

BOARD OF DIRECTORS

Information Summary

August 6, 2008

Subject

Proposed Groundwater Transportation Rules

Summary

With certain exceptions, groundwater transportation into an Active Management Area is prohibited. State law provides specific exemptions for groundwater transfer from the McMullen Valley, the Big Chino Sub-basin, the Harquahala Irrigation Non-expansion Area (INA) and Butler Valley. Each of these areas has limitations and qualifications related to groundwater transfers that are specified in statute.

The Arizona Department of Water Resources (ADWR) is in the process of developing rules for inter-basin groundwater transportation in certain areas of the state. Some of the key provisions in the rules relate to the information that must be submitted by applicants seeking to transport groundwater from one of the basins from which groundwater transfer is allowed and the determination of Historically Irrigated Acres (HIA) lands. The determination of HIA lands is critical because the number of HIA relate to the amount of groundwater that may be transferred.

Prior to the initiation of the rule making process, concerns were expressed by affected parties, including the Salt River Project, regarding the transfer of water by Prescott, Prescott Valley and Chino Valley out of the Big Chino Sub-basin. ADWR had drafted a “technical corrections” substantive policy. However, this policy raised further concerns on the part of those parties. Questions arose regarding whether a substantive policy was the most appropriate means by which to address inter-basin groundwater transfers or whether the issue should be addressed in rule. This issue was brought to the Governor’s Regulatory Review Council (GRRC) for review. GRRC determined that the issue should be addressed in rule. ADWR responded by drafting a set of proposed rules and circulating it to interested parties.

ADWR has held multiple meetings in Prescott to discuss the proposed rules. One meeting was also held in Phoenix. Informal public comments regarding the first draft of the rules are due to ADWR by August 15th. The schedule for finalization of the draft rule, and the deadline for the submission of formal comments have not yet been set.

Considerations

These rules raise policy considerations that AMWUA may want to address. The first issue relates to water management. The second issue relates to the means by which ADWR uses past legislation as a precedent for determining the intent of the statute.

In the proposed rules, ADWR interprets the statutes authorizing the Big Chino groundwater sub-basin transfer to allow the rights to withdraw groundwater that are based on historic irrigation on specific parcels of land to be aggregated. This has been interpreted to mean that those groundwater rights may be withdrawn from a single parcel of land located anywhere in the area, not necessarily on the land with which the right is associated. This interpretation is problematic for two reasons. First, concentrating pumping in a single area, rather than a broader area, could create localized groundwater declines that would be more severe than if the groundwater were pumped from several wells located over a larger area. Additionally, Prescott, Prescott Valley and Chino Valley have discussed withdrawing their collective Big Chino water rights from Chino Valley's Wineglass Ranch, a location significantly closer to the headwater springs of the Verde River than the historically irrigated land in the Big Chino. If this were to occur, impacts to the flow of the Verde River could occur sooner than if pumping was limited to the historically irrigated acres and would make monitoring and mitigating those impacts more problematic.

The second issue relates to the differing statutory interpretations used by ADWR when developing the draft rules applicable to transportation of groundwater from different groundwater basins. For example, the statutes for McMullen Valley are different than the statutes for the Big Chino on the issue of the location of the HIA lands and groundwater pumping for transportation. These inconsistencies in the interpretation of the groundwater transfer statutes will likely be problematic in the future.

Additionally, ADWR argues that proposed legislation that failed to be enacted into law may be used for guidance when interpreting the Big Chino statute. One of the reasons that legislation did not pass was because it was flawed in some way or that it is or was politically unacceptable. Using legislation that may be inherently flawed as the basis for interpreting the intent of a current law may not lead to the correct conclusions.

Prior Committee Action

This issue has not previously been before the AMWUA Board of Directors. At its July 30th meeting, the AMWUA Management Board recommended that the AMWUA Board of Directors direct the AMWUA staff, in consultation with the Water Resources Advisory Group, to develop appropriate comments to submit to ADWR related to issues of concern.

Recommendation

The AMWUA staff, in consultation with the Water Resources Advisory Group, develop appropriate comments to submit to ADWR related to issues of concern.

Attachments

There are no attachments.