

Water Resources Development Commission

Supplemental Report



September 27, 2012

Water Resources Development Commission Members

Member	Representing
Bas Aja	Agriculture - Statewide
Kathleen Ferris	Arizona Municipal Water Users Association
David Modeer	Central Arizona Water Conservation District
Pat Call	Cochise County/Southern Arizona
Lyn White	Industry - Statewide
John Lewis	Inter Tribal Council of Arizona, Inc.
Maureen George	Mohave County/Northwest Arizona
Ray Benally	Navajo Nation
David Brown (Co-chair)	Northeastern Arizona
Ron Doba	Northern Arizona Municipal Water Users Association
Cliff Neal	Phoenix, City of
David Snider	Pinal County
John Sullivan	Salt River Project
Warren Tenney	Southern Arizona Water Users Association
Wade Noble	Southwest Colorado River Communities
Pat Graham	The Nature Conservancy
Chris Avery	Tucson, City of (Tucson Water Department)

Water Resources Development Commission *Ex officio* Members

Steve Olea	Arizona Corporation Commission
Don Butler	Arizona Department of Agriculture
Michael Fulton	Arizona Department of Environmental Quality
Sandra Fabritz-Whitney (Chair)	Arizona Department of Water Resources
Larry Voyles	Arizona Game and Fish Department
Maria Baier	Arizona State Land Department
Kevin Kinsall	Governor Jan Brewer's Office
Ray Suazo	U.S. Bureau of Land Management
Randy Chandler	U.S. Bureau of Reclamation

Former Water Resources Development Commission Members

Herb Guenther (Chair)	Arizona Department of Water Resources
Tom Buschatzke (Co-chair)	City of Phoenix

Water Resources Development Commission Advisors

Chris Udall	Agri-Business Council
Tom Farley	Arizona Association of REALTORS
Jim Klinker	Arizona Farm Bureau
Gary Hix	Arizona Water Well Association
Craig Sullivan	County Supervisors Association of Arizona
Spencer Kamps	Home Builders Association of Central Arizona
Ray Jones	Water Utility Association of Arizona

ACRONYMS AND ABBREVIATIONS

AMA	Active Management Area
A.R.S.	Arizona Revised Statutes
bls	below land surface
Committee	Legislative Recommendations Committee
Final Report	Final Report of the WRDC dated October 2011
ITCA	Inter Tribal Council of Arizona
RWAA	Regional Water Augmentation Authority
WIFA	Water Infrastructure Finance Authority
WRDC	Water Resources Development Commission
WSDR Fund	Water Supply Development Revolving Fund

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INTRODUCTION AND BACKGROUND

In 2010, the Arizona State Legislature passed House Bill 2661 that established the Water Resources Development Commission (WRDC). The WRDC was given the task of assessing Arizona's demand for water and the supplies available to meet those demands for the next 25, 50, and 100 years and presenting that information in a final report. In October 2011, the WRDC submitted its final report (Final Report) on water supply and demands. As discussed in the Final Report, the WRDC further recommended continued development, evaluation and prioritization of potential solutions or legislative proposals to assist water users in meeting future demands. The WRDC tasked the Legislative Recommendations Committee (Committee) with continuing the discussions regarding development of additional recommendations until the sunset date of the WRDC, September 30, 2012.

The Committee began meeting late in 2011 and developed an Interim Memorandum that was presented to the WRDC in April 2012. The Interim Memorandum described the work of the Committee, detailed its recommendations and summarized a WRDC Project Proposal Matrix. The WRDC Project Proposal Matrix (see Appendix A) is not intended to be a comprehensive list of all water supply projects necessary to meet all projected demands; it should only be utilized to understand the scale, magnitude and projected timing of the types of projects being considered statewide. The WRDC has not evaluated these projects to determine their legal, financial, political or environmental viability and the WRDC is not requesting funding for any specific project from this list. The matrix indicated that the upfront capital funding needs for the projects ranges from approximately \$1.3 billion within the five active management areas (AMA) to approximately \$1.8 billion outside the AMAs over the next 50 years.

In June of 2012, the co-chairs of the WRDC received a letter from Speaker of the House Andy Tobin that provided additional direction to the WRDC. In this letter, Speaker Tobin strongly urged the WRDC "to adopt meaningful statewide water recommendations before its termination date" and reminded the members to "focus, in particular, on the task of identifying potential mechanisms to finance the acquisition of water supplies and any infrastructure necessary".

The following sections describe the recommendations of the WRDC.

Recommendation I: Authorize the formation of Regional Water Augmentation Authorities to assist local communities in developing future water supplies and water supply infrastructure

The WRDC has concluded that there will be future water supply-demand imbalances in the state and that water supply and infrastructure projects will be needed. Members have reached consensus that formation of Regional Water Augmentation Authorities (RWAA) should be authorized and that RWAA's cannot be formed pursuant to any existing statutory framework. Therefore, authorization for formation of RWAA would require new legislation.¹

¹ Nothing in this report is intended to be a recommendation to alter existing state and federal law governing rights to surface water and groundwater.

During discussions regarding RWAA formation, the WRDC deliberated issues raised by Tribal entities. The Tribes are concerned that they could potentially be negatively impacted by a RWAA's activities and they also believe that they may be able to provide benefits if they partnered with a RWAA. Out of the deliberations, a change was made to allow a Tribe to be a member of an RWAA. Despite extensive deliberation, the WRDC did not reach agreement on the following language developed by the WRDC Tribal working group, largely because the WRDC believed that some of the concerns raised by the Tribes were already addressed in the recommendations and in existing law:

- A RWAA shall respect the sovereignty of all Tribal governments.
- Upon the request of an Arizona Tribe, a RWAA shall promptly meet and confer with the Tribe to: (1) discuss potential opportunities to partner with the Tribe under such terms as may be mutually agreeable to the Tribe and the RWAA; (2) seek to resolve in advance Tribal concerns about the RWAA's planned actions or projects, including but not limited to, potential impacts on Tribal water rights and resources, Tribal sacred sites, traditional cultural properties and Tribally sensitive species.
- Concurrently with the notice to the Board of Supervisors of the RWAA formation, the RWAA shall provide notice of the RWAA formation to the office of the Chairperson of each Arizona Indian Tribe with a copy of the organization documents that describe the authority, its membership, the water supply issues to be addressed by the RWAA, and the proposed locations of uses of water supplied by the RWAA.
- Any aggrieved Arizona Tribe may contest the formation of the RWAA.
- Maintain a list of interested persons and any Arizona Tribes who have requested to receive notices from the RWAA, and provide written notice of the following (via mail or email) to the person or persons, including the person or persons designated by any Arizona Tribe: (1) any public meetings to be held by the RWAA; (2) the completion and availability of written studies on the water supply projects to be developed by the RWAA or conducted by or on behalf of the RWAA; (3) the submission of any final application for a permit or approval to be issued by any state or federal agency or department that requires public notice by the state or federal agency or department.

The WRDC also discussed five primary principles that would need to be addressed legislatively with respect to creation of a RWAA: membership; formation; governance; powers and duties of the authority; and revenues and financing. Discussion regarding specific concepts within each of the first four principles follows. Specific concepts regarding the fifth principle are discussed in Recommendation II.

RWAA Principle: Authority Membership

1. Voluntary
2. Must share in the costs of financing a project and services of the authority
3. Any municipality regardless of whether it owns and operates a water treatment or distribution system
4. Any Title 48 entity that has the authority to treat and distribute water for domestic, commercial and industrial purposes

5. Any Title 45 county water augmentation authority
6. Any Title 45 county water authority
7. Counties
8. Private water companies
9. Other water-centered Title 48 entities
10. Private entities
11. Members do not have to be adjoining/coterminous
12. Arizona Indian Tribes
13. Arizona State Land Department

RWAA Principle: Authority Formation

1. Two or more eligible entities, at least one of which is a public agency, may form an authority. The authority must have a clear public purpose. Each eligible entity must adopt a resolution approving its membership in and establishment of the authority.
2. The authority shall notify the board of supervisors of each county in which a proposed use of water from the authority will be located of the authority's formation, and file with each board of supervisors organizational documents that describe the authority, its membership, the water supply issues to be addressed by the authority, and the proposed locations of uses of water supplied by the authority.
3. The authority shall publish a notice of the authority's formation once each week for two consecutive weeks in a newspaper of general circulation in each county in which a proposed use of water from the authority will be located.
4. Any aggrieved person may protest the formation of the authority by filing an action in the superior court of any county in which a proposed use of water from the authority will be located. Any protest must be filed within 30 days of the second publication of the notice. The grounds for objection are limited to whether the formation of the authority occurred in substantial compliance with the authorizing statutes.
5. The superior court shall determine whether the formation of the authority occurred in substantial compliance with the authorizing statutes.
6. The formation of the authority is lawful and conclusive against all persons if an action is not filed as provided above, or if an action is filed, the action is unsuccessful.

RWAA Principle: Authority Governance

1. Board of Directors
 - a. Each member would be entitled to appoint one member to the Board of Directors.
 - b. Each Director shall serve at the pleasure of the member who appointed the Director.
2. The authority has the rights and immunities of a municipal corporation that are granted by the constitution and the statutes of this state, including immunity of its property and bonds from taxation.
3. The authority is a political subdivision of the state subject to the laws affecting political subdivisions, including the Open Meeting Laws and public records statutes.

RWAA Principle: Authority Powers and Duties

1. Plan, design, construct, own and operate water projects
2. Acquire and sell water, except may not engage in the retail sale of water²
3. Acquire, hold and sell water rights
4. Exercise the power of limited eminent domain authority in accordance with A.R.S. Title 12, Chapter 8, Article 3. The power of eminent domain shall be limited to the condemnation of real property necessary for pipelines, other infrastructure and easements for the authority's water projects. The authority may not exercise the power of eminent domain to:
 - Condemn water, water rights, wells or existing water systems.
 - Condemn land owned by another governmental entity.
 - Acquire electrical facilities.
 - Condemn land for purposes of drilling one or more wells.
5. Use existing public rights-of-way and public easements consistent with the underlying purpose and authority of the right-of-way or easement
6. Lease and exchange water
7. Acquire, hold and assign long-term storage credits
8. Sue and be sued
9. Employ necessary staff
10. Charge fees for services and water sales
11. Negotiate agreements to use facilities
12. Provide for payment of debts
13. Borrow money (see additional discussion regarding Revenues and Financing in second recommendation)
14. Issue revenue bonds and pledge revenues of the authority for the repayment of the bonds (see additional discussion regarding Revenues and Financing in second recommendation)
15. Enter into contracts, including contracts for services with private entities
16. Cooperate with other public and private entities, including the state and political subdivisions of the state
17. Acquire and lease real and personal property
18. Make investments
19. Transport and deliver water
20. Acquire electrical power for authority purposes
21. Treat water if treatment does not conflict with another entity's jurisdiction and the entity consents to treatment
22. Partner with Tribes
23. Partner with federal agencies

² Retail is intended to mean that the authority may not sell water directly to customers of a municipal water provider without the municipal provider's consent.

Recommendation II: Authorize the RWAA to obtain funding from revenue bonds, user fees, membership fees, WIFA funds, grants, proceeds from loans or advances, capital contributions from private parties, and other sources except for ad valorem taxes and general obligation bonds

The WRDC agreed that financial assistance will be necessary to construct water supply projects within the state. The following are specific concepts related to the sources of funding identified for a RWAA.

RWAA Principle: Revenues and Financing

1. Revenue bonds to finance the development and construction of water projects, including the acquisition of water and water rights. The development of revenue bonding power for the authority will require the advice of bond experts and should be done in the context of drafting legislation to enable the establishment of RWAA. Following is a list of the types of provisions that could be considered:
 - a. Authority to issue revenue bonds and the purposes for which bonds may be issued.
 - b. Process for issuing revenue bonds:
 - Resolution of Board of Directors: required content, including a description of the undertaking/project to be financed by the bonds.
 - Public notice of and hearing on the resolution.
 - c. Information required to be included in the bonds, such as interest rate, due date, registration of bonds, etc.
 - d. Provisions of the bond sale.
 - e. Sources of revenue that may be pledged to repay bond holders.
 - f. Authority to impose fees and charges to help pay the bonds when due.
 - g. Statement that the bonds are not an obligation of any member of the Authority or the state or any political subdivision of the state.
 - h. Statement of the statutes controlling the validity of the bonds.
 - i. Qualification of bonds to be a legal investment of other public agencies.
 - j. Authority to issue refunding bonds for outstanding bonds.
 - k. Authority to partner with other public entities in issuing bonds.
 - l. Any minimum required investment grade rating for the bonds.
2. User fees, to pay for the cost of operating and maintaining water projects and repay revenue bonds.
3. Membership fees, to pay for overhead, administrative and managerial costs of the Authority and repay revenue bonds.
4. Eligibility to apply for Water Infrastructure Finance Authority (WIFA) technical assistance and loans, including the Clean Water Revolving Fund, the Drinking Water Revolving Fund and the Water Supply Development Revolving Fund (WSDR Fund).
5. Grants
6. Proceeds from loans or advances, except that the Authority may borrow money only at commercially reasonable interest rates.
7. Capital contributions from private parties.

8. Other sources of revenue as determined by the governing body, except for ad valorem taxes and general obligation bonds.

Recommendation III: Authorize statutory amendments to permit integration of Regional Water Augmentation Authorities into Title 49, Chapter 8 regarding the Water Supply Development Revolving Fund

The WSDR Fund was created by the Arizona legislature in 2007 after multi-year discussions by the Statewide Water Advisory Group (SWAG). The purpose of the WSDR Fund, administered by the WIFA, is to provide low interest rate loans to water providers for the acquisition of water supplies and development of water infrastructure. As discussed in Recommendation II, this fund is a potential source of monies for a RWAA to utilize, and may be the primary source for large-scale projects. The WRDC has reached agreement that several actions are necessary to allow a RWAA to be eligible for loans from the WSDR Fund.

It is important to note that the WRDC does not intend for this list of statutory amendments to be all inclusive. Continued evaluation of pertinent rules and statutes will be needed to make conforming changes and take into account the diverse nature of projects that may be undertaken by a regional authority.

Recommendation III(A): Amend Title 49, Chapter 8 to make a RWAA eligible to receive funding from the WSDR Fund

Under current law, only a “water provider”, is eligible for funding from the WSDR Fund. The WRDC recommends making a RWAA an entity eligible to receive funding from the WSDR Fund.

Recommendation III (B): Amend §49-1273 to provide that the WSDR Fund may not be used to provide financial assistance for water service to any subdivided land or municipal provider that has not demonstrated an adequate or assured water supply

When the enabling statutes for the WSDR Fund were being deliberated, an important component was insuring that entities who accessed monies from the fund were instituting strong water management practices. This amendment is a modification of the current law, which provides that the monies in the fund shall not be used to provide financial assistance to a water provider unless the water provider is located in a county or a city or town that has adopted the adequate water supply requirement, or is located within an AMA. By this amendment, the WSDR Fund may be utilized to provide financial assistance for water service to any subdivided land or municipal provider that has demonstrated either an adequate or assured water supply.

A RWAA is not a water provider, as defined by A.R.S. § 49-1201, and may have members located in more than one county or outside of a city or town. This amendment ensures that the adequate or assured water supply requirement of the WSDR Fund applies to a RWAA so that a RWAA is not prevented from applying for funds because it does not meet the conditions of current law.

Recommendation III(C): Amend §49-1275 to provide for a loan repayment term of up to 50 years

Under current law, loans from the WSDR Fund must be repaid within 30 years. When loans are made to a RWAA, this may be an unreasonable repayment period due to the scope and magnitude of the types of projects that may be undertaken by a RWAA.

Recommendation III(D): Amend §49-1202, Establishing the Water Supply Development Revolving Fund Committee, to add one member appointed by the governor to represent municipalities with populations of more than one hundred thousand persons from a county with a population of eight hundred thousand persons or more but less than one million five hundred thousand persons

The WSDR Fund Committee has the responsibility of evaluating and approving applications for funding from the WSDR Fund. Because applications may be received for projects statewide, this amendment is necessary to insure that the WSDR Fund Committee's composition is broad and representative of statewide interests.

Recommendation IV: Request that the Arizona Department of Water Resources' Notice of Proposed Rulemaking to Amend Arizona Administrative Code Rules R12-15-701, R12-15-712, R12-15-713, R12-15-714, R12-15-715, and R12-701-716 be exempted from the gubernatorial moratorium on rulemaking

Senate Bill 1575, enacted in 2007, gave counties, cities and towns authority to require a demonstration of adequate water supply for approval of development. Current Assured and Adequate Water Supply rules for municipal providers (as defined by A.R.S. § 45-561) outside AMAs require that groundwater may be withdrawn from a depth to static water level that does not exceed 1,200 feet below land surface (bls) in order to receive this designation. This is not practical for municipal providers using the C and R aquifers of northern Arizona that may have depths to water ranging from 1,500 feet bls to 3,000 feet bls. To address this issue, draft amendments to the Assured and Adequate Water Supply rules were proposed by the Arizona Department of Water Resources in 2008. The amendments provide these municipal providers the ability to provide a hydrologic study for a determination of adequate water supply instead of

meeting the 1,200 feet bls requirement. Previously, it may have been impossible to meet the 1,200 feet bls criteria due to topographic and geologic conditions. The ability to demonstrate an adequate water supply is a positive attribute and incentive for economic growth in non-AMA communities.

Executive Order 2012-03 places a moratorium on the release of new rules for the purpose of job creation and retention and is currently keeping the proposed amendments to the Assured and Adequate Water Supply rules from being released. The proposed amendments to the Assured and Adequate Water Supply rules will lessen or ease a current regulatory burden but will not negatively impact job creation and retention. This will be accomplished by providing an opportunity for municipal providers using the C and R aquifers to access the WSDR Fund. Accordingly, it is recommended that the moratorium established by executive Order 2012-03 be determined not applicable to the subject rules and they be exempted.

Recommendation V: Clarify that the Water Supply Development Revolving Fund may be used for permitting, NEPA reviews, and other necessary activities under appropriate guidelines

Monies in the WSDR Fund may be used for “water supply development” as defined by A.R.S. §49-1201. Permitting and environmental reviews will be important aspects of any water supply development project and, subject to appropriate guidelines, monies from the WSDR Fund should be available for these purposes.

Recommendation VI: Provide funding for the Water Supply Development Revolving Fund; amend statutes if needed to allow monies to be deposited into the Water Supply Development Revolving Fund

As discussed previously, the WRDC reached agreement that financial assistance will be necessary to construct water supply projects within the state. The SWAG reached a similar consensus and the legislature agreed, resulting in creation of the WSDR Fund. The WSDR Fund was intended to be used to provide financial assistance to water providers and was established to be maintained in perpetuity consisting of: (1) monies received from the issuance and sale of water supply development bonds under A.R.S. §49-1278; (2) monies appropriated by the legislature; (3) federal monies for water supply development purposes; (4) monies received from water providers as loan repayments, interest and penalties; (5) interest and other money received from investing fund money; and (6) gifts, grants and donations. The WSDR Fund is a revolving fund that provides financial assistance primarily in the form of loans or limited grants with a maximum of \$100,000.

To date, the WSDR Fund has not been funded. It is recognized that if the WSDR Fund is to be a primary source of financing for the acquisition of water supplies and development of water supply projects, one or more sources of dedicated funding will need to be established. In its Final Report, the WRDC completed an analysis of potential funding sources for the WSDR Fund,

including the advantages and disadvantages of each source. The Final Report also addressed the magnitude of funding that would be necessary to make meaningful loans statewide for water infrastructure projects and noted that a dependable revenue source will be needed for many years to make the WSDR Fund a viable source of financing for water supply development projects.

The WRDC reviewed the potential funding sources evaluated in the Final Report and concluded that many of them may be appropriate for repayment of WSDR Fund loans by a water provider or a RWAA, but are not appropriate as a funding source for the WSDR Fund. Because the WSDR Fund is intended to be a statewide source of funding for water supply development, the WRDC has concluded that a statewide funding source is most appropriate. While not necessarily endorsed by the WRDC, examples of statewide funding sources include the general fund, transaction privilege taxes (similar to general sales tax in other states), and bottled water taxes.

The WRDC members were selected based on their “knowledge about a variety of water resource and water management issues around the state”, rather than for their financial knowledge. Consequently, although the WRDC has discussed financial issues extensively, members do not believe that they have the necessary expertise to fully evaluate the specific source, or sources, of statewide funding that would be most appropriate to result in a viable WSDR Fund. The WRDC respectfully defers to the legislature and other experts on this issue.

The work of the WRDC clearly demonstrates that financial assistance will be necessary for statewide water development. The WRDC supports development of a meaningful level of dependable funding for the WSDR Fund in order to make this financial assistance possible. Financial assistance in the form of low-cost loans that must be repaid is the most viable mechanism to ensure that Arizona is able to provide the water necessary for continued growth and prosperity.