

# ARIZONA DEPARTMENT OF WATER RESOURCES

## SUBSTANTIVE POLICY STATEMENT

### REMEDIATED GROUNDWATER INCENTIVE FOR CONSERVATION REQUIREMENT ACCOUNTING FOR THE SECOND MANAGEMENT PLAN

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Governor

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#### I. BACKGROUND

The director of the Arizona Department of Water Resources ("director") is required to develop management plans for active management areas, which include a continuing mandatory conservation program for all persons withdrawing, distributing or receiving groundwater, designed to achieve reductions in withdrawals of groundwater. A.R.S. § 45-563(A). Active management areas are geographical areas that have been designated as requiring active management of groundwater. A.R.S. § 45-402(2). Effective December 15, 1989, the director adopted the management plans for the second management period, 1990 to 2000 ("SMP") pursuant to A.R.S. § 45-565. Each active management area management plan has a conservation program that includes specific conservation requirements for agricultural, municipal and industrial groundwater users.

#### II. REMEDIATED GROUNDWATER INCENTIVE

In 1997, the Arizona Legislature enacted legislation directing the Arizona Department of Water Resources ("Department") to include in the management plans developed pursuant to A.R.S. §§ 45-566, 45-567 and 45-568 (the Third, Fourth and Fifth Management Plans) provisions to encourage the beneficial use of groundwater that is withdrawn pursuant to approved remedial action projects under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") or Title 49, Arizona Revised Statutes. Laws 1997, Ch. 287, § 51(A). To encourage the beneficial use of remediated groundwater, the Legislature specifically mandated:

In determining compliance with applicable conservation requirements adopted pursuant to sections 45-566, 45-567 and 45-568, Arizona Revised Statutes, the department of water resources shall account for groundwater withdrawn pursuant to approved remedial action projects under CERCLA or title 49, Arizona Revised Statutes, consistent with the accounting for surface water.

Laws 1997, Ch. 287, § 51(B). Although this legislation does not refer to conservation requirements adopted in the SMP, the director has decided to apply the accounting incentive

described in this policy statement.<sup>1</sup> The director believes that doing so will expedite the beneficial use of groundwater withdrawn pursuant to approved remedial action projects, consistent with the intent of the Legislature.

### **III. DEPARTMENT POLICY**

In determining compliance with conservation requirements established in the SMP, the Department will account for remediated groundwater withdrawn pursuant to an approved remedial action project in accordance with the statutory directive to account for it consistent with the accounting for surface water. To inform the public of the Department's current approach and procedures regarding the accounting of remediated groundwater in determining compliance with conservation requirements, the Department has developed an advisory substantive policy statement pursuant to A.R.S. § 41-1001(21). The Department's substantive policy is described in the following discussion.

Among other things, section A below outlines the criteria to be followed by Department staff in recommending preferred end uses for proposed remedial actions. Section A will not be used to determine if groundwater withdrawn pursuant to an approved remedial action project qualifies for the remediated groundwater incentive for conservation requirement accounting. The criteria in section A will be included in the narrative portion of Chapter 7, the Groundwater Quality Management Program, in the management plan for the third management period, 2000 to 2010 ("TMP"). Therefore, section A of this policy statement will be effective for an active management area until January 1, 2000 or the date the TMP for the active management area is adopted, whichever is later.

Section B below discusses implementation of the remediated groundwater incentive for conservation requirement accounting for the SMP and outlines the provisions that must be complied with in order to qualify for the remediated groundwater incentive. The criteria in section B are included in Chapter 5, the Municipal Conservation Program, and Chapter 6, the Industrial Conservation Program, of the TMPs for the Phoenix, Pinal and Tucson active management areas and will be included in the TMPs for the Prescott and Santa Cruz active management areas. Therefore, Section B of this policy statement will be effective until the conservation requirements for the TMPs become effective.

#### **A. Coordination with ADEQ in Evaluating Remedial Actions**

As part of the Water Quality Assurance Revolving Fund ("WQARF") legislation of 1997, Laws 1997, Ch. 287, the Department must "coordinate and confer" with the Arizona Department of Environmental Quality ("ADEQ") regarding "water plans, water resource planning, water management, wells, water rights and permits, and other appropriate provisions of [title 45]

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<sup>1</sup> In 1999, the legislation was amended to also apply to the Second Management Plans. Laws 1999, Ch. 295, § 49. The amended legislation takes effect August 6, 1999.

pertaining to remedial investigations, feasibility studies, site prioritization, selection of remedies and implementation of the [WQARF] program pursuant to title 49, chapter 2, article 5.” A.R.S. § 45-105(B)(4)(c). Pursuant to this legislative mandate, the Department is required to actively coordinate and confer with ADEQ in evaluating proposed remedial actions to provide ADEQ with information regarding water resource considerations.

As part of its consultation and coordination with ADEQ relating to proposed remedial actions, the Department will consider, among other things, the volume of groundwater proposed to be withdrawn, the impact that end uses of remediated groundwater will have on aquifers and water supplies, whether a proposed withdrawal achieves the maximum beneficial use of water and whether the proposed remedial action is viable, as well as whether a proposed withdrawal and use of remediated groundwater is consistent with Title 45, Arizona Revised Statutes. The Department will coordinate and confer with ADEQ *prior to* ADEQ’s approval or denial of a proposed remedial action project. Once a remedial action project is approved by ADEQ or the Environmental Protection Agency (“EPA”) pursuant to CERCLA or Title 49, A.R.S., the Department will account for remediated groundwater in accordance with Laws 1997, Ch. 287, § 51 and as outlined in section B below.

Among other things, the Department will consider the following factors relating to proposed remedial actions in its recommendations to ADEQ:

1. ***Volume of remediated groundwater to be withdrawn:*** The Department will encourage remedial actions that use the least amount of groundwater necessary to facilitate a project’s remedial goal and will discourage remedial actions that are not prudent and efficient from a water management perspective.
2. ***End uses to which remediated groundwater will be put:*** The Department will encourage end uses that minimize groundwater withdrawals and that are consistent with the safe-yield goal because they will result in no change in groundwater storage (or in the Pinal active management area, that are consistent with the planned depletion goal because they will maximize the quantity and quality of groundwater available for other uses). Where remediated groundwater cannot be practicably or cost-effectively re-injected or recharged, the Department will encourage replacing existing groundwater uses with remediated groundwater and preventing new permanent uses which would not have occurred without the incentive to use remediated groundwater and which would continue to rely on groundwater after the remediated groundwater is no longer available.

While individualized circumstances will be evaluated on a case-by-case basis, generally, the Department’s beneficial end use preferences are the following, listed in order from most to least preferred based on the impact on the active management area’s management goal and the amount of groundwater in storage:

Neutral to local aquifer

- a. Re-inject or recharge in the same local area.
- b. Replace existing groundwater uses in the same local area.

Neutral to groundwater basin

- c. Re-inject or recharge in the same active management area.
- d. Replace existing groundwater uses in the same active management area.

Reduce groundwater in storage

- e. Replace existing non-groundwater use in the same active management area.
- f. Beneficial uses of water for new purposes.
- g. Artificial wetlands or artificial lakes.
- h. Dispose to the sewer (unless the resulting effluent is re-injected, recharged or replaces an existing groundwater use).

3. ***Achievement of maximum beneficial use of waters and viability of proposed remedial action:*** Remedial actions must assure the protection of public health and welfare and the environment; to the extent practicable, provide for the control, management or cleanup of hazardous substances so as to allow the maximum beneficial use of the waters of the state; and be reasonable, necessary, cost-effective and technically feasible. A.R.S. § 49-282.06(A).
4. ***Consistency with Title 45:*** Groundwater withdrawn pursuant to an approved remedial action must be withdrawn and used consistent with Title 45, Arizona Revised Statutes.

**B. Implementation of Remediated Groundwater Incentive for the SMP**

In implementing the remediated groundwater incentive for SMP conservation requirement accounting, the Department will follow policies and procedures described in this section.

1. ***Any person subject to SMP conservation requirements may qualify for incentive:*** Any person or entity who is subject to conservation requirements adopted pursuant to A.R.S. § 45-565 may qualify for the remediated groundwater incentive for conservation requirement accounting.
2. ***Groundwater eligible for the remediated groundwater incentive is based on an authorized volume of groundwater withdrawals:*** For each approved remedial action project, the annual amount of groundwater that is eligible for the remediated groundwater incentive for conservation requirement accounting is the annual authorized volume of groundwater to be withdrawn for purposes of the project. For projects approved on or after June 15, 1999, the annual authorized volume must be specified in a consent decree or other document approved by ADEQ or EPA. For projects approved before June 15,

1999, the annual authorized volume is the highest annual use of groundwater withdrawn pursuant to the approved remedial action project prior to January 1, 1999, except that if a maximum annual volume is specified in the consent decree or other document approved by ADEQ or EPA, the annual authorized volume is the maximum annual volume specified in the document. For remedial action projects associated with treatment plants that were in operation before June 15, 1999, a person may request an increase in the annual authorized volume at the same time the initial notice is submitted. The Department will increase the annual authorized volume up to the maximum treatment capacity of the treatment plant if adequate documentation is submitted demonstrating that an increase is necessary to further the purpose of the remedial action project and the increase is not in violation of the consent decree or other document approved by ADEQ or EPA.

3. ***Notice letter and record of volume to be withdrawn:*** To qualify for the remediated groundwater incentive for conservation requirement accounting, a person must notify the director as described below. For groundwater withdrawn on or after June 15, 1999, the director must be notified in writing by August 15, 1999 or prior to the withdrawal for which the accounting is desired, whichever is later. For groundwater withdrawn before June 15, 1999, the director must be notified in writing no later than August 15, 1999. A municipal provider or irrigation district may submit notice on behalf of a person subject to conservation requirements. Along with the notice letter, the person must submit to the director the following:

- A copy of the document approved by ADEQ or the EPA such as a Remedial Action Plan (RAP), Record of Decision (ROD) or consent decree;
- The volume of groundwater that will be pumped annually, the time period to which the approved document applies, and where the annual authorized volume is referenced in that document. (If this is not specified in the approved document, justification for the volume and time period must be submitted);
- The purpose for which the remediated water will be used;
- The contact person's name and phone number.

4. ***Actual use or agreement to use remediated groundwater:*** At the time the person notifies the director of a groundwater withdrawal that qualifies for the remediated groundwater incentive for conservation requirement accounting, the person must be using remediated groundwater pursuant to an approved remedial action or must have agreed to do so through a consent decree or other document approved by ADEQ or EPA.

5. ***Changes and modifications:*** If a person needs to withdraw groundwater pursuant to an approved remedial action in excess of the annual authorized volume as determined in paragraph 2 of this section, the person must notify the director in writing of the amount of the increase. The Department will modify the annual authorized volume for purposes of the remediated groundwater incentive if adequate documentation is submitted

demonstrating that an increase is necessary to further the purpose of the remedial action project and the increase is not in violation of the consent decree or other document approved by ADEQ or EPA. In addition, persons desiring the remediated groundwater accounting for conservation requirements must notify the Department of changes to the consent decree or other legally binding agreements within thirty days of the change, and the annual authorized volume will be modified accordingly.

6. ***Accurate recording of volumes of groundwater withdrawn pursuant to approved remedial action projects:*** To qualify for the remediated groundwater incentive for conservation requirement accounting, groundwater withdrawn pursuant to an approved remedial action project must be metered separately from groundwater withdrawn in association with another groundwater withdrawal authority for the same or other end uses.
7. ***Annual report:*** With each annual water withdrawal and use report filed pursuant to A.R.S. § 45-632, persons desiring the remediated groundwater accounting for conservation requirements shall indicate the volume of water withdrawn during the previous calendar year that qualifies for the remediated groundwater incentive for conservation requirement accounting.
8. ***Remediated groundwater retains its legal character as groundwater for other purposes:*** Groundwater withdrawn pursuant to an approved remedial action project retains its legal character as groundwater for all other purposes under Title 45, A.R.S., including all other laws regulating groundwater withdrawal and use such as the assessment of withdrawal fees pursuant to A.R.S. § 45-611, *et. seq.*, as well as laws regulating water exchanges as set forth in A.R.S. § 45-1001, *et. seq.*, the transportation of groundwater as set forth in A.R.S. § 45-541, *et. seq.*, withdrawals of groundwater for transportation to active management areas as set forth in A.R.S. § 45-551, *et. seq.*, and underground water storage, savings and replenishment as set forth in A.R.S. § 45-801.01 *et. seq.*
9. ***Consistency with modification of municipal conservation program:*** As an incentive to use renewable water supplies, the Legislature granted the Department the authority to modify its municipal conservation program in the Second Management Plan to include a provision that would allow

[A] municipal provider subject to per capita conservation requirements to comply with its first intermediate per capita conservation requirement established in the management plan during any year after December 31, 1994 and before January 1, 2000 in which the amount of groundwater withdrawn or received by the municipal provider for use in its service area does not exceed an amount computed by multiplying the total amount of water supplied by the municipal provider for use in its service area during the year by thirty per cent.

Laws 1992, Ch. 183, § 15. In accordance with this provision, groundwater withdrawn in association with an approved remedial action project conducted pursuant to CERCLA or Title 49, A.R.S., and in compliance with paragraphs 1 through 7 of this section, shall be accounted for consistent with the accounting for surface water for purposes of determining whether a large municipal provider's groundwater use was less than or equal to thirty percent of its total water use on an annual basis before January 1, 2000.

10. ***Effective date of substantive policy statement:*** Subject to revisions and modifications, this substantive policy statement shall apply to withdrawals of groundwater beginning on or after January 1, 1998.

The Director may modify or revoke this policy at any time.

Date June 14, 1999

Rita P. Pearson

RITA P. PEARSON  
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