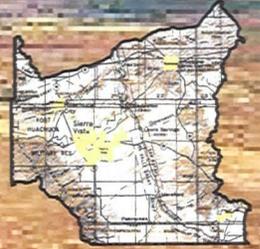


Upper San Pedro Water District



Appendices for Organizational Plan and Financial Plan Draft

August 3, 2009

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**UPPER SAN PEDRO WATER DISTRICT
APPENDICES FOR
ORGANIZATIONAL PLAN
AND
FINANCIAL PLAN**

AUGUST 3, 2009

**PREPARED FOR:
THE UPPER SAN PEDRO WATER DISTRICT
ORGANIZING BOARD OF DIRECTORS**

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7

1 ARIZONA REVISED STATUTES
2 CHAPTER 37
3 UPPER SAN PEDRO WATER DISTRICT
4

5 ARTICLE 1 - GENERAL PROVISIONS

6 48-6401. Findings; purpose

7 A. The legislature finds that the upper San Pedro groundwater basin is a major
8 source of water for the residents of Cochise county and for the personnel and
9 operations of Fort Huachuca, and that Fort Huachuca and the residents of the
10 basin are dependent on the withdrawal of water from wells for their water supply
11 for drinking and other purposes. The legislature finds that conserving and
12 maintaining the groundwater supply by adoption of this chapter will protect and
13 promote the public's health and safety by helping to ensure a more reliable water
14 supply.

15 B. The legislature further finds that maintaining the mission of Fort Huachuca will
16 strengthen our national defense and ensure and improve the public safety of the
17 residents of this state, and that the closure or significant reduction in the fort's
18 mission would adversely impact the safety and security of the residents of this
19 state and this nation. Because federal law requires consideration of certain water
20 issues in evaluating the future of Fort Huachuca, ensuring the water supply to
21 Fort Huachuca and its surrounding communities will further protect the public's
22 safety.

23 C. The purpose of this chapter is to allow for the formation of the upper San
24 Pedro water district consisting of a portion of the upper San Pedro groundwater
25 basin that includes Fort Huachuca, the lands in the corporate limits of the cities of
26 Sierra Vista and Tombstone and the town of Huachuca City and the portion of
27 the city of Bisbee located in the upper San Pedro groundwater basin, but not any
28 lands in Santa Cruz county or Pima county and not including that portion of the
29 city of Bisbee located in the Douglas groundwater basin, and to provide the
30 district with sufficient resources and authority to allow the district to achieve the
31 goal prescribed in section 48-6403.

32 D. The upper San Pedro water district formed pursuant to this chapter is intended
33 as a long-term, legally binding body with perpetual authority that is specifically
34 adapted to the geographical and hydrological requirements and needs of the
35 area in the district. The district shall be established with a specific water resource
36 goal appropriate to that area.

1 E. The legislature finds that the adequate water supply requirements in section
2 48-6411 are necessary to assist the district in achieving its management goal
3 and to protect the public health and safety in the district.

4
5 48-6402. Definitions

6 In this chapter, unless the context otherwise requires:

7 1. "Board" means the elected board of directors of the upper San Pedro water
8 district formed pursuant to this chapter.

9 2. "County" means the county in which the district is located.

10 3. "Department" means the department of water resources.

11 4. "Director" means the director of water resources.

12 5. "District" means the upper San Pedro water district formed pursuant to this
13 chapter.

14 6. "Municipal water delivery system" means an entity that distributes or sells
15 potable water primarily through a pipeline delivery system that is owned by
16 either:

17 (a) A city or town incorporated or chartered under the constitution and laws of
18 this state.

19 (b) A private entity that is regulated as a public service corporation by the
20 corporation commission under a certificate of public convenience and necessity.

21 (c) A special taxing district established under chapter 4 or 6 of this title.

22 (d) An entity that is regulated as a water supply system by the department of
23 environmental quality.

24
25 48-6403. Establishment of upper San Pedro water district; map; goal; decreed
26 and appropriative water rights

27 A. The upper San Pedro water district may be established by an election held
28 pursuant to this article. If the district is established, the lands in the district shall
29 consist of the portion of the upper San Pedro groundwater basin delineated on
30 the map that is dated April, 2007 and that is on file in the department. The district
31 includes Fort Huachuca, the lands in the corporate limits of the cities of Sierra
32 Vista and Tombstone and the town of Huachuca City and the portion of the city of
33 Bisbee located in the upper San Pedro groundwater basin, but not any lands in
34 Santa Cruz county or Pima county and not including that portion of the city of
35 Bisbee located in the Douglas groundwater basin. If the district is established, a
36 true copy of the map shall be recorded in the office of the county recorder in the

1 county. The map prescribed by this section shall not be modified without the
2 approval of the legislature.

3 B. The purpose and goal of the district are to maintain the aquifer and base flow
4 conditions needed to sustain the upper San Pedro river and to assist in meeting
5 the water supply needs and water conservation requirements for Fort Huachuca
6 and the communities within the district.

7 C. This chapter shall not be construed to affect decreed and appropriative water
8 rights. This chapter shall not be construed to affect any of the following:

- 9 1. The definition of surface water in section 45-101.
- 10 2. Water subject to appropriation in section 45-141.
- 11 3. Any provision of title 45, chapter 1, article 9.

12
13 48-6404. District as municipal corporation; exemption from taxation; judicial
14 review

15 A. The district is a public improvement district of this state and a municipal
16 corporation to the extent of the powers, privileges and immunities conferred by
17 this chapter or granted generally to municipal corporations by the constitution
18 and statutes of this state, including the immunities and exemptions provided by
19 article XIII, section 7, Constitution of Arizona, except as specifically limited by this
20 chapter.

21 B. The district is regarded as performing a governmental function in carrying out
22 the purposes of this chapter and is not required to pay taxes or assessments on
23 any of the property acquired or constructed, on the activities of the district in
24 maintaining and caring for the real property or on the monies derived from the
25 property.

26 C. Decisions of the board of directors under this chapter are subject to judicial
27 review only to the same extent and in the same manner as decisions of other
28 special taxing districts under this title.

29
30 48-6405. Board; members; terms; compensation

31 A. Beginning thirty days after the date on which the board of directors is elected,
32 the district shall be administered by a board of directors of seven persons who
33 shall be qualified electors of the district.

34 B. A board of directors shall be elected as prescribed in this section. After the
35 election and qualification of the first directors, the directors shall meet and divide
36 themselves by lot into two classes as nearly equal in number as possible.

37 Directors of the first class shall serve for a term of four years and directors of the

1 second class shall serve for a term of two years. At each statewide general
2 election thereafter, one director for each expired term shall be elected and shall
3 hold office for a term of four years and until the director's successor is elected
4 and qualified. Board members may be reelected.

5 C. A candidate for election to the board shall be nominated by a petition that is
6 signed by at least two hundred qualified electors of the district and filed with the
7 clerk of the board of supervisors or the elections officer of that county as
8 prescribed by title 16, chapter 3.

9 D. Only qualified electors of the district shall vote at an election for directors.

10 E. A vacancy on the board shall be filled by appointment by the county board of
11 supervisors to fill the unexpired portion of the term of office.

12 F. A person who is appointed as a director pursuant to this section is fully vested
13 with the powers and duties of the office as if elected to that office, unless
14 otherwise provided in this chapter.

15 G. Board members are not eligible to receive compensation but are eligible for
16 reimbursement of actual and necessary expenses while engaged in official
17 business under order of the board.

18 H. The board shall select a chairperson, vice-chairperson and secretary-
19 treasurer.

20 I. Each board member shall qualify by taking and subscribing an official oath of
21 office as prescribed by title 38.

22 J. Members of the board are public officers and are subject to all laws applicable
23 to public officers. The provisions of title 38, chapter 3, article 8, relating to conflict
24 of interest, apply to all board members, officers and employees of the district.

25
26 48-6406. Formation election; tax authorization; election of board members

27 A. The county board of supervisors of a county in which the upper San Pedro
28 water district is authorized pursuant to section 48-6403, on request of the
29 organizing board of the district appointed pursuant to section 48-6416, may
30 submit to a vote of the qualified electors of the proposed district the issue of
31 formation of the district and election of members of the board of directors. On
32 request of the organizing board of the district, the board of supervisors may
33 submit to a vote of the qualified electors as a separate question or at a separate
34 election the issue of authority for the district to levy a transaction privilege tax. On
35 request of the organizing board, the board of supervisors may either order and
36 call a special district-wide election for those purposes or place the issues on the
37 ballot at a general election.

1 B. If a majority of those voting on the question of formation approve the formation
2 of the district, the district shall be formed. If the majority of those voting on the
3 question of the tax levy approve the authority for the district to levy a transaction
4 privilege tax, the district may levy a transaction privilege tax as prescribed in
5 section 48-6432. If the district's formation is approved and the question of the
6 authority to levy the tax is not submitted to or not approved by a vote of the
7 qualified electors, the district shall not levy a transaction privilege tax unless
8 authority for the levy is subsequently approved by a vote of the qualified electors
9 of the district as a separate and subsequent ballot question.

10 C. At the same election held pursuant to subsection A of this section, the
11 qualified electors of the district shall additionally elect a board of directors for the
12 district as prescribed in section 48-6405, whose members shall serve only if the
13 district's formation is approved at that election.

14 D. If a transaction privilege tax is approved, the board of directors shall set the
15 transaction privilege tax rate in an amount determined proper by the board,
16 based on the activities and projects of the district and within the limits prescribed
17 in section 48-6432.

18
19 48-6407. Board meetings; notice

20 A. The board shall hold regular meetings every calendar quarter and additional
21 meetings on the call of the chairperson or a majority of the members of the
22 board. The secretary-treasurer shall give at least three days' notice of each
23 meeting to each member of the board in addition to the public notices required by
24 law.

25 B. The district is a public body for the purposes of title 38, chapter 3, article 3.1
26 relating to open meetings.

27
28 48-6408. Powers and duties of the board

29 A. The board shall determine its organizational and procedural structure, adopt,
30 amend or repeal bylaws, rules and forms consistent with the requirements of this
31 chapter and prescribe a system of accounts.

32 B. The board may:

- 33 1. Manage and conduct the business and affairs of the district.
- 34 2. Make and execute all necessary contracts, including intergovernmental
35 agreements pursuant to title 11, chapter 7, article 3.
- 36 3. Sue and be sued.
- 37 4. Adopt a seal for the district to be used to attest to documents.

1 5. Provide for payment of all debts and appropriate claims against the district
2 from the appropriate funds.

3 6. Employ such administrative, legal, engineering, accounting, clerical and other
4 staff as may be necessary and prescribe the duties, terms and conditions of
5 employment.

6 7. Retain outside professional services, including legal counsel.

7 8. Perform all other acts necessary to carry out the purposes of this chapter.

8 C. In addition to the administrative powers and duties of the board prescribed in
9 subsections A and B of this section, the board, for and in the name of the district,
10 may:

11 1. Acquire in any lawful manner, except as limited by this chapter, and sell, lease,
12 exchange or otherwise dispose of real and personal property, easements and
13 rights-of-way that are necessary or required for the uses and purposes of the
14 district.

15 2. Purchase, construct, own, lease, maintain and operate all works, facilities and
16 other property necessary for the uses and purposes of the district.

17 3. Acquire, transport, deliver, treat or recharge water pursuant to this chapter,
18 including recharging stormwater and providing or selling water to a person or
19 entity that makes direct deliveries of water.

20 4. Issue bonds and pledge all or part of its revenue from any source for security
21 and payment of its bonds pursuant to section 48-6433.

22 5. Negotiate, make, execute, acknowledge and perform any contract, agreement
23 or obligation it deems advisable for the interest of the district to carry out or
24 accomplish the purposes of this chapter, including agreements to acquire water
25 supplies and water rights for water exchanges, recharge, underground storage
26 and water deliveries.

27 6. Plan, coordinate, construct, operate, maintain and dismantle water
28 augmentation projects that are operated by the district, including treatment,
29 recharge, underground storage and recovery and retention projects, water
30 treatment, and wastewater treatment and reuse projects.

31 7. Enter into intergovernmental agreements, memoranda of understanding or
32 other contracts with single or multiple parties, including federal agencies that
33 provide funding to meet the goal of the district, to further the district's purposes.

34 8. Acquire energy resources to operate district facilities.

35 9. Impose and collect fees as provided in section 48-6431, borrow monies or
36 receive gifts, grants and donations from any public or private source.

1 10. Enter into contracts, intergovernmental agreements or memoranda of
2 understanding for public education programs in the district relating to water
3 conservation.

4 11. Apply for and hold storage facility permits, water storage permits and
5 recovery well permits under title 45, chapter 3.1.

6 12. Acquire, hold, assign or otherwise dispose of credits registered to storage
7 accounts under any provision of title 45, chapter 3.1.

8 13. Apply for and receive loans or grants under title 49, chapter 8.

9 14. Consult and confer with any governmental agency with respect to matters
10 within the district's powers and duties under this chapter.

11 15. Conduct any other activities that are reasonably necessary and related to the
12 powers and duties described by this chapter.

13 D. The county attorney for the county may advise or represent the district on
14 matters within the district's authority under this chapter if the county attorney
15 determines that the advice or representation is appropriate and not in conflict
16 with the county attorney's duties under section 11-532.

17 E. Notwithstanding any other law, the county board of supervisors may require
18 the district to reimburse the county for the cost of services provided to the district,
19 including the use of the county attorney. The board of supervisors shall establish
20 a schedule for reimbursement of county services and shall distribute this
21 schedule to the district before providing any service named in the schedule. The
22 reimbursement schedule shall not exceed the actual costs for the services
23 provided by the county. The district may elect to perform for itself any of the
24 services provided by the county in lieu of reimbursement, except election
25 services provided by the county.

26
27 48-6409. Water development and management; technical assistance and review
28 by director of water resources

29 A. For purposes of achieving the goal of the district as described in section 48-
30 6403, the district through its board shall do the following consistent with section
31 48-6410:

32 1. Modify the district's comprehensive plan at least every ten years to include
33 measurable objectives to be met within ten years after the modification and to
34 make any additional changes the board determines are necessary to achieve the
35 goal of the district. The district shall consult with the director of water resources
36 when developing the modifications to the plan.

1 2. Develop and implement, or enter into contracts, intergovernmental agreements
2 or memoranda of understanding for, water conservation, reuse, recharge and
3 augmentation programs to meet the goal of the district and the measurable
4 objectives in the district's comprehensive plan.

5 3. Consult with, advise and cooperate with the director of water resources with
6 respect to actions taken by the director that affect the water supply in the district,
7 including the adoption of rules applicable to water use in the district.

8 B. The director may provide technical assistance to the board in carrying out its
9 duties under this section and shall review and comment on any proposed
10 modifications to the district's comprehensive plan.

11
12 48-6410. Limitation on powers

13 The board and the district shall not do any of the following:

14 1. Engage in the retail sale of potable water to customers in the district.

15 2. Require the use of a water measuring device for any well in the district, except
16 as a condition in a contract with the district.

17 3. Impose mandatory conservation requirements on persons in the district.

18 4. Regulate the acquisition, use or disposal of water or rights to water in the
19 district.

20 5. Regulate the division of lands into unsubdivided lands as defined in section
21 32-2101 or into five or fewer parcels of land that do not qualify as subdivided
22 lands as defined in section 32-2101.

23 6. Exercise any right of eminent domain.

24 7. Engage in the regulation or zoning of subdivided lands as defined in section
25 32-2101.

26
27 48-6411. Adequate water supply requirements; notice; objections

28 A. Except as provided in subsection C of this section and sections 48-6412 and
29 48-6413, a person who proposes to offer subdivided lands, as defined in section
30 32-2101, for sale or lease in the district shall apply for and obtain a determination
31 of adequate water supply from the director pursuant to sections 45-108 and 45-
32 108.04 before presenting the plat for approval to the city, town or county in which
33 the land is located, if it is required, and before filing with the state real estate
34 commissioner a notice of intention to offer the lands for sale or lease pursuant to
35 section 32-2181, unless the subdivider has obtained a written commitment of
36 water service for the subdivision from a city, town or private water company

1 designated as having an adequate water supply pursuant to sections 45-108 and
2 45-108.04.

3 B. Except as provided in subsection C of this section and sections 48-6412 and
4 48-6413, the county and a city or town in the district shall not approve a
5 subdivision plat for a proposed subdivision in the district unless one of the
6 following applies:

7 1. The director of water resources has determined that there is an adequate
8 water supply for the subdivision pursuant to sections 45-108 and 45-108.04 and
9 the subdivider has included the report with the plat.

10 2. The subdivider has obtained a written commitment of water service for the
11 subdivision from a city, town or private water company designated as having an
12 adequate water supply by the director of water resources pursuant to sections
13 45-108 and 45-108.04.

14 C. Subsections A and B of this section do not apply to:

15 1. A proposed subdivision that the director has determined will have an
16 inadequate water supply pursuant to sections 45-108 and 45-108.04 if the
17 director grants an exemption for the subdivision pursuant to section 48-6412 and
18 the exemption has not expired or the director grants an exemption pursuant to
19 section 48-6413.

20 2. A proposed subdivision that received final plat approval from a city, town or
21 county before the district is established if the plat has not been materially
22 changed since it received the final plat approval. If changes were made to the
23 plat after the plat received the final plat approval, the director shall determine
24 whether the changes are material pursuant to the rules adopted by the director to
25 implement section 45-108. If a city, town or county approves a plat pursuant to
26 this subsection and the director of water resources has determined that there is
27 an inadequate water supply for the subdivision pursuant to sections 45-108 and
28 45-108.04, the city, town or county shall note this on the face of the plat.

29 D. If the county or a city or town in the district approves a subdivision plat
30 pursuant to subsection B of this section, the platting entity shall note on the face
31 of the plat that the director of water resources has reported that the subdivision
32 has an adequate water supply or that the subdivider has obtained a commitment
33 of water service for the proposed subdivision from a city, town or private water
34 company designated as having an adequate water supply pursuant to sections
35 45-108 and 45-108.04.

1 E. If the county or a city or town in the district approves a subdivision plat
2 pursuant to an exemption granted by the director of water resources pursuant to
3 section 48-6412 or 48-6413 the county, city or town shall both:
4 1. Give written notice of the approval to the director of water resources and the
5 director of environmental quality.
6 2. Include on the face of the plat a statement that the director of water resources
7 has determined that the water supply for the subdivision is inadequate and a
8 statement describing the exemption under which the plat was approved,
9 including a statement that the director has determined that the specific conditions
10 of the exemption were met. If the director subsequently informs the county, city
11 or town that the subdivision is being served by a water provider that has been
12 designated by the director as having an adequate water supply pursuant to
13 sections 45-108 and 45-108.04, the county, city or town shall record in the county
14 recorder's office a statement disclosing that fact.

15 F. A person who is required to file a notice of intention to subdivide lands with the
16 state real estate commissioner under section 32-2181 for subdivided lands in the
17 district shall include with the notice a report issued by the director of water
18 resources pursuant to section 45-108 stating that the subdivision has an
19 adequate water supply, unless one of the following applies:
20 1. The subdivider submitted the report to a city, town or county before approval of
21 the plat by the city, town or county and this has been noted on the face of the
22 plat.
23 2. The subdivider has obtained a written commitment of water service for the
24 subdivision from a city, town or private water company designated as having an
25 adequate water supply by the director of water resources pursuant to sections
26 45-108 and 45-108.04.
27 3. The plat was approved by the county or a city or town in the district pursuant to
28 an exemption granted by the director under section 48-6412 and the exemption
29 has not expired or pursuant to an exemption granted by the director under
30 section 48-6413. If the plat was approved pursuant to an authorized exemption,
31 the state real estate commissioner shall require that all promotional material and
32 contracts for the sale of lots in the subdivision adequately display the director's
33 report or the developer's brief summary of the report as approved by the
34 commissioner on the proposed water supply for the subdivision and a statement
35 describing the exemption under which the subdivision was approved, including
36 the specific conditions of the exemption that were met.

1 4. The subdivision received final plat approval from the city, town or county
2 before the district is established, and there have been no material changes to the
3 plat since the final plat approval. If changes were made to the plat after the final
4 plat approval, the director of water resources shall determine whether the
5 changes are material pursuant to the rules adopted by the director to implement
6 section 45-108. If this paragraph applies, the state real estate commissioner shall
7 require that all promotional materials and contracts for the sale of lots in the
8 subdivision adequately display the director of water resources' report or the
9 developer's brief summary of the report as approved by the commissioner on the
10 proposed water supply for the subdivision.

11 G. The state real estate commissioner shall deny issuance of a public report
12 pursuant to section 32-2183 or 32-2197.08, whichever applies, or the use of any
13 exemption pursuant to section 32-2181.02, subsection B for subdivided lands or
14 timeshare property in the district unless one of the following applies:

15 1. The director of water resources has reported pursuant to section 45-108 that
16 the subdivision or timeshare property has an adequate water supply.

17 2. The subdivider or timeshare property has obtained a written commitment of
18 water service for the subdivision from a city, town or private water company
19 designated as having an adequate water supply by the director of water
20 resources pursuant to sections 45-108 and 45-108.04.

21 3. The plat was approved pursuant to an exemption granted by the director under
22 section 48-6412 and the exemption has not expired or pursuant to an exemption
23 granted by the director under section 48-6413.

24 4. The subdivision received final plat approval from the city, town or county
25 before the district is established, and there have been no material changes to the
26 plat since the final plat approval. If changes were made to the plat after the final
27 plat approval, the director of water resources shall determine whether the
28 changes are material pursuant to the rules adopted by the director to implement
29 section 45-108.

30 H. On receipt of an application for a water report for a subdivision in the district or
31 an application by a city, town or private water company in the district to be
32 designated as having an adequate water supply under sections 45-108 and 45-
33 108.04, the director shall publish notice of the application once each week for two
34 consecutive weeks in a newspaper of general circulation in the district. The first
35 publication shall occur within fifteen days after the application is determined or
36 deemed to be administratively complete. If the application is substantially
37 modified after notice of the application is given pursuant to this subsection, the

1 director shall give notice of the application as modified in the manner prescribed
2 by this subsection. The first publication of any subsequent notice shall occur
3 within fifteen days after the modified application is determined or deemed to be
4 administratively complete.

5 I. Notice pursuant to subsection H of this section shall state that written
6 objections to the application may be filed with the director by residents and
7 landowners in the district within fifteen days after the last publication of notice. An
8 objection shall state the name and mailing address of the objector and be signed
9 by the objector, the objector's agent or the objector's attorney. The grounds for
10 objection are limited to whether the application meets the criteria for determining
11 an adequate water supply set forth in sections 45-108 and 45-108.04. The
12 objection shall clearly set forth reasons why the application does not meet the
13 criteria.

14 J. In appropriate cases, including cases in which a proper written objection to the
15 application has been filed, an administrative hearing may be held before the
16 director's decision on the application if the director deems a hearing necessary.
17 Thirty days before the date of the hearing, the director shall give notice of the
18 hearing to the applicant and to any person who filed a proper written objection to
19 the application. The hearing shall be scheduled for at least sixty days but not
20 more than ninety days after the expiration of the time in which to file objections.

21 K. If the application is for a water report:

22 1. If the director determines that an adequate water supply exists for the
23 proposed use, the director shall issue a water report stating that the water supply
24 for the subdivision is adequate.

25 2. If the director determines that an adequate water supply does not exist, the
26 director shall issue a water report stating that the water supply for the subdivision
27 is inadequate.

28 L. If the application is for a designation of adequate water supply:

29 1. If the director determines that an adequate water supply exists for the
30 proposed use, the director shall approve the application.

31 2. If the director determines that an adequate water supply does not exist, the
32 director shall deny the application.

33 M. The applicant or a person who contested the application by filing a proper
34 objection pursuant to subsection I of this section may seek judicial review of the
35 final decision of the director as provided in section 45-114, subsection B in the
36 superior court.

1 N. Section 45-114, subsections A and B govern administrative proceedings,
2 rehearings or reviews and judicial reviews of final decisions of the director under
3 this section. If an administrative hearing is held, it shall be conducted in the
4 district.

5 O. The district may bring an enforcement action in superior court to enforce this
6 section.

7
8 48-6412. Exemption from adequate water supply requirements based on
9 substantial capital investment; application; criteria; expiration

10 A. If the director determines pursuant to sections 45-108 and 45-108.04 that an
11 adequate water supply does not exist for a proposed subdivision in the district,
12 the subdivider may apply to the director for an exemption from the water
13 adequacy requirements in section 48-6411, subsections A and B on a form
14 prescribed by the director within one year after the date the district is established.
15 The director shall grant the exemption if the subdivider demonstrates to the
16 satisfaction of the director that all of the following apply:

- 17 1. The subdivider has made substantial capital investment toward the
18 construction of the proposed subdivision before the date the district was
19 established. For the purposes of this paragraph, substantial capital investment
20 may include construction costs, site preparation costs, construction of off-site
21 improvements and conversion or remodeling costs for existing structures, as well
22 as planning and design costs associated with those items, but does not include
23 the original cost of acquiring the property.
- 24 2. The subdivider was not aware of the proposed requirement for an adequate
25 water supply at the time the investment was made.
- 26 3. The proposed subdivision complied in all other respects with existing state
27 laws as of the date the district was established.

28 B. If the director grants an exemption pursuant to this section:

- 29 1. The exemption expires five years after the date the exemption is granted
30 unless, before that date, at least one lot in the subdivision is sold to a bona fide
31 purchaser or the director extends the exemption pursuant to paragraph 2 of this
32 subsection.
- 33 2. The director may extend the period of the exemption for not more than two
34 successive five-year periods if the subdivider applies for an extension before the
35 exemption expires and demonstrates to the satisfaction of the director that the
36 subdivider has made material progress in developing the subdivision, but that

1 sales of parcels in the subdivision have been delayed for reasons outside the
2 control of the subdivider.

3 C. If an exemption granted under this section expires, any public report issued for
4 the subdivision by the state real estate commissioner pursuant to section 32-
5 2183 expires and the subdivider shall not sell any lots in the subdivision unless
6 both of the following apply:

7 1. The subdivider files with the state real estate commissioner a new notice of
8 intention to subdivide lands pursuant to section 32-2181 and complies with
9 section 48-6411.

10 2. The state real estate commissioner issues a new public report for the
11 subdivision pursuant to section 32-2183.

12 D. Section 45-114, subsections A and B govern administrative proceedings,
13 rehearing or review and judicial review of final decisions of the director under this
14 section.

15

16 48-6413. Exemption from adequate water supply requirements based on an
17 adequate water supply within twenty years; criteria; application

18 A. A subdivider may apply to the director for an exemption from the water
19 adequacy requirements in section 48-6411, subsections A and B pursuant to this
20 section on a form prescribed by the director. The director shall grant the
21 exemption if the subdivider demonstrates to the satisfaction of the director that
22 the subdivision will be served by a water supply project to which both of the
23 following apply:

24 1. The subdivider has demonstrated financial capability pursuant to section 45-
25 108.04, but the water supply project will not be capable of serving the subdivision
26 with sufficient water to meet its demands in a timely manner because of one of
27 the following:

28 (a) The physical works for delivering water to the subdivision are not complete
29 but are under construction and will be completed within twenty years.

30 (b) The subdivision will be served Colorado river water by a water provider that
31 does not currently have the legal right to serve the water to the subdivision, but
32 the water provider has an existing permanent contract for the Colorado river
33 water and will have the legal right to serve the water to the subdivision within
34 twenty years.

35 2. The subdivision will have an adequate water supply when the construction of
36 the physical works is completed or the water supply is legally available to serve
37 the subdivision, whichever applies, and the interim water supply that will serve

1 the subdivision meets all of the criteria for an adequate water supply under
2 section 45-108.04 except that the interim water supply will not be available for
3 one hundred years.

4 B. Section 45-114, subsections A and B govern administrative proceedings,
5 rehearing or review and judicial review of final decisions of the director under this
6 section.

7

8 48-6414. Inapplicability of other adequate water supply provisions to proposed
9 subdivisions in the district

10 Section 9-463.01, subsections J through Q, section 11-806.01, subsections F
11 through I, section 32-2181, subsection F, section 32-2183, subsection F, section
12 32-2197.08, subsection D, section 45-108, subsection H, section 45-108.01,
13 section 45-108.02 and section 45-108.03 do not apply to proposed subdivisions
14 in the district.

15

16 48-6415. District and municipal water delivery systems in district eligible to
17 receive financial assistance from water supply development revolving fund

18 The district is deemed to be a water provider for the purposes of title 49, chapter
19 8. The district and municipal water delivery systems serving water in the district
20 are eligible to apply for and receive financial assistance from monies in the water
21 supply development revolving fund established under section 49-1271
22 notwithstanding section 49-1273, subsection C.

23

24 48-6416. Organizing board; upper San Pedro water district; membership;
25 authority; formation election

26 A. The organizing board for the upper San Pedro water district is established
27 consisting of the following persons:

- 28 1. Five members who are appointed by the governor and who are qualified
29 electors of the proposed district, one of whom may represent a city that is located
30 in the proposed district and that has a population of thirty-five thousand persons
31 or more, one of whom may represent a city that is located in the proposed district
32 and that has a population of less than thirty-five thousand persons, one of whom
33 may represent a conservation organization that has been involved in the upper
34 San Pedro partnership of agencies and entities that is recognized under federal
35 law, one of whom may represent an investor-owned utility and one of whom may
36 represent retired military personnel or a military support organization.

1 2. Two members appointed by the president of the senate and two members
2 appointed by the speaker of the house of representatives. These members shall
3 be qualified electors of the proposed district and shall have an interest in one or
4 more of the communities in the proposed district and may include persons
5 representing a city, town or county, a resource based business or a natural
6 resource conservation district or other persons who have personal, business or
7 professional interests in the district.

8 B. The organizing board of the district shall prepare and provide to the public the
9 following:

10 1. A detailed plan of organization for the upper San Pedro water district.
11 2. A financial plan by which adequate revenues will be generated to support the
12 district's activities. The organizing board of the district may recommend a rate of
13 taxation to the elected board but the organizing board shall not set the rate of any
14 tax.
15 3. A comprehensive plan for the conservation, reuse, recharge and augmentation
16 of water in the district designed to achieve the goal of the district. The plan shall
17 include measurable objectives to be met by the district not later than ten years
18 after the district is established. The organizing board shall consult with the
19 director of water resources when developing the plan.
20 4. An election plan for the district that includes an election for the formation of the
21 district, an election for members of the board of directors of the district, if
22 formation is approved, and approval of and authority for the district to generate
23 revenue pursuant to section 48-6406. The election may be called by the county
24 board of supervisors at the next regular general election or on a date prescribed
25 in section 16-204 before or after the next general election date. The election plan
26 shall include proposed ballot language that is sufficiently detailed to inform the
27 voters of the powers and duties of the proposed district board of directors,
28 including the organization of the district, the water management goal and the
29 revenue generating authority of the proposed district.

30 C. The organizing board of the district shall cooperate with other government
31 entities and agencies in the area of the proposed district, including the
32 department, and may enter into intergovernmental agreements with those entities
33 before and without regard to formation of any district, but the organizing board
34 may not legally or financially bind the district.

35 D. The organizing board of the district is a public body that is subject to title 38,
36 chapter 3, article 3.1 relating to open meetings.

1 E. If the district is established, the organizing board of the district shall serve until
2 an elected board of directors is qualified and begins serving, but the organizing
3 board may not assess, levy or collect a tax.

4 F. The county attorney for the county may advise or represent the organizing
5 board on matters within the board's authority under this chapter if the county
6 attorney determines that the advice or representation is appropriate and not in
7 conflict with the county attorney's duties under section 11-532.

8 G. If the district is not established within five years after the effective date of this
9 section, the authority of the organizing board is terminated and any
10 intergovernmental agreements executed by the organizing board are terminated.

11
12 **ARTICLE 2 - FINANCIAL PROVISIONS**

13
14 **48-6431. Financial authority of district**

15 The district may generate monies for the benefit of the district by any of the
16 following:

- 17 1. The transaction privilege tax levied pursuant to section 48-6432.
- 18 2. The sale of water or water rights that are owned by the district.
- 19 3. User fees for services provided by the district and that are agreed to by those
20 users.
- 21 4. Revenue bonds sold by and debt repaid to the district.
- 22 5. The receipt of gifts, grants and donations received from any public or private
23 source.

24
25 **48-6432. Transaction privilege tax; administration; hearing; notice**

26 A. If approved by the voters pursuant to section 48-6406, the board may levy a
27 transaction privilege tax on the business of operating a municipal water delivery
28 system in the district pursuant to this section. The tax shall not be levied at a rate
29 of more than fifty cents per thousand gallons of water delivered to customers in
30 the district, except that water delivered to a customer for resale is exempt from
31 the tax. The district shall notify the department of revenue of the amount of the
32 tax levied pursuant to this subsection.

33 B. The owner or operator of a municipal water delivery system shall pay the tax
34 levied pursuant to this section to the department of revenue at the same time as
35 paying the tax on potable water pursuant to section 42-5302. If the system for
36 any reason does not pay the transaction privilege tax, the tax is due and payable

1 to the department of revenue and is delinquent if not paid as provided in section
2 42-5014, subsection A.

3 C. A tax imposed pursuant to this section is in addition to the tax on potable
4 water imposed by section 42-5302 and any county, city, town or other local
5 transaction privilege tax.

6 D. Unless the context otherwise requires, section 42-5303 governs the
7 administration, collection and enforcement of a tax imposed under this section.

8 E. Each month the state treasurer shall remit to the district the net revenues
9 collected under this section during the preceding month. The district shall deposit
10 the monies in the district's general fund.

11 F. The board shall hold a public hearing before levying or increasing a tax
12 pursuant to this section. Any resident or municipal water delivery system in the
13 district may appear and be heard in favor of or against any proposed tax levy or
14 tax increase.

15 G. Except as provided in subsection H of this section, the board shall publish a
16 notice of a public hearing held pursuant to subsection F of this section that meets
17 the following requirements:

18 1. The notice shall be published twice in a newspaper of general circulation in the
19 district. The first publication shall be at least fourteen but not more than twenty
20 days before the date of the hearing. The second publication shall be at least
21 seven but not more than ten days before the date of the hearing.

22 2. The notice shall be published in a location other than the classified or legal
23 advertising section of the newspaper in which it is published.

24 3. The notice shall be at least one-fourth page in size and shall be surrounded by
25 a solid black border at least one-eighth inch in width.

26 4. The notice shall be in the following form, with the "public hearing notice of tax
27 increase on municipal water delivery systems" headline in at least eighteen point
28 type:

29 Public hearing notice of tax increase
30 on municipal water delivery systems

31 In compliance with section 48-6432, Arizona Revised Statutes, the upper San
32 Pedro water district ("District") is notifying residents and municipal water delivery
33 systems in the district of its intention to (levy a) (increase the) transaction
34 privilege tax imposed on the business of operating a municipal water delivery
35 system in the district. The district is proposing to (levy a tax of _____ cents per
36 thousand gallons of water delivered to customers in the district) (raise the tax by

1 _____ cents per thousand gallons of water delivered to customers in the district or
2 _____ %).

3 All interested persons are invited to attend the public hearing on the tax (levy)
4 (increase) that is scheduled to be held _____ (date and time) at
5 _____ (location).

6 H. Instead of publishing the notice prescribed by subsection G of this section, the
7 board may mail the notice described in subsection G, paragraph 4 of this section
8 to all registered voters in the district at least ten but not more than twenty days
9 before the date of the hearing pursuant to subsection F of this section.

10 I. In addition to publishing the public hearing on taxation notice under subsection
11 G of this section or mailing the notice under subsection H of this section, the
12 board shall issue a press release containing the public hearing on taxation
13 notice.

14 J. The board shall consider a motion to levy or increase a transaction privilege
15 tax by roll call vote.

16

17 48-6433. Revenue bonds; issuance; hearing; notice

18 A. The board may authorize, issue and sell negotiable revenue bonds for any
19 lawful district purpose. The bonds may be in one or more series and may be
20 secured by revenues received pursuant to this article. The bonds may have
21 different dates, be payable in a medium and at different places, have reserve or
22 sinking funds, carry registration privileges, bear a rate or rates of interest that
23 may vary from time to time but shall not exceed twelve per cent per year, and
24 contain terms, covenants and conditions, be in a form, be executed in a manner
25 and be sold at prices as the board may prescribe. The issuer may assign its
26 interest in any or all revenues, contracts and reserve or sinking funds securing
27 any bonds to a bank or trust company doing business in this state that acts as
28 indenture trustee. The resolution of the board or the trust indenture authorizing
29 the issuance of the bonds may contain such covenants, conditions and
30 provisions as the board deems necessary to secure the bonds. The board is also
31 authorized to purchase credit or liquidity enhancement and to spend bond
32 proceeds or contract revenues to aid such purchase. The board is authorized, in
33 its discretion, to employ such consultants, experts or agents and to spend bond
34 proceeds or contract revenues to pay any and all fees and expenses of bond
35 issuance and administration.

36 B. Bonds issued under this section shall be legal investments for all banks, trust
37 companies and insurance companies organized and operating under the laws of

1 this state. The bonds and interest on the bonds shall be paid solely in
2 accordance with their terms and shall not be obligations general, special or
3 otherwise of this state or any political subdivision of this state other than the
4 issuer. The issuer shall not be liable in any event for the payment of the principal
5 of or interest on the bonds from any source of revenues other than those pledged
6 for the payment of the bonds. The holder of the bonds shall never have the right
7 to compel any exercise of the taxing power of this state, any political subdivision
8 of this state or the issuer to provide for payment of the bonds or to pay any claim
9 arising of any nature with respect to the issuance or sale of the bonds. The
10 bonds shall never be construed to constitute an indebtedness of the issuer within
11 the meaning of any constitutional or statutory debt or spending limitations.

12 C. The board shall hold a public hearing before issuing bonds pursuant to this
13 section. Any resident in the district may appear and be heard in favor of or
14 against any proposed bonds.

15 D. Except as provided in subsection E of this section, the board shall publish a
16 notice of a public hearing held pursuant to subsection C of this section that meets
17 the following requirements:

18 1. The notice shall be published twice in a newspaper of general circulation in the
19 district. The first publication shall be at least fourteen but not more than twenty
20 days before the date of the hearing. The second publication shall be at least
21 seven but not more than ten days before the date of the hearing.

22 2. The notice shall be published in a location other than the classified or legal
23 advertising section of the newspaper in which it is published.

24 3. The notice shall be at least one-fourth page in size and shall be surrounded by
25 a solid black border at least one-eighth inch in width.

26 4. The notice shall be in the following form, with the "public hearing notice of
27 bond issuance" headline in at least eighteen point type:

28 Public hearing notice of bond issuance
29 In compliance with section 48-6433, Arizona Revised Statutes, the upper San
30 Pedro water district ("District") is notifying residents in the district of its intention
31 to issue bonds. The district is proposing to issue up to \$ _____ in
32 bonds to be secured by revenue from _____ (source of revenue).

33 All interested persons are invited to attend the public hearing on the issuance of
34 bonds that is scheduled to be held _____ (date and time) at _____
35 (location).

36 E. Instead of publishing the notice prescribed by subsection D of this section, the
37 board may mail the notice described in subsection D, paragraph 4 of this section

1 to all registered voters in the district at least ten but not more than twenty days
2 before the date of the hearing pursuant to subsection C of this section.

3 F. In addition to publishing the public hearing notice under subsection D of this
4 section or mailing the notice under subsection E of this section, the board shall
5 issue a press release containing the public hearing on bond issuance notice.

6
7 48-6434. Administrative and operations budgets; annual statement and audit

8 A. On or before July 1 of each year, the district shall adopt an administrative
9 budget for the next fiscal year. The budget shall consist of a complete statement
10 of administrative expenditures from all monies during the past fiscal year and an
11 estimate of the different amounts that may be deemed necessary to meet
12 administrative requirements of the district for the next fiscal year, fixing the
13 amounts proposed for all recurring items of expense and an amount for
14 contingencies or emergencies. No administrative expenditures may be made in
15 excess of the total amount of the budget. Economies resulting in remaining
16 balances for any fiscal year shall be available for subsequent administrative or
17 operating purposes.

18 B. The district shall also prepare an operation budget for each fiscal year
19 covering operations and including capital items. The budget shall consist of a full
20 and complete statement of all incoming receipts and expenditures for the past
21 fiscal year and an estimate of anticipated income and expenditures for the next
22 fiscal year. The budget shall also give a complete asset and liability statement
23 and statement of all bond obligations, together with an itemized statement of
24 cash on hand, commitments, reserves and obligations anticipated for the next
25 fiscal year, together with such other information to provide a full and complete
26 disclosure of the current financial condition of the district.

27 C. On or before December 1 of each year, the board shall make a verified
28 statement of the financial condition of the district as of June 30 of the preceding
29 fiscal year, showing particularly the receipts and disbursements during the fiscal
30 year and the source of the receipts and the purpose of the disbursements.

31 D. Within ninety days after the close of each fiscal year, the district shall cause
32 an audit to be made of the monies of the district by a certified public accountant.
33 The board shall file a copy of the audit with the auditor general. The auditor
34 general may make such further audits and examinations as the auditor general
35 deems necessary and may take appropriate action relating to the audit pursuant
36 to title 41, chapter 7, article 10.1. If the auditor general takes no official action
37 within thirty days after the audit is filed, the audit is deemed sufficient. The board

1 shall pay any fees and costs of the certified public accountant and auditor
2 general under this section from the general fund of the district.

3
4 48-6435. Annual report

5 A. The district shall make and submit to the president of the senate and the
6 speaker of the house of representatives on or before December 1 of each year a
7 report containing a full and complete description of all actions taken by the district
8 during the preceding fiscal year to meet the measurable objectives included in
9 the district's comprehensive plan, including all of the following:

- 10 1. The amount and type of water used by the district during the year for each
11 recharge, augmentation or other project implemented by the district during the
12 year.
- 13 2. A description of all projects implemented or partially implemented during the
14 year.
- 15 3. A description of all permits applied for or received by the district during the
16 year.
- 17 4. A description of all programs adopted by the district during the year.
- 18 5. A description of the district's finances.
- 19 6. Progress made by the district during the year toward achieving the district's
20 goal as described in section 48-6403, subsection B and the measurable
21 objectives for achieving the goal as adopted in the district's most recent
22 comprehensive plan.

23 B. The district shall provide a copy of the report to the director of the Arizona
24 state library, archives and public records.

25
26 48-6436. Special audit; report

27 A. The auditor general shall perform a special audit of the upper San Pedro water
28 district that covers the first five years of the district's operation and the operation
29 of the district's organizing board. The audit is due and shall be completed within
30 six months after the close of the district's fifth fiscal year.

31 B. The special audit shall examine the financing of the district, its revenues and
32 expenditures and its level of performance in reaching its water management
33 goal.

34 C. The auditor general shall submit its report of the special audit to the speaker
35 of the house of representatives, the president of the senate and the governor and
36 shall provide a copy to the director of the Arizona state library, archives and
37 public records.

Appendix E

**UPPER SAN PEDRO
WATER DISTRICT
BUDGET WORKSHEET**

Appendix E
**Upper San Pedro
Water District
Budget Worksheet**

| Budget Category | Item | Calculation | Cost | Contingency Adjust 10% |
|-------------------------------|--|--|--------------|-------------------------------|
| Personnel | Manager | \$100,000 | | |
| | Technician | \$70,000 | | |
| | Admin Ass't | \$45,000 | | |
| | | | \$215,000 | \$236,500.0 |
| Employee Benefits | | Estimated @ 32% of Salary | \$68,800 | \$75,680.0 |
| Operating | Office Supplies etc. | \$4,500/person | \$13,500 | \$14,850.0 |
| Travel | Auto Lease, Fuel and Maintenance | 12 month lease @ \$350 Month 50 mile/day @42c/mile | \$4,603 | \$5,063.52 |
| Facility Rent* | | 1500 sq ft x \$20/sq ft | \$30,000 | \$33,000.0 |
| Outside Professional Services | Legal, Engineering and Accounting Services | 5 hours/ mo x \$475 | \$28,500 | \$31,350.0 |
| | | | | \$396,443.5 |
| | | | | |
| | | | | |
| | | | | |
| Rent Calculation | | Office space | SQ FT | |
| | Office | 14'x14' | 196 | |
| | Office | 12'12' | 144 | |
| | Office | 10'x10' | 100 | |
| | Restroom | 8'x8' | 64 | |
| | Conference | 17'14' | 238 | |
| | Filing Halls +10% | | 742 | |
| | | | 1,484 | |

Appendix F

HB 146 – 111th Congress

Omnibus Public Land Management Act of 2009

Excerpt Section 9002

Appendix F

HB 146 – 111th Congress

Omnibus Public Land Management Act of 2009

Excerpt Section 9002

Sierra Vista Subwatershed

SEC. 9002. SIERRA VISTA SUBWATERSHED, ARIZONA.

(a) Definitions- In this section:

(1) APPRAISAL REPORT- The term `appraisal report' means the appraisal report concerning the augmentation alternatives for the Sierra Vista Subwatershed in the State of Arizona, dated June 2007 and prepared by the Bureau of Reclamation.

(2) PRINCIPLES AND GUIDELINES- The term `principles and guidelines' means the report entitled `Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies' issued on March 10, 1983, by the Water Resources Council established under title I of the Water Resources Planning Act (42 U.S.C. 1962a et seq.).

(3) SECRETARY- The term `Secretary' means the Secretary of the Interior.

(b) Sierra Vista Subwatershed Feasibility Study-

(1) STUDY-

(A) IN GENERAL- In accordance with the reclamation laws and the principles and guidelines, the Secretary, acting through the Commissioner of Reclamation, may complete a feasibility study of alternatives to augment the water supplies within the Sierra Vista Subwatershed in the State of Arizona that are identified as appropriate for further study in the appraisal report.

(B) INCLUSIONS- In evaluating the feasibility of alternatives under subparagraph (A), the Secretary shall-

(i) include--

- (I) any required environmental reviews;
- (II) the construction costs and projected operations, maintenance, and replacement costs for each alternative; and
- (III) the economic feasibility of each alternative;

(ii) take into consideration the ability of Federal, tribal, State, and local government sources and private sources to fund capital construction costs and annual operation, maintenance, energy, and replacement costs;

(iii) establish the basis for--

(I) any cost-sharing allocations; and

(II) anticipated repayment, if any, of Federal contributions; and

(iv) perform a cost-benefit analysis.

(2) COST SHARING REQUIREMENT-

(A) IN GENERAL- The Federal share of the total costs of the study under paragraph (1) shall not exceed 45 percent.

(B) FORM OF NON-FEDERAL SHARE- The non-Federal share required under subparagraph (A) may be in the form of any in-kind service that the Secretary determines would contribute substantially toward the conduct and completion of the study under paragraph (1).

(3) STATEMENT OF CONGRESSIONAL INTENT RELATING TO COMPLETION OF STUDY- It is the intent of Congress that the Secretary complete the study under paragraph (1) by a date that is not later than 30 months after the date of enactment of this Act.

(4) AUTHORIZATION OF APPROPRIATIONS- There is authorized to be appropriated to the Secretary to carry out this subsection \$1,260,000.

(c) Water Rights- Nothing in this section affects--

(1) any valid or vested water right in existence on the date of enactment of this Act; or

(2) any application for water rights pending before the date of enactment of this Act.