

# Welcome

The meeting will begin shortly, in the meantime please:

- Keep your phone muted during the meeting
- If you experience any technical difficulties, please contact ADWR Help Desk at 602-771-8444 or [tickets@azwater.gov](mailto:tickets@azwater.gov)



# Douglas AMA GUAC

## May 23<sup>rd</sup>, 2024



# Meeting Agenda

**1. Call to Order – Welcome & Introductions** – *Nicholas Mason, ADWR*

**2. Meeting Logistics** – *Nicholas Mason, ADWR*

**3. Overview of Council Member Responsibilities** – *Ryan Melson ADWR*

Ryan will provide an overview of council members' roles responsibilities.

**4. Election of Officers** – *Douglas GUAC Members*

The council will elect a Chair and Vice Chair to serve a two-year term.

**5. Open Meeting Law Overview** – *Anthony Proano, ADWR*

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**6. AMA Establishment Overview** – *Casey Allman, ADWR*

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**8. AMA Director Report** – *Natalie Mast, ADWR*

Natalie will provide an update on ADWR and AMA activities.

**9. Call to the Council** – *Council*

**10. Call to the Public** – *Chair*

**11. Adjournment** – *Chair*



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# Meeting Logistics

- For guests joining online:
  - Please keep your phone muted during the meeting
- During the Call to Public attendees will have the option to speak to the Council
- This meeting is being recording and will be posted to ADWR's website
- With any technical difficulties please contact ADWR Help Desk at 602-771-8444 or [tickets@azwater.gov](mailto:tickets@azwater.gov)



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# Overview of Council Responsibilities



# A.R.S. § 45-420

## Groundwater users advisory councils; appointment; representation of water users; term; compensation

- A. There shall be a groundwater users advisory council in each active management area consisting of five members. Members of the council shall be appointed by the governor to represent the users of groundwater in the active management area and on the basis of their knowledge of, interest in and experience with problems relating to the development, use and conservation of water.
- B. The term of office of each member is six years. The terms of two members shall expire on the third Monday of January each even numbered year, except that each third even numbered year the term of one member shall expire.
- C. Members of the council shall serve without compensation, except that each member shall be reimbursed for travel and subsistence while engaged in business of the council in the same manner as is provided by law for state officers.



# A.R.S. § 45-421

## Administrative duties of the groundwater users advisory councils

The groundwater users advisory council shall:

1. Advise the area director for the active management area, make recommendations on groundwater management programs and policies for the active management area and comment to the area director and to the director on draft management plans for the active management area before they are promulgated by the director.
2. Keep the minutes of its meetings and all records, reports and other information relative to its work and programs in permanent form indexed and systematically filed.
3. Elect from its members a chairman and vice-chairman for terms of two years expiring on the third Monday of January of each even numbered year.
4. Designate the person or persons who shall execute all documents and instruments on behalf of the council.
5. Manifest and record its actions by motion, resolution or other appropriate means.
6. Make a complete record of its proceedings which shall be open to public inspection during regular business hours in the branch office of the department in the active management area.
7. Provide comment to the Arizona water banking authority with regard to draft plans for additional storage facilities and draft plans of operation in accordance with sections 45-2453 and 45-2456.



# A.R.S. § 45-421

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# GUAC Meetings

## Format

- \* Formal public meeting, subject to Open Meeting Law requirements.
- \* A quorum of members (3/5) must be present to hold a meeting.
- \* Chair leads the meeting, with ADWR support.
  - \* Any items discussed must be on the agenda
  - \* Items for recommendation or decision must be specifically listed as such on the agenda, and are formalized through a motion/vote procedure.

## Content

- \* Updates related to water conditions, use, data, management, regulation, etc.
- \* Discussion and recommendations on groundwater management programs and policies, including management plans
- ~~\* Discussion and recommendations on withdrawal fees~~
- ~~\* Discussion and recommendations on conservation grants~~



# Questions?

## AMA Customer Service

602-771-8585

[earp@azwater.gov](mailto:earp@azwater.gov)

## Ryan Melson

Deputy AMA Director

[rmelson@azwater.gov](mailto:rmelson@azwater.gov)



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# Arizona's Open Meeting Law



ANTHONY C. PROANO  
DEPUTY COUNSEL, LEGAL DIVISION

Presented to the Douglas AMA  
Groundwater Users Advisory Counsel

# Legislative Intent: Openness in Government

- ◆ Arizona's public policy requires that official deliberations and proceedings be conducted openly
- ◆ Any uncertainty should be resolved in favor of open and public meetings

A.R.S. § 38-431.09





# Resources

◆ A.R.S. §§ 38-431 through 38-431.09

◆ Arizona Agency Handbook

\* [www.azag.gov](http://www.azag.gov)

\* Chapter 7 (Open Meetings)

◆ Arizona Attorney General Opinions

\* [www.azag.gov](http://www.azag.gov)



# WHO is subject to the Open Meeting Law?



# “Public Body”

## “Public Body” means:

- ✓ The Legislature, all boards and commissions of this state or political subdivisions, all multimember governing bodies of departments, agencies, institutions and instrumentalities of the state or political subdivisions, including without limitation all corporations and other instrumentalities whose boards of directors are appointed or elected by the state or political subdivision.
- ✓ All quasi judicial-bodies and all standing, special or advisory committees or subcommittees of, or appointed by, the public body.
- ✓ All commissions and other public entities established by the Arizona Constitution or by way of ballot initiative.

A.R.S. § 38-431(6) and Arizona Attorney General Opinion I07-001



# Advisory Committees & Subcommittees

- ◆ **“Advisory Committee” or “Subcommittee” means:**
  - ◆ Any entity, however designated;
  - ◆ Officially established on motion or order of the public body or by the presiding officer;
  - ◆ Appointed to make a recommendation concerning a decision to be made or considered by the public body.

A.R.S. §38-431(1)



# Advisory Committees & Subcommittees

- ◆ Must comply with all requirements of the Open Meeting Law
- ◆ Must take minutes or make recordings of their meetings
- ◆ Must provide appropriate agendas for meetings of the Committee



# WHEN does the Open Meeting Law apply?



# Meeting

- ◆ A gathering, in person, or through technological devices
  - \* Phone, email, fax
- ◆ Of a quorum, that
- ◆ Discusses, proposes or takes legal action
  - ◆ Includes deliberations
  - ◆ Includes a one-way electronic communication that proposes legal action and/or an exchange of electronic communications that involves discussion, deliberation or legal action

A.R.S. § 38-431(4) and Arizona Attorney General Opinion 105-004



# Quorum

- ◆ Generally in Arizona, a quorum is a majority of a board or commission.
- ◆ Look to your statutes and rules.
- ◆ Vacancies **DO** count toward the number of members of a board unless your statutes/laws say otherwise.





# What if you don't have a quorum?

◆ You don't have a “meeting”

BUT

◆ Beware of serial communications

◆ Beware of “wheel and spoke” communications

- ◆ Meeting with individual members
- ◆ Reporting what other members said
- ◆ Polling the members

◆ Look to your statutes and rules.

◆ Vacancies **DO** count toward the number of members of a board unless your statutes/laws say otherwise.



# What about social events or other occasions where a quorum is present?

## ◆ If more than a quorum may be present:

1. Post a “courtesy notice” announcing the event where a quorum may be present
2. Include statement that no business of the public body will be discussed & no action will be taken
3. Board members should avoid talking with each other – or have a witness



# Discussing, Proposing or Taking Legal Action

- ◆ Normal use and meaning of these words will apply.
- ◆ Legal action means a collective decision, commitment or promise. A.R.S. § 38-431(3)
- ◆ Proposing legal action = “put forward for consideration, discussion, or adoption.”
- ◆ Includes deliberations = discussion of facts and opinions re: potential board business.
- ◆ **RULE:** If this occurs among a quorum of the Board IT IS A MEETING.

A.R.S 38-431(3) and Arizona Attorney General Opinion 105-004



# Proposing an Agenda Item?

- ◆ Proposing an item for the agenda via e-mail is allowed IF you do not propose legal action.
- ◆ Communicate the TOPIC only NOT the legal action you want the Council to take.
- ◆ Do not discuss, deliberate or take legal action regarding the proposed agenda item.



# One-way E-mail from Staff

- ◆ Passive receipt of information from staff, without more, does not violate OML.
- ◆ Staff may send e-mail to board members.
- ◆ Staff may send agenda packets to board members, these must also be made available to the public.



# Telephone Conferencing

- ◆ Allowed if the public body has approved this practice.
- ◆ The notice and agenda should indicate telephone participation.
- ◆ The public must be able to hear.
- ◆ Minutes should identify telephonic participants and describe public access.
- ◆ See Informal AG Opinion issued March 13, 2020 regarding Open Meeting Law and COVID-19



# HOW do you comply with the Open Meeting Law?



# Find a good location

- ◆ Meetings must be accessible
- ◆ Discourage procedures that obstruct or inhibit public attendance such as:
  - \* Remote or inadequate location
  - \* Required sign in sheets
  - \* Unreasonable time



# Location, location, location

- ◆ Can you move the meeting to another location close to the original location?
- ◆  YES       NO
- ◆ Leave a staff person to give directions
  - Post a large notice
  - Start the meeting a little later

# Statement and Notice

## Public bodies of the State, counties and school districts shall:

- ◆ Conspicuously post a statement on their website stating where all public notices of their meetings will be posted
  - Include physical and electronic locations
  - Give additional public notice as is reasonable and practicable
- ◆ Post all public meeting notices on their website and give additional public notice as is reasonable and practicable as to all meetings.
- ◆ A technological problem or failure that prevents posting or use of the website does not preclude the holding of the meeting if the public body complies with A.R.S. §38-431.02(A) all other notice requirements.

A.R.S. §38-431.02(A)



# Notice of Meetings

- ◆ Notice required at least 24 hours in advance of a meeting
- ◆ To all members of the public body
- ◆ To the public by posting at the location(s) described

A.R.S. § 38-431.02(C)



# Contents of Notice

- ◆ The public body
- ◆ Date, time, place (address, room number)
- ◆ Agenda or how to obtain agenda
- ◆ Executive Session if applicable (cite specific statutory authority)
- ◆ Accommodations under the ADA



# Recessed & Resumed Meeting

- ◆ Can recess and resume a meeting with less than 24 hours notice if proper public notice of initial session of the meeting is given and, prior to recessing, notice is publicly given regarding the time and place of the resumed meeting or regarding the method by which notice shall be publicly given.

A.R.S. § 38-431.02(E)



# Agendas

- ◆ Agendas must include matters at the meeting to be
  - \* Discussed,
  - \* Considered or
  - \* Decided
- ◆ Must contain information reasonably necessary to inform the public

A.R.S. § 38-431.02(H)



# Agendas must be understandable

- ◆ No acronyms
- ◆ Statutory cite is not enough without explanation
- ◆ No legalese
- ◆ No agency slang



# Agenda Items

- ◆ Needs to include “specific” items to be discussed, considered or decided
- ◆ NOT GOOD ENOUGH without details:
  - \* “New business”
  - \* “Old business”
  - \* “Personnel”
  - \* “Announcements”





# If it's not on the agenda

- ◆ You CANNOT discuss
- ◆ All discussion must be reasonably related to an adequately-described agenda item
- ◆ Add new items to the agenda for future meeting



# Changes in agenda

- ◆ Post and distribute same as original
- ◆ 24-hour rule still applies



# Welch v. Cochise Cty. Bd. of Supervisors, CV201900060 (Ariz. App. Div. 2, 2020)

## ◆ Actions taken by Board establish intentional violation of OML:

- \* Recess meeting and resume more than an hour after time provided meant the public was not adequately noticed. ¶ 24
- \* Agenda did not indicate that the Board was considering one of its own members for the position. ¶ 24
- \* Call to appoint Board member was the first action taken after executive session. ¶ 24



# Minutes

- ◆ Required
- ◆ In writing or
- ◆ Recorded - audio or video tape
  - ◆ Be wary of tech mishaps!
  - ◆ If doing minutes by recording, ensure quality is good

A.R.S. §38-431.01(B)

May 24, 2024



# Contents of Minutes

- ◆ Date, time, place
- ◆ Members present/absent
- ◆ General description of matters discussed or considered
- ◆ Accurate description of legal actions proposed, discussed or taken and how members voted
- ◆ Name of members who propose each motion
- ◆ Name of each person making statements or presenting material and a reference to the legal action addressed



# Public Access to Minutes

- ◆ Minutes or a recording shall be available for public inspection 3 working days after the meeting
- ◆ Make tape available
- ◆ Can stamp as “draft”

A.R.S. § 38-431.01(D)



# Public's Rights

- ◆ Must be permitted to attend meeting
- ◆ May attend without signing in
- ◆ Not permitted to speak, unless public body allows it
- ◆ If they make a presentation, they must identify themselves (required for Minutes) A.R.S. §38-431.01(B)(4)
- ◆ Cannot disrupt proceedings (but make a good record before removing someone)
- ◆ Can record all or part of the meeting. A.R.S. §38-431.01(F)
- ◆ Can limit speaking time of each speaker



# Calls to the Public

- ◆ Optional
- ◆ Be fair
- ◆ Avoid getting into a discussion of matters not on the agenda
- ◆ Public body's response is limited:
  - \* Direct staff to study the matter
  - \* Respond to criticism
  - \* Schedule matter for future meeting





# Meeting Etiquette

Discourage the following:

- ◆ Whispering to other Committee members
- ◆ Passing notes between Committee members
- ◆ Letting members of the public talk to each member before the meeting starts with their hands over the microphone
- ◆ If its about business of the public body, this could become a violation
- ◆ In any event, it looks like a violation



# Executive Sessions

- ◆ Special Requirements
- ◆ Still requires an agenda and notice
- ◆ Meeting and minutes are confidential
- ◆ Consult with your attorney before contemplating an executive session



# Executive Session Categories

- ◆ Personal matters
- ◆ Confidential records
- ◆ Legal advice
- ◆ Litigation, contracts and settlements discussions involving attorney consultation
- ◆ Employee salary discussions
- ◆ International, interstate and tribal negotiations
- ◆ Purchase, sale or lease of real property

A.R.S. § 38-431.03(A)(1)-(7)



# WHAT happens if there is a problem?



# Actions to take if there is a violation

- ◆ Ratify (A.R.S. § 38-431.05(B))
- ◆ Consider self-reporting
- ◆ Cooperate with County Attorney, AG, or Ombudsman's Office and move early to remedy the problem
- ◆ Consider training and changes to policy to prevent violations in the future



# Ratification

- ◆ *Welch v. Cochise Cnty. Brd. of Supervisors* provides clarification on the effect of ratification.
  - \* Ratification ensures effectiveness of decisions, but does not preclude possible sanctions. ¶ 25



# Ratification

- ◆ Must take place within 30 days after discovery of the violation or after discovery should have been made
- ◆ Clear indication in agenda and notice of ratification
- ◆ Detailed written description of violation and all associated deliberations, consultations and decisions available to the public
- ◆ Notice a written description available 72 hours before the meeting

A.R.S. § 38-431.05(B)



# What can the AG or County Attorney do?

- ◆ Investigation
- ◆ May issue “investigative demands”
- ◆ May conduct examinations under oath
- ◆ May require written statements under oath
- ◆ May file enforcement action in Superior Court
- ◆ May seek removal from office

A.R.S. §§ 38-431.06 and .07





# Arizona Ombudsman's Office

- ◆ Can investigate Open Meeting Law and Public Records complaints
- ◆ Can take anonymous complaints
- ◆ Offers training



# Private Parties

- ◆ Open Meeting Law allows private rights of action.
- ◆ Taxpayer suits permissible, whether or not the individual attended or would have attended the meeting. *Welch v. Cochise County Board of Supervisors* at ¶14 – 16 & FN3
- ◆ AG will defer to the court if matter is filed in Superior Court

A.R.S. § 38-431.07



# Penalties

- ◆ Action is null and void A.R.S. § 38-431.05
- ◆ Up to \$500 fine for each violation A.R.S. § 38-431.07
  - \* Against anyone who commits a violation
  - \* Against anyone who knowingly aids, agrees to aid or attempts to aid another in committing a violation
  - \* Individual, not public body, pays penalty
- ◆ May have to pay attorneys fees and costs A.R.S. § 38-431.07



# Removal from Office

If intent to deprive the public of information or opportunity to be heard

- ◆ Court may remove the public officer from office
- ◆ Assess attorneys fees and costs

A.R.S. § 38-431.07



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# AMA Establishment

Douglas GUAC, May 23, 2024

6  
3



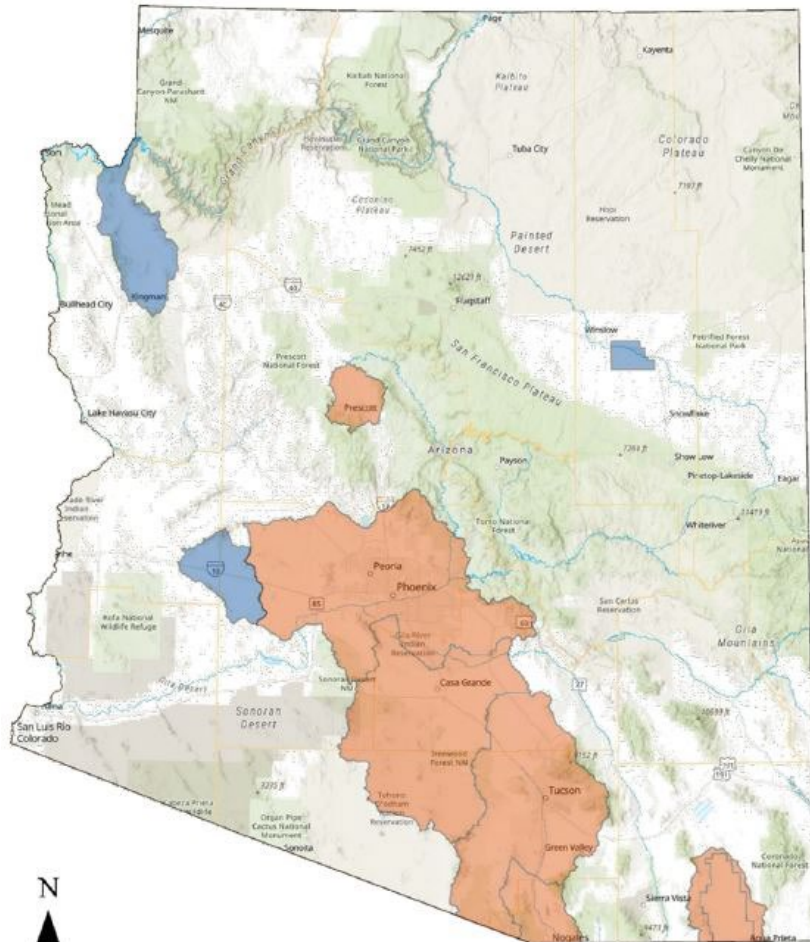
# Groundwater Management Act of 1980

- The Groundwater Management Act of 1980 created the Arizona Department of Water Resources
- Imposes certain regulations statewide, but most regulations are limited to areas designated as “irrigation non-expansion areas” and “active management areas”
- This Act authorizes the establishment of new AMAs by election
- Establishes a GUAC (Groundwater Users Advisory Council) for each AMA
- Irrigation, as referenced in INAs and AMAs, means “to apply water to 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. § 45-402.18).





# Existing Active Management Areas (AMAs) & Irrigation Non-Expansion Areas (INAs)



## Six AMAs

- Prescott AMA
- Phoenix AMA
- Pinal AMA
- Tucson AMA
- Santa Cruz AMA
- Douglas AMA (est. December 1, 2022)

## Three INAs

- Joseph City INA
- Harquahala INA
- Hualapai Valley INA (est. December 19, 2022)

Douglas GUAC - May 23, 2024



# Groundwater Regulatory Structure

- Registration of all wells
- Adequate Water Supply
- Community Water Systems Documentation

+

- Expansion of irrigated acres is prohibited
- Monitoring and Reporting

+

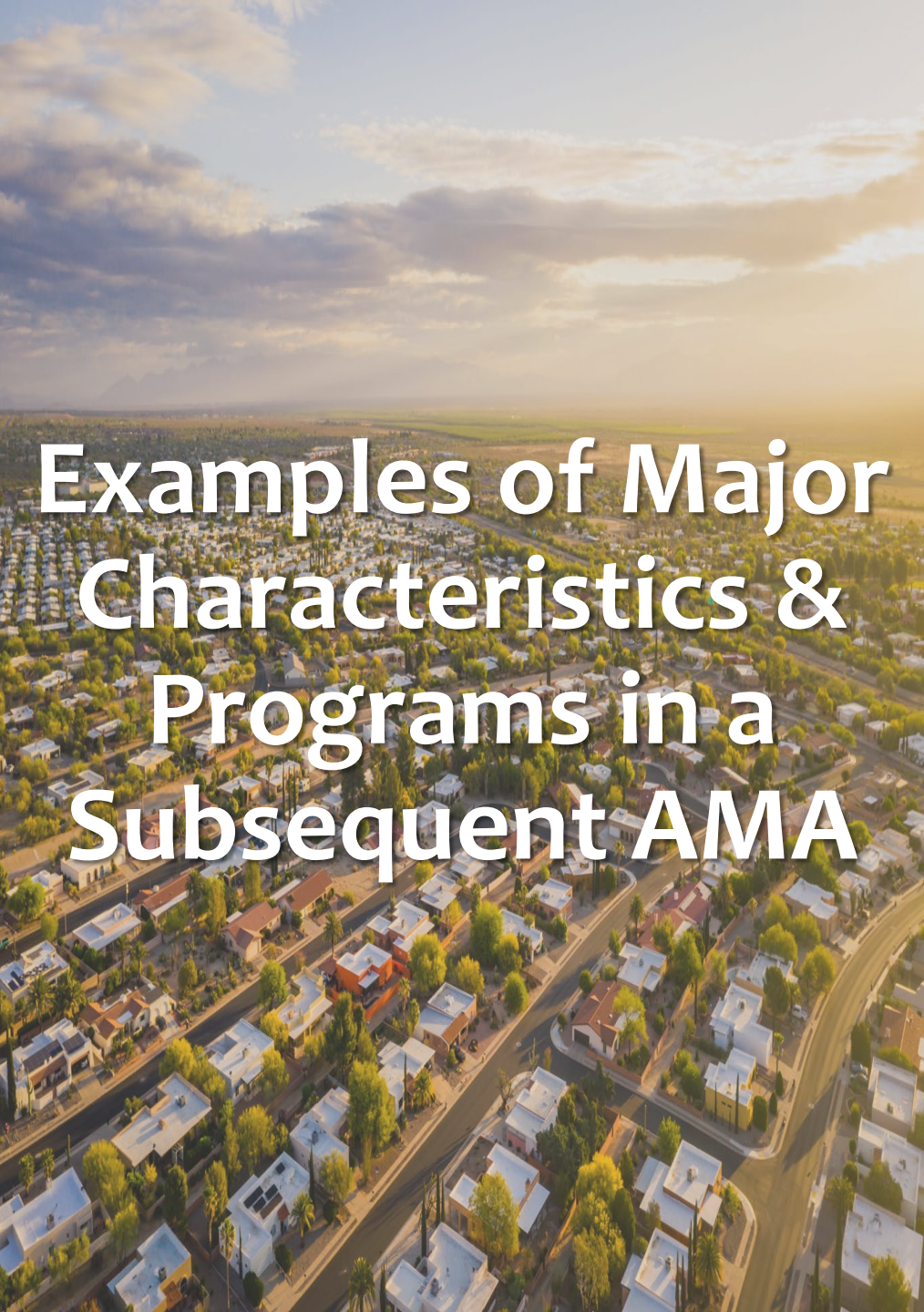
- Assured Water Supply
- Grandfathered Rights & Groundwater Withdrawal Fees
- Management Goals, Plans, & Conservation Programs

**Statewide**

**INA**

**AMA**



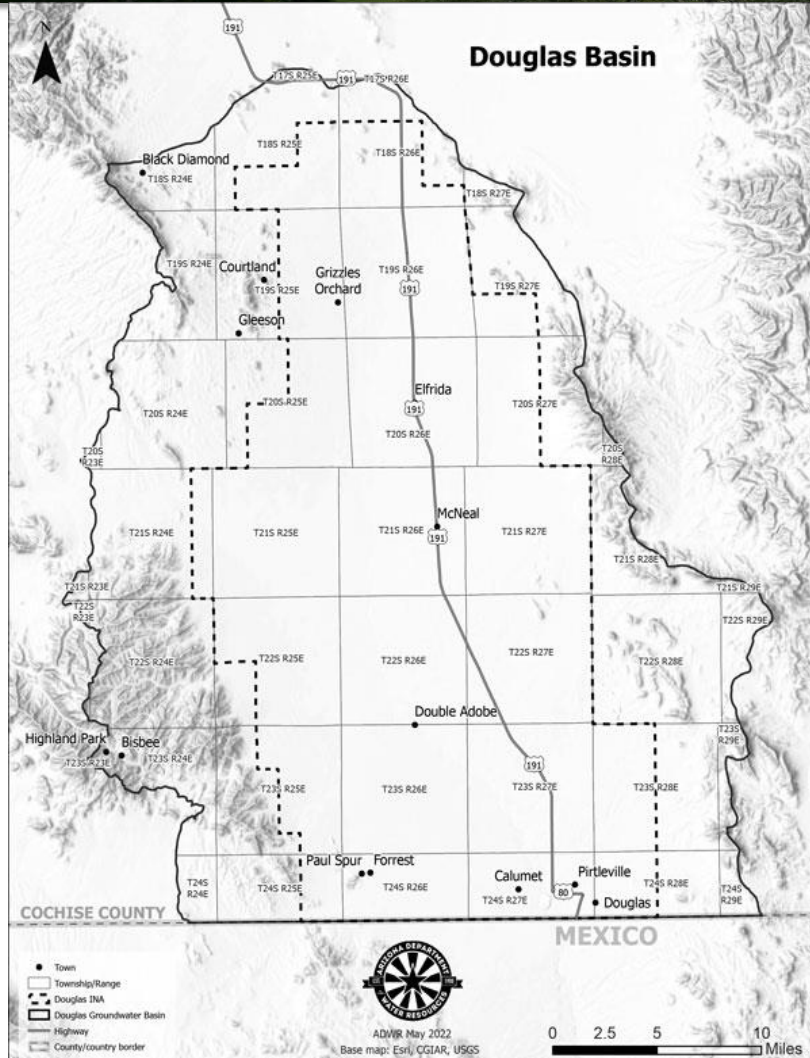


# Examples of Major Characteristics & Programs in a Subsequent AMA

- Prohibition on expansion of irrigated acres
- Metering and reporting requirements
- ~~Withdrawal Fees (Not Authorized)~~
- Management Goal
  - A.R.S. § 45-569(A)
- Management Plan
  - A.R.S. § 45-569(B)
- Wells Requirements
  - Impact Analysis for new Non-Exempt Wells
- Groundwater Rights and Withdrawal Authorities
  - Applications available - <https://www.azwater.gov/ama/douglas-ama>
  - Failure to apply for a GFR by the deadline (September 3, 2024) will result in the waiver and relinquishment of any right to use groundwater (A.R.S. § 45-477.01).



# Douglas Active Management Area



- First subsequent AMA established
- First AMA to be established by local election
  - Established on December 1, 2022
- Located entirely in Cochise County
- A portion of the basin was previously an INA
  - That portion is now an AMA, plus an AMA boundary extension as shown on the map to the left.



# Who is Allowed to Use Groundwater in an AMA?

- Exempt Wells:
  - Generally, a person may withdraw groundwater for a non-irrigation use from a well having a pump with a maximum pump capacity of **35 gallons per minute or less** (“exempt well”) without a right or permit. However, there are some limitations on the use of exempt wells within the AMAs. Some of these limitations include:
    - Only one exempt well may be used to serve the same use at the same location.
    - Withdrawals from an exempt well for a non-irrigation purpose other than domestic use and stock watering are limited to 10 acre-feet per year.
- Non-exempt wells:
  - Within an AMA, a person may withdraw groundwater from a well having a pump with a maximum capacity greater than 35 gallons per minute (“Non-exempt well”) **only if the person holds a right or permit** to withdraw the groundwater.
    - Any person irrigating 2 or more acres or using 10 or more AF for a non-irrigation purposes must file an application for a grandfathered right or obtain a withdrawal authority.
    - Failure to apply for a GFR by the deadline (September 3, 2024) will result in the waiver and relinquishment of any right to use groundwater (A.R.S. § 45-477.01).



# Meeting Agenda

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**2. Meeting Logistics** – *Nicholas Mason, ADWR*

**3. Overview of Council Member Responsibilities** – *Ryan Melson ADWR*

Ryan will provide an overview of council members' roles responsibilities.

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The council will elect a Chair and Vice Chair to serve a two-year term.

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Casey will provide an overview of the establishment process for the Douglas AMA.

**7. Overview of AMA Management Plans** – *Madison Moreno, ADWR*

Madison will provide an overview of management plans for an AMA and the timeline for the Douglas AMA First Management Plan.

**8. AMA Director Report** – *Natalie Mast, ADWR*

Natalie will provide an update on ADWR and AMA activities.

**9. Call to the Council** – *Council*

**10. Call to the Public** – *Chair*

**11. Adjournment** – *Chair*



# Douglas AMA Management Plan Development

May 23, 2024



# Management Goals, Management Plans, & Conservation Programs

## A.R.S. § 45-563 (A)

*“The director shall develop a management plan for each initial active management area for each of five management periods... and shall adopt the plans only after public hearings... The plans shall include a continuing mandatory conservation program... designed to achieve reductions in withdrawals of groundwater.”*

The management plans for a subsequent AMA follow the statutes for the management plans for the initial AMA as close as practical.





# Management Plans

## A.R.S. § 45-569 (B)

“Not later than two years after the designation of a subsequent active management area, the director shall promulgate an initial management plan for the active management area... If the director determines that active management is necessary to preserve the existing supply of groundwater for future needs... the director, in developing the plan or plans, shall include measures for reducing groundwater withdrawals which follow as closely as practicable the program set forth in sections 45-564 through 45-568...”

## Process & Principles

- \* Development
  - \* Series of public meetings to discuss and develop concepts for conservation programs & other plan details
- \* Initial Management Plan - Principles
  - \* “Reducing groundwater withdrawals”
  - \* Transitional plan
    - \* Works to educate on AMA requirements and processes
    - \* Introduces basic conservation requirements

# Tentative Management Plan Timeline Douglas AMA (Development)

Public Meeting:  
Introduction, Overview  
& Timeline

Sept 2023

Public Meetings:  
Sector Workshops –  
Agriculture, Municipal,  
Industrial

Nov 2023 – Jan 2024

Public Meeting:  
Other topics –  
recharge, voluntary  
measures

Feb 2024

Public Meeting:  
Follow-up re:  
framework, policies

Mar 2024

Publish initial  
regulatory language  
for comment

May 2024



# Tentative Management Plan Timeline Douglas AMA (Adoption)

**GUAC Meeting:  
Informal Draft Review  
& Comments, including  
GUAC**

**Aug 2024**

**Hearing Notice:  
Formal Comment  
Period Begins**

**Oct 2024**

**Public Hearing:  
Formal Comment  
Period Ends**

**Nov 2024**

**Adoption of First  
Management Plan**

**Dec 2024**

**Effective date for  
Conservation  
Requirements**

**Jan 2027**



# Management Plans

**Douglas AMA Designation: December 1, 2022**

**Tentative Promulgation of Initial Management Plan: December 1, 2024**

**Tentative Effective Date for Conservation Requirements: January 1, 2027**



# Douglas AMA Management Plan Development

## Next Steps

- \* Publish draft regulatory language and open for public comment in May 2024
- \* Draft Management Plan published and presented to the GUAC in August 2024

# Questions?

managementplans@azwater.gov

Douglas AMA Information and Applications:

<https://www.azwater.gov/douglas-ama>



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