active BMA; and
 - b) requiring a groundwater user to report the user's groundwater use beyond the prescribed requirements. (Sec. 1)

91. Requires a groundwater user to annually report to the Council an estimate of groundwater use based on pumping capacity and the power usage of the user's groundwater pumping. (Sec. 1)
92. States that an active BMA and Council terminate 10 years after the date on which the active BMA was established, unless continued through an election. (Sec. 1)
93. Requires an active BMA to immediately terminate if the ADWR Director determines that the active BMA no longer meets its required conditions. (Sec. 1)
94. Outlines requirements the ADWR Director must complete 24 months before an active BMA terminates. (Sec. 1)
95. States that an active BMA, if not continued, reverts to a BMA and any active BMA management plan is unenforceable. (Sec. 1)
96. Specifies that a water user has the same certificated groundwater right guaranteed to the water user before the formation of the active BMA. (Sec. 1)
97. Prohibits an active BMA that was originally designated as a BMA from terminating on the grounds that the basin no longer meets specified conditions. (Sec. 1)

Appropriation

98. Requires ADWR to use monies appropriated in the statewide waste resources planning line item in Laws 2023, Chapter 133, Section 97 only to fund water conservation measures in a BMA. (Sec. 3)
99. Appropriates \$40,000,000 from ARPA monies in FY 2025 to ADWR to fund water conservation measures in a BMA. (Sec. 3)
100. Allows a water user in a BMA to apply for a grant of not more than 50% of the costs of the water user's water conservation measure. (Sec. 3)
101. Requires ADWR to award the grant monies equitably to all classes of water users in a BMA. (Sec. 3)
102. Exempts the appropriations from lapsing. (Sec. 3)

Miscellaneous

103. Prohibits the ADWR Director or voters of a BMA or an active BMA from designating a BMA or an active BMA as an AMA or INA. (Sec. 1)
104. Specifies that if a BMA is established in an area that was previously designated as an INA, the ADWR Director must declare all basins or subbasins in the INA as a BMA and the INA and any regulations adopted pursuant to the designation as an INA terminate. (Sec. 1)
105. States that the BMA and active BMA provisions do not preempt the transportation of groundwater to AMAs. (Sec. 1)
106. Defines *land subsidence* and *substantial capital investment*. (Sec. 1)
107. Modifies the definition of *eligible entity* to include an active basin management council. (Sec. 2)

Amendments

Committee on Natural Resources, Energy & Water

1. Removes the requirement that the registered voters initiating the establishment of a BMA receive their drinking water from the groundwater basin or subbasin.
2. Requires the initial applicant for a petition to be a resident of Arizona for at least five years and for their primary residence to be in the groundwater basin or subbasin subject to the petition.
3. Specifies that a water management plan for an active BMA cannot require a water user:
 - a) to reduce annual water use at any time during the term of the active BMA pursuant to a groundwater right certificate before the establishment of the active BMA; and
 - b) to achieve water reduction in increments greater than 2% of the user's annual allotment per year in any year during the term of an active BMA.
4. Makes conforming changes.