



Public Notice Pursuant to A.R.S. § 38-431.02

**ARIZONA MUNICIPAL WATER USERS ASSOCIATION
BOARD OF DIRECTORS**

MEETING NOTICE AND AGENDA

Thursday, March 22, 2018 – 10:00 a.m.

(NOTE TIME CHANGE)

**Arizona Municipal Water Users Association
Board Conference Room
3003 North Central Avenue, Suite 1550
Phoenix, Arizona 85012**

A. Call to Order

B. General Business—Items for Discussion and Possible Action

1. Approval of the Minutes from the February 22, 2018 Meeting
2. Schedule Next Meeting Date: Thursday, April 26, 2018, 11:00 a.m.
3. 2018 Legislative Update
4. AMWUA Annual Action Plan
5. Analysis of Water Transfers

C. Executive Director's Report

D. Future Agenda Items

E. Executive Session

Pursuant to A.R.S. Section 38.431.03.A.1, the AMWUA Board of Directors may vote to convene in Executive Session to discuss the annual evaluation of the AMWUA Executive Director.

F. Consideration of Action Pursuant to Executive Session

G. Adjournment

*The order of the agenda may be altered or changed by the AMWUA Board of Directors.

More information about AMWUA public meetings is available in the AMWUA office, online at www.amwua.org/what-we-do/public-meetings, or by request.

Arizona Municipal Water Users Association

BOARD OF DIRECTORS

MEETING MINUTES

February 22, 2018

VOTING MEMBERS PRESENT

Mayor Jim Lane, President, Scottsdale
Mayor Cathy Carlat, Peoria
Councilmember Eddie Cook, Gilbert
Councilmember Pat Dennis, Avondale
Councilmember Lauren Kuby, Tempe
Councilmember René Lopez, Chandler
Councilmember Joanne Osborne, Goodyear
Councilmember Kevin Thompson, Mesa
Councilmember Bart Turner, Glendale
Councilwoman Thelda Williams, Phoenix

OTHERS PRESENT

Barry Aarons, The Aarons Co	Alan Dulaney, Peoria	Diana Piña, AMWUA
Anthony Alejandro, Peoria	Kathy Ferris, AMWUA	Kathy Rall, Scottsdale
Cindy Blackmore, Avondale	Brett Fleck, AMWUA	Javier Setovich, Goodyear
Jessica Blazina, Avondale	Lacey James, Avondale	Richard Siegel, SRP
Eric Braun, Gilbert	Sam Jaskolski, AMWUA	Tony Staffaroni, CAP
Cynthia Campbell, Phoenix	Ryan Lee, Glendale	Drew Swieczkowski, Glendale
Gregg Capps, Chandler	Sandy Lopez, Avondale	Warren Tenney, AMWUA
Brian Draper, Mesa	Brian Payne, AMWUA	Carol Ward-Morris, AMWUA

A. Call to Order

Mayor Lane called the meeting to order at 10:05 a.m.

B. General Business – Items for Discussion and Possible Action

1. Approval of the Minutes from the January 25, 2018 Meeting

Upon a motion by Mayor Carlat and a second by Councilwoman Williams, the AMWUA Board of Directors unanimously approved the January 25, 2018 meeting minutes.

2. Next meeting scheduled: Thursday, March 22, 2018, 10:00 a.m., at the AMWUA office

3. 2018 Legislative Update

Mr. Tenney reviewed a presentation to provide an update on current legislation.

Mr. Tenney stated that identical omnibus bills, SB 1507 and HB 2512: water program amendments, have been introduced by Senator Griffin and Representative Bowers. He said these bills do not include the language that was agreed upon during negotiations between the Arizona Department of Water Resources (ADWR) and key legislators; however, negotiations are still occurring that will determine how things unfold over the next months. Both bills include language on the following issues: desalination action plan, interstate transportation of water, containerized plants and irrigation grandfathered rights, Pinal Active Management Area (AMA) extinguishment credits, AMA management plans beyond 2025, effluent definition, natural resource conservation districts, adequate water supply requirements, sovereign immunity for the Central Arizona Water Conservation District (CAWCD), and interstate agreements. He noted that neither SB 1507 nor HB 2512 address the issue of forbearance programs, which was an item the Governor's Office had requested be included in the water bill.

Mr. Tenney reported that AMWUA has been voicing its overall concerns with the two bills: the proposed language raises questions rather than clarifies and is regressive in some cases; the proposed language includes the same language that AMWUA actively opposed two years ago regarding adequate water supply requirements (Sierra Vista); and the challenges facing Arizona's Colorado River water are not addressed. He also detailed AMWUA's concerns regarding each issue within SB 1507 and HB 2512.

Mr. Aarons reported that it appears SB 1507 will not move forward, and HB 2512 will serve as the vehicle.

Mr. Tenney discussed that the issues included in SB 1507 were also each introduced as individual component bills: SB 1508, SB 1509, SB 1510, SB 1511, SB 1512, SB 1513, SB 1514, SB 1515, and SB 1516.

Mr. Tenney stated that at its February 14, 2018 meeting, the AMWUA Management Board recommended that the AMWUA Board of Directors oppose SB 1507, HB 2512, and the individual component bills.

Mr. Tenney noted that while amendments have been made to the omnibus bills and individual bills, the issues are not completely resolved. He said the bills are moving and as they move forward, AMWUA should support ADWR's position unless it negatively impacts AMWUA members. He also emphasized the importance of having an overall water package rather than individual bills.

Mayor Lane asked if any of AMWUA's concerns were addressed through amendments; Mr. Tenney said no. Mayor Lane said Representative Bowers has made comments that

ongoing conversations are happening regarding amendments and asked if any of AMWUA's concerns will be included in those discussions; Mr. Aarons said not yet. Mr. Aarons added that when there are this many issues, it makes it difficult to pass a complete package and he believes a resolution will occur after the budget is set.

Councilmember Osborne asked why AMWUA is recommending an opposing position on some bills rather than monitoring. Mr. Tenney said AMWUA considered monitoring some of the individual bills; however, the concern is that if AMWUA indicated a monitor position on any of the individual bills that it could undermine efforts to fix the overall water package. Mayor Lane and Mr. Aarons concurred with Mr. Tenney and added that the current proposed legislation does not resolve the issues and is not in the best interest of the AMWUA members.

Councilmember Lopez expressed disappointment that the parties involved did not go after the root cause of the water issues. Mayor Lane and Councilmember Osborne echoed Councilmember Lopez's statement and discussed the importance of the Drought Contingency Plan (DCP) and DCP Plus.

Ms. Ferris stated that none of the water bills introduced benefit AMWUA or address its members' concerns. She said there is nothing to negotiate and no reason to support any of the proposed legislation.

Councilmember Kuby said it is important for AMWUA to continue Arizona's history of moving forward on water issues in a non-partisan way with long-term vision. Mayor Carlat echoed Councilmember Kuby's comment.

Mr. Tenney reported that there is other introduced legislation of interest to AMWUA. At its February 14, 2018 meeting, the AMWUA Management Board recommended that the AMWUA Board monitor the following bills: SB 1475 & HB 2581, SB 1493, SB 1494, HB 2552, HB 2556, HB 2608.

Upon a motion by Councilmember Thompson and a second by Councilmember Turner, the AMWUA Board of Directors unanimously took the following position:

Oppose: SB 1507 & HB 2512 and the individual component bills. As bills move forward, support ADWR's position unless it negatively impacts AMWUA's members.

4. Analysis of Water Transfers

Mr. Tenney stated that AMWUA has completed its analysis on water transfers and the final paper was included in this month's AMWUA Board meeting packet. He said the objective of this paper was to do an analysis on water transfers and their history in Arizona as water transfers have been discussed in recent news, particularly in Mohave County. He added that there is no proposal in the analysis.

Mayor Lane asked if the topic of blending water and potential contamination is included in discussions on water transfers. Mr. Payne said the issue of putting non-project groundwater into the Central Arizona Project (CAP) canal is a type of water transfer and is briefly touched on in the analysis.

5. Contract for Reprinting of Landscape Plants for the Arizona Desert Publication

Mr. Tenney stated that AMWUA's popular publication, *Landscape Plants for the Arizona Desert*, is currently being updated and will be reprinted this Fiscal Year. He reported that after receiving three bids, AMWUA has selected a printer and is currently taking orders to determine the exact quantity to be printed. He noted that AMWUA will recover the cost of printing and delivery only from the organizations placing orders as they will be invoiced for their order's share; however, because the cost of printing will be over \$30,000, AMWUA Board approval is required. At its February 14, 2018 meeting, the AMWUA Management Board recommended that the AMWUA Board of Directors approve the Executive Director to enter into a contract based on the estimate provided for the printing of the *Landscape Plants for the Arizona Desert* publication.

In response to a comment from Mayor Lane on the validity of the plants in the publication, Ms. Ward-Morris stated that the *Landscape Plants* publication is a subset of the ADWR Low Water Use Drought Tolerant Plant List, which is the state regulatory plant list for AMAs and has been thoroughly vetted.

Councilmember Kuby asked if there would be an opportunity to present *Landscape Plants* to horticulture experts at Arizona State University for their input and review. Ms. Ward-Morris said she would be happy to follow up on that idea for the next print run of the publication, as this year's reprint updates will be brief in order to get the publications to the AMWUA members as soon as possible because they are in high demand.

Upon a motion by Mayor Carlat and a second by Councilwoman Williams, the AMWUA Board of Directors unanimously approved the Executive Director to enter into a contract based on the estimate provided for the reprint of *Landscape Plants for the Arizona Desert*.

6. AMWUA Quarterly Financial Statements – Second Quarter

Mr. Tenney reported that AMWUA's second quarter Statement of Revenues and Expenses show that AMWUA is operating efficiently within its resources and is roughly \$9,000 under budget as of December 2017. At its February 14, 2018 meeting, the AMWUA Management Board recommended that the AMWUA Board of Directors accepted the quarterly financial statements as presented.

Upon a motion by Councilwoman Williams and a second by Councilmember Dennis, the AMWUA Board of Directors unanimously accepted the quarterly financial statements as presented.

C. Executive Director's Report

Mr. Tenney reported that last week, the CAWCD Finance, Audit, and Power Committee met and made recommendations for the CAWCD Board to consider next week. AMWUA discussed these recommendations with the Water Resources Advisory Group yesterday. He said the primary recommendation is to use \$44.7 million of the accumulated 4 cent tax monies to replenish the strategic reserves, which is consistent with AMWUA's position that taxes should continue to be used for federal debt repayment. He stated that while it is positive that CAWCD is working to address deficits in its financial portfolio, it is also important to question what CAWCD plans to do moving forward to avoid strategic reserve depletion in the future.

Mr. Tenney reported that two weeks ago, the CAWCD Water Quality Standards Task Force met for an update on the effort to develop a water quality standard for non-project water introduced into the CAP canal. At the meeting, Mr. Tenney gave an update on AMWUA's stakeholder group's efforts and emphasized the concern of overanalyzing every possible scenario of non-project water being introduced and the importance of regular reviews of the water quality standard and allowing known projects to move forward so we can learn from them. Leslie Meyers of the U.S. Bureau of Reclamation noted the importance of creating flexibility while recognizing the risk. The Task Force requested that CAWCD staff develop a proposal for how to proceed, present the proposals at a meeting in March, and then allow one month for stakeholders to respond. Mr. Tenney said the understanding is that CAWCD staff will build from AMWUA's stakeholder proposal.

D. Future Agenda Items

Councilmember Osborne noted that last year, AMWUA prepared talking points for AMWUA Board members to share with Arizona's Congressional Delegation when they attended the National League of Cities Congressional City Conference and that the talking points were very helpful. She asked if AMWUA would do the same this year. Councilmember Lopez echoed that talking points would be appreciated. Mr. Tenney said he will send the AMWUA Board members talking points prior to the conference.

E. Adjournment

Upon a motion by Councilmember Lopez and a second by Mayor Carlat, Mayor Lane unanimously adjourned the meeting at 11:16 a.m.

BOARD OF DIRECTORS
INFORMATION SUMMARY
March 22, 2018

2018 Legislative Update

STRATEGIC PLAN REFERENCE

Objectives – Safeguard Water Supplies; Reinforce Groundwater Management; Prepare for Impacts of Drought & Shortage; Augment Supplies; Elevate the Benefit of Water Reuse; Minimize Financial Impacts

Collaboration – Legislature; Arizona Department of Water Resources; Salt River Project; Central Arizona Project; Water Community

SUMMARY

The legislative session is moving forward. The next major legislative deadline is March 23rd, the last day for House consideration of Senate bills and Senate consideration of House bills, though still subject to exceptions.

This summary will first discuss the key water legislation introduced this session. It will then discuss other legislation the Board has taken a position on that is moving through the legislative process. The remainder of this summary will review legislation which at the present time appears to be not moving forward. AMWUA staff would be pleased to answer any questions.

RECOMMENDATION

It is recommended that the AMWUA Board of Directors discuss and ask questions regarding legislation impacting AMWUA's members. Depending on legislative developments before the March 22, 2018 meeting, the Board may be asked to take further action.

Key Water Legislation

SB 1507 & HB 2512: Water program amendments (Griffin, Bowers).

The most substantive portions of these omnibus water bills do the following: (1) Requires the Arizona Department of Water Resources (ADWR) Director to prepare a desalination action plan and present it to key state leaders; (2) Requires the ADWR Director to notify the Legislature on approval of an application to withdraw, divert, and transport water out of Arizona; (3) Allows persons holding a certificate of irrigation grandfathered right to exercise that right to withdraw groundwater for containerized plants; (4) Provides detailed criteria for the ADWR Director to calculate the volume of extinguishment credits for the extinguishment of grandfathered rights in the Pinal Active Management Area (AMA); (5) Creates an additional 10-year active management plan-the Sixth Management Plan from 2025 to 2035; (6) States that for the purposes of ADWR's informational materials, the word "effluent" should be defined as "recycled water"; (7) Places oversight of the Division of Natural Resource Conservation in the Arizona Department of Forestry and Fire Management; (8) Allows the board of supervisors in a non-AMA county that has adopted a mandatory 100-year adequate water supply requirement to vote unanimously to not readopt the requirement; (9) States that a multi-county water conservation district (i.e. Central Arizona Water Conservation District (CAWCD)) shall not assert the defense of immunity in litigation brought by a water user to enforce the terms of a water delivery contract or subcontract; and (10) Requires both ADWR and CAWCD to inform the other if one is a party to discussions or negotiations of interstate agreements involving Colorado River water.

The House version of this bill, HB 2512, passed the House on a largely party-line vote on February 21st.

The Senate version of this bill, SB 1507, was amended on the floor on March 1st. The amendments are as follows: (1) Removes the requirement that the Legislature approve water transfers out of the state and instead requires notification of key legislative leaders; (2) Removes the effluent provision; (3) Removes the sovereign immunity provision; and (4) Removes the requirement for ADWR and CAWCD to notify the other involving agreements and negotiations. Even with the amended changes, the bill failed to pass the full Senate on March 5th by a 15–15 vote.

AMWUA Position: Oppose SB 1507, HB 2512, and the related individual component bills. As these bills move forward, AMWUA recommends supporting ADWR's position unless it negatively impacts AMWUA members.

SB 1508 & HB 2551: Water; desalination action plan (Griffin, Bowers). These bills require the ADWR Director to prepare a desalination action plan that, among other things, considers costs of brackish water treatment, and identifies areas of the State where brackish groundwater exists and areas that could benefit from treated brackish supplies. The plan may also evaluate potential bi-national agreements or projects with respect to ocean desalination. The Director must submit a report to designated state leadership by September 30, 2019. As amended, the language requires an evaluation of the sources of brackish water, as well as impacts to water supplies of

users in the area if water is withdrawn and treated. Desalination has an important role to play in Arizona's water management. However, this language appears to codify what the State is largely already doing as part of the Governor's Water Augmentation Council.

SB 1508 passed the Senate on February 22nd, and the House Energy, Environment, and Natural Resources committee on March 13th.

HB 2551 passed the House on February 20th, and passed through the Senate Natural Resources, Energy, and Water committee on March 12th.

AMWUA Position: Oppose

SB 1509: Water; interstate sales (Griffin). Under current law, a person may not transport water from Arizona to another state without approval from the Director of ADWR. As introduced, this bill stated that in addition to the Director, the Legislature must approve any transportation of water from the State, whether it be surface water, groundwater, Colorado River water, or other water. Although the intent of this bill was positive, there were concerns that the bill raised issues under the Commerce Clause of the United States Constitution. On March 1st, the bill was amended to only require a notice to the President of the Senate and the Speaker of the House of Representatives when the ADWR Director receives an application to transport water out of state. The amended bill failed in a vote of the Senate on March 5th. A motion to reconsider the bill passed the next day, but as of the writing of this report the bill has not advanced since that time.

AMWUA Position: Oppose

SB 1510: Irrigation grandfathered right; containerized plants (Griffin). This bill states that in an initial Active Management Area, a person who holds a certificate of irrigation grandfathered right may exercise that right to withdraw groundwater to water plants in containers on or above the surface. Among other things, the bill also requires the right holder to separately measure any groundwater used for watering plants in containers and groundwater for irrigation; however, the total amount of water may not exceed the amount allowed by the irrigation water duty for the farm. This proposal was among the issues discussed as part of the Governor's workgroups last year. A slightly amended version of this bill passed out of the Senate on February 22nd, and passed the House Energy, Environment, and Natural Resources committee on March 13th.

AMWUA Position: Oppose

SB 1511: Pinal AMA; groundwater; extinguishment credits (Griffin). This bill provides detailed criteria for the ADWR Director to calculate the volume of extinguishment credits for the extinguishment of grandfathered rights in the Pinal AMA. Under the 100-year assured water supply rules, a farmer within an AMA with irrigation rights can choose to extinguish those rights anytime in exchange for what is called an "extinguishment credit" that can be used to demonstrate a 100-year assured water supply for new development. The last two legislative sessions, AMWUA opposed bills that sought to weaken the ADWR Director's authority and would have caused increased groundwater pumping in the Pinal AMA. During the Governor's Water

Solutions Conversation, water users in the Pinal AMA came to a compromise with each other and ADWR on the amount of credits received upon extinguishment. AMWUA staff understands that in its current form, the language in this bill is essentially the compromise that was reached. The amended form of this bill passed the Senate on February 22nd, and passed the House Energy, Environment, and Natural Resources committee on March 13th. Despite movement on this bill, AMWUA staff understands that the Governor's Office intends to address the concerns of the Pinal stakeholder group through an administrative rule change under an exception to the Governor's rule moratorium.

AMWUA Position: Oppose

SB 1512: Active management areas; sixth management period (Griffin). This bill creates an additional 10-year active management plan—the Sixth Management Plan from 2025 to 2035—under the Groundwater Management Act for each initial Active Management Area. The bill includes language that virtually mirrors the statutory guidance for the previous management plans. The bill also allows the ADWR Director to approve administrative variances from irrigation water duties or conservation requirements for the Fifth and Sixth Management Plans, which is similar to provisions found in statute for previous management plans. The State proposed during the Governor's Water Solutions Conversation to extend the safe-yield goal for three 10-year management periods. Having only one ten-year period provides a marginal increase in certainty. For this reason, AMWUA staff supports adding additional management periods. Arizona's successful economy is directly linked to our planning and investing in our water resource planning. This bill passed the Senate on March 13th.

AMWUA Position: Oppose

SB 1513: Effluent; recycled water; definition (Griffin). This bill states that for the purposes of ADWR's informational materials, the word "effluent" should be defined as "recycled water." ADWR has raised concerns that this bill could create confusion based on the various regulatory meanings for "effluent", "remediated", "reuse", and "recycled". This bill passed out of the Senate on February 22nd; however, this provision was removed from the larger Senate water package bill on March 1st.

AMWUA Position: Oppose

SB 1514 & HB 2596: Natural resource conservation districts; administration (Griffin, Toma). These bills place oversight of the Division of Natural Resource Conservation in the Department of Forestry and Fire Management. It currently resides in the State Land Department. The Senate and House both passed this bill on February 22nd, but as of the writing of this report no action has occurred since that time.

AMWUA Position: Oppose

SB 1515 & HB 2553: Adequate water supply; county review (Griffin, Bowers). This bill essentially allows a county that is not in an Active Management Area, through a unanimous vote of the

county board of supervisors, to vote not to readopt the 100-year adequate water supply water requirement if certain conditions are met. The conditions, which relate to the county or largest city in the county, include participation in the following: groundwater recharge, reclaimed water reuse, water conservation programs, and use of low water use plants in certain publically owned areas. The bill states that the board of supervisors must review and may, by a unanimous vote, not readopt the 100-year requirement within five years of the bill's effective date, and at least every ten years thereafter.

The Senate passed this bill on February 22nd, and the House on February 20th.

AMWUA Position: Oppose

SB 1516: Central Arizona Project; sovereign immunity (Griffin). This bill states that a multi-county water conservation district (i.e. CAWCD) shall not assert the defense of immunity under the Eleventh Amendment in litigation brought by a water user to enforce the terms of a Central Arizona Project (CAP) water delivery contract or subcontract. The bill passed out of committee on February 15th, but has not moved since that time. Similar language was removed from the broader Senate water package on March 1st.

AMWUA Position: Oppose

Other Legislation

SB 1039: Arizona water protection fund (Griffin). This bill, as amended, appropriates \$400,000 from the state general fund in fiscal year 2018-19 to the Arizona Water Protection Fund. The Arizona Water Protection Fund is a state-run program that funds projects to protect and enhance water quality and quantity in Arizona's rivers, streams, and riparian areas. Some of these efforts include revegetation, erosion control, channel stabilization, research, and water conservation. This bill passed the Senate on February 27th, and passed through the House Energy, Environment, and Natural Resources committee on March 13th.

AMWUA Position: Support

SB 1493: Environmental quality; dredge, fill permits (Griffin). Under current law, the United States Environmental Protection Agency (EPA) issues permits under the Clean Water Act for the discharge of dredged or fill materials into waters that meet the definition of Waters of the United States. This bill essentially authorizes the Arizona Department of Environmental Quality (ADEQ) to establish a Dredge and Permit Program that is consistent with, and no more stringent than, the federal program. The bill lists requirements for the rules ADEQ would adopt to implement the program. ADEQ and the State are pursuing this legislation as a means of attempting to have EPA assign responsibility to the State over this federal program. To date, only Michigan and New Jersey have obtained authority from EPA to oversee this program at the state level. AMWUA staff understands that the Governor's Office is supporting this bill along with the business community.

This bill passed out of the Senate as amended on February 20th. The bill is moving through the House as well, passing out of the House Rules committee on March 12th.

AMWUA Position: Monitor

SB 1494: Environment; underground injection control program (Griffin). The Underground Injection Control Program is a program primarily overseen by EPA in cooperation with ADEQ that regulates the underground injection or discharge of both hazardous and nonhazardous liquid and gas. This bill requires ADEQ to establish a permit program that meets the minimum federal requirements for permitting injection wells in Arizona and requires the ADEQ Director to adopt rules for that purpose. ADEQ and the State are pursuing this legislation as a means of attempting to have EPA assign responsibility to the State over this federal program. To date, only four individual Underground Injection Control permits have been issued in Arizona, primarily for mining purposes. As Arizona looks at using brackish groundwater supplies, some have argued that deep underground injection of brine may be a means of making brackish desalination in Arizona more economically feasible. AMWUA staff understands that the Governor's Office is supporting this bill along with the business community. This bill passed out of the Senate as amended on February 20th. The bill is moving through the House as well, passing out of the House Rules committee on March 12th.

AMWUA Position: Monitor

HB 2203: Wildland fuel loads; watershed protection (Finchem). This bill authorizes a mayor, chairman of the board of supervisors, or a county sheriff to make a formal determination that a "catastrophic wildland fuel load" exists on state or federal land located in the borders of the city, town, or county. After making this determination, the relevant official must consult with the political subdivision's attorney or the attorney general, and notify relevant state and federal officials, including as necessary a demand to the relevant state or federal agency that it address the issue. The bill instructs the mayor, chairman, or a county sheriff to enter into a plan with the federal or state agency to abate the condition. If the mayor, chairman, or county sheriff determines that the condition exists on federal land and that it poses an immediate threat to the public health, safety, and welfare of the city, town, or county, the official must coordinate with relevant state and federal officials, and in consultation with legal counsel and the attorney general, must pursue all remedies allowed by law. The bill also authorizes the state forester to remove non-native woody biomass or overgrowth biomass from state lands, and enter into agreements with cities, towns, or counties to do so. This bill is of interest due to the connection between watershed health and water quantity and quality. This bill passed the House on February 15th.

AMWUA Position: Monitor

HB 2556: Environment; water quality; brine (Nutt and six others). This bill directs the Arizona Department of Environment Quality (ADEQ) Director, in coordination with the ADWR Director, by December 1, 2019 to "review existing data on the use and reuse of high salinity water and identify locations in this state, including hydrologically isolated areas, as potential sources for

supplementing water supplies in this state." The bill also directs the ADEQ Director to post the report on ADEQ's webpage. This bill passed the House on February 20th.

AMWUA Position: Monitor

Legislation That Appears to Be Not Moving Forward

SB 1229: Water infrastructure finance authority; appropriation (Mendez and 16 others). This bill appropriates \$30 million from the state general fund to the Water Infrastructure Finance Authority (WIFA). WIFA is a state agency that provides low-interest loans to water providers. This bill has not moved.

AMWUA Position: Monitor

SB 1475 & HB 2581: Ecological water; program; fund (Dalessandro, Gabaldon, and others). These bills establish the Ecological Water Stewardship Program and directs the ADWR Director to adopt rules to carry out its mission. The bills direct the ADWR Director to establish a set of standard measures to define ecological water needs in Arizona, including criteria for examining the relationship between ecological water and groundwater and surface water in Arizona. The bills direct the Director to take all reasonable steps necessary to monitor, maintain, improve and restore the surface water systems of Arizona. After making a determination of the ecological water needs for each watershed or subwatershed, the Director would publish a preliminary report that includes a determination of the ecological water and monitoring methods necessary to maintain and restore freshwater ecosystems. If the Director determines in any watershed or subwatershed that there is insufficient ecological water, the Director shall take all steps necessary to appropriate any unappropriated water to maintain the ecological water requirements or acquire by purchase or lease existing water rights.

These bills would put into statute several provisions touching on water rights that AMWUA staff finds problematic. However, AMWUA staff believes these bills are likely dead for this session.

AMWUA Position: Monitor

HB 2214: WQARF; appropriation (Gabaldon). This bill appropriates \$15 million from the general fund to the Water Quality Assurance Revolving Fund (WQARF) in addition to any other appropriations made in Fiscal Year 2018-2019. WQARF is a state-sponsored program established by the Legislature to clean up hazardous soil and groundwater contamination. This bill has not moved.

AMWUA Position: Support

HB 2291: Groundwater basin; department survey (Cobb). This bill requires ADWR to conduct a survey of areas in the groundwater basin of the Upper Colorado River Planning Area to determine the status and resiliency of groundwater supplies, and submit a report to the House Speaker,

Senate President, legislators in affected areas, and relevant County Supervisors. ADWR would be required to gather extensive data, including well usage information. The bill also allows the County Board of Supervisors to recommend metering and monitoring of wells to ADWR. This bill has not been assigned to a committee and has not moved.

AMWUA Position: Monitor

HB 2352: Appropriation; lead screening; charter schools (Engel and 14 others). This bill appropriates \$100,000 from the general fund in addition to other appropriations for Fiscal Year 2018-2019 to ADEQ for screening for lead in drinking water in charter schools. This bill has not been assigned to a committee and has not moved.

AMWUA Position: Monitor

HB 2410: Geologists; landscape architects; regulatory repeal (Mosley). This bill eliminates certain Board of Technical Registration requirements and related statutory language for geologists and landscape architects. This bill is similar to provisions in a bill from 2016 that sought to deregulate the professional geological practice. The 2016 bill resulted in a legislative compromise that resulted in the voluntary licensure of geologists. Under current law, geologists make certifications under the groundwater code. This bill has not moved.

AMWUA Position: Oppose

HB 2429: Public works contracts; prevailing wage (Cardenas and 14 others). This bill states that a public works contract that is valued at two hundred fifty thousand dollars or more shall contain a provision requiring the wages paid by the contractor or any subcontractor to be at least the prevailing rate of wages for work of a similar nature in the state or political subdivision in which the project is located. AMWUA staff does not anticipate that this bill will move forward this session.

AMWUA Position: Monitor

HB 2552: Desalination action study committee (Bowers). This bill establishes a 13-member desalination action study committee comprised of political leaders and representatives from relevant agencies, water users, and other stakeholders. The bill directs the committee to (1) Consider state statutory or regulatory impediments to using high salinity water, (2) Consider the economic impact resulting from the amount and effect of high salinity water, and (3) Submit a report regarding the committee's activities, findings and recommendations on or before December 31, 2018. To date, this bill has not moved.

AMWUA Position: Monitor

HB 2608: Well reporting; Mohave, La Paz basins (Cobb). This bill requires the owner of a well in one of four groundwater basins located in Northwest and Western Arizona to annually report groundwater withdrawals, if the well was drilled on or after January 1, 2012 and the well has a

capacity of more than 100 gallons per minute. The bill states that a well owner that does not use a meter can maintain records of the estimated water use. The bill requires reporting for a period of three years, and the bill is repealed after December 31, 2020. This bill has not moved.

AMWUA Position: Monitor

BOARD OF DIRECTORS

INFORMATION SUMMARY

March 22, 2018

AMWUA Annual Action Plan

STRATEGIC PLAN REFERENCE

Operational Principles – Manage an Efficient and Effective Association

SUMMARY

The AMWUA Board of Directors approved the Strategic Plan for 2016-2020 at its September 2016 meeting. The current annual plan gave detail on how the Strategic Plan would be accomplished from February 2017 through Fiscal Year 2018. Most of the achievements under the current action plan were touted in the Accomplishments 2017 pamphlet that was distributed in January 2018.

Since most of the current plan is still relevant, AMWUA staff decided to update rather than make a completely new annual plan to guide AMWUA's efforts through Fiscal Year 2019. The Water Resources Advisory Group provided feedback to the Fiscal Year 2019 action plan being presented.

The annual plan highlights areas of focus for AMWUA, but it is certain that during the time period of this annual plan AMWUA will also need to address other issues that arise. This was obviously the case this last year with the Governor's Water Solutions Conversation.

The annual plan lists alphabetically key action areas, which include Adjudication, Augmentation, Central Arizona Groundwater Replenishment District, Colorado River Drought & Shortage, Demand Management & Sustainability, Finances & Water, 4th Management Plan and Beyond, Legislation, Regional Recharge Efforts, Recovery Implementation Plan, System Use Agreement, and Water Reuse Rules.

The attached draft annual plan designates the new action items added for Fiscal Year 2019 and those action items that have been updated based on what has been accomplished and the current situation.

The AMWUA Management Board reviewed and discussed the annual plan at its March 14, 2018 meeting.

RECOMMENDATION

The AMWUA Board of Directors is encouraged to review the proposed annual plan and to provide comments and feedback.

The AMWUA Management Board recommends that the AMWUA Board of Directors approve the annual plan through Fiscal Year 2019.

ATTACHMENT

- *Draft AMWUA Annual Action Plan – Fiscal Year 2019*

Underlined – New action item for Fiscal Year 2019

Italicized – Updated action item from Fiscal Year 2018 annual plan

Regular – Same action item as Fiscal Year 2018 annual plan

AMWUA staff will pursue the following actions to ensure AMWUA achieves its vision and mission as outlined in the 2016-2020 strategic plan. This action plan will guide the development of the Fiscal Year 2019 budget and will drive the organization's efforts through Fiscal Year 2019. Although this plan outlines key areas of focus, other issues will most certainly arise during the time period of this annual plan that AMWUA will and should address.

To accomplish this annual action plan, AMWUA must be able to carry forward the day-to-day operations necessary to be an effective organization. This means continuing the general services that AMWUA cities rely on from AMWUA. The following lists key activities, though not inclusive, of what AMWUA does on a day-to-day basis:

AMWUA's Day-to-Day Operations

Strategic Plan: Operational Principles – Facilitate our Strength in Numbers, Excel as an Expert and Resource, Manage an Efficient and Effective Association

Actions:

- AMWUA will continue to serve its members through facilitating dialogue on issues to find common ground. This includes the regular meetings of the AMWUA Board, Management Board, Water Resources Advisory Group, Conservation Committee, and Sub-Regional Operating Group.
- AMWUA will continue to provide timely notification of water issues as well as summaries of key water meetings held throughout the year.
- AMWUA will continue to communicate about water and its members to increase awareness among the public and decision makers including the production of the weekly blog.
- AMWUA will develop a plan to commemorate its 50-year anniversary in March 2019.

In alphabetical order are the key actions to be pursued by AMWUA in this annual action plan:

Adjudication

Strategic Plan: Objectives – Advocate for Solution, Safeguard Water Supplies, Reinforce Groundwater Management; Collaboration – Legislature, Arizona Department of Water Resources, Business Community

Actions:

- Increase understanding and engage in dialogue about the General Stream Adjudication with ADWR, SRP, Kyl Center and others.
- *Assess AMWUA's members' positions on the Adjudication and seek a collaborative approach to advocate for the completion of the Adjudication.*

Augmentation

Strategic Plan: Objectives – Augment Supplies, Safeguard Water Supplies; Collaboration – Legislature, Arizona Department of Water Resources, Salt River Project, Water Community

Actions:

- Engage and report about the activities of the Governor's Water Augmentation Council and its committees.

- As discussions regarding financing, desalination, reuse, and other augmentation efforts occur, consider how AMWUA's members can benefit and discuss recommendations AMWUA cities would like the GWAC to consider.
- Pursue opportunities to work with SRP, The Nature Conservancy and others to protect and better manage the Salt and Verde watershed.

Central Arizona Groundwater Replenishment District

Strategic Plan: Objectives – Safeguard Water Supplies, Reinforce Groundwater Management; Collaboration – Central Arizona Project

Actions:

- Analyze CAGR issues that remain post-2015 Plan of Operation and determine if AMWUA should make proposals to address those issues.
- Assess the impacts on designated providers of member service area membership.
- Engage with others to develop effective plan for CAGR to transition from excess water.

Colorado River Drought / Shortage

Strategic Plan: Objectives – Prepare for Impacts of Drought & Shortage, Minimize Financial Impacts; Collaboration – Arizona Department of Water Resources, Central Arizona Project, Business Community

Actions:

- Remain engaged with developments to protect the Colorado River from drought and address the structural deficit.
- *Seek ways AMWUA and its members can best individually and cooperatively respond to the increasing probability of a shortage declaration.*
- Coordinate communications efforts among agencies and the membership to promote clear, consistent messaging to the public regarding drought and shortage.

Demand Management & Sustainability

Strategic Plan: Objectives – Prepare for Impacts of Drought & Shortage, Augment Supplies, Interconnect Disciplines

Actions:

- Continue to serve as a forum for member staffs to share information regarding the development and refinement of conservation and efficiency programs with added focus on the development of commercial, institutional, and industrial efforts.
- Develop and pursue ways to increase interaction between demand management and water resource planning to create more synergy for water management opportunities.
- Increase understanding among finance, water resources, planning, and efficiency staff about the financial and water managing impact that comes from the continuing trend of decreasing water demand.
- *Facilitate sharing of information and resources, training, and technical assistance to members in support of efforts to enhance distribution system water loss control and revenue recovery*
- Continue to coordinate advocacy efforts to secure funding and authorization of the EPA WaterSense Program and water conservation rebate tax parity.
- Complete the redevelopment of the conservation and efficiency section of the AMWUA website, including the microsites *Landscape Plants for the Arizona Desert* and *Landscaping with Style*.
- Develop a comprehensive website to administer and promote the Smartscape Program in Maricopa and Pima counties, working in partnership with Tucson Water, the University of Arizona, and ADWR.

Finances & Water

Strategic Plan: Objectives – Minimize Financial Impacts, Prepare for Impacts of Drought & Shortage, Interconnect Disciplines; Collaboration – Central Arizona Project, Salt River Project, Arizona Department of Environmental Quality, Water Community

Actions:

- Facilitate meetings for our members' finance teams to compare and share information.
- Monitor and report on CAP finances including rate setting to keep our members informed so they can prepare and respond to projected impacts from CAP finances.
- Discuss and reach agreement for AMWUA positions on issues that will impact CAP finances such as the use of property tax revenue, use of rate stabilization funds, recovery infrastructure financing, costs of System Use Agreement water quality requirements, and costs of shortage delay programs.
- Increase understanding about SRP's plans for its electricity and water operations and how implementing those plans will impact long-range water rates.
- Participate in ADEQ stakeholder effort to find means to adequately fund the WQARF program.

4th Management Plan and Beyond

Strategic Plan: Objectives – Safeguard Water Supplies, Reinforce Groundwater Management; Collaboration – Arizona Department of Water Resources, Salt River Project, Water Community

Actions:

- Assess the Phoenix AMA 4th Management Plan to determine its impact to AMWUA members.
- *Work with ADWR and relevant stakeholders to build support for Strategic Aquifer Protection ideas to be incorporated into the 5th Management Plan.*

Legislation

Strategic Plan: Objectives – Advocate for Solutions, Safeguard Water Supplies, Reinforce Groundwater Management, Prepare for Impacts of Drought & Shortage; Collaboration – Legislature, Arizona Department of Water Resources, Central Arizona Project, Salt River Project, Water Community, and Business Community

Actions:

- Identify and track water legislation and other legislation of interest to our members.
- Provide weekly legislative updates during the session.
- Increase awareness of water-related federal legislation.
- Analyze and respond to legislation that impacts our members by taking positions, working with legislators and Congressional Delegation, and engaging the media and public as needed.
- Develop outreach to Legislators to continue to inform them about water and AMWUA. This includes individual meetings, presentations, and forums.

Regional Recharge Efforts

Strategic Plan: Objectives – Augment Supplies, Elevate the Benefit of Water Reuse; Collaboration – Arizona Department of Water Resources, Water Community

Actions:

- *Produce an analysis of the existing State recharge program rules and statues and propose recommendations to enhance recharge activities.*
- Lead effort to amend State statute to ensure long-term storage credits will continue to be earned from effluent storage beyond 2025.

Recovery Implementation Plan

Strategic Plan – Objectives – Prepare for Impacts of Drought & Shortage; Collaboration – Arizona Department of Water Resources, Central Arizona Project, Arizona Water Banking Authority

Actions:

- *Represent AMWUA interests in the ADWR-led Recovery Planning Advisory Group to complete a recovery implementation plan for M&I water firmed by the AWBA.*
- *Ensure the outstanding issues identified in AMWUA’s recovery analysis are adequately answered.*
- *Facilitate discussion among our members to develop proposals to contribute to a complete plan.*

System Use Agreement

Strategic Plan: Objectives – Prepare for Impacts of Drought & Shortage; Collaboration – Central Arizona Project & Bureau of Reclamation

Action:

- *Continue to represent AMWUA members in the development of water quality standard and how they will be addressed in conjunction with the execution of the CAP System Use Agreement.*
- *Discuss and reach agreement among AMWUA members on how canal capacity and wheeling costs are spread in conjunction with the execution of the System Use Agreement*

Water Reuse Rules

Strategic Plan: Objectives – Elevate the Benefit of Water Reuse; Collaboration – Arizona Department of Environmental Quality

Action:

- *Assist members in coordinating their efforts in ADEQ’s process for reviewing and updating the water reuse rules.*
- *Pursue opportunities to increase positive public perception about water reuse.*

BOARD OF DIRECTORS INFORMATION SUMMARY

March 22, 2018

Analysis of Water Transfers

STRATEGIC PLAN REFERENCE

Objectives – Advocate for Solutions; Safeguard Water Supplies; Reinforce Groundwater Management; Prepare for Impacts of Drought & Shortage; Augment Supplies

Collaboration – Legislature; Arizona Department of Water Resources

Operational Principles – Facilitate our Strength in Numbers; Excel as an Expert and Resource

SUMMARY

Water transfers have returned to the forefront with the proposed Central Arizona Groundwater Replenishment District (CAGR) water transfer involving the acquisition of 2,200 acres of farmland with Colorado River rights in Mohave County. It is anticipated that this water transfer will elevate the discussion about such transfers with the Legislature, policymakers, and the Arizona Department of Water Resources (ADWR).

AMWUA staff thought it was important to elevate the level of understanding about water transfers among AMWUA's members and the water community. AMWUA staff would like to present an overview of an analysis staff recently completed on water transfers. This analysis, *The Transfer and Transportation of Water in Arizona*, looks at the history of water transfers in Arizona, categories of transfers, and what water transfers could mean for Arizona's water future.

Due to time constraints, AMWUA staff was unable to present the analysis at the February AMWUA Board meeting. Since that time, AMWUA staff has modified the analysis to make it more succinct and to address additional comments staff has received. The overview of the analysis was presented to the Management Board at its February 14, 2018 meeting.

RECOMMENDATION

Staff requests that the AMWUA Board ask questions and discuss AMWUA's analysis on water transfers that will be presented at the March 22nd meeting.

ATTACHMENT

- *The Transfer and Transportation of Water in Arizona*



The Transfer and Transportation of Water in Arizona
An AMWUA Staff Analysis
Revised March 12, 2018

I. Executive Summary

Historically, water transfers in Arizona have often been controversial, especially when they involve Colorado River entitlements or groundwater. It was the transportation of groundwater that led to the 1980 Groundwater Management Act. Later, in 1991, the Arizona Legislature barred the transportation of groundwater from most rural groundwater basins to the state's Active Management Areas (AMAs). More recently, proposed transfers of rights to use mainstem Colorado River Water for use in other parts of the state have engendered opposition.

As Arizona grapples with strategies to meet projected statewide water needs, the Arizona Department of Water Resources (ADWR) has pointed out:

A comprehensive analysis of water transfers is needed in Arizona. Evaluation of long-term versus short-term transfers may actually provide insight into how water transfers can be developed to protect or even benefit local communities. Lessons from other western states that have adopted more market-based water right transfer models may be worthy of review as part of this analysis.¹

In light of the continuing debate over water transfers, AMWUA staff has prepared this analysis to highlight the major types of transfers currently contemplated and the issues involved. This paper addresses three broad categories of transfers: (1) Transfers of entitlements to use Colorado River mainstem water, (2) Transfers involving transportation of groundwater, and (3) Transfers of in-state surface water rights.

(1) Colorado River Mainstem Transfers: To date, large-scale transfers of entitlements to use mainstem Colorado River water for use in other parts of Arizona have been rare. When such transfers have occurred, they have been part of congressionally approved tribal settlements. Transferring a mainstem Colorado River entitlement is subject to the dual oversight of the Arizona Department of Water Resources (ADWR) at the state level, and the Bureau of Reclamation at the federal level. Although the Secretary of Interior and Bureau of Reclamation ultimately oversee the allocation of Colorado River water, they have historically given significant deference to the recommendations of the ADWR Director in determining intrastate allocations. A transfer of Colorado River water involving the Central Arizona Project canal will also require a wheeling agreement pursuant to the CAP System Use Agreement.

(2) Groundwater Transportation: Another type of transfer is the transportation of groundwater from one location to another. The Arizona Groundwater Transportation Act of 1991 limits or prohibits the transportation of groundwater to another basin or sub-basin or to an AMA. The primary purpose behind the groundwater transportation restrictions was to protect rural economies by ensuring that local groundwater primarily goes to local uses.

¹ ADWR, *Arizona's Next Century: A Strategic Vision for Water Supply Sustainability* 18 (2014).

(3) Transfers of In-state Surface Water: State law allows a surface water right to be severed from land to which it is appurtenant for use elsewhere. Generally, the quantity of water that can be transferred is limited to the amount historically consumed. Although the framework exists for severances and transfers to occur, in certain cases they can be challenging to implement. Severances and transfers are further complicated by the fact that the relative priority and extent of Arizona’s in-state surface water rights are uncertain as a result of the General Stream Adjudication. These factors significantly increase the complexity of transferring in-state surface water rights.

II. Introduction

In January 2014, the Arizona Department of Water Resources (ADWR) developed a document entitled *Arizona’s Next Century: A Strategic Vision for Water Supply Sustainability*. The purpose of that document was to identify strategies to meet Arizona’s projected statewide water needs.² That report discussed water transfers as one possible means to address future supply needs over the next 20 to 100 years, including the needs of rural areas of the state.³ The report noted that while transfers are possible under existing law, current law creates high transaction costs limiting the usefulness of transfers.⁴ Furthermore, history has shown that water transfers can be very controversial.⁵

This controversy is demonstrated by the recent proposal of the Central Arizona Groundwater Replenishment District (CAGRD) to acquire 2,200 acres of farmland with entitlements to use Colorado River water in Mohave County.⁶ The rhetoric around the issue is heated. In a letter to the CAWCD Board, the chair of the Mohave County Board of Supervisors wrote that the transfer is “part of a continual attack on the water rights and economy of rural Arizona.”⁷ As a result of this and other recent events, the water transfer issue will likely be an issue of interest to legislators.

This paper explores three broad categories of transfers and the issues involved. These categories are: (1) Transfers of entitlements to use Colorado River mainstem water, (2) Transfers involving the transportation of groundwater, and (3) Transfers of in-state surface water rights.

² *Id.* at 9-10.

³ *Id.* at 51.

⁴ *Id.* at 57-58.

⁵ *Id.*

⁶ CAWCD Board Meeting Brief, *Discussion and Consideration of Action to Approve on Behalf of CAGRD a Purchase and Sale Agreement to Acquire Water Rights and Land in Mohave Valley Irrigation and Drainage District 2* (October 5, 2017). CAWCD staff conservatively estimates that approximately 5,500 AF of the total diversion right would be transferable based on quantification estimates and assuming 50 percent of the land is fallowed in any given year.

⁷ D.K. McDonald, *Central Arizona Project Seeks Transfer of Mohave Valley Water Rights*, Mohave Valley Dailey News (October 23, 2017).

III. Background

Arizona law permits several types of arrangements to transfer water.⁸ However, the legal barriers and transaction costs to implementing transfers can be significant. As ADWR pointed out in the 2014 Strategic Vision, current laws and policies related to transfers are designed to protect local interests and water right holders, and these protections make transfers hard to do.⁹ The specific barriers for any given transaction largely depend on the type of transfer and the impacts it will have on other right holders. Additionally, one person's barriers serve as another person's protections.

There are inherent advantages and disadvantages to water transfers. What follows is an outline of some of these considerations.¹⁰

Advantages

Voluntary: Water transfers are usually voluntary transactions between willing buyers and sellers, and thus utilize market forces. Issues that arise between the principal parties can be resolved through negotiation.

Flexible Uses of Water: Water transfers can facilitate flexible uses of water to meet current and future needs.

Incentivize Conservation: Water transfers can incentivize conservation of water. In some cases, it may make economic sense for a farmer to invest in increased water efficiency or plant water efficient crops if the saved water can be marketed or leased. Transfers of conserved in-state surface water would be very difficult to do in Arizona as a result of current laws that give certain downstream right holders the ability to veto water transfers.¹¹

Market-based Transactions: Water transfers can utilize market forces to allocate water supplies. This can lead to economically efficient allocations of water. While utilizing market forces may lead to economically efficient allocations, it may also have negative impacts on certain industries and smaller communities that may not have the resources to compete for limited water supplies. Moreover, Arizona policy leaders have historically rebuffed efforts to make it easier for the private sector to acquire and market water supplies.

⁸ ADWR, *Arizona's Next Century: A Strategic Vision for Water Supply Sustainability* 58 (2014).

⁹ *Id.* at 57.

¹⁰ Western Governors' Association & Western States Water Council, *Water Transfers in the West* ix-x (2012). The listed advantages and disadvantages are derived from a report issued by the Western Governors' Association in 2012 that was based on extensive stakeholder feedback from state water administrators, NGOs, farmers, academics, and water resource professionals.

¹¹ See A.R.S. § 45-172(A); M. Byron Lewis, Arizona State University Morrison Institute for Public Policy, *New Era of Arizona Water Challenges* 5 (May 2014). As an example, state statute essentially gives any downstream irrigation district the authority to veto a sever or transfer within the same watershed or drainage area. A.R.S. § 45-172(A)(5). This provision significantly increases the transaction costs of any sever and transfer and may practically make such transfers unfeasible. Susanna Eden et al., *Agricultural Water to Municipal Use: The Legal and Institutional Context for Voluntary Transactions in Arizona* 20, *The Water Report* (Dec. 15, 2008).

Disadvantages

Impacts on Other Right Holders and River Flows: Transferring surface water can impact other water right holders and in-stream environmental flows. A prime example is a farmer who diverts water that is not 100 percent consumed by crops, infiltration, or evaporation, and thus flows back to the river. This return flow is water that benefits downstream users and flows in the river. If this water is transferred to another diversion point that decreases return flow to the river, it will have impacts to other right holders and the river system. Under Arizona law, a transfer of in-state waters must not harm or interfere with another party's water right.¹² Consumptive use and return flows can be quantified to determine how much can be transferred while protecting downstream users, but this can be a difficult process.

Complex Institutional Considerations: Many water rights are not held by individual parties, but by institutions such as irrigation districts. For example, if an in-state surface water right is tied to lands within an irrigation district, the decision to transfer a water right must be approved by the irrigation district board.¹³ In some cases, irrigation districts have authority to veto any upstream transfer within the same watershed even if the water right is tied to lands outside of the district.¹⁴

Impact on Local Economies: Transfers often involve the movement of water from rural to urban locations. In some cases, transfers can impact rural economies and diminish their prospects for future growth.

In 2012, the Western Governors' Association noted that “[p]erhaps the greatest challenge for water transfers involves the key role water plays in rural economies.”¹⁵ This is because many rural areas rely on irrigated agriculture, and less water can mean fewer crops and cash flow into the local economy.¹⁶ This not only impacts local economic activity, but also the tax base for local governments. For example, one of the primary concerns expressed by Mohave County with CAWCD's proposed transfer is that the 2,200 acres CAWCD would acquire would not be subject to property taxes.¹⁷ CAWCD staff has stated that it is willing to work with the County to discuss ways to minimize impacts of CAWCD land ownership.¹⁸ Regardless, the issue of decreasing the tax base is a concern for rural communities.

Transfers that provide some benefits not only for the transacting parties, but also impacted communities may facilitate implementation. For example, some agricultural districts have water tables that are too high and must pump drainage water from the ground in order to

¹² A.R.S. § 45-172(A)(2).

¹³ A.R.S. § 45-172(A)(4).

¹⁴ A.R.S. § 45-172(A)(5).

¹⁵ Western Governors' Association & Western States Water Council, *Water Transfers in the West* 13 (2012).

¹⁶ *Id.* at 23.

¹⁷ *Public Comment of Supervisor Gary Watson*, CAWCD Board Meeting, Omni Tucson National Resort, Tucson, Arizona (October 5, 2017).

¹⁸ CAWCD Board Meeting Brief, *Discussion and Consideration of Action to Approve on Behalf of CAGR D a Purchase and Sale Agreement to Acquire Water Rights and Land in Mohave Valley Irrigation and Drainage District* 2-3 (October 5, 2017).

grow crops. It is not difficult to imagine scenarios where some of this drainage water could be used for transfers or exchanges of water.

In other states, some entities desiring to transfer water have funded formal mitigation efforts for local communities. In California, the Metropolitan Water District of Southern California (MWD) and Palo Verde Irrigation District have a compensated fallowing program in place that transfers between 30,000 to 120,000 acre-feet of water annually over a 35-year period. In addition to payments made to farmers, MWD established a \$6 million mitigation fund that pays for workforce training programs and small business development.¹⁹ The program has been called a “model of how cities and farming areas can work together to stretch water supplies further while keeping agriculture alive.”²⁰ However, tensions between the two entities remain as Palo Verde Irrigation District recently sued MWD over its purchase of thousands of acres within the irrigation district.²¹

In 2013, proposed legislation introduced by then House Speaker Andy Tobin raised issues involving transfers. House Bill 2338 would have enabled public and private entities in urban and rural areas to voluntarily form regional water augmentation authorities for the purpose of financing water projects as well as acquiring water supplies.²² Despite support for the concept from the Water Resources Development Commission organized by Governor Jan Brewer, the bill’s language proved controversial. Several Yuma area water users, the Cattlemen’s Association, and other entities representing rural interests opposed the bill, viewing it as a water grab. As one prominent rural representative commented, “this bill has started a war” and the bill posed a threat “to agriculture in the Yuma area.”²³ Despite a personal plea from the Speaker to move the bill out of committee, the bill was held after a heated 2 ½ hour hearing.

While water transfers are often framed as a means of increasing urban water supplies, they benefit rural areas as well. One recent example is a water transfer between Salt River Project and the Town of Payson. The Town will transport an average of 3,000 acre-feet per year of surface water from Salt River Project’s C.C. Cragin Reservoir located north of the Town.²⁴ This arrangement will allow the Town to access a renewable water supply from the watershed as soon as this year, allowing the Town to augment its supplies and protect its groundwater.

IV. Colorado River Mainstem Transfers

A. History

Large-scale transfers of rights to use mainstem Colorado River have been rare. This is due to the many legal, policy, and institutional barriers to such transactions. When transfers have occurred, they have been part of congressionally approved tribal settlements. One example

¹⁹ Western Governors’ Association, *Water Transfers in the West* 53 (2012).

²⁰ Ian James, *A New Fight Over Water in the California Desert, with Echoes of ‘Chinatown’*, Desert Sun (Sept. 28, 2017).

²¹ *Id.*

²² H.B. 2338, 51st Leg. 1st Reg. Sess. (Ariz. 2013).

²³ *Public Comment of Wade Noble*, Arizona Legislature, House Agriculture and Water Committee (Feb. 19, 2013).

²⁴ See ADWR, *In the Matter of the Application to Partially Sever and Transfer a Certain Water Right Evidenced by Revised Certificate of Water Right No. 3696.0001, No. ST-10-001* (March 15, 2010).

occurred in the late 1980s when the United States acquired 22,000 acre-feet from the Wellton-Mohawk Irrigation and Drainage District to settle water claims of the Salt River Pima-Maricopa Indian Community.²⁵ Although the irrigation district eventually approved the transaction in exchange for federal concessions, the deal was controversial among local farmers.²⁶ Another transfer occurred as part of the 1984 congressional revisions to the Ak-Chin water settlement. Congress allocated 50,000 acre feet of unused water from the Yuma Mesa Division of the Gila Project.²⁷ The state of Arizona unsuccessfully opposed the transfer, taking the position that the water should be allocated to CAWCD.²⁸

Other water users have shown interest in transferring Colorado River water. Although to date the Central Arizona Groundwater Replenishment District (CAGR) has not yet acquired the rights to non-CAP Colorado River water to wheel through the Central Arizona Project, the Arizona water community has known for years that this is a possibility.²⁹

B. Process for Transferring a Colorado River Contract Entitlement

Transferring a mainstem Colorado River contract right is subject to the dual oversight of ADWR at the state level, and the Bureau of Reclamation at the federal level.³⁰ Each agency has its own process for analyzing and recommending or approving a transfer. As a result of this dual authority, buyers and sellers should not be surprised by delays or extensive consulting and legal costs.³¹

Although the Secretary of Interior and Bureau of Reclamation ultimately oversee the allocation of Colorado River water, Reclamation tends to give some measure of deference to the recommendations of the ADWR Director in determining intrastate allocations.³²

The first step is submitting an application to ADWR requesting the Director recommend that the Bureau of Reclamation approve the transfer.³³ ADWR requires extensive documentation in an application, including quantification of the existing diversion and consumptive use of water, as well as documenting the proposed use and management of the water after the transfer.³⁴ In considering the proposed transfer, the ADWR Director will consider the impacts on other right holders, water quality repercussions, return flow impacts, and the United States' treaty obligations to Mexico.³⁵ ADWR will facilitate an extensive public notice and comment process

²⁵ Robert Glennon & Michael J. Pearce, *Transferring Mainstem Colorado River Water Rights: The Arizona Experience*, 49 Ariz. L. Rev. 235, 238 (2007).

²⁶ *Id.* at 238-240.

²⁷ *Maricopa-Stanfield Irrigation & Drainage District v. U.S.*, FN 7 (Oct. 14, 1998).

²⁸ Robert Glennon & Michael J. Pearce, *Transferring Mainstem Colorado River Water Rights: The Arizona Experience*, 49 Ariz. L. Rev. 235, 242 (2007).

²⁹ CAGR, *Plan of Operation* 46-47 (2004); CAGR, *Plan of Operation* 4-11, 12 (2015).

³⁰ Robert Glennon & Michael J. Pearce, *Transferring Mainstem Colorado River Water Rights: The Arizona Experience*, 49 Ariz. L. Rev. 235, 245 (2007).

³¹ *Id.*

³² *Id.* See A.R.S. § 45-107.

³³ Robert Glennon & Michael J. Pearce, *Transferring Mainstem Colorado River Water Rights: The Arizona Experience*, 49 Ariz. L. Rev. 235, 246 (2007).

³⁴ *Id.* at 5-6.

³⁵ *Id.* at 2, 4, 6.

before the Director makes a recommendation.³⁶ Based on the timelines in ADWR’s formal policy, any transfer decision from the Director will take several months at a minimum, and perhaps much longer.

In addition to ADWR’s review, any transfer must be approved by the Bureau of Reclamation. The end goal of the transfer process is Reclamation’s issuance of what is known as a new “Section 5” contract.³⁷ A Section 5 contract is a contract with the Secretary of Interior for the use of Colorado River water pursuant to Section 5 of the Boulder Canyon Project Act. Upon submission of a transfer application with supporting documentation, Reclamation will list the proposed transfer in the federal registrar and enter into a contract with the parties to cover Reclamation’s administrative costs.³⁸ Reclamation will review the proposed transfer to ensure it complies with federal law, including Reclamation law and the National Environmental Policy Act (NEPA). With respect to transfers completed to date on the Colorado River, the NEPA process has generally involved the less intense Categorical Exclusion process, but in some cases can involve an Environmental Assessment or a more expensive Environmental Impact Statement.³⁹ Reclamation also considers any impacts of the transfer on third parties, including the tribes for which the United States government has trust obligations. Reclamation’s process also consists of a public notice and comment period wherein stakeholders can weigh in on the proposed transfer and new entitlement contract.⁴⁰ If Reclamation approves the transfer, it issues a new Colorado River contract to the transferee.⁴¹ To date, most transfers of Colorado River water that require the issuance of a new contract have been for relatively modest amounts of water and taken a few months to process.⁴²

One particular challenge in transferring mainstem Colorado River water is quantification of the amount of the entitlement that may be transferred.⁴³ This issue is a challenge because many times water that is diverted on the Colorado River is not all consumptively used, creating return flows to the River that other users rely upon.⁴⁴ Gathering the necessary data to quantify historical consumptive use and return flows can be expensive and time consuming.⁴⁵

There are two basic types of Colorado River entitlements: (1) Consumptive use, and (2) Diversion entitlements. A consumptive use entitlement limits the amount of water that the right

³⁶ *Id.* at 7.

³⁷ Robert Glennon & Michael J. Pearce, *Transferring Mainstem Colorado River Water Rights: The Arizona Experience*, 49 *Ariz. L. Rev.* 235, 246 (2007).

³⁸ Phone Conversation with Reclamation Staff, Boulder Canyon Office (Nov. 2017).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Robert Glennon & Michael J. Pearce, *Transferring Mainstem Colorado River Water Rights: The Arizona Experience*, 49 *Ariz. L. Rev.* 235, 246 (2007).

⁴² Phone Conversation with Reclamation Staff, Boulder Canyon Office (Nov. 2017).

⁴³ Robert Glennon & Michael J. Pearce, *Transferring Mainstem Colorado River Water Rights: The Arizona Experience*, 49 *Ariz. L. Rev.* 235, 245 (2007).

⁴⁴ ADWR, Substantive Policy Statement CR8, *Policy and Procedure for Transferring an Entitlement of Colorado River Water* 4-5 (Jan. 17, 2014).

⁴⁵ Western Governors’ Association, *Water Transfers in the West*, 35, 57 (2012).

holder can consume or actually use.⁴⁶ ADWR's policy for this type of entitlement is to limit any transfer to the maximum amount of the entitlement.⁴⁷ Diversion entitlements limit the amount of water that can actually be diverted from the River, with the understanding that often there are return flows from the use of that water.⁴⁸ Diversion entitlement transfers are slightly more complicated. If the transfer will result in the same amount of return flow, the full entitlement may be transferred.⁴⁹ However, if the new use results in decreased return flows, the transferable amount is limited to the actual consumptive use.⁵⁰ For example, a farmer with a diversion right of 5,000 acre feet with 1,500 acre feet of historical return flows would only be able to transfer 3,500 acre feet.

A transfer of Colorado River water that will require the use of the Central Arizona Project canal to deliver the water will also require a wheeling agreement pursuant to the CAP System Use Agreement. Obtaining a wheeling contract will require the transferee to contribute funds towards system improvement projects that increase the operational capability of the canal to carry wheeled water.⁵¹ In addition, the transferee will be required to pay certain CAP annual costs, such as an equivalent fixed OM&R rate, pumping energy rate, and a capital charge equivalent.⁵² Furthermore, any introduction of wheeled water must be approved by Reclamation and undergo environmental review under the NEPA process.⁵³

C. Recent Proposed Colorado River Transfers

In recent years, water users have actively discussed several potential transfers of Colorado River water. What follows are summaries of some notable examples of proposed transfers. To date, none of the examples have been implemented.

Quartzite & CAWCD

In June 2017, the CAWCD board signed a lease agreement with the Town of Quartzite for the town's Colorado River water entitlement of 1,070 acre feet. The purpose of the lease is to

⁴⁶ Robert Glennon & Michael J. Pearce, *Transferring Mainstem Colorado River Water Rights: The Arizona Experience*, 49 Ariz. L. Rev. 235, 245 (2007); ADWR, Substantive Policy Statement CR8, *Policy and Procedure for Transferring an Entitlement of Colorado River Water* 4 (Jan. 17, 2014).

⁴⁷ ADWR, Substantive Policy Statement CR8, *Policy and Procedure for Transferring an Entitlement of Colorado River Water* 4 (Jan. 17, 2014).

⁴⁸ Robert Glennon & Michael J. Pearce, *Transferring Mainstem Colorado River Water Rights: The Arizona Experience*, 49 Ariz. L. Rev. 235, 245 (2007).

⁴⁹ ADWR, Substantive Policy Statement CR8, *Policy and Procedure for Transferring an Entitlement of Colorado River Water* 4 (Jan. 17, 2014).

⁵⁰ *Id.* at 4-5.

⁵¹ CAWCD Staff Presentation to Board, *Draft System Use Agreement* (December 1, 2017). References to System Improvement Fees were removed in later drafts of the System Use Agreement, and issues related to funding of system improvement projects will be discussed in a future stakeholder process. *Id.* However, it is clear that System Improvement Projects will be funded by wheeling parties. *Id.*

⁵² § 14 Standard Form of CAWCD Wheeling Contract, Exhibit B, CAP System Use Agreement Between the U.S. and the CAWCD, Contract No. 17-XX-30-W0622 (February 2, 2017).

⁵³ Amended Master Repayment Contract § 8.18, Contract No. 14-o6-w-245 (November 28, 1988); CAP System Use Agreement Between the U.S. and the CAWCD § 6, Contract No. 17-XX-30-W0622 (February 2, 2017).

provide water for the benefit of CAGR. ⁵⁴ As the town is located 20 some miles away from the River, the town does not have the financial ability to directly use its Colorado River water. As a result, this water has historically gone to the CAP excess pool. ⁵⁵

The term of the lease is for two successive 25-year terms, with either party having the right to not renew the second term. The agreement also gives CAWCD a first right of refusal on any lease or sale of the entitlement for five years after the lease expires. CAWCD would pay the town \$1,700 per acre foot to lease the water for the first 25 years, and \$2,470 per acre foot if the second 25-year lease period is enacted. ⁵⁶

Although the CAWCD Board approved this transaction unanimously, the lease is not without controversy. At the June 2017 board meeting, an attorney for the Mohave County Water Authority spoke against the proposed lease. She argued that this arrangement essentially is a permanent water transfer because of the right of first refusal. She also argued that when Colorado River water was set aside for the Central Arizona Project, it was agreed that 10 percent of the amount set aside would remain available to on-River users, and that this arrangement disrupts that balance. ⁵⁷ In November 2017, ADWR held three meetings throughout the state to receive public comment on the proposed transfer. ADWR has not yet made any recommendation on the proposed transfer.

CAWCD & Mohave Valley Irrigation District

In October 2017, the CAWCD board entered into a contract to purchase farmland in the Mohave Valley Irrigation and Drainage District with the plan of transferring water for the benefit of CAGR. ⁵⁸ The land includes 2,203 acres with 13,936 acre-feet of diversion rights at a purchase price of \$34 million. ⁵⁹ CAWCD staff has proposed a rotational fallowing program to implement the transfer, and estimates that it could transfer 5,508 acre-feet each year as a result. ⁶⁰

The contract includes several closing contingencies that must be met for the deal to go through, including a requirement that the Mohave Valley Irrigation and Drainage District approve the assignment or issuance of a Colorado River water contract to CAWCD. ⁶¹ This contingency is key because the contract rights CAWCD is seeking to acquire are held by the irrigation district, not the landowner.

⁵⁴ CAWCD Board Meeting Brief, *Discussion and Consideration of Action to Approve on Behalf of CAGR a Water Right Lease Agreement between the Town of Quartzsite and Central Arizona Water Conservation District 2* (June 8, 2017).

⁵⁵ *Id.*

⁵⁶ *Id.* at 3.

⁵⁷ *Public Comment of Maureen George*, CAWCD Board Meeting, Phoenix, Arizona (Jun. 8, 2017). Specifically, the representative for the Mohave County Water Authority was making this argument with respect to the 164,652 AF of water contracted subsequent to September 30, 1968 that shares a co-equal priority with CAP Project Water pursuant to section 8.7(c) of the 1988 Amended CAWCD Master Repayment Contract.

⁵⁸ CAWCD Board Meeting Brief, *Discussion and Consideration of Action to Approve on Behalf of CAGR a Purchase and Sale Agreement to Acquire Water Rights and Land in Mohave Valley Irrigation and Drainage District 2-3* (October 5, 2017).

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

The proposed deal has engendered a great deal of controversy. Interests that are generally supportive of CAGR D such as the development and the homebuilding industries have largely spoken in favor of the proposal. Mohave County and other rural interests have either spoken against or expressed concerns with the proposal. Like the Quartzite transfer, representatives from Mohave County have argued that when Colorado River water was set-aside for the Central Arizona Project, the parties agreed that 10 percent of the amount set aside would remain available to on-River users.⁶² Another issue of concern for Mohave County is the potential for lost tax revenues as CAWCD is not required to pay property taxes, an issue CAWCD staff is open to discussing.⁶³ Regardless, as a lobbyist for Mohave County has publically stated, the primary concern of the County's elected officials is not lost tax revenue, but the impact of the transfer on the region's economic future.⁶⁴

Salt River Project & the Colorado River Indian Tribes

In the fall of 2017, the Arizona news media reported that in 2015 and 2016 Salt River Project (SRP) held closed-door discussions with the Colorado River Indian Tribes (CRIT), Governor's Office, CAWCD, and federal officials about the concept of leasing 150,000 acre-feet of the CRIT's water for use across the state.⁶⁵ SRP envisioned this water going to a new power generation facility, Prescott, Sierra Vista, West Valley cities, and Superstition Vistas. The CRIT holds a present perfected right to divert about 662,000 acre feet of water each year of Arizona's Colorado River entitlement. After return flows and other losses, the CRIT's consumptive use has historically been in the range of 350,000 acre feet per year. Although the parties discussed concepts that involved MWD and the GRIC, it is unclear if representatives from either entity were involved in these discussions.

An early version of the concept envisioned an interstate component whereby some of Arizona's apportioned Colorado River water would be forborne by CAWCD and go to MWD in California. The proposed transaction was very complex and involved a number of parties. In August 2016, the Governor's Office informed SRP that the state did not support the interstate aspect of the concept due to concerns about selling Arizona's water to California. CAWCD shared these concerns.

The proposal to transfer some of CRIT's Colorado River water has led to an effort to recall the CRIT Tribal Council. According to the *Parker Pioneer*, the proponents of a recall allege that the "Tribal Council has not taken steps to explore alternative uses for water, and

⁶² *Public Comment of Maureen George*, CAWCD Board Meeting, Omni Tucson National Resort, Tucson, Arizona (October 5, 2017).

⁶³ *Public Comment of Supervisor Gary Watson*, CAWCD Board Meeting, Omni Tucson National Resort, Tucson, Arizona (October 5, 2017); CAWCD Board Meeting Brief, *Discussion and Consideration of Action to Approve on Behalf of CAGR D a Purchase and Sale Agreement to Acquire Water Rights and Land in Mohave Valley Irrigation and Drainage District 2-3* (October 5, 2017).

⁶⁴ *Public Comment of Patrick Cunningham*, CAWCD Board Meeting, Phoenix, Arizona (Dec. 7, 2017).

⁶⁵ Tony Davis, *Water Bailout? Colorado River Tribes Pose Statewide Leasing Idea*, ARIZONA DAILY STAR, Tucson.com (Sept. 24, 2018).

instead is attempting to market our only viable natural resource without the full support of membership.”⁶⁶

V. Groundwater Transportation

Another type of transfer is the transportation of groundwater from one location to another. In the aftermath of the 1980 Groundwater Management Act, in the mid-1980s the cities of Phoenix and Mesa purchased farms outside of the Phoenix AMA to use as a water supply to meet the Act’s requirements.⁶⁷ For a variety of reasons, neither city ever actually transported groundwater from the farms, and both have either sold or are currently under contract to sell the farms.⁶⁸ In addition, certain land speculators bought farms during this time period with the expectation of transporting groundwater.⁶⁹

The purchase of these “water farms” in the 1980s created a backlash in parts of rural Arizona that feared the mining and export of local groundwater.⁷⁰ As a result of this backlash and after several years of discussion, the Arizona legislature passed the Groundwater Transportation Act in 1991.⁷¹ The Act restricted the right to transport groundwater.⁷² The primary purpose behind the groundwater transportation restrictions was to protect distinct groundwater basins and rural economies by ensuring that local groundwater primarily goes to local uses.⁷³

The statutes that govern the transportation of groundwater are complex and scenario-specific. However, the general rule with respect to transporting groundwater from outside an AMA into one of the initial AMAs is clear—unless a limited exception in statute applies, it cannot be done.⁷⁴ The authorized exceptions cover five distinct areas of the state, with different conditions applying to each area.⁷⁵ Some of these restrictions make transfers challenging to execute, and thus limit their utility for augmenting supplies.⁷⁶

One example of a permissible groundwater transportation involves the City of Scottsdale. The City acquired approximately 1,200 acres in the Harquahala Irrigation Non-Expansion Area that are eligible to be irrigated. The City’s purpose in acquiring this farmland was to retire the irrigation use and pump groundwater to meet the CAGR requirements of a Water Availability Status member, however, Scottsdale does not rely on CAGR for its 100-

⁶⁶ *Statements on Tribal Council Recall Effort*, PARKER PIONEER, parkerpioneer.net (Jan. 17, 2018).

⁶⁷ Paul Bergelin, *Moderating Power: Municipal Interbasin Groundwater Transfers in Arizona* 17, 62-73, Arizona State University Master’s Thesis (Oct. 2013).

⁶⁸ *Id.* at 149.

⁶⁹ *Id.* at 87-90.

⁷⁰ *Id.* at 91-92, 102-03.

⁷¹ *Id.* at 93.

⁷² M. Byron Lewis, Arizona State University Morrison Institute for Public Policy, *New Era of Arizona Water Challenges* 19 (May 2014).

⁷³ ADWR, *Arizona’s Next Century: A Strategic Vision for Water Supply Sustainability* 58 (2014).

⁷⁴ A.R.S. § 45-551. Arizona’s statutes contain extensive provisions and restrictions involving the transportation of groundwater outside of Active Management Areas. See A.R.S. § 45-544.

⁷⁵ These five areas are the Yuma Basin (A.R.S. § 45-547); McMullen Valley Basin (A.R.S. § 45-552); Butler Valley Basin (A.R.S. § 45-553), Harquahala INA (A.R.S. § 45-554), and the Big Chino Sub-basin (A.R.S. § 45-555).

⁷⁶ ADWR, *Arizona’s Next Century: A Strategic Vision for Water Supply Sustainability* 57 (2014).

year Assured Water Supply needs.⁷⁷ The relevant groundwater rights will allow the City to pump approximately 3,600 acre feet of groundwater per year that will be delivered ("wheeled") through the Central Arizona Project.⁷⁸ The City is currently working on the design and construction of the necessary infrastructure, environmental NEPA compliance, and satisfying other requirements to wheel the groundwater through the CAP system pursuant to the CAP System Use Agreement.⁷⁹ The City is continuing to work with CAWCD staff, Bureau of Reclamation, and other stakeholders in an attempt to address water quality issues relating to the introduction of non-Colorado River water into the Central Arizona Project.

VI. Severance & Transfer

A third type of water transfer is called a "severance and transfer." A severance and transfer is defined as a severing of an in-state surface water right from land for use elsewhere.⁸⁰ These types of transfers can occur subject to the limitations and conditions in statute.⁸¹ Among other things, the law states:

- No severance and transfer is effective unless approved by the ADWR Director.⁸²
- Existing surface water rights must not be "affected, infringed upon nor interfered with." This is sometimes referred to as the "no injury rule."⁸³
- The water rights must be valid, and not forfeited or abandoned.⁸⁴
- Consent and approval for the transfer is usually needed from affected irrigation districts or other entities.⁸⁵
- The ADWR Director must publish notice of the application stating that any interested person can file objections to the proposed transfer. The Arizona Supreme Court has defined an interested person as essentially an affected party that has an interest protected by the relevant statute. The Director may hold a public hearing and consider objections.⁸⁶

Although the Director has significant discretion in considering severance and transfer applications, the Director may deny an application only for the reasons identified in statute, which include the reasons listed above.⁸⁷ Generally, the quantity of water that may be transferred is limited to the amount historically consumed, i.e. diversion minus return flows.⁸⁸ This is

⁷⁷ Scottsdale City Council Report, Agenda Item 27A (July 1, 2015).

⁷⁸ Chris Hassert, Scottsdale Water Planning & Engineering Director, Presentation to CAWCD Water Quality Task Force, *Harquahala Valley Groundwater Wheeling* (June 6, 2017).

⁷⁹ *Id.*

⁸⁰ A.R.S. § 45-172.

⁸¹ A.R.S. § 45-172(A).

⁸² A.R.S. § 45-172(A)(1).

⁸³ A.R.S. § 45-172(A)(2).

⁸⁴ A.R.S. § 45-172(A)(3).

⁸⁵ A.R.S. § 45-172(A)(4)-(6). For example, if an in-state surface water right is tied to lands within an irrigation district, the decision to transfer a water right must be approved by the irrigation district board. In some cases, irrigation districts have authority to veto any upstream transfer within the same watershed even if the water right is tied to lands outside of the district.

⁸⁶ A.R.S. § 45-172(A)(7); *ADWR v. McClennen*, No. CV-15-0223-SA, 2, 9, 11 (Nov. 12, 2015).

⁸⁷ *ADWR v. McClennen*, No. CV-15-0223-SA, 2 (Nov. 12, 2015).

⁸⁸ Susanna Eden et al., *Agricultural Water to Municipal Use: The Legal and Institutional Context for Voluntary Transactions in Arizona* 10, *The Water Report* (Dec. 15, 2008).

because changing the location of the diversion in many cases will impact the amount of return flows going back to the river that downstream users rely upon.⁸⁹ As severances and transfers can impact downstream users, ADWR has shown hesitancy in granting applications when there are objections from right holders.⁹⁰

Thus, although the framework exists for severances and transfers to occur, they can result in controversy that puts ADWR in politically challenging situations.⁹¹ Severances and transfers are further complicated by the fact that the relative priority and extent of Arizona’s in-state surface water rights are uncertain as a result of the General Stream Adjudication litigation.⁹² These factors significantly increase the transaction costs of transferring surface water rights.

One recent example of a severance and transfer occurred in 2015. The process began in 2011 when Freeport-McMoRan bought land with water rights from the City of Scottsdale known as Planet Ranch near the Bill Williams River in western Arizona.⁹³ During the course of negotiations, Freeport applied to sever and transfer the water rights to a wellfield that would supply water to a copper mine.⁹⁴ For a variety of reasons, the Hualapai Tribe, Department of Interior, and Arizona Game and Fish objected to the transfer, leading to a series of negotiations that resulted in a series of 2013 settlement agreements.⁹⁵ Congress approved these settlement agreements as part of the Bill Williams River Water Rights Settlement Act of 2014.⁹⁶ One of the conditions that had to be met as part of the settlement was a final decision by ADWR to grant Freeport’s severance and transfer application.⁹⁷

ADWR published notice of the transfer, and Mohave County objected on the grounds that the transfer would affect the County’s water supply and tax revenue.⁹⁸ The case made its way to the Arizona Supreme Court, which upheld ADWR’s decision to approve the application. The court held that Mohave County could not object as an “interested person” as that term is used in the statute because the county did not have “an interest that is protected by [the relevant statute] that would be affected by the application for severance and transfer.”⁹⁹

⁸⁹ *Id.*

⁹⁰ *Id.* at 11; Mark A. McGinnis & R. Jeffrey Heilman, *Don’t Be Left Out to Dry: Recognizing and Addressing Water Supply Issues in Arizona Real Estate Transactions*, 46 *Ariz. St. L.J.* 577, 594 (2014).

⁹¹ M. Byron Lewis, Arizona State University Morrison Institute for Public Policy, *New Era of Arizona Water Challenges* 18 (May 2014).

⁹² Rhett Larson & Kelly Kennedy, *Bankrupt Rivers*, 49 *U.C. Davis L. Rev.* 1335, 1367 (2016).

⁹³ Janet M. Howe, *Arizona Water Law: A Parched Public Interest*, 58 *Ariz. L. Rev.* 541, 546 (2016).

⁹⁴ *Id.* at 546-547.

⁹⁵ *Id.*

⁹⁶ *ADWR v. McClennen*, No. CV-15-0223-SA, 3 (Nov. 12, 2015).

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

VII. Conclusion

ADWR has stated that over the next 20 to 100 years, Arizona may need to develop an additional 900,000 to 3.2 million acre-feet of water.¹⁰⁰ One of ADWR's priorities from its 2014 Strategic Vision is evaluating the role of in-state water transfers:

A source of significant controversy across the State, in-State water transfers have been the focus of much debate throughout Arizona's history. A comprehensive analysis of water transfers is needed in Arizona.¹⁰¹

ADWR's proposal for a comprehensive analysis of this issue is worth pursuing. While water transfers have the potential to aid the state in addressing future water demands, care must be taken to protect existing right holders and rural economies. Transfers that offer these protections are more likely to be successful in the long run.

In the coming years, Arizona faces a number of questions about how the state will manage its water in support of economic prosperity while facing the uncertainty of continuing drought. With this challenge on the horizon, the State and water users should consider all available tools to meet projected future water needs. One key question for Arizona's future is what role water transfers and the transportation of water should play.

¹⁰⁰ADWR, *Arizona's Next Century: A Strategic Vision for Water Supply Sustainability* 51 (2014).

¹⁰¹ *Id.* at 18.