

[Council Member Comments Submitted for the November 29, 2023, Governor's Water Policy Council Meeting](#)

From: **Daniel Schwiebert** <DSchwiebert@azleg.gov>

Date: Mon, Nov 27, 2023 at 10:05 AM

Subject: Representative Gail Griffin's Comments on AWS Committee Proposal for Illegal Lot Splits

To: Ben Altener <baltener@azwater.gov>

Cc: Tom Buschatzke <tbuschatzke@azwater.gov>, Gail Griffin <GGriffin@azleg.gov>, Emily Stokich <EStokich@azleg.gov>

Good morning Ben,

Attached please find Representative Gail Griffin's comments on the AWS Committee's proposal for illegal lot splits.

Rep. Griffin respectfully requests the Department add her comments to the public record and include her comments in the Committee's submission to the full Council. Thank you.

Respectfully,

Daniel Schwiebert

Sr. Policy Advisor & Staff Attorney

Arizona House of Representatives

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ETHICS

Arizona House of Representatives

Phoenix, Arizona 85007

November 27, 2023

Via Email

Tom Buschatzke, Director
Arizona Department of Water Resources
1110 W. Washington St., #310
Phoenix, AZ 85007

RE: *Comments on Assured Water Supply Committee Proposal to Address Illegal Lot Splits*

Director Buschatzke and the Members of the Assured Water Supply Committee:

I thank you for the opportunity to provide the following comments on the proposed statutory changes to address illegal lot splits and their impacts to consumer protection in Arizona:

- 1. Strengthen subdivision law by clarifying that any entity, individual or combination thereof with any ownership in six or more lots offered for sale or lease in one or more adjoining sections of land is evidence of “acting in concert”.**

Comment: Pursuant to A.R.S. § 32-2101(1), the definition of “acting in concert” is “evidence of collaborating to pursue a concerted plan.” I believe “ownership” in multiple companies constitutes “evidence” of “collaboration” when the “owners” are the same people and the companies are used to divide, sell, or lease six or more lots to avoid the subdivision laws of this state by “using a series of owners or conveyances.” If the statute is not clear, I am open to clarifying that “ownership” may be “evidence” of “acting in concert” when the same people are involved in companies that divide, sell, or lease six or more lots in a subdivision or the same tax parcel map. However, I also believe that the use of “well share agreements,” “road maintenance agreements,” and other good-neighbor instruments, or the use of common contractors and subcontractors, alone, should not constitute “evidence” of “acting in concert,” as these instruments are common in rural areas and there are few contractors in rural Arizona for land owners to use.

- 2. Clarify the definition of “contiguous” when evaluating if nearby lots constitute a subdivision by:**
 - a. Using one or more adjoining Sections of Land as the defined geographic area for considering whether lots are considered contiguous.**

Comment: *The Arizona Department of Real Estate, local county official, or court that is evaluating whether lots are considered contiguous should use the smallest area of land necessary to conduct the evaluation. Arizona law allows land divisions up to 36 acres per lot before the lots are considered a “subdivision.” See A.R.S. §§ 32-2101(58) & 32-2181(E)(1). Colloquially, these are 40-acre parcels, which is a Quarter-Quarter Section of Land. A Section of Land is 640 acres; a Quarter Section is 160 acres; and a Quarter-Quarter Section is 40 acres. Thus, the smallest possible area the Arizona Department of Real Estate, local county official, or court needs to determine whether lots are considered contiguous is “one or more adjoining Quarter-Quarter Sections of Land.”*

b. Clarifying that lots separated by a "street" or "road" are contiguous.

Comment: *I can agree generally with the concept that lots separated by a private “street” or “road” are contiguous and have opened a bill folder to codify this proposal in the 2024 legislative session; however, as discussed during the AWS Committee meeting on November 14, 2023, the definitions of “street” and “road” is critical to getting the legislation right. A.R.S. § 32-2101 does not define “street” or “road,” and not all “streets” and “roads” are created equal.*

c. Retaining city, county, state, federal highways and “natural or man-made barriers” that divide lots as non-contiguous.

Comment: *See comment above.*

3. Apply civil penalties to each lot instead of the unauthorized subdivision as a whole.

Comment: *As discussed in previous AWS Committee meetings, it was my intention for this issue to be addressed in the 2023 legislative session through H.B. 2590, which increased the maximum penalty per infraction from \$1,000 per infraction to \$2,000 per infraction. I have opened a bill folder to address this issue: H.B. 2007 (subdivided lands; civil penalties).*

4. Provide counties and municipalities authority to:

a. Collect ownership information at the time of application for subdivision and building permits, and;

Comment: *I can support the concept of increased disclosure in the application process, particularly for information that applicants may already be required to disclose in other places or contexts. Requiring submittal of such ownership information may serve as a deterrent to unlawful attempts to avoid the subdivision laws of this state and, thus, help to reduce illegal lot splits without having to incur the time and cost of prosecuting or enforcing such prohibitions. However, the AWS Committee made it clear that the only reason for the increased scrutiny in illegal lot splits was due to the situation in Rio Verde Foothills and other communities, like New River and Desert Hills, which were in active management areas. The AWS Committee has established no basis for increasing regulation outside of*

active management areas. Any increase in regulations for lawful land divisions is simply making the process more burdensome for applicants in areas where subdividers are not expected or required to demonstrate an assured or adequate water supply.

b. Require a subdivider to obtain a subdivision public report based on ownership findings.

Comment: *Denying or withholding approval of an applicant's application for a land division or building permit until the applicant obtains a public report would be viewed as unlawful 'prior restraint' and a regulatory taking. It raises many questions, none of which have been thoroughly answered or addressed by the AWS Committee. Such questions include: What happens when the applicant is successful and prevails in court? Does the applicant get reimbursed for fees and costs? Who will pay the applicant's attorney fees? Will the applicant be entitled to compensation for financial harm or damages caused by the delay in approving the application? There are many unanswered questions; therefore, I cannot support this proposal.*

I look forward to the Water Policy Council considering these comments at the next available opportunity and request the Department include these comments as a part of the Committee's submission to the full Council. I am available for any questions. Thank you.

Respectfully,



Gail Griffin
Representative, Legislative District 19
Arizona House of Representatives

From: **Craig Sullivan** <craigs@countysupervisors.org>
Date: Tue, Nov 28, 2023 at 7:34 AM
Subject: Illegal Subdivision Recommendations--CSA Comment
To: Ben Altener <baltener@azwater.gov>, James Knupp <jknupp@azre.gov>
Cc: Trent Blomberg <tblomberg@azwater.gov>

Hello Ben and Jim,

Thank you both for your willingness to discuss the concepts under consideration related to “wildcat” subdivisions. CSA understands the importance of addressing this problem and appreciates the Committee’s work on the issue. We’ve reviewed the concepts with county technical professionals and wish to submit the following comments.

As we discussed, without seeing legislative language, it is difficult to comment on the specifics of policies under consideration, and we look forward to being part of the stakeholder process to review any proposed legislation. However, at a high level we understand and appreciate the goals and merits of recommendations 1, 2, & 3.

Very importantly, and due to the lack of specific statutory language, we have received a substantial amount of concern that recommendation 4 has the potential to shift the responsibility of research, investigation, and enforcement for unregulated land divisions from ADRE to the counties, a concept counties oppose. Below are a few concerns to this point in hopes that they will be considered as legislation is drafted.

- County Planning & Development Departments are charged with land development regulation and not with the review of land ownership and transfer/transactions.
- Charging the counties with investigations and enforcements would pose a significant burden on work programs. This mandate would significantly increase permit review times, the overall permitting timeframe, and associated costs.
- There needs to be some clarification on the use of the term “subdivider” versus “acting in concert.”
- Lastly, it is unclear what the counties are supposed to do with the new authority to request subdivision public reports and when such a report would be requested. Counties are not familiar with public reports and how to act on them. This is a real estate department function, not a county function.

We hope to work with ADRE, ADWR, and other stakeholders as these concepts move forward to ensure any final draft language makes effective, incremental improvement over the status quo, while also ensuring appropriate alignment of ADRE’s investigation and enforcement responsibility and county planning and development operations.

Thank you for your consideration.

Craig

Craig Sullivan
Executive Director
County Supervisors Association of Arizona

From: **Megdall, Sharon B** <smegdall@arizona.edu>

Date: Tue, Nov 28, 2023 at 3:03 PM

Subject: Statement for the record

To: Tom Buschatzke <tbuschatzke@azwater.gov>, Patrick Adams <padams@az.gov>, Bruce Hallin <bhallin@azwater.gov>, Carol Ward <cward@azwater.gov>, Trent Blomberg <tblomberg@azwater.gov>

Dear Tom,

Regretfully, due to a prior commitment to a binational project meeting, I am unable to attend Wednesday's meeting of the Governor's Water Policy Council. I ask that this statement be read into the record.

I am in support of the Assured Water Supply Committee's recommendations regarding Wildcat Development. I appreciate the work that went into their development.

As a member of the Rural Groundwater Committee, I wish to express my full support for the Committee's recommended Rural Groundwater Management Framework. I likewise support the Measuring and Reporting proposal.

These recommendations will support the long-term vitality of Arizona's communities and businesses.

I look forward to the next steps in this process.

Thank you for this consideration.

Sharon Megdal

Director, University of Arizona Water Resources Research Center

From: **Daniel Schwiebert** <DSchwiebert@azleg.gov>

Date: Wed, Nov 29, 2023 at 9:59 AM

Subject: Representative Gail Griffin's Comments on Governor's Water Policy Council Rural Groundwater Recommendations

To: Ben Alteneader <balteneader@azwater.gov>

Cc: Tom Buschatzke <tbuschatzke@azwater.gov>, Gail Griffin <GGriffin@azleg.gov>

Good morning Ben,

Attached please find Representative Gail Griffin's comments on the Governor's Water Policy Council, Rural Groundwater Committee recommendations for a "Rural Groundwater Management Framework."

I will be appearing virtually on Representative Griffin's behalf this morning and reading her comments into the record. Please also include an electronic copy with the Department's public records available on the Department's website and submit a copy with the full Council's recommendation/report to the Governor.

Thank you.

Respectfully,

Daniel Schwiebert

Sr. Policy Advisor & Staff Attorney

Arizona House of Representatives

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Phoenix, Arizona 85007

November 29, 2023

Via Email

Tom Buschatzke, Director
Arizona Department of Water Resources
1110 W. Washington St., #310
Phoenix, AZ 85007

RE: Governor's Water Policy Council Meeting on November 29, 2023

SUB: Comments on the Rural Groundwater Committee Recommendations for "Rural Groundwater Management Framework"

Dear Director Buschatzke and the Members of the Governor's Water Policy Council:

On slide 29 of the Arizona Department of Water Resources' PowerPoint presentation for the June 29 meeting of the Governor's Water Policy Council Rural Groundwater Committee, and on slides 11 and 27 of the Department's August 17 presentation, the Department stated that the "Local Groundwater Stewardship Area" (LGSA) proposal that was introduced this legislative session was the "starting point" for the Rural Groundwater Committee and that this "framework" was "based on LGSA legislation."

As stated on slide 29 of the Department's June 29 presentation, this LGSA proposal and Rural Groundwater Committee "starting point" included the following "requirements":

- Mandatory "groundwater monitoring, metering and reporting"
- "Limits on new wells"
- "Non-expansion of largest users of groundwater"
- "Mandatory conservation requirements"
- Local management goals that are "based on" "climatic, economic, [and] ecological" conditions.

To the extent that the current "Rural Groundwater Management Framework," as it has currently been proposed, is based on or contains any part or all of these requirements, I cannot support the proposal.

Rather, I support Senator Sine Kerr's proposed "Water Basin Management Plan," including:

- A quantifiable and enforceable water right inherent with land ownership;
- The ability to save, bank, and conserve groundwater for future use and generations, recognizing the benefits to the acquirer;
- Protections for private property rights in the land and in the groundwater beneath the surface estate; and
- Encouraging water conservation by using best management practices across all industries, including:
 - Investing in recharge projects (large and small);
 - Capturing stormwater runoff;
 - Installing xeriscape landscaping;
 - Fixing water loss due to waterline leakage; and
 - Addressing the prevention of recharge due to the fact that 95% of all precipitation that reaches the surface in Arizona evaporates before it has an opportunity to infiltrate into the aquifer.

In addition, any goals that are adopted or advanced should include or be explicitly limited by the purpose of government stated in the Arizona Constitution (Art 2 Sec 2), which states that:

- "All political power is inherent in the people";
- "[G]overnments derive their just powers from the consent of the governed"; and
- "[Governments] are established to protect and maintain

individual rights." A continuation of a strong economy must be high on the list of goals as well.

And, in closing, we should ask, in the active management areas, why is the residential, for-sale single family home the only industry being targeted when affordable housing is in a crisis?

Thank you for allowing my comments. Please enter these comments into the official record.

Respectfully,



Gail Griffin
Representative, Legislative
District 19 Arizona House of
Representatives

From: **Dunham, Doug** <DDunham@epcor.com>

Date: Wed, Nov 29, 2023 at 1:22 PM

Subject: Governor Water Council; Rural Committee recommendations

To: Tom Buschatzke <tbuschatzke@azwater.gov>, Patrick Adams <padams@az.gov>, Bruce Hallin <bhallin@azwater.gov>, Carol Ward <cward@azwater.gov>, Trent Blomberg <tblomberg@azwater.gov>

Director Buschatzke-

In an effort to save some time during a very full Council meeting I wanted to submit some written comments on behalf of EPCOR.

Like the AWS committee, the rural committee obviously has put in a great deal of time and effort in crafting their recommendations. They are to be commended. This also represents a huge effort on behalf of your staff who should also receive well deserved recognition.

EPCOR supports the proposals for the new rural groundwater management concepts. One of the primary proposals is the recognition of existing users. This is key, and will provide protection to existing water users in rural Arizona that they do not currently enjoy. As a rural water provider EPCOR also appreciates the recognition of private utilities as an important type of water provider to many rural communities. I would also like to ensure the recognition of many small co-op type water providers that also exist in rural Arizona. These should also be taken into account as the rural programs are further developed. I am also supportive of the oversight role of ADWR in the proposal; these are complicated issues facing rural basins and DWR possesses the expertise needed for sound water management decisions. As a private utility tasked with supplying rural communities with safe and reliable water, we also appreciate consistency in regulatory framework as it is developed; investment decisions are driven by steady regulatory environments. The regulatory framework as it is developed needs to be able to support growth and allow private utilities to invest in needed infrastructure and securing long term water supplies for the communities we serve. Lastly, given the often 'closed' nature of many rural basins, or lack of alternate renewable water supplies in those basins, whatever 'grandfathered' groundwater rights system(s) are developed, will need to have a "portability" element to them not currently available in the AMA's. As cropping patterns change (wine grapes replacing row crops for example in the Willcox Basin) or new technology is developed rural areas will need the ability to shift types and locations of water use with increased efficiency requirements. I look forward to a deeper dive with your staff as these recommendations are further developed.

EPCOR supports increased measuring and reporting outside of AMA's & INA's. Better data drives better decision-making. Rural water use information is often lacking. As a Community Water Systems water provider we are happy to report our water use. We support the Department exploring use of remote sensing and other methods to help with confidentiality concerns of some rural water users. We support additional resources to help the Department obtain and analyze additional rural data. We also support additional funding to support more statewide conservation grants to assist rural water providers conservation programs.

Again, thank you and your staff for all of your time and efforts to date. I look forward to further development of these proposals.

Douglas W. Dunham
Water Resources Manager
EPCOR Water