



REPRESENTATIVE GAIL GRIFFIN

Here's How Proposed EDF Groundwater Control
Legislation Could be Used to Take Advantage of
Supervisor Districts, Economies, and Constituents

October 2023



Arizona House of Representatives
Representative Gail Griffin

Have You Read the 41-Page Groundwater Legislation Proposed for Rural Arizona? Here's How Proposed Groundwater Control Legislation from the Environmental Defense Fund Could be Used to Take Advantage of Supervisor Districts, Economies, & Constituents

This year, some county supervisors and radical environmental organizations have been pushing state lawmakers to adopt legislation that would allow as few as two or three county supervisors in some counties (a simple majority) to establish California-style rural groundwater management areas in other supervisors' districts, including at the objection of impacted supervisors.

Over the years, the concept has gone by many names, including "Groundwater Conservation Areas," "Special Management Areas," and "Rural Management Areas." This year, it's being called "Local Groundwater Stewardship Areas" (LGSAs). The primary backer of the concept is the Environmental Defense Fund (EDF) (headquartered in New York).

While the proposed legislation ([HB2731](#) and [SB1306](#)) (the "EDF Legislation") may be portrayed as a giving "local" communities "tools" to help manage local groundwater resources and secure their water future, the provisions are far from "local" or voluntary.

Rather, the EDF Legislation would give a small group of unelected bureaucrats (an "LGSA council") broad, unfettered authority to weaponize the Arizona Department of Water Resources (ADWR) and regulate groundwater that is necessary to support rural families and economies, such as ranching, farming, mining, and electric energy and hydrogen production.

Other environmental organizations that are pushing the proposed EDF legislation along with EDF include the Lincoln Institute of Land Policy (headquartered in Cambridge, Massachusetts), the Bonneville Environmental Foundation (headquartered in Portland, Oregon), and the National Audubon Society (headquartered in New York).

At over 40 pages (affecting 14 sections of Arizona law and adding ten new sections), it may not be obvious how the proposed EDF Legislation—which promises "customizable" "tools" to help "local" communities manage groundwater resources in rural Arizona—could be used to foist an irreversible scheme on rural supervisors and take away your constituents' private property rights and water to usher in radical social and economic transformation in your district. But that's exactly what it could do.

Here are some of the key provisions that demonstrate how the proposed EDF Legislation could be abused to change the social, economic, and political makeup of your district, along with page and line numbers to help supervisors identify the corresponding location in the legislation.

I. Overview of Key Provisions

a. Formation

An LGSA can be established over a groundwater basin or subbasin by a simple majority vote of each county where the basin or subbasin overlaps. **(Page 29, lines 6-10; page 31, lines 43-45).**

The Director of ADWR, who serves at the will and pleasure of the Governor, can also establish an LGSA over a groundwater basin or subbasin unilaterally. **(Pages 31-32).**

b. Eligibility

If groundwater is the only or primary source of drinking water in the area, or if there has been any decline in groundwater levels (regardless of the amount, cause, or timeframe) then the area qualifies. **(Page 29, lines 22-33).**

On the other hand, if as few as ten percent of registered voters in the area want to establish an LGSA, then the government doesn't need to establish any factual basis. The LGSA can be established by desire alone. **(Page 32, lines 11-40).**

c. Size

The boundaries of an LGSA are coterminous with the boundaries of the relevant groundwater basin or subbasin. **(Page 30, lines 13-22; page 32-33).** However, in the "regional aquifer systems of Northern Arizona" (such as the Little Colorado Plateau, Coconino Plateau, Kanab Plateau, and Shivwits Plateau), an LGSA may be "smaller" than a subbasin. **(Page 29, lines 6-10; page 30, lines 16-19; page 31, lines 43-45; pages 32-33).**

d. Council

Once established, the members of the LGSA council are nominated by the county supervisors and appointed by the Governor. **(Page 33, lines 42-43; pages 34-35).** Members of the LGSA council do not need to live in the LGSA. **(Page 34).**

e. Regulation

Once appointed, the members of the LGSA council must adopt a "local management plan" with "local management goals." **(Page 16, lines 21-30; page 35, lines 25-28; page 37, lines 3-6; pages 39-40).**

"Local management goals" can be anything, including perceived or desired "hydrologic," "geologic," "ecological," "environmental," "natural resource," and "demographic" conditions of the area, including the desire to regulate surface water as groundwater in areas subject to general stream adjudications. **(Page 29, lines 27-29; page 37, lines 3-36).**

The tools for achieving such “goals” can be anything related to groundwater, including “locally tailored actions” for “managing and regulating” the “withdrawal, use and conservation” of groundwater from “certain” uses and “persons” which the members of the LGSA council deem “inconsistent with” with the “local management goal.” **(Page 37-38).**

Proposed regulations can include:

- Mandatory groundwater measuring devices (meters) for “*certain groundwater withdrawals*” **(pages 24 and 38).**
- Mandatory groundwater withdrawal permits for “*certain purposes*” **(page 39, lines 17-19).**
- Mandatory groundwater conservation requirements for “*certain persons* withdrawing, distributing, or receiving groundwater” within the LGSA **(page 39, lines 1-3).**
- Establishment of a subsequent Irrigation Non-expansion Area (INA) over any “*portion*” of the LGSA. **(Pages 16-18; pages 37-38).**
- Adoption of the rural 100-year “adequate water supply” requirement in the LGSA to prevent the construction of new residential subdivisions in the area **(page 38, lines 10-11).**

If the members of the LGSA council recommend a proposed regulation, and the proposed regulation is “consistent with” the “local management goal,” then the Director of ADWR must adopt/implement the proposed regulation. **(Page 40, lines 33-38).** Voter approval or supervisor approval is not required; only a request from the LGSA council is sufficient.

If the members of the LGSA council recommend the local county supervisors adopt the rural 100-year “adequate water supply” requirement, then the vote count required for the county to adopt such requirement shifts from a unanimous vote to a simple majority vote. **(Page 12, lines 30-45).**

f. Duration

The proposed EDF Legislation does provide a pre-set duration for time in which an LGSA and its associated regulations will remain in effect, once established.

If county supervisors establish the LGSA, then there is a 10-year “review” period and an opportunity to “rescind” the LGSA. However, the LGSA cannot be rescinded unless the supervisors demonstrate that the “conditions” utilized to establish the LGSA (such as the fact that groundwater is the only or primary source of drinking water) “no longer apply.” **(Page 29, lines 22-33; page 31, lines 4-14).**

If the Director of ADWR establishes the LGSA, then there is no “review” and “rescission” provision. **(Pages 31-33).**

g. Funding

The proposed EDF Legislation establishes an “LGSA fund” that is funded every year with \$50 million from the State Lottery Fund. **(Page 2, lines 32-36).**

The proposed EDF Legislation allows the Director of ADWR to 100% of the \$50 million in the fund each year to “any” political subdivision, tribe, or nonprofit organization in the nation, regardless of geographical location, political affiliation, financial motivation, or conflict of interest. **(Page 15, lines 23-29).**

Once granted, the recipient can use the funds to award various property owners in the basin for “voluntary, compensated land and water conservation plans” in the LGSA. **(Page 36, lines 22-26; page 39, lines 4-16).**

II. Summary of Key Issues

a. LGSAs are not "local."

No local vote of the people is required to establish an LGSA. (Page 29, lines 6-10; page 31, lines 43-45).

No local vote of the people is required to elect the members of the LGSA council. (Page 33, lines 42-43; pages 34-35).

No local vote of the people is required to adopt the LGSA's "local management goals" or proposed groundwater regulations that could be imposed by such "goal." (Page 35, lines 25-28; page 39, lines 33-36).

b. Everywhere qualifies for an LGSA.

In rural Arizona, groundwater is the primary source of drinking water.

And any person or industry that utilizes groundwater for economic production is going to show groundwater declines at some point, especially during historic drought.

Whether you like it or not, if other supervisors and members of the radical Left want to establish an LGSA in your district, they're going to find a reason.

The proposed EDF Legislation gives them all the reasons they need.

c. LGSAs are permanent.

Once established, LGSAs will never go away.

With the constant fight over surface water rights and push to "protect" areas, radical environmental groups and federally backed entities will never allow rural communities to use surface water as a substitute for groundwater to obtain drinking water, especially if areas are in the adjudication process.

Additionally, rural communities cannot afford to pay for alternative sources of drinking water from expensive, multi-jurisdictional water import projects like ocean desalination from Mexico. Groundwater will always be the primary source of drinking water for rural communities.

d. Allows county supervisors to establish LGSAs and nominate LGSA councils at the objection of other supervisors.

Because LGSAs can be established by a simple majority vote of the local county board of supervisors, two supervisors can establish an LGSA *in another supervisor's district*, even if the other supervisor objects to the LGSA. **(Page 29, lines 6-10).**

Because the members of the LGSA council are nominated by the supervisors and appointed by the governor (rather than elected by the people owning property in the LGSA), there is a risk that the Governor would appoint only the candidates who were nominated by the supervisors that voted "Yes" on the LGSA. **(Page 33, lines 42-43).**

Because there's no residency requirement, supervisors that vote "Yes" on the LGSA can *nominate themselves* and be appointed to the council, even if the LGSA is in *another supervisor's district*. **(Page 34, lines 3-20).**

e. Allows county supervisors and LGSA council members to target individual property owners.

In "the regional aquifer systems of Northern Arizona," county supervisors can establish an LGSA over "*a portion*" of a groundwater basin, such as over the site of a future or existing power plant, paper mill, copper mine, industrial facility, farm, ranch, or hydrogen production facility in Northern Arizona (i.e., a "targeted LGSA"). **(Pages 29-33).**

Current law prohibits the designation of a subsequent INA over "a portion" of a groundwater basin **(A.R.S. § 45-432(B))**, but the proposed EDF Legislation provides a workaround that allows the members of the LGSA council to act in concert with the county supervisors who nominated them and the Governor who appointed them to establish a subsequent INA over *any "portion"* of the LGSA, such as over the site of a future or existing farm, orchard, or vineyard within *another supervisor's district* (i.e., a "targeted INA"), regardless of the objection of the other supervisor. **(Pages 16-18; pages 37-38).**

Anywhere in the LGSA, the LGSA council can recommend, and the governor's regulator *must adopt* **(page 40, lines 33-38)** mandatory regulations on "certain" groundwater users and uses, including mandatory groundwater measuring devices (meters) for "*certain groundwater withdrawals*" **(pages 24 and 38)**, mandatory groundwater withdrawal permits for "*certain purposes*" **(page 39, lines 17-19)**, and mandatory groundwater conservation requirements for "*certain persons*" withdrawing, distributing, or receiving groundwater within the LGSA **(page 39, lines 1-3)** (i.e., "targeted regulations"), while *other "persons," "purposes," or "withdrawals"* the LGSA council deems "consistent with the management goal" may continue pumping unabated.

f. Makes \$50 million available to any city, tribe, or nonprofit in the nation to compensate itself for worthless, vacant land.

Allows the government to grant up to \$50 million of public money each year to “any” political subdivision, tribe, or nonprofit organization in the nation, regardless of geographical location, political affiliation, financial motivation, or conflict of interest. (Page 2, lines 32-36; page 15, lines 23-29). A recipient could:

- Have helped gather signatures for the establishment of a targeted LGSA, INA, or Active Management Area;
- Be hostile to “certain” property owners in the area that would be eligible for compensation; or
- Own property in the LGSA that would allow the recipient to compensate itself for “voluntary, compensated” land and water conservation plans.

Once granted, the recipient serves as sole judge and jury in deciding who is and is not worthy to receive funds for “voluntary, compensated land and water conservation plans” in the LGSA. (Page 36, lines 22-26; page 39, lines 4-16). Could these dollars be used for conservation easements that reduce the property tax base in rural counties? Could they be used as matching funds for federal land and water conservation programs to acquire private property as a part of the global “30x30” initiative? The proposed EDF Legislation is unclear.

There is no limitation on who can be compensated for “voluntary” land and water conservation, including the recipient itself. Once the funds have been granted, there is no additional government oversight or veto authority over the disbursement of funds.

While farmers and ranchers must work the land in order to provide for their families, radical environmental land trust organizations and their corporate backers along the coasts would be able to regulate the land out of economic value, acquire the land for pennies on the dollar, and pay themselves millions of dollars in public funds each year for letting the land sit vacant and grow weeds.

g. Gives LGSA council members broad, unfettered authority to set public policy and carry out their visions for radical social and environmental change in rural Arizona.

The sweeping grant of authority to establish “local management goals” based on “hydrologic,” “geologic,” “ecological,” “environmental,” “natural resource,” and “demographic” conditions gives the LGSA board absolute power to dictate the fate of an area without any legislative or supervisor approval or voter oversight.

Through the “local management goal,” the members of the LGSA council can force private property owners to:

- Conserve groundwater to protect threatened and endangered species;
- Conserve groundwater to preserve open spaces and riparian areas, including in-stream flow in stream adjudications;
- Use groundwater for only drinking water;
- Conserve groundwater for special corporate interests; or
- Use groundwater to prioritize the health and well-being of bugs, weeds, and rocks over the health and well-being of people, jobs, and economic livelihoods.

III. Consequences

Allows supervisors to fundamentally alter the social, economic, and political makeup of other supervisors' districts.

In rural Arizona, the affirmative vote of only two or three supervisors (depending on the county) would be sufficient to establish a targeted LGSA in another supervisor's district, nominate and appoint anti-district members to the LGSA council, including one of the supervisors themselves, and establish targeted INAs and regulations throughout the district, thereby fundamentally altering its social, economic, and political makeup forever.

i. End Ranching and Mining on the Arizona Strip

In counties with significant opportunities for ranching and mining, including in the regional aquifer system in Northern Arizona, such as the White Mountains or Arizona Strip, as few as two or three county supervisors could establish a targeted LGSA and nominate anti-agriculture/anti-mining members to the LGSA council to impose targeted regulations and restrictions on ranchers and miners in the area.

ii. Shut Down Critical Baseload Power Plants and Energy Production in Rural Arizona

In counties featuring critical baseload power plants, such as the Coronado, Springerville, and Apache Generating Stations—which provide critical power to SRP, TEP, and UNSE customers in Central Arizona, Tucson, and Kingman, respectively, as well as to Mohave Electric Cooperative in Mohave County, Trico Electric Cooperative in Marana, and Navopache Electric Cooperative in the White Mountains—a simple majority vote of two or three county supervisors in some counties would be sufficient to establish LGSAs over these power plants' critical groundwater sources and nominate anti-energy members to the LGSA council to adopt targeted regulations against these critical sources of safe and reliable power (not to mention jobs and local county tax base). In addition, as few as two or three supervisors in some counties could vote to establish LGSAs in basins ripe for hydrogen fuel production and nominate anti-hydrogen members to the LGSA council to block the development of competitive hydrogen production facilities throughout the state.

iii. Increase the Price of Dairy in Arizona Groceries and Restaurants

In groundwater basins such as the Willcox, Gila Bend, and Ranegras Plain groundwater basins, as few as two or three supervisors could vote to establish an LGSA across the basins and nominate anti-agriculture members to the LGSA boards to adopt targeted INAs and targeted regulations to shut down economically productive dairy farms in these basins, which contribute significantly to the state economy and local property tax base.

iv. Block Competition in the Arizona Wine Market

In regions of the state that are famous for production of local, Arizona wine, such as Willcox, Sonoita, and the Verde Valley, as few as two or three county supervisors could work together to establish an LGSA in one of these areas and nominate anti-winery members to the LGSA council to adopt targeted regulations on the Arizona wine industry or otherwise interfere with the competitive wine market in these areas.

Unworkable for Arizona

Currently, the Governor's Water Policy Council is considering rural groundwater control legislation as its landmark legislation for the 2024 legislative session. It is also using the proposed Environmental Defense Fund Legislation as its "starting point" for discussion.

Most members of the public don't have time to read multi-page legislation or keep track of all the happenings of sporadic government committees and councils, so they must rely on elected officials to keep them informed.

The radical environmental defense coalitions and their liberal backers who drafted the proposed Environmental Defense Fund Legislation, however, cannot be trusted to reveal the poison pills that they wrote into the proposed Environmental Defense Fund Legislation.

No water policy in Arizona should be able to divide and take advantage of rural Arizonans like the proposed Environmental Defense Fund Legislation allows members of the radical Left to do.

Arizonans want clean air and water. And they want certainty for their private property rights and future water supply. But the proposed Environmental Defense Fund Legislation is not the solution.

Don't let radical out-of-state environmental organizations headquartered in New York and other elitist cities along the coasts with agendas sell you a bill of goods. Proposed Environmental Defense Fund Legislation is not right for rural Arizona.

Pathways 2025

EDF Strategic Plan



Rebalance water systems

Climate change and population growth are stretching our freshwater resources beyond their limits—particularly in arid and semi-arid environments, where 40% of the global population lives and where irrigated agriculture is a dominant water use.⁶⁹

The challenge is particularly urgent in the American West, where historic drought and overallocation have put major river systems at risk. As a result, groundwater levels are plummeting, agriculture is getting squeezed, wildlife is threatened and many communities have lost access to safe drinking water.

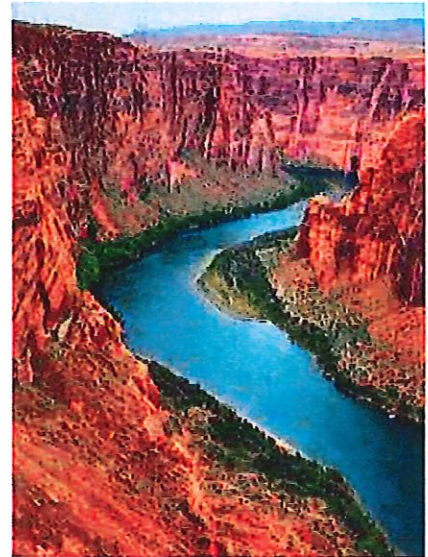
Our goal is to rebalance these water systems and make them more resilient to climate change. We see opportunities for innovation and collaborative solutions. Policies already in place, such as California’s Sustainable Groundwater Management Act, mandate more proactive decision making.⁷⁰ Technological tools are making smarter water use more attainable. And water users of all kinds are thinking differently about how they share, save and allocate water. Scarcity is focusing people’s minds—a prerequisite to successful reform.

We are focusing our work on three areas: modernizing groundwater management, improving and expanding healthy water trading programs, and incentivizing the sustainable use of agricultural water. In these areas, we collaborate with farmers and cities to better incorporate the needs of all water users—including rural, disadvantaged communities and the environment, two important, yet often overlooked, stakeholders.

OBJECTIVES FOR 2022

- Sustainable groundwater management plans that improve ecosystems and include water trading are being implemented in at least three groundwater basins.
- At least two major water deals to reduce water diversions from the Colorado River provide for farmers’ active participation in water markets and habitat restoration.
- Satellite-based measurement of agricultural water use is available at low cost through a web interface to farmers, water managers and others across the West.
- Water trading in California and Arizona is on track to double from 2016 levels by 2025.

Some of our partners: American Rivers, Audubon California, Friends of Verde River Greenway, NASA and Desert Research Institute, Rural Community Assistance Corporation, Self Help Enterprises, Yuma County Water Users Association.⁷¹



The watershed of the Colorado River covers parts of seven Western states.

KEY EFFORTS OUTSIDE EDF

Promote groundwater recharge on California agricultural lands (e.g., *Sustainable Conservation*)

Protect and maintain healthy flows in the upper Colorado River Basin (e.g., *Western Resources Advocates*)

Ensure that rivers, springs and creeks in Texas continue to flow (e.g., *Texas Living Waters Project, a collaboration of National Wildlife Federation, Sierra Club and Galveston Bay Foundation*)⁷²