



ARIZONA HOUSE OF REPRESENTATIVES

Fifty-sixth Legislature
Second Regular Session

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~~

NOW: land division; water; transportation; turf

Sponsor: Senator Shope, LD 16

House Engrossed

Overview

Authorizes a person who owns land, within an active management area (AMA), that may be legally irrigated with groundwater under a grandfathered right to permanently relinquish all or a portion of the irrigation grandfathered right in exchange for a physical availability exemption credit (exemption credit) if specified criteria is met. OR

Makes changes to statutes relating to building permit and land division applications, physical availability exemption credits (exemption credits) and turf and plant installation.

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

Building Permit and Land Division Application Requirements

1. Requires an applicant for a building permit for new construction of a residential single-family home and an applicant for a land division to identify ownership interests in the property. (Sec. 1)
2. Exempts an applicant from identify ownership interest in the property if, at the time of applying for the permit, the applicant provides a copy of the subdivision final plat that indicates an assured water supply and is approved by the municipality where the parcels, lots or fractional interests of the proposed new construction exist. (Sec. 1)
3. Adds outlined questions that an applicant, applying to split a parcel of land, must answer regarding ownership and representation of property that is in the same tax parcel map or subdivision as the lots, parcels or fractional interests that are the subject of the application. (Sec. 2)
4. Adds attestation language that must be included in an application for a land division. (Sec. 2)
5. Specifies that compliance is not essential to the public interest for lots, parcels or fractional interests that have been included with a previous public report approved within the last 10 years where the applicant attests there are no material changes altering the facts of the report. (Sec. 3)
6. Excludes, from statutory compliance requirements, lots, parcels or fractional interests owned by a financial institution as a result of foreclosure that are up for sale and have been included with a previous public report that was approved within the last 10 years and no material changes have occurred within the report. (Sec. 3)

Subdivided Lands and Acting in Concert

7. Specifies, as it relates to subdivision laws, that the following alone are not sufficient to constitute unlawful acting in concert:
 - a) a familial relationship;
 - b) a well share agreement;
 - c) a road maintenance agreement; and
 - d) for a county with a population of less than 500,000 persons the use or referral of the same licensed engineer or registered contractor. (Sec. 2, 3)
8. Specifies that the maximum civil penalty for a subdivider or agent who engages in unlawful practice with respect to the sale or lease of subdivided lands is up to \$2,000 for each lot:
 - a) where a violation occurs if the subdivider does not obtain a public report; or
 - b) if the subdivider obtains a public report that is subsequently revoked and after the revocation commits the violations or engages in unlawful practices. (Sec. 4)

Exemption Credit

9. Allows a person who owns land, within an AMA, that may be legally irrigated with groundwater under a grandfathered right to permanently relinquish all or a portion of the irrigation grandfathered right in exchange for an exemption credit if specified criteria is met. (Sec. 7)

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10. Requires, in an initial AMA with a management goal of safe-yield, the volume of groundwater per acre that may be withdrawn and used annually to be less than:
 - a) the maximum amount of groundwater that a person may use pursuant to an irrigation grandfathered right for the acre at the time it is relinquished; or
 - b) either of the following:
 - i. two acre-feet per irrigation acre in the farm or portion of the farm if the irrigation grandfathered right is relinquished by December 31, 2035; or
 - ii. one and five-tenths of an acre-foot per irrigation acre in the farm or portion of the farm if the irrigation grandfathered right is relinquished on or after January 1, 2036. (Sec. 7)
11. Requires, in an initial AMA without a management goal of safe yield or a subsequent AMA, the volume of groundwater per acre that may be withdrawn and used annually to be less than:
 - a) the maximum amount of groundwater that a person may use pursuant to an irrigation grandfathered right for the acre at the time it is relinquished;
 - b) 50% of the volume of groundwater that may be withdrawn annually per acre pursuant to the holder's irrigation grandfathered right; or
 - c) either of the following:
 - i. two acre-feet per irrigation acre in the farm or portion of the farm if the irrigation grandfathered right is relinquished by December 31, 2035; or
 - ii. one and five-tenths of an acre-foot per irrigation acre in the farm or portion of the farm if the irrigation grandfathered right is relinquished on or after January 1, 2036. (Sec. 7)
12. Instructs the ADWR Director, when issuing an exemption credit, to identify:
 - a) the volume of groundwater per acre that may be withdrawn and used annually in an initial AMA with a management goal of safe-yield;
 - b) the number and location of the acres that are associated with the relinquishment;
 - c) the wells that have been used to serve the irrigation grandfathered right;
 - d) the owner of the land at the time of the relinquishment, which shall be the holder of the physical availability exemption credit; and
 - e) whether an assured water supply is satisfied. (Sec. 7)
13. Exempts, on request of the holder of an exemption credit, the volume of groundwater calculated from the physical availability requirement if all of the following apply:
 - a) the proposed groundwater use associated with an application for an assured water supply is on one or more of the specified locations;
 - b) the applicant for an assured water supply proposes to withdraw groundwater from one or more specified locations; and
 - c) the applicant demonstrates, using an approved method of analysis, that groundwater can be withdrawn to serve the proposed use for 100 years without exceeding the depth of the aquifer or applicable depth-to-static water level. (Sec. 7)
14. Requires the ADWR Director within 90 days, on request from the holder of an irrigation grandfathered right, to make a determination to grant an exemption credit. (Sec. 7)
15. Outlines licensing timeframes and extension requirements. (Sec. 7)
16. Instructs the ADWR Director, before issuing an exemption credit, to:
 - a) notify the holder of the irrigation grandfathered right in writing whether the criteria is satisfied; and

- b) request a written confirmation that the holder of the irrigation grandfathered right would like to proceed with the relinquishment. (Sec. 7)
- 17. Allows, on notice to the ADWR Director, some or all of the exemption credit to be assigned to a municipal provider or a subsequent owner of the land associated with the relinquishment. (Sec. 7)
- 18. Requires the ADWR Director to identify the volumes remaining for the exemption credit if only a portion is applied to a certificate or designation of assured water supply. (Sec. 7)
- 19. States that if a municipal provider who serves land associated with the relinquishment becomes a designated provider, the exemption credit associated with the certificate of assured water supply must be used to support the designation. (Sec. 7)
- 20. Outlines the ADWR Director's governance of administrative proceedings, rehearing or review and judicial review of final decisions. (Sec. 7)
- 21. Outlines the applicable depth-to-static water level requirements for each AMA for the purpose of seeking an exemption from the physical availability requirement for an assured water supply. (Sec. 7)

Turf and Plant Installation

- 22. Prohibits a municipal provider from applying potable water on nonfunctional turf that is installed as part of a new development project or redevelopment project on any applicable portion of property within an AMA. (Sec. 8)
- 23. Prohibits a municipality, in an initial AMA, from adopting or enforcing any requirement that establishes, directly or indirectly:
 - a) minimum turf requirements; or
 - b) the installation of plants not included on the low-water-use and drought-tolerant plant list. (Sec. 8)

Assured Water Supply

- 24. 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. 9)
- 25. Requires the ADWR Director to find that the volume of groundwater that may be withdrawn and used annually in an initial AMA pursuant to an exemption credit is exempt from the physical availability requirements for an assured water supply. (Sec. 9)
- 26. Exempts any volume of groundwater subject to an exemption credit for the purpose of applying for an application to modify a designation of assured water supply in the Pinal AMA. (Sec. 10)

Miscellaneous

- 27. Modifies the affidavit of disclosure form to include specified information. (Sec. 5)
- 28. Repeals and re-enacts Laws 2023, Chapter 77, Section 3 to correct a technical error resulting in a potentially invalid change to statute. (Sec. 6)
- 29. Defines terms (Sec. 7, 8)
- 30. Makes technical changes. (Sec. 2)

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