

# Water rights extinguished

By Jim Klinker

Senator Ken Bennett (R-Flagstaff) and Representative Barbara Blewster (R-Dewey) have opened a can of worms with their legislation to extend the rights of farmers to the water associated with their land in the Prescott Active Management Area. Is this a novel idea? Well not so novel, as it was then the law of Arizona until 1980 when Governor Bruce Babbitt and the legislature stripped the water rights away from the land and from those who had developed and put the water to beneficial use. To a large extent, the farmers and ranchers.

Agricultural negotiators knew, in 1980, in the urban growth areas, agricultural water use needed to be converted to a non-agricultural use. The 1980 Groundwater Code recognized this by providing that, outside city service areas (areas that were not yet set up to be served water by a city), a farmer had up to three acre-feet of water to sell with his land. It seems straight forward enough and makes sense. The intent was to encourage developers to buy farmland and use the retired agricultural water for their new development. Not so says the 1980 Groundwater Code and the Department of Water Resources (DWR) that enforces it. The Code also calls for a 100-year assured supply of water if the land is going into houses and the three-acre-feet belonging to the farmer cannot automatically be counted as assured water. With this conflict in the code, there is little incentive to retire farmland and we see the leap-frog development of the desert and foothill areas. Developers, with DWR, create recharge areas and replenishment districts to be able to move water, in some cases paper water, to demonstrate an

assured supply. Other developers buy Indian rights to the Central Arizona Project water and supply their desert development. The assured water supply rules, finalized in 1995, attempted to partially address the discrepancy in the Code. The rule gave all agricultural land 1.5 acre-feet of water in the Active Management Areas, but, reduced that amount by four percent per year until 2025 when there would be no water associated with the retired farmland for the development of homes. This amount of water could be used to demonstrate an assured water supply for a non-agricultural use and it encourages farmers to sell their land early to gain as much benefit as possible from the value of the water.

The Bennett and Blewster legislation brings into focus that the 1980 Groundwater Code is stealing water from agriculture.

At Thanksgiving and Christmas of 1999, Gary Young of Young's Farm in Dewey, told his thousands of customers from the Phoenix valley that the state's water law was forcing him to sell his farm before he and his family wanted to. Four percent of the value is being stripped away every year he does not sell to a developer. The public reacted with phone calls to the Governor's office and the Water Department.

The 1980 Groundwater Code needs serious attention in this area. The DWR is on the right track with the assured water supply rules except where the rules call for the diminishment, over 25 years, of the water right associated with farmland.

One obvious reason to change the law is that the current rule is stealing water from the farmer. Stealing water equates to stealing value in water short areas.

The second reason to change the law is that the diminishment provisions reduce the incentive to retire farmland. A basic premise of the 1980 code was to retire agricultural water use for residential and other urban uses. When the amount of water associated with agricultural land is reduced, the developer has equal or increased incentive to develop land that has no historic right to water, desert land and mountainsides.

Prescott area farmers are mad. DWR has granted 30,000 future development lots an assured water supply. One area farmer points out that is water enough for 90,000 people that are not even there yet. The question these area farmers are asking is why these non-farmed areas are deemed to have water for 100 years and their farms are not? A good question and one that will undoubtedly be asked in the other Active Management Areas as the assured water rules take effect in 2000.

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# 'Young's Farm bill' gives local farmers reprieve

April 21, 2000

By JOANNA DODDER  
The Daily Courier

PHOENIX - It appears Prescott Active Management Area farmers will get a 10-year reprieve from losing the value of their groundwater rights.

Just a day before the state legislative session ended, the House approved Senate Bill 1509. It was sponsored by Sen. Ken Bennett, R- Prescott.

State rules allow owners of irrigation groundwater rights, like the well-known Young's Farm, to sell these rights to subdivision developers. People usually can't own groundwater rights, but the state gave Active Management Area farmers these rights as a concession.

Under a previous state rule, the value of these rights started decreasing by 4 percent annually this year. This encouraged farmers

to sell out to developers sooner rather than later.

The Arizona Department of Water Resources (ADWR) made the rule because homes use less water than farms, and the state has concluded that the Prescott Active Management Area is using groundwater faster than the aquifer can replenish it.

Government officials expect the Gov. Jane Hull to sign the bill into law, and when she does, these rights won't decrease for the next 10 years. However, once the 10 years are up, the rights drop by 40 percent.

"It just takes our heads off the chopping block for a while," said Gary Young, who lobbied enough for the change that the bill became known as the "Young's Farm bill."

Young hopes that a land trust will buy the development rights to his family's farm before the 10 years

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is up, to offset the potential loss of the water rights. While the family does have an offer on the table for the popular "u-pick-um" farm at the corner of highways 69 and 169 in Dewey, they'd rather not take it, Young said.

Young had high praise for Bennett as well as Rep. Barbara Blewster, R-Dewey, who tried to get a permanent reprieve from the water value depreciation. Bennett says he supports the full reprieve in the future, but knew only a compromise would make it through the process this year.

Chino Valley farmer Kraig Collier, who also has spoken out in favor of the bill, said the 10-year reprieve is more than he thought he would get.

"I think it's probably the best we could have done this year. It takes the pressure off Collier said. But I don't think it's an acceptable conclusion. Pressuring us to sell out by eliminating our property values is not the way to go.

ADWR Assistant Director Jim Hoiway hopes no one will try to make the reprieve permanent within the next few years.

"From a region-wide water management point of view, this is not nearly as big an issue as where the communities are going to get their water so the aquifer doesn't go dry," Hoiway said.

Young and other farmers also are thankful for the overwhelming support of citizens in this area and elsewhere. More than 200 people sent the Young family copies of letters that they sent the governor and Legislature supporting the bill, Young said.

"There's been more people listening to us this time than ever before," said Collier, whose family has been farming near Chino for 42 years. Like the Youngs, their farm has become a popular spot for people to visit during harvest season and pick their own pumpkins and other vegetables.

"People don't want houses on every piece of ground," Collier said. "They moved here because there was a little bit of rural atmosphere, and farms are a part of that."

The ADWR opposed Blewster's bill and it failed to pass out of committee. She tried to change Bennett's bill to be like hers, but he changed it back during conference committee meetings.

Bennett and ADWR officials expect the governor to sign off on the bill.

"I would be totally shocked if it didn't get signed," Bennett said.

The ADWR supported Bennett's bill because it could use it as a vehicle to add amendments that closed some "loopholes" in the law.

Those amendments nearly caused severe problems for Prescott, Prescott Valley and Chino Valley governments, however.

One day before the bill became final in conference committee, local officials learned of the implications of these technical amendments, and got some changes.

"I don't think anybody was trying to hide anything from anybody, but the most important section went unnoticed until the end," Bennett said. "It's very technical language (in the ADWR amendments). Unless you are an attorney, you don't realize all its implications."

ADWR officials didn't plan to hurt the communities' interests, Hoiway said.

"No one here was aware (of the effect) until the last minute," Hoiway said.

The department assumed local officials were tracking the bill since it gained so much local publicity, Hoiway said.

It would have been nice if the ADWR had sent the amendments to its Local Groundwater Users Advisory Council for review, Prescott Environmental Services Director Brad Huza said.

One of ADWR's original amendments would have hurt Prescott's agreement with farmers in the Chino Valley Irrigation District who sold the city Watson and Willow lakes, Huza said.

That amendment excluded farmers from the 10-year reprieve if they hadn't been farming with groundwater at least four out of the past six years. That exclusion would have included Irrigation District farmers, who have been using effluent credits because of the Prescott agreement.

The same amendment would have made it harder for Chino Valley to start its own water company by buying groundwater rights, said John Munderloh, Chino's engineering projects manager. That's because few of the groundwater owners in the Prescott Active Management Area still use those rights to farm, even though many haven't developed their land yet, he said.

Prescott Valley faced the same problem with that amendment, since it's trying to build its water portfolio, PV Public Works Director Larry Tarkowski said.

Now that this amendment was changed at the last minute, the three cities and towns are satisfied with the bill, officials said.