



March 09, 2022

Arizona Department of Water Resources
ATTN: Carol Ward, Deputy Assistant Director, Water Planning and Permitting Division
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Sent Via E-Mail: cward@azwater.gov

Re: Arizona Water Authority

Thank you for the opportunity to submit this letter expressing questions and concerns that the Water for Arizona Coalition (WAC) has about the recent proposal for an Arizona Water Authority (AWA). While (WAC) supports policies that ensure water security for all Arizonans and acknowledges the need for a Statewide entity to be created which can finance efforts to augment the State's water resources, regretfully we do not feel that SB 1611 sufficiently reflects the principles and approaches of Arizona's past successes in sound water management.

WAC does submit that the Arizona Water Authority (AWA) proposal has opened the door for the legislature to seize a historic opportunity to engage in meaningful negotiations to craft high-impact water investments and policy solutions that benefit the entire state.

WAC believes that an AWA could potentially be very useful under three conditions:

- (1) If it were structured for a more limited role as a water infrastructure financing authority;
- (2) If its purpose was more clearly defined to address pressing water reliability needs; and,
- (3) If it were combined with the right guidelines, governance, and needed water policy reforms.

The following principles should guide and help to inform the development of such legislation. More specifically, WAC believes there are several important and essential principles that define sound, proactive, and inclusive water management in Arizona. We submit that these principles and Arizona's urgent and immediate water needs are not met by proposed SB 1611 in its current form.

Arizona's water challenges are here and now. Groundwater levels are declining in many parts of the state and Colorado River shortages are deepening and proactive responses and solutions are immediately required. Investments in out-of-state importation not only avoid addressing immediate challenges to water supplies, but—even if successful—will take decades to realize, meaning that any imported water will not arrive in Arizona for years to come, will be very expensive, and will only replace a fraction of the water lost even under current Colorado River shortage conditions. There are proven water management strategies, plans, and conservation projects that would increase water supplies or reliability at a fraction of the cost per unit of water, of ocean desalination or other importation. These strategies can be implemented right now, in order to make a near-term and long-term difference, if the legislature enacts a balanced approach to water security while promoting conservation and more efficient use of existing water supplies. *SB 1611 as proposed does not articulate the purpose of a new authority and sidesteps addressing today's need for solutions by directing attention to expensive, uncertain, and insufficient future buckets of water.*

Local communities must be empowered. The Arizona Water Authority proposal in itself will not address the serious water challenges faced by rural Arizona communities that depend solely on groundwater, and it will not protect farmers, ranchers, property owners, or rivers. Holes in the “Arizona water management bucket” must be plugged. Communities need the state to provide significant resources and empower them to plan for their water future at the groundwater basin level. While SB 1611 underscores the need for decision-makers to invest in Arizona’s water, it does not provide a strategic and broadly informed vision to fix the policy gaps that exist today in ways that will ensure present and future water security for all Arizonans.

Public investments in water should benefit all Arizonans. The purpose of water supply and management investments should be to enhance the security and reliability of the water supplies for all of Arizona. This must be the cornerstone of any new investment authority, and its governance, planning requirements, authorities, and operations should be structured accordingly. WAC believes that the AWA could be structured to serve a more narrowly defined role as a water infrastructure financing authority if the purpose of the authority were more clearly focused on improving water supply reliability, and if appropriate structures and governance mechanisms were incorporated. The authority’s investments should be made based on well-defined criteria and mechanisms to ensure consideration and funding for a wide range and distribution of water projects, and that favor projects to increase water supply reliability for current uses over expanding water demands. Project evaluation and selection should strike a balance between statewide priorities and meeting local needs and goals of communities across Arizona, including decreasing groundwater demand, enhancing water supply reliability, and sustaining rivers. As proposed, SB 1611 does not provide a clear vision for the need, governance structure, project evaluation criteria, authorities, and operations of a new water authority.

Public investments must support the sustainability and reliability of Arizona water supplies. We are in a moment of tremendous public interest and investment in water projects and water policy. To adapt to climate change and capitalize on public investment opportunities, we must develop an “all-of-the-above” statewide supply and demand strategy that includes aggressive conservation, recycling and reuse, multi-benefit stormwater and groundwater recharge, and watershed restoration. By focusing primarily on expensive and distant water augmentation projects, SB 1611 does not propose a multi-faceted solution set that starts today in establishing a strong foundation for Arizona’s water future.

An open, transparent stakeholder dialogue is needed to determine the most effective, inclusive, and immediate pathways to respond to this moment of critical water needs for all Arizona communities. Planning for Arizona’s water future should begin through a dynamic and inclusive process aimed at evaluating Arizona’s needs and developing structures and investments to match, not developing structures first before evaluating needs. SB 1611 did not emerge from a participatory public process or statewide planning effort and therefore does not reflect input on current water needs across rural and urban communities. Furthermore, the proposed new water authority does not include even representation from across Arizona stakeholders and interest groups.

In summary, Arizona’s water needs cannot wait. The State needs to prioritize investments and actions that tangibly increase the reliability and resilience of our current groundwater and surface water supplies, not expand existing demands nor seek solutions primarily outside the state that rely on uncertain and distant supplies.

In an era of increasing shortages on the Colorado River and on-going historic drought conditions, today’s water management leaders and state decision-makers must respond to the ongoing historic drought and impending shortages on the Colorado River by increasing water security for all communities across all of Arizona. Thank you for the opportunity to express our concerns in this letter.

Please also see our attached notes with additional questions and comments on some specific aspects of the current proposal.

Sincerely,



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Environmental Defense Fund
& Co-Chair, Water for Arizona Coalition



Kim Mitchell, Senior Water Policy Advisor
Healthy Rivers Program
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Todd Reeve, Director
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The Water for Arizona Coalition is a group of five conservation organizations – American Rivers, National Audubon Society, Business for Water Stewardship, Environmental Defense Fund, and Western Resource Advocates – that supports policies and innovative practices to ensure a reliable water supply to meet the state’s needs. Collectively, we have over 60,000 Arizona members, as well as hundreds of hunter, angler, business, and outdoor recreation partners around the state. The coalition was recognized as an Arizona Capitol Times “2020 Leader of the Year” for our efforts to protect Arizona’s most valuable resource.



ATTACHMENT

WAC Comments on Arizona Water Authority Proposal

Comments and Questions about Specific Aspects of Proposed Language

Purpose of Authority

- How will it be ensured that the Authority's actions are undertaken strategically in response to statewide planning or an evaluation of needs?
- There does not appear to be a specific defined purpose for the Authority, or for augmentation or conservation projects that it undertakes.
 - Should the purpose be connected to enhancing water security and reliability across the state?
 - Can the purpose clarify that the first priority should be to shore up the reliability of supplies for existing uses, rather than expanding demands in a way that could actually worsen water supply reliability challenges in the future?
 - Defining a specific purpose for the Authority could help clarify the public benefit, and could be accompanied with other guardrails and project prioritization guidelines to help actions and projects match the state's most pressing needs.
- Should there, additionally, be a statement of legislative purpose and intent?
- Should there also be a defined purpose for the long-term water augmentation fund?
 - Money in the fund may be used for "funding water augmentation and conservation projects that originate outside or inside this state, including purchasing water or rights to water and acquiring or constructing water-related facilities or infrastructure in this state, for the benefit of this state."
 - Water augmentation and conservation projects to what end? For whose benefit? Appears to be up to the Board (whose rules and procedures aren't subject to the Administrative Procedure Act) to decide what is "for the benefit of this state."
 - Water augmentation and conservation are not defined.

Governance of Authority

- Make-up of recommendations committee leans heavily toward economic development and traditional (not 21st-century) industry.
 - Could there be additional municipal/local government/water provider representation?
 - There should be representation for conservation organizations.
 - *One of nine committee members is required to have "significant knowledge and experience with water management in this state."* Shouldn't all of the committee members have such knowledge and experience?
- Exemption from Administrative Procedures Act requirements removes important safeguards to ensure appropriate oversight and transparency of new state agency.
- Exemption from the Procurement Code also removes important safeguards.

- Conflicts of interest provision:
 - Under 45-2805(B)(1)(a) a person is not eligible for appointment to the Authority's governing board if they are "employed by or participates in the management of a business entity or other organization that receives monies from the authority." Shouldn't this also apply to organizations that are beneficiaries of Authority funding/projects even if they don't directly receive money from the Authority? And shouldn't it apply to those who are seeking money or benefits from the Authority not just those who are already receiving money?
- Attorney general public-private partnership agreement certification
 - Under 45-2838, if a public-private partnership agreement "complies with this chapter and the attorney general determines that the agreement will constitute a binding and legal obligation of the authority that is enforceable according to the terms of the agreement, the attorney general shall certify in substance that the agreement has been entered into in accordance with the constitution and laws of this state." Does this provision limit the ability to challenge public-private partnership agreements on constitutional grounds?

Transparency

- Public meeting requirements
 - Under 48-2806, the authority's board and subcommittees are subject to open meetings requirements, *except that* they may meet in executive session to discuss: "water supply or conservation project opportunities, strategies, technologies, applications and potential applications that, if made public, could potentially harm the applicant's, the potential applicant's or this state's competitive position." This exception could be very broadly construed by the board, keeping discussion of the Authority's actions out of public view?
- Confidentiality and public disclosures
 - Under 45-2834, when the Authority is reviewing an application for funding from a private entity, "no part of an application other than the executive summary is subject to release or disclosure by the authority until after an award of the contract, funding or financial assistance, and until after the conclusion of any protest or other challenge to the award..."
 - This executive summary is developed by the applicant, and is to cover "the major elements of its application that do not address the price, financing plan or other confidential or proprietary information or trade secrets that the entity intends to be exempt from disclosure."
 - How will there be sufficient transparency when applications for public funding and benefits can be reviewed in private, without disclosure of price or other details of the project?
 - Would the location, water source, etc. of the project have to be disclosed in the executive summary? If not, how can there be appropriate oversight?

Eminent Domain

- Under 45-2808(D), the Authority may exercise eminent domain to “acquire property, rights-of-way or other rights in property for projects that are necessary to develop, operate or hold water-related facilities or infrastructure under this chapter, regardless of whether the property will be owned in fee simple by this state or whether the property will be leased or otherwise made available to a private partner to use lease or operate for its business purposes in connection with a public-private partnership project.” Isn’t this a broad grant of eminent domain power for projects that may have more private than public benefits?

Powers to acquire, sell, deliver water and water rights

- Under 45-2831, among the Authority’s other powers, it may, “as reasonable or necessary to administer or carry out the purposes of the [two funds]”
 - Plan, construct, acquire and decommission water-related facilities or infrastructure
 - Acquire, sell, lease, exchange, hold, sever or transfer water and rights to water, including acquiring water and water rights in its own name
 - Enter into and carry out subcontracts with water users for the delivery of water acquired by the authority
 - Assess fees in connection with the conveyance or delivery of water; negotiate and enter into agreements to use existing facilities or infrastructure to divert, withdraw, deliver, treat and store water and to transport water in and to this state
 - Elsewhere it’s stated that the Authority may not operate or maintain facilities or infrastructure by may enter into agreements with others to operate or maintain facilities those owned or constructed by the authority. ARS 45-2832(c).
- It appears that there is little constraint or guidance about the purpose for which water can be acquired and for whose benefit—just must be in keeping with the purpose of the funds, which as noted above is not specifically defined beyond “augmentation and conservation.”
- How will the Authority address competition for water supplies among potential beneficiaries or for different purposes within Arizona? It appears that the Authority can buy and sell water rights essentially at its own discretion in terms of purpose and recipients and price, so long as it can be characterized as “augmentation” or “conservation.”
- Should water and water rights owned by the Authority in its name be held in trust?

Evaluation criteria for projects, funding and financial assistance

- Under 45-2835, before entering into a public-private partnership or other agreement for facilities or infrastructure, or providing funding or financial assistance from one of the

two funds, the Authority “shall determine the order and priority of the projects under consideration” based on a listed set of factors.

- Do these evaluation criteria also apply to the Authority’s acquisitions of water or water rights in its own name? Should the language make clear that the evaluation should also happen before the Authority itself spends money?
- The first factor is listed as “The benefits of the project to the public, including the ability of the project to augment or improve the delivery of water supplies within this state and promote economic growth.”
 - This appears to be a narrow interpretation of the benefits of the project to the public and does not mention water supply reliability
 - Should, at the least, read “...augment or improve the delivery *or reliability* of water supplies within this state and promote economic growth *and water supply reliability*.”
 - List of factors does not include potential environmental impacts and benefits
- Factor #11 is “Existing and planned conservation, best management practices and water management programs of the applicant or potential applicant.” Should this say “applicant or beneficiaries of the project, or potential applicant or beneficiaries”?
- Overall the list of factors is just a list of things that should be considered and does not provide further direction to the Board about how to prioritize projects and funding.
 - There does not appear to be a mechanism to connect this prioritization to any state strategy for improving water security and water supply reliability.
 - Would any type of project be “off-limits” under this structure based on running counter to the state’s water security/reliability needs (e.g., expanding growth on mined groundwater)?
 - There appears to be no preference given to projects based on their contribution to water security in the state.
- Potential ways to improve this aspect of a proposal could include a range of possibilities, for example:
 - Further define the purpose of the Authority and/or the Augmentation Fund to focus on water security and water reliability for the state
 - Require that the Authority’s board cooperate with ADWR to develop a strategic plan for water augmentation and conservation, and require that projects are consistent with the strategic plan
 - Establish a set of “project preference” criteria. For example:
 - Prioritize projects to help established municipal water providers reliably meet existing demand over those to benefit developers or specific new developments.
 - Prioritize projects that replace non-renewable water supplies with renewable ones or otherwise enhance the reliability of supplies for existing uses over those that simply increase water demand to satisfy a new use.

- Prioritize projects that replenish groundwater over those that will reduce groundwater supplies in the state.
- Given that there is only very broad guidance about how to prioritize projects or beneficiaries, what will prevent investment or water acquisitions from being undertaken to benefit particular private parties?