



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

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

MEETING NOTICE AND AGENDA

Thursday, January 25, 2024 – 11:00 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: 889 7057 7007
(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 7, 2023, Meeting
2. Next Meeting Date: February 22, 2024, 11:00 a.m.
3. Political Landscape for Water Legislation
4. 2024 Legislative Session

C. Executive Director's Report

D. Future Agenda Items

E. Adjournment

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



BOARD OF DIRECTORS
MEETING MINUTES
December 7, 2023
HYBRID MEETING

BOARD MEMBERS PRESENT

Councilmember Bart Turner, Glendale, President
Councilmember Sheri Lauritano, Goodyear, Vice President
Councilmember Scott Anderson, Gilbert, Secretary-Treasurer
Councilmember, Jennifer Crawford, Peoria
Councilmember Curtis Nielson, Avondale
Councilwoman Ann O'Brien, Phoenix
Vice Mayor Matt Orlando, Chandler
Mayor David Ortega, Scottsdale
Councilmember Arlene Chin, Tempe

OTHERS PRESENT

Barry Aarons, Aarons Co.	Kathleen Ferris, AMWUA	Abigail O'Brien, City of Mesa
Amy Arguilez, Gilbert	Berenice Felix-Baca, Phoenix	Jacob Perez Laurent, AMWUA
Liz Barker Alvarez, Avondale	Brett Fleck, City of Peoria	Adam Santiago, Scottsdale
Gretchen Baumgardner, Scottsdale	Sherry Garcia, AMWUA	Tina Sleeper, Tempe
Paul Bergelin, AMWUA	Jake Golden, Phoenix	Martin Stiles, CAP
Craig Caggiano, City of Tempe	Laura Hixson, Town of Gilbert	Warren Tenney, AMWUA
Harry Cooper, AMWUA	Jack Lunsford	Sheri Trapp, AMWUA
Ray Diaz, City of Goodyear	Kathy McDonald, City of Mesa	Theresa Ulmer, Ulmer Consulting
Miranda DeWitt, City of Mesa	Mike Milby, CLA	Shauna Warner, City of Tempe
	Brad Moore, AMWUA	Adam Wiechman

A. Call to Order

Councilmember Turner called the meeting to order at 11:02 a.m.

B. General Business – Items for Discussion and Possible Action

1. Approval of the Minutes from the October 26, 2023, Meeting

Upon a motion made by Mayor Ortega and a second from Vice Mayor Orlando, the AMWUA Board of Directors unanimously approved the October 26, 2023, meeting minutes.

2. Next Meeting Date: Thursday, January 25, 2024 – 11:00 a.m.

3. Update on the Governor's Water 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.

Councilmember Nielson asked what is the difference between Assured Water required for apartments compared to build-to-own properties? Mr. Bergelin responded that the distinction depends on what is and what is not considered subdivided land. Often, subdivided lands are the basis for creating single-family homes. It may be that those lands don't have to be subdivided for multi-housing properties and so consequently those properties don't require an assured water supply. Location matters and could already be covered by a designation. This has been a topic of conversation whether those properties should be included in the Assured Water Program.

Councilmember Lauritano mentioned that developers are building small houses as one plat and later going back and re-plating them separately so they can later sell them individually. If they replat, how does that work with the water supply – this seems to be a loophole. Ms. Ferris added that this is a concern because it's hard to go back and recapture especially if the original developer is gone 10 years down the road. It would be hard to get a certificate of assured water supply. They look like single family homes, but they are being rented for a short period of time. The hope is to get the assured water supply on the front end instead of trying to recapture it later.

Mayor Ortega stated there are gaps in the Assured Water Supply Program and should this legislation move forward, it should be very clear from the state statutes that the county is the responsible party in regarding to wildcat subdivisions, so these problems are addressed upfront.

Councilmember Anderson said the Senate President recently made some outrageous statements about the Assured Water Supply, and asked Mr. Tenney if he has talked with the Senate President? Mr. Tenney responded that he has not directly but AMWUA immediately addressed those statements through its blog and the reasons why it would not be in the state's or anyone's best interest to weaken or remove the requirements of the Assured Water Supply program. At this time, there is a lot of national attention on groundwater and several states are looking to us on what they can do because Arizona has been so proactive with their ground management.

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.

Councilmember Chin shared that it is important to educate those who are making policy decisions. As the urgency of water supply escalates, it’s important to remind people the true definition of some basic concepts and she said that she appreciates this presentation.

Councilmember Turner said this was an excellent presentation of historical and current information. Councilmember Turner asked if a city annexes in an area that has a well on it that was for private use, what happens to the well? Would it stay in use for the property owner? Mr. Tenney reported that it is his understanding that when those type of annexations occur the city has specific requirements. This is why House Bill 2535 was troubling because it undercut the municipalities to say what they require. Mr. Tenney reported that he believes it is dependent upon each city to determine if a well needs to be decommissioned. Ms. Ferris also said that was the controversy last session. The bill would have allowed the landowner to continue to operate the well and serve other entities or buildings from the same well which is contrary to the service area concept. Councilmember Turner said cities have

the power as a condition of annexation to control that well but under the proposed legislation that would have taken that away from the city. Ms. Ferris said that it's a condition of service.

5. Investing in Water Resources and Infrastructure

Mr. Tenney shared information on the importance of investing in water resources and infrastructure. Water will generate increased attention and impact to municipal finances in the coming years. Arizona will not run out of water as long as we plan, manage, and invest in our water resources and infrastructure. One challenge Arizona is facing is the Phoenix AMA groundwater model projected 4.9 million-acre-foot of unmet demand by 2121 due to rates of groundwater decline that are twice the historical average. Due to this model's projections, ADWR has paused subdivision development outside of designated providers, where development is solely dependent on groundwater. As designated providers, AMWUA cities are not impacted by this and can continue to grow in the parameters of their designations. However, with the emphasis on groundwater and knowing that groundwater is limited, there is a there a need to transition to other supplies.

Mr. Tenney reported that another challenge is the Colorado River is becoming smaller. Since 2000, there has been 10 years, including last year, in the Colorado River Basin with above average snowpack. Despite the above average snowpack, of the River is producing less water and Lake Mead's elevation continues to decline.

With less Colorado River water and growing pressure on groundwater, new water supplies will be critical. There have been discussions about expanding Bartlett Dam water, Advanced Water Purification (direct potable reuse), Tribal leases, transporting groundwater from the Harquahala INA, McMullen Valley, and Butler Valley, WIFA's Long-term augmentation fund-desalination, MWD Regional Recycled Water Program, Importation, etc.

New water supplies will be expensive. SRP and the Bureau of Reclamation projects it will cost \$1 billion (\$12,000/AF as a one-time cost) to expanded Bartlett Dam. The projected cost for direct potable reuse/Advanced Water Purification facility to treat effluent to drinking water standards is well above \$1 billion. Desalinated ocean water projected cost is \$3 billion+ in capital costs \$3,000-5,000+/AF in ongoing costs. Investments in new supplies today will be less expensive than those made tomorrow.

Mr. Tenney shared that he hopes this additional information will be useful as Board members work with their fellow councilmembers to understand about why investing in new water supplies is so important. The costs to construct and maintain water infrastructures continue to increase and inflation has dramatically impacted capital projects. There has been a 55% increase in construction market costs over the last three years and supply chain issues are impacting operation, maintenance, and construction costs. PFAS and other water quality issues will increase expense. Aging workforce and tight job market complicates recruiting and retaining staff throughout water utilities, which has an impact on operating costs.

With the uncertainty of water issues, from basic O&M costs to water resources availability, broad strategic planning is required. Having flexible financial resources better positions municipalities to take advantage of opportunities and deal with the unexpected as they arise from resources to infrastructure. Investment in water supplies and infrastructure is vital for securing a solid economic future. It takes time to plan and build infrastructure and costs will only increase. Developing and acquiring water supplies and infrastructure is a long game. We cannot afford to get behind in water investments. A thriving economy cannot happen if you don't have the needed water.

Each community must determine how to best meet the water demands of its own service area. Comparisons about rates can give a false sense of security and undermine what your water services actually need. The cost of water is going up in the Valley and national. Drivers for development are not based on water rates but rather businesses and people locate here because Arizona can provide safe, reliable water. We need to convey the importance of investing in our water supplies and infrastructure.

Councilmember Lauritano asked if there are concerns about legislation taking back the billion dollars that was set aside for long-term water augment? Mr. Tenney said, yes, that is a concern. It was structured that the billion dollars was committed and then in 2022 a third of that was put into WIFA's bank account. This year, the Legislature did not do the full third because they used the money for smaller water projects. The WIFA Board advocating that it's important that the State follow through with that commitment and fully fund them. Councilmember Lauritano added that we need to educate them and work together.

Councilmember Turner added this is an opportunity for our cities to invest in the expansion of the dam to reserve water for citizens for the future. This was done several years ago with raising Roosevelt Dam. This would give cities beyond the boundaries of Salt River Project territory in state access to surface water.

6. Measuring 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.

Mayor Ortega shared that the City of Scottsdale is the first city to adopt the green building code involving both energy and power. The City of Scottsdale is also emphasizing young citizen awareness in schools. He also added that the City of Scottsdale has full support from the real estate community and people are looking for those properties.

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.

7. Fiscal Year 2024 Quarterly Financial Statements – First Quarter

Mr. Tenney reported that as of September 30, 2023, AMWUA's expenses are under the year-to-date budget by \$2,123.

Upon a motion made by Mayor Ortega and a second from Councilmember Nielson, the AMWUA Board of Directors unanimously approved of the AMWUA Fiscal Year 2024 Quarterly Financial Statements for the 1st Quarter.

8. AMWUA Annual Financial Audit Report for Fiscal Year 2023

Mr. Tenney reported that Heinfeld, Meech & Co., an independent accounting firm, conducted the Fiscal Year 2023 audit and concluded there are no significant findings in their audit, which means AMWUA's finances are in good standing.

Upon a motion from Councilmember Vice Mayor Orlando and a second by Mayor Ortega, the AMWUA Board of Directors unanimously approved of the AMWUA Annual Financial Audit Report for Fiscal Year 2023.

9. Recommendation for 2024 AMWUA Board Officers

Councilmember Turner reported that the AMWUA Board Nominating Committee recommends Councilmember Sheri Lauritano from City of Goodyear to serve as the AMWUA Board President, Councilmember Scott Anderson from Town of Gilbert to serve as Board Vice President, and Councilmember Mark Freeman from City of Mesa to serve as Board Secretary-Treasurer.

Upon a motion by Councilwoman O'Brien and a second from Vice Mayor Orlando, the AMWUA Board of Directors unanimously approved the Nominating Committee's recommended slate for 2024 AMWUA Board Officers.

C. 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 we are expecting a very busy legislative session. There will be legislation related with the Governor's Water Council recommendations as well as legislation to counter some of those recommendations. In particular, the rural groundwater management area proposal. We also anticipate bills in response to the Phoenix AMA Groundwater Model, as well as, to the Alternative Path to Designation in so far as to help current undesignated providers to utilize that proposal. There will be ideas to incentive development on agriculture land. Yesterday, AMWUA staff reviewed with the WRAG a number of potential bills we are anticipating. We are waiting to see the actual language to be able to better determine how to respond.

Mr. Tenney reported next Monday, the Agribusiness Council and AMWUA are facilitating the Vetting Forum for Water in which we anticipate some of these legislative ideas will be shared and discussed.

Mr. Tenney reported that AMWUA will host a breakfast for Legislators at the Capitol on January 18th. He will send further information about that event.

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 Councilmember Turner and thanked him for his Service on the AMWUA board. Other board members thanked Councilmember Turner for his service as Board President. Councilmember Turner thanked everyone for the opportunity work with the AMWUA Board and staff.

D. Future Agenda Items

No future agenda items were requested.

E. Adjournment

Councilmember Turner adjourned the meeting at 12:46 p.m.

AMWUA BOARD OF DIRECTORS
INFORMATION SUMMARY
January 25, 2024

Political Landscape for Water Legislation

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

With over 60 water bills already introduced within the first two weeks of the legislative session and more to come, it is clear that this session is quite different from previous ones regarding water. AMWUA staff thought it would be beneficial to provide a brief presentation regarding the old and new dynamics impacting the current landscape. We believe this will assist with better understanding and addressing the legislation that has been introduced.

RECOMMENDATION

The AMWUA Board of Directors is requested to provide comments and ask questions about the AMWUA staff presentation regarding the political landscape that is impacting water legislation this session.

AMWUA BOARD OF DIRECTORS

INFORMATION SUMMARY

January 25, 2024

Updated January 23, 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 began January 8, 2024. This report has been updated as of the morning of January 23, 2024, with nearly 948 measures have been introduced, with 67 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.

On January 10, 2024, the AMWUA Management Board reviewed and made recommendations on 41 water bills. This report includes those bills as well as additional legislation that was introduced since the Management Board meeting.

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

This legislative report includes a summary of 62 water bills and the Management Board Recommended Positions based on the AMWUA 2024 legislative agenda as well as AMWUA's overall mission and previous legislative positions. However, the report is organized to review first the water bills that potentially have the most direct impact upon the AMWUA members.

The terms “neutral” and “monitor” apply to bills that we are watching. “Neutral” infers that we most likely do not see the bill having an impact on our members and have will therefore not get into the debate on the bill. “Monitor” infers that we are watching the bill closely, further analyzing, and may take a position of support, oppose, or neutral at a later date.

In this report, an “*” indicates that the bill was added subsequent to the January 18, 2024 version of this report.

RECOMMENDATION

The AMWUA Board of Directors is requested to adopt the recommended positions on water legislation provided by the AMWUA Management Board as well as the adopt the recommended positions of subsequent introduce legislation as presented in this Board packet.

Depending on the introduction of legislation before the January 25, 2024 Board meeting, the AMWUA Board of Directors may be asked to take positions on 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:

- HB 2006 real estate; acting in concert (Griffin) ----- *Neutral*
- HB 2007 subdivided lands; civil penalties (Griffin)----- *Support*
- HB 2008 commercial; industrial; conservation requirements; rules (Griffin)----- *Oppose, seek to amend*
- HB 2009 subdivisions; acting in concert (Griffin)----- *Support*
- HB 2010 cities; towns; water reuse plans (Griffin)----- *Neutral*
- HB 2011 lottery, water infrastructure finance authority (Griffin)----- *Support*
- HB 2013 water improvements program; nonprofit corporations (Griffin)----- *Neutral*
- HB 2014 wells; intention to drill; appropriation (Griffin)----- *Oppose*
- HB 2015 subsequent water management areas; basins (Griffin) ----- *Neutral*
- HB 2016 grandfathered rights; subsequent AMA; extension (Griffin) ----- *Neutral*
- HB 2017 assured water supply, commingling (Griffin)----- *Oppose*
- HB 2018 subsequent irrigation non-expansion area; removal (Griffin) ----- *Oppose, seek to amend*
- HB 2019 groundwater model; public inspection (Griffin) ----- *Oppose*
- HB 2020 long-term storage; stormwater; rainwater; rules (Griffin) ----- *Oppose*
- HB 2024 lottery; on-farm irrigation efficiency fund (Griffin) ----- *Support*
- HB 2025 residential lease community; water, requirements (Griffin) ----- *Oppose*
- HB 2026 residential lease community; water; certificate (Griffin) ----- *Support, seek to amend*
- HB 2027 subsequent AMAs; assured water supply (Griffin)----- *Neutral*
- HB 2028 groundwater model; unpledged storage credits (Griffin) ----- *Oppose*
- HB 2029 groundwater model; unpledged effluent (Griffin) ----- *Oppose*
- HB 2030 cities; towns; service; audit (Griffin)----- *Oppose*
- HB 2055 underground water storage; permitting (Dunn)----- *Support*
- HB 2056 appropriation; on-farm efficiency fund (Dunn)----- *Support*
- HB 2057 appropriation; long-term water augmentation fund (Dunn) ----- *Support*
- HB 2058 Yuma water banking; study committee (Dunn) ----- *Oppose, seek to amend*
- HB 2059 contiguous real estate; definition (Griffin)----- *Neutral*
- HB 2060 irrigation non-expansion area; substitution; acres (Griffin) ----- *Neutral*
- HB 2061 subsequent active management area; removal (Griffin) ----- *Oppose*
- HB 2062 assured water supply; certificate; model (Griffin) ----- *Oppose*
- HB 2063 exempt wells; certificate; groundwater use (Griffin)----- *Neutral*

HB 2096 tiny homes; construction; requirements; exemptions (Parker B) ----- *Neutral*
HB 2097 gray water; definition; residential standard (Parker B) ----- *Neutral*
HB 2099 active management area; groundwater right (Griffin) ----- *Oppose*
HB 2100 administrative completeness review; licensing (Griffin) ----- *Oppose*
HB 2101 land division; applicant submissions; review (Griffin) ----- *Support*
HB 2123 wells; water measuring devices; prohibition (Smith) ----- *Oppose*
HB 2127 assured water supply certificate; effluent (Griffin) ----- *Oppose*
HB 2150 groundwater sales; online exchange (Kolodin) ----- *Oppose*
HB 2182 augmentation; Phoenix; Pinal; Tucson; AMA (Kolodin) ----- *Monitor*
HB 2184 brackish groundwater pilot program (Smith) ----- *Neutral*
HB 2186 remedial groundwater incentive; brackish groundwater (Kolodin) ----- *Oppose*
HB 2195 on-site wastewater treatment facilities; permitting (Hendrix) ----- *Monitor*
HB 2200 groundwater transportation; Harquahala non-expansion area (Dunn) --- *Support*
HB 2201 Harquahala non-expansion area; groundwater transportation (Dunn) --- *Support*
HB 2214 water treatment facilities; loan repayment (Terech) ----- *Support*
HB 2320 watersheds; beneficial use; instream flows (Travers) ----- *Monitor*
HB 2355 subsequent active management area; designation (Stahl Hamilton) ---- *Monitor*
HB 2356 subsequent irrigation; non-expansion areas; procedures (Stahl Hamilton) - *Monitor*
HB 2357 watershed health; use; survey (Stahl Hamilton) ----- *Monitor*
HB 2358 state lands; leases; groundwater use (Stahl Hamilton) ----- *Support*
HB 2359 adequate water supply; statewide requirements (Stahl Hamilton) ----- *Support*
HB 2366 physical availability; review; designated providers (Griffin) ----- *Oppose*
HB 2368 transportation; groundwater; Douglas AMA (Griffin) ----- *Neutral*
HB 2399 reporting; groundwater pumping; measuring (Crews) ----- *Support*
HB 2589 assured water supply; analysis; availability (Dunn) ----- *Oppose*
HB 2647 physical availability credits; water supply (Smith) ----- *Monitor*
SB 1106 state lands; leases; groundwater use (Sundareshan) ----- *Support*
SB 1041 groundwater savings certificate; assured water (Hoffman) ----- *Oppose*
SB 1056 municipalities; counties; fee increases; vote (Petersen) ----- *Oppose*
SB 1081 exemption area; assured water supply (Kerr) ----- *Monitor*
SB 1107 long-term storage accounts; credits; percentage (Sundareshan) ----- *Oppose*
SB 1108 subsequent active management area; designation (Sundareshan) ----- *Monitor*
SB 1109 water augmentation fund; appropriation; rights (Sundareshan) ----- *Oppose*
SB 1153 regulatory costs; rulemaking; legislative ratification (Kern) ----- *Oppose*
SB 1172 physical availability credits; water supply (Shope) ----- *Monitor*
SB 1081 exemption area; assured water supply (Kerr) ----- *Monitor*
SB 1181 *groundwater replenishment; member lands; areas (Petersen)* ----- *Monitor*

Bills Recommended for Action

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

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

Management Board 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 2019 groundwater model; public inspection; challenge (Griffin)

Management Board 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.

At the January 16th House Natural Resources Committee, the Committee did amend the bill to remove the provision requiring a process to allow a party to challenge the model and added a public comment period prior to the model being ran and released regarding the assumptions that would be used in the groundwater model.

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

Management Board 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)

Management Board 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)

Management Board 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)

Management Board 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 2062 assured water supply; certificate; model (Griffin)

Management Board 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 2100 administrative completeness review; licensing (Griffin)

Management Board Recommended Position – Oppose

This bill requires an agency to 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.

Crucially, HB 2100 prohibits an agency from making a final decision on an application based on the findings or conclusions of a document not included in the application unless the document or report was “subject to public inspection and the applicant had the opportunity to challenge the document or report and its findings before submitting the application.” Although the bill refers to an “agency” in general terms, our concern is that the “document or report” could include those related to the Phoenix AMA groundwater model. In effect, this requirement would create a backdoor way to implement a process to challenge the findings of the Phoenix

AMA groundwater model similar to HB 2019 (groundwater model; public inspection; challenge). This challenge process could redirect ADWR's resources away from more pressing matters such as processing recovery well permit applications, accounting for long-term storage credits, or assisting with the general stream adjudications.

HB 2127 assured water supply certificate; effluent (Griffin)

Management Board 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. First, there needs to be more certainty as to how the effluent will be used, as is required in a Designation of Assured Water Supply. This includes a financial commitment for the development and infrastructure necessary to put to use the effluent. There is not a similar requirement for the applicant of the CAWS under this legislation. Treating effluent is costly and there should be some requirement for the developer to show a willingness to financially pay for this treatment to ensure that it will be contributed to the CAWS. Second, the CAWS would use an undetermined amount of effluent created by a proposed subdivision as a stand in for groundwater being physically available in order to allow the CAWS to be issued on groundwater. This is adding speculation, rather than certainty, to the Assured Water Supply Program.

HB 2182 augmentation; Phoenix; Pinal; Tucson; AMA (Kolodin)

Management Board 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. It is problematic that "new water" is not defined and should be clarified to avoid this important fund from being used to develop an inappropriate or questionable source of water. For example, brackish groundwater is frequently mentioned by some legislators but this is problematic since brackish groundwater is already considered as groundwater for the purposes of ADWR modeling and the Assured Water Supply Program, and is therefore not actually a new supply.

HB 2186 remedial groundwater incentive; brackish groundwater (Kolodin)

Management Board 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.

HB 2200 groundwater transportation; Harquahala non-expansion area (Dunn)

Recommended Position – Support

This bill was introduced again as an effort to allow EPCOR and other private water companies to transport groundwater from the Harquahala INA, something that these entities have previously pursued. Currently, only political subdivisions of the State—such as cities and towns—that own legally irrigable land can withdraw and transport groundwater from this INA. This bill is relevant this session because of the need to secure new water supplies that was created by the Governor’s Water Policy Council’s recommendation to create an Alternative Pathway to Designation.

HB 2201 Harquahala non-expansion area; groundwater transportation (Dunn)

Recommended Position – Support

This bill is serving the same purpose as HB 2200, except for allowing the transported groundwater to be used in La Paz County in addition to initial AMAs. La Paz County interests have been seeking to obtain transported groundwater from Harquahala INA. Again, this bill is especially relevant this session because of the need to secure new water supplies that was created by the Governor’s Water Policy Council’s recommendation to create an Alternative Pathway to Designation.

HB 2366 physical availability; review; designated providers (Griffin)

Recommended Position – Oppose

HB 2366 would endanger the designations of all designated municipal providers in the Phoenix AMA. The bill prohibits ADWR from adopting the Carry-Over Rule in the Phoenix AMA, which allows designated municipal water providers to carry over their unused groundwater allowance when applying for redesignation. Since ADWR has already adopted this rule, we do not believe that this provision would have any impact. However, HB 2366 still directs ADWR to review the physical availability of groundwater and stored water for each designated municipal water provider in the Phoenix AMA.

It is more than troubling that HB 2366 is attempting to question and undermine the groundwater allowances from all designated municipal providers and consequently threaten their ability to remain designated. This bill could cause immense damage to growth and development in Phoenix metropolitan area and the entire state by questioning the designations of water providers.

****[HB 2647/SB 1172](#) physical availability credits; water supply (Smith/Shope)***

Recommended Position – Monitor

HB 2647 and SB 1172 are both an effort to incentivize the retirement of agricultural land so it can be developed for residential use and thereby dramatically reduce the use of water. Specifically, this legislation would allow the holder of an irrigation grandfathered right (IGR) to earn a physical availability credit by permanently retiring their land from irrigation to future non-irrigation use if certain criteria were met. The land to be retired must have been farmed in three of the last seven years, the new non-irrigation use must remain appurtenant to the retired lands, and the groundwater is delivered by a municipal provider, which will withdraw the groundwater from within its service area.

This credit would entitle the holder to withdraw groundwater from the retired lands in an amount that would be the lesser of either:

- the current maximum amount of groundwater that may be pumped per the IGR OR
- 3 acre-feet multiplied by the water duty acres in the appurtenant farm divided by the irrigated acreage on this farm.

If the amount withdrawn is more than what's needed for the lands, the remaining balance can be used anywhere within the municipal provider's service area.

The physical availability credit could also be used to support Certificates and Designations of Assured Water Supply. In addition to being physically available, any groundwater pumped pursuant to this credit would be considered consistent with the AMA's management goal.

The fundamental problem with this bill is that there is no clear connection between a grandfathered right and physical availability of groundwater. The bill tries to address this issue by limiting its applicability to recently used IGRs that would presumably have been factored into the Phoenix AMA groundwater model. In doing so, the intent seems to be reduction of unmet demand.

An additional problem is that there is already a statutory process to retire farmlands and convert an IGR to type 1 non-IGR. It is not clear why that process cannot be used.

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

Management Board 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 (CAGRDR);
- 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. In other words, the 100-year water supply that was guaranteed by these certificates and designations may be no more. SB 1041 also undermines the security of water that cities have stored underground for future use by focusing on the depth to water at a well without taking into account how much of that water level is made up of stored water. It would basically enable more groundwater pumping that would endanger our cities' ability to recover water they have stored over several decades.

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.

***SB 1081 exemption area; assured water supply (Kerr)**

Recommended Position – Monitor

SB 1081 intends to incentivize the development on agricultural within the Buckeye Water Conservation and Drainage District. Specifically, the bill would allow ADWR to designate part of city or town that is located in the Phoenix AMA and Buckeye Waterlogged Area as having an Assured Water Supply if several criteria are met. The portion designated must be entirely within an irrigation and water conservation district, the city or town must have contracted with the district for water service for at least 100 years, and the city or town will not use "new groundwater" as the basis for an AWS within the portion of its service area designated.

The district would be allowed the city or town to pump up to 10,000 acre-feet per year of groundwater from the district's wells for municipal use on district lands. ADWR would be required to deem this groundwater as physically available. The pumping would also be consistent with the AMA's management goal if the average groundwater level remains less than 150 feet below surface over a three-year period, as measured by 10 index wells. If the groundwater falls below this level, the city or town must become a CAGRDR Member Service Area and its pumping will be subject to replenishment.

There are several potential problems with this bill. The Buckeye Waterlogged Area is a legal construct that was created to address temporary conditions in the West Valley. It provides more leeway for pumping in this area due to the shallow groundwater. A recent ADWR study indicated that the unique hydrologic factors that characterize this area could cease to exist if the amount of effluent that flows down the Gila River is reduced or ends. If this waterlogged area ceases to exist, the provisions of SB 1081 will probably no longer apply. Moreover, ADWR regularly evaluates the physical availability of CAP water and surface water supplied by SRP when a designation comes up for review.

In addition, designating a portion of a water provider's service area may be problematic because it does not align with the fact that a service area contains a provider's entire distribution system. Water that enters the designated part of the system can move to the undesignated part, and vice versa. A partially designated service area can also allow for non-AWS pumping to proliferate in the undesignated portion of the provider's service area while limiting growth of subdivided lands to the designated portion. Finally, the term "new groundwater" is not defined in this bill which raises questions about how this bill would be implemented.

SB 1181 groundwater replenishment; member lands; areas (Petersen)

Recommended Position – Monitor

As introduced, SB 1181 would allow a municipal provider that is seeking a designation to decide whether to assume the replenishment obligation for any Central Arizona Groundwater Replenishment District (CAGRD) Member Lands within its service area or whether to have the replenishment obligation remain with those Member Lands. If the provider chooses for the replenishment obligation to remain with the Member Land, the Arizona Department of Water Resources (ADWR) would have the authority to require the provider to reduce the replenishment obligations for those Member Lands 10 years after becoming designated. Specifically, the provider would be required to reduce the replenishment obligation in thirds over the next 15 years so that no replenishment obligation would remain by the end of the fifteenth year.

This bill is being introduced to support Queen Creek’s efforts to become designated through the Alternative Pathway to Designation (ADAWS), which was a proposal from the Governor’s Water Policy Council and ADWR is currently developing rules to establish an ADAWS. Utilizing the ADAWS would require Queen Creek to become a Member Service Area, which would mean that it would need to assume the responsibility for CAGRD replenishing groundwater pumping within its service area. Queen Creek officials have expressed concerns about the financial shock assuming this replenishment obligation would cause to their rates. They have proposed SB 1181 as a way of easing the easing this burden by allowing a gradual assumption of replenishment obligations for Member Lands.

Queen Creek and CAGRD have developed an amendment that will change some provisions of SB 1181. Under this amendment, a newly designated provider will need to begin assuming the replenishment obligations for Member Lands within its service area and the end of its first term of designation (which may be up to 15 years) or 10 years after becoming designated, whichever is greater. After that point, the provider will be required to reduce the replenishment obligation in thirds over the next 15 years in a way similar to the introduced bill. Finally, the amendment will limit the bill’s provisions to municipal providers that apply for designation in the Phoenix AMA. Queen Creek and CAGRD are both supportive of the amendment, which is anticipated to be offered when SB 1181 is heard in committee.

The following are the remaining water bills introduced as of January 23, 2024 –

HB 2006 real estate; acting in concert (Griffin)

Management Board 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)

Management Board 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)

Management Board 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)

Management Board 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)

Management Board 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)

Management Board 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)

Management Board 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)

Management Board 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)

Management Board 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 – Oppose

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. Therefore, the Management Board recommended a neutral position.

Subsequently, at the January 16th House Natural Resources Committee, an amendment was added that makes it questionable if this legislation would not change ADWR's current practices. Of greater concern, the amendment appears to be subverting the Governor's Water Policy Council's recommendation for an Alternative Path to Designation (ADAWS) before ADWR has even released draft rules for the ADAWS concept. For this reason, AMWUA staff is recommending that our position be oppose rather than neutral.

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

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

Management Board 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)

Management Board 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 (CAGRDR) Member Lands. The applicant must also pay applicable fees to CAGRDR. 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 CAGRDR’s replenishment obligation from the AWS Program and create operational challenges for CAGRDR. 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 CAGRDR’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 CAGRDR gaining a replenishment obligation separate from the AWS Program.

Additionally, the information contained in a CAWS for a Member Land helps CAGRDR 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, CAGRDR would need to obtain this information by other means.

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

Management Board 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)

Management Board 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)

Management Board 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)

Management Board 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)

Management Board 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 2058 Yuma water banking; study committee (Dunn)

Management Board 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 2059 contiguous real estate; definition (Griffin)

Management Board 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)

Management Board 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)

Management Board 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)

Management Board 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)*

Management Board 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)*

Management Board 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)

Management Board 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 is 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 2101 land division; applicant submissions; review (Griffin)

Management Board 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)

Management Board 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 2150 groundwater sales; online exchange (Kolodin)

Management Board 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 2184 brackish groundwater pilot program (Smith)

Management Board 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 2195 on-site wastewater treatment facilities; permitting (Hendrix)

Recommended Position – Monitor

This bill would allow an on-site wastewater treatment facility with a design flow between 3,000 and 75,000 gallons per day to operate under a general Aquifer Protection Permit (APP) rather than having to obtain an individual permit. The facility operator must comply with existing general permit rules, and the bill also requires ADEQ to create requirements for maintenance, monitoring, recordkeeping, and reporting that would apply to such facilities operated under a general permit.

This bill would expedite the process for those wishing to set up an on-site wastewater treatment facility, likely in an industrial facility of some kind, because they would be able to be covered under a general APP rather than going through the process of receiving an individualized permit. So long as ADEQ makes the requirements to obtain a general APP adequately stringent, there is no reason to believe that holders of such a permit would pose a danger to the aquifer or other water sources.

HB 2214 water treatment facilities; loan repayment (Terech)

Recommended Position – Support

This bill would remove from Title 9 a requirement that cities and towns with a population of more than 150,000 must hold a public vote before the city or town may enter into a federal financial assistance loan repayment program through the Water Infrastructure Finance Authority (WIFA). This bill would also remove a similar requirement that applies to all counties.

Requiring municipalities with a population of more than 150,000 people to ask for a vote before entering a federal loan repayment program through WIFA puts an unfair barrier between most of the state’s population and crucial water resources development funding. No such requirement exists for any other loan repayment program or funding source, and the fact that the State Legislature put a five year stay on this provision shows that it is unnecessary and harmful. This bill is similar to previous legislation that we supported.

HB 2320 watersheds; beneficial use; instream flows (Travers)

Recommended Position – Monitor

This bill would allow the Game and Fish Commission to acquire and lease surface water rights for “watershed health uses and instream uses”. This bill also defines “watershed health uses” as water that is conserved in a natural watercourse and not otherwise used and that supports watershed health. This bill also requires ADWR to conduct a watershed health survey every

three years after the initial survey, which is not described in this bill. The survey will evaluate the overall health of each watershed in the state based on hydrology, geomorphology, plant and animal biodiversity, landscape condition, and other factors. This bill also adds watershed health as a reason why a water right may be severed and transferred from the land to which it is appurtenant.

While it is a laudable goal to evaluate the overall health of Arizona’s watersheds, it is worrying that another large responsibility would be placed on ADWR without additional funding or other resources. This bill is a slightly different version of HB 2357 and is not complete because it does not include a description of the initial watershed health survey that is referenced in the bill. This bill is also worrying because of the additional ability to acquire and lease surface water rights that it grants to the Game and Fish Commission.

HB 2355/SB 1108 subsequent active management area; designation (Stahl Hamilton/Sundereshan)

Recommended Position – Monitor

This bill would require ADWR to designate as an AMA any area that meets the AMA designation criteria. The criteria include water quality degradation from groundwater use, land fissures, and active management to preserve groundwater for future use.

AMAs are the gold standard when it comes to groundwater management in Arizona, and any area that shows signs of groundwater depletion should be designated as an AMA. However, the large increase in responsibilities that the designation of numerous new AMAs could place on ADWR would necessitate further funding for the Department, and that should be considered.

HB 2356 subsequent irrigation; non-expansion areas; procedures (Stahl Hamilton)

Recommended Position – Monitor

This bill would allow ADWR to consider “reasonable projections” of future irrigation groundwater use when considering whether to designate an area as a subsequent INA, rather than only considering current irrigation groundwater use. This bill also defines the acceptable amount of groundwater available for irrigation as a 100-year supply. This bill also specifies who may sign a petition to designate a subsequent INA, including someone who is the owner of irrigated land, has irrigated two or more acres in the basin in the past five years, or “is capable of irrigating the land in the future”. This bill requires these petitions to be submitted along with a numeric groundwater model and hydrologic report prepared by a professional geologist or hydrologist. Lastly, this bill states that ADWR’s final decision on the designation of a subsequent INA are not an appealable agency action but are subject to judicial review, and that after a refusal another petition to designate the area may not be submitted for three years.

This bill has two sides, in that it arguably makes it both easier and more difficult to designate an area as a subsequent INA. ADWR is given more flexibility in their projections of groundwater use when designating an area. The number of people eligible to sign a petition is broadened substantially by the stating that anyone who “is capable of irrigating the land in the future” may sign the petition. Conversely, the designation of a subsequent INA via petition is made more onerous by a requirement to include hydrological evidence. This provision does, however, make the petition stronger in addition to pre-empting any attempts to invalidate the petition by including evidence that the petition is necessary.

HB 2357 watershed health; use; survey (Stahl Hamilton)

Recommended Position – Monitor

This bill would require ADWR to establish criteria to evaluate the status of the relationship between “ecological water needs”, groundwater withdrawal, and surface water appropriations in Arizona. This bill also requires ADWR to complete a survey of the status of the waters of Arizona by December 31, 2026. This survey must include an assessment of the overall health of all watersheds in the state, and a lesser assessment of the health of sub-watersheds and the health of the ecosystems they support. ADWR must also determine the appropriate steps to be taken to remedy the problems in these watersheds and recommend legislation through which to take these steps. ADWR is also required to hold public meetings and receive and publish public comments on this survey and make the survey public when it is complete. This bill also includes the same requirements for follow-up surveys and the same definitions that are included in HB 2320.

Again, while it is laudable goal to evaluate the overall health of Arizona’s watersheds, it is worrying that another large responsibility would be placed on ADWR without additional funding or other resources. This bill is a superior version of HB 2320 because it includes a description of the initial watershed health survey. This bill is also preferable because it does not put any additional responsibilities or allowances on the Game and Fish Commission.

HB 2358/SB 1106 state lands; leases; groundwater use (Stahl Hamilton/Sundareshan)

Recommended Position – Support

This bill would require ADWR to establish rules to govern an annual groundwater withdrawal fee that it will levy upon each lessee of State Land for agricultural purposes that is located outside of an AMA or INA. These lessees would be required to submit a report to ADWR each year that details the locations of any wells, the amount of groundwater withdrawn from these wells, and why the groundwater was used.

This bill would disincentivize agricultural groundwater use on State Land outside of AMAs and INAs and would also bring additional revenue to ADWR.

HB 2359 adequate water supply; statewide requirements (Stahl Hamilton)

Recommended Position – Support

This bill would require a city, town, or county to ensure that a subdivision has an adequate water supply or will be served by a provider with an adequate water supply before it may be platted. This bill would also require the Department of Real Estate to ensure that a subdivision has an adequate water supply or will be served by a provider with an adequate water supply before it may issue a public report and allow sale or lease of the land. This bill would also repeal provisions that allow capital investment and infrastructure assurances that would allow development to continue despite no adequate water supply existing.

Currently, most areas outside of AMAs do not require an adequate water supply before development can occur. Developers may apply for determination of adequate water supply with ADWR, but it is not required. Some areas (e.g. Yuma County, Town of Clarkdale) do require an adequate water supply before development, despite not being located in an AMA. This bill would place that “mandatory adequacy” requirement on all areas of the state outside of AMAs and is therefore a big step forward in ensuring that we have water first, and then development.

HB 2368 transportation; groundwater; Douglas AMA (Griffin)

Recommended Position – Neutral

HB 2368 would allow a private water company to withdraw groundwater from the Upper San Pedro Groundwater Basin to transport to the Douglas AMA if the groundwater will be used for municipal service, the private water company or its predecessor had been engaged in this transportation since September 30, 1992, and the company holds a Certificate of Convenience and Necessity to provide water service in the Douglas AMA. HB 2368 limits the amount of groundwater that may be annually transported to the annual amount that was transported before December 1, 2022.

HB 2368 is intended to allow Arizona Water Company–Bisbee to continue transporting groundwater to the Town of Douglas. The company’s service area is mostly within the Upper San Pedro Groundwater Basin though part of it overlays the Douglas AMA. The Company relies on four wells near Naco to provide groundwater. The annual amount delivered is currently unknown.

HB 2399 reporting; groundwater pumping; measuring (Crews)

Recommended Position – Support

This bill would require measurement and reporting by anyone who owns a non-exempt well outside of an AMA or INA if the well withdraws more than 10 acre-feet per year for a non-irrigation use or is used to irrigate 10 or fewer acres for an irrigation use. This bill also lists the reporting requirements for the well owner.

Accurate measurement and reporting of groundwater use within Arizona is essential to sound groundwater management. Groundwater availability in Arizona is more threatened now than it has been in at least the past 40 years, and now is exactly when we should be showing the rest of the world that we are serious about sound water management.

HB 2589 assured water supply; analysis; availability (Dunn)

Recommended Position – Oppose

An Analysis of Assured Water Supply is used by developers to “reserve” groundwater for future Certificates. An Analysis of Assured Water Supply is not a permanent guarantee and can expire and be revoked. However, numerous developers have argued that larger investments were made because of the analysis and believe it to be an expectation that they will receive the Certificate. HB 2589 would require ADWR to consider an Analysis of Assured Water Supply (that was issued before May 31, 2023, and has not expired) as a valid demonstration of physical availability of groundwater for the amount stated in the Analysis. Additionally, ADWR must subtract the amount of groundwater “represented” by all Certificates that were already issued based on the Analysis from the amount of groundwater considered physically available based on the Analysis.

This bill appears to be an attempt to require ADWR to resume the granting of some Certificates despite the release of the Phoenix AMA groundwater model. Issued Analyses are already considered in the model, and it has been demonstrated that sufficient physical availability does not exist. The Analyses that this bill applies to would not have been issued if they were based on ADWR’s most recent modeling. In fact, ADWR has stopped issuing new Analyses in the Phoenix AMA simply because there is not enough physical availability of groundwater. Requiring ADWR to issue Certificates based on the outdated modeling from these Analyses would not at all be in line with sound water management or scientific best practices.

SB 1056 municipalities; counties; fee increases; vote (Petersen)

Recommended Position – Oppose

This bill would require a two-thirds vote in favor by the common council of a municipality or the board of supervisors of a county before any increase of any assessment, tax, or fee.

This bill would make it harder for city councils to pass any increase of assessments, taxes, or fees. This would certainly make it harder to increase development fees and may make it harder to increase other fees associated with water service in the AMWUA cities. While it is necessary that assessment, tax, and fee increases are run through city councils, requiring a two-thirds majority is unnecessarily cumbersome. The additional barrier this creates makes it even harder for city water departments to recoup their costs for providing quality water and wastewater services to their residents.

SB 1107 long-term storage accounts; credits; percentage (Sundareshan)

Recommended Position – Oppose

This bill would change the amount of recoverable stored water that ADWR will credit to long-term storage accounts from 95% to 70%. In other words, this bill increases the so-called “cut to the aquifer” for most long-term storage from 5% to 30%.

This bill was introduced on January 17, 2024 and we are still analyzing whether this change would apply prospectively or retroactively. If the bill is retroactively, it would be reckless and irresponsible since it would drastically reduce the investment made for generating these credits and undermine how their owner had planned to utilize them. If the bill is prospective, it still is troubling to have a major alteration in the Underground Storage Program and how municipal water providers and other water users prepare for less Colorado River water in the future.

SB 1109 water augmentation fund; appropriation; rights (Sundareshan)

Recommended Position – Oppose

This bill would transfer \$30 million from WIFA’s Long-Term Water Augmentation Fund for FY 2024 to ADWR to be used to purchase and retire irrigation grandfathered rights. This bill also requires ADWR to begin purchasing and retiring these rights by the end of 2024.

This bill has a laudable goal. Voluntarily purchasing and retiring irrigation grandfathered rights could be an essential tool in reducing groundwater pumping within AMAs, which will include developing a monetary incentive. However, the Long-Term Water Augmentation Fund is not the place to get the funding for such a project. WIFA has already faced numerous budget cuts at a time when we need new water supplies more than ever. We cannot allow the Legislature to alter its mission before it has had a chance to prove itself nor should the funding used for whatever project the Legislature wants to pursue.

****[SB 1153](#) regulatory costs; rulemaking; legislative ratification (Kern)***

Recommended Position – Oppose

This bill would prohibit any proposed rule that will cost the state more than \$500,000 within five years from going into effect until the Legislature enacts legislation ratifying the proposed rule. An agency would be required to submit the proposed rule to the Administrative Rules Oversight Committee, and the Committee would submit the rule to the Legislature “as soon as practicable”. The agency is prohibited from submitting a finalized rule until the Legislature ratifies the rule, and the agency must terminate the proposed rule if the Legislature fails to ratify it within the same legislative session that it was submitted to the Committee.

This bill is troubling because of the wide-ranging impacts it could have on ADWR, ADEQ, and every other state agency. \$500,000 is not a lot of money, and most substantive agency rules would probably cost the state that amount within five years. Oversight of agency rulemaking should be handled through public stakeholder processes, and not through the political machinations of the legislature. Requiring agency rulemaking to be approved by the legislature effectively opens these agencies up to political influence and means that rules would likely be passed through that were politically advantageous rather than those that follow actual best practices.

Whether the intention of the bill or not, the timing of this bill raises questions about its impact on ADWR’s upcoming A-DAWS rule. The A-DAWS is the best current path forward for development in the Phoenix AMA and preventing it from being enacted would be counter to the goals of the legislators that sponsored this bill. Perhaps those legislators are hoping that, without the A-DAWS, other ways to push forward development or ways to weaken the Assured Water Supply Program would gain more traction.
