



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

ARIZONA MUNICIPAL WATER USERS ASSOCIATION MANAGEMENT BOARD

MEETING NOTICE AND AGENDA

Wednesday, January 10, 2024 – 10:00 a.m.

**This meeting will be held as a Hybrid meeting.
Attendance in person is welcomed; Others may join via Zoom.**

Access this [Link](#) to join via Zoom. Meeting ID: 845 3218 4774
(Option to join by phone: 602-753-0140, same Meeting ID as above)

A. Call to Order

B. General Business—Items for Discussion and Possible Action

1. Approval of the Minutes from the December 12, 2023, Meeting
2. Next Meeting Date: February 14, 2024, 10:00 a.m.
3. ADEQ, Lead and Copper Rule Revisions, and Advanced Water Purification Rulemaking
4. 2024 Legislative Session

C. Member Reports

D. Executive Director's Report

E. Future Agenda Items

F. Adjournment

*The order of the agenda may be altered or changed by the AMWUA Management Board. Members of the AMWUA Management Board may attend in person or by internet conferencing.

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

Arizona Municipal Water Users Association

3003 North Central Avenue, Suite 1550, Phoenix, Arizona 85012 • (602) 248-8482 • amwua.org

MANAGEMENT BOARD

MEETING MINUTES

December 12, 2023

HYBRID MEETING

MEMBERS PRESENT

Chris Hassert, Mesa, Chair
Brian Biesemeyer, Scottsdale, Vice Chair
Jeremy Abbott for John Knudson, Chandler
Kirk Beaty, Avondale
David Burks, Peoria
Craig Caggiano for Tara Ford, Tempe
Ray Diaz for Barbara Chappell, Goodyear
Troy Hayes, Phoenix
Jessica Marlow, Gilbert
Mark Roye for Ron Serio, Glendale

OTHERS PRESENT

Gretchen Baumgardner, Scottsdale	Kathy Ferris, AMWUA	Drew Swieczkowski, Glendale
Paul Bergelin, AMWUA	Sherry Garcia, AMWUA	Tina Sleeper, Tempe
Rebecca Bernat, AWBA	Lisa Gray, CliftonAllenLarson	Martin Stiles, CAP
Silvia Burgos, City of Goodyear	Meagan Johnson, Phoenix	Warren Tenney, AMWUA
Brian Draper, City of Mesa	Brad Moore, AMWUA	Sheri Trapp, AMWUA
Harry Cooper, AMWUA	Jacob Perez Laurent, AMWUA	

A. Call to Order

Mr. Hassert called the meeting to order at 10:00 a.m.

B. General Business – Items for Discussion and Possible Action

1. Approval of the Minutes from the November 8, 2023, Meeting

The November 8, 2023, minutes were approved with the following correction: Brandy Kelso was present for Troy Hayes, City of Tempe.

Upon a motion made by Mr. Hayes and a second by Mr. Biesemeyer the AMWUA Management Board unanimously approved of the November 8, meeting minutes.

2. Next Meeting Date: Wednesday, January 10, 2024, at 10:00 a.m.

3. Update on the Governor's Water Policy Council

Mr. Bergelin reported that the Governor's Water Council has been meeting for approximately six months and at the end of November, made its final recommendations. Recommendations originated from two committees within the Water Council. One committee was focused on the Assured Water Supply Program, and one was focused on managing rural groundwater. Overall, there are five recommendations that these two committees put forward.

The first recommendation is for a new framework for Rural Groundwater Management. There have been large commercial agriculture operations in certain rural areas of the state and the amount of water they are consuming is conflicting with other established groundwater users including homeowners. They are recommending a new regulatory framework called the Rural Groundwater Management Area that consists of several consensus statements on its creation, adoption of an area goal and plan, establishment of a council to oversee this area, and periodically review of this area. There are several details that need to be resolved for this proposal to be fleshed out into something implementable, which will require legislation. Representative Griffin opposes the Rural Groundwater Management Area in favor of another framework under development by Senator Kerr.

The second recommendation focuses on ways to enhance ADWR's ability to measure, monitor, and collect groundwater data in rural areas including, using technologies such as remote sensing, and providing financial assistance to voluntarily meter non-exempt wells. Agriculture members want to publicly report aggregate well data instead of individual well pumping and implementation will require increase in ADWR's budget.

The third recommendation, which is from the Assured Water Supply Committee, is another way for a water provider to become designated. A provider would be allowed to grandfather its 2021 groundwater pumping volume. A provider would be required to replenish some of its pumping or deduct it from a limited groundwater allowance. Also, 30% of the provider's new supplies must substitute for groundwater pumping to facilitate a transition away from groundwater. ADWR has begun stakeholder meetings and plans to draft rules in January and begin a rulemaking process that will last through summer 2024.

The fourth recommendation is to fully incorporate build-to-rent properties into the Assured Water Supply Program. Building permit for a build-to-rent property may only be approved if the units have either obtained a Certificate of Assured Water Supply or water services from a designated water provider.

The final recommendation is the oversight of "wildcat" subdivisions by broadening the geographic scope of "acting in concert" for the purposes of illegally subdividing lands and clarifying when lots are contiguous. When violations are found, fines would be applied to each illegally subdivided lot instead of the unauthorized subdivision as a whole. Cities, towns, and counties would have authority to collect additional information during subdivision/building permit application process. Representative Griffin has introduced three bills to implement some of these recommendations.

At this time, the Council's work is complete, and ADWR has transmitted its recommendations to Governor Hobbs. Those proposals that require legislation will be subject to further discussion in advance of the legislative session. Looking beyond the legislative session, the Assured Water Supply Committee received several concepts that it has not had time to review. ADWR wants to focus on implementing an Alternative Pathway to Designation before considering additional Assured Water Supply Committee concepts. The future work for the Rural Groundwater Committee is uncertain.

Mr. Hassert asked what the distinguishing factors are for proposals going through the rulemaking process or being subject to legislation? Mr. Bergelin responded that it depends on what the current statutory framework allows for. For example, the Alternative Pathway of Designation proposal involves the requirements of the Assured Water Supply Program, which is spelled out in Arizona Administrative Code, not the Arizona Revised Statute. Therefore, the best way to implement that proposal is by amending the rules in Administrative Code through a rule making process. Some of the other proposals involve changing current statutes, which would require legislation.

Mr. Hassert asked other ideas discussed by the Water Council could be introduced as legislation? Mr. Bergelin said lawmakers can introduce any bill on any topic.

4. [Analysis of the Role of Service Areas in Providing Water](#)

Mr. Moore, AMWUA's Water Policy Analyst, reported that service areas are essential for the operation of a utility. Without understanding their history and essential role in water management there is risk of their effectiveness being eroded. AMWUA staff drafted this analysis in an effort to educate stakeholders and the public and elevate the importance of service areas. This analysis initially grew out of AMWUA's response to a number of recent proposed legislation – HB2535 (2023), SB 1171 (2022), SB 1660 (2023), SB 1093 (2023) and HB 2561 (2023) – had the potential to undercut basic tenets of service areas.

The origin of this concept can be traced back to feudal Europe. Rulers issued franchises to subjects to allow them to carry out activities that would otherwise have been reserved for the ruler. These monopoly franchises were granted to owners of essential public infrastructure, and they came with an implicit "duty to service." The idea of a "duty to serve" and the granting of monopoly rights are today core tenets of public utility service.

The "duty to serve" is the common understanding of the responsibilities of public utilities in the United States. Some of the responsibilities include an obligation to extend service to all within a service area, and obligation to provide continual and reliable service, and an expectation that you will continue service even if payment for the service is not provided in full, or if the total revenue received from customers does not cover the full cost of providing the service.

Public utilities are still given a public monopoly right, but today these utilities operate as regulated monopolies. This means that state regulation prevents the negative aspects of a "monopoly", namely cessation of innovation and the driving up of prices. Public utilities can be seen as "natural monopolies" because their service can be met by a single firm, and having multiple competing firms would be against the public interest. The Arizona Revised Statute defines a water provider's service area as the area being served water for a non-irrigation use and that contains an "operating distribution system." A water provider's area generally delineates its wastewater collection and reclamation services. In an AMA, there are some limits on how and why a water provider may expand its service area. Prior to 1903, irrigation water was delivered by competing canal companies with no central organizing authority. Litigation was omnipresent with landowners often being forced to physically defend their rights. In 1889, Phoenix granted an exclusive franchise right to the Phoenix Water Company to provide water service to the city. Years of declining service led to Phoenix acquiring the company in 1907. As Phoenix grew rapidly in the 1950s, many parts of Phoenix were served by private water companies. The city acquired these companies when residents petitioned the city to alleviate poor water quality and service.

Moving forward, to the present, service areas increased in importance with the establishment of the 1980 Groundwater Management Act, with the strict regulations on who could pump groundwater within AMAs and imposing of mandatory conservation requirements. Now, with a few exceptions, only a water provider can pump and serve groundwater within its service area. Service areas delineate

which areas are covered by a 100-year designation of Assured Water Supply – ensuring sustainable development.

The benefits of service areas aid in resource management by defining where a provider may develop water resources and build infrastructure. It also prevents costly duplication of assets that would occur if multiple water providers were able to compete for customers in the same area. It gives water providers the security to allocate resources towards supplies and infrastructure that benefit their existing customers, rather than having to compete with neighboring utilities and maintains accountability to customers. The protections offered by water service areas are an essential foundation for sound water management. Strengthening, rather than weakening, this foundation will ensure the 4.9 million people who call the Phoenix metropolitan area home, will continue to thrive.

Mr. Biesemeyer asked is there a move by the legislature on service areas specifically? Mr. Tenney responded that we do not think there is a direct target on service areas, but legislation could have an indirect way of eroding the service area concept. We want to make sure that we understand the background and the role that service areas play, so that we can counter or better inform legislators when legislation is introduced that could create a problem for service areas.

5. [Messaging about Current Collective Conservation Efforts](#)

Ms. Trapp reported that there is a need to further highlight current collective initiatives. The AMWUA cities are doing great conservation, and we are working to showcase it better. Using numbers and data help to tell a more impactful story. She reviewed with the Board updated talking points about the collective conservation efforts of the AMWUA cities.

Moving forward, Ms. Trapp said AMWUA wants to keep building upon this initiative as more data becomes available and use data to elevate conservation and better tell the collective story. AMWUA will be using this information at CRWUA next week and the upcoming Legislative breakfast in January 2024. We will continue to collaborate with conservation staffs to look at additional ways to promote programs and successes.

Mr. Tenney added that there has been a lot of work with the AMWUA cities' staff on this. Mr. Tenney said that it is important to recognize that it takes a lot of time and effort to run the various conservation programs and projects.

6. [Recommendation for 2024 AMWUA Management Board Chair and Vice Chair](#)

Mr. Hassert reported that the nominating committee for the 2024 AMWUA Management Board is recommending Ron Serio from the City of Glendale as Board Chair, and Tara Ford from the City of Tempe as Vice-Chair.

Upon a motion made by Mr. Burks and a second from Mr. Biesemeyer, the AMWUA Management Board approved of the nominating committee's recommendation.

C. Member Reports

No member reports.

D. Executive Director's Report

Mr. Tenney reported that over the last six months, WIFA has been scrambling to award and issue \$200 million for conservation grants. As of this week, 273 applications have been submitted, which amounts to

\$317 million in requests. To date, WIFA has awarded 67 of those applications, which amounts to \$87 million, with a projected overall water savings between 1.2 and 1.8 million acre-feet. AMWUA cities have submitted a total of 41 applications for the water conservation grant funds and to date 15 of those proposals have been awarded, which amounts to \$24 million to help increase water savings. WIFA is under pressure to get through the process of evaluating, recommending, and awarding the remaining proposals. It is positive that the State has been investing this much into water conservation and that the AMWUA municipalities have been actively pursuing the grant monies to augment and enhance their individual conservation programs.

Mr. Tenney reported that the Agribusiness Council and AMWUA facilitated the Vetting Forum for Water earlier this week. There were 130 who attended the Zoom meeting. Barry Aarons moderated, and we learned about five legislative proposals. We are anticipating there will be other legislative proposals introduced this session, which is shaping up to be an active and busy one for water. Representative Griffin has already dropped 21 water bills. AMWUA staff is in the process of summarizing those bills along with legislation we anticipate will be introduced and plan to send that summary to the InterGovs, WRAG, and you by the end of today.

One bill that we are trying to learn more about is HB 2030, which would require cities larger than 240,000 and with an M&I subcontract to contract an independent audit to look at various financial aspects of the water utility.

Due to this bill and possibly other legislation that may target cities, we believe we have an opportunity to better inform Legislators about existing requirements and ways that municipal water providers are already transparent about their finances including rate increases, as well as to educate about the rising costs entailed to just operate and maintain a water system let alone the large expenses that will be incurred to secure additional water supplies at a time when there's pressure on our groundwater and the Colorado River is becoming smaller.

Mr. Tenney reported that the Salt River and Verde River reservoirs are at a combined capacity of 80%. The November runoff was the second driest November on record for SRP signaling Arizona may be in for a dry winter.

Mr. Tenney reported that the outlook for this winter in the Colorado River Basin remains hard to predict due to a very weak El Nino system. Lake Mead continues to hold steady at 34% full.

Mr. Tenney said it has been a pleasure working with Mr. Hassert and thanked him for his service as Chair of the AMWUA Management Board.

E. Future Agenda Items

Mr. Hassert said there will be discussion regarding legislative activity. Mr. Abbott suggested hearing from a representative with ADEQ regarding recent changes to its Lead and Copper Program. Mr. Biesemeyer agreed with Mr. Abbott and echoed his suggestion of hearing from an ADEQ representative at a future Management Board Meeting.

F. Adjournment

Mr. Hassert adjourned the meeting at 11:04 a.m.

MANAGEMENT BOARD

INFORMATION SUMMARY

January 10, 2024

ADEQ, Lead and Copper Rule Revisions, and Advanced Water Purification Rulemaking

ANNUAL PLAN REFERENCE

Sustainable Water Management

Promote efforts and policies that will sustain and safeguard our members' water resources and prepare for critical water management issues.

- Groundwater Management - Lead discussions and develop strategies to safeguard groundwater, including recovery's impact on the aquifer, post-2025 management issues in the AMAs, and legislation.
- Augmentation – Engage in water augmentation discussions and advocate for our members' perspectives per the Augmentation Principles.

Strategic Plan: Facilitate our Strength in Numbers, Educate – Excel as an Expert and Resource, Collaborate and Advocate for Solutions, Safeguard Water Supplies, Strengthen Groundwater Management, Prepare for Impacts of Drought & Shortage, Pursue Post-2025 Water Policy, Interconnect Disciplines

Finances & Water

Examine, analyze, and influence water positions and policies that impact our members' finances.

Strategic Plan: Collaboration and Advocate for Solutions, Safeguard Water Supplies, Prepare for Impacts of Drought & Shortage, Minimize Financial Impacts

SUMMARY

ADEQ staff is scheduled to meet with the AMWUA Management Board to discuss the Lead and Copper Rule Revisions. The Management Board raised questions about those revisions at the December 12, 2023 meeting so this an opportunity to directly discuss with ADEQ staff each other's perspectives about the Lead and Copper Rule Revisions.

This agenda item is also an opportunity for the Management Board to gain an update regarding ADEQ's rulemaking process for Advanced Water Purification.

RECOMMENDATION

The AMWUA Management Board is requested to ask questions and discuss ADEQ's Lead and Copper Rule Revisions and the development of rules for Advanced Water Purification with ADEQ staff.

MANAGEMENT BOARD INFORMATION SUMMARY

January 10, 2024

Amended January 9, 2024

2024 Legislative Session

ANNUAL PLAN REFERENCE

Legislation

Effectively advocate with one voice at the Legislature.

- Monitor, analyze and clarify state and federal legislation of interest to our members.
- Engage with legislators to inform them about the issues important to AMWUA including identifying and working with legislators to champion water issues.

Strategic Plan: Collaborate and Advocate for Solutions, Safeguard Water Supplies, Reinforce Groundwater Management, Prepare for Impacts of Drought & Shortage, Pursue Post-2025 Water Policy

SUMMARY

The Second Regular Session of the 56th Legislature begins on January 8, 2024. As of the end of January 9, 2024, 271 measures have been prefiled, with 41 relating to water.

In preparation for the 2024 Legislative Session, the AMWUA 2024 Legislative Agenda was approved by the Board of Directors on October 26, 2023. AMWUA and the Agribusiness Council organized a Vetting Forum in December.

AMWUA staff and Legislative Contractor will provide an overview of relevant legislation that has been introduced to date as well as an outlook on what may take place during the upcoming session.

Since January 3, 2024, nine more water bills have been introduced for a total of 41 bills as of January 9, 2024. This legislative report includes a summary of those 41 water bills and the recommended positions based on the AMWUA 2024 legislative agenda as well as AMWUA's overall mission and previous legislative positions. The report is organized to review first the water bills that potentially have the most direct impact upon the AMWUA members.

RECOMMENDATION

Staff requests that the AMWUA Management Board recommend to the AMWUA Board of Directors adoption of the legislative positions presented in this Board packet.

Depending on the introduction of legislation before the January 10, 2024 Board meeting, the AMWUA Management Board may be asked to provide direction regarding additional legislation.

SUGGESTED MOTION

I move that the AMWUA Management Board recommend to the AMWUA Board of Directors that AMWUA adopt the following legislative positions as outlined in the Board packet:

SUPPORT

- HB 2007** subdivided lands; civil penalties (Griffin)
- HB 2009** subdivisions; acting in concert (Griffin)
- HB 2011** lottery, water infrastructure finance authority (Griffin)
- HB 2024** lottery; on-farm irrigation efficiency fund (Griffin)
- HB 2026** residential lease community; water; certificate (Griffin)
- HB 2055** underground water storage; permitting (Dunn)
- HB 2056** appropriation; on-farm efficiency fund (Dunn)
- HB 2057** appropriation; long-term water augmentation fund (Dunn)
- HB 2101** land division; applicant submissions; review (Griffin)

NEUTRAL/MONITOR

- HB 2006** real estate; acting in concert (Griffin)
- HB 2010** cities; towns; water reuse plans (Griffin)
- HB 2013** water improvements program; nonprofit corporations (Griffin)
- HB 2015** subsequent water management areas; basins (Griffin)
- HB 2016** grandfathered rights; subsequent AMA; extension (Griffin)
- HB 2017** assured water supply, commingling (Griffin)
- HB 2027** subsequent AMAs; assured water supply (Griffin)
- HB 2059** contiguous real estate; definition (Griffin)
- HB 2060** irrigation non-expansion area; substitution; acres (Griffin)
- HB 2063** exempt wells; certificate; groundwater use (Griffin)
- HB 2096** tiny homes; construction; requirements; exemptions (Parker B)
- HB 2097** gray water; definition; residential standard (Parker B)
- HB 2182** augmentation; Phoenix; Pinal; Tucson; AMA (Kolodin)
- HB 2184** brackish groundwater pilot program (Smith)

OPPOSE – SEEK TO AMEND

- HB 2008** commercial; industrial; conservation requirements; rules (Griffin)
- HB 2018** subsequent irrigation non-expansion area; removal (Griffin)
- HB 2058** Yuma water banking; study committee (Dunn)

OPPOSE

- HB 2014** wells; intention to drill; appropriation (Griffin)
- HB 2019** groundwater model; public inspection (Griffin)
- HB 2020** long-term storage; stormwater; rainwater; rules (Griffin)
- HB 2025** residential lease community; water, requirements (Griffin)
- HB 2028** groundwater model; unpledged storage credits (Griffin)

HB 2029 groundwater model; unpledged effluent (Griffin)
HB 2030 cities; towns; service; audit (Griffin)
HB 2061 subsequent active management area; removal (Griffin)
HB 2062 assured water supply; certificate; model (Griffin)
HB 2099 active management area; groundwater right (Griffin)
HB 2100 administrative completeness review; licensing (Griffin)
HB 2123 wells; water measuring devices; prohibition (Smith)
HB 2127 assured water supply certificate; effluent (Griffin)
HB 2150 groundwater sales; online exchange (Kolodin)
HB 2186 remedial groundwater incentive; brackish groundwater (Kolodin)
SB 1041 groundwater savings certificate; assured water (Hoffman)

Bills Recommended for Action by the AMWUA Management Board

* Indicates that the recommended position has been changed for that bill since this report was initially drafted on January 3, 2024.

** indicates bills that have been added to this report since January 3, 2024.

Listed first are the bills with potentially the most impact on AMWUA members –

**[SB 1041](#) groundwater savings certificate; assured water (Hoffman)

Recommended position – Oppose

SB 1041 would create a new type of a certificate (a Groundwater Savings Certificate) that could be used in place of a Certificate of Assured Water Supply when a developer plans to sell or lease subdivided lands in an active management area (AMA). A Groundwater Savings Certificate will be issued if all the following conditions are met:

- The land in the application is or will be a Member Land of the Central Arizona Groundwater Replenishment District (CAGR);
- The applicant can show, based on ADWR's groundwater model, that any wells on the land or that are authorized to provide water service to the land can be operated continuously for 100 years at the development's annual demand without exceeding 1,000 feet below land surface or the bottom of the aquifer, whichever is less; and
- The applicant makes no claim to any sewage or effluent that will be produced on the land and relinquishes any claim to the authorized sewage treatment provider that will provide sewer service to the land.

Additionally, the SB 1041 directs ADWR to adopt rules by the start of this year that would provide or a reduction in water demand for a Groundwater Savings Certificate if a gray water system is installed that meets ADEQ's requirements and the land in the application qualifies as a Member Land.

This bill manifests a criticism of how ADWR interpreted the unmet demand projected in the Phoenix AMA groundwater model. Some have argued that development should be allowed to continue in areas where the model has projected that the aquifer will not fall below 1,000 feet below land surface or bedrock, whichever is shallower. It also encourages the adoption of gray water systems in the belief that these systems will reduce overall water demand.

SB 1041 would significantly alter the 1980 Groundwater Management Act's principle that the active management area is managed as a hydrologic whole. It would allow for the segregation of property's presumed groundwater from the rest of the basin is hydrologically questionable since groundwater is not stationary, but flows.

Allowing groundwater pumping for 100 years to be tied to a specific location jeopardizes the groundwater that is accounted for to nearby designated water providers and already issued certificates. It undermines the investments of designated water providers to develop renewable water supplies to protect the aquifer for their communities in times of shortage. It would generate new certificates as the risk of endangering the validity of existing certificates.

SB 1041 would allow development to continue on groundwater and will only worsen the projections in future groundwater models and make Arizona's water future less secure. While the Phoenix AMA groundwater model projected 4.9 million acre-feet of unmet demand over the next 100 years, it also projected that groundwater levels are expected to decline at twice the rate they had between the pre-1900s period and 2021. This decline represents a 30% loss in aquifer storage over the next 100 years. This loss in available groundwater combined with the land subsidence, fissuring, and collapsing of aquifers that inevitably will follow will make the Arizona's water future less secure for future generations. Allowing additional groundwater pumping to occur will only make this future frailer.

Proponents of groundwater-dependent development often point to CAGRDR replenishment as the mechanism for ensuring that a groundwater model's dire projections do not come to pass. But crucially, that argument only works if CAGRDR can continue to secure enough water supplies to meet its replenishment obligations so that its Plan of Operation receives ADWR's approval. That task will be made more difficult as its replenishment obligation grows and as the water supplies to meet those obligations becoming fewer in number and drastically more expensive. Putting stress on an already stressed system is imprudent and irresponsible for Arizona's future.

There are also some technical problems with SB 1041. As written, the bill authorizes ADWR to designate water providers in AMAs that have a Groundwater Savings Certificate, but all criteria listed to qualify for such a certificate could not apply to a water provider. The bill also lacks conforming changes that would need to be made to various other statutes. However, the bill drafter seems to be aware of this deficiency; the final section of the bill directs Legislative Council to prepare a conforming bill for the next legislative session.

HB 2008 commercial; industrial; conservation requirements; rules (Griffin)

Recommended Position – Oppose but seek to amend

HB 2008 requires the Arizona Department of Water Resources (ADWR) to adopt rules by 2025 for commercial and industrial water users within and outside of the service area of designated providers in an attempt to create greater water efficiency, conservation, and on-site water reuse and recycling. This bill prohibits these rules from requiring a commercial or industrial user to obtain a Certificate of Assured Water Supply, enroll as a Member Land, or otherwise meet a replenishment obligation.

By targeting industrial and commercial users within a designated provider's service area, this bill would be redundant with ADWR's existing industrial conservation requirements in the 5th Management Plan, as well as the existing conservation programs created by municipal water

providers to address their own specific commercial and industrial water users. Moreover, “commercial users” is not defined anywhere in statute or in the management plans.

HB 2008 would be more effective if it was solely addressing groundwater pumping by large water-using industrial users located outside of the service areas of designated providers. Many of these users are only minimally regulated by ADWR’s 5th Management Plan (5MP) and are able to pump groundwater without having to meet AMA management goals or demonstrate physical availability. The sponsor and other legislators ought to be encouraged to remedy this issue by pursuing an amendment to the 5th Management Plan’s industrial regulations.

HB 2018 subsequent irrigation non-expansion area; removal (Griffin)

Recommended Position – Oppose but seek to amend

This bill would require the Arizona Department of Water Resources (ADWR) to periodically review subsequent irrigation non-expansion areas (INAs) to determine whether they still meet the criteria to qualify for an INA. ADWR would also have the authority to rescind an INA’s designation if it no longer meets these criteria. Additionally, the bill would establish a process by which local residents could petition ADWR to rescind a subsequent INA’s designation. Finally, HB 2018 would restrict who can sign a petition requesting that ADWR designate a subsequent INA to registered voters who receive their drinking water from the basin or sub-basin specified in the petition.

INAs—which were originally established in 1948 as “critical groundwater areas”—are designed to preserve groundwater for future agriculture by essentially prohibiting the expansion of any irrigated acreage. In A.R.S. 45-431, initial irrigation expansion areas are listed as the Douglas critical groundwater area and Joseph City critical groundwater area. The Harquahala INA was designated by ADWR in 1982, which means it would be considered a subsequent INA. Aside from the Harquahala INA, the only other subsequent INA is the Hualapai Valley INA, which was designated by ADWR in October 2022.

HB 2018 may threaten groundwater transportation from the Harquahala INA, which is allowed under the 1991 Groundwater Transportation Act. When transporting groundwater from the Harquahala INA, groundwater may only be withdrawn from lands that are eligible to be irrigated while the INA is in effect. If HB 2018 were to be enacted and residents successfully petitioned ADWR to rescind the Harquahala INA’s designation, no groundwater could be withdrawn and transported. This could have a negative impact on AMWUA cities and other central Arizona water providers who seek to utilize the 1991 Groundwater Transportation Act.

HB 2019 groundwater model; public inspection; challenge (Griffin)

Recommended Position – Oppose

This bill would require the Arizona Department of Water Resources (ADWR) to make publicly available “at no cost” all information related to groundwater models it uses for Assured Water Supply determinations. It would also establish a process for a party to challenge any groundwater model that ADWR makes publicly available.

Since the release of the Pinal Active Management Area (AMA) groundwater model in Fall 2019, ADWR has been exceedingly proactive in working with stakeholders to address any concerns about its groundwater model. In the case of the Pinal AMA model, ADWR formed a stakeholder group and many of the changes made in response to this group’s concerns were carried over to the Phoenix AMA model. ADWR has similarly indicated that it is open to remedying any technical concerns related to Phoenix AMA model.

Based on these efforts, we are uncertain why this bill is necessary. We are concerned that this bill might create a formal process by which disgruntled stakeholders can harass ADWR over the projections of unmet demand in current and future groundwater models.

HB 2020 long-term storage; stormwater; rainwater; rules (Griffin)

Recommended Position – Oppose

This bill would allow someone to earn long-term storage credits (LTSCs) by building infrastructure—including roadways and sidewalks—that leads to increased natural, incidental, or artificial recharge of groundwater in an active management area. The Arizona Department of Water Resources would be required to develop rules by 2025 that detail the criteria for this infrastructure and formula for determining how much increased recharge the infrastructure will create over its useful life when determining the amount of LTSCs earned.

While we support efforts to utilize stormwater runoff and floodwaters more efficiently, this bill’s approach is poorly defined. It also takes a big leap from the intention and purpose of the Underground Storage Act. As currently written, credits could be generated from infrastructure, such as streets and sidewalks, that are not specifically designed for recharge and underground storage and without any established methodology to support how much recharge is actually taking place. It would impose an administrative burden on ADWR as they would try to quantify aquifer recharge generated by unconventional infrastructure. Additionally, there may be water quality issues associated with storm water runoff which would undermine the quality of underlying aquifer and could consequently raise public health concerns for rural communities that rely on wells. Plus, there would most likely be questions about how it may impact surface water rights.

HB 2028 groundwater model; unpledged storage credits (Griffin)

Recommended Position – Oppose

This bill would require the Arizona Department of Water Resources (ADWR), when making a groundwater model to help evaluate Assured Water Supply determinations, to assume that any long-term storage credits (LTSCs) not pledged to a current water user or Assured Water Supply application will be available for use.

This bill is intended to address a criticism that the Phoenix AMA groundwater model, which projected a 4% overallocation of groundwater over the next 100 years, did not fully consider the availability of future LTSCs that could be used in place of groundwater.

Unpledged LTSC is not a term used in statute and rule and it could cover any number of credits. It may refer to Arizona Water Banking Authority's LTSCs for future firming during shortages on the Colorado River, including those that the AWBA holds for Nevada. Unpledged credits may also refer to those LTSCs held by municipal water providers (cities, towns, and private water companies) that are not included in their current designations, including those that these providers have created or acquired subsequent to becoming designated. Municipal water providers store and acquire LTSCs to ensure their ability to meet future demands including as a backup supply to in the event of an emergency. Credits held by other private entities such as mines may also qualify as unpledged LTSCs.

HB 2028 is deeply problematic because it essentially authorizes a taking of others' LTSCs for the potential benefit of allowing more groundwater pumping. If these credits were factored into the model and eliminated the projected unmet demand, it would effectively allow new Certificates of Assured Water Supply based on groundwater to be issued. Even though this pumping would likely be replenished by CAGR in the future, the decline in groundwater levels in some areas may make it difficult for water providers and others to recover stored water, particularly if the area experiences an average annual decline greater than 4-feet per year.

Simply put, HB 2028 would allow the LTSCs held by others to be used to facilitate additional groundwater pumping while limiting or preventing these very users from recovering these credits in the future.

Additionally, it would be naïve and irresponsible to factor any of these unpledged credits into the groundwater model since they could be recovered in the near-term as the Colorado River's flows continue to decline. It is also questionable how much of a difference such credits would make in either the Phoenix AMA or Pinal AMA groundwater model's determination of an unmet demand.

HB 2029 groundwater model; unpledged effluent (Griffin)

Recommended Position – Oppose

This bill would require the Arizona Department of Water Resources (ADWR), when making a groundwater model to help evaluate Assured Water Supply determinations, to assume that any effluent created within the active management area (AMA) and not pledged to a specific user will be used to replace groundwater demand. This bill is intended to address a criticism that the Phoenix AMA groundwater model, which projected a 4% overallocation of groundwater over the next 100 years, did not fully consider how future effluent will be used.

The Phoenix AMA model incorporates effluent uses in two ways. First, the model includes existing effluent uses (as of 2021) as reductions in groundwater pumping. It also includes effluent discharges, such as those from the 91st Avenue Wastewater Treatment Plant. Second, the model considers future effluent usage if that effluent is included in an Assured Water Supply (AWS) determination. The model does not account for future effluent that is stored and recovered outside of the area of impact, discharged, or that is committed by contract to third party users.

Although “pledging effluent” is not a term used in statute or the Assured Water Supply (AWS) rules, the intent of this bill seems to be to incorporate future effluent usage not associated with AWS determinations into groundwater models. The problem with that approach is that effluent can be used in a variety of capacities that do not necessarily entail directly offsetting groundwater pumping, such as being used for potable drinking water supplies through direct potable reuse, being treated for use by agricultural users downstream of a discharge site or supplying the Palo Verde Nuclear Generating Station.

Effluent is the property of whoever creates and/or obtains it. Assuming that owners of effluent will use it to offset groundwater pumping is highly speculative and does not adhere to the conservative and cautious principles that govern how we project groundwater levels for the purpose of future AWS determinations.

HB 2030 cities; towns; water service; audit (Griffin)

Recommended Position – Oppose

This bill would require Phoenix, Tucson, Mesa, Chandler, Gilbert, Glendale, and Scottsdale (cities with more than 240,000 in population) to hire an independent auditor to conduct a full rate audit and cost-of-service study that focuses on various components of their water and sewer services.

Based on our initial review, municipal water providers would be required to undergo a duplicate governmental review for their finances when most of the information requested is already publicly available and subject to transparent reporting requirements. We are additionally concerned that this audit, which would be covered by each municipal provider’s

rate payers, is an expensive, unfunded mandate that will force municipal water providers to contract for an outside review of their finances when most of information requested is already available.

Some topics this audit is required to cover are very time and resource intensive. For example, it normally takes the Arizona Corporation Commission about a year to determine “used and usefulness” for a private utility’s assets during the ratemaking process. Having an independent auditor make this determination for public utilities, which are structured and operate in financially different ways from private utilities, would be time consuming and very costly.

Some topics are so vague that it is doubtful that an independent auditor would be able to arrive at an objective conclusion, such as evaluating the reasonableness and prudence of capital and operating expenditures compared to “known and reasonable alternatives.” Having ill-defined topics will set up the auditors, municipalities, and the taxpayers funding them, for a pricey failure.

This bill encroaches into the business of city management, which is overseen by elected officials. While it is limited to seven municipalities, this bill sets a disturbing precedent in subverting local oversight and responsibility of water management and finances.

HB 2058 *Yuma water banking; study committee (Dunn)*

Recommended Position – Oppose but seek to amend

This bill would establish the Yuma Area Water Banking Study Committee. This committee would consist of two Yuma-area senators and four Yuma-area representatives from the State Legislature, as well as seven members of the Yuma Area Agricultural Council, each of whom would represent one of the seven irrigation districts in Yuma County. The purpose of the committee would be to develop legislation to establish a water banking authority for the “Yuma County area” that would bank excess Colorado River water. The committee would submit a report of its findings to the Governor and State Legislature by 2025. This bill would also require ADWR to assign staff and provide services to the committee.

The biggest concern raised by the potential creation of a water banking authority for Yuma County are the implications for lower priority Colorado River users. If this authority would bank higher priority excess Colorado River water for Yuma-area agricultural users, many of whom have senior Colorado River water rights, it could adversely impact the Central Arizona Project and other lower priority Colorado River users by leaving less water in the river. In effect, it could reduce the amount of Colorado River water available to the AMWUA cities, tribes with water rights settlements that include M&I CAP water, and other CAP subcontractors. Banking Colorado River water worked well during times when excess water was available, but doing so when the river is in a long-term state of decline risks rushing headlong into a crisis.

The requirement for ADWR to assign staff and provide services such as “hydrological information and potential locations for underground storage” to this committee does not

provide ADWR with funding with which to do so. Additionally, the prospect of the creation of an additional water banking authority raises concerns about the over-extension of already strained funding.

HB 2062 assured water supply; certificate; model (Griffin)

Recommended Position – Oppose

This bill would require ADWR to review undecided or denied applications for Certificates of Assured Water Supply (CAWS) if the applicant requests such a review. Only applications filed within the Phoenix AMA and between January 26, 2021 and May 31, 2023 are eligible for review. ADWR must notify all eligible applicants of the possible review within five days of the effective date of this bill, and the review must be requested within 90 days of the effective date of this bill. ADWR must issue a determination for these reviews within 15 days and must only use the 2006-2009 Salt River Valley Regional Model when conducting these reviews.

This bill appears to be an attempt to free up water that is held by certificates that were either denied or had their development put on hold due to the release of the Phoenix AMA Groundwater Model. The requirement for ADWR to use the 2006-2009 Salt River Valley Regional Model for these reviews, and not the more current and accurate Phoenix AMA Groundwater Model is concerning and is certainly not in line with scientific best practices.

****HB 2150 groundwater sales; online exchange (Kolodin)**

Recommended position – Oppose

HB 2150 proposes to allow those with a grandfathered groundwater right in the Phoenix, Pinal and Tucson Active Management Areas (AMAs) to sell or lease a portion of their right or the groundwater itself to anyone in these three AMAs. Any groundwater right or groundwater sold or leased may not be withdrawn in another sub-basin but may be transported to that basin. When a transaction occurs, the buyer or lessee is entitled to receive the right to receive or withdraw 65% of the total amount of groundwater that was part of the transaction. The remaining 35% will remain with the land and cannot be pumped, used, or otherwise conveyed.

Any groundwater or right conveyed would be exempt from replenishment by the Central Arizona Groundwater Replenishment District, excluded from a designated water provider's groundwater allowance, deemed consistent with the AMA's management goal, and deemed physically available for obtaining a Certificate of Assured Water Supply.

HB 2150 has numerous problems. First, there has been a market for grandfathered groundwater rights since the passage of the Groundwater Management Act in 1980. However, ADWR has indicated that as of 2021, there are underutilized grandfathered groundwater rights in the Phoenix, Pinal, and Tucson AMAs, which indicates a lack of market activity. The utilization rate varies based on the type of right from Type 1 non-IGRs (6-34%), Type 2 non-IGRs (23-34%),

and IGRs (67-78%). Taken together, the underutilization of these rights also means that there may not be any groundwater saved by the transactions contemplated in HB 2150.

Second, by allowing quantities of groundwater to be sold or leased, HB 2150 contradicts established caselaw on managing groundwater. In *Town of Chino Valley v. City of Prescott*, the Arizona Supreme Court held that “there is no right of ownership of groundwater in Arizona prior to its capture and withdrawal from the common supply.” Allowing the owner of a right to sell or lease groundwater conflicts with the court's decision and undermines Arizona’s management of groundwater for the last four decades.

Third, allowing grandfathered rights to be sold for use outside of the AMA in which they were issued threatens the ability to reach the unique management goal of that particular AMA. Some AMAs, such as the Phoenix AMA which covers 5,600 square miles and seven sub-basin, are so large that changing the pumping location within an AMA may prove problematic.

Fourth, physical availability of groundwater is separate and distinct from the right to pump groundwater. Deeming water pumped pursuant to a Grandfathered Right to be physically available for the purpose of obtaining a Certificate of Assured Water Supply is not based on hydrologic reality and is contrary to the consumer protection purpose of the assured water supply provisions. Just like Rio Verde Foothills, homeowners could be left down the road without a water supply.

Fifth, trying to shuffle groundwater around the AMAs to allow development distracts stakeholders from working on the need to develop additional near-term and long-term supplies that will provide a more sustainable future.

****[HB 2182](#) augmentation; Phoenix; Pinal; Tucson; AMA (Kolodin)**

Recommended Position – Monitor with the potential to support

This bill would change the allowable uses of WIFA’s Long-Term Water Augmentation Fund to include creating new water sources and purchasing new water or purchasing rights to use new water created within Arizona. The bill also states that the fund cannot be used to purchase water or rights to water from in-state users unless the purchase is related to the creation of new water. The bill also states that the funds can be used to construct infrastructure to convey or deliver new water created in Arizona. Lastly, the bill states that 75% of any money left in the fund for FY22, FY23, or FY24 as of the effective date of the bill must be used to supply imported or new water to users within the Phoenix, Pinal, or Tucson AMAs.

The changes this bill makes to the Long-Term Water Augmentation Fund’s allowable uses pivot the fund away from a focus on out-of-state importation of water and mean that it may also fund “new water” from within Arizona. What this “new water” might be is not described in the bill, but it could include the expansion of Bartlett Dam or development of a regional Advanced Water Purification system. “New water” may also include brackish groundwater and stormwater come to mind as possible “new” water sources that have been discussed by

members of the Legislature’s majority caucus. Brackish groundwater is, of course, considered groundwater for the purposes of ADWR modeling and the Assured Water Supply Program, and is therefore not actually a new supply. The potential of using stormwater as a source of “new water” is something that perhaps should be explored further, but the legal intricacies and entanglements with surface water rights mean that topic would be better explored in a larger stakeholder group outside of the legislature.

The following are the remaining water bills introduced as of January 9, 2024 –

[*HB 2006](#) *real estate; acting in concert (Griffin)*

Recommended Position – Neutral

This bill specifies that familial relationships, well-sharing agreements, road maintenance agreements, and use of the same contractor do not constitute “acting in concert” to illegally subdivided lands.

This bill is in response to a recommendation from the Governor’s Water Policy Council to improve oversight of “wildcat” subdivisions, which are lots that are illegally created to circumvent the legal requirements for creating subdivided lands. Specifically, the Council’s recommendation seeks to broaden the applicability of the “acting in concert” statute, which prohibits different parties from working together to divide lands into lots without going through the approval process to formally subdivide those lands. In particular, the Water Council recommended that “acting in concert” include (1) 25% or more shared ownership interests (substantial control), and (2) 50% or more shared development resources.” The bill does not include this specificity but appears to incorporate the general intention of the Water Council’s recommendation.

[HB 2007](#) *subdivided lands; civil penalties (Griffin)*

Recommended Position – Support

This bill implements another recommendation for addressing “wildcat” subdivisions made by the Governor’s Water Policy Council. Under current law, the civil penalty for violating statutes and regulations to unlawfully selling or leasing subdivided lands is a fine of to up to \$2,000. However, any infraction involving more than one lot is considered a single infraction. Therefore, someone who illegally subdivided lands to create 100 lots would be fined as if he created a single lot. HB 2007 would apply this civil penalty to each lot where the violation occurred, which means that the aforementioned subdivider would be fined as much as \$200,000 for illegally creating 100 lots.

[HB 2009](#) *subdivisions; acting in concert (Griffin)*

Recommended Position – Support

This bill would add a time-related criteria to the “acting in concert” statutes by specifying that illegally subdividing lands involves dividing a parcel into six or more lots to sell or lease through a series of owners, conveyances or other methods over a 10-year period. It also requires someone who applies to split a parcel to acknowledge this definition of “acting in concert.”

Although this bill was not technically part of the Governor’s Water Policy Council’s recommendations for “wildcat” subdivisions, the concept was discussed in the Assured Water Supply Committee’s meetings.

HB 2010 cities; towns; water reuse plans (Griffin)

Recommended Position – Neutral

This bill would allow a municipality’s common council to participate in water reuse and recycling programs and regional wastewater recharge projects and related infrastructure. The intent or need for this legislation is not known.

HB 2011 lottery; water infrastructure finance authority (Griffin)

Recommended Position – Support

This bill would annually appropriate \$50 million from the State Lottery Fund to the Water Infrastructure Finance Authority (WIFA). This appropriation would occur after nearly all distributions from the State Lottery Fund are made, but before any remaining fund monies are deposited into the state General Fund. This \$50 million appropriation would be evenly divided between the Water Supply Development Revolving Fund and the Water Conservation Grant Fund.

While the Water Supply Development Revolving Fund can receive revenue from fund bonds and loan repayments, the Water Conservation Grant Fund lacks a dedicated revenue source. The Water Conservation Grant Fund received a single \$200 million appropriation in American Rescue Plan Act monies, and those funds are set to be fully encumbered by the end of the calendar year.

Having a dedicated revenue source for the Water Conservation Grant Fund would help AMWUA members and others finance more water conservation projects in the future.

HB 2013 water improvements program; nonprofit corporations (Griffin)

Recommended Position – Neutral

This bill would allow a nonprofit corporation to establish a water improvement program to provide finance assistance to low-income or fixed income property owners to either deepen their drinking water well or replumb their residence for a water delivery system. Although counties have the authority to establish this program, some have declined to do so because they lack the funds necessary to implement it.

[*HB 2014 wells; intention to drill; appropriation \(Griffin\)](#)

Recommended Position – Oppose

This bill would require the Arizona Department of Water Resources (ADWR) to audit all notices of an intention to drill to determine how many issued notices led to someone drilling a new well or deepening an existing well. The bill also lists additional information that must be collected about these wells and requires ADWR to submit a report of its findings by 2026. Finally, HB 2014 appropriates an unspecified amount of state General Fund monies to ADWR to conduct this audit.

Notices of intention to drill must be filed with ADWR anytime someone either drills a well or deepens an existing well. ADWR will review the notice and, if it is determined to be accurate and complete and contains the appropriate fee, ADWR will issue a card authorizing the drilling of the well. The well must be drilled or deepened within a year.

This bill will create an additional administrative burden for ADWR.

[HB 2015 subsequent water management areas; basins \(Griffin\)](#)

Recommended Position – Neutral

This bill would limit who can sign a petition to the Arizona Department of Water Resources to designate a subsequent irrigation non-expansion area (INA) or designate an INA as an active management area (AMA). Specifically, this bill would require residents who sign a petition to be receiving their drinking water from the same groundwater basin or sub-basin specified in that petition. HB 2015 would also limit who can sign a petition to hold a local election to designate a subsequent AMA.

The proliferation of several large corporate farming operations in rural Arizona has created tension with local residents who rely on small, shallow wells for their water supply. The Hualapai Valley INA (2022) and Douglas AMA (2022) were both created in response to petitions from local residents, and there has been discussion of more petitions in the future. HB 2015 could undermine those efforts by limiting who may sign these petitions.

[HB 2016 grandfathered right; subsequent AMA; extension \(Griffin\)](#)

Recommended Position – Neutral

This bill is an emergency measure that would allow someone within the recently created Douglas active management area (AMA) to file an application for a grandfathered groundwater right with the Arizona Department of Water Resources (ADWR) by September 1, 2024. Within AMAs, pumping groundwater requires some to obtain a right or a permit from ADWR. A

grandfathered groundwater right refers to a right pump groundwater based on the individual's historic water usage; this pumping is essentially "grandfathered" into the AMA.

There have been concerns that some residents of the Douglas AMA (which was designated on December 1, 2022) have not submitted grandfathered groundwater rights applications and therefore might lose their right to pump groundwater. The deadline to apply for these rights is currently March 1, 2024, so HB 2016 would effectively extend that deadline by six months.

HB 2017 assured water supply; commingling (Griffin)

Recommended Position – Neutral

This bill would direct the Arizona Department of Water Resources (ADWR) to consider any type of waters that are commingled together when making an Assured Water Supply (AWS) determination. Since this mandate is consistent with how ADWR already evaluates different water supplies under the AWS Rules, we believe that this bill does not appear to change ADWR's current practices and procedures. However, this bill may be a placeholder for different language that addresses commingled water supplies.

As background, most water providers utilize a combination of water supplies in their systems, such as groundwater, Central Arizona Project water, and Salt River Project water. Water providers that have Designations of Assured Water Supply like the AMWUA cities have their water supplies reviewed every 10-15 years by the ADWR to determine compliance with AWS criteria. This is why subdivisions that receive service from these designated providers do not need to obtain Certificates of Assured Water Supply (CAWS). Water providers that lack designations must have their supplies regularly reviewed by ADWR when it is evaluating whether to issue a CAWS for a proposed development. Since the Phoenix AMA groundwater model projected that groundwater is overallocated over the next 100 years, ADWR has refused to issue any CAWS for proposed developments served by undesignated providers that use any amount of groundwater. There has been an effort to allow CAWS to be issued for developments served by undesignated providers if these providers obtain renewable water supplies for these developments.

HB 2024 lottery; on-farm irrigation efficiency fund (Griffin)

Recommended Position – Support

This bill would annually appropriate \$50 million from the State Lottery Fund to the On-Farm Irrigation Efficiency Fund in FYs 2025 and 2026. This appropriation would occur after nearly all distributions from the State Lottery Fund are made, but before any remaining fund monies are deposited into the state General Fund.

The On-Farm Irrigation Efficiency Program was created in 2022 to provide grants for farmers to adopt water-efficient drip and sprinkler systems in place of flood irrigation. It received an initial

appropriation of \$30 million in ARPA monies in 2022 and received \$15 million more from the state General Fund in 2023. To date, this program (which is administered by the University of Arizona Cooperative Extension) has enabled more efficient irrigation on over 18,000 acres of farmlands, resulting in an annual water savings of about 36,000 acre-feet.

HB 2025 residential lease community; water; requirements (Griffin)

Recommended Position – Oppose

This bill attempts to implement the Governor’s Water Policy Council’s recommendation to fully incorporate build-to-rent developments (which are called “residential lease communities” in the bill) into the Assured Water Supply Program. It would require applications for building permits for six or more detached single-family within a residential lease community in the Prescott, Phoenix, Pinal, Tucson, and Santa Cruz AMAs to either obtain water service from the water provider with a Designation of Assured Water Supply or be located on a parcel of land that already qualifies as Central Arizona Groundwater Replenishment District (CAGR D) Member Lands. The applicant must also pay applicable fees to CAGR D. This requirement would not apply to residential lease communities that are existing or that have applied for or received zoning changes before September 30, 2024.

CAP staff are concerned that this bill is not consistent with the Governor’s Water Policy Council’s recommendation and could decouple CAGR D’s replenishment obligation from the AWS Program and create operational challenges for CAGR D. First, although becoming a Member Land is necessary to obtain a Certificate of Assured Water Supply (CAWS), one does not necessarily need a CAWS to become a Member Land. Therefore, it is possible that this bill as written could enable the expansion of CAGR D’s replenishment obligation beyond lands covered by the AWS Program. The CAWCD Board recently approved an addition to the 2024 CAP State Legislative Agenda that specifically says that CAP will oppose any legislation that would lead to the CAGR D gaining a replenishment obligation separate from the AWS Program.

Additionally, the information contained in a CAWS for a Member Land helps CAGR D calculate the estimated water demand, replenishment obligation, and any fees or dues for that Member Land. However, if there are no CAWS for the Member Land, CAGR D would need to obtain this information by other means.

HB 2026 residential lease community; water; certificate (Griffin)

Recommended Position – Support but amend

This bill would implement the Governor’s Water Policy Council’s recommendation to fully incorporate build-to-rent developments into the Assured Water Supply (AWS) Program. Under the Council’s recommendation, these developments would be considered the same as a subdivision for the purposes of the AWS Program. The Council defined these developments as

“six or more detached residential dwellings on one or more lots, parcels, or fractional interests...offered for the purpose of lease without regard to lease term.”

HB 2026 would require applications for building permits for six or more detached single-family residences in the Phoenix, Pinal, and Tucson AMAs to either obtain a Certificate of Assured Water Supply (CAWS) or water service from the water provider with a Designation of Assured Water Supply (DAWS). The applicant must also pay applicable fees to the Central Arizona Groundwater Replenishment District (CAGRDR). This requirement would apply regardless of the proposed lease term for these single-family residences. The bill would be limited to applications submitted after September 30, 2023.

Additionally, CAGRDR would levy an activation fee for residential lease communities within Member Lands and Member Service Areas that are enrolled beginning in 2025 and a one-time activation fee against each detached residential dwelling unit within the “residential lease community.” Although “residential lease community” was the Council’s term for build-to-rent developments, it is not defined in HB 2026. This technical error will need to be remedied if the bill moves forward.

HB 2027 subsequent AMAs; assured water supply (Griffin)

Recommended Position – Neutral

This bill would not require a subdivision that is within the boundaries of a county or municipality that had adopted a mandatory water adequacy ordinance to show an adequate water supply if that subdivision is included in a subsequent active management area. Any such subdivision that has already been shown to have an adequate water supply would be considered to have an assured water supply.

This bill is intended to resolve some regulatory ambiguities raised by the recently created Douglas AMA in southeastern Arizona. While AMAs require an *assured* water supply before developing subdivided lands, rural communities only require that developers disclose whether subdivided lands have an *adequate* water supply. (The requirements for an assured water supply and adequate water supply are similar.) However, rural counties and municipalities can adopt ordinances requiring a demonstration of adequate water supply before subdivided lands are developed. Cochise County has adopted one of these mandatory water adequacy ordinances. The creation of the Douglas AMA, which is within Cochise County, raised questions of how the county’s mandatory water adequacy ordinance and the subdivisions authorized under it would be treated. HB 2027 is intended to resolve these ambiguities.

[HB 2055](#) *underground water storage; permitting (Dunn)

Recommended Position – Support

HB 2055 allows ADWR more time to conduct its due diligence review of underground water storage applications without altering the overall deadline for making a determination on these applications. It would lengthen the timeframe within which ADWR is required to conduct its due diligence review applications for underground water storage permits from within 100 days to within 180 days. However, this bill would also shorten the timeframe within which ADWR is required to issue a decision on the permit application from within 6 months of ADWR publishing a public notice of the application to within 100 days of the public notice. Taken together, these changes should not alter the overall deadline for ADWR making a determination on an application.

[HB 2056](#) *appropriation; on-farm efficiency fund (Dunn)*

Recommended Position – Support

This bill would appropriate \$30 million from the State General Fund for FY 2025 to be used for the On-Farm Irrigation Efficiency Fund.

The On-Farm Irrigation Efficiency Program was established in 2022 and is administered by the University of Arizona's Cooperative Extension. The program provides grants and collects data for the purpose of reducing on-farm use of Colorado River water, surface water, and groundwater, while also seeking to reduce use of flood irrigation and instances of fallowing. Essentially, the program seeks to reduce water use through efficiency gains rather than reducing farmed acres.

Representative Dunn introduced a bill with this same language during the 2023 legislative session. Ultimately, \$15.2 million was appropriated to the University of Arizona for funding the program as part of the FY 2024 Budget.

[HB 2057](#) *appropriation; long-term water augmentation fund (Dunn)*

Recommended Position – Support

This bill would appropriate \$143.8 million from the State General Fund for FY 2024 for WIFA's Long-Term Water Augmentation Fund. This appropriation would also be exempt from lapsing at the end of FY 2024.

This appropriation would make WIFA's Long-Term Water Augmentation Fund whole again, after \$143.8 million in funding was directed elsewhere instead of to that fund in the 2023 session. AMWUA is supportive of funding that can help WIFA secure additional water sources for our state and our member cities.

HB 2059 contiguous real estate; definition (Griffin)

Recommended Position – Neutral

This bill would amend the definition of “contiguous” in reference to subdivisions to include lots, parcels or fractional interests that are separated by a private road or street. This bill also clarifies that lots separated by a public road or street are not considered contiguous.

This bill is in response to the recommendations made by the Governor’s Water Policy Council in relation to wildcat subdivisions. However, this bill may not accurately reflect what was recommended by the Council and we are seeking clarification.

HB 2060 irrigation non-expansion area; substitution; acres (Griffin)

Recommended Position – Neutral

This bill would allow a person who owns irrigated acres within an irrigation non-expansion area (INA) to permanently retire those acres and transfer the irrigation right to a piece of land that is the same acreage in the same INA and use the associated water for any purpose. The person must demonstrate to ADWR that the transfer of the irrigation right will not lead to a net increase in groundwater withdrawal within the INA. However, ADWR may not condition approval of the acreage substitution on groundwater withdrawal being decreased.

This bill could allow owners of irrigated but unproductive acreage within INA’s to use the associated irrigation right for a more productive purpose. Alternatively, a farmer that acquires another farmer’s land could discontinue irrigation of the acquired land and expand irrigation to other owned lands. Essentially, this bill gives INA landowners flexibility in their irrigation operations, something that many have been asking for.

HB 2061 subsequent active management area; removal (Griffin)

Recommended Position - Oppose

This bill would require ADWR to periodically review all areas that are included within subsequent Active Management Areas (AMAs) and determine whether the areas still meet the criteria for inclusion within an AMA. This bill would also require voters to obtain their drinking water from within a groundwater basin before they can vote on whether that basin should be designated as a subsequent AMA. This bill would also allow a subsequent AMA designation to be removed if ten percent of voters within the AMA sign a petition calling for the removal and then a majority of voters approve this removal in a general election.

This bill may be an attempt to repeal the recently designated Douglas AMA. This bill is certainly an attempt to make it easier to remove subsequent AMA designations once they have been put into place. More importantly, it could mean a removal of AMA when the hydrologic conditions still demonstrate a new for the AMA.

HB 2063 exempt wells; certificate; groundwater use (Griffin)

Recommended Position – Neutral

This bill reiterates that owners of exempt wells are allowed to pump no more than 35 gallons per minute and requires ADWR to issue owners of exempt wells with a “Certificate of Water Rights” that says as much. This bill also clarifies that exempt well owners may not appropriate subflow or surface water out of priority and further specifies that withdrawn water is not exempt from a general stream adjudication.

This bill may be proposed in response to recent actions in the Gila River general stream adjudications. In December 2021, at the request of the adjudication court, ADWR issued a report that proposed a subflow zone for the Verde River Mainstem and the Sycamore Canyon Subwatershed, which will assist the court in distinguishing between subflow and groundwater. ADWR issued a separate report for the remainder of the Verde River watershed in April 2023, which included all tributaries not covered in the 2021 report. Those who filed statements of claim in the Gila River general stream adjudication could file objection with the Maricopa County Superior Court related to ADWR’s findings by October 27, 2023. After that date, the court will review these objections and consider further proceedings before ultimately issuing an order on the subflow boundaries for this watershed. Once those boundaries are established, the court will determine wells are located within the subflow zone and which wells are outside this zone. Wells within this zone are presumed to pump surface water. Wells outside this zone may pump surface water depending on how the pumping impacts the subflow zone.

Exempt wells have a pumping capacity of less than 35 gallons per minute and are generally exempt from the Groundwater Management Act’s requirements. However, depending on the location of an exempt well, it is possible that its owner may be pumping appropriable surface water. The provisions of HB 2063 do not seem to materially impact how owners of these small wells will be treated in the Gila River general stream adjudications. Instead, this bill—like HB 2818 (adjudication; subflow wells; claim priority) in the 2020 session—may serve as a signal that the Legislature is aware of the stress that small well owners are experiencing under the Gila River general stream adjudication.

****HB 2096 tiny homes; construction; requirements; exemptions (Parker B)**

Recommended Position – Neutral

This bill requires that counties ensure “maximum ease” when considering the construction of residences on “residential rural land”. The bill also states that counties cannot require building

permits for single-family home and accessory dwelling units built on residential rural land, they meet some requirements. These requirements include a maximum size of 600 square feet for the home and a requirement that the home is attached to utility service, or otherwise has on-site electrical generation capacity, on-site water storage, and an on-site wastewater treatment or graywater system. Counties are allowed to require the owners and/or builders of said buildings to sign an affidavit saying that they will abide by the requirements in the bill, and that they are not constructing the building with the intent of selling or leasing it.

This bill, along with HB 2097, is intended to allow for easier construction of tiny homes on county islands and other unincorporated land. While this bill does not necessarily directly impact the AMWUA cities, the proliferation of residential buildings on county islands raises questions about exactly how wastewater will be discharged and treated; and therefore, is something that AMWUA should monitor.

HB 2097 gray water; definition; residential standards (Parker B)

Recommended Position – Neutral

This bill prohibits county supervisors from putting additional regulations or zoning restrictions on use of graywater systems or on land improvements that allow for the use of graywater systems. This bill also adds a definition of a “composting toilet” to Title 49 and clarifies that a kitchen sink that includes a garbage disposal does not produce graywater. This bill also clarifies that a graywater treatment and disposal system does not constitute an on-site wastewater treatment facility. This bill prohibits a city, town or county from requiring notice or permit before a resident can use graywater if the resident meets a series of requirements that are meant to prevent the graywater from contaminating aquifers or food sources. Lastly, this bill prevents a city, town, or county from prohibiting a composting toilet on an unincorporated lot of two acres or more that is not adjacent to a city or town.

This bill is building off of and adding clarifying language in relation to last year’s HB 2143 (NOW: gray water; residential standards; rules), which allowed ADEQ to permit graywater systems. It appears to be consistent with ADEQ’s existing regulations for graywater systems; however, there is uncertainty of how expanding graywater use may cause emerging contaminants to percolate into aquifers. A homeowner’s ability to put to use the graywater generated on their property is viewed by many as a proactive effort to conserving water.

***HB 2099 active management area; groundwater right (Griffin)**

Recommended Position – Oppose

HB 2099 would prohibit ADWR, in an AMA that had previously been an INA, from granting a water duty acre that is less than the highest annual withdrawal of the user since the basin was designated as an INA. This bill also requires ADWR to grant any person who owns legally irrigated land (in an AMA that was previously an INA) an irrigation water duty and a designation

of the number of farm units that is consistent with the user's highest annual withdrawal since the basin was designated as an INA. ADWR would be required to provide groundwater users with notice of their granted water duty and farm units and cannot charge the user any fee or require any application. The user can contest the granted water duty and farm units. Lastly, this bill states that on the effective date of the act ADWR will grant all groundwater users in the Douglas AMA an irrigation water duty consistent with this act. This is an emergency measure.

This bill would essentially undermine the basic premise of an AMA, which is to manage all sectors of water users, by eliminating ADWR's ability to regulate agricultural groundwater pumping in the recently designated Douglas AMA. The water duty is one component of an irrigation grandfathered right that dictates how much groundwater may be pumped pursuant to that right. Crucially, the water duty is established in the AMA's management plan, which means that it allows ADWR to control the amount of agricultural pumping in an AMA. HB 2099 would replace this authority with water duty based on the user's highest annual withdrawal since 1980. ADWR's authority to set a water duty particularly important in the newly created Douglas AMA, where about 87% of groundwater pumping is for agriculture. If the Douglas AMA is to succeed in achieving its management goal of reducing the rate of aquifer depletion, ADWR must have the ability to curb pumping from IGRs.

HB 2100 administrative completeness review; licensing (Griffin)

Recommended Position – Oppose

This bill states that an agency must make available a comprehensive list of items needed for an application to be deemed administratively complete. This bill also states that an agency may issue a notice of deficiencies, but that even if they do so, the application is still considered administratively complete (this portion of the bill seems to conflict with the sentence that is directly before it, and which has not been removed). This bill also states that an agency cannot issue a final decision on an application that is based on items not in the comprehensive list described in the first sentence.

This bill applies to "an agency" in general terms. However, this bill is likely targeting ADWR, possibly in relation to the 2023 Phoenix AMA groundwater model or to tie in with some of the other bills that Griffin has already introduced. The conflicting points made in this bill mean that it likely requires amendment. Regardless, this bill ties ADWR's hands and makes it more difficult for them to carry out their administrative review processes and makes it more difficult for them to deny bad applications.

HB 2101 land division; applicant submissions; review (Griffin)

Recommended Position – Support

HB 2101 requires an applicant for a land division to answer two additional questions when submitting an application. The first question asks if them or related parties own or represent

any property in the same tax parcel map or subdivision as the lots in the application. The second question asks if them or related parties have sold or leased any property within the same tax parcel map or subdivision as the lots in the application.

****[HB 2123](#) wells; water measuring devices; prohibition (Smith)**

Recommended Position – Oppose

This bill prohibits the State or any political subdivision of the State from requiring a water measuring device for any well located in a basin or subbasin that is subject to a general adjudication of water rights that has not yet been completed *and* that is located outside of an initial Active Management Area (AMA) *and* outside of a basin from which groundwater can be withdrawn and transported to an AMA.

This bill, despite not applying to initial AMAs or the specific transportation basins, is a threat to ADWR’s ability to regulate groundwater in Arizona. This bill is also in obvious opposition to the intent and recommendations of the Governor’s Water Policy Council’s Rural Groundwater Committee.

****[HB 2127](#) assured water supply certificate; effluent (Griffin)**

Recommended Position – Oppose

HB 2127 would allow a Certificate of Assured Water Supply (CAWS) in the Phoenix, Prescott, Tucson, and Santa Cruz AMAs to consider effluent that will be projected to be produced. In particular, if the proposed subdivision will use all effluent produced, this bill would allow this effluent use to qualify as demonstrating physical availability and consistency with the management plan. ADWR would additionally be required to deem that the applicant has sufficient groundwater, and that the groundwater use is consistent with the AMA’s management plan and goal. If the applicant enrolls as a Member Land and all projected effluent that is produced by the subdivision is recharged in the same sub-basin, ADWR would be required to grant the applicant a CAWS.

HB 2127 is problematic because it would allow an undetermined amount of effluent created by a proposed subdivision as a stand in for groundwater availability with the intent of allowing CAWS to be issued on groundwater.

****[HB 2184](#) brackish groundwater pilot program (Smith)**

Recommended Position – Neutral

This bill would amend the 2023 General Appropriations Act to state that \$2 million previously appropriated to ADWR for the purpose of a brackish groundwater desalination demonstration

program within the AMAs can now be used for such a demonstration program anywhere within Arizona. This bill also states that ADWR may locate this demonstration program within any administrative section of ADWR, rather than within the AMA section. Lastly, this bill states that \$9 million previously appropriated towards dollar-for-dollar matches for brackish water desalination projects by CAP subcontractors within AMAs can now be used for such matches anywhere within Arizona. CAP will be provided \$3 for every dollar it contributes towards such programs that are within AMAs.

Pursuing the use of brackish groundwater as a “new” supply of water continues to be an inappropriate use of state funds and ADWR’s time, as brackish groundwater is deemed hydrologically and legally as groundwater within ADWR modeling and the Assured Water Supply Program. However, this funding has already been appropriated, and this bill takes a slightly positive turn by allowing ADWR slightly more flexibility in the use of this funding. One may speculate that ADWR has had trouble putting this funding to use within AMAs, because of the aforementioned reality about brackish groundwater, so the flexibility granted by this bill may allow them to carry out such a study elsewhere in Arizona.

****[HB 2186](#) remedial groundwater incentive; brackish groundwater (Kolodin)**

Recommended Position – Oppose

This bill would amend the definition of a hazardous substance under A.R.S. Title 49 to include groundwater with a total dissolved solids (TDS) content between 1,000 and 10,000 milligrams per liter. This bill also adds desalination of such brackish groundwater as a remedial action to be taken by relevant parties that wish to use such groundwater. This bill also makes conforming changes to include brackish groundwater as a hazardous substance that may be included in a remediation plan. This bill also states that this brackish (remedial) groundwater will be considered consistent with AMA management goals when applying for an AWS Certificate or Designation, without ADWR approval, if the applicant meets metering and reporting requirements for said groundwater. ADWR is required to create rules outlining how it will determine compliance with management goals for remedial groundwater. Applicants who wish to use such a supply in their AWS determination must provide ADWR with notice at least 120 days of notice. Lastly, this bill states that “remedial groundwater” will be metered and reported separately from “groundwater” when reporting to ADWR.

TDS is not, on its own, considered a health hazard by environmental regulatory agencies. On its own, TDS is an aesthetic issue that can lead to buildup in pipes and on taps, and certainly does not warrant elevation to the level of a hazardous substance that require remediation. An exceptionally high TDS level can indicate the presence of harmful ions such as copper and lead. However, these ions and TDS itself are already regulated by ADEQ. Requiring such a commonplace water quality measurement as TDS to be handled through a remediation plan would put an unnecessary burden on municipal water providers that are already able to thoroughly treat water for TDS and related ions.

This bill is likely meant to sidestep ADWR's stance that brackish groundwater is simply groundwater by designating it as a hazardous substance and making it easier to classify it separately. This bill also more directly classifies brackish groundwater separately by requiring it to be metered and reported separately from other groundwater. Regardless, the reality remains that brackish groundwater is already included in ADWR's modeling and within the Assured Water Supply Program as simply groundwater. This supply is already included within providers' portfolios and creating it as a separate category of water will only exacerbate the groundwater challenges Arizona is already facing.