



ARIZONA HOUSE OF REPRESENTATIVES

Fifty-sixth Legislature
Second Regular Session

Senate: NREW DP 4-2-1-0 | 3rd Read 16-14-0-0

House: NREW DP 5-4-1-0

SB 1243: groundwater sales; online exchange.

Sponsor: Senator Wadsack, LD 17

Caucus & COW

Overview

Establishes a Water Marketplace and outlines the right to sell or lease groundwater.

History

The Groundwater Management Code (Code) was enacted in 1980 and established the statutory framework to regulate and control the use of groundwater. As part of the management framework, the Code designated five active management areas (AMAs): Phoenix, Pinal, Prescott, Tucson and Santa Cruz and currently, there is one subsequent AMA: Douglas (A.R.S. §§ [45-411](#), [45-411.03](#))(ADWR).

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](#), [45-463](#), [45-464](#), [45-465](#)).

Groundwater withdrawn pursuant to a grandfathered right or a groundwater withdrawal permit or from an exempt well may be transported without payment of damages within a sub-basin of an AMA, subject to the limitations on location of use ([A.R.S. § 45-541](#)).

Noxious weed means any species of plant that is destructive and difficult to control or eradicate and includes any species that the Director of the Arizona Department of Agriculture, after investigation and hearing, determines to be a noxious weed ([A.R.S. § 3-201](#)).

Provisions

1. Allows a person with a grandfathered right to groundwater in the Phoenix, Tucson or Pinal AMA to sell, lease or convey any portion of the right to pump groundwater to any other person in the Phoenix, Tucson or Pinal AMA. (Sec. 2)
2. States the water marketplace does not authorize a person to sell, lease or convey the right to pump groundwater in one subbasin for use or withdrawal in another subbasin but groundwater may be transported between subbasins by other means. (Sec. 2)
3. Requires any groundwater withdrawn to be withdrawn at either:

- a) the same location authorized in the original grandfathered right; or
 - b) any other location in the same subbasin if the proposed location of withdrawal complies with ADWR rules relating to locating new or replacement wells in an AMA. (Sec. 2)
4. Instructs a person, who sells, leases or conveys the right to pump groundwater, to notify ADWR and provide specified information related to the transaction on a form prescribed by ADWR. (Sec. 2)
 5. Specifies that the buyer or lessee, for any prescribed sale, lease or conveyance, receives the right to 65% of the total amount of groundwater forgone by a seller or lessor resulting from the transaction. (Sec. 2)
 6. Prohibits, for any sale, 35% of the original grandfathered right conveyed to a seller from being pumped, used or further conveyed. (Sec. 2)
 7. Restricts, for any lease, 35% of the original grandfathered right conveyed to a seller from being pumped, used or further conveyed during the duration of the lease. (Sec. 2)
 8. Requires ADWR, in calculating the amount of groundwater that a seller or lessor may forgo, to use the average amount of water pumped over the preceding 5 years. (Sec. 2)
 9. Specifies that any groundwater conveyed and used is:
 - a) exempt from any replenishment obligation on the part of the buyer or lessee, including a replenishment tax;
 - b) excluded from a municipalities' groundwater use for the purposes of determining the municipalities groundwater allowance;
 - c) deemed consistent with the management goal for the AMA; and
 - d) deemed, for the purpose of obtaining a certificate of assured water supply (Certificate), physically available to the buyer or lessee for the number of years ADWR determines the conveyed groundwater or right to groundwater, whether sold or leased, can be pumped or used at its full amount annually until it is no longer physically available. (Sec. 2)
 10. Allows groundwater that is received or withdrawn to be applied toward obtaining a Certificate. (Sec. 2)
 11. Specifies the percentage of groundwater forgone by a seller that is:
 - a) allocated to the aquifer; and
 - b) treated as inflow for the purpose of water modeling. (Sec. 2)
 12. Provides that groundwater forgone by a seller is permanently retired. (Sec. 2)
 13. Outlines conditions for use and reversion of leased groundwater. (Sec. 2)
 14. States the water marketplace does not apply to water in the subflow zone of a river or stream or water in the cone of depression of a well and must not be construed to modify existing law in any way with respect to determining surface water and groundwater. (Sec. 2)
 15. States the water marketplace does not authorize ADWR or any political subdivision to:
 - a) curtail the scope of existing grandfathered rights unless the rights are sold, leased or conveyed; or

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- b) impose additional requirements or restrictions on the use or exercise of type 2 non-irrigation grandfathered rights. (Sec. 2)
- 16. Requires disclosure of any transaction costs related to the sale, lease or conveyance in a contract for any sale, lease or conveyance. (Sec. 2)
- 17. Instructs ADWR to maintain on its website an online exchange for groundwater and groundwater rights that are transferred, sold, leased or conveyed. (Sec. 2)
- 18. Requires the online water exchange to be publicly accessible and include the information submitted to ADWR. (Sec. 2)
- 19. Requires a person to maintain property and from which groundwater may be sold, leased or conveyed free of noxious weeds, Russian thistles (*Salsola kali*) and blowing dust that creates a threat to health or safety. (Sec. 1)