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2008 ADWR Compliance and Enforcement Report July 1 through December 31, 2008 Update

In the second half of 2008, Arizona Department of Water Resources (“Department”) compliance and enforcement staff collected civil penalties and outstanding payments from citations and audit investigations totaling approximately \$193,119.69. These citations were issued from the five state Active Management Areas (“AMA”): Phoenix, Pinal, Prescott, Santa Cruz and Tucson, for violations of the Groundwater Code and Third Management Plan. A brief description of the major violation types investigated and enforced by compliance staff follows.

Agricultural Flex Account Balances

Pursuant to A.R.S. § 45-467, an Irrigation Grandfathered Right (“IGFR”) is allowed to accrue unlimited credits to its flexibility account balance, while the debit balance may not exceed 50% of the current annual groundwater allotment at any time. A.R.S. § 45-467(O) enables IGFR holders within irrigation districts to reduce their flexibility account debits by purchasing and/or conveying flexibility account credits from other IGFR holders within the same irrigation district. Right holders located outside an of irrigation district also are permitted to buy or convey flexibility account credits between farms located within the same groundwater sub-basin, and the same AMA, but outside of an irrigation district. The sale or conveyance of credits between farms where one of the farms is located within an irrigation district and the other farm is located outside of that irrigation district is also allowed only if both farms are located within the same groundwater sub-basin, the same AMA, and if the owner or lessee of one of the farms is also the owner or lessee of the other farm.

In the Phoenix AMA, there were six IGFRs out of compliance with their 2006 flexibility accounts. One IGFR holder amended their 2006 annual report and is now compliant with A.R.S. § 45-467. The five remaining IGFR holders purchased flexibility account credits, pursuant to A.R.S. § 45-467(O), which brought them back into compliance.

Arizona Corporation Commission Compliance Requests

Department staff researched and submitted approximately 70 ‘Water Provider Compliance Status Reports’ to the Arizona Corporation Commission in the final six months of 2008. Arizona Water Company (22 water systems) and Arizona-American Water Company (14 water systems)

accounted for about half of the total status reports prepared. Compliance-related items researched for the status report include: timely and accurate submittal of annual water withdrawal and assured water supply reports, system water plans, management plan requirements, maintenance of accurate measuring devices and permitted well volumes, etc.

Dam Safety

The Department's Dam Safety Division issued a Notice of Violation for a dam located in Yavapai County. The Notice of Violation alleged a violation of A.R.S. § 45-1216(A), concerning the repair and/or reconstruction of a dam without prior Department approval. The dam failed in 2004 and the owner was notified that prior approval was necessary if the dam was to be rebuilt. Approximately, two years ago the dam was rebuilt without Department approval. The Department and involved parties met in early February to discuss the Notice of Violation.

Gallons per Capita per Day (GPCD)/ Lost and Unaccounted for Water (L&U) Notifications

In November, the Department issued a letter to 64 "large municipal providers"¹ entitled, "Notification of 2000 through 2006 Gallons per Capita per Day (GPCD) and Lost and Unaccounted for Water (L&U) Percentage." According to Department calculations, the 64 large municipal providers notified exceeded the allowable Total GPCD flexibility account balance and/or the three-year average L&U percentage. Department staff has held numerous meetings with affected water providers to verify information and calculations contained in the notification.

Those large municipal providers, after the opportunity to meet with the Department, that are determined to be in violation of Total GPCD and/or L&U requirements will be subject to compliance enforcement actions ranging from advisory letters, citations and Stipulation and Consent Orders. Additionally, Department staff is providing municipal providers in violation of their Total GPCD requirements the opportunity for early entrance into the Modified Non-Per Capita Conservation Program (MNPCCP). Department staff will continue to meet regularly to ensure consistency with regard to potential enforcement actions and remedies stemming from GPCD and/or L&U violations.

Irrigation Grandfathered Right (IGFR) Audits – Pinal AMA

A.R.S. § 45-632(O) requires a groundwater rightholder to file an Annual Water Withdrawal and Use Report ('Annual Reports') for a year on or before March 31 of the following year. Failure to file a timely report results in an assessment of late penalties and filing fees, and, if applicable, the Department also collects unpaid groundwater withdrawals fees. During the months of November and December 2008, the Pinal AMA conducted 17 audits and issued 21 citations to those IGFR owners whose annual reports were not on file. The completed audits produced 82 individual Annual Reports that were outstanding from 2001 through 2007. Total groundwater withdrawal fees, late penalties and filing fees collected from audits and citations amounted to \$152,014.69 and \$2,300, respectively. Total groundwater withdrawals not previously reported on the IGFR Annual Reports totaled approximately 32,100 acre-feet.

¹ A "large municipal provider" is defined in TMP 5-101.23 for Phoenix, Pinal and Tucson AMAs and 5-101.20 for Prescott and Santa Cruz AMAs.

Notice of Intent (NOI)

In calendar year 2008, the NOI Unit issued 46 citations for violations of A.R.S. § 45-600(A), which requires the filing of well driller report. A well driller report must be filed within 30 days of completion of the drilling of any well in the state and must include all information contained in log of the well. As of December 31, 2008, 24 of the citations and accompanying well drillers reports were signed and returned to the Department. A total of \$4800 was collected in civil penalties for violations of A.R.S. § 45-600(A). The deadline for and collection of civil penalties for the remaining 22 citations will occur in early 2009. An update of A.R.S. § 45-600(A) activities will be provided in 2009's compliance and enforcement report.

Pursuant to Arizona Administrative Code R12-15-822, the owner of an open well shall either install a cap on the well or properly abandon the well. Within five days after capping the well, the owner of the well shall file a notice of well capping with the Department. NOI compliance staff conducted numerous R12-15-822 inspections resulting in the proper capping of 41 open wells (through January 22, 2009). The majority of the wells were located in Pinal County, but field inspections were also conducted in Cochise, Maricopa, Yavapai, and Yuma counties. Twelve additional open wells are in various stages of being capped pending the well owners hiring a contractor or the Department locating the current well owner.

The NOI Unit conducted a total of 236 well inspections in 2008 and enforcement measures included all Arizona counties with the exception of Greenlee County. The Compliance Enforcement Officers assigned to the NOI unit attended a hearing at the Office of Administrative Hearing (OAH) in Tucson, as well as, testifying at a civil trial held at the Pinal County Superior Court Building in Florence.

Recharge

In 2008, Recharge Division staff finalized audits regarding reporting issues with several Phoenix AMA municipal water providers.

Turf-Related Facility Flexibility Account Violations

In AMAs, a flexibility account with a maximum negative account balance is established for each turf-related facility (i.e. a facility with 10 or more acres of water-intensive landscaping, such as a golf course, homeowners association, cemetery, and park). A maximum negative account balance, defined in the Phoenix AMA TMP 6-309(b)(c), is calculated by multiplying the facility's annual water conservation allotment by a factor of -.2. If a debit is registered to a facility's flexibility account that causes the account balance to exceed the maximum negative account balance, the facility is subject to a compliance action.

One Phoenix AMA HOA received a citation and paid civil penalties in the amount of \$14,625 for violations of its turf-related facility flexibility account.

One Phoenix AMA water provider is currently finalizing SCO negotiations with the Department for violations of the turf-related facility flexibility accounts for several golf courses. The water provider serves water to the golf courses and is responsible for compliance with their flexibility accounts. The SCO will be resolved pending the reporting and inclusion of 2008 facility water usage. An update on the final SCO details and civil penalties collected will be available in the next compliance update.

Withdrawal of Groundwater in Excess of or Without Legal Authority (A.R.S. § 45-451(A) Violations)

A.R.S. § 45-451(A), requires a regulated person in an AMA to withdraw and use groundwater in accordance with their legally determined withdrawal authority. The Department issued three citations for violations (in whole or in part) of withdrawal of groundwater in excess of legal authority and collected \$16,925 in civil penalties.

Additionally, a Phoenix AMA golf course entered into a Stipulation and Consent Order (“SCO”) on December 14, 2008, that addressed the facility’s 2002 through 2007 illegal withdrawal of groundwater. The SCO required the golf course to pay a civil penalty in the amount of \$2,455, maintain a positive long-term storage credit balance at the end of each calendar year, purchase and extinguish 982.19 acre-feet of long-term storage credits by December 31, 2013, and submit to a three-year probationary period. Recharge and compliance staff will continue to monitor the facility to ensure SCO conditions are fulfilled.