



State Legislative
Water Policy
Resolutions
of the
Board of Directors
of the
Arizona Municipal
Water Users
Association

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RESOLUTION

**A RESOLUTION OF THE BOARD OF
DIRECTORS OF THE ARIZONA MUNICIPAL
WATER USERS ASSOCIATION REGARDING**

THE GOVERNOR'S WATER MANAGEMENT COMMISSION

WHEREAS, the Arizona Municipal Water Users Association represents the Cities of Chandler, Glendale, Goodyear, Mesa, Peoria, Phoenix, Scottsdale, Tempe, and the Town of Gilbert in the development of urban water policy for Maricopa County; and

WHEREAS, the Governor of the State of Arizona, The Honorable Jane D. Hull, established a Governor's Water Management Commission; and

WHEREAS, the Governor's Water Management Commission was charged to review the 1980 Groundwater Management Code and recommend changes, if necessary, to ensure that the five Active Management Areas within the State continue to maintain a reliable and sustainable water supply to meet current and future demands; and


WHEREAS, the Governor's Water Management Commission submitted its final report on December 18, 2001 which, in preparation for the 2002 legislative session, contains the findings and recommendations of the Governor's Water Management Commission; and,

WHEREAS, the Governor's Water Management Commission found the goals and legal framework of the 1980 Groundwater Management Code are fundamentally sound and as such should continue to guide water management decisions and investments in Active Management Areas; and,

WHEREAS, the specific recommendations of the Governor's Water Management Commission fine tune certain aspects of the Code in order to further reduce groundwater mining, make the achievement of safe yield more likely, enhance environmental values and maintain the stability and certainty necessary for investment in water supplies, delivery infrastructure and efficiency improvements which are vital to Arizona's future.

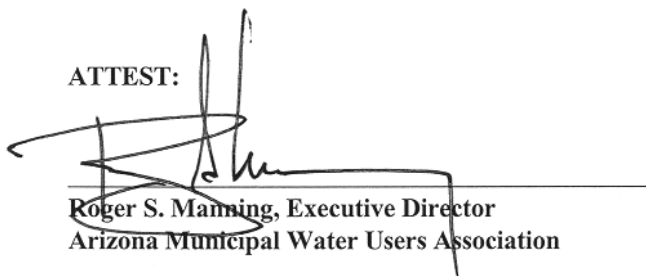
NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Arizona Municipal Water Users Association that the Association respectfully urges the Arizona State Legislature to enact the necessary statutes that will implement the recommendations of the Governor's Water Management Commission contained in its final report dated December 3, 2001.

DATED THIS 10TH DAY OF JANUARY 2002



Mayor Mary Manross, President
Arizona Municipal Water Users Association

ATTEST:



Roger S. Manning, Executive Director
Arizona Municipal Water Users Association

ISSUE A. GOVERNOR'S WATER MANAGEMENT COMMISSIONBackground

The performance audit of the Arizona Department of Water Resources (DWR) conducted by the Auditor General and released on April 23, 1999 addressed DWR's efforts to ensure a long-term water supply for the state and concluded that a number of statutory restrictions and exemptions may limit the ability to achieve the statutory goal of safe yield by 2025 in the Phoenix and Tucson metropolitan areas. Many in the Arizona water community involved in the development of the Third Management Plan had already reached much the same conclusion. Considerable interest was expressed in evaluating the current Groundwater Code and management plan provisions and in developing better tools for achieving safe yield in the safe yield Active Management Areas. In the Summary of Hearing and Findings on the Third Management Plan (TMP), the Director noted this interest and supported the establishment of a study commission to provide focus on regional and local management actions necessary to ensure a sustainable water supply.

Governor's Water Management Commission

On May 2, 2000, at the Conference on the 20th Anniversary of the Groundwater Management Act, the Governor formally announced the establishment of her Water Management Commission.¹ The Governor's Water Management Commission (GWMC) was tasked to:

1. Review the Active Management Areas' (AMA) water quantity management goals, policies and programs.
2. Determine the adequacy of water management programs to meet AMA goals.
3. Identify other water management issues which should be addressed at the State or regional levels.
4. Develop recommendations to the Governor and the Legislature on appropriate changes in statute, rules or DWR policies and programs.

¹ Executive Order 2000-7

In other words, the GWMC was charged to review the 21 year old Groundwater Management Code and recommend changes, if necessary, to ensure that the five AMAs within the State continue to maintain a reliable, sustainable water supply to meet current and future demands.

On December 18, 2001, the GWMC delivered its Final Report to the Governor. The GWMC concluded that although groundwater mining has been considerably reduced and the use of renewable supplies significantly increased, additional work is needed to ensure the Phoenix, Prescott and Tucson AMAs reach their AMA-wide goal of safe-yield by 2025. Nevertheless, the GWMC found that the goals and legal framework of the Code are fundamentally sound and as such should continue to guide water management decisions and investments in the AMAs. The GWMC's recommendations are thus focused on fine-tuning aspects of the Code and other water management-related activities. Such, if implemented, the GWMC contends will further reduce groundwater mining thereby making the achievement of safe yield more likely. These recommendations are also designed to enhance environmental values and to maintain the stability and certainty necessary for investments in water supplies, delivery infrastructure and efficiency improvements which are all vital to Arizona's future quality of life.

This issue paper will briefly address some of the GWMC's recommendations concerning three areas: the Central Arizona Groundwater Replenishment District (CAGR); wells withdrawing groundwater; and, M&I groundwater use disincentives.

Central Arizona Groundwater Replenishment District

CAGR was established to provide landowners, developers and municipal water providers, who have insufficient or no long-term access to CAP water or other renewable supplies, with an alternative mechanism to help demonstrate a 100 year supply under the Code's assured water supply (AWS) requirement and associated rules. Groundwater may not be mined but a member of CAGR can grow on groundwater if it pays CAGR to replenish/recharge/replace any groundwater used by it which exceeds the amount of groundwater which it may pump consistent with the AWS Rules. All other water used must be renewable.

Since enrollment in CAGR has exceeded nearly all expectations, concerns were raised about the availability of renewable supplies to meet CAGR's future replenishment obligations. Currently, and probably until at least 2030, CAGR will rely on unused CAP entitlements available on an annual basis. These unused entitlements are a short-term or temporary resource because as CAP allocations become more heavily utilized less of this excess CA water will be annually available. The GWMC recognized that CAGR's intended role is to maximize use of short-term water supplies that could not otherwise be used to satisfy the 100 year AWS requirement. But if CAGR were required to secure large volumes of long-term water supplies in advance,

it would have to compete for those long-term supplies with municipal water providers that are legally unable to use short-term supplies to demonstrate an AWS. The challenge for the GWMC was: 1) devise a way to help ensure that CAGRDR would be able to meet its future replenishment obligations; 2) maintain CAGRDR's operational and legal flexibility to maximize the use of short-term supplies as they become available; and, 3) reduce the potential for competition over long-term water supplies.

Accordingly, the GWMC recommended that the Legislature amend the statutes to require CAGRDR to build a "replenishment reserve" of long-term underground water storage credits which could be used only after 2030 to meet replenishment obligations. A target volume of 20% of that portion of CAGRDR's 100 year replenishment obligation not otherwise covered by long-term water supplies was recommended. CAGRDR should be given 25 years to build the reserve and as new members enroll, CAGRDR would meet that additional reserve obligation over the succeeding 25 year period. Additionally, CAGRDR would be authorized to fund the replenishment reserve through annual assessment rates and enrollment fees for future members of CAGRDR. This recommendation would allow CAGRDR to take advantage of the significant quantities of unused CAP entitlements that should be available until at least 2030 by implementing a plan to store the water and improve CAGRDR's water supply reliability.

Wells Withdrawing Groundwater

Exempt Wells

Groundwater withdrawals by wells with a pump capacity of 35 gallons per minute or less are exempt from most of the regulatory provisions of the Code. Exempt well owners do not participate in efforts to achieve the AMA management goals, since they have no replenishment obligation, no conservation requirements, no requirement to pay a pump tax and no requirement to measure and report withdrawals. The overall impact of such wells is unknown. However, with the ongoing practice of parcel splits not subject to the State's subdivision laws and dry lot developments where each lot owner must drill a well due to the absence of a centralized water system, exempt wells are expected to increase. Many of the members of the GWMC also expressed concern about potential impacts of high densities of exempt wells in sensitive areas, particularly near riparian habitats. In some cases, existing exempt wells also pose problems for municipal water providers proposing to drill new service area wells. A new service area well requires an impact analysis and all well owners in the impacted area must be identified and noticed even if the well owner drilled his or her well after the municipal provider purchased the service area well site. If a negative impact is projected, the applicant must either reduce projected pumping or obtain a waiver for all well owners, including exempt well owners. Exempt well owners are often difficult to locate and reluctant to provide a waiver even if the well is not in use. If a waiver cannot be obtained, the municipal provider must find a new well site

The GWMC recommended that the pumping capacity of new exempt wells be reduced from 35 to 20 gallons per minute and that new exempt wells be prohibited within the service area of a municipal provider unless the municipal provider denies service. The GWMC also recommended that existing exempt well owners should have a set period of time (30 days) within which to object to the permitting of a new non-exempt well. If no objection is filed, there is no other recourse. If the exempt well owner objects and if the applicant for the proposed non-exempt well offers to connect the exempt well owner to a municipal system at no connection cost, then the hydrologic impact of the new non-exempt well on the exempt well will not be considered. New exempt wells would not be required to be noticed of any hydrologic impact. Insofar as the subject was “new” exempt wells, the GWMC evidently felt that if one is exempt for regulatory obligations it is only fair that one should be exempt from regulatory protections as well.

New Wells: Impacts and Location

The GWMC recommended that no later than January 1, 2005, the DWR Director, assisted by an advisory committee of technical experts and affected water users, must adopt rules governing the location on new wells and replacement wells in new locations to prevent unreasonably increasing damage to surrounding land or other water users from the concentration of wells. The rules will also assess the cumulative impacts of multiple wells drilled by a person in approximately the same location.

Perhaps one of the most significant issues before the GWMC concerned the impact of wells withdrawing groundwater on ecologically significant habitats---riparian areas and wetlands. After considerable study and debate, the GWMC recommended that the Legislature amend the Code to severely limit within AMAs, but not prohibit, the ability to drill new wells, including exempt wells, to withdraw groundwater within a riparian area protection zone specifically designated and periodically reviewed by the Legislature. The boundaries of such ecologically significant habitats so protected would be a one-half mile buffer adjacent to the specified stream segments or wetlands. The Code would also be modified to require that rules be adopted to establish criteria for determining whether a proposed exempt or non-exempt well in a designated riparian area protection zone adversely impacts the riparian area.

M&I Groundwater Use Disincentives

Municipal providers who expect or wish to continue to grow must demonstrate an AWS and show that new residential demands will be met with renewable supplies, not mined groundwater. However, certain segments of the municipal sector, most current and new industrial users, and agricultural users have no requirement to use renewable supplies and thus no obligation to contribute to the achievement of safe yield or other AMA management goals. This creates equity problems, since some water users are making more significant contributions than others.

Accordingly, the GWMC recommended a mined groundwater tax for certain existing M&I users and a replenishment requirement for certain new M&I users. Certain existing M&I water users who currently have no obligation to use renewable supplies would be required to pay a mined groundwater tax of \$20 per acre foot, phased-in over a ten year period, on a percentage of their mined groundwater. This tax would be used to recharge a portion of the groundwater mined or to fund water resource planning activities and technical investigations aimed at reducing reliance on mined groundwater.

Second, for certain new M&I users, the GWMC recommended that they be required to either use renewable supplies or have a phased-in 100% replenishment obligation for all groundwater mined by 2025. It appears that the former recommendation may be subject to Proposition 108, i.e., it must be approved by a two-thirds legislative majority.

Recommendation

The recommendations of the GWMC discussed in this issue paper, if implemented, will help to further reduce groundwater mining and make the achievement of safe yield more likely. They will also enhance environmental values and help to maintain the stability and certainty necessary for investment in water supplies, delivery infrastructure and efficiency improvements which are vital to Arizona's future. Therefore, the Arizona Municipal Water Users Association recommends that the Legislature enact the necessary statutes that will implement the recommendations of the GWMC concerning CAGR, wells withdrawing groundwater and M&I groundwater use disincentives. The goals and legal framework of the 1980 Groundwater Management Code remain fundamentally sound and should continue to guide water management decisions and investments in the AMAs.

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