

2020 Legislative Review

The Second Regular Session of the 54th Legislature ended its tumultuous run on May 26th, 2020 when the Senate adjourned sine die by a slim majority, minutes after being gavelled in. The Senate's adjournment was preceded by weeks of uncertainty, as the Legislature had recessed for over a month amidst the COVID-19 crisis. Lawmakers had expected to address some of the many impacts from the pandemic, including a \$1 billion budget shortfall projection, but as of June 12th the Governor's office had still not announced its intentions to call for a special session.

Before recessing in late March, a "skinny budget" was passed which included \$16,682,200 of appropriations for ADWR (a 3% increase) as well as monies from the Arizona Water Protection Fund and authorization to raise certain fees in the upcoming fiscal year. For the first time in many years, the WQARF program received \$15 million in general fund appropriations.

Even before COVID-19 became a global crisis, the 2020 session was proving to be a memorable one, with a record 1,607 bills introduced. Prior to the start of the session, AMWUA partnered with the Arizona Agribusiness & Water Council to host the *Vetting Forum 4 Water*, an opportunity for legislators and stakeholders to discuss water-related legislation and proposals. The VF4W was convened four times, monthly from September through November. Each session saw a massive outpouring of stakeholders from the water community, with at times over a dozen legislators in attendance. Bills and topics pertaining to the Arizona General Stream Adjudications, WQARF, water efficiency standards, and recovery were discussed.

Not all stakeholders chose to bring their ideas and proposals to the VF4W, as evidenced by the 43 water-related bills for which the AMWUA Board of Directors took formal positions. AMWUA coordinated the drafting and introduction of SB 1301 which would provide for the direct distribution of Arizona Water Banking Authority firming credits to municipal water users. Bill sponsor Frank Pratt noted that the VF4W process provided an extra layer of education and transparency that increased his interest in sponsoring the measure. SB 1301 passed unanimously out of the Senate, and was widely supported by the water community, including CAWCD and the AWBA Commission. Unfortunately, SB 1301 was lost to the chaos caused by the pandemic, just days before it was scheduled for committee in the House.

A fair number of high profile, water-related bills were introduced during the session. In response to the overallocation of groundwater physical availability in Pinal County, stakeholders introduced HB 2880, which would have mandated that ADWR approve groundwater volumes for



applicants who sought to renew their Designations, without a hydrologic review. AMWUA expressed concerns about inequities between AMAs, as well as the ramifications of fracturing the Assured Water Supply Regulations in different parts of the state and was successful in securing an amendment with a legislative intent clause that limited the impacts of HB 2880 to the Pinal AMA. The bill did not make it through the Senate before the COVID-19 crisis.

Multiple measures were also introduced to amend Arizona laws related to surface water rights. HB 2672 originated with the Arizona Farm Bureau and sought to codify the “Futile Call” doctrine. HB 2674, HB 2675, and HB 2818 were introduced by Rep. Gail Griffin all which would have eased restrictions on water right usage. These bills were primarily targeted to rural areas, with provisions to shield water users from forfeiture and abandonment (HB 2675) and protect well owners who are pumping subflow (HB 2818).

Ultimately, only 89 bills were passed during the session, and stakeholders will need to try again in future years to see their legislative priorities through. The following pages outline the bills for which AMWUA adopted positions. Only HB 2618, providing for the continuation of ADWR, was passed out of the Legislature.



Water Legislation of the 2020 Session

HB 2076: appropriation; DWR; additional staff (Gabaldón).

This bill would appropriate \$6.1 million to the Arizona Department of Water Resources (ADWR) for the purpose of hiring hydrologists and other support staff.

AMWUA Position: Support

HB 2098: dam safety study committee (Griffin).

This bill would create a Dam Safety Study Committee consisting of two appointed legislators and the Director of ADWR or their nominee. The Committee would be required to consider the safety of dams throughout Arizona and complete a report of their findings by December 31st, 2020.

AMWUA Position: Support

HB 2101: appropriation; Arizona water protection fund (Griffin & Nutt).

This bill would appropriate \$1 million from the state general fund in Fiscal Year 2020-21 to the Arizona Water Protection Fund. The Arizona Water Protection Fund is a state-run program administered by ADWR 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. AMWUA has supported this legislation in previous years.

AMWUA Position: Support

HB 2158 | SB 1405: water; well metering; nonexempt wells (HB: Engel | SB: Mendez).

This bill would mandate measurement of water use and annual reporting for nonexempt groundwater wells throughout the state. Nonexempt wells include those with a pumping capacity greater than 35 gallons per minute (gpm). Current law contains no measuring requirements for wells outside of the AMAs or INAs except for a person who withdraws groundwater for transportation to an initial AMA.

AMWUA Position: Support



HB 2159 | SB 1385: water adequacy requirements; statewide applicability (HB: Engel | SB: Mendez)

This bill would mandate that counties outside of the AMAs adopt an adequate water requirement for subdivided lands within the county. Currently, counties outside of an AMA have an option to adopt the mandatory adequacy provisions upon unanimous vote of the county Board of Supervisors.

AMWUA Position: Monitor

HB 2174: exempt wells; capacity (Blanc, Chavez, Peten).

The Groundwater Code defines exempt wells as those with a maximum pumping capacity of less than 35 gallons per minute (gpm) used to withdraw groundwater for non-irrigation uses. These wells are exempt from most of the provisions of the Groundwater Code. This bill alters that criterion, changing the threshold for exemption to a maximum capacity of 20 gpm of pumping capacity.

AMWUA Position: Monitor

HB 2212 appropriation; DEQ; testing; remediation (Gabaldón)

Appropriates \$500,000 for ADEQ to test public water systems for PFAS and assist systems that exceed the health advisory level determined by the U.S. EPA.

AMWUA Position: Monitor

HB 2213: WQARF; Appropriation (Gabaldón).

Appropriates \$20 million from the general fund in FY2020-21 to the Water Quality Assurance Revolving Fund. WQARF is a state-sponsored program established by the Legislature and administered by the Arizona Department of Environmental Quality to clean up hazardous soil and groundwater contamination.

AMWUA Position: Support

HB 2226: water measuring devices; report (Kavanagh).

Authorizes the ADWR Director to require water measuring and reporting for groundwater pumping in areas outside of the AMAs. This requirement may only be applied to wells with a maximum pump capacity greater than 35 gpm.

AMWUA Position: Support

HB 2286 appropriation; wastewater treatment infrastructure (Osborne & 3 others)

Luke Air Force Base's (AFB) wastewater treatment plant was originally constructed in 1942 and is approaching the end of its useful life. The City of Glendale has agreed to receive and treat wastewater from Luke AFB using the City's infrastructure. This bill would appropriate \$5 million from the general fund in FY2020-21 to defray costs associated with the construction of water reclamation infrastructure related to this project.

AMWUA Position: Support

HB 2309 groundwater; waterlogged area exemption; date (Dunn)

The Buckeye Waterlogged Area (BWLA) was established by the Legislature in 1988, covering an area surrounding the Gila River from confluence with the Salt River west to Gillespie Dam, which includes part of Avondale and Goodyear. Within the BWLA, farmlands are exempt from water duties, certain irrigation districts are exempt from conservation requirements, and entities pumping groundwater are not required to pay withdrawal fees. Statute requires that ADWR review the area's hydrologic conditions and make a recommendation to the Governor and Legislature on whether or not the exemptions should continue. ADWR published its findings in December 2019 and recommended that the BWLA continue through 2034. This bill would extend the BWLA exemptions through 2034, as recommended by ADWR.

AMWUA Position: Support

HB 2405 Colorado River fourth priority water (Cobb & Biasiucci)

This bill would add statutory language prohibiting the transfer of any Priority 4 (P4) Colorado River water to non-"Colorado river communities." Similar legislation was introduced in 2019 prohibiting transfers of P4 water out of Mohave and La Paz Counties. ADWR is currently reviewing an application to transfer P4 water from La Paz County to Queen Creek and is



expected to make its recommendation to the Bureau of Reclamation in the coming months.

AMWUA Position: Monitor

HB 2447 gaming compacts; water claims; prohibition (Rep Pierce, Bowers, Griffin, Dunn, Finchem; Sen Fann, Allen.)

This bill would prohibit the State of Arizona from negotiating or executing any Tribal-State gaming compacts with tribes who are involved in water rights litigation. Many if not all tribal nations are involved in the General Stream Adjudications. Negotiation of tribal gaming contracts has been underway for the past few years, as many are set to expire in 2023.

AMWUA Position: Monitor

HB 2456 environmental quality programs; terminations; repeal (Griffin)

This bill proposes to remove the statutory termination dates for multiple programs administered by the Arizona Department of Environmental Quality (ADEQ). Current statutes include sunset dates for these individual programs, separate from ADEQ's sunset review as an entire agency. Removing the termination dates for these programs would align their sunset reviews with the ADEQ sunset review.

AMWUA Position: Support

HB 2567 appropriation; lead screening; charter schools (Engel & 7 others)

Appropriates \$100,000 for ADEQ to conduct water quality testing for lead in charter schools. ADEQ conducted a voluntary, statewide lead screening program in 2017 but did not include charter schools.

AMWUA Position: Monitor

HB 2595 S/E water rights; general adjudications; funding (Campbell & 20 others)

Originally introduced as HB 2770, this striker establishes the *General Adjudication Personnel and Support Fund*. Monies in the Fund can be used to provide additional full-time staff, equipment, or services for the Adjudication proceedings for both the Court and ADWR. Prior to any monies being allocated from the Fund, ADWR or the Supreme Court must prepare an expenditure plan



for review by the Joint Legislative Budget Committee. The bill appropriates nearly \$400,000 for the Court to immediately utilize and \$2 million for the general purposes of the Fund.

AMWUA Position: Support

HB 2620 law clinic; stream adjudications; appropriation (Bowers)

This bill allows local Arizona Universities to represent claimants who meet certain low-income requirements in the General Stream Adjudications. Appropriates \$500,000 to the University of Arizona to establish a law clinic for this purpose.

AMWUA Position: Monitor

HB 2671 S/E water supply development fund; appropriation (Griffin & Bowers)

Appropriates \$50,000,000 to the state Water Supply Development Revolving fund. This fund was established in 2007 and was intended to assist rural water providers acquire water supplies through loans and grants. Currently statutory criteria exist that limit the disbursements from the fund to only water providers that are located within an AMA, or a jurisdiction that has voluntarily adopted adequate water supply provisions. The strike everything amendment removes those statutory criteria and proposes to exclude access to these funds for any water provider located within an AMA. AMWUA is working with the Sponsor to explore amended language.

AMWUA Position: Oppose, seek amendment

HB 2672 water rights (Griffin)

This bill is proposing to codify a facet of western water law known as the “Futile Call” doctrine. As amended, this bill modifies statute to allow a junior water right holder to avoid curtailment by a senior right holder, if the junior user can prove that their curtailment would not produce water for the senior user.

AMWUA Position: Monitor

HB 2674 water; substitute acreage (Griffin, Bowers, Dunn, Nutt)

Adds statutory provisions that would allow an irrigator to retire irrigated acres and apply that water right to new, “substitute” lands. The substitute lands must be contiguous to the retired acres and part of the same farming unit. The irrigator must notify ADWR that the retired acres



were damaged by floodwaters or, report that a “condition” (including soil quality or the shape of the farmland) exists that is limiting the efficient irrigation of those original acres and that the substitution of new land will facilitate more efficient water use.

AMWUA Position: Monitor

HB 2675 water conservation notice; no abandonment (Griffin, Bowers, Dunn, Nutt)

Allows a water right holder to file a “Water Conservation Plan” with ADWR. Upon filing a plan that outlines water conservation measures that are planned or will be implemented, the water rights included in that notice would be shielded from a claim of abandonment or forfeiture. The Plan can be extended by 10 years, indefinitely. An amendment to the bill on 2/4/20 included a legislative intent clause specifying that the Legislature intends the provisions to only apply prospectively.

AMWUA Position: Monitor

HB 2677 groundwater replenishment reserves (Griffin)

This bill introduces clarifications to the calculation of CAGR’s 100-year replenishment obligation for the purpose of calculating the replenishment reserve target. Existing statute could be read to require the CAGR to calculate the replenishment reserve based on each AMA’s buildout obligation multiplied by 100. Modifies the statutory calculation of each AMA’s projected replenishment obligation to equal the cumulative projected obligation for each year following submission of the Plan of Operation.

AMWUA Position: Support

HB 2737 water efficient plumbing fixtures (Rep. Engel, Campbell, Payne; Sen. Otondo, Pratt)

Arizona adopted water-efficiency standards for indoor plumbing fixtures in 1992 which have since been superseded by various federal laws and requirements. This bill would update Arizona’s water-efficiency standards to align with criteria established by the WaterSense Program, a public-private partnership between industry, utilities, and regulators.

AMWUA Position: Support

HB 2738: irrigation non-expansion areas; water supplies (Engel & 2 others).

An irrigation non-expansion area (INA) is a geographical area that has been designated as having insufficient groundwater for irrigation of cultivated lands. Within an INA expansion of new irrigated acreage is generally prohibited and water management regulations, such as well metering, apply. Arizona’s Groundwater Code allows the Director of ADWR to designate new INA’s based upon certain criteria, including if the Director determines that “there is insufficient groundwater . . . at the current rates of withdrawal.” (Emphasis added). In 2015, a petition from irrigators in the San Simon Valley to establish a new INA was declined by ADWR; the Director noting in his decision that he could not consider future groundwater uses in the determination. These bills would require the Director to consider projected rates of groundwater withdrawals in their determination of a new INA.

AMWUA Position: Support

HB 2758 | SB 1465: watershed health; use; survey (HB: Engel, Campbell, Cobb, Gabaldón, Rodriguez | SB: Dalessandro & 3 others)

This bill directs ADWR to conduct a biennial assessment of watershed health throughout Arizona and to establish by 2022 a set of recommendations for how much “ecological water” is needed to sustain ecosystems, wildlife habitat, or communities that may rely on a watershed. The bill also provides for the appropriation of water for “watershed health uses,” defined as the conservation of water within a natural watercourse that supports the health of an individual watershed. Current statutes allow for the appropriation and beneficial use of water instream for fish, wildlife, and recreation purposes but not explicitly for the benefit of the watershed or ecosystem as a whole.

Recommended Position: Monitor

HB 2787 water; augmentation authority; special districts (Shope)

This measure has been introduced on behalf of the Pinal County Water Augmentation Authority (CWAA). The bill would create a statutory framework for a CWAA to levy an assessment (similar to an ad valorem property tax) on property for the purposes of financing water supply development projects that will ultimately allow that property to be eligible for a Certificate of Assured Water Supply. HB 2787 also adds to the existing statutory authorities of County Improvement Districts the ability to acquire water supplies and develop infrastructure for water conveyance, reuse, or replenishment. Finally, this bill would require ADWR to transfer a minimum of \$200,000 per year of groundwater withdrawal fee monies to the Pinal CWAA. Currently, statute specifies that ADWR may transfer up to \$200,000 by annual determination.

AMWUA Position: Monitor

HB 2818 adjudication; subflow wells; claim; priority (Griffin)

The General Stream Adjudications affect any entity who uses surface water within the Little Colorado or Gila River watersheds. This includes water users who are pumping groundwater that is hydrologically connected to a river or stream, known as subflow. Many small well owners throughout the State have installed groundwater wells near surface waters and may be unknowingly pumping subflow. This bill would allow a well owner (of any size) determined to be in a subflow zone to apply to the Court to receive a water right with a priority retroactively assigned to the date that water was first withdrawn from the well. Similar proposals in the late 1990s resulted in years of litigation and were ultimately deemed unconstitutional on the basis that retroactive legislation which impacted property rights violates due process rights afforded by the Arizona Constitution.

AMWUA Position: Oppose

HB 2880 assured water supply; availability; plats (Roberts, Finchem, Shope)

This measure has been introduced on behalf of the Pinal AMA Stakeholder Group; entities working to address groundwater physical availability issues in the Pinal AMA. HB 2880 would amend statute to allow a water provider in the Pinal AMA retain the volume of groundwater approved in their most recent Designation of Assured Water Supply (AWS) without any future hydrologic review. Currently, Designated water providers in all AMAs must re-demonstrate physical availability of groundwater when renewing their Designations. The bill also changes the AWS statutes to allow developers to increase the number of housing units on a subdivision plat associated with existing Certificates of AWS. Current regulations require developers to apply for a new Certificate if a plat is revised and housing units are increased by 10% or more.

AMWUA had worked with bill supporters to see if the bill could be amended regarding the AWS designation provision but the Pinal Stakeholders wanted the bill to remain for only the Pinal AMA. AMWUA's position has been to oppose unless amended. The bill did pass the House with an amendment that clarified the legislative intent was only for Pinal AMA and did not prevent ADWR from pursuing similar approaches via rules. With that amendment, it is recommended that AMWUA's position shift to monitor.

AMWUA Position: Monitor



HB 2895 | SB 1635 subsequent irrigation non-expansion areas; procedures (H: Cobb | S: Otondo)

Similar to HB 2738, these measures introduce a number of modifications to the procedures for establishment of new irrigation non-expansion areas (INA). This bill would allow ADWR to consider projected rates of groundwater withdrawal as part of the determination of a new INA. The bill also clarifies which entities are eligible to petition the State to create a new INA and would mandate that petitioners submit a groundwater model and hydrologic assessment using methodology approved by the ADWR Director. These bills align with the suggested statutory changes presented by ADWR in the summer of 2017 during the Governor's Water Solutions Conversations.

AMWUA Position: Support

HB 2896 water; rural management areas (Cobb & 7 others)

This bill would allow a County Board of Supervisors to establish a new type of water management jurisdiction called a Rural Management Area if a particular groundwater basin or subbasin meet certain criteria, generally related to groundwater depletion. Rural Management Areas may develop a Management Goal, Management Plan, and voluntary or mandatory best management practices designed to reduce groundwater withdrawals in the area. The proposed Management Plan must be submitted for approval by ADWR.

AMWUA Position: Monitor

SB 1301 water banking; storage credits; subcontractors (Pratt & 2 others)

For nearly three decades the Arizona Water Banking Authority (AWBA) has stored Colorado River water underground to supplement the water supplies of Central Arizona Project (CAP) Municipal & Industrial (M&I) subcontractors. To access the stored water in times of shortage, current statutes require that the AWBA must first transfer the LTSC to CAP for recovery. This bill would provide the AWBA with the option to distribute LTSC directly to M&I subcontractors. The concept of direct distribution is an outcome of a stakeholder effort to plan for the recovery of water supplies stored by the AWBA. This legislative change would provide flexibility and simplicity for recovery of AWBA credits and reduces the cost of recovery to end users.

AMWUA Position: Support

SB 1488 appropriation; best land management practices (Otondo & 24 others)

This measure directs the State Land Commissioner and State Forester to establish a program promoting best land management practices for the removal of hazardous vegetation on state land for the purposes of fire suppression and watershed management. SB 1477 outlines the program requirements to specifically include a plan for removal of hazardous vegetation from federal and tribal lands for the purposes of protecting infrastructure and municipal water supplies. The bill would appropriate \$4 million from the general fund for the program.

AMWUA Position: Support

SB 1494 | HB 2618 department of water resources; continuation (SB: Kerr | HB: Griffin)

Extends ADWR's sunset date to 2028.

AMWUA Position: Support

SB 1636 groundwater pumping; measuring; reporting (Steele & 11 others)

Requires monitoring and annual reporting for nonexempt groundwater wells throughout the state. Water users who irrigate 10 or fewer acres that are not part of a larger farming operation, or water users who pump <10 acre-feet per year for non-irrigation use are exempted from this requirement.

Recommended Position: Support

SB 1637 wells; permits; spacing rules (Mendez & 10 others)

Requires that ADWR adopt rules governing the location of new and replacement wells >35 gpm statewide, within groundwater basins that the Director determines to be experiencing declining groundwater levels.

AMWUA Position: Support



SB 1638 well drilling; groundwater basins (Dalessandro & 12 others)

Establishes a well drilling moratorium that prevents new wells in the Upper San Pedro and Verde Valley groundwater subbasins until the conclusion of the General Stream Adjudication unless a well is a replacement well or does not pump subflow.

AMWUA Position: Monitor

SB 1639 adequate water supply; statewide requirements (Otondo & 11 others)

Mandates that a city, town, or county may only approve a subdivision plat if the development has demonstrated an adequate water supply.

AMWUA Position: Monitor

HR 2003 Arizona water professionals; appreciation week (Gabaldón)

Designates April 12-18, 2020 as Arizona Water Professionals Appreciation Week to express gratitude and appreciation for the water professionals who contribute to the delivery and management of Arizona's safe and reliable water supplies.

AMWUA Position: Support