

Groundwater Regulation in Arizona: Legal Pathways for State and Local Conservation Efforts

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The Fine Print

- This presentation is for educational purposes only and should not be taken as legal advice. I am not your lawyer, and the Attorney General of Arizona is not your lawyer.
- This presentation has been vetted by the Attorney General's Office but ultimately the conclusions are my own.
- If you have a legal question, I recommend you consult an attorney.



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A Bit About Me

- Attorney-Consultant for Arizona Attorney General's Office
- Born and raised in Phoenix.
- Energy economist, consumer-focused utility consultant, and now, lawyer.
- Favorite Arizona waterbody: Lake Roosevelt



Presentation Roadmap

- Contextualizing groundwater use in Arizona
- A (brief) history of groundwater regulation in Arizona
- The Groundwater Management Act
- State Agencies' roles in Arizona's groundwater
- State-level options to protect groundwater
- Local options to protect groundwater
- The bottom line
- Questions



Table Setting: Groundwater in Arizona



- Groundwater supplies approximately 40% of Arizona's water
- Reliance on groundwater likely to increase in years ahead, at least in certain areas of the state.
- Vast majority of state's groundwater basins are not subject to regulation beyond "reasonable use."
- Overpumping in most basins, even those controlled by Active Management Area (AMA) or Irrigation Non-Expansion Area (INA) rules.



A Brief History of Groundwater Regulation in Arizona



- Pre-Statehood
- *Brister v. Cheatam* (1952)
 - Reasonable use doctrine imposed
- *Farmers Investment Company v. Bettwy* (1976)
 - Reasonable use limits transportation of water off-basin



A Brief History, Cont.



- Groundwater Management Act (1980)
- *Town of Chino Valley v. City of Prescott* (1981)
- *Brady v. Abbott Laboratories* (2006)
- *Southwest Sand & Gravel v. Central Arizona Water Conservation District* (2009)



The Groundwater Management Act (GMA)

“The legislature finds that the people of Arizona are dependent in whole or in part upon groundwater basins...and that in many basins and sub-basins withdrawal of groundwater is greatly in excess of the safe annual yield and that this...is threatening to do substantial injury to the general economy and welfare of this state and its citizens.”

- A.R.S. 45-101



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State Agencies Involved in Groundwater Management

- Department of Water Resources
 - Primary regulatory responsibility
- Department of Environmental Quality
 - *Water quality*
- State Lands
 - Less of a role than pre-GMA
- Attorney General's Office
 - Enforcement



State Options to Improve Groundwater Conservation



- New legislation
- New regulations, e.g. from DWR or DEQ
- Lawsuits

Local Options to Improve Groundwater Conservation

- Conservation easements
- Zoning tools
- Special Districts (ARS Title 48)
- Conservation incentives
- Lawsuits



*Orme Ranch in Yavapai
County*



**City of Prescott
Water
Conservation**



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The Bottom Line

- Legal avenues to protect groundwater are available but are downstream from political questions about resource use.
- Many legal conservation options, e.g., declaring a new zoning district, are discretionary, further emphasizing the role of politics.



Questions

- How can public trust doctrine be used to improve rural groundwater management?
- When can citizens initiate litigation to protect groundwater?
- How can citizens make DWR pay attention to their public comments in AMA management plan proceedings?
- What options are available to address domestic wells in the Prescott AMA going dry due to unregulated pumping outside the AMA?



Questions, Cont.

- What are the statutes that prevent or allow special districts to regulate water outside of AMAs?
- What are the laws that regulate water use by mining outside of AMAs, and inside of AMAs?
- What legislation is needed to block future export of rural groundwater (in the form of hay, etc) to foreign entities?



Other Questions?



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Thank You!

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