



ARIZONA STATE SENATE
Fifty-Sixth Legislature, Second Regular Session

AMENDED
FACT SHEET FOR H.B. 2201

Harquahala non-expansion area; groundwater transportation
(NOW: groundwater; credit; transportation; turf; designation)

Purpose

An emergency measure that allows a person that owns outlined land within an active management area (AMA) to permanently relinquish all or a portion of an irrigation grandfathered right in exchange for a physical availability exemption credit. Prescribes requirements and procedures for municipalities and municipal providers relating to an assured water supply and outlines procedures for the transportation of groundwater from the Harquahala Irrigation Non-Expansion Area (INA). Outlines exemptions to *unlawful acting in concert* for the purpose of the sale or lease of subdivision lots or parcels of land. Modifies requirements for applications related to construction and sale of homes and the division of parcels of land.

Background

Subdivided Land

A *subdivision* or *subdivided land* is improved or unimproved land divided or proposed to be divided for the purpose of sale or lease, whether immediate or future, into six or more lots, parcels or fractional interests, including: 1) a stock cooperative; 2) lands divided or proposed to be divided as part of a common promotion plan; and 3) residential condominiums. Leasehold offerings of one year or more are exempt from the classification of subdivision or subdivided lands ([A.R.S. § 32-2101](#)).

Land Division

A county board of supervisors (county BOS) must approve any land divisions of five or fewer lots, parcels or fractional interests, any of which is 10 acres or smaller in size, if the land division meets outlined requirements. A person or group of persons may not act in concert to attempt to avoid the requirements to divide a parcel of land or sell subdivision lots by using a series of owners or conveyances or by any other method that ultimately results in the division of lands into a subdivision or the sale of subdivided land (A.R.S. §§ [11-831](#) and [32-2181](#)).

Irrigation Grandfathered Rights

An irrigation grandfathered right is granted to a person who owns land within an AMA which was legally irrigated in whole or in part with groundwater at any time during the five years preceding January 1, 1980, for initial AMAs, or the date of the notice of the initiation of designation procedures or the call for the election for subsequent AMAs ([A.R.S. § 45-465](#)). *Non-irrigation use* is a use of groundwater other than irrigation use. *Irrigation use* is the use of groundwater on two or more acres of land to produce plants or parts of plants for sale or human consumption, or for use as feed for livestock, range livestock or poultry ([A.R.S. § 45-402](#)).

Assured Water Supply

A person who proposes to offer subdivided lands for sale or lease in an AMA must apply for and obtain a certificate of assured water supply from the Director of the Arizona Department of Water Resources (ADWR) before presenting the plat for approval to the city, town or county in which the land is located, if required, and before filing with the State Real Estate Commissioner a notice of intention to offer such lands for sale or lease, unless the subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an assured water supply ([A.R.S. § 45-576](#)).

In an AMA, a city, town or private water company or irrigation or water conservation district may withdraw groundwater only pursuant to the established groundwater rights, except as provided by a grandfathered right or as otherwise stated ([A.R.S. § 45-491](#)).

Current statute prohibits the groundwater rights and uses of service areas from being construed to enlarge the authority of an irrigation or water conservation district to withdraw and distribute groundwater for municipal or industrial purposes ([A.R.S. § 45-497](#)).

Groundwater Replenishment Obligation

For each active AMA in which member lands or member service areas are or may be located, the irrigation or water conservation district must replenish groundwater in an amount equal to the groundwater replenishment obligation for that AMA. If a parcel of member land is included in the service area of a municipal provider that is not a member service area but that has been designated as having an assured water supply, the parcel of member land has no parcel replenishment obligation, and the irrigation or water conservation district has no groundwater replenishment obligation attributable to that parcel of member land for as long as the designation remains in effect. Additionally, if a parcel of member land is included in the service area of a municipal provider that is a member service area and that has been designated as having an assured water supply, the parcel of member land has no further parcel replenishment obligation ([A.R.S. § 48-3771](#)).

Groundwater Withdrawal from the Harquahala INA

A groundwater replenishment district may lease the use of one or more of the wells from an irrigation district located entirely within the Harquahala INA to withdraw groundwater from a depth to 1000 feet, at an established rate. The state or a political subdivision of the state that owns land eligible to be irrigated in the Harquahala INA may withdraw groundwater from the land for transportation to an initial AMA for its own use or use by the Arizona Water Banking Authority as prescribed ([A.R.S. § 45-554](#)).

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

Unlawful Acting in Concert

1. Specifies that, for the purpose of attempting to avoid subdivision laws by acting in concert to divide a parcel of land into six or more lots or sell or lease six or more lots by using a series of owners or conveyances, any of the following alone is not sufficient to constitute *unlawful acting in concert*:
 - a) a familial relationship;
 - b) a well share agreement;

- c) a road maintenance agreement; or
 - d) for a county with a population of fewer than 500,000 persons, the use of or referral to the same licensed contractor or registered architect, engineer, geologist, home inspector, landscape architect or surveyor.
2. Specifies that, for the purpose of attempting to avoid subdivision laws by acting in concert to divide a parcel of land or sell subdivision lots by using a series of owners or by any other method that ultimately results in the division of the lands into a subdivision or the sale of subdivided lands, any of the following is not sufficient to constitute *unlawful acting in concert*:
- a) a familial relationship;
 - b) a well share agreement;
 - c) a road maintenance agreement; or
 - d) for a county with a population of fewer than 500,000 persons, the use of or referral to the same licensed contractor or registered architect, engineer, geologist, home inspector, landscape architect or surveyor.

Subdivided Land

3. Subjects a subdivider or agent subject to the jurisdiction of the Arizona Department of Real Estate (ADRE) who violates outlined rules or laws or engages in outlined unlawful practices with respect to the sale or lease of subdivided lands to a civil penalty of up to \$2,000 for each lot where the violation occurs, rather than for each infraction.
4. Specifies that, for any sale or lease of subdivided lands which have been approved by ADRE, an infraction that concerns more than one lot in a subdivision is a single infraction.

Land Division

5. Requires an applicant for a building permit for new construction of a residential single-family home to identify any ownership interests in the property that is the subject of the permit.
6. Exempts an applicant for a building permit from requirements relating to the identification of ownership interests if the applicant provides copies of the subdivision final plat indicating assured water supply as approved by the municipality where the parcels, lots or fractional interests exist.
7. Adds, to the qualifications required for a county BOS to approve an application to split a parcel of land, outlined questions 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.
8. Exempts an applicant to split a parcel of land from answering questions relating to ownership or representation of property if the applicant provides a plat of the lots, parcels or fractional interests that are the subject of the application.
9. Requires an applicant for a land division to disclose any ownership interest in the properties that are the subject of the land division application.
10. Prescribes an attestation that must be included in an application for a land division.

11. Adds, to the list of lot creation exemptions, lots, parcels or fractional interests owned by a licensed financial institution in Arizona as a result of foreclosure and are being sold by the financial institution by an Arizona real estate licensee, if limited to those that have been included with a previous public report when the public report was approved within the last 10 years and no material changes have occurred within the public report.
12. Adds a specification to the special order exemption that lots, parcels or fractional interests where compliance is not essential to the public interest or for the protection of buyers include those that have been included with a previous public report approved within the last 10 years where the applicant for an exemption attests that there are no material changes altering the facts of the public report.

Physical Availability Exemption Credit

13. Allows a person who owns land within an AMA that may be irrigated with groundwater pursuant to an irrigation grandfathered right to permanently relinquish all or a portion of the irrigation grandfathered right in exchange for a physical availability exemption credit if:
 - a) the irrigation grandfathered right has been exercised in at least one of the last five calendar years; and
 - b) the person's use of the irrigation grandfathered right complies with the Groundwater Code and the applicable management plan.
14. Requires the volume of groundwater that may be withdrawn and used annually per acre to be the lesser of either:
 - 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) if the irrigation grandfathered right is relinquished by December 31, 2035, two acre-feet multiplied by the retired irrigation acres in the farm or portion of the farm, or if the irrigation grandfathered right is relinquished on or after January 1, 2036, one and five-tenths of an acre-foot multiplied by the retired irrigation acres in the farm or portion of the farm.
15. Requires the Director of ADWR to identify all of the following when issuing a physical availability exemption credit:
 - a) the volume of groundwater that may be withdrawn and used as calculated;
 - 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 must be the holder of the physical availability exemption credit; and
 - e) the Director of ADWR's determination whether the prescribed criteria would be satisfied based on the Director of ADWR's most recent assured water supply projection.
16. Requires the determination to be applied to an assured water supply application that is submitted to ADWR within two years from the date the physical availability exemption credit is issued and to remain valid until the Director of ADWR makes a final decision on the assured water supply application.
17. Requires the volume of groundwater calculated, on request of the holder of a physical availability exemption credit and for purposes of an application for an assured water supply, to be exempt from the requirement to demonstrate that the groundwater supply is physically available if:
 - a) the proposed groundwater use associated with an application for an assured water supply must be on one or more of the following locations:

- i. the retired irrigation acres;
 - ii. land that is under common ownership and contiguous to the retired irrigation acres, including land separated by a barrier, road, highway, easement or right-of way; or
 - iii. land within one mile of the exterior boundary of the retired irrigation acres;
 - b) the applicant for an assured water supply proposes to withdraw groundwater from one or more of the following locations:
 - i. wells that were used to serve the irrigation grandfathered rights;
 - ii. wells located within one mile of any well that was used to serve the irrigation grandfathered right;
 - iii. wells located on the acres associated with the relinquishment; or
 - iv. wells located within one mile of the acres associated with the relinquishment; and
 - c) the applicant demonstrates, using a method of analysis approved by the Director of ADWR, that groundwater can be withdrawn to serve the proposed use for 100 years without exceeding the depth of the aquifer or the irrigation grandfathered right, whichever is less.
18. Requires the entire parcel, for the purposes of land within one mile of the exterior boundary of the retired irrigation acres, to be included.
19. Prohibits the Director of ADWR from considering other withdrawals of groundwater that exceed the depth of the aquifer or the applicable depth-to-static water level during that 100-year period.
20. Allows the applicant, for groundwater withdrawals located within one mile of any wells that was used to serve the outlined irrigation grandfathered right, to rely on the Director of ADWR's most recent assured water supply projection to satisfy this requirement.
21. Requires the Director of ADWR, on request from the holder of an irrigation grandfathered right, to make a determination to grant a physical availability exemption credit within an overall time frame of 90 days pursuant to prescribed licensing timeframes.
22. Requires the overall time frame to include 30 days for an administrative completeness review and 60 days for a substantive review.
23. Allows the time frame to be extended by mutual agreement.
24. Requires the Director of ADWR, before the Director of ADWR issues a physical availability exemption credit, to notify the holder of the irrigation grandfathered right in writing whether the prescribed criteria would be satisfied based on the Director of ADWR's most recent assured water supply projection and request written confirmation that the holder of the irrigation grandfathered right would like to proceed with the relinquishment.
25. Allows some or all of the credit, on notice to the Director of ADWR by the holder of a physical availability exemption credit, to be assigned to a municipal provider or to a subsequent owner of the land associated with the relinquishment.
26. Requires the Director of ADWR, if only a portion of a physical availability exemption credit is applied to a certificate of assured water supply or a designation of assured water supply issued, to identify the volumes remaining for the physical availability exemption credit.
27. Requires the physical availability exemption credit associated with the certificate, after the issuance of a certificate of assured water supply based on a physical availability exemption credit, if a municipal provider that serves land associated with the relinquishment becomes a designated provider, to be used to support the designation.

28. Requires the applicable depth-to-static water level for each AMA, for the purposes of seeking an exemption from the physical availability requirement for an assured water supply, to be:
- a) in the Pinal AMA, 1,100 feet below land surface; or
 - b) in all other AMAs, 1,000 feet below land surface.

Assured Water Supply for Outlined Exemption Area

29. Allows the Director of ADWR, on application to ADWR by a city or town, to designate a portion of the city or town that is located both in the area delineated for exemption and in the Phoenix AMA as having an assured water supply if:
- a) the portion of the city or town seeking an assured water supply designation is located entirely within an irrigation district or water conservation district;
 - b) the city or town seeking an assured water supply designation has contracted with the irrigation district or water conservation district for a term of not less than 100 years under which the city or town will receive water that the landowners in the district have the right to use on their lands and will treat and deliver the water for exclusive use on irrigation or water conservation district lands for municipal use;
 - c) sufficient surface water or effluent of an adequate quality will be continuously available to satisfy the portion of a city's or town's proposed water needs for up to 100 years; and
 - d) the city or town demonstrates the financial capability to construct the water facilities, including delivery systems, storage facilities and treatment works, necessary to make the supply of water available for the proposed use.
30. Allows the Director of ADWR to accept evidence of the construction assurances to satisfy the outlined requirement.
31. Allows the Director of ADWR to review the determination that a portion of a city or town has an assured water supply.
32. Allows the Director of ADWR to determine that a portion of a city or town does not have an assured water supply.

Replenishment Obligation for Outlined Member Land

33. Allows, after the effective date of this legislation, a municipal provider that submits an application for a new designation of assured water supply pursuant to adopted rules in the Phoenix AMA that relies on a member service area agreement to elect for all parcels of member land in the municipal service area to retain a replenishment obligation.
34. Requires an irrigation or water conservation district, for parcels of member land that retain a replenishment obligation, to replenish groundwater in an amount equal to the obligation applicable to that parcel of member land.
35. Requires the municipal provider, if a municipal provider's service area contains member lands and the municipal provider applies to become designated as having an assured water supply, to notify the irrigation or water conservation district whether it chooses to assume the member lands' replenishment obligation under the municipal provider's designation member service agreement.
36. States that the outlined regulations do not authorize new member lands to be enrolled within the municipal provider's service area after the service area is designated as having an assured water supply.

37. Requires the designation of assured water supply and member service area agreement for the municipal provider, if a municipal provider chooses to allow parcels of member land within its service area to retain the parcel replenishment obligation, to provide that the parcels of member land retain the parcel replenishment obligation for the lesser of either:
 - a) 10 years from the date of commencement of the first term of the designation; or
 - b) the first term of the designation.
38. Requires the municipal provider, on the lesser of the outlined conditions, to begin to assume an escalating percentage of the groundwater delivered to parcels of member land and any associated parcel replenishment obligation and provide the information to the water conservation district in the annual reports.
39. Allows the municipal provider, in the first year of reporting, to assume at least 10 percent of the total reported groundwater delivered to each parcel of member land.
40. Requires the municipal provider, in each successive year, to assume at least an additional 10 percent so that within 10 years all reported groundwater delivered and parcel replenishment obligations are assumed by the municipal provider and the parcels of member land to have no further parcel replenishment obligation.
41. Requires the municipal provider, after a municipal provider assumes all groundwater deliveries from all parcels of member land to cease submitting reports to the irrigation or water conservation district for parcels of member land while the municipal provider's designation of assured water supply remains valid.
42. Allows, if a municipal provider assumes the parcel replenishment obligation of member lands pursuant to a designation of assured water supply that relies on a member service area agreement, any groundwater allowance or extinguishment credits, as provided in rules adopted by ADWR, associated with the member lands assumed by the municipal provider to be used as follows:
 - a) if the parcel replenishment obligation and reported groundwater delivered to the member lands are entirely assumed on the initial designation of an assured water supply, the remaining extinguishment credits or groundwater allowance associated with the member lands may be used by the municipal provider as authorized pursuant to a member service area agreement; or
 - b) if the parcel replenishment obligation and reported groundwater delivered to the member lands are assumed in stages as provided, the municipal provider may use the groundwater allowance and extinguishment credits for the member lands in the same manner as authorized in the applicable agreement and notice of municipal reporting requirements if the groundwater is being reported as delivered to member lands, and thereafter, any remaining extinguishment credits or groundwater allowance may be used by the municipal provider as authorized under the member service area agreement.

Groundwater Transportation from Harquahala INA

43. Allows a prescribed entity that owns land eligible to be irrigated in the Harquahala INA, rather than the state or a political subdivision of the state, to withdraw groundwater from the land for transportation to a location and for outlined purposes, rather than to an initial AMA for its own use or use by the Arizona Water Banking Authority:
 - a) by a public service corporation, if all costs associated with withdrawing, transporting and delivering groundwater away from the Harquahala INA are collected from the customers

- of the public service corporation's multi-county water conservation district where the transported groundwater is used;
- b) if before the withdrawal of groundwater from the Harquahala INA or the effective date of this legislation, whichever is later, the eligible entity has demonstrated compliance with outlined criteria using a hydrological study;
 - c) if before the withdrawal of groundwater from the Harquahala INA or the effective date of this legislation, whichever is later, the eligible entity installs water measuring devices, or other similarly reliable and accessible methods as approved by ADWR to determine the volume of groundwater withdrawn from all relevant wells and transported out of the Harquahala INA by pipelines, canals or conduits; and
 - d) if before the withdrawal of groundwater from the Harquahala INA or the effective date of this legislation, whichever is later, the eligible entity submits a monthly report to ADWR containing the:
 - i. volume of groundwater the entity withdrew from the Harquahala INA in the preceding month;
 - ii. volume of groundwater the entity transported out of the Harquahala INA in the preceding month; and
 - iii. end use or destination of groundwater the entity transported out of the Harquahala INA in the preceding month.
44. States that the entities eligible to transport groundwater away from the Harquahala INA include:
- a) the state;
 - b) a political subdivision of the state; and
 - c) a public service corporation that is regulated by the Arizona Corporation Commission and that holds a certificate of convenience and necessity for water service.
45. Requires the Director of ADWR to adopt rules to implement the transportation of groundwater withdrawn from the Harquahala INA, including for the reporting of the transported groundwater.
46. Requires the Director of ADWR to prescribe the contents of the hydrological study that is submitted with the application.
47. States that the locations and purposes eligible to receive groundwater transported away from the Harquahala INA include:
- a) an initial AMA for use by an eligible entity or the Arizona Water Banking Authority; and
 - b) any location in La Paz County for use by an eligible entity.
48. Requires ADWR, by July 1 of each year, to submit a report to the Governor, the President of the Senate and the Speaker of the House of Representatives, and to provide a copy of the report to the Secretary of State, that includes the:
- a) total amount of groundwater all eligible entities withdrew from the Harquahala INA in the preceding year;
 - b) total amount of groundwater each eligible entity withdrew from the Harquahala INA in the preceding year delineated by entity;
 - c) total amount of groundwater all eligible entities transported from the Harquahala INA in the preceding year;
 - d) total amount of groundwater each eligible entity transported from the Harquahala INA in the preceding year delineated by entity;

- e) end use or destination of all groundwater all eligible entities transported from the Harquahala INA in the preceding year; and
- f) end use or destination of all groundwater all eligible entities transported from the Harquahala INA in the preceding year delineated by destination or end use.

Turf

- 49. Prohibits a municipal provider, on or after January 1, 2026, from applying potable water on nonfunctional turf that is installed as part of a new development project or redevelopment project on any portion of applicable property within an initial AMA.
- 50. States this prohibition does not:
 - a) preclude a municipality from adopting requirements that are more restrictive than the requirements regarding applying potable water on nonfunctional turf; or
 - b) impair vested rights to the use of water.
- 51. Prohibits a municipality located in an initial AMA, notwithstanding any other law, from adopting or enforcing any requirement establishing, directly or indirectly:
 - a) minimum turf requirements except for functional turf requirements that are associated with public recreational use areas or other public space that is regularly used for civic, community or recreational purposes, including playgrounds, sports fields, cemeteries, schoolyards and storm water management; and
 - b) the installation of plants that are not included on the low-water-use and drought-tolerant plant list that is published by ADWR for the most current management plan in the initial AMA.

Miscellaneous

- 52. Exempts ADWR from rulemaking requirements for one year for the purposes of groundwater transportation from the Harquahala INA.
- 53. Requires ADWR to amend adopted rules for the incorporation of extinguishment credits and groundwater allowance associated with member land in a designation of assured water supply consistent with outlined regulation.
- 54. Defines terms.
- 55. Makes technical and conforming changes.
- 56. Becomes effective on signature of the Governor, if the emergency clause is enacted.

Amendments Adopted by the Committee

- 1. Allows a prescribed entity that owns land eligible to be irrigated in the Harquahala INA to withdraw groundwater from the land for transportation to a location and for outlined purposes if before the withdrawal of groundwater from the Harquahala INA or the effective date of this legislation, whichever is later, the eligible entity has demonstrated compliance with outlined criteria using a hydrological study.
- 2. Makes technical changes.

Amendments Adopted by the Committee of the Whole

- Stipulates that a public service corporation that is regulated by the Arizona Corporation Commission and that holds a certificate of convenience and necessity for water service, rather than for water service in an initial AMA, is eligible to transport groundwater away from the Harquahala INA.

Amendments Adopted by Additional Committee of the Whole

1. Adds the ability for a person that owns land within an AMA that may be irrigated with groundwater pursuant to an irrigation grandfathered right to permanently relinquish all or a portion of the irrigation grandfathered right in exchange for a physical availability exemption credit if the outlined conditions are met.
2. Prescribes requirements necessary for a physical availability credit to be used to withdraw groundwater from the land for non-irrigation use.
3. Prescribes various requirements for the Director of ADWR when determining the existence of an assured water supply on non-irrigation lands.
4. Adds the ability for the Director of ADWR, on application to ADWR by a city or town, to designate a portion of the city or town that is located both in the area delineated for exemption and in the Phoenix AMA as having an assured water supply if outlined conditions are met.
5. Adds the ability for, after the effective date of this legislation, a municipal provider that submits an application for a new designation of assured water supply pursuant to adopted rules in the Phoenix AMA that relies on a member service area agreement to elect for all parcels of member land in the municipal service area to retain a replenishment obligation.
6. Outlines prohibitions on turf installation for individual persons and for the adoption or enforcement of municipal turf requirements.
7. Defines terms.
8. Makes technical and conforming changes.

Amendments Adopted by Additional Committee of the Whole #2

1. Adds exemptions to unlawful acting in concert for the purpose of the sale or lease of subdivision lots or parcels of land.
2. Subjects a subdivider or agent who violates outlined rules or laws to a civil penalty of up to \$2,000 for each lot where the violation occurs, rather than for each infraction.
3. Modifies requirements for applications related to construction or sale of homes and the division of parcels of land.
4. Requires the Director of ADWR to identify, when issuing a physical availability exemption credit, the Director of ADWR's determination whether the outlined criteria would be satisfied based on the Director of ADWR's most recent assured water supply projection.

5. Requires the prescribed determination to be applied to an assured water supply application that is submitted to ADWR within two years from the date the physical availability exemption credit is issued and to remain valid until the Director of ADWR makes a final decision on the assured water supply application.
6. Requires the Director of ADWR, before issuing a physical availability exemption credit, to notify the holder of the irrigation grandfathered right in writing whether the prescribed criteria would be satisfied based on the Director of ADWR's most recent assured water supply projection and request written confirmation that the holder of the irrigation grandfathered right would like to proceed with the relinquishment.
7. Prohibits a municipal provider, on or after January 1, 2026, from applying potable water on nonfunctional turf that is installed as part of a new development project or redevelopment project on any portion of applicable property within an initial AMA.
8. States that the above prohibition does not preclude a municipality from adopting requirements that are more restrictive than the requirements regarding applying potable water on nonfunctional turf.
9. Prohibits a municipality located in an initial AMA, notwithstanding any other law, from adopting or enforcing any requirement establishing, directly or indirectly, the outlined requirements.
10. States that the above prohibition must not impair vested rights to the use of water.
11. Defines terms.
12. Adds an emergency clause.

House Action

NREW 2/13/24 DPA 7-2-0-1
3rd Read 2/26/24 33-23-3-0-1

Senate Action

NREW 3/13/24 DPA 4-3-0
3rd Read 5/14/24 13-11-6

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