

2018 Legislative Review

The Arizona water community had anticipated that the 2018 legislative session would bring about significant legislation, but instead it failed to produce legislation addressing Arizona's Colorado River and groundwater issues. During the legislative session, AMWUA worked primarily to prevent questionable legislation from passing.

The same day the legislative session ended, the Arizona Department of Water Resources (ADWR) and the Central Arizona Water Conservation District (CAWCD) issued a joint statement that they "are committed to bringing DCP [the Drought Contingency Plan] to closure in Arizona by addressing a broad range of issues that respect the concerns of all stakeholders across the State. The discussions between ADWR and CAWCD are only the first step in a process that will expand to include participation by stakeholders."

State Budget: The last several weeks of the session focused on education funding and the state budget. The Legislature appropriated nearly \$16 million for ADWR, roughly the same as last year's appropriation. Furthermore, the environment budget reconciliation bill included an appropriation of \$100,000 to allow ADWR to hire a consultant to study groundwater depletion in the Mohave County area. Parts of Mohave County have experienced significant groundwater depletion issues over the past several years.

The Legislature also appropriated \$13.5 million to the Water Quality Assurance Revolving Fund (WQARF), although this appropriation does not include funding through the State General Fund. With the Legislature designating an additional \$2 million of non-appropriated funds for WQARF, the program will receive about \$15.5 million.

AMWUA played a role in the success, amendment or opposition of the following bills:

SB 1507: Water Program Amendments (Griffin). *AMWUA Position: Oppose*

HB 2512: Water Program Amendments (Bowers). *AMWUA Position: Oppose*

As amended, the most substantive portions of these omnibus water bills would do the following: (1) Requires the ADWR Director to prepare a desalination action plan and present it to key state leaders; (2) Requires notification of key legislative leaders when ADWR receives an application to transfer water out of state, whether it be surface water, groundwater, or other water; (3) Allows persons holding a certificate of irrigation grandfathered right to exercise that right to withdraw groundwater for containerized plants; (4) Provides detailed criteria for the ADWR Director to calculate the volume of extinguishment credits for the extinguishment of grandfathered rights in the Pinal Active Management (AMA); (5) Creates an additional 10-year active management plan—the Sixth Management Plan from 2025 to 2035; (6) Places oversight of the Division of Natural Resource Conservation in the Arizona Department of Forestry and Fire Management; (7)

Allows the board of supervisors in a non-AMA county that has adopted a mandatory 100-year adequate water supply requirement to vote unanimously to not readopt the requirement. SB 1507 bill failed in the Senate on the third read. HB 2512 was held in the Senate.

SB 1508: Water; Desalination Action Plan (Griffin). *AMWUA Position: Oppose*

HB 2551: Water; Desalination Action Plan (Bowers). *AMWUA Position: Oppose*

As introduced, these bills would have required the ADWR Director to prepare a desalination action plan that, among other things, considers costs of brackish water treatment, and identifies areas of the State where brackish groundwater exists and areas that could benefit from treated brackish supplies. The Director would also have to submit a report to designated state leadership by September 30, 2019. As amended, the language requires an evaluation of the sources of brackish water, as well as impacts to water supplies of users in the area if water is withdrawn and treated. SB 1508 was held in the House. HB 2551 became a vehicle for an unrelated strike everything amendment on March 20, 2018 and ultimately was held in the House.

SB 1509: Water; Interstate Sales (Griffin). *AMWUA Position: Oppose*

As amended, this bill requires the ADWR Director to notify the President of the Senate and the Speaker of the House of Representatives when the ADWR Director receives an application to transport water out of the state. This bill was held awaiting the third read on reconsideration and did not move.

SB 1510: Irrigation Grandfathered Right; Containerized Plants (Griffin). *AMWUA Position: Oppose*

This bill states that in an initial AMA, a person who holds a certificate of irrigation grandfathered right may exercise that right to withdraw groundwater to water plants in containers on or above the surface. Among other things, the bill also requires the right holder to separately measure any groundwater used for watering plants in containers and groundwater for irrigation; however, the total amount of water may not exceed the amount allowed by the irrigation water duty for the farm. This proposal was among the issues discussed as part of the Governor's workgroups last year. This bill was vetoed by the Governor on March 29, 2018.

SB 1511: Pinal AMA; Groundwater; Extinguishment Credits (Griffin). *AMWUA Position: Oppose*

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

understands that in its current form, the language in this bill is essentially the compromise that was reached. This bill was held in the House.

SB 1512: Active Management Areas; Sixth Management Period (Griffin). *AMWUA Position: Oppose*

This bill creates an additional 10-year active management plan—the Sixth Management Plan from 2025 to 2035—under the Groundwater Management Act for each initial AMA. The bill includes language that virtually mirrors the statutory guidance for the previous management plans. The bill also allows the ADWR Director to approve administrative variances from irrigation water duties or conservation requirements for the Fifth and Sixth Management Plans, which is similar to provisions found in statute for previous management plans. This bill was held in the House.

SB 1513: Effluent; Recycled Water; Definition (Griffin). *AMWUA Position: Oppose*

As introduced, this bill stated that for the purposes of ADWR's informational materials, the word "effluent" should be defined as "recycled water." This bill was amended by a "strike everything" amendment on March 20, 2018 and then held in the House.

SB 1514: Natural Resource Conservation Districts; Administration (Griffin). *AMWUA Position: Oppose*

This bill would have placed oversight of the Division of Natural Resource Conservation from the State Land Department to the Department of Forestry and Fire Management. This bill was held in the House.

HB 2596: Natural Resource Conservation Districts; Administration (Toma). *AMWUA Position: Monitor*

As introduced, this bill would have placed oversight of the Division of Natural Resource Conservation in the Department of Forestry and Fire Management. On March 27, 2018, this bill became the subject of an unrelated "strike everything" amendment. The strike everything amendment signed by Governor on May 16, 2018.

SB 1515: Adequate Water Supply; County Review (Griffin). *AMWUA Position: Oppose*

As amended, this bill would have allowed a county board of supervisors in a non-AMA county that has adopted a mandatory 100-year adequate water supply requirement to vote unanimously to not readopt the requirement if certain conditions are met. The conditions, which relate to the county or largest city in the county, include participation in the following: Groundwater recharge, reclaimed water reuse, water conservation programs, and use of low water use plants in certain publicly owned areas. This bill was held in the House.

HB 2553: Adequate Water Supply; County Review (Bowers). *AMWUA Position: Oppose*

As amended, this bill allows a county board of supervisors in a non-AMA county that has adopted a mandatory 100-year adequate water supply requirement to vote unanimously to not readopt the requirement if certain conditions are met. The conditions, which relate to the county or largest city in the county, include participation in the following: Groundwater recharge, reclaimed water reuse, water conservation programs, and use of low water use plants in certain publicly owned areas. This bill was held in the Senate.

SB 1516: Central Arizona Project; Sovereign Immunity (Griffin). *AMWUA Position: Oppose*

This bill states that a multi-county water conservation district (i.e. CAWCD) shall not assert the defense of immunity under the Eleventh Amendment in litigation brought by a water user to enforce the terms of a Central Arizona Project (CAP) water delivery contract or subcontract. As written, the language in this bill could be read to imply that CAWCD does have sovereign immunity under the Eleventh Amendment and could assert this defense in actions unrelated to the enforcement of subcontracts. As amended, the bill also requires both ADWR and CAWCD to inform the other if one is a party to discussions or negotiations of interstate agreements involving Colorado River water. This bill was held in the Senate Rules Committee.

Other Legislation

The following were bills that AMWUA also monitored or took positions on.

SB 1039: Appropriation; Arizona Water Protection Fund (Griffin). *AMWUA Position: Support*

This bill, as amended, appropriates \$400,000 from the state general fund in fiscal year 2018-19 to the Arizona Water Protection Fund. The Arizona Water Protection Fund is a state-run program that funds projects to protect and enhance water quality and quantity in Arizona's rivers, streams, and riparian areas. Some of these efforts include revegetation, erosion control, channel stabilization, research, and water conservation. This bill was signed by the Governor on May 16, 2018.

SB 1493: Environmental Quality; Dredge, Fill Permits (Griffin). *AMWUA Position: Monitor*

Under current law, the United States EPA issues permits under the Clean Water Act for the discharge of dredged or fill materials into waters that meet the definition of Waters of the United States. This bill essentially authorizes ADEQ to establish a Dredge and Fill Permit Program that is consistent with and no more stringent than the federal program. The bill lists requirements for the rules ADEQ would adopt to implement the program. ADEQ and the state are pursuing this legislation as a means of attempting to have EPA assign responsibility to the state over this federal program. To date, only Michigan and New Jersey have obtained authority from EPA to oversee this program at the state level. This bill was signed by the Governor on April 12, 2018.

SB 1494: Environment; Underground Injection Control Program (Griffin). *AMWUA Position: Monitor*

The Underground Injection Control Program is a program primarily overseen by EPA in cooperation with ADEQ that regulates the underground injection or discharge of both hazardous and nonhazardous liquid and gas. This bill requires ADEQ to establish a permit program that meets the minimum federal requirements for permitting injection wells in Arizona and requires the ADEQ Director to adopt rules for that purpose. ADEQ and the state are pursuing this legislation as a means of attempting to have EPA assign responsibility to the state over this federal program. To date, only four individual Underground Injection Control permits have been issued in Arizona, largely for mining purposes. As Arizona looks at using brackish groundwater supplies, some have argued that deep underground injection of brine may be a means of making brackish desalination in Arizona more economically feasible. This bill was signed by the Governor on April 10, 2018.

HB 2203: Wildland Fuel Loads; Watershed Protection (Finchem). *AMWUA Position: Monitor*

As introduced, this bill authorized a mayor, chairman of the board of supervisors, or a county sheriff to make a formal determination that a "catastrophic wildland fuel load" exists on state or

federal land located in the borders of the city, town or county, and to take several enumerated actions to address the condition. On 3/19/18, this bill became a vehicle for an unrelated “strike everything” amendment. This bill was last amended by an unrelated strike everything amendment on 3/19/18. This bill was held in the Senate Rules Committee.

SB 1229: Water Infrastructure Finance Authority; Appropriation (Mendez and 16 others). *AMWUA Position: Monitor*

This bill appropriates \$30 million from the state general fund to the Water Infrastructure Finance Authority (WIFA). WIFA is a state agency that provides low-interest loans to water providers. This bill was held in Committee.

SB 1475: Ecological Water; Program; Fund (Dalessandro). *AMWUA Position: Monitor*

This bill establishes the Ecological Water Stewardship Program and directs the ADWR Director to adopt rules to carry out its mission. The bill directs the ADWR Director to establish a set of standard measures to define ecological water needs in Arizona, including criteria for examining the relationship between ecological water and groundwater and surface water in Arizona. The bill directs the Director to take all reasonable steps necessary to monitor, maintain, improve and restore the surface water systems of Arizona. After making a determination of the ecological water needs for each watershed or subwatershed, the Director would publish a preliminary report that includes a determination of the ecological water and monitoring methods necessary to maintain and restore freshwater ecosystems. If the Director determines in any watershed or subwatershed that there is insufficient ecological water, the Director shall take all steps necessary to appropriate any unappropriated water to maintain the ecological water requirements or acquire by purchase or lease existing water rights. This bill was held in Committee.

HB 2581: Ecological Water; Program; Fund (Gabaldon and others).

This bill establishes the Ecological Water Stewardship Program and directs the ADWR Director to adopt rules to carry out its mission. The bill directs the ADWR Director to establish a set of standard measures to define ecological water needs in Arizona, including criteria for examining the relationship between ecological water and groundwater and surface water in Arizona. The bill directs the Director to take all reasonable steps necessary to monitor, maintain, improve and restore the surface water systems of Arizona. After making a determination of the ecological water needs for each watershed or subwatershed, the Director would publish a preliminary report that includes a determination of the ecological water and monitoring methods necessary to maintain and restore freshwater ecosystems. If the Director determines in any watershed or subwatershed that there is insufficient ecological water, the Director shall take all steps necessary to appropriate any unappropriated water to maintain the ecological water requirements or acquire by purchase or lease existing water rights. This bill was held in Committee.

HB 2214: WQARF; Appropriation (Gabaldon). *AMWUA Position: Support*

This bill appropriates \$15 million from the general fund to the WQARF in addition to any other appropriations made in fiscal year 2018 2019. WQARF is a state-sponsored program established by the Legislature to clean up hazardous soil and groundwater contamination. This bill was held in Committee.

HB 2291: Groundwater Basin; Department Survey (Cobb). *AMWUA Position: Monitor.*

This bill requires ADWR to conduct a survey of areas in the groundwater basin of the Upper Colorado River Planning area to determine the status and resiliency of groundwater supplies, and submit a report to the House Speaker, Senate President, legislators in affected areas, and relevant County Supervisors. ADWR would be required to gather extensive data, including well usage information. The bill also allows the County Board of Supervisors to recommend metering and monitoring of wells to ADWR. This bill was held in Committee.

HB 2352: Appropriation; Lead Screening; Charter Schools (Engel and 14 others). *AMWUA Position: Monitor*

This bill appropriates \$100,000 from the general fund in addition to other appropriations for fiscal year 2018-2019 to ADEQ for screening for lead in drinking water in charter schools. This bill was held in Committee.

HB 2410: Geologist; Landscape Architects; Regulatory Repeal (Mosley). *AMWUA Position: Oppose*

This bill eliminates certain Board of Technical Registration requirements and related statutory language for geologists and landscape architects. This bill is similar to provisions in a bill from 2016 that sought to deregulate the professional geological practice. The 2016 bill resulted in a legislative compromise that resulted in the voluntary licensure of geologists. Under current law, geologists make certain certifications under the groundwater code. This bill was held in Committee.

HB 2429: Public Work Contracts; Prevailing Wage (Cardenas and 14 others). *AMWUA Position: Monitor*

This bill states that a public works contract that is valued at two hundred fifty thousand dollars or more shall contain a provision requiring the wages paid by the contractor or any subcontractor to be at least the prevailing rate of wages for work of a similar nature in the state or political subdivision in which the project is located. AMWUA staff did not anticipate that this bill will move forward this session. This bill was held in Committee.

HB 2552: Desalination Action Study Committee (Bowers). *AMWUA Position: Monitor*

This bill establishes a 13-member desalination action study committee comprised of political leaders and representatives from relevant agencies, water users, and other stakeholders. The bill directs the committee to (1) Consider state statutory or regulatory impediments to using high salinity water, (2) Consider the economic impact resulting from the amount and effect of high salinity water, and (3) Submit a report regarding the committee's activities, findings and recommendations on or before December 31, 2018. This bill was held in Committee.

HB 2556: Environment; Water Quality; Brine (Nutt and six others). *AMWUA Position: Monitor*

Directs the ADEQ Director, in coordination with the ADWR Director, by December 1, 2019 to "review existing data on the use and reuse of high salinity water and identify locations in this state, including hydrologically isolated areas, as potential sources for supplementing water supplies in this state." The bill also directs the ADEQ Director to post the report on ADEQ's webpage. This bill was held in Committee.

SB 1339: Appropriation; WQARF (Peshlakai and 8 others). *AMWUA Position: Support*

This bill appropriates \$15 million from the general fund to the WQARF in fiscal year 2018-19. WQARF is a state-sponsored program established by the Legislature to clean up hazardous soil and groundwater contamination. This bill was held in Committee.