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Senate: NREW DP 4-3-0-0 | 3rd Read 16-12-2-0

House: NREW DPA 6-4-0-0

SB 1172: physical availability credits; water supply

Sponsor: Senator Shope, LD 16

Caucus & COW

Overview

Authorizes a person who owns land with an irrigation grandfathered right, within an active management area (AMA), to permanently retire the land from irrigation use and retain a physical availability credit.

History

The Groundwater Management Code (Code) was enacted in 1980 and established the statutory framework to regulate and control the use of groundwater. Determining who may pump groundwater and how much they may pump is a vital part of groundwater management. In an AMA, a person who was legally withdrawing and using groundwater as of the designation of the AMA or who owns land legally entitled to be irrigated with groundwater has the right to withdraw or receive and use groundwater. The right to withdraw or receive and use groundwater is a grandfathered right. There are three types of grandfathered rights:

- 1) Type 1 non-irrigated grandfathered rights associated with retired irrigated lands;
- 2) Type 2 non-irrigated grandfathered rights associated with retired irrigated lands; and
- 3) Irrigation grandfathered right ([A.R.S. § 45-462](#))(SOS).

A Type 1 right is associated with land permanently retired from farming after January 1, 1965 and converted to a non-irrigation use that has the right to withdraw from and receive 3 acre-feet of groundwater per acre per year if specified criteria are met ([A.R.S. § 45-463](#)).

A Type 2 right is associated with historical pumping of groundwater for a non-irrigation use and equals the maximum amount of irrigated groundwater in any one year between January 1, 1975 and January 1, 1980 ([A.R.S. § 46-464](#)).

An Irrigation grandfathered right is associated with land within an AMA that was legally irrigated with groundwater between January 1, 1975 and January 1, 1980 and has not been retired from irrigation for non-irrigation use. To irrigate means to grow crops for sale, human consumption or livestock or poultry feed by applying water on two or more acres ([A.R.S. §§ 45-402, 45-465](#)).

Provisions

1. Allows a person who owns land, within an AMA, that may be legally irrigated with groundwater under a grandfathered right to permanently retire the land from irrigation in anticipation of future non-irrigation use. (Sec. 1)

<input type="checkbox"/> Prop 105 (45 votes)	<input type="checkbox"/> Prop 108 (40 votes)	<input type="checkbox"/> Emergency (40 votes)	<input type="checkbox"/> Fiscal Note
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2. Permits a person that retires land from irrigation to retain a physical availability credit. (Sec. 1)
3. States that a physical availability credit may be used to withdraw from or receive for the irrigated land a specified amount of groundwater calculated for non-irrigation use if:
 - a) the land has been actively farmed in the three of the last seven calendar years and is permanently retired from irrigation use;
 - b) the new non-irrigation use of water remains appurtenant to the original irrigation acres described in the certificate of grandfathered right; and
 - c) the water is delivered by a municipal provider within an AMA pursuant to a contract that requires the municipal provider to deliver at least the same quantity of water available to the retired original irrigation acres and to withdraw any groundwater that is part of the delivery form within its service area. (Sec. 1)
4. Requires the amount of groundwater per acre that may be withdrawn or received annually to be less than:
 - a) the current maximum amount of groundwater that may be used pursuant to the irrigation grandfathered right for the acre at the time it is retired;
 - b) three acre-feet multiplied by the water duty acres in the farm in which the right is appurtenant divided by the number of irrigation acres in the farm. (Sec. 1)
5. Requires groundwater withdrawn or received using a physical availability credit to be used on the original irrigation acres. (Sec. 1)
6. Allows the balance of the physical availability credit to be used anywhere within the municipal provider's service area if the amount of water calculated is more than needed to meet the water demand on the original irrigation acres. (Sec. 1)
7. States the balance of the physical availability credit is the difference between the amount of water calculated for non-irrigation use and the water demand for use on the original irrigation acres. (Sec. 1)
8. Instructs the Arizona Department of Water Resources (ADWR) Director, in determining whether to issue a certificate of assured water supply or to designate or redesignate a municipal provider as having an assured water supply, to:
 - a) include the amount of groundwater calculated for non-irrigation use that may be withdrawn and used annually;
 - b) include the amount of groundwater calculated for non-irrigation use that may be withdrawn based on the reduction in water use resulting from the transition from an irrigation use to a non-irrigation use and based on that reduction, find that groundwater used meets the physical availability requirements to demonstrate an assured water supply; and
 - c) find that the projected use of the groundwater that is determined to be available for assured water supply is consistent with achievement of the management goal requirements of the AMA.
9. Outlines the ADWR Director's governance of administrative proceedings, rehearing or review and judicial review of final decisions. (Sec. 1)
10. Defines *municipal provider* to mean a city, town, private water company or irrigation district that supplies water for non-irrigation use. (Sec. 1)

11. Removes the effective date by which rules must provide for a reduction in water demand for an application for a designation of assured water supply or a certificate of assured water supply. (Sec. 2)
12. Requires the ADWR Director to find:
 - a) the amount of groundwater calculated that is physically available for assured water supply purposes; and
 - b) the projected use of groundwater that is determined to be available for assured water supply purposes that is consistent with achievement of the management goal. (Sec. 2)
13. Makes technical changes. (Sec. 2)

Amendments

Committee on Natural Resources, Energy & Water

1. Modifies the conditions to use a physical availability credit.
2. Revises the amount of groundwater per acre that can be withdrawn and received annually.
3. Modifies the ADWR Director's determination relating to the physical availability of an assured water supply.
4. Eliminates the ability to use the balance of the physical availability credit anywhere within the municipal provider's service area.
5. Establishes criteria for the ADWR Director to accept an analysis of assured water supply as a valid demonstration of physical availability of groundwater to meet the estimated demand of a proposed development and issue a physical availability credit based on the analysis.
6. Requires the ADWR Director to revise administrative rules relating to extinguishment credits.
7. Allows a holder of a physical availability credit to apply for a variance based on alternative methodology to adjust projected demand for a subdivision.
8. Defines pertinent terms.

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