

**Arizona
Department
of
Water Resources**
www.water.az.gov

**LEGISLATIVE
IMPLEMENTATION
PLAN**

**47th Legislature, 1st Regular Session
2005**

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**ARIZONA DEPARTMENT OF WATER RESOURCES
LEGISLATIVE IMPLEMENTATION PLAN**

**HB 2174 Assured Water Supply; Fund; Committee
47th Legislature, 1st Regular Session (2005)**

BILL NUMBER: HB 2174, Chapter 217

SHORT TITLE: Assured Water Supply; Fund; Committee

PRIME SPONSOR: Representative: O'Halleran

BILL SUMMARY: HB 2174 contains the following provisions:

- Establishes an Assured and Adequate Water Supply Administration Fund. The Fund consists of the fees that are paid to the Arizona Department of Water Resources (ADWR) for applications relating to adequate and assured water supplies.
- States that the Fund monies are to be used for the costs and expenses incurred by ADWR when determining and declaring adequate and assured water supplies. The monies are subject to appropriation and are to be used by ADWR for the Adequate and Assured Water Supply Program.
- Requires ADWR to administer the Fund.
- Requires the Fund to be on a separate account on the books of ADWR.
- Exempts monies in the Fund from the lapsing of appropriations.
- Requires the State Treasurer to invest and divest monies in the Fund on notice from the Director of ADWR. All monies earned from investment will be credited to the Fund.
- Requires the Director to conduct a review of the Assured and Adequate Water Supply Rules in the Arizona Administrative Code for the purpose of making the application process more efficient.
- Requires the Director to submit a written report on the Director's recommendations to the Governor, the President of the Senate and the Speaker of the House of Representatives on or before December 15, 2005.

- Requires the Director to file a Notice of Proposed Rule Change by January 1, 2006, to initiate rulemaking proceedings according to the recommendations identified by the Director.
- Requires the Director to appoint an advisory committee to assist the Director in identifying statutory or rule changes to make the application process more efficient.
- Requires the advisory committee to include subdividers and water providers or their representatives.

SIGNIFICANCE TO AGENCY: ADWR lacks the resources to adequately staff the Assured and Adequate Water Supply Program. In the last six years, the workload in the program has grown significantly while ADWR's resources have declined. Since processing Assured and Adequate Water Supply applications is critical to the State's development industry, ADWR has drawn substantial resources from other water management programs, undermining the effectiveness of those programs. Even with the reassignment of staff, the processing time is lengthening and ADWR has been unable to adequately monitor and enforce the program. The inadequate level of monitoring has led to several short-term development moratoriums that could have been avoided. Based on current and projected development trends, the number of applications is expected to continue to increase.

ADWR believes that the Assured and Adequate Water Supply Program should be partly or fully self-supporting to enable it to function more effectively. ADWR would use these fees to support the staff and administration of the Assured and Adequate Water Supply Program. ADWR currently transmits the fees for Assured and Adequate Water Supply applications to the General Fund. HB 2174 allows ADWR to retain these fees to help to offset the costs of the program.

REQUIRED OUTCOMES:

- **Rule**
Rule changes are anticipated. The Stakeholders Group will identify specific rules that will require modification.
- **Legislation**
Legislation is anticipated. Based on preliminary discussions, ADWR may not have the authority to change certain rules without statutory authority. The Stakeholders Group will identify specific statutes that will require amendments.
- **Substantive Policy**
Preliminary discussions indicate that some aspects of the application process may be modified without a rule or statutory change. ADWR may be able to address these issue through a substantive policy change or by modifying internal processes administratively. The Stakeholders Group will identify processes and issues to help to improve program efficiency.

ACTIONS REQUIRED:

1. ADWR staff will meet internally to identify processes within the Assured Water Supply Program that can be eliminated or modified to improve the efficiency of the program, without jeopardizing the integrity of the Assured Water Supply Program.
2. ADWR staff will develop an outline of the issues identified by ADWR staff that will help to improve the efficiency of the Assured and Adequate Water Supply Program and discuss issues with the Director.
3. Open a rule making docket and publish notice of the docket opening with the Secretary of State.
4. ADWR staff makes recommendations to the Director regarding the composition of the Stakeholders Group that must include representatives of subdividers and water providers.
5. Director appoints group and sends a letter the week of May 9 confirming appointments to members of the Stakeholders Group.
6. An advance e-mail to Stakeholders to hold a date for the first meeting of the Stakeholders Group which will be scheduled sometime during the week of May 23 will also be sent the week of May 9.
7. Agendas and background material will be sent the week of May 16 (approximately one week before the meeting).
8. The Stakeholders Group will hold its first meeting the week of May 23.
9. At the first meeting, Stakeholders will begin discussion of opportunities for improved efficiency.
10. The structure and number of meetings will be determined, based on the discussion at the first meeting of the Stakeholders Group.
11. Finalize recommendations for rule changes, statutory changes and administrative changes by first week in July and begin drafting the recommendations report.
12. Review a summary of the Stakeholders recommendations with Water Legislation Stakeholders Group the first week in August.
13. Submit legislative proposals to Governor's Office by August 15.
14. Provide draft rules and statutory language for review the first week in September.

15. Receive comments during the month of September.
16. Incorporate comments by the end of October.
17. Send out final draft in early November.
18. Secure legislative sponsor and open file with Legislative Council by November 15.
19. Incorporate final comments.
20. Submit final report of proposed statutory changes to the Governor, Speaker of the House and President of the Senate by December 15.
21. File a notice of proposed rule-making with the Secretary of State by January 1, 2006.

DIVISION STAFF SUPPORT REQUIRED:

- Director's Office/Legislative Liaison
- Office of Legal Services
- Hydrology Division
- Active Management Areas
- Assured and Adequate Water Supply

TIMELINE:

2005

- May
 - Conduct internal discussions regarding program efficiency
 - Appoint Stakeholders Advisory Committee
 - Develop materials for first meeting
 - Convene first Stakeholders meeting
 - Determine process structure
- June
 - Stakeholders meet and develop recommendations (# of meetings TBA)
- July
 - Finalize recommendations first week in July
- August
 - Review recommendations with Water Legislation Stakeholders Group first week in August
- September
 - Provide draft rules and amendments for review
 - Move to new office
 - Receive comments on recommendations

- October
 - Incorporate comments
- November
 - Send out drafts for final review
- December
 - Finalize rule package

2006

- January 1, 2006
 - File notice of proposed rule making with the Secretary of State

State of Arizona
House of Representatives
Forty-seventh Legislature
First Regular Session
2005

CHAPTER 217

HOUSE BILL 2174

AN ACT

AMENDING TITLE 45, CHAPTER 2, ARTICLE 9, ARIZONA REVISED STATUTES, BY
ADDING SECTION 45-580; RELATING TO WATER MANAGEMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 45, chapter 2, article 9, Arizona Revised Statutes, is amended by adding section 45-580, to read:

45-580. Assured and adequate water supply administration fund; purpose

A. THE ASSURED AND ADEQUATE WATER SUPPLY ADMINISTRATION FUND IS ESTABLISHED CONSISTING OF THE FEES THAT ARE PAID TO THE DEPARTMENT FOR APPLICATIONS RELATING TO ADEQUATE AND ASSURED WATER SUPPLY PURSUANT TO SECTIONS 45-108, 45-576 AND 45-579 AND THAT ARE ESTABLISHED BY THE DIRECTOR PURSUANT TO SECTION 45-113, SUBSECTION B. THE DEPARTMENT SHALL ADMINISTER THE FUND. MONIES IN THE FUND ARE SUBJECT TO APPROPRIATION AND SHALL BE USED BY THE DEPARTMENT FOR THE COSTS AND EXPENSES OF THE DEPARTMENT IN ADMINISTERING SECTIONS 45-108, 45-576 AND 45-579.

B. THE DIRECTOR SHALL DEPOSIT, PURSUANT TO SECTIONS 35-146 AND 35-147, ALL FEES RECEIVED PURSUANT TO SUBSECTION A OF THIS SECTION IN THE FUND. THE FUND SHALL BE A SEPARATE ACCOUNT ON THE BOOKS OF THE DEPARTMENT. MONIES REMAINING IN THE FUND AT THE END OF THE FISCAL YEAR REMAIN IN THE FUND AND ARE EXEMPT FROM THE PROVISIONS OF SECTION 35-190 RELATING TO THE LAPSING OF APPROPRIATIONS. ON NOTICE FROM THE DIRECTOR, THE STATE TREASURER SHALL INVEST AND DIVEST MONIES IN THE FUND AS PROVIDED BY SECTION 35-313, AND MONIES EARNED FROM INVESTMENT SHALL BE CREDITED TO THE FUND.

Sec. 2. Review of assured and adequate water supply program; advisory committee

A. The director of the department of water resources shall conduct a review of the assured and adequate water supply rules in title 12, chapter 15, article 7, Arizona administrative code for the purpose of identifying statutory or rule changes that would make the application processes under those rules more efficient. The director shall

submit a written report of the director's recommendations for any statutory changes to the governor, the president of the senate and the speaker of the house of representatives on or before December 15, 2005. No later than January 1, 2006, the director shall file a notice of proposed rule making with the secretary of state pursuant to section 41-1022, Arizona Revised Statutes, for the purpose of initiating the rule making proceeding to make any rule changes identified by the director under this subsection that are not dependent on proposed statutory amendments.

B. The director shall appoint an advisory committee to assist the director in identifying the statutory or rule changes described in subsection A of this section. The advisory committee shall include representatives of subdividers and water providers. The members of the committee shall serve at the pleasure of the director and are not eligible to receive compensation.

APPROVED BY THE GOVERNOR APRIL 25, 2005.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 25, 2005.

**ARIZONA DEPARTMENT OF WATER RESOURCES
LEGISLATIVE IMPLEMENTATION PLAN**

**HB 2277 Water Providers; Community System Plans
47th Legislature, 1st Regular Session (2005)**

BILL NUMBER: HB 2277, Chapter 223

SHORT TITLE: Water Providers; Community System Plans

PRIME SPONSORS: Representatives: Hershberger
Landrum Taylor
O'Halleran

BILL SUMMARY: HB 2277 contains the following provisions:

Definition of Water System

- Defines *community water system* as a public water system that serves at least 15 service connections used by year-round residents or that regularly serves at least 25 year-round residents. A *public water system* is one that provides water for human consumption (A.R.S. 49-325).
- Defines *large community water system* as a community water system that serves water to more than 1,850 persons.
- Defines *small community water system* as a community water system that does not qualify as a large community water system.

Water Plan

- Requires all community water systems to submit:
 - A water supply plan that describes their sources of water, service area, transmission system facilities, monthly system production data, historic demand for the past five years and projected demands for the next five, 10 and 20 years.
 - A drought preparedness plan that includes drought and emergency response strategies, a plan of action to respond to water shortage conditions and provisions to inform and educate the public.
 - A water conservation plan that may include measures to control lost or unaccounted for water, consideration of water rate structures that encourage efficient use of water

[as set by the community water system's governing body and subject to approval by the Arizona Corporation Commission (ACC)] and information and education on conserving water.

- Clarifies that the requirement for a water supply plan only includes community water systems and not water used for hard rock mining or metallurgical processes.
- Requires large community water systems to submit plans to the Director of ADWR by January 1, 2007 and small community water systems by January 1, 2008. Small community water systems (whether filing alone or jointly) may be given an extension by the Director if a request is submitted at least 90 days prior to the deadline.
- Exempts a small municipal provider from the requirement to submit a water conservation plan if the provider does the following:
 - Petitions the Director of the Arizona Department of Water Resources (ADWR) before January 1, 2007.
 - Shows that under reasonable growth projections they will be regulated as a large municipal water provider by January 1, 2012.
- Authorizes two or more water providers serving the same area to coordinate their efforts and submit a joint plan. The deadline for submitting a joint plan is the same as for small community water systems.
- Requires updates to the plans every five years. The Director is required to review the plans to determine if they are in compliance.
- Provides for disclosure of non-compliance to the governing body in the service area if a water provider does not comply within sixty days of a written notice from the Director regarding failure to submit a water conservation plan.
- Exempts a water system from submitting a water supply plan if the system has been designated as having an Assured Water Supply. The system still must submit a drought preparedness plan and a water conservation plan.
- States that water systems do not have to resubmit any information required by this legislation if it is already on file with ADWR.
- Requires the Director to prepare, and make available, forms for small water systems to complete and submit as their water plan. The Director must also develop a guidance document to assist community water systems in preparing a water system plan.

Records and Annual Report of Water Use

- Requires an annual report of water use from each water provider that includes information, if known, regarding sources of water, quantity of water pumped or diverted,

well registration numbers, how the water was used, number of customers served and information on storage facilities. For *large community water systems* the report must also include a map of the service area and distribution system.

- Exempts community water systems located inside Active Management Areas (AMAs) from duplicate reporting requirements.
- Requires the Director to prepare blank forms and distribute them on a timely schedule and cooperate with the ACC and the Arizona Department of Environmental Quality (ADEQ) to facilitate the reporting of similar or identical information

SIGNIFICANCE TO AGENCY: Requiring communities to develop water supply plans, drought plans and conservation plans is an important step toward improving our ability to effectively manage our water resources, both at the state and local levels. The three key components of the legislation and the implications for water management are listed below.

Water Supply Plan

- Increase public awareness of water supplies at the state and local levels.
- Provide much needed data regarding our state's water supplies and water infrastructure.
- Describe existing local water supplies.
- Enable us to target our data collection in those areas that need the most support.
- Improve our ability to plan for our future water infrastructure needs so that we will have the resources available.

Drought Preparedness Plan

- Increase public awareness on local drought conditions and potential local responses.
- Improve drought planning to identify and mitigate drought conditions in the early stages to reduce the need for more costly and intrusive emergency response measures.
- Assure that our communities will be prepared to meet our citizens water needs in times of water shortage.
- Provide local flexibility to:
 - Establish drought and emergency response stages to enable local communities to implement response measures.
 - Develop a plan of action to respond to drought or water shortage conditions.
 - Develop procedures for the enforcement of mandatory water use restrictions for residential and non-residential uses.
- Recognize that extraordinary hardships could result as a result of the plan and provide for variances in such cases.

Water Conservation Plan

- Ensure consistent, statewide conservation practices by all water users.

- Increase the efficiency of the water system to reduce potential drought-impacts or other water supply deficiencies
- Encourage consumer water conservation efforts.
- Provide an opportunity for local community residents to actively participate in safeguarding water supplies to sustain the economic viability of their community.

REQUIRED OUTCOMES:

- **Rule**
No rule changes are anticipated at this time.
- **Legislation**
Two issues may require legislative action:
 - Limit public access to the service area maps for security purposes.
 - Clarify reporting requirements related to effluent.
- **Substantive Policy**
Preliminary discussions indicate that some aspects of the reporting and planning processes may need to be addressed without additional rule or statutory changes. ADWR will be able to address these issue through internal processes administratively.

ACTIONS REQUIRED:

1. Coordinate development of reporting requirements with ADEQ and the ACC to ensure reporting requirements and planning processes are not overly duplicative; use existing ACC/ADEQ reporting formats to the extent possible.
2. Develop annual report forms, review processes, and databases to track reporting.
3. Develop Water System Plan Guidance Document and a small system planning form in consultation with ADEQ, ACC and community water systems.
4. Develop internal review processes for plans.
- 5.

DIVISION STAFF SUPPORT REQUIRED:

- Director's Office
- Office of Legal Services
- Hydrology Division
- Active Management Areas
- Assured and Adequate Water Supply
- Office of Statewide Planning

TIMELINE:

2005

- May
 - Meet with ACC and ADEQ to review reporting requirements for those agencies compared to requirements of HB2277. Need to determine how we will move forward, either a separate report or adding information needed to the reports currently submitted.
 - Meet with ACC and ADEQ to review planning requirements for those agencies compared to requirements of HB2277. Develop a form for small community water systems to complete as their Water System Plans based on this discussion.
 - Work with ACC and ADEQ to develop mailing list.
- June
 - Meet with stakeholders to review requirements and deadlines for annual reporting.
 - Contact all community water systems detailing planning and annual reporting requirements.
 - Draft the form for small community water systems to complete as their Water System Plans. Request review and comment by ACC and ADEQ.
 - Coordinate with ACC regarding plan implementation for private water companies.
 - Begin preparation of the **Water System Plan Guidance Document** to assist community water systems in preparing the water system plan.
- July
 - Continue stakeholder meetings to review requirements and deadlines.
- August
 - Finalize annual report for review of ACC and ADEQ.
 - Coordinate development of Annual Reports with ADWR IT staff, considering input by ACC and ADEQ.
 - Continue stakeholder meetings to review annual report requirements and deadlines.
 - Conduct public workshops to solicit input from cities and towns, private water companies and irrigation districts that qualify as community water systems regarding the draft Water System Plan Guidance Document and the Small Community Water System Plan form.
 - Revise Water System Plan Guidance Document and the Small Community Water System Plan form per local community input.
 - Convene additional workshops, if necessary, to finalize the Guidance Document and Water System Plan form.
- September
 - Develop database for input of annual report information.
 - Begin planning November workshops to inform communities about monitoring and reporting requirements for the following calendar year.
- November

- Conduct workshops to inform communities about monitoring and reporting requirements for the following calendar year.
- December
 - Conduct workshops to review with Communities regarding requirements for Water System Plan and provide Water System Plan Guidance Document.
 - Distribute Water System Plan Guidance Document.

2006

- January through October
 - Continue stakeholder meetings to review annual reporting requirements and deadlines.
 - Develop internal guidance documents for review of Water System Plans.
- February
 - Send Quarterly reminders to Large Community Water Systems of upcoming January 1, 2007 deadline for Initial Plan.
 - Provide assistance, as needed, to community water systems.
 - Conduct workshops to continue to assist with Water Plan development.
- March
- April
- May
 - Send Quarterly reminders to Large Community Water Systems of upcoming January 1, 2007 deadline for Initial Plan. Provide assistance as needed to both Large and Small Community Water Systems.
 - Continue to conduct workshops to assist water systems.
- June
- July
- August
 - Send Quarterly reminders to Large Community Water Systems of upcoming January 1, 2007 deadline for Initial Plan and continue to provide assistance to community water systems.
 - Continue workshops.
- September
- October
- November
 - Send Quarterly reminders to Large Community Water Systems of upcoming January 1, 2007 deadline for Initial Plan and continue to provide assistance to water systems.
 - Continue workshops.
- December
 - Prepare for Annual Report mailing.

2007

- January
 - Deadline for Large Community Water System Plans.

- Coordinate Annual Report form mailing with ACC report mailing.
- Assist communities with reporting requirements.
- February
 - Send quarterly reminders to Small Community Water Systems of upcoming January 1, 2008 deadline for Initial Plan and provide assistance, as needed.
 - Continue workshops.
- March
- April
- May
 - Annual Reports due.
 - Send quarterly reminders to Small Community Water Systems of upcoming January 1, 2008 deadline for Initial Plan and continue assistance.
 - Continue workshops.
- June
- July
- August
 - Send quarterly reminders to Small Community Water Systems of upcoming January 1, 2008 deadline for Initial Plan and provide assistance as needed.
 - Continue workshops to provide assistance.
- September
- November
 - Send quarterly reminders to Small Community Water Systems of upcoming January 1, 2008 deadline for Initial Plan and provide assistance as needed
 - Continue workshops.
- December

2008

- January
 - Deadline for Small Community Water System Plans.
 - Continue to assist small utilities.

State of Arizona
House of Representatives
Forty-seventh Legislature
First Regular Session
2005

CHAPTER 223

HOUSE BILL 2277

AN ACT

AMENDING TITLE 45, CHAPTER 1, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 13; RELATING TO COMMUNITY WATER SYSTEMS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 45, chapter 1, Arizona Revised Statutes, is amended by adding article 13, to read:

ARTICLE 13. COMMUNITY WATER SYSTEM PLANNING
AND REPORTING REQUIREMENTS

45-330. Definition

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "COMMUNITY WATER SYSTEM" MEANS A PUBLIC WATER SYSTEM THAT SERVES AT LEAST FIFTEEN SERVICE CONNECTIONS USED BY YEAR-ROUND RESIDENTS OF THE AREA SERVED BY THE SYSTEM OR THAT REGULARLY SERVES AT LEAST TWENTY-FIVE YEAR-ROUND RESIDENTS OF THE AREA SERVED BY THE SYSTEM. A PERSON IS A YEAR-ROUND RESIDENT OF THE AREA SERVED BY A SYSTEM IF THE PERSON'S PRIMARY RESIDENCE IS SERVED WATER BY THAT SYSTEM.
2. "LARGE COMMUNITY WATER SYSTEM" MEANS A COMMUNITY WATER SYSTEM THAT SERVES WATER TO MORE THAN ONE THOUSAND EIGHT HUNDRED FIFTY PERSONS.
3. "PUBLIC WATER SYSTEM" MEANS AN ENTITY THAT DISTRIBUTES OR SELLS WATER AND THAT QUALIFIES AS A PUBLIC WATER SYSTEM UNDER SECTION 49-352, SUBSECTION B.
4. "SMALL COMMUNITY WATER SYSTEM" MEANS A COMMUNITY WATER SYSTEM THAT DOES NOT QUALIFY AS A LARGE COMMUNITY WATER SYSTEM.

45-331. Water plan

A. EXCEPT AS PROVIDED IN SUBSECTIONS D AND E OF THIS SECTION, BY THE DATES SPECIFIED IN SUBSECTIONS B OR C OF THIS SECTION, EACH COMMUNITY WATER SYSTEM SHALL PREPARE AND SUBMIT TO THE DIRECTOR A SYSTEM WATER PLAN THAT INCLUDES THE FOLLOWING COMPONENTS:

1. A WATER SUPPLY PLAN.

2. A DROUGHT PREPAREDNESS PLAN.

3. A WATER CONSERVATION PLAN.

B. EXCEPT AS PROVIDED IN SUBSECTION C OF THIS SECTION, A LARGE COMMUNITY WATER SYSTEM SHALL SUBMIT ITS FIRST SYSTEM WATER PLAN TO THE DIRECTOR ON OR BEFORE JANUARY 1, 2007, AND SHALL SUBMIT AN UPDATED PLAN WITHIN SIX MONTHS PRIOR TO JANUARY 1 OF EVERY FIFTH CALENDAR YEAR THEREAFTER. A SMALL COMMUNITY WATER SYSTEM SHALL SUBMIT ITS FIRST SYSTEM WATER PLAN TO THE DIRECTOR ON OR BEFORE JANUARY 1, 2008, AND SHALL SUBMIT AN UPDATED PLAN WITHIN SIX MONTHS PRIOR TO JANUARY 1 OF EVERY FIFTH CALENDAR YEAR THEREAFTER. FOR A SMALL COMMUNITY WATER SYSTEM THAT SUBMITS ITS REQUEST TO THE DIRECTOR AT LEAST NINETY DAYS BEFORE THE FILING DEADLINE, THE DIRECTOR MAY EXTEND THE TIME FOR FILING THE FIRST WATER SYSTEM PLAN. IF A COMMUNITY WATER SYSTEM REVISES ITS SYSTEM WATER PLAN AFTER SUBMITTING THE PLAN TO THE DIRECTOR, THE COMMUNITY WATER SYSTEM SHALL SUBMIT THE REVISED PLAN TO THE DIRECTOR WITHIN SIXTY DAYS FROM THE DATE OF REVISION.

C. IF MORE THAN ONE COMMUNITY WATER SYSTEM SERVES WATER TO RESIDENTS WITHIN A CITY OR TOWN, TWO OR MORE OF THE COMMUNITY WATER SYSTEMS SERVING WATER TO RESIDENTS WITHIN THAT CITY OR TOWN MAY COORDINATE THEIR EFFORTS IN PREPARING THE PLANS REQUIRED BY THIS SECTION AND MAY SUBMIT A JOINT PLAN THAT CONTAINS THE INFORMATION REQUIRED IN THIS SECTION FOR THAT PORTION OF THE COMMUNITY SUPPLIED BY THE COMMUNITY WATER SYSTEMS INSTEAD OF SUBMITTING INDIVIDUAL WATER SYSTEM PLANS. COMMUNITY WATER SYSTEMS THAT SUBMIT A JOINT PLAN PURSUANT TO THIS SUBSECTION SHALL SUBMIT THE PLAN TO THE DIRECTOR BY THE DATE ON WHICH A SMALL COMMUNITY WATER SYSTEM IS REQUIRED TO SUBMIT ITS SYSTEM WATER PLAN UNDER SUBSECTION B OF THIS SECTION. THE DIRECTOR MAY EXTEND THE TIME FOR FILING THE FIRST WATER SYSTEM PLAN FOR A JOINT PLAN THAT INCLUDES A SMALL COMMUNITY WATER SYSTEM IF THE REQUEST IS RECEIVED NINETY DAYS BEFORE THE FILING DEADLINE.

D. A COMMUNITY WATER SYSTEM THAT HAS BEEN DESIGNATED AS HAVING AN ASSURED WATER SUPPLY PURSUANT TO SECTION 45-576 IS EXEMPT FROM THE REQUIREMENT TO SUBMIT A WATER SUPPLY PLAN UNDER THIS SECTION.

E. A COMMUNITY WATER SYSTEM REGULATED AS A LARGE MUNICIPAL PROVIDER UNDER CHAPTER 2, ARTICLE 9 OF THIS TITLE IS EXEMPT FROM THE REQUIREMENT TO SUBMIT A WATER CONSERVATION PLAN UNDER THIS SECTION. THE DIRECTOR SHALL EXEMPT A COMMUNITY WATER SYSTEM REGULATED AS A SMALL MUNICIPAL

PROVIDER UNDER CHAPTER 2, ARTICLE 9 OF THIS TITLE FROM THE REQUIREMENT TO SUBMIT A WATER CONSERVATION PLAN UNDER THIS SECTION IF THE COMMUNITY WATER SYSTEM:

1. PETITIONS THE DIRECTOR FOR AN EXEMPTION PRIOR TO JANUARY 1, 2007.
2. DEMONSTRATES, UNDER REASONABLE GROWTH PROJECTIONS, THAT IT WILL BE REGULATED AS A LARGE MUNICIPAL PROVIDER UNDER CHAPTER 2, ARTICLE 9 OF THIS TITLE PRIOR TO JANUARY 1, 2012.

F. A COMMUNITY WATER SYSTEM THAT HAS PREVIOUSLY SUBMITTED INFORMATION REQUIRED BY THIS SECTION TO THE DIRECTOR MAY MAKE A WRITTEN REQUEST TO THE DIRECTOR TO BE EXEMPTED FROM THE REQUIREMENT TO SUBMIT THE INFORMATION IN ITS SYSTEM WATER PLAN. THE DIRECTOR SHALL GRANT THE EXEMPTION IF THE DIRECTOR DETERMINES THAT THE INFORMATION IS ALREADY ON FILE WITH THE DEPARTMENT.

G. THE DIRECTOR SHALL REVIEW A SYSTEM WATER PLAN, INCLUDING A REVISED PLAN, SUBMITTED BY A COMMUNITY WATER SYSTEM PURSUANT TO SUBSECTION B OF THIS SECTION AND SHALL NOTIFY THE COMMUNITY WATER SYSTEM IN WRITING AS TO WHETHER THE PLAN COMPLIES WITH THIS SECTION. IF THE DIRECTOR DETERMINES THAT THE PLAN DOES NOT COMPLY WITH THIS SECTION, THE DIRECTOR SHALL GIVE WRITTEN NOTICE OF THAT DETERMINATION TO THE COMMUNITY WATER SYSTEM AND GIVE THE COMMUNITY WATER SYSTEM AT LEAST ONE HUNDRED TWENTY DAYS TO MAKE REVISIONS OR ADDITIONS AS ARE NECESSARY TO BRING THE PLAN INTO COMPLIANCE. IF THE COMMUNITY WATER SYSTEM DOES NOT BRING THE PLAN INTO COMPLIANCE BY THE DATE SPECIFIED IN THE NOTICE, THE DIRECTOR SHALL PROVIDE NOTICE OF THE NONCOMPLIANCE TO THE GOVERNING BODIES OF THE CITIES, TOWNS AND COUNTIES LOCATED WITHIN THE SERVICE AREA OF THE COMMUNITY WATER SYSTEM. IF THE DIRECTOR DETERMINES THAT THE PLAN IS IN COMPLIANCE WITH THIS SECTION BUT THAT CHANGES WOULD IMPROVE THE PLAN, THE DIRECTOR SHALL GIVE WRITTEN NOTICE OF THE CHANGES TO THE COMMUNITY WATER SYSTEM BUT THE WATER SYSTEM SHALL NOT BE REQUIRED TO MAKE THE CHANGES.

H. THE WATER SUPPLY PLAN SHALL EVALUATE THE WATER SUPPLY NEEDS IN THE SERVICE AREA AND PROPOSE A STRATEGY TO MEET IDENTIFIED NEEDS. THE PLAN SHALL INCLUDE:

1. A LIST AND DESCRIPTION OF SERVICE AREA LANDS, SOURCES OF SUPPLY, INCLUDING EMERGENCY SOURCES, WELL REGISTRATION NUMBERS AND WATER LEVELS AT THE WELL SITES, IF KNOWN, AND STORAGE AND TREATMENT FACILITIES. THE LIST SHALL NOT INCLUDE WATER LEVELS AT WELL SITES THAT ARE SOURCES OF

SUPPLY FOR HARD ROCK MINING OR METALLURGICAL PROCESSING OR INDUSTRIAL USES RELATED TO HARD ROCK MINING OR METALLURGICAL PROCESSING.

2. A MAP AND DESCRIPTION OF EXISTING TRANSMISSION AND DISTRIBUTION FACILITIES, UNLESS PREVIOUSLY PROVIDED PURSUANT TO SECTION 45-498. FOR A SMALL COMMUNITY WATER SYSTEM A MAP IS NOT REQUIRED.

3. A DESCRIPTION OF MONTHLY SYSTEM PRODUCTION DATA CATEGORIZED BY THE SYSTEM'S SOURCES OF SUPPLY AND, FOR SYSTEMS THAT USE METERS TO MEASURE WITHDRAWALS AND DIVERSIONS, A SUMMARY OF SYSTEM AVERAGE DAILY DEMANDS, MAXIMUM MONTHLY DEMANDS AND AN ESTIMATE OF PEAK DAY DEMANDS FOR THE PAST FIVE YEARS.

4. A LIST, DESCRIPTION AND MAP OF EXISTING INTERCONNECTIONS UNLESS PREVIOUSLY PROVIDED PURSUANT TO SECTION 45-498, AND THE QUANTITIES OF WATER SOLD TO OR PURCHASED FROM OTHER WATER SYSTEMS DURING THE PREVIOUS FIVE YEARS, UNLESS PREVIOUSLY PROVIDED PURSUANT TO SECTION 45-632. FOR A SMALL COMMUNITY WATER SYSTEM A MAP IS NOT REQUIRED.

5. AN ANALYSIS OF PRESENT AND FUTURE WATER SUPPLY DEMANDS FOR THE NEXT FIVE, TEN AND TWENTY YEARS.

I. THE DROUGHT PREPAREDNESS PLAN SHALL BE DESIGNED TO MEET THE SPECIFIC NEEDS OF THE WATER SYSTEM FOR WHICH IT APPLIES AND SHALL INCLUDE:

1. THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE COMMUNITY WATER SYSTEM AND THE NAMES OF THE OFFICERS OR OTHER PERSONS RESPONSIBLE FOR DIRECTING OPERATIONS DURING A WATER SHORTAGE EMERGENCY.

2. DROUGHT OR EMERGENCY RESPONSE STAGES PROVIDING FOR THE IMPLEMENTATION OF MEASURES IN RESPONSE TO REDUCTION IN AVAILABLE WATER SUPPLY DUE TO DROUGHT OR INFRASTRUCTURE FAILURE.

3. A PLAN OF ACTION THAT THE COMMUNITY WATER SYSTEM WILL TAKE TO RESPOND TO DROUGHT OR WATER SHORTAGE CONDITIONS, INCLUDING:

(a) PROVISIONS TO ACTIVELY INFORM THE PUBLIC OF THE WATER SUPPLY SHORTAGE AND A PROGRAM FOR CONTINUED EDUCATION AND INFORMATION REGARDING IMPLEMENTATION OF THE DROUGHT PREPAREDNESS PLAN.

(b) DEVELOPMENT OF EMERGENCY SUPPLIES, WHICH MAY INCLUDE IDENTIFICATION OF EMERGENCY OR REDUNDANT FACILITIES TO WITHDRAW, DIVERT OR TRANSPORT SUBSTITUTE SUPPLIES OF THE SAME OR OTHER TYPES OF WATER.

(c) SPECIFIC WATER SUPPLY OR WATER DEMAND MANAGEMENT MEASURES FOR EACH STAGE OF DROUGHT OR WATER SHORTAGE CONDITIONS, SUBJECT TO APPROVAL BY THE CORPORATION COMMISSION IF THE COMMUNITY WATER SYSTEM IS A PUBLIC

SERVICE CORPORATION. THIS REQUIREMENT MAY BE MET BY PROVIDING A CURTAILMENT TARIFF ON FILE WITH THE CORPORATION COMMISSION.

J. THE WATER CONSERVATION PLAN SHALL BE DESIGNED TO INCREASE THE EFFICIENCY OF THE WATER SYSTEM, REDUCE WASTE AND ENCOURAGE CONSUMER WATER CONSERVATION EFFORTS. THE WATER CONSERVATION PLAN SHALL BE DESIGNED TO MEET THE SPECIFIC NEEDS OF THE COMMUNITY WATER SYSTEM AND SHALL INCLUDE BOTH DEMAND AND SUPPLY MANAGEMENT MEASURES INCLUDING THE FOLLOWING:

1. FEASIBLE MEASURES THAT MAY BE IMPLEMENTED TO DETERMINE AND CONTROL LOST AND UNACCOUNTED FOR WATER.

2. CONSIDERATION OF WATER RATE STRUCTURES THAT ENCOURAGE EFFICIENT USE OF WATER, AS SET BY THE COMMUNITY WATER SYSTEM'S GOVERNING BODY, SUBJECT TO APPROVAL BY THE CORPORATION COMMISSION IF THE COMMUNITY WATER SYSTEM IS A PUBLIC SERVICE CORPORATION.

3. A CONTINUING CONSERVATION EDUCATION PROGRAM CONTAINING PROVISIONS TO ACTIVELY INFORM THE PUBLIC OF DROUGHT CONDITIONS AND INFORMATION REGARDING CONSERVATION MEASURES TO REDUCE VULNERABILITY FROM DROUGHT CONDITIONS, INCLUDING:

(a) CURTAILMENT OF NONESSENTIAL WATER USES.

(b) AFFORDABLE EFFICIENCY TECHNOLOGIES FOR INDOOR AND OUTDOOR USE.

(c) REBATE AND RETROFIT PROGRAMS FOR INDOOR AND OUTDOOR USES.

(d) REUSE AND RECYCLING PROGRAMS.

K. THE WATER CONSERVATION PLAN SHALL BE IMPLEMENTED BY THE COMMUNITY WATER SYSTEM WITHIN TWELVE MONTHS AFTER RECEIVING WRITTEN NOTIFICATION FROM THE DIRECTOR THAT THE PLAN COMPLIES WITH THIS SECTION. FOR A COMMUNITY WATER SYSTEM THAT RECEIVES A NOTICE PURSUANT TO SUBSECTION G OF THIS SECTION THAT THE WATER CONSERVATION PLAN DOES NOT COMPLY WITH THIS SECTION, THE WATER CONSERVATION PLAN SHALL BE IMPLEMENTED WITHIN TWELVE MONTHS AFTER THE EXPIRATION OF THE DATE BY WHICH THE SYSTEM IS REQUIRED TO MAKE REVISIONS OR ADDITIONS TO THE PLAN TO BRING IT INTO COMPLIANCE, AS SPECIFIED IN THE NOTICE GIVEN TO THE SYSTEM UNDER SUBSECTION G OF THIS SECTION.

L. THE DIRECTOR SHALL PREPARE FORMS THAT SMALL COMMUNITY WATER SYSTEMS MAY COMPLETE AND SUBMIT AS THEIR SYSTEM WATER PLAN UNDER THIS SECTION. THE DIRECTOR SHALL DISTRIBUTE THE FORMS ON A TIMELY SCHEDULE AND FURNISH THEM UPON REQUEST. FAILURE TO RECEIVE OR OBTAIN A FORM DOES NOT RELIEVE ANY COMMUNITY WATER SYSTEM FROM THE REQUIREMENT TO FILE A SYSTEM WATER

PLAN BY THE DATE PRESCRIBED IN SUBSECTIONS B OR C OF THIS SECTION. THE DIRECTOR OF WATER RESOURCES SHALL COORDINATE WITH THE CORPORATION COMMISSION AND THE DIRECTOR OF ENVIRONMENTAL QUALITY IN ESTABLISHING THE FORM TO FACILITATE THE REPORTING OF SIMILAR OR IDENTICAL INFORMATION TO THE DEPARTMENT OF WATER RESOURCES AND THE CORPORATION COMMISSION OR TO THE DEPARTMENT OF WATER RESOURCES AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY.

M. THE DIRECTOR SHALL PREPARE A GUIDANCE DOCUMENT TO ASSIST COMMUNITY WATER SYSTEMS IN PREPARING THE WATER SYSTEM PLAN. THE DIRECTOR SHALL COOPERATE WITH CITIES AND TOWNS, PRIVATE WATER COMPANIES AND IRRIGATION DISTRICTS THAT ARE COMMUNITY WATER SYSTEMS IN DEVELOPING THE GUIDANCE DOCUMENT AND THE FORM DESCRIBED IN SUBSECTION L OF THIS SECTION.

45-332. Records and annual report of water use; penalty

A. EACH COMMUNITY WATER SYSTEM THAT IS REQUIRED TO FILE AN ANNUAL REPORT UNDER THIS SECTION AND THAT USES METERS TO MEASURE WATER WITHDRAWALS AND DIVERSIONS SHALL MAINTAIN CURRENT, COMPLETE, TRUE AND CORRECT RECORDS OF ITS WITHDRAWALS, DIVERSIONS AND DELIVERIES OF WATER IN THE FORM AS PRESCRIBED BY THE DIRECTOR. EACH COMMUNITY WATER SYSTEM THAT IS REQUIRED TO FILE AN ANNUAL REPORT UNDER THIS SECTION AND THAT DOES NOT USE METERS TO MEASURE WATER WITHDRAWALS AND DIVERSIONS SHALL MAINTAIN RECORDS OF THE ESTIMATED AMOUNT OF ITS WITHDRAWALS, DIVERSIONS AND DELIVERIES OF WATER IN THE FORM AS PRESCRIBED BY THE DIRECTOR.

B. AN ANNUAL REPORT SHALL BE FILED WITH THE DIRECTOR BY EACH COMMUNITY WATER SYSTEM. A COMMUNITY WATER SYSTEM IS EXEMPT FROM THE REPORTING REQUIREMENTS IN THIS SECTION IF IT IS REQUIRED TO FILE AN ANNUAL REPORT UNDER SECTION 45-632.

C. A COMMUNITY WATER SYSTEM REQUIRED TO FILE AN ANNUAL REPORT UNDER THIS SECTION SHALL REPORT THE FOLLOWING INFORMATION:

1. IF WATER WAS PUMPED OR DIVERTED BY THE COMMUNITY WATER SYSTEM DURING THE YEAR:

(a) THE QUANTITY OF WATER PUMPED OR DIVERTED AND THE WELL REGISTRATION NUMBERS OF ANY WELLS USED TO PUMP OR DIVERT THE WATER. COMMUNITY WATER SYSTEMS THAT DO NOT USE METERS TO MEASURE WATER PUMPED OR DIVERTED SHALL ESTIMATE THE QUANTITY OF WATER PUMPED OR DIVERTED.

(b) THE NUMBER OF CUSTOMERS TO WHOM THE COMMUNITY WATER SYSTEM DELIVERED WATER DURING THE YEAR.

(c) AN IDENTIFICATION OF THE NUMBER OF STORAGE FACILITIES AND THE STORAGE CAPACITY OF EACH FACILITY.

2. IF WATER WAS RECEIVED BY THE COMMUNITY WATER SYSTEM FROM ANOTHER PERSON DURING THE YEAR:

(a) THE NAME OF THE PERSON FROM WHOM THE WATER WAS OBTAINED.

(b) IF THE WATER WAS PUMPED OR DIVERTED, THE REGISTRATION NUMBERS OF ANY WELLS USED TO PUMP OR DIVERT THE WATER, IF KNOWN.

(c) THE QUANTITY OF WATER RECEIVED DURING THE YEAR.

(d) THE NUMBER OF CUSTOMERS TO WHOM THE COMMUNITY WATER SYSTEM DELIVERED WATER DURING THE YEAR.

(e) AN IDENTIFICATION OF THE NUMBER OF STORAGE FACILITIES AND THE STORAGE CAPACITY OF EACH FACILITY.

3. IF EFFLUENT THAT IS GENERATED FROM A WASTEWATER TREATMENT FACILITY WAS USED OR RECEIVED BY THE COMMUNITY WATER SYSTEM DURING THE YEAR, THE ESTIMATED QUANTITY OF EFFLUENT GENERATED FROM THE WASTEWATER TREATMENT FACILITY DURING THE YEAR, THE ESTIMATED QUANTITY OF EFFLUENT USED DIRECTLY FROM THE WASTEWATER TREATMENT FACILITY DURING THE YEAR AND THE SPECIFIC USES TO WHICH THE EFFLUENT WAS APPLIED DURING THE YEAR.

D. COMMUNITY WATER SYSTEMS REQUIRED TO FILE ANNUAL REPORTS UNDER THIS SECTION SHALL MAINTAIN A CURRENT MAP CLEARLY DELINEATING ITS SERVICE AREA AND DISTRIBUTION SYSTEM.

E. THE RECORDS AND REPORTS REQUIRED TO BE KEPT AND FILED UNDER THIS SECTION SHALL BE IN THE FORM AS THE DIRECTOR PRESCRIBES. THE DIRECTOR SHALL PREPARE BLANK FORMS AND DISTRIBUTE THEM ON A TIMELY SCHEDULE AND FURNISH THEM UPON REQUEST. FAILURE TO RECEIVE OR OBTAIN THE FORMS DOES NOT RELIEVE ANY PERSON FROM KEEPING THE REQUIRED RECORDS OR MAKING ANY REQUIRED REPORT. THE DIRECTOR SHALL COOPERATE WITH CITIES AND TOWNS, PRIVATE WATER COMPANIES AND IRRIGATION DISTRICTS THAT ARE COMMUNITY WATER SYSTEMS IN ESTABLISHING THE FORM OF THE RECORDS AND REPORTS TO BE KEPT AND FILED BY THEM. THE DIRECTOR OF WATER RESOURCES SHALL COORDINATE WITH THE CORPORATION COMMISSION AND THE DIRECTOR OF ENVIRONMENTAL QUALITY IN ESTABLISHING THE FORM OF THE REPORTS REQUIRED TO BE FILED BY THIS SECTION TO FACILITATE THE REPORTING OF SIMILAR OR IDENTICAL INFORMATION TO THE DEPARTMENT OF WATER RESOURCES AND THE CORPORATION COMMISSION OR TO THE DEPARTMENT OF WATER RESOURCES AND THE DEPARTMENT OF ENVIRONMENTAL QUALITY.

F. IF A COMMUNITY WATER SYSTEM FAILS TO TIMELY FILE THE REPORT PRESCRIBED BY THIS SECTION, THE DIRECTOR SHALL PROVIDE A WRITTEN NOTICE TO THE WATER SYSTEM THAT REQUIRES COMPLIANCE WITHIN SIXTY DAYS OF THE DATE OF THE NOTICE. IF THE WATER SYSTEM DOES NOT COMPLY WITHIN THE SIXTY DAY PERIOD, THE DIRECTOR SHALL PROVIDE NOTICE OF THAT NONCOMPLIANCE TO THE GOVERNING BODIES OF THE CITIES, TOWNS AND COUNTIES LOCATED WITHIN THE SERVICE AREA OF THE WATER SYSTEM.

G. A VIOLATION OF THIS ARTICLE DOES NOT CONSTITUTE A VIOLATION OF CHAPTER 2 OF THIS TITLE.

APPROVED BY THE GOVERNOR APRIL 25, 2005.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 25, 2005.

**ARIZONA DEPARTMENT OF WATER RESOURCES
LEGISLATIVE IMPLEMENTATION PLAN**

**HB 2643 Lower Colorado River; Conservation
47th Legislature, 1st Regular Session (2005)**

BILL NUMBER: HB 2643, Chapter 78

SHORT TITLE: Lower Colorado River; Conservation

PRIME SPONSORS: Representatives: Bee
Miranda
O'Halleran
Robson
J Weiers

BILL SUMMARY: HB 2643 contains the following provisions:

Administration

- Authorizes the Arizona Game and Fish Commission (Commission), the Arizona Department of Water Resources (ADWR) and the Central Arizona Water Conservation District (CAWCD) to enter into agreements with the federal government and other parties for participation in the Lower Colorado River Multi Species Conservation Program (MSCP).
- Specifies that the agreements may designate private financial institutions as fiscal agents or trustees for the collection and management of the MSCP monies.
- Establishes that the monies collected for the MSCP may include appropriations from the legislature; additional watercraft registration fees; surcharges on Arizona Colorado River special use permits; Colorado River water use fees; gifts, grants and donations from public or private sources; and payments by any person under any agreement to fund the MSCP.

Fee Assessments and Collections

- Allows the Commission to assess additional motorized watercraft registration fees that are collected solely for the purpose of funding the MSCP.

- Requires the revenues from the registration of motorized watercraft to be deposited in a watercraft registration fee clearing account. The State Treasurer distributes all monies collected from motorized watercraft registration (except those collected specifically for the MSCP) into the Watercraft Licensing Fund. The State Treasurer deposits monies collected specifically for the MSCP into an account that is used solely for the MSCP.
- Allows the Commission to impose and collect surcharges on special use permits used on the Colorado River. The Commission determines the amount and the surcharges may only be used for the MSCP. The monies collected must be put into a Colorado River special use permit clearing account that is paid into a MSCP account on a monthly basis by the State Treasurer.
- Allows ADWR to assess and collect annual fees from each person in Arizona who diverts and consumptively uses water from the mainstream of the Colorado River. These monies must be put into the Colorado River water use fee clearing account, which is paid monthly into an account solely used for the MSCP. The Director must set these fees by July 1 of each year for the following program year.
- Requires that, in setting fees, the Director must consider:
 - The consumptive use by the person being assessed during that program year.
 - The payment obligations that apply to similar water users under agreements to fund the MSCP.
 - The amount of monies needed to fund the MSCP for that year.
 - The amount of monies from other sources that are expected to be available to fund the MSCP for that year.
- Allows the Director to establish classes of water users in to assign graduated fee rates to the respective classes.
- Requires the Director to consider the date of any contract or right to use Colorado River water and the type of water used when assigning fee rates.
- States that the Director must give written notice of the fees within thirty days after the fees are established for a program year.
- Requires the Director to record a statement of fees for the following year in the Department's records and transmit a copy of the statement to the State Treasurer.
- Establishes the fee calculation method for the consumptive use of Colorado River water. The fee is calculated by multiplying the applicable annual fee for the program year by the consumptive use for the person for the program year.
- Allows the Director to reduce the amount of a person's annual fee by the value of any services or tangible assets (including land or water) accepted by the federal government as a contribution to the MSCP. The Director also may reduce the amount of a person's

annual fee by amounts paid or to be paid during the program year by the person under agreements with the CAWCD.

- Requires the Director to provide a notice and comment period and consult with representatives of the water users before setting the Colorado River water use fee.
- Requires the Director to give written notice of the amount of the fee that is assessed for the consumptive use of Colorado River water no later than August 15 before the beginning of a program year. A person who is assessed a fee (including registration fees and annual water use fees) must pay the fee within 45 days of receiving written notice of the fee amount.
- Authorizes the Director to assess a penalty of 10 percent of the unpaid fee for each month or portion of a month that a fee is delinquent. The total penalty may not exceed 60 percent of the unpaid fee. An action to recover the penalties must be brought in the Superior Court in Maricopa County. All penalties collected will be deposited in the Colorado River water use fee clearing account.
- Clarifies that anyone who has entered into agreements with CAWCD for Colorado River water use does not have to pay a Colorado River water use fee if they are in compliance with the agreements.

Central Arizona Water Conservation District

- Allows the CAWCD Board to enter into agreements with state agencies, the federal government and any other person who participates in the MSCP.
- Authorizes CAWCD to manage the funds collected for the MSCP or to designate a private financial institution or the State Treasurer as a fiscal agent. Also applies to collection, investment and distribution of monies.
- Clarifies that monies collected for the MSCP can only be used for activities and administrative costs relating to the MSCP.

Definitions

- Defines *consumptive use* as a water user's total use that is recorded in the final accounting for the most recent calendar year.
- Defines *final accounting* as the United States Bureau of Reclamation's final compilation of records of Colorado River diversions, return flows and consumptive uses for the year.
- Defines *Lower Colorado River Multispecies Conservation Program* as the cooperative effort to provide the basis for compliance with the Endangered Species Act of 1973. The cooperative effort is among government agencies, political subdivisions of the states of

Arizona, California and Nevada, and public and private parties with a common interest in the water and resources of the Lower Colorado River.

- Defines *program year* as the 12-month period between October 1st and the following September 30th.

SIGNIFICANCE TO AGENCY: The purpose of this program is to provide for the incidental take of endangered species along the Colorado River and limit our State's liability to assure that Arizona's water and power supplies are protected. The basic strategy is to implement a coordinated, comprehensive, conservation program to benefit the species in order to address the impacts of ongoing operations and maintenance and those associated with future water transfers. This program would thus assist Arizona in managing drought impacts in the future.

REQUIRED OUTCOMES:

- **Rule**
No rule changes are anticipated.
- **Legislation**
Legislation may be required to make technical corrections.
- **Substantive Policy**
No substantive policies are anticipated.

ACTIONS REQUIRED:

1. Determine entities subject to the fee based on Article V Accounting Report. Note that parties to "Lower Colorado River Multi-Species Conservation Program, Arizona Trust Indenture and Joint Payment Agreement" (Trust Indenture Agreement) are not subject to the fees.
2. Determine if water use by entities subject to the fee is reported under a party to the Trust Indenture Agreement in coordination with those parties
3. Colorado River Management Section drafts courtesy letter for Director advising entities subject to fee that they will receive notice in May 06 of fee proposal to be paid on calendar 05 water use. Fee the same as provided for in Trust Indenture Agreement, ie. \$0.25/ac-ft.
4. Director requests that State Treasurer establish "Colorado River Water Use Fee Clearing Account."

5. Director publishes notice of proposed fee in early May 1, 2006 providing 30 day comment period. Fee the same as provided for in Trust Indenture Agreement, ie. \$0.25/ac-ft.
6. Director consults with entities to be assessed fee, providing two week notice if hearing held.
7. Director sets fee by July 1, 2006, for entities subject to the fee, considering factors in 45-334 (A).
8. Director provides written notice to entities subject to the fee within 30 days of setting fee (the rate) per 45-334 (A)(6).
9. Director provides written notice of total amount of the fee by August 15 before the beginning of the program year per 45-334(B).
10. Director deposits fees collected in “Colorado River Water Use Fee Clearing Account” at State Treasurer.
- 11.

DIVISION STAFF SUPPORT REQUIRED:

- Director’s Office
- Office of Legal Services
- Water Management Support

TIMELINE:

2005

- May
- June
- July
 - Colorado River Management Section initiates determination of entities subject to the fee.
 - Colorado River Management Section initiates determination if water use by entities subject to the fee is reported under a party to the Trust Indenture Agreement in coordination with those parties.
 - Colorado River Management Section drafts courtesy letter advising entities subject to fee that they will receive notice in May 2006 of fee proposal to be paid on calendar 2005 water use.
 - Director requests that State Treasurer establish “Colorado River Water Use Fee Clearing Account.”

- August
- September
- October
- November
- December

2006

- January
- February
- March
- April
- May
 - Director publishes notice of proposed fee in early May 1, 2006 providing 30-day comment period.
 - Director consults with entities to be assessed the fee, providing a two-week notice if hearing held. (May or June meeting)
- June
 - Director to set fee by July 1, 2006, for entities subject to the fee, considering factors in 45-334 (A).
- July
 - Director provides written notice to entities subject to the fee within 30 days of setting fee (the rate) per 45-334 (A)(6).
- August
 - Director provides written notice of total amount of the fee by August 1 for calendar year 2005 water use.
- September
 - Fees due September 15 from contract holders
 - Fees deposited by ADWR in “Colorado River Water Use Fee Clearing Account.”
 - State Treasurer deposits fees collected in J.P. Morgan Chase account.
- October
 - Money available Oct 1 for draw by Reclamation from J.P. Morgan Chase account
- November
- December

House Engrossed

State of Arizona
House of Representatives
Forty-seventh
Legislature
First Regular Session
2005

CHAPTER 78

HOUSE BILL 2643

AN ACT

AMENDING SECTIONS 5-321, 5-323, 17-231, 17-345 AND 48-3712, ARIZONA REVISED STATUTES; AMENDING TITLE 45, CHAPTER 1, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 13; AMENDING TITLE 48, CHAPTER 22, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 48-3713.03; RELATING TO THE LOWER COLORADO RIVER MULTISPECIES CONSERVATION PROGRAM.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 5-321, Arizona Revised Statutes, is amended to read:

5-321. Numbering; registration fees; license tax; repeal of registration; penalty; procedures

A. The owner of each motorized watercraft requiring numbering by this state shall file an application for a registration number with the department, or its agent, on forms approved by the department. Except as provided by rule adopted by the commission, the application shall be signed by the owner of the motorized watercraft and shall be accompanied by a registration fee and a license tax levied at the following rates:

1. For a resident owner, defined as a person who owns a boat for which registration is required and who is required to and does register motor vehicles owned by the person in this state or, if no motor vehicle is owned by the person owning the boat, the person is a resident as defined by section 28-2001, a registration fee of four dollars and a license tax of forty-five cents per foot of length or fraction thereof of each watercraft up to and including eighteen feet and sixty-eight cents per foot of length for each foot or fraction thereof over eighteen feet except as provided in section 5-322.

2. For a nonresident owner, defined as any person who owns a boat for which registration is required and who is not a resident owner as defined by this section, a registration fee of twenty dollars and a license tax of two dollars ninety cents per foot of length or fraction thereof of each watercraft up to and including eighteen feet and five

dollars fifty cents per foot of length for each foot or fraction thereof over eighteen feet except as provided in section 5-322.

B. The length of the motorized watercraft shall be measured from the most forward part of the bow excluding the bowsprit or jibboom, over the centerline to the rearmost part of the transom excluding sheer, outboard motor, rudder, handles or other attachments.

C. THE COMMISSION MAY ASSESS AN ADDITIONAL REGISTRATION FEE, TO BE COLLECTED AT THE SAME TIME AND IN THE SAME MANNER AS THE REGISTRATION FEE IMPOSED BY SUBSECTION A, PARAGRAPH 1 OR 2 OF THIS SECTION. THE AMOUNT OF THE ADDITIONAL FEE SHALL BE DETERMINED BY THE COMMISSION AND MAY BE IMPOSED IN DIFFERENT AMOUNTS WITH RESPECT TO RESIDENT AND NONRESIDENT OWNERS. AN ADDITIONAL REGISTRATION FEE UNDER THIS SUBSECTION IS TO BE USED SOLELY FOR THE PURPOSE OF THE LOWER COLORADO RIVER MULTISPECIES CONSERVATION PROGRAM UNDER SECTION 48-3713.03.

D. Upon receipt of the application in approved form WITH THE APPLICABLE FEES AND LICENSE TAX, the department or its agent shall enter the application on the records of its office and issue to the applicant two current annual decals and a certificate of number stating the number issued to the watercraft and the name and address of the owner. The owner shall display the assigned number and the current annual decals in such manner as may be prescribed by rules of the commission. The number and decals shall be maintained in legible condition. The certificate of number or commission approved proof of valid certificate of number, except as provided in section 5-371, shall be available at all times for inspection by a peace officer whenever the watercraft is in operation. No number issued by another state or the United States coast guard, unless granted exemption or exception pursuant to this chapter, shall be displayed on the watercraft.

~~E.~~ E. No motorized watercraft shall be purchased, sold or otherwise transferred without assignment by the owner of the current numbering certificate or other documentation as may be prescribed by rules of the commission. Within fifteen days after such transfer, the person to whom such transfer is made shall make application to the department to have the motorized watercraft registered in the person's name by the department, for which the department shall charge a transfer fee of four dollars. The department shall not issue or transfer a numbering certificate for a motorized watercraft to a person who is subject to the use tax under title 42, chapter 5, article 4 unless the applicable tax has been paid as shown by a receipt from the collecting officer. Persons doing business as marine dealers and licensed as such by this state are not required to register in their name any watercraft in their possession that may be offered for resale.

~~D~~. F. In the event of the loss or destruction of the certificate of number or annual decal, the department shall issue a duplicate to the owner upon payment of a fee of two dollars.

~~E~~. G. The department may issue any certificate of number directly or may authorize any person to act as agent for the issuance of the certificate of number in conformity with this chapter and with any rules of the commission. An agent that contracts with the commission to renew certificates of number by telecommunication may impose additional fees for ~~their~~ THE services as provided in the contract.

~~F~~. H. The owner shall furnish to the department notice of the transfer of all or any part of the owner's interest other than the creation of a security interest in a motorized watercraft numbered in this state pursuant to the provisions of this chapter or of the destruction or abandonment of such watercraft within fifteen days. Such transfer, destruction or abandonment shall terminate the certificate of number of such watercraft, except that in the case of a transfer of a part interest which does not affect the owner's right to operate such watercraft, the transfer shall not terminate the certificate of number.

~~G~~. I. Any holder of a certificate of number shall notify the department within fifteen days if the holder's address no longer conforms to the address appearing on the certificate and shall, as a part of such notification, furnish the department with the holder's new address. The commission may provide in its rules for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or the alteration of an outstanding certificate to show the new address of the holder.

~~H~~. J. On renewal of any motorized watercraft registration that has not been renewed by the current expiration date, the department shall assess a penalty unless the watercraft ownership has been transferred and the watercraft was not registered subsequent to the expiration date. The commission shall establish the penalty which shall not exceed fifteen dollars. If more than twelve months have lapsed since the expiration date of the last registration or renewal the penalty and back fees are waived.

Sec. 2. Section 5-323, Arizona Revised Statutes, is amended to read:

5-323. Disposition of fees

A. REVENUES FROM the registration fees received under this chapter for the numbering of watercraft shall be deposited, pursuant to sections 35-146 and 35-147, in A FUND DESIGNATED AS THE WATERCRAFT REGISTRATION FEE CLEARING ACCOUNT. EACH MONTH, ON NOTIFICATION BY THE DEPARTMENT, THE STATE TREASURER SHALL DISTRIBUTE THE MONIES IN THE CLEARING ACCOUNT AS FOLLOWS:

1. PAY ALL REVENUES COLLECTED FROM THE REGISTRATION FEES COLLECTED PURSUANT TO SECTION 5-321, SUBSECTION A, PARAGRAPHS 1 AND 2 TO a special fund to be known as the watercraft licensing fund. ~~Such~~ THE WATERCRAFT LICENSING fund is to be used by the department for administering and enforcing ~~the provisions of~~ this chapter and providing an information and education program relating to boating and boating safety.

2. PAY ALL REVENUES COLLECTED FROM ANY ADDITIONAL REGISTRATION FEES COLLECTED PURSUANT TO SECTION 5-321, SUBSECTION C TO AN ACCOUNT DESIGNATED BY A MULTI-COUNTY WATER CONSERVATION DISTRICT ESTABLISHED UNDER TITLE 48, CHAPTER 22 TO BE USED SOLELY FOR THE LOWER COLORADO RIVER MULTISPECIES CONSERVATION PROGRAM AND FOR NO OTHER PURPOSE.

B. Each month monies received from the license taxes imposed under section 5-321 in the amount of forty-five per cent of such revenues shall be transferred to the watercraft licensing fund. Such monies are subject to legislative appropriation.

C. Each month monies received from the license taxes imposed under section 5-321 in the amount of fifty-five per cent of such revenues shall be deposited by the ~~Arizona game and fish~~ department as follows:

1. Fifteen per cent to the state lake improvement fund to be used as prescribed by section 5-382.

2. Eighty-five per cent to the law enforcement and boating safety fund to be used as prescribed by section 5-383.

Sec. 3. Section 17-231, Arizona Revised Statutes, is amended to read:

17-231. General powers and duties of the commission

A. The commission shall:

1. Make rules and establish services it deems necessary to carry out the provisions and purposes of this title.

2. Establish broad policies and long-range programs for the management, preservation and harvest of wildlife.

3. Establish hunting, trapping and fishing rules and prescribe the manner and methods which may be used in taking wildlife.

4. Be responsible for the enforcement of laws for the protection of wildlife.

5. Prescribe grades, qualifications and salary schedules for department employees.

6. Provide for the assembling and distribution of information to the public relating to wildlife and activities of the department.

7. Prescribe rules for the expenditure, by or under the control of the director, of all funds arising from appropriation, licenses, gifts or other sources.

8. Exercise such powers and duties necessary to carry out fully the provisions of this title and in general exercise powers and duties which relate to adopting and carrying out policies of the department and control of its financial affairs.
9. Prescribe procedures for use of department personnel, facilities, equipment, supplies and other resources in assisting search or rescue operations on request of the director of the division of emergency management.
10. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

B. The commission may:

1. Conduct investigations, inquiries or hearings in the performance of its powers and duties.
2. Establish game management units or refuges for the preservation and management of wildlife.
3. Construct and operate game farms, fish hatcheries, fishing lakes or other facilities for or relating to the preservation or propagation of wildlife.
4. Expend funds to provide training in the safe handling and use of firearms and safe hunting practices.
5. Remove or permit to be removed from public or private waters fish which hinder or prevent propagation of game or food fish and dispose of such fish in such manner as it may designate.
6. Purchase, sell or barter wildlife for the purpose of stocking public or private lands and waters and take at any time in any manner wildlife for research, propagation and restocking purposes or for use at a game farm or fish hatchery and declare wildlife salable when in the public interest or the interest of conservation.
7. Enter into agreements with the federal government, with other states or political subdivisions of the state and with private organizations for the construction and operation of facilities and for management studies, measures or procedures for or relating to the preservation and propagation of wildlife and expend funds for carrying out such agreements.
8. Prescribe rules for the sale, trade, importation, exportation or possession of wildlife.
9. Expend monies for the purpose of producing publications relating to wildlife and activities of the department for sale to the public and establish the price to be paid for annual subscriptions and single copies of such publications. All monies received from

the sale of such publications shall be deposited in the game and fish publications revolving fund.

10. Contract with any person or entity to design and produce artwork on terms which, in the commission's judgment, will produce an original and valuable work of art relating to wildlife or wildlife habitat.

11. Sell or distribute the artwork authorized under paragraph 10 of this subsection on such terms and for such price as it deems acceptable.

12. Consider the adverse and beneficial short-term and long-term economic impacts on resource dependent communities, small businesses and the state of Arizona, of policies and programs for the management, preservation and harvest of wildlife by holding a public hearing to receive and consider written comments and public testimony from interested persons.

C. The commission shall confer and coordinate with the director of water resources with respect to the commission's activities, plans and negotiations relating to water development and use, restoration projects under the restoration acts pursuant to ~~the provisions of~~ chapter 4, article 1 of this title, where water development and use are involved, the abatement of pollution injurious to wildlife and in the formulation of fish and wildlife aspects of the director of water resources' plans to develop and utilize water resources of the state and shall have jurisdiction over fish and wildlife resources and fish and wildlife activities of projects constructed for the state under or pursuant to the jurisdiction of the director of water resources.

D. THE COMMISSION MAY ENTER INTO ONE OR MORE AGREEMENTS WITH A MULTI-COUNTY WATER CONSERVATION DISTRICT AND OTHER PARTIES FOR PARTICIPATION IN THE LOWER COLORADO RIVER MULTISPECIES CONSERVATION PROGRAM UNDER SECTION 48-3713.03, INCLUDING THE COLLECTION AND PAYMENT OF ANY MONIES AUTHORIZED BY LAW FOR THE PURPOSES OF THE LOWER COLORADO RIVER MULTISPECIES CONSERVATION PROGRAM.

Sec. 4. Section 17-345, Arizona Revised Statutes, is amended to read:

17-345. Surcharges; purposes

In addition to any other fees, the commission may **IMPOSE AND** collect:

1. A surcharge of up to two dollars on a class A, B, C, D, F, G, H or I license and on a trout stamp. Monies collected pursuant to this ~~section~~ **PARAGRAPH** shall be segregated from other fees and deposited in the conservation development fund.

2. **SURCHARGES ON ARIZONA-COLORADO RIVER SPECIAL USE PERMITS, CALIFORNIA-COLORADO RIVER SPECIAL USE PERMITS AND NEVADA-COLORADO RIVER SPECIAL USE PERMITS ISSUED IN THIS STATE AS PROVIDED BY SECTIONS 17-342, 17-343 AND 17-344. THE AMOUNT OF THE SURCHARGES SHALL BE DETERMINED BY THE**

COMMISSION. A SURCHARGE UNDER THIS PARAGRAPH IS TO BE USED SOLELY FOR THE PURPOSE OF THE LOWER COLORADO RIVER MULTISPECIES CONSERVATION PROGRAM UNDER SECTION 48-3713.03. ANY MONIES COLLECTED PURSUANT TO THIS PARAGRAPH SHALL BE SEGREGATED FROM OTHER REVENUES AND DEPOSITED, PURSUANT TO SECTIONS 35-146 AND 35-147, IN A FUND DESIGNATED AS THE COLORADO RIVER SPECIAL USE PERMIT CLEARING ACCOUNT. EACH MONTH, ON NOTIFICATION BY THE DEPARTMENT, THE STATE TREASURER SHALL PAY ALL OF THE MONIES IN THE CLEARING ACCOUNT TO AN ACCOUNT DESIGNATED BY A MULTI-COUNTY COUNTY WATER CONSERVATION DISTRICT ESTABLISHED UNDER TITLE 48, CHAPTER 22 TO BE USED SOLELY FOR THE LOWER COLORADO RIVER MULTISPECIES CONSERVATION PROGRAM AND FOR NO OTHER PURPOSE.

Sec. 5. Title 45, chapter 1, Arizona Revised Statutes, is amended by adding article 13, to read:

ARTICLE 13. COLORADO RIVER WATER USE FEE

45-331. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "CONSUMPTIVE USE" MEANS, FOR ANY WATER USER FOR ANY PROGRAM YEAR, THE CONSUMPTIVE USE AS RECORDED IN THE FINAL ACCOUNTING FOR THE MOST RECENT CALENDAR YEAR FOR WHICH A FINAL ACCOUNTING IS AVAILABLE, OR IF NONE IS RECORDED, THE AMOUNT OF DIVERSIONS SO RECORDED.
2. "FINAL ACCOUNTING" MEANS, FOR ANY CALENDAR YEAR, THE UNITED STATES BUREAU OF RECLAMATION'S FINAL COMPILATION OF RECORDS OF COLORADO RIVER DIVERSIONS, RETURN FLOWS AND CONSUMPTIVE USES FOR THE YEAR, COMPILED PURSUANT TO ARTICLE V(B) OF THE DECREE OF THE UNITED STATES SUPREME COURT IN ARIZONA V. CALIFORNIA, 376 U.S. 340 (1964).
3. "LOWER COLORADO RIVER MULTISPECIES CONSERVATION PROGRAM" OR "PROGRAM" MEANS THE COOPERATIVE EFFORT AMONG AGENCIES OF THE FEDERAL GOVERNMENT AND AGENCIES AND POLITICAL SUBDIVISIONS OF THE STATES OF ARIZONA, CALIFORNIA AND NEVADA AND OTHER LOCAL PUBLIC AND PRIVATE PARTIES WITH A COMMON INTEREST IN THE WATER AND RELATED RESOURCES OF THE LOWER COLORADO RIVER, INCLUDING THE HISTORIC FLOODPLAIN AND RESERVOIRS TO THE FULL POOL ELEVATIONS, TO PROVIDE THE BASIS FOR COMPLIANCE WITH SECTIONS 7 AND 10(a)(1)(B) OF THE ENDANGERED SPECIES ACT OF 1973 (P.L. 93-205; 87 STAT. 884; 16 UNITED STATES CODE SECTIONS 1536 AND 1539.)

4. "PROGRAM YEAR" MEANS THE TWELVE MONTH PERIOD BEGINNING OCTOBER 1 OF ANY CALENDAR YEAR AND ENDING SEPTEMBER 30 OF THE FOLLOWING CALENDAR YEAR.

45-332. Cooperation in lower Colorado river multispecies conservation program

ON BEHALF OF THE DEPARTMENT, THE DIRECTOR MAY ENTER INTO ONE OR MORE AGREEMENTS WITH A MULTI-COUNTY WATER CONSERVATION DISTRICT AND OTHER PARTIES FOR PARTICIPATION IN THE LOWER COLORADO RIVER MULTISPECIES CONSERVATION PROGRAM, INCLUDING THE COLLECTION OF ONE OR MORE FEES UNDER THIS ARTICLE FOR PURPOSES OF THE LOWER COLORADO RIVER MULTISPECIES CONSERVATION PROGRAM.

45-333. Colorado river water use fee; purpose

A. THE DIRECTOR MAY ASSESS AND COLLECT ANNUAL COLORADO RIVER WATER USE FEES FROM EACH PERSON WHO DIVERTS AND CONSUMPTIVELY USES WATER IN THIS STATE FROM THE MAINSTREAM OF THE COLORADO RIVER AS RECORDED IN THE FINAL ACCOUNTING. THIS FEE DOES NOT APPLY TO PERSONS WHO HAVE ENTERED INTO, AND ARE IN COMPLIANCE WITH, AGREEMENTS WITH A MULTI-COUNTY WATER CONSERVATION DISTRICT AND OTHER PARTIES FOR PARTICIPATION IN THE LOWER COLORADO RIVER MULTISPECIES CONSERVATION PROGRAM WITH RESPECT TO THE USE OF COLORADO RIVER WATER.

B. THE DIRECTOR SHALL SET THE AMOUNT OF A FEE UNDER THIS SECTION EACH YEAR ACCORDING TO THE GUIDELINES IN SECTION 45-334.

C. ANY MONIES COLLECTED PURSUANT TO THIS SECTION SHALL BE SEGREGATED FROM OTHER REVENUES AND DEPOSITED, PURSUANT TO SECTIONS 35-146 AND 35-147, IN A FUND DESIGNATED AS THE COLORADO RIVER WATER USE FEE CLEARING ACCOUNT. EACH MONTH, ON NOTIFICATION BY THE DIRECTOR, THE STATE TREASURER SHALL PAY ALL OF THE MONIES IN THE CLEARING ACCOUNT TO AN ACCOUNT DESIGNATED BY A MULTI-COUNTY WATER CONSERVATION DISTRICT ESTABLISHED UNDER TITLE 48, CHAPTER 22 TO BE USED SOLELY FOR THE LOWER COLORADO RIVER MULTISPECIES CONSERVATION PROGRAM AND FOR NO OTHER PURPOSE.

45-334. Setting Colorado river water use fee

A. IN SETTING COLORADO RIVER WATER USE FEES UNDER THIS ARTICLE:

1. NOT LATER THAN JULY 1 OF EACH YEAR, THE DIRECTOR SHALL SET THE COLORADO RIVER WATER USE FEES FOR THE FOLLOWING PROGRAM YEAR. THE DIRECTOR SHALL CONSIDER THE FOLLOWING IN SETTING THE AMOUNT OF THE FEES:

(a) THE CONSUMPTIVE USE FOR THAT PROGRAM YEAR BY THE PERSONS TO WHOM THE FEE WILL BE ASSESSED.

(b) THE PAYMENT OBLIGATIONS THAT APPLY TO SIMILAR WATER USERS UNDER AGREEMENTS TO FUND THE LOWER COLORADO RIVER MULTISPECIES CONSERVATION PROGRAM.

(c) THE AMOUNT OF MONIES NECESSARY TO FUND THE LOWER COLORADO RIVER MULTISPECIES CONSERVATION PROGRAM FOR THAT PROGRAM YEAR.

(d) THE AMOUNT OF MONIES EXPECTED TO BE AVAILABLE TO FUND THE LOWER COLORADO RIVER MULTISPECIES CONSERVATION PROGRAM DURING THE PROGRAM YEAR FROM OTHER SOURCES.

2. THE DIRECTOR MAY ESTABLISH CLASSES OF WATER USERS FOR THE PURPOSE OF ASSIGNING GRADUATED FEE RATES TO THE RESPECTIVE CLASSES.

3. THE DIRECTOR SHALL CONSIDER THE DATE OF ANY CONTRACT OR OTHER RIGHT TO USE COLORADO RIVER WATER AND THE TYPE OF WATER USE WHEN ASSIGNING FEE RATES.

4. THE DIRECTOR SHALL ENTER IN THE DEPARTMENT'S RECORDS A STATEMENT OF THE FEES FOR THE FOLLOWING PROGRAM YEAR AND TRANSMIT A COPY OF THE STATEMENT TO THE STATE TREASURER.

5. BEFORE SETTING THE FEES, THE DIRECTOR SHALL CONSULT WITH REPRESENTATIVES OF THE WATER USERS WHICH WILL BE ASSESSED FOR THE FEES. THE DIRECTOR SHALL PUBLISH NOTICE OF THE FEES AND PROVIDE A COMMENT PERIOD OF AT LEAST THIRTY DAYS BEFORE SETTING THE FINAL FEE AMOUNTS.

6. WITHIN THIRTY DAYS AFTER THE DIRECTOR SETS FEES FOR A PROGRAM YEAR, THE DIRECTOR SHALL GIVE WRITTEN NOTICE OF THE FEES TO EACH PERSON WITH CONSUMPTIVE USE.

7. THE DIRECTOR SHALL CALCULATE THE TOTAL AMOUNT OF THE FEE THAT A PERSON MUST PAY FOR THE CONSUMPTIVE USE OF COLORADO RIVER WATER FOR A PROGRAM YEAR BY MULTIPLYING THE APPLICABLE ANNUAL FEE FOR THAT PROGRAM YEAR BY THE CONSUMPTIVE USE FOR THE PERSON FOR THE PROGRAM YEAR. THE DIRECTOR MAY REDUCE THE AMOUNT OF A PERSON'S FEE BY THE VALUE OF ANY SERVICES OR TANGIBLE ASSETS, INCLUDING LAND OR WATER, CONTRIBUTED BY THE PERSON TO, AND ACCEPTED BY, THE FEDERAL GOVERNMENT FOR USE IN THE LOWER COLORADO RIVER MULTISPECIES CONSERVATION PROGRAM.

B. THE DIRECTOR SHALL GIVE WRITTEN NOTICE OF THE TOTAL AMOUNT OF THE FEE THAT A PERSON MUST PAY UNDER THIS SECTION NO LATER THAN AUGUST 15 BEFORE THE BEGINNING OF THE PROGRAM YEAR.

45-335. Payment of fee; penalty for delinquency

A. IF THE DIRECTOR ASSESSES A FEE PURSUANT TO THIS ARTICLE IN ANY YEAR, A PERSON TO WHOM THE FEE IS ASSESSED MUST PAY THE FEE WITHIN FORTY-FIVE

DAYS AFTER THE PERSON RECEIVES WRITTEN NOTICE OF THE TOTAL AMOUNT OF THE FEE FROM THE DIRECTOR.

B. IF A PERSON FAILS TO PAY THE FEE WHEN DUE, THE DIRECTOR MAY ASSESS AND COLLECT A PENALTY OF TEN PER CENT OF THE UNPAID FEE, WITHOUT COMPOUNDING, FOR EACH MONTH OR PORTION OF A MONTH THAT THE FEE IS DELINQUENT. THE TOTAL PENALTY ASSESSED SHALL NOT EXCEED SIXTY PER CENT OF THE UNPAID FEE. AN ACTION TO RECOVER PENALTIES UNDER THIS SUBSECTION SHALL BE BROUGHT IN THE SUPERIOR COURT IN MARICOPA COUNTY. ANY PENALTIES COLLECTED SHALL BE DEPOSITED, PURSUANT TO SECTIONS 35-146 AND 35-147, IN THE COLORADO RIVER WATER USE FEE CLEARING ACCOUNT ESTABLISHED PURSUANT TO SECTION 45-333.

Sec. 6. Section 48-3712, Arizona Revised Statutes, is amended to read:

48-3712. Powers and duties of the board

A. The board shall:

1. Manage and conduct the affairs and business of the district.
2. Make and execute all necessary contracts and other instruments which shall be signed by the president or, in ~~his~~ THE PRESIDENT'S absence, by another member of the board designated for that purpose, and attested by the secretary.
3. Establish bylaws and rules for the governing of the board and for the functions of the district, as provided in title 41.
4. Perform all acts necessary to carry out the purposes of this chapter.
5. Except as provided in subsection C of this section and in sections 48-3713.03, 48-3715.01, 48-3715.03, 48-3715.05, 48-3772 and 48-3773, require that all funds received on behalf of the district shall be deposited, pursuant to sections 35-146 and 35-147, in a special fund established by the state to be expended at the direction of the board to effectuate the provisions and purposes of this chapter. On notice from the board, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.
6. Adopt an ordinance or ordinances to establish a revenue bonding program that pledges to bond repayment any monies received or to be received by the district from any source except ad valorem tax revenues, replenishment assessment revenues and replenishment tax generated under article 4 of this chapter.
7. Employ such agents, engineers, attorneys and employees not readily available from existing state agencies.

B. The board may:

1. Accept grants, gifts or donations of money or other property from any source which may be expended for any purpose consistent with the provisions of this chapter.

~~C- 2. The board may~~ Establish a revolving fund for the purpose of defraying the costs and expenses of the district.

Sec. 7. Title 48, chapter 22, article 1, Arizona Revised Statutes, is amended by adding section 48-3713.03, to read:

48-3713.03. Lower Colorado river multispecies conservation program; definition

A. THE BOARD MAY ENTER INTO AGREEMENTS WITH THIS STATE, AN AGENCY OR POLITICAL SUBDIVISION OF THIS STATE, THE FEDERAL GOVERNMENT, AN AGENCY OF THE FEDERAL GOVERNMENT AND ANY OTHER PERSON FOR PARTICIPATION IN THE LOWER COLORADO RIVER MULTISPECIES CONSERVATION PROGRAM UNDER THIS SECTION, INCLUDING THE PAYMENT, COLLECTION, MANAGEMENT, INVESTMENT AND DISTRIBUTION OF MONIES FOR THE PROGRAM.

B. THE AGREEMENTS MAY DESIGNATE THE STATE TREASURER OR PRIVATE FINANCIAL INSTITUTIONS AS FISCAL AGENTS OR TRUSTEES FOR COLLECTION, MANAGEMENT, INVESTMENT AND DISTRIBUTION OF MONIES FOR THE LOWER COLORADO RIVER MULTISPECIES CONSERVATION PROGRAM.

C. MONIES COLLECTED FOR THE LOWER COLORADO RIVER MULTISPECIES CONSERVATION PROGRAM SHALL BE USED ONLY FOR ACTIVITIES AND ADMINISTRATIVE COSTS DIRECTLY RELATED TO THE MULTISPECIES CONSERVATION PROGRAM AND MAY INCLUDE:

1. MONIES APPROPRIATED BY THE LEGISLATURE.
2. ADDITIONAL WATERCRAFT REGISTRATION FEES, IF ASSESSED PURSUANT TO SECTION 5-321, SUBSECTION C.
3. SURCHARGES ON ARIZONA-COLORADO RIVER SPECIAL USE PERMITS, CALIFORNIA-COLORADO RIVER SPECIAL USE PERMITS AND NEVADA-COLORADO RIVER SPECIAL USE PERMITS, IF IMPOSED PURSUANT TO SECTION 17-345, PARAGRAPH 2.
4. COLORADO RIVER WATER USE FEES, IF ASSESSED PURSUANT TO SECTION 45-333.
5. GIFTS, GRANTS AND DONATIONS FROM ANY PUBLIC OR PRIVATE SOURCES.
6. PAYMENTS BY ANY PERSON UNDER ANY AGREEMENT TO FUND ALL OR PART OF THE PROGRAM.

D. FOR THE PURPOSES OF THIS SECTION, "LOWER COLORADO RIVER MULTISPECIES CONSERVATION PROGRAM" OR "PROGRAM" MEANS THE COOPERATIVE EFFORT AMONG AGENCIES OF THE FEDERAL GOVERNMENT AND AGENCIES AND POLITICAL SUBDIVISIONS OF THE STATES OF ARIZONA, CALIFORNIA AND NEVADA AND OTHER LOCAL PUBLIC AND PRIVATE PARTIES WITH A COMMON INTEREST IN THE WATER AND RELATED RESOURCES OF THE LOWER COLORADO RIVER, INCLUDING THE HISTORIC FLOODPLAIN AND RESERVOIRS TO THE FULL POOL ELEVATIONS, TO PROVIDE THE BASIS FOR COMPLIANCE WITH SECTIONS 7 AND 10(a)(1)(B) OF THE ENDANGERED

SPECIES ACT OF 1973 (P.L. 93-205; 87 STAT. 884; 16 UNITED STATES CODE SECTIONS 1536 AND 1539).

APPROVED BY THE GOVERNOR APRIL 13, 2005.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 13, 2005.

**ARIZONA DEPARTMENT OF WATER RESOURCES
LEGISLATIVE IMPLEMENTATION PLAN**

**HB 2720 Water; General Industrial Use Permits
47th Legislature, 1st Regular Session (2005)**

BILL NUMBER: HB 2720, Chapter 236

SHORT TITLE: Water; General Industrial Use Permits

PRIME SPONSOR: Representative: Boone

BILL SUMMARY: HB 2720 repeals Laws 2002, Chapter 72, which authorized ADWR to extend the term of a general industrial use permit for up to seven years, and replaces it with another session law that extends the dates by which certain conditions must occur. For example, a water exchange contract, which is one of the necessary conditions for a water use permit to be granted, must be signed by January 1, 2007 (Previously January 1, 2002).

SIGNIFICANCE TO AGENCY: HB 2720 will help to better utilize Central Arizona Project water in the Sun City Area. The area is experiencing subsidence due to the overpumping of groundwater. HB 2720 will help the area to move off of groundwater and on to a renewable supply.

REQUIRED OUTCOMES:

- **Rule**
No rule changes are needed to implement the legislation.
- **Legislation**
No legislative changes are needed to implement the legislation.
- **Substantive Policy**
No substantive policies are needed to implement the legislation.

ACTIONS REQUIRED: No agency action is needed to implement the legislation.

DIVISION STAFF SUPPORT REQUIRED:

- Active Management Areas, generally; no specific staff support is required for this legislation

TIMELINE: No timeline for action is required.

House Engrossed

State of Arizona
House of Representatives
Forty-seventh
Legislature
First Regular Session
2005

CHAPTER 236

HOUSE BILL 2720

AN ACT

REPEALING LAWS 2002, CHAPTER 72; RELATING TO GENERAL INDUSTRIAL USE PERMITS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Repeal

Laws 2002, chapter 72 is repealed.

Sec. 2. General industrial use permit; extension; conditions; termination

A. Notwithstanding section 45-515, Arizona Revised Statutes, the department of water resources shall extend the term of a general industrial use permit issued in the Phoenix active management area for up to seven years after the date the permit would otherwise expire as provided in subsection B of this section if all of the following apply:

1. The general industrial use permit would otherwise expire on or before August 5, 2005 and cannot be renewed under section 45-515, Arizona Revised Statutes, because the site of the general industrial use is now located within the exterior boundaries of a private water company.
2. During the term of the extension, all wells from which groundwater is withdrawn pursuant to the general industrial use permit are located within the service area of the private water company and the private water company has agreed in writing that the term of the general industrial use permit may be extended for up to seven years under terms prescribed by this section.
3. The general industrial use permit is the subject of a water exchange contract, as defined in section 45-1001, Arizona Revised Statutes, to which all of the following apply:
 - (a) The water exchange contract was entered into before January 1, 2007 for the exchange of central Arizona project water between a holder of a municipal and industrial central Arizona project subcontract and the holder of the general industrial use permit.

(b) The holders of the general industrial use permits have agreed in the water exchange contract to exchange groundwater pursuant to one or more general industrial use permits and the total amount of those permits is less than two thousand acre-feet.

(c) The central Arizona project water received by the holder of the general industrial use permit will replace groundwater for use on one or more golf courses owned by the permit holders.

B. A general industrial use permit described in subsection A of this section shall be extended for an additional seven years after the date the permit would have otherwise expired except that the extension shall terminate four years after the date on which the general industrial use permit would have otherwise expired if within that four-year period construction on a pipeline for transporting central Arizona project water to the permit holder's golf courses has not substantially commenced.

Sec. 3. Purpose

The purpose of this act is to facilitate the replacement of groundwater use on golf courses with the use of central Arizona project water by allowing general industrial use permits issued under section 45-515, Arizona Revised Statutes, in the Phoenix active management area to be extended for up to seven years after the date the permits would have otherwise expired, if the permits cannot be renewed because the location of the use is now within the exterior boundaries of a private water company and if the permits will be used to exchange groundwater for central Arizona project water that will be used on a golf course. This exception to the requirements of section 45-515, Arizona Revised Statutes, will give the general industrial use permit holders additional time to secure a replacement withdrawal right to exchange for the central Arizona project water or make other arrangements to continue receiving the central Arizona project water for use on the golf courses. It is further intended that the extension of the general industrial use permit duration for the maximum seven years is dependent on timely progress toward completion of the water delivery infrastructure that will transport the central Arizona project water to the golf course.

Sec. 4. Repeal

Sections 2 and 3 of this act are repealed on August 1, 2012.

APPROVED BY THE GOVERNOR APRIL 25, 2005.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 25, 2005.

**ARIZONA DEPARTMENT OF WATER RESOURCES
LEGISLATIVE IMPLEMENTATION PLAN**

**HB 2728 Arizona Water Settlements Act
47th Legislature, 1st Regular Session (2005)**

BILL NUMBER: HB 2728, Chapter 143

SHORT TITLE: Arizona Water Settlements Act

PRIME SPONSORS: Representatives: J. Allen
Brown
Chase
Mason
Nelson
O'Halleran
Prezelski
Robson
J. Weiers

Senators: Flake
Bennett

BILL SUMMARY: HB 2728 institutes programs, fees and other requirements for meeting the state's obligation pertaining to the water settlements of the Gila River Indian Community (GRIC) and San Xavier Reservation.

Gila River Indian Community Water Settlement Program

- Establishes five groundwater protection zones along the southern boundary of the Gila River Indian Reservation (Eastern Protection Zone North; Eastern Protection Zone South; Western Municipal and Industrial Protection Zone; Western Municipal Protection Zone; and Central Protection Zone). If groundwater withdrawals exceed a certain limit in those areas, the State's obligation to replenish the water is triggered.
- Prohibits transportation away from the Eastern and Western Protection Zones if the transportation is for a non-irrigation use. Certain exemptions apply for grandfathered uses; if the water is replenished or replaced within a certain time; or if specific storage and transportation limitations apply.

- Establishes conservation requirements for the Central Protection Zone that are no less restrictive than those established in the Management Plan for the Pinal Active Management Area (AMA).
- Requires the Arizona Water Banking Authority (AWBA) to acquire sufficient water supplies to meet the replenishment obligations of the State, using monies appropriated from the State General Fund. To the extent General Fund monies are not available, the AWBA may use groundwater withdrawal fees, collected in the Pinal AMA and already committed for Arizona Water Banking Authority purposes, to establish the Southside Replenishment Bank for the GRIC.
- Establishes the Southside Replenishment Bank for the GRIC and requires the AWBA to bank at least 1,000 acre feet of water per year until the balance in the GRIC account reaches 15,000 acre feet. There will be no cost to the GRIC. The AWBA is required to maintain a balance in the Southside Replenishment Bank of at least 5,000 acre feet. The AWBA is not required to deliver more than 11 percent of the annual water delivery in any single month.
- Requires the AWBA to maintain an accounting system that keeps longterm storage credits developed for GRIC separate from other longterm storage credits.
- Establishes a funding mechanism for replenishment by authorizing use of appropriated funds, and if no appropriations are available use of a groundwater withdrawal fee of up to \$2.50 per acre foot. The fee will continue to be collected in the Pinal AMA and is currently used for water banking activities in Pinal AMA as well as replenishment obligations for the GRIC.
- Outlines the method to calculate the amount of any replenishment obligation. Withdrawals for municipal and industrial uses that exceed two acre feet in the Western zones and 2.33 acre feet in the eastern zones trigger a replenishment obligation. Withdrawals for irrigation uses are calculated based on the farm's flexibility account and irrigation water duty established by the Arizona Department of Water Resources (ADWR). A water company that withdraws water from an Eastern Protection Zone and transports the water for municipal uses outside the Eastern Protection Zones triggers a replenishment obligation if the amount exceeds 1,275 acre feet for the year. Specific time limits apply to replenishment.
- A person may incur an individual replenishment obligation if groundwater is withdrawn that exceeds a certain volume. The AWBA must send written notice of the obligation to the person specifying the amount, the cost of replenishment, and the manner in which the person may satisfy the obligation. The Director of ADWR is required to provide written notice of the potential for an individual who withdraws groundwater in the Eastern or Western Protection Zones to incur a replenishment obligation.
- Establishes a Gila River Maintenance Area and prohibits construction of new dams or enlarging existing dams within the area. Provides exemptions for flood control

structures, stockponds, replacement dams, and impoundments for certain mining activities, industrial facilities, and effluent.

- Prohibits irrigation of land within the Maintenance Area if the land was not irrigated between January 1, 2000 and the general effective date of HB 2728. Provides exemptions for lands that are irrigated with a surface water right that is earlier than the general effective date for HB 2728; if irrigation is allowed under other settlement agreements or decrees; or if the land is located in Cochise County.
- Authorizes ADWR to enforce the provisions of the Gila River Indian Community Water Settlement Program. Enforcement measures include inspections; investigations, audits, cease and desist orders, hearings, injunctive relief and civil and criminal penalties.

San Xavier Reservation Water Settlement Program

- Requires ADWR to analyze the impacts that a proposed new well will have on water levels at the San Xavier Reservation boundaries. If the analysis shows water levels will decline 10 feet or more in the first five years, the permit to drill shall be denied.
- Prohibits new well(s) within two miles of the San Xavier Reservation boundary if the combined capacity of all well(s) is 500 gallons per minute or more. Provides an exception if a hydrologic study shows that the water level at the proposed well site is declining at an average rate of two feet per year; that water levels will not exceed a specific rate of decline over a five year period, or if the Nation provides written consent to drilling the well. This provision does not apply to recovery wells drilled to recover water stored at an underground storage facility located within one mile of the recovery well.
- Requires the Director of ADWR to provide written notice and a copy of an application to drill a well within two miles of the San Xavier Reservation boundary. If the Nation files a written objection to the application, the Director shall schedule an administrative hearing on the objection. Procedures and timelines for decisions are outlined.

Water Firming Program

- Requires the Director of ADWR to develop a water firming program to ensure that non-Indian agricultural priority (NIA priority) Central Arizona Project (CAP) water that has been reallocated to Arizona Indian tribes pursuant to the federally enacted Arizona Water Settlements Act (PL 108-451) is delivered during times of shortage at the same priority as municipal and industrial CAP water. The reallocation provides 15,000 acre feet of NIA priority CAP water to the GRIC and 8,724 acre feet of NIA priority CAP water to other Arizona Indian tribes.
- Requires the Director to work with the United States Secretary of Interior to firm the federal obligation of 28,200 acre feet of NIA priority CAP water reallocated to the

Tohono O'odham Nation as provided in the Arizona Water Settlements Act (PL 108-451).

- Establishes the Arizona Water Firming Program Study Commission consisting of members appointed by the ADWR Director who represent at least eight specific entities. This Commission will study options for a water firming program that will satisfy the requirements of the Arizona Water Settlements Act and identify appropriate mechanisms to accomplish the goal. An interim report is due to the Legislature by November 1, 2005 and a final report is due January 6, 2006.
- The Commission is repealed on June 1, 2006.

Other provisions

- Requires the State to cooperate with the GRIC to acquire a specific parcel of land located within the exterior boundaries of the Community's reservation. Specifies that state action shall be taken in accordance with Arizona law.
- Provides a conditional enactment for certain sections of HB 2728, based on final approval by the Secretary of the Interior, and notice in the Federal Register that all components of the Arizona Water Settlement Act. If final approval is not obtained by December 31, 2010, the sections will not take effect and Title 45, Chapter 15 will be repealed.
- The conditional enactments are for sections related to the Gila River Maintenance Area and Impact Zones; for restrictions on new dams and new irrigated lands; enforcement provisions; and the water firming program.

SIGNIFICANCE TO AGENCY: Provides an important step in the final enforceability of the Arizona Water Settlements Act. It also provides the Department with additional tools to maintain water supplies in certain areas of the state.

REQUIRED OUTCOMES:

- **Rule**
No new rules are needed and no existing rule needs to be amended.
- **Legislation**
Legislation and or funding may be need as a result of the Indian Firming Study Commission review and recommendations. The Department is also reviewing HB 2728 to see if technical amendments should be recommended for the next legislative session.
- **Substantive Policy**
No new substantive policy statements are needed.

ACTIONS REQUIRED:

1. The Director must develop a water firming program to firm 15,000 acre feet of NIA priority water for the Gila River Indian Community and 8,724 acre feet of NIA priority water for future Indian settlements. The Director has appointed the Indian Firming Study Commission. See attached list of Commission members and staff, and work plan. Commission will make a final report to the Director and the Legislature with recommendations of any needed legislative authority, and a plan for the firming program by January 6, 2006.
2. Gila River Maintenance Area. To accomplish the prohibition of new storage reservoirs in the Area, and prohibition of new irrigation from impact zones within the Area, the Department will have to take several steps:
 - (a) Repository of maps of the Gila River Maintenance Area and notice to public.
 - (b) Remote sensing survey of existing irrigation in the Gila River Maintenance Area.
 - (c) Modify applications for construction or enlargement of dams to be consistent with prohibition provisions.
 - (d) Modify NOI forms for Gila River Maintenance Area to incorporate questions concerning (i) whether the proposed well will be used for irrigation, and (ii) notice that if the proposed well is in or near an impact zone of certain forms to be filed with the Gila River Indian Community.
3. Southside Protection Program. The replenishment obligation is given to the Arizona Water Banking Authority, however, the Department is responsible for the Southside Protection Program, to accomplish the restrictions of the Southside Protection Program the Department will have to take several steps:
 - (a) Repository of maps of the Southside Protection Zones and notice to public.
 - (b) Survey and documentation of all municipal and industrial groundwater uses in the Zones.
 - (c) Modify NOI forms in Southside Protection Zones to incorporate notice of the replenishment obligations.
 - (d) Modify Annual Reports for groundwater users within the Southside Protection Zones to provide the Department with adequate information to make calculations for replenishment obligations of the AWBA.
4. San Xavier Protection Program. The Department will need to modify NOI forms in the Tucson AMA to give notice to the public of the new requirements for well spacing analysis near the San Xavier Reservation.

DIVISION STAFF SUPPORT REQUIRED:

- Director's Office
- Office of Legal Services
- Hydrology Division
- Active Management Areas

- Assured and Adequate Water Supply Program
- Recharge
- Office of Statewide Planning
- Arizona Water Banking Authority
- NOI Unit
- Office of Engineering
-

TIMELINE:

2005

- May
 - Firming - First meeting of the Indian Firming Study Commission (review objectives and background). Staff complete model runs for identification of the firming volume.
- June
 - Meeting with GIS and Legal over remote sensing availability and costs for Gila River Management Area baseline. Meeting with Pinal AMA on Southside Protection Program. Meeting with Assured Water Supply on Southside Protection Program.
 - Firming – Meeting with Bureau of reclamation to discuss State’s role in “assisting” the Feds with their firming obligation. Study Commission Meeting - Define Shortage and Quantify volume of water needed to offset projected shortages to NIA water for the next 100 years. Identify alternative methods for firming water.
- July
 - Meeting with GRIC over Gila River Management Area baseline. Meeting with Tucson AMA on San Xavier Groundwater Protection Program. Meeting with NOI group about changes to conform to settlement programs in Pinal AMA, Tucson AMA, and upper Gila River area.
 - Firming – ADWR staff develop additional information on each solution element identified by Study Commission including: cost/funding source, identification of supply required to meet the firming obligation, identification of water supply available to meet the firming obligation, hydrologic feasibility, legal feasibility, and potential partnerships.
- August
 - Meeting with Office of Engineering over Gila River Management Area to modify dam permit forms. Remote sensing activities begin.
 - Firming – Meeting of the Firming Study Commission. Present expanded solution elements (work identified in July). Identify ranking criteria for ranking solution elements. Staff to rank elements based on criteria. Develop outline for Interim Report.
- September

- Firming – Develop Interim Report and present Draft to Study Commission. Study Commission Meetings (2) to discuss ranked solution elements and begin defining recommendations and review Draft Interim Report.
- October
 - Firming – Finalize Interim Report. Develop outline for Final Report for Study Commission review. Study Commission Meeting to discuss recommendations, to identify preferred mechanism, and review Interim Report. Staff to identify appropriate statutory and regulatory provisions that are necessary to fully implement the recommendations being discussed.
- November
 - Meeting with GRIC Gila River Management Area GIS baseline created from remote sensing.
 - Firming – Submit Interim Report to the Legislature. Study Commission Meeting to finalize recommendations and review Draft Final Report. Staff to continue to develop necessary statutory and regulatory provisions and agreements.
- December
 - Finalize Gila River Management Area GIS baseline. Finalize NOI form changes. Finalize dam permit forms.
 - Firming – Review and complete Final Report (no meeting unless necessary to complete report or other issues). Complete necessary statutory and regulatory provisions and agreements.

2006

- January
 - Finalize annual report changes for Pinal AMA for Southside Protection Program.
 - Submit Final Report of the Firming Commission to the Legislature.

State of Arizona
House of Representatives
Forty-seventh Legislature
First Regular Session
2005

CHAPTER 143

HOUSE BILL 2728

AN ACT

AMENDING SECTIONS 45-611 AND 45-841.01, ARIZONA REVISED STATUTES;
AMENDING SECTION 45-841.01, ARIZONA REVISED STATUTES, AS AMENDED BY THIS
ACT; AMENDING SECTIONS 45-2423, 45-2425 AND 45-2457, ARIZONA REVISED
STATUTES; AMENDING TITLE 45, ARIZONA REVISED STATUTES, BY ADDING CHAPTER
15; AMENDING TITLE 45, CHAPTER 15, ARTICLE 1, ARIZONA REVISED STATUTES, AS
ADDED BY THIS ACT, BY ADDING SECTIONS 45-2602 AND 45-2604; AMENDING TITLE
45, CHAPTER 15, ARIZONA REVISED STATUTES, AS ADDED BY THIS ACT, BY ADDING
ARTICLES 2, 3 AND 6; AMENDING TITLE 45, ARIZONA REVISED STATUTES, BY ADDING
CHAPTER 16; PROVIDING FOR THE DELAYED CONDITIONAL REPEAL OF TITLE 45,
CHAPTER 15, ARIZONA REVISED STATUTES, AS ADDED BY THIS ACT; RELATING TO
WATERS; PROVIDING FOR CONDITIONAL ENACTMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 45-611, Arizona Revised Statutes, is amended to read:

45-611. Groundwater withdrawal fee; amounts and purposes of fee; exception

A. Except as provided in subsection B of this section, the director shall levy and collect an annual groundwater withdrawal fee from each person withdrawing groundwater in the Prescott active management area or the person who owns the right to withdraw the groundwater, in an amount not to exceed five dollars per acre-foot of groundwater withdrawn and beneficially used. The director shall levy and collect an annual withdrawal fee from each person withdrawing water, other than stored water, from a well in the Santa Cruz active management area or the person who owns the right to withdraw the water, in an amount not to exceed five dollars per acre-foot of water, other than stored water, that is withdrawn and beneficially used. For purposes of this article, the annual withdrawal fee levied and collected in the Santa Cruz active management area shall be considered a groundwater withdrawal fee. The actual amount of the fee levied and collected by the director pursuant to this subsection shall be set by the director as follows:

1. For administration and enforcement of this chapter, an amount not less than fifty cents and not greater than one dollar per acre-foot per year. The initial fee for administration and enforcement shall be levied as soon as practicable after the active management area is established.
2. For augmentation of the water supply of the active management area, conservation assistance to water users within the active management area and monitoring and assessing water availability within the active management area, an amount not greater than two dollars per acre-foot per year.
3. For purchasing and retiring grandfathered rights, an amount not greater than two dollars per acre-foot per year. The initial fee for purchasing and retiring grandfathered rights shall be levied in the first year in which the director develops and implements a program for the purchase and retirement of grandfathered rights as part of the management plan for the active management area, but not earlier than January 1, 2006. The director may not levy a fee under this paragraph on a district member of a groundwater replenishment district that withdraws groundwater in the district for a non-irrigation use in the district.

B. A person, other than an irrigation district, who withdraws groundwater in an active management area from a non-exempt well for use pursuant to an irrigation grandfathered right that is appurtenant to ten or fewer irrigation acres and the person who owns the right to withdraw the groundwater are exempt from the groundwater withdrawal fee requirements of subsections A and C of this section for those withdrawals unless the irrigation acres are part of an integrated farming operation.

C. Except as provided in section 45-411.01, subsection C and subsection B of this section, the director shall levy and collect an annual groundwater withdrawal fee from each person who withdraws groundwater in the Tucson, Phoenix and Pinal active management areas or the person who owns the right to withdraw the groundwater, in an amount of not more than five dollars per acre-foot of groundwater withdrawn and beneficially used. The director shall set the actual amount of the fee as follows:

1. **IN THE TUCSON AND PHOENIX ACTIVE MANAGEMENT AREAS**, beginning in 2017, for administration and enforcement of this chapter, an amount of at least fifty cents but not more than one dollar per acre-foot per year. **IN THE PINAL ACTIVE MANAGEMENT AREA, BEGINNING IN 2017, FOR ADMINISTRATION AND ENFORCEMENT OF THIS CHAPTER, AN AMOUNT OF NOT MORE THAN ONE DOLLAR PER ACRE-FOOT PER YEAR.**
2. Through 2016, for augmentation of the water supply of the active management area, conservation assistance to water users within the active management area and monitoring and assessing water availability within the active management area, an amount of not more than fifty cents per acre-foot per year, and after 2016, an amount

of not more than two dollars per acre-foot per year. If a permanent board of directors of an active management area water district assumes office under section 48-4831, the fee for augmentation under this paragraph shall not be levied in that active management area.

3. **IN THE TUCSON AND PHOENIX ACTIVE MANAGEMENT AREAS**, through 2016, for Arizona water banking purposes, the amount of two dollars fifty cents per acre-foot per year, ~~except that for groundwater withdrawn pursuant to irrigation grandfathered rights within the Pinal active management area to the extent those rights are used to irrigate lands outside of the service area of an irrigation district, the amount of seventy-five cents per acre-foot of groundwater withdrawn in 1997, and a cumulating additional twenty-five cents per acre-foot each year thereafter, to a maximum of two dollars fifty cents per acre-foot per year.~~ **IN THE PINAL ACTIVE MANAGEMENT AREA, THROUGH 2016, FOR ARIZONA WATER BANKING PURPOSES, INCLUDING REPLENISHMENT UNDER CHAPTER 15, ARTICLE 3 OF THIS TITLE, THE AMOUNT OF TWO DOLLARS FIFTY CENTS PER ACRE-FOOT PER YEAR AND, BEGINNING IN 2017, FOR ARIZONA WATER BANKING PURPOSES, INCLUDING REPLENISHMENT UNDER CHAPTER 15, ARTICLE 3 OF THIS TITLE, AN AMOUNT OF NOT MORE THAN TWO DOLLARS FIFTY CENTS PER ACRE-FOOT PER YEAR.**

4. For purchasing and retiring grandfathered rights, an amount of not more than two dollars per acre-foot per year. The initial fee for purchasing and retiring grandfathered rights shall be levied in the first year in which the director develops and implements a program for the purchase and retirement of grandfathered rights as part of the management plan for the active management area, but not earlier than January 1, 2006. The director may not levy a fee pursuant to this paragraph on a district member of a groundwater replenishment district that withdraws groundwater in the district for non-irrigation use in the district.

Sec. 2. Section 45-841.01, Arizona Revised Statutes, is amended to read:

45-841.01. Accrual of long-term storage credits; Indian water rights settlements

A. To further the implementation of Indian water rights settlements in this state, an Indian community may accrue long-term storage credits as prescribed by this section.

B. This section applies only to the settlement of a water rights claim by a federally recognized Indian community in this state if the settlement provides for off-reservation storage of its central Arizona project water and only after the settlement results in a dismissal with prejudice of a class action claim that has been pending in the United States district court for more than five years.

C. Before accruing any long-term storage credits under this section, both of the following conditions apply:

1. A party seeking to participate in the accrual of long-term storage credits under this section shall file written notice with the director that the requirements of subsection B of this section have been met.

2. The director shall find that the requirements of subsection B of this section have been met.

D. Before accruing any long-term storage credits under this section, a party seeking to participate in the accrual of long-term storage credits under this section shall file with the director all of the following information:

1. A written notice of the ~~parties'~~ PARTY'S intent to begin the delivery of central Arizona project water that ~~was made~~ IS available to the Indian community ~~by the water rights settlement~~ to the holder of grandfathered groundwater rights in an active management area.

2. A sworn statement by the holder of the grandfathered groundwater rights that the holder will use the water delivered off of Indian community lands on a gallon-for-gallon substitute basis instead of groundwater that otherwise would have been pumped pursuant to the grandfathered groundwater rights from within an active management area.

3. A listing and description of the grandfathered groundwater rights that will not be exercised by the holder because of the delivery of the water that is delivered by the Indian community.

4. A hydrologic report assessing the effect of nonexercise of grandfathered groundwater rights under this section on any underground storage facility that was constructed as a state demonstration project and that is located within ten miles of the point of withdrawal for the grandfathered groundwater rights.

E. The director shall review the hydrologic report filed pursuant to subsection D, paragraph 4 of this section and shall make such modifications to the state demonstration project's underground storage facility permit as the director deems appropriate.

F. If the director determines that the parties have complied with subsection D of this section, the Indian community may begin accruing long-term storage credits for the delivery of central Arizona project WATER to the holder of the grandfathered groundwater rights, but only if the following apply:

1. By March 31 of each year, the holder of the grandfathered groundwater rights files an annual report with the director for the preceding calendar year. The annual report shall include the following information:

(a) The total quantity of water received from the Indian community during the year for use by the holder under this section.

(b) A listing of those grandfathered groundwater rights that were not exercised during the year by the holder because of the receipt of central Arizona project water delivered by the Indian community.

(c) Such other information as the director may reasonably require.

2. The director finds that the water reported as received by the grandfathered groundwater right holder was used on a gallon-for-gallon substitute basis for groundwater.

3. The Indian community has offered to sell the Arizona water banking authority ten per cent of any long-term storage credits accruable by the Indian community under this section at a price per acre-foot at the time of sale equal to the authority's cost of delivering and storing water at an underground storage facility that was constructed as a state demonstration project and that is located within ten miles of the point of withdrawal of any of the grandfathered groundwater rights identified in the list filed with the director pursuant to subsection D, paragraph 3 of this section, except that any credits purchased pursuant to such offer may not be recovered within five miles of the exterior reservation boundary of the Indian community.

G. The water that is received under this section by the holder of the grandfathered groundwater right is deemed to be groundwater for all purposes of chapter 2 of this title as if the holder had withdrawn it from a well. The holder is responsible for all records, reports and fees required by chapter 2 of this title relating to the water received.

H. The director shall establish a long-term storage account for the Indian community in accordance with section 45-852.01 and each year shall credit to that long-term storage account ninety-five per cent of the water received by the holder of the grandfathered groundwater right during the preceding year that meets the requirements of subsection F of this section.

I. Long-term storage credits accrued pursuant to this section may be used or assigned in any manner that is consistent with this chapter.

J. The maximum amount of long-term storage credits that may be accrued by an Indian community under this section in any year is ten thousand acre-feet.

Sec. 3. Section 45-841.01, Arizona Revised Statutes, as amended by this act, is amended to read:

45-841.01. Accrual of long-term storage credits; Indian water rights settlements

A. To further the implementation of Indian water rights settlements in this state, an Indian community may accrue long-term storage credits as prescribed by this section.

B. This section applies only to the settlement of a water rights claim by a federally recognized Indian community in this state if the settlement provides for off-reservation

storage of its central Arizona project water and only after the settlement results in a dismissal with prejudice of a class action claim that has been pending in the United States district court for more than five years.

C. Before accruing any long-term storage credits under this section, both of the following conditions apply:

1. A party seeking to participate in the accrual of long-term storage credits under this section shall file written notice with the director that the requirements of subsection B of this section have been met.

2. The director shall find that the requirements of subsection B of this section have been met.

D. Before accruing any long-term storage credits under this section, a party seeking to participate in the accrual of long-term storage credits under this section shall file with the director all of the following information:

1. A written notice of the ~~party's~~ PARTIES' intent to begin the delivery of central Arizona project water that ~~is~~ WAS MADE available to the Indian community BY THE WATER RIGHTS SETTLEMENT to the holder of grandfathered groundwater rights in an active management area.

2. A sworn statement by the holder of the grandfathered groundwater rights that the holder will use the water delivered off of Indian community lands on a gallon-for-gallon substitute basis instead of groundwater that otherwise would have been pumped pursuant to the grandfathered groundwater rights from within an active management area.

3. A listing and description of the grandfathered groundwater rights that will not be exercised by the holder because of the delivery of the water that is delivered by the Indian community.

4. A hydrologic report assessing the effect of nonexercise of grandfathered groundwater rights under this section on any underground storage facility that was constructed as a state demonstration project and that is located within ten miles of the point of withdrawal for the grandfathered groundwater rights.

E. The director shall review the hydrologic report filed pursuant to subsection D, paragraph 4 of this section and shall make such modifications to the state demonstration project's underground storage facility permit as the director deems appropriate.

F. If the director determines that the parties have complied with subsection D of this section, the Indian community may begin accruing long-term storage credits for the delivery of central Arizona project water to the holder of the grandfathered groundwater rights, but only if the following apply:

1. By March 31 of each year, the holder of the grandfathered groundwater rights files an annual report with the director for the preceding calendar year. The annual report shall include the following information:
 - (a) The total quantity of water received from the Indian community during the year for use by the holder under this section.
 - (b) A listing of those grandfathered groundwater rights that were not exercised during the year by the holder because of the receipt of central Arizona project water delivered by the Indian community.
 - (c) Such other information as the director may reasonably require.
2. The director finds that the water reported as received by the grandfathered groundwater right holder was used on a gallon-for-gallon substitute basis for groundwater.
3. The Indian community has offered to sell the Arizona water banking authority ten per cent of any long-term storage credits accruable by the Indian community under this section at a price per acre-foot at the time of sale equal to the authority's cost of delivering and storing water at an underground storage facility that was constructed as a state demonstration project and that is located within ten miles of the point of withdrawal of any of the grandfathered groundwater rights identified in the list filed with the director pursuant to subsection D, paragraph 3 of this section, except that any credits purchased pursuant to such offer may not be recovered within five miles of the exterior reservation boundary of the Indian community.
- G. The water that is received under this section by the holder of the grandfathered groundwater right is deemed to be groundwater for all purposes of chapter 2 of this title as if the holder had withdrawn it from a well. The holder is responsible for all records, reports and fees required by chapter 2 of this title relating to the water received.
- H. The director shall establish a long-term storage account for the Indian community in accordance with section 45-852.01 and each year shall credit to that long-term storage account ninety-five per cent of the water received by the holder of the grandfathered groundwater right during the preceding year that meets the requirements of subsection F of this section.
- I. Long-term storage credits accrued pursuant to this section may be used or assigned in any manner that is consistent with this chapter.
- J. The maximum amount of long-term storage credits that may be accrued by an Indian community under this section in any year is ten thousand acre-feet.

Sec. 4. Section 45-2423, Arizona Revised Statutes, is amended to read:

45-2423. [Powers and duties of authority](#)

A. The authority, acting through its commission, shall:

1. Administer the Arizona water banking fund in accordance with this chapter.
2. Coordinate its staffing needs with the director and CAWCD.
3. Coordinate the storage of water and distribution and extinguishment of long-term storage credits with the director in accordance with this chapter and the water management objectives set forth in chapter 2 of this title.
4. Coordinate with CAWCD for the purchase, delivery and storage of Colorado river water delivered through the central Arizona project in accordance with this chapter.
5. Coordinate and confer with state agencies, municipal corporations, special districts, authorities, other political subdivisions, private entities, Indian communities and the United States on matters within their jurisdiction relating to the policy and purposes of this chapter.
6. Determine, on an annual basis, the quantity of Colorado river water to be stored by the authority and where that storage will occur.
7. Account for, hold and distribute or extinguish long-term storage credits in accordance with this chapter.
8. Comply with all aspects of chapter 3.1 of this title.

9. PERFORM THE AUTHORITY'S REPLENISHMENT RESPONSIBILITIES UNDER CHAPTER 15, ARTICLE 3 OF THIS TITLE WITH MONIES APPROPRIATED FROM THE STATE GENERAL FUND BY THE LEGISLATURE FOR THAT PURPOSE AND TO THE EXTENT THAT MONIES APPROPRIATED BY THE LEGISLATURE FOR THAT PURPOSE ARE NOT AVAILABLE, WITH MONIES COLLECTED IN THE PINAL ACTIVE MANAGEMENT AREA PURSUANT TO SECTION 45-611, SUBSECTION C, PARAGRAPH 3.

~~9.~~ 10. Adopt an official seal for the authentication of its records, decisions and resolutions.

~~10.~~ 11. Keep the minutes of its meetings and all records, reports and other information relating to its work and programs in permanent form, systematically indexed and filed.

B. The authority, acting through its commission, may:

1. Apply for and hold water storage permits.
2. Accrue, exchange, assign, lend and hold long-term storage credits in accordance with this chapter.
3. Exchange Colorado river water for any type of water in accordance with chapter 4 of this title.
4. Enter into water banking services agreements.
5. Charge fees for water banking services.

6. Apply for and hold any water quality permit required for water storage by the department of environmental quality under title 49, chapter 2, article 3 or by federal law.
7. Make and execute all contracts, including intergovernmental agreements pursuant to title 11, chapter 7, article 3, that shall be signed by the chairperson, or in the chairperson's absence the vice-chairperson, and attested by the secretary, necessary to:
 - (a) Obtain for storage Colorado river water delivered through the central Arizona project. Agreements by which the authority obtains Colorado river water are exempt from the requirements of title 41, chapter 23.
 - (b) Obtain effluent for storage but only after the authority has stored all available excess Central Arizona project water or when central Arizona project water is otherwise unavailable or undeliverable.
 - (c) Affiliate water storage permits held by the authority with storage facility permits.
 - (d) Store Colorado river water at permitted storage facilities.
 - (e) Distribute long-term storage credits earned by the authority to make water available to municipal and industrial users of Colorado river water in this state that are inside or outside of the CAWCD service area, in accordance with the provisions of this chapter.
 - (f) Store Colorado river water in Arizona on behalf of appropriately authorized agencies in California and Nevada.
 - (g) Cause a decrease in Arizona diversions from the Colorado river, ensuring that Arizona will use less than its full entitlement to Colorado river water in years in which California and Nevada agencies are contractually authorized to call on the water stored on their behalf by the authority.
 - (h) Distribute long-term storage credits earned by the authority on behalf of agencies in California and Nevada to Colorado river water users in Arizona to use in place of Colorado river water that would have otherwise been used by those Arizona users.
 - (i) REPLENISH WATER PURSUANT TO CHAPTER 15, ARTICLE 3 OF THIS TITLE, INCLUDING ENTERING INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE GILA RIVER INDIAN COMMUNITY PURSUANT TO SECTION 45-2624.
8. Sue and be sued.
9. Perform all other acts necessary for the authority to carry out its purposes, powers and duties in accordance with this chapter.
10. Submit a request for a general fund appropriation to the legislature each year. A request shall be accompanied by a budget detailing how the appropriation would be used and justifying the need for the appropriation.

11. Form temporary committees as deemed necessary by the authority to provide the authority with advice on issues identified by the authority. Advisory committees may consist of members of the public selected by the authority, members of the authority and authority staff.

12. Purchase long-term storage credits accrued by an Indian community pursuant to section 45-841.01, provided such long-term storage credits are distributed or extinguished in accordance with the rules of operation specified in section 45-2457 for the funds used by the authority to purchase the credits.

Sec. 5. Section 45-2425, Arizona Revised Statutes, is amended to read:

45-2425. Arizona water banking fund

A. The Arizona water banking fund is established and shall include subaccounts based on funding sources. The authority shall administer the banking fund in accordance with this chapter.

B. The banking fund consists of all of the following:

1. Monies appropriated from the state general fund by the legislature **FOR WATER BANKING PURPOSES OTHER THAN REPLENISHMENT UNDER CHAPTER 15, ARTICLE 3 OF THIS TITLE.**

2. MONIES APPROPRIATED FROM THE STATE GENERAL FUND BY THE LEGISLATURE FOR REPLENISHMENT UNDER CHAPTER 15, ARTICLE 3 OF THIS TITLE.

~~3.~~ 3. Reimbursement for the distribution of long-term storage credits, collected by the authority in accordance with section 45-2457, subsection B, paragraph 2.

~~3.~~ 4. Monies paid to the authority by the recipients of in lieu water at a groundwater savings facility, in accordance with section 45-2455, subsection C.

~~4.~~ 5. Monies collected in accordance with section 45-611, subsection C, paragraph 3.

~~5.~~ 6. Monies deposited in the banking fund in accordance with section 48-3715.03, subsection B.

~~6.~~ 7. Monies paid to the authority by agencies that have entered into interstate water banking agreements with the authority in accordance with section 45-2471.

~~7.~~ 8. Monies paid to the authority by persons and Indian communities in this state that have entered into water banking services agreements with the authority in accordance with section 45-2458.

C. In addition to the monies prescribed in this section, the authority may accept any gifts, grants or donations and deposit those monies in the banking fund.

D. Monies in the banking fund are exempt from lapsing under section 35-190. On notice from the authority, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the banking fund.

E. The authority may use the banking fund to pay all reasonable expenses incurred in carrying out its duties and responsibilities in accordance with this chapter.

Sec. 6. Section 45-2457, Arizona Revised Statutes, is amended to read:

45-2457. Accounting; rules of operation

A. The authority shall develop an accounting system for the long-term storage credits accrued by the authority. The accounting system shall be designed to allow the authority to determine which funding source of the banking fund paid for each long-term storage credit accrued by the authority.

B. The authority shall operate in accordance with all of the following rules of operation:

1. The authority shall reserve a reasonable number of long-term storage credits accrued with general fund appropriations, **OTHER THAN GENERAL FUND**

APPROPRIATIONS FOR REPLENISHMENT UNDER CHAPTER 15, ARTICLE 3 OF THIS TITLE, for the benefit of municipal and industrial users of Colorado river water in this state that are outside of the service area of CAWCD.

2. The authority may distribute long-term storage credits accrued with general fund appropriations, **OTHER THAN GENERAL FUND APPROPRIATIONS FOR REPLENISHMENT UNDER CHAPTER 15, ARTICLE 3 OF THIS TITLE**, for both of the following:

(a) To make water available to a municipal and industrial user of Colorado river water in this state that is outside of the service area of CAWCD, if both of the following apply:

(i) The municipal and industrial user would otherwise suffer a water shortage. The authority may distribute long-term credits to the extent reasonably necessary to offset the water shortage.

(ii) The authority collects reimbursement for the cost to the authority of replacing the long-term storage credits distributed. The authority may replace the long-term storage credits in any year it deems appropriate but shall use good faith efforts to replace the long-term storage credits at a reasonable cost to the person who is responsible for reimbursing the authority for the credits distributed.

(b) To make water available to CAWCD to the extent necessary for CAWCD to meet the demands of its municipal and industrial subcontractors, if all of the following apply:

(i) CAWCD's normal diversions from the Colorado river have been or will be disrupted by shortages on the river or by disruptions in the operation of the central Arizona project.

(ii) The authority does not distribute for this purpose the long-term storage credits reserved in accordance with paragraph 1.

(iii) The authority collects reimbursement from CAWCD for the cost to the authority of replacing the long-term storage credits distributed. The authority may replace the long-

term storage credits in any year it deems appropriate but shall use good faith efforts to replace the long-term storage credits at a reasonable cost to CAWCD.

3. The authority may distribute or extinguish long-term storage credits accrued with general fund appropriations, [OTHER THAN GENERAL FUND APPROPRIATIONS FOR REPLENISHMENT UNDER CHAPTER 15, ARTICLE 3 OF THIS TITLE](#), to implement the settlement of water right claims by Indian communities in this state.

4. On request from the director, the authority may extinguish long-term storage credits accrued with general fund appropriations, [OTHER THAN GENERAL FUND APPROPRIATIONS FOR REPLENISHMENT UNDER CHAPTER 15, ARTICLE 3 OF THIS TITLE](#), to fulfill the water management objectives set forth in chapter 2 of this title.

5. The authority may exchange long-term storage credits accrued with general fund appropriations for long-term storage credits held by other persons if the long-term storage credits received by the authority were stored in a location that better enables the authority to fulfill the purposes and policies of this chapter than were the long-term storage credits exchanged by the authority. For the purposes of this paragraph, the authority may make exchanges of long-term storage credits stored in one active management area for long-term storage credits stored in a different active management area or of long-term storage credits stored in one groundwater basin for long-term storage credits stored in a different groundwater basin.

6. The authority shall distribute or extinguish long-term storage credits accrued with monies collected in accordance with section 45-611, subsection C, paragraph 3 only for the benefit of the active management area in which the monies were collected. The authority may distribute or extinguish these long-term storage credits to implement the settlement of water right claims by Indian communities in this state or, on request from the director, to meet the water management objectives set forth in chapter 2 of this title. [THE AUTHORITY MAY USE THE MONIES COLLECTED IN THE PINAL ACTIVE MANAGEMENT AREA UNDER SECTION 45-611, SUBSECTION C, PARAGRAPH 3 TO ACQUIRE LONG-TERM STORAGE CREDITS FOR REPLENISHMENT PURPOSES UNDER CHAPTER 15, ARTICLE 3 OF THIS TITLE.](#)

7. The authority shall distribute long-term storage credits accrued with monies deposited in the fund in accordance with section 48-3715.03, subsection B only for the benefit of the county in which the monies were collected. The authority shall distribute these long-term storage credits to CAWCD to the extent necessary to meet the demands of CAWCD's municipal and industrial subcontractors during times in which CAWCD's diversions from the Colorado river have been or will be disrupted by shortages on the Colorado river or by disruptions in operation of the central Arizona project.

8. For each county within the CAWCD service area, on a determination by the authority that the number of long-term storage credits accrued with monies deposited in the fund in accordance with section 48-3715.03, subsection B exceeds the needs specified in paragraph 7 for that county, the authority shall distribute those excess long-term storage credits to municipal water providers within that county that are at the time of distribution experiencing surface water supply shortages not associated with the central Arizona project. The authority shall distribute to each such municipal water provider the lesser of the following number of long-term storage credits:

(a) The total number of credits determined to be available by the authority under this paragraph multiplied by the percentage produced by dividing a numerator equaling the amount of revenues paid pursuant to section 48-3715.02, subsections B and C by taxpayers that are within both the boundaries of the municipal provider that is experiencing the shortage and the boundaries of the surface water supply system that is experiencing the shortage by a denominator equaling the total revenues paid pursuant to section 48-3715.02, subsections B and C by all taxpayers that are located within both the boundaries of a municipal water provider and the boundaries of a surface water supply system in the county. In making these computations, the authority shall use the amounts of revenue paid by taxpayers during the most recent tax year for which this information is available.

(b) Twenty per cent of the total surface water shortage that the municipal and industrial water provider is experiencing.

9. The authority shall distribute or replace long-term storage credits accrued with monies collected pursuant to water banking services agreements in accordance with the terms of those agreements.

10. THE AUTHORITY SHALL ACQUIRE SUFFICIENT WATER SUPPLIES TO PERFORM ITS REPLENISHMENT RESPONSIBILITIES UNDER CHAPTER 15, ARTICLE 3 OF THIS TITLE. THE AUTHORITY SHALL ACQUIRE THOSE WATER SUPPLIES WITH MONIES APPROPRIATED FROM THE STATE GENERAL FUND BY THE LEGISLATURE FOR REPLENISHMENT UNDER CHAPTER 15, ARTICLE 3 OF THIS TITLE AND TO THE EXTENT THAT MONIES APPROPRIATED BY THE LEGISLATURE FOR THAT PURPOSE ARE NOT AVAILABLE, WITH MONIES COLLECTED IN THE PINAL ACTIVE MANAGEMENT AREA UNDER SECTION 45-611, SUBSECTION C, PARAGRAPH 3. THE AUTHORITY SHALL USE THE WATER SUPPLIES ACQUIRED PURSUANT TO THIS PARAGRAPH FOR ANY REPLENISHMENT ACTIVITY AUTHORIZED BY SECTION 45-2623 AND FOR IMPLEMENTATION OF THE SOUTHSIDE REPLENISHMENT BANK ESTABLISHED BY SECTION 45-2624, INCLUDING DELIVERING WATER DIRECTLY TO THE GILA RIVER INDIAN COMMUNITY FOR THOSE PURPOSES.

C. Any other long-term storage credits accrued by the authority may be distributed or extinguished by the authority in accordance with the policy and purposes of this chapter.

D. Except as provided by subsection B, paragraph 7 of this section and except as provided by agreements entered into by the authority, the decision to distribute or extinguish any long-term storage credit accrued by the authority is at the complete discretion of the authority.

Sec. 7. Title 45, Arizona Revised Statutes, is amended by adding chapter 15, to read:

CHAPTER 15

GILA RIVER INDIAN COMMUNITY WATER SETTLEMENT PROGRAM

ARTICLE 1. ADMINISTRATION

45-2601. Definitions

UNLESS THE CONTEXT OTHERWISE REQUIRES, THE TERMS DEFINED IN SECTIONS 45-402 AND 45-802.01 HAVE THE SAME MEANING IN THIS CHAPTER AND FOR THE PURPOSES OF THIS CHAPTER:

1. "CENTRAL PROTECTION ZONE" MEANS THE CENTRAL PROTECTION ZONE ESTABLISHED UNDER SECTION 45-2602.
2. "COMMUNITY" MEANS THE GILA RIVER INDIAN COMMUNITY, A GOVERNMENT COMPOSED OF MEMBERS OF THE PIMA TRIBE AND THE MARICOPA TRIBE AND ORGANIZED UNDER SECTION 16 OF THE ACT OF JUNE 18, 1934 (25 UNITED STATES CODE SECTION 476).
3. "DAM" HAS THE MEANING PRESCRIBED IN SECTION 45-1201 ON JANUARY 1, 2005.
4. "DESIGNED STORAGE CAPACITY" MEANS THE STORAGE CAPACITY IN ACRE-FEET OF A RESERVOIR AT THE ELEVATION OF THE LOWEST SPILLWAY IN THE DAM IMPOUNDING WATER IN THE RESERVOIR, AS THE DAM WAS ORIGINALLY CONSTRUCTED.
5. "EASTERN PROTECTION ZONE" MEANS THE EASTERN PROTECTION ZONE NORTH OR THE EASTERN PROTECTION ZONE SOUTH.
6. "EASTERN PROTECTION ZONE NORTH" MEANS THE EASTERN PROTECTION ZONE NORTH ESTABLISHED UNDER SECTION 45-2602, SUBSECTION A.
7. "EASTERN PROTECTION ZONE SOUTH" MEANS THE EASTERN PROTECTION ZONE SOUTH ESTABLISHED UNDER SECTION 45-2602, SUBSECTION A.
8. "GILA RIVER MAINTENANCE AREA" MEANS THE GILA RIVER MAINTENANCE AREA ESTABLISHED UNDER SECTION 45-2603, SUBSECTION A.
9. "GILA RIVER MAINTENANCE AREA IMPACT ZONE" MEANS THE GILA RIVER MAINTENANCE AREA IMPACT ZONE ESTABLISHED UNDER SECTION 45-2603, SUBSECTION B.

10. "GLOBE EQUITY DECREE" MEANS THE DECREE DATED JUNE 29, 1935 AND ENTERED IN UNITED STATES OF AMERICA v. GILA VALLEY IRRIGATION DISTRICT, GLOBE EQUITY NO. 59, ET AL. BY THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA AND INCLUDES ALL COURT ORDERS AND DECISIONS SUPPLEMENTAL TO THAT DECREE.

11. "INDUSTRIAL USE" MEANS ALL OF THE FOLLOWING:

(a) A NONIRRIGATION USE OF WATER COMMENCED AFTER DECEMBER 31, 2002 THAT IS NOT SUPPLIED BY A MUNICIPAL PROVIDER, INCLUDING ANIMAL INDUSTRY USE AND EXPANDED ANIMAL INDUSTRY USE.

(b) A USE OF GROUNDWATER COMMENCED BEFORE JANUARY 1, 2003 BY A HOLDER OF A TYPE 1 NONIRRIGATION GRANDFATHERED RIGHT IN EXISTENCE ON DECEMBER 31, 2002, OTHER THAN A TYPE 1 NONIRRIGATION GRANDFATHERED RIGHT HELD BY A MUNICIPAL PROVIDER AND OTHER THAN A USE UNDER ANOTHER GROUNDWATER RIGHT OR PERMIT, IN EXCESS OF THE AMOUNT ALLOWED UNDER THE TYPE 1 NONIRRIGATION GRANDFATHERED RIGHT.

(c) A USE OF GROUNDWATER COMMENCED BEFORE JANUARY 1, 2003 BY A HOLDER OF A TYPE 2 NONIRRIGATION GRANDFATHERED RIGHT IN EXISTENCE ON DECEMBER 31, 2002, OTHER THAN A TYPE 2 NONIRRIGATION GRANDFATHERED RIGHT HELD BY A MUNICIPAL PROVIDER, IN EXCESS OF THE AMOUNT ALLOWED UNDER THE RIGHT AND FOR WHICH THE HOLDER HAS NO OTHER GROUNDWATER RIGHT.

(d) A USE OF GROUNDWATER COMMENCED BEFORE JANUARY 1, 2003 BY A HOLDER OF A GENERAL INDUSTRIAL USE PERMIT ISSUED UNDER SECTION 45-515 AND IN EXISTENCE ON DECEMBER 31, 2002, OTHER THAN A USE UNDER ANOTHER GROUNDWATER RIGHT OR PERMIT, IN EXCESS OF THE AMOUNT ALLOWED UNDER THE GENERAL INDUSTRIAL USE PERMIT.

12. "IRRIGATION USE" MEANS THE USE OF WATER ON TWO OR MORE ACRES OF LAND TO PRODUCE PLANTS OR PARTS OF PLANTS FOR SALE OR HUMAN CONSUMPTION, OR FOR USE AS FEED FOR LIVESTOCK, RANGE LIVESTOCK OR POULTRY, AS DEFINED IN SECTION 3-1201.

13. "MUNICIPAL ACRE" MEANS THE ACRE OR ACRES OF LAND WITHIN A PROTECTION ZONE, ON WHICH WATER PUMPED FROM WITHIN A PROTECTION ZONE IS SUPPLIED BY A MUNICIPAL PROVIDER, ON WHICH WATER USE WAS FIRST COMMENCED AFTER DECEMBER 31, 2002 AND FOR WHICH THE WATER USE IS REPORTED PURSUANT TO SECTION 45-632, 45-875.01 OR 45-2602.

14. "MUNICIPAL PROVIDER" MEANS A CITY, TOWN, PRIVATE WATER COMPANY OR IRRIGATION DISTRICT THAT SUPPLIES WATER FOR NONIRRIGATION USE.

15. "MUNICIPAL USE" MEANS A NONIRRIGATION USE OF WATER COMMENCED AFTER DECEMBER 31, 2002 AND SUPPLIED BY A MUNICIPAL PROVIDER ON MUNICIPAL ACRES.
16. "NONIRRIGATION USE" MEANS A USE OF WATER WITHDRAWN FROM A WELL, OTHER THAN AN IRRIGATION USE.
17. "RESERVATION" MEANS THE GILA RIVER INDIAN COMMUNITY RESERVATION.
18. "SETTLEMENT AGREEMENT" MEANS THE AGREEMENT ENTITLED THE "GILA RIVER INDIAN COMMUNITY WATER RIGHTS SETTLEMENT AGREEMENT", DATED FEBRUARY 4, 2003 BETWEEN THE COMMUNITY, THIS STATE AND OTHER PARTIES, AS AMENDED BEFORE THE EFFECTIVE DATE OF THIS SECTION, A COPY OF WHICH IS ON FILE IN THE DEPARTMENT.
19. "SOUTHSIDE PROTECTION ZONES" MEANS THE EASTERN PROTECTION ZONE NORTH, THE EASTERN PROTECTION ZONE SOUTH, THE WESTERN MUNICIPAL PROTECTION ZONE, THE WESTERN MUNICIPAL AND INDUSTRIAL PROTECTION ZONE AND THE CENTRAL PROTECTION ZONE.
20. "STOCKPOND" MEANS A POND THAT HAS A CAPACITY OF NOT MORE THAN FIFTEEN ACRE-FEET AND THAT IS USED SOLELY FOR WATERING LIVESTOCK OR WILDLIFE. STOCKPOND DOES NOT INCLUDE A POND USED PRIMARILY FOR FISHING OR FOR THE CULTURING OF FISH.
21. "STORED WATER" MEANS WATER THAT HAS BEEN STORED OR SAVED UNDERGROUND PURSUANT TO A STORAGE PERMIT ISSUED UNDER CHAPTER 3.1 OF THIS TITLE.
22. "UNDERGROUND WATER" MEANS WATER, OTHER THAN STORED WATER, WITHDRAWN FROM A WELL.
23. "WATER COMPANY" MEANS EITHER OF THE FOLLOWING:
 - (a) A PRIVATE WATER COMPANY THAT AS OF JANUARY 1, 2000 WAS REGULATED AS A PUBLIC SERVICE CORPORATION BY THE ARIZONA CORPORATION COMMISSION AND WAS WITHDRAWING UNDERGROUND WATER FROM LANDS NOW WITHIN THE EASTERN PROTECTION ZONE NORTH.
 - (b) ANY SUCCESSOR OF A PRIVATE WATER COMPANY DESCRIBED IN SUBDIVISION (a) OF THIS PARAGRAPH.
24. "WESTERN MUNICIPAL AND INDUSTRIAL PROTECTION ZONE" MEANS THE WESTERN MUNICIPAL AND INDUSTRIAL PROTECTION ZONE ESTABLISHED UNDER SECTION 45-2602, SUBSECTION A.
25. "WESTERN MUNICIPAL PROTECTION ZONE" MEANS THE WESTERN MUNICIPAL PROTECTION ZONE ESTABLISHED UNDER SECTION 45-2602, SUBSECTION A.

26. "WESTERN PROTECTION ZONES" MEANS THE WESTERN MUNICIPAL PROTECTION ZONE AND THE WESTERN MUNICIPAL AND INDUSTRIAL PROTECTION ZONE.

45-2603. Establishment of Gila river maintenance area and Gila river maintenance area impact zone; notice of intention to drill

A. THE GILA RIVER MAINTENANCE AREA IS ESTABLISHED ON THE EFFECTIVE DATE OF THIS SECTION. THE BOUNDARIES OF THE GILA RIVER MAINTENANCE AREA ARE SHOWN ON THE MAP THAT IS DATED JULY, 2002 AND THAT IS ON FILE IN THE DEPARTMENT. THE MAP SHALL BE AVAILABLE FOR EXAMINATION BY THE PUBLIC DURING REGULAR BUSINESS HOURS.

B. THE GILA RIVER MAINTENANCE AREA IMPACT ZONE IS ESTABLISHED ON THE EFFECTIVE DATE OF THIS SECTION. THE BOUNDARIES OF THE GILA RIVER MAINTENANCE AREA IMPACT ZONE ARE SHOWN ON THE MAP THAT IS DATED JULY, 2002 AND THAT IS ON FILE IN THE DEPARTMENT.

C. IF A PROPOSED WELL WILL WITHDRAW WATER WITHIN THE GILA RIVER MAINTENANCE AREA IMPACT ZONE ESTABLISHED UNDER SUBSECTION B OF THIS SECTION, AS DETERMINED PURSUANT TO SECTION 45-2641, SUBSECTION A, AND THE WATER WILL BE USED TO IRRIGATE LANDS WITHIN THE GILA RIVER MAINTENANCE AREA ESTABLISHED UNDER SUBSECTION A OF THIS SECTION AND OUTSIDE OF COCHISE COUNTY, THE NOTICE OF INTENTION TO DRILL FILED PURSUANT TO SECTION 45-596 SHALL INCLUDE ONE OF THE FOLLOWING:

1. PROOF THAT THE LANDS TO BE IRRIGATED WERE IRRIGATED WITH WATER FROM ANY SOURCE AT ANY TIME FROM JANUARY 1, 2000 THROUGH THE EFFECTIVE DATE OF THIS SECTION.

2. PROOF THAT THE IRRIGATION IS ALLOWED UNDER THE EXEMPTIONS PRESCRIBED IN SECTION 45-2641, SUBSECTION B, PARAGRAPH 1, 2 OR 4.

ARTICLE 4. DAMS WITHIN GILA RIVER MAINTENANCE AREA

45-2631. Construction or enlargement of new dams within maintenance area; prohibited; exceptions

A. BEGINNING ON THE EFFECTIVE DATE OF THIS SECTION, A PERSON SHALL NOT CONSTRUCT A NEW DAM OR ENLARGE AN EXISTING DAM WITHIN THE GILA RIVER MAINTENANCE AREA, AND THE DIRECTOR SHALL NOT ISSUE A PERMIT UNDER CHAPTER 6 OF THIS TITLE TO CONSTRUCT A NEW DAM OR ENLARGE AN EXISTING DAM WITHIN THE GILA RIVER MAINTENANCE AREA.

B. THIS SECTION DOES NOT APPLY TO:

1. THE CONSTRUCTION OR ENLARGEMENT OF ANY OF THE FOLLOWING:

(a) FLOOD CONTROL STRUCTURES.

(b) STRUCTURES FOR IMPOUNDING MINE TAILINGS.

- (c) IMPOUNDMENTS WITHIN HARDROCK MINES OR INDUSTRIAL FACILITIES, OR BOTH, FOR ENVIRONMENTAL CONTROL OR PROCESS MANAGEMENT PURPOSES.
- (d) IMPOUNDMENTS FOR DIVERTING SURFACE WATER FLOWS AROUND HARDROCK MINES OR INDUSTRIAL FACILITIES, OR BOTH.
- (e) GROUNDWATER IMPOUNDMENTS.
- (f) EFFLUENT IMPOUNDMENTS.
- (g) STOCKPONDS.
- (h) IMPOUNDMENTS THAT MAY BE CONSTRUCTED TO STORE WATER OTHERWISE AUTHORIZED TO BE USED BY A PARTY TO THE SETTLEMENT AGREEMENT.
- (i) DAMS USED TO DIVERT OR STORE WATER THAT IS DECREED WATER UNDER THE GLOBE EQUITY DECREE.

2. THE CONSTRUCTION OF A DAM THAT REPLACES A DAM IN EXISTENCE WITHIN THE GILA RIVER MAINTENANCE AREA ON THE EFFECTIVE DATE OF THIS SECTION IF THE REPLACEMENT DAM IS IN CLOSE PROXIMITY TO THE ORIGINAL DAM AND THE DESIGNED STORAGE CAPACITY OF THE REPLACEMENT DAM DOES NOT EXCEED THE DESIGNED STORAGE CAPACITY OF THE ORIGINAL DAM.

3. THE ENLARGEMENT OF A DAM WITHIN THE GILA RIVER MAINTENANCE AREA IF THE ENLARGEMENT DOES NOT INCREASE THE DESIGNED STORAGE CAPACITY OF THE DAM.

4. THE MODIFICATION OR REPAIR OF A DAM WITHIN THE GILA RIVER MAINTENANCE AREA AS NECESSARY TO COMPLY WITH THE DAM SAFETY REQUIREMENTS IN CHAPTER 6 OF THIS TITLE AND ANY RULES ADOPTED BY THE DIRECTOR UNDER THAT CHAPTER, IF THE MODIFICATION OR REPAIR DOES NOT INCREASE THE DESIGNED STORAGE CAPACITY OF THE DAM. FOR THE PURPOSES OF THIS PARAGRAPH, "MODIFICATION OR REPAIR OF A DAM" INCLUDES THE DESILTING, LINING OR REHABILITATION OF A DAM.

C. THE DIRECTOR SHALL NOT APPROVE AN APPLICATION UNDER SECTION 45-1207 FOR CONSTRUCTION OR ENLARGEMENT OF A DAM IN THE GILA RIVER MAINTENANCE AREA ESTABLISHED UNDER SECTION 45-2603 IF THE APPLICANT IS PROHIBITED FROM CONSTRUCTING OR ENLARGING THE DAM, AS APPLICABLE, UNDER THIS SECTION.

D. ANY VIOLATIONS OF THIS ARTICLE ARE SUBJECT TO ENFORCEMENT UNDER ARTICLE 6 OF THIS CHAPTER ON THE EFFECTIVE DATE OF ARTICLE 6 OF THIS CHAPTER, AND SUCH ENFORCEMENT MAY INCLUDE INJUNCTIVE RELIEF THAT REQUIRES REMOVAL OF ANY STRUCTURES CONSTRUCTED IN VIOLATION OF THIS ARTICLE. ANY DELAY BETWEEN THE DATE OF THE ALLEGED VIOLATION OF THIS ARTICLE AND THE DATE OF ANY ENFORCEMENT ACTION PURSUANT TO ARTICLE 6 OF

THIS CHAPTER SHALL NOT BE A FACTOR IN DETERMINING WHETHER TO ISSUE AN INJUNCTION PURSUANT TO ARTICLE 6 OF THIS CHAPTER.

ARTICLE 5. IRRIGATION OF NEW LANDS WITHIN GILA RIVER MAINTENANCE AREA

45-2641. Irrigation of new lands in Gila river maintenance area with water withdrawn or diverted from Gila river maintenance area impact zone prohibited; exception

A. EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION, A PERSON SHALL NOT USE WATER WITHDRAWN OR DIVERTED WITHIN THE GILA RIVER MAINTENANCE AREA IMPACT ZONE TO IRRIGATE LAND WITHIN THE GILA RIVER MAINTENANCE AREA UNLESS THE LAND WAS IRRIGATED WITH WATER FROM ANY SOURCE AT ANY TIME FROM JANUARY 1, 2000 THROUGH THE EFFECTIVE DATE OF THIS SECTION. FOR THE PURPOSES OF THIS SECTION, WATER IS WITHDRAWN OR DIVERTED WITHIN THE GILA RIVER MAINTENANCE AREA IMPACT ZONE IF ONE OF THE FOLLOWING APPLIES:

1. THE WATER IS WITHDRAWN FROM A WELL LOCATED WITHIN THE GILA RIVER MAINTENANCE AREA IMPACT ZONE.
2. THE WATER IS SURFACE WATER DIVERTED ON THE SURFACE AT A LOCATION WITHIN THE GILA RIVER MAINTENANCE AREA IMPACT ZONE.
3. THE WATER IS WITHDRAWN BY A WELL LOCATED OUTSIDE OF THE GILA RIVER MAINTENANCE AREA IMPACT ZONE AND THE WELL'S CONE OF DEPRESSION CAPTURES SURFACE WATER WITHIN THE GILA RIVER MAINTENANCE AREA IMPACT ZONE AS DETERMINED BY A CONE OF DEPRESSION TEST ADOPTED BY THE SUPERIOR COURT WITH JURISDICTION OVER THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE GILA RIVER SYSTEM AND SOURCE.

B. THIS SECTION DOES NOT APPLY TO:

1. THE IRRIGATION OF LANDS PURSUANT TO AN APPROPRIATIVE RIGHT WITH A PRIORITY DATE EARLIER THAN THE EFFECTIVE DATE OF THIS SECTION AND THE IRRIGATION OF LANDS TO WHICH THE RIGHT IS SEVERED AND TRANSFERRED.
2. THE IRRIGATION OF LANDS IF THE IRRIGATION IS ALLOWED UNDER THE SETTLEMENT AGREEMENT.
3. THE IRRIGATION OF LANDS WITHIN THE PORTION OF THE GILA RIVER MAINTENANCE AREA LOCATED IN COCHISE COUNTY.
4. THE IRRIGATION OF LANDS IF THE IRRIGATION IS ALLOWED UNDER THE GLOBE EQUITY DECREE OR UNDER OTHER RIGHTS DECREED BEFORE THE EFFECTIVE DATE OF THIS SECTION AND THE IRRIGATION OF LANDS TO WHICH THE RIGHT IS SEVERED AND TRANSFERRED.

C. ANY VIOLATIONS OF THIS ARTICLE ARE SUBJECT TO ENFORCEMENT UNDER ARTICLE 6 OF THIS CHAPTER ON THE EFFECTIVE DATE OF ARTICLE 6 OF THIS

CHAPTER, AND SUCH ENFORCEMENT MAY INCLUDE INJUNCTIVE RELIEF THAT REQUIRES REMOVAL OF ANY STRUCTURES CONSTRUCTED IN VIOLATION OF THIS ARTICLE. ANY DELAY BETWEEN THE DATE OF THE ALLEGED VIOLATION OF THIS ARTICLE AND THE DATE OF ANY ENFORCEMENT ACTION PURSUANT TO ARTICLE 6 OF THIS CHAPTER SHALL NOT BE A FACTOR IN DETERMINING WHETHER TO ISSUE AN INJUNCTION PURSUANT TO ARTICLE 6 OF THIS CHAPTER.

Sec. 8. Title 45, chapter 15, article 1, Arizona Revised Statutes, as added by this act, is amended by adding sections 45-2602 and 45-2604, to read:

45-2602. Establishment of southside protection zones; reporting requirements

A. THE FOLLOWING SOUTHSIDE PROTECTION ZONES ARE ESTABLISHED ON THE EFFECTIVE DATE OF THIS SECTION:

1. THE EASTERN PROTECTION ZONE NORTH.
2. THE EASTERN PROTECTION ZONE SOUTH.
3. THE WESTERN MUNICIPAL AND INDUSTRIAL PROTECTION ZONE.
4. THE WESTERN MUNICIPAL PROTECTION ZONE.
5. THE CENTRAL PROTECTION ZONE.

B. THE BOUNDARIES OF THE SOUTHSIDE PROTECTION ZONES ESTABLISHED UNDER SUBSECTION A ARE SHOWN ON THE MAPS THAT ARE DATED MARCH 25, 2002 AND THAT ARE ON FILE IN THE DEPARTMENT. THE MAPS SHALL BE AVAILABLE FOR EXAMINATION BY THE PUBLIC DURING REGULAR BUSINESS HOURS.

C. EACH PERSON IN THE PINAL ACTIVE MANAGEMENT AREA WHO WITHDRAWS UNDERGROUND WATER DURING A CALENDAR YEAR IN A SOUTHSIDE PROTECTION ZONE ESTABLISHED UNDER THIS SECTION, OTHER THAN THE CENTRAL PROTECTION ZONE, SHALL FILE AN ANNUAL REPORT WITH THE DIRECTOR NO LATER THAN MARCH 31 OF EACH YEAR FOR THE PRECEDING CALENDAR YEAR. THE REPORT SHALL CONTAIN THE FOLLOWING INFORMATION IN ADDITION TO ANY OTHER INFORMATION REQUIRED BY SECTION 45-632:

1. THE AMOUNT OF UNDERGROUND WATER WITHDRAWN WITHIN THE SOUTHSIDE PROTECTION ZONE AND THE NAME OF THE PROTECTION ZONE.
2. IF THE UNDERGROUND WATER WAS USED FOR A NONIRRIGATION USE, THE PURPOSE FOR WHICH THE UNDERGROUND WATER WAS USED, THE LOCATION OF THE USE, THE ACREAGE OF THE PARCEL OR PARCELS OF LAND ON WHICH THE UNDERGROUND WATER WAS USED AND THE DATE THE USE COMMENCED.
3. THE AMOUNT OF ANY WATER REPLENISHED DURING THE YEAR PURSUANT TO SECTION 45-2611, SUBSECTION B, PARAGRAPH 2, THE WATER USE FOR WHICH THE WATER WAS REPLENISHED AND THE MANNER IN WHICH THE WATER WAS REPLENISHED.

4. THE AMOUNT OF ANY WATER REPLACED DURING THE YEAR PURSUANT TO SECTION 45-2611, SUBSECTION B, PARAGRAPH 3, THE WATER USE FOR WHICH THE WATER WAS REPLACED AND THE MANNER IN WHICH THE WATER WAS REPLACED.

D. A PERSON WHO IS REQUIRED TO FILE AN ANNUAL REPORT FOR A YEAR UNDER SUBSECTION C OF THIS SECTION:

1. SHALL USE A WATER MEASURING DEVICE APPROVED BY THE DIRECTOR UNLESS EXEMPT UNDER SECTION 45-604.

2. SHALL MAINTAIN CURRENT ACCURATE RECORDS OF THE PERSON'S WITHDRAWALS, TRANSPORTATION, DELIVERIES AND USE OF UNDERGROUND WATER AS PRESCRIBED BY THE DIRECTOR.

3. MAY COMBINE THE REPORT WITH AN ANNUAL REPORT FOR THE SAME YEAR FILED UNDER SECTION 45-632.

4. SHALL COMPLY WITH THE REQUIREMENTS PRESCRIBED IN SECTION 45-632, SUBSECTIONS N, O AND P AND IS SUBJECT TO THE PENALTIES PRESCRIBED IN SECTION 45-632, SUBSECTION O AS IF THE REPORT WAS REQUIRED BY SECTION 45-632.

E. A PERSON WHO WITHDRAWS UNDERGROUND WATER FROM AN EXEMPT WELL IS EXEMPT FROM THE RECORD KEEPING AND REPORTING REQUIREMENTS OF SUBSECTIONS C AND D OF THIS SECTION. FOR THE PURPOSES OF THIS SUBSECTION, "EXEMPT WELL" MEANS A WELL THAT HAS A PUMP WITH A MAXIMUM CAPACITY OF NOT MORE THAN THIRTY-FIVE GALLONS PER MINUTE, THAT IS USED TO WITHDRAW UNDERGROUND WATER AND THAT WOULD QUALIFY AS AN EXEMPT WELL UNDER SECTION 45-454 IF USED TO WITHDRAW GROUNDWATER.

F. IF STORED WATER IS WITHDRAWN IN THE PINAL ACTIVE MANAGEMENT AREA IN A SOUTHSIDE PROTECTION ZONE ESTABLISHED UNDER THIS SECTION, OTHER THAN THE CENTRAL PROTECTION ZONE, THE ANNUAL REPORT FILED UNDER SECTION 45-875.01, SUBSECTION D SHALL INCLUDE:

1. THE AMOUNT OF STORED WATER WITHDRAWN WITHIN THE SOUTHSIDE PROTECTION ZONE AND THE NAME OF THE PROTECTION ZONE.

2. IF THE STORED WATER WAS USED FOR A NONIRRIGATION USE, THE PURPOSE FOR WHICH THE WATER WAS USED, THE ACREAGE OF THE PARCEL OR PARCELS OF LAND ON WHICH THE WATER WAS USED, THE LOCATION OF THE USE AND THE DATE THE USE COMMENCED.

3. THE IDENTIFICATION OF THE STORAGE FACILITY IN WHICH THE WATER WAS STORED.

4. THE AMOUNT OF ANY WATER REPLENISHED DURING THE YEAR PURSUANT TO SECTION 45-2611, SUBSECTION B, PARAGRAPH 2, THE WATER USE FOR WHICH THE

WATER WAS REPLENISHED AND THE MANNER IN WHICH THE WATER WAS REPLENISHED.

5. THE AMOUNT OF ANY WATER REPLACED DURING THE YEAR PURSUANT TO SECTION 45-2611, SUBSECTION B, PARAGRAPH 3, THE WATER USE FOR WHICH THE WATER WAS REPLACED AND THE MANNER IN WHICH THE WATER WAS REPLACED.

45-2604. Conservation requirements for persons using groundwater in central protection zone no less restrictive than in third management plan

NOTWITHSTANDING ANY OTHER LAW, BEGINNING ON THE EFFECTIVE DATE OF THIS SECTION, WHEN ADOPTING OR MODIFYING A MANAGEMENT PLAN FOR THE PINAL ACTIVE MANAGEMENT AREA PURSUANT TO CHAPTER 2, ARTICLE 9 OF THIS TITLE, THE CONSERVATION REQUIREMENTS ADOPTED BY THE DIRECTOR FOR PERSONS USING GROUNDWATER WITHIN THE CENTRAL PROTECTION ZONE SHALL BE NO LESS RESTRICTIVE THAN THE CONSERVATION REQUIREMENTS FOR PERSONS USING GROUNDWATER WITHIN THE CENTRAL PROTECTION ZONE AS ESTABLISHED IN THE MANAGEMENT PLAN FOR THE PINAL ACTIVE MANAGEMENT AREA FOR THE THIRD MANAGEMENT PERIOD IN EFFECT ON JANUARY 1, 2005 OR AS ADJUSTED AFTER THAT DATE AS A RESULT OF JUDICIAL REVIEW OR ADMINISTRATIVE REVIEW PURSUANT TO SECTION 45-570 OR 45-575.

Sec. 9. Title 45, chapter 15, Arizona Revised Statutes, as added by this act, is amended by adding articles 2, 3 and 6, to read:

ARTICLE 2. TRANSPORTATION OF UNDERGROUND WATER AND STORED WATER AWAY FROM EASTERN PROTECTION ZONES AND WESTERN PROTECTION ZONES

45-2611. Transportation of underground water and stored water away from an eastern protection zone or western protection zone prohibited; exceptions

A. EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION, BEGINNING ON THE EFFECTIVE DATE OF THIS SECTION, UNDERGROUND WATER OR STORED WATER WITHDRAWN IN AN EASTERN PROTECTION ZONE OR A WESTERN PROTECTION ZONE MAY NOT BE TRANSPORTED AWAY FROM THE PROTECTION ZONE IN WHICH THE WATER WAS WITHDRAWN IF THE TRANSPORTATION IS FOR A NONIRRIGATION USE.

B. SUBSECTION A OF THIS SECTION DOES NOT APPLY TO ANY OF THE FOLLOWING:

1. THE TRANSPORTATION OF UNDERGROUND WATER OR STORED WATER AWAY FROM AN EASTERN PROTECTION ZONE OR A WESTERN PROTECTION ZONE FOR A NONIRRIGATION USE IN AN ANNUAL AMOUNT THAT DOES NOT EXCEED THE HIGHEST ANNUAL VOLUME OF UNDERGROUND WATER OR STORED WATER TRANSPORTED AWAY FROM THE SAME PROTECTION ZONE FOR THAT USE DURING CALENDAR YEARS 1999 THROUGH 2001.

2. THE TRANSPORTATION OF UNDERGROUND WATER OR STORED WATER AWAY FROM AN EASTERN PROTECTION ZONE OR A WESTERN PROTECTION ZONE FOR A NONIRRIGATION USE IF THE PERSON TRANSPORTING THE UNDERGROUND WATER OR STORED WATER REPLENISHES THE WATER AS PROVIDED IN SECTION 45-2625 WITHIN TWENTY-FOUR MONTHS AFTER THE END OF THE CALENDAR YEAR IN WHICH THE TRANSPORTATION OCCURS.

3. THE TRANSPORTATION OF UNDERGROUND WATER OR STORED WATER AWAY FROM AN EASTERN PROTECTION ZONE OR A WESTERN PROTECTION ZONE FOR A NONIRRIGATION USE IF THE PERSON TRANSPORTING THE UNDERGROUND WATER OR STORED WATER REPLACES THE WATER WITH AN EQUIVALENT AMOUNT OF WATER IMPORTED INTO THAT PROTECTION ZONE WITHIN THE SAME CALENDAR YEAR IN WHICH THE TRANSPORTATION OCCURS.

4. THE TRANSPORTATION OF STORED WATER AWAY FROM AN EASTERN PROTECTION ZONE OR A WESTERN PROTECTION ZONE IF THE STORED WATER WAS ORIGINALLY STORED IN THE PROTECTION ZONE FROM WHICH THE WATER WAS RECOVERED.

5. THE TRANSPORTATION OF UNDERGROUND WATER OR STORED WATER BETWEEN THE EASTERN PROTECTION ZONE NORTH AND THE EASTERN PROTECTION ZONE SOUTH.

6. THE TRANSPORTATION OF UNDERGROUND WATER OR STORED WATER BETWEEN THE WESTERN MUNICIPAL AND INDUSTRIAL PROTECTION ZONE AND THE WESTERN MUNICIPAL PROTECTION ZONE IF THE WATER IS TRANSPORTED FOR A MUNICIPAL USE ON MUNICIPAL ACRES.

7. THROUGH 2023, THE TRANSPORTATION OF UNDERGROUND WATER AND STORED WATER WITHDRAWN BY A WATER COMPANY WITHIN AN EASTERN PROTECTION ZONE AND TRANSPORTED BY THE WATER COMPANY FOR MUNICIPAL USES OUTSIDE OF THE EASTERN PROTECTION ZONES. FOR THE PURPOSES OF THIS PARAGRAPH, STORED WATER DOES NOT INCLUDE ANY WATER STORED WITHIN AN EASTERN PROTECTION ZONE AND RECOVERED WITHIN THAT PROTECTION ZONE.

8. BEGINNING WITH CALENDAR YEAR 2024, THE ANNUAL TRANSPORTATION OF UP TO ONE THOUSAND TWO HUNDRED SEVENTY-FIVE ACRE-FEET OF UNDERGROUND WATER AND STORED WATER WITHDRAWN BY A WATER COMPANY WITHIN AN EASTERN PROTECTION ZONE AND TRANSPORTED BY THE WATER COMPANY FOR MUNICIPAL USES OUTSIDE OF THE EASTERN PROTECTION ZONES. FOR THE PURPOSES OF THIS PARAGRAPH, STORED WATER DOES NOT INCLUDE ANY WATER STORED WITHIN AN EASTERN PROTECTION ZONE AND RECOVERED WITHIN THAT PROTECTION ZONE.

ARTICLE 3. REPLENISHMENT OF UNDERGROUND WATER AND STORED WATER WITHDRAWN IN EASTERN PROTECTION ZONES AND

WESTERN PROTECTION ZONES

45-2621. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

1. "AUTHORITY" MEANS THE ARIZONA WATER BANKING AUTHORITY ESTABLISHED BY SECTION 45-2421 OR ITS SUCCESSOR.
2. "COMMUNITY'S ACCOUNT" MEANS THE ACCOUNT ESTABLISHED FOR THE COMMUNITY IN THE SOUTHSIDE REPLENISHMENT BANK PURSUANT TO SECTION 45-2624.
3. "INDUSTRIAL ACRE" MEANS THE ACRE OR ACRES IN AN EASTERN PROTECTION ZONE OR IN THE WESTERN MUNICIPAL AND INDUSTRIAL PROTECTION ZONE ON WHICH WATER IS USED FOR AN INDUSTRIAL USE AND FOR WHICH THE WATER USE IS REPORTED TO THE DIRECTOR UNDER SECTION 45-632, 45-875.01 OR 45-2602.
4. "SOUTHSIDE REPLENISHMENT OBLIGATION" MEANS A REPLENISHMENT OBLIGATION CALCULATED UNDER SECTION 45-2622.

45-2622. Annual southside replenishment obligations

- A. NO LATER THAN OCTOBER 1 OF EACH CALENDAR YEAR FOLLOWING THE YEAR IN WHICH THIS SECTION BECOMES EFFECTIVE, THE DIRECTOR SHALL CALCULATE THE SOUTHSIDE REPLENISHMENT OBLIGATIONS FOR THE PRECEDING CALENDAR YEAR AND NOTIFY THE AUTHORITY OF THE AMOUNT OF THE OBLIGATIONS.
- B. THE DIRECTOR SHALL CALCULATE THE SOUTHSIDE REPLENISHMENT OBLIGATIONS FOR A CALENDAR YEAR AS FOLLOWS:
 1. THE DIRECTOR SHALL CALCULATE THE MUNICIPAL AND INDUSTRIAL REPLENISHMENT OBLIGATION FOR THE WESTERN MUNICIPAL AND INDUSTRIAL PROTECTION ZONE FOR THE YEAR AS FOLLOWS:
 - (a) DETERMINE THE TOTAL AMOUNT OF UNDERGROUND WATER AND STORED WATER WITHDRAWN DURING THE YEAR FROM WITHIN THE WESTERN MUNICIPAL AND INDUSTRIAL PROTECTION ZONE FOR MUNICIPAL USES WITHIN A WESTERN PROTECTION ZONE AND THE TOTAL AMOUNT OF UNDERGROUND WATER AND STORED WATER WITHDRAWN DURING THE YEAR FROM WITHIN THE WESTERN MUNICIPAL AND INDUSTRIAL PROTECTION ZONE FOR INDUSTRIAL USES WITHIN THE WESTERN MUNICIPAL AND INDUSTRIAL PROTECTION ZONE, AS REPORTED TO THE DIRECTOR UNDER SECTIONS 45-632, 45-875.01 AND 45-2602. FOR THE PURPOSES OF THIS SUBDIVISION, STORED WATER DOES NOT INCLUDE ANY WATER STORED AT A STORAGE FACILITY LOCATED WITHIN THE WESTERN MUNICIPAL AND INDUSTRIAL PROTECTION ZONE OR ANY WATER STORED AND RECOVERED ON AN ANNUAL BASIS PURSUANT TO SECTION 45-851.01.

(b) DIVIDE THE VOLUME OF WATER DETERMINED IN SUBDIVISION (a) OF THIS PARAGRAPH BY THE TOTAL NUMBER OF MUNICIPAL ACRES AND INDUSTRIAL ACRES WITHIN THE WESTERN PROTECTION ZONES ON WHICH THE WATER WAS USED DURING THE YEAR.

(c) MULTIPLY THE TOTAL NUMBER OF MUNICIPAL ACRES AND INDUSTRIAL ACRES WITHIN THE WESTERN PROTECTION ZONES ON WHICH THE WATER DETERMINED IN SUBDIVISION (a) OF THIS PARAGRAPH WAS USED DURING THE YEAR BY TWO ACRE-FEET.

(d) SUBTRACT THE PRODUCT IN SUBDIVISION (c) OF THIS PARAGRAPH FROM THE QUOTIENT IN SUBDIVISION (b) OF THIS PARAGRAPH. THE RESULT IS THE MUNICIPAL AND INDUSTRIAL REPLENISHMENT OBLIGATION FOR THE WESTERN MUNICIPAL AND INDUSTRIAL PROTECTION ZONE FOR THE YEAR, EXCEPT THAT IF THE RESULT IS LESS THAN ZERO, THERE IS NO REPLENISHMENT OBLIGATION.

2. THE DIRECTOR SHALL CALCULATE THE MUNICIPAL REPLENISHMENT OBLIGATION FOR THE WESTERN MUNICIPAL PROTECTION ZONE FOR THE YEAR AS FOLLOWS:

(a) DETERMINE THE TOTAL AMOUNT OF UNDERGROUND WATER AND STORED WATER WITHDRAWN DURING THE YEAR FROM WITHIN THE WESTERN MUNICIPAL PROTECTION ZONE FOR MUNICIPAL USES WITHIN A WESTERN PROTECTION ZONE, AS REPORTED TO THE DIRECTOR UNDER SECTIONS 45-632, 45-875.01 AND 45-2602. FOR THE PURPOSES OF THIS SUBDIVISION, STORED WATER DOES NOT INCLUDE ANY WATER STORED AT A STORAGE FACILITY LOCATED WITHIN THE WESTERN MUNICIPAL PROTECTION ZONE OR ANY WATER STORED AND RECOVERED ON AN ANNUAL BASIS PURSUANT TO SECTION 45-851.01.

(b) DIVIDE THE VOLUME OF WATER DETERMINED IN SUBDIVISION (a) OF THIS PARAGRAPH BY THE TOTAL NUMBER OF MUNICIPAL ACRES WITHIN THE WESTERN PROTECTION ZONES ON WHICH THE WATER WAS USED DURING THE YEAR.

(c) MULTIPLY THE TOTAL NUMBER OF MUNICIPAL ACRES WITHIN THE WESTERN PROTECTION ZONES ON WHICH THE WATER DETERMINED IN SUBDIVISION (a) OF THIS PARAGRAPH WAS USED DURING THE YEAR BY TWO ACRE-FEET.

(d) SUBTRACT THE PRODUCT IN SUBDIVISION (c) OF THIS PARAGRAPH FROM THE QUOTIENT IN SUBDIVISION (b) OF THIS PARAGRAPH. THE RESULT IS THE MUNICIPAL REPLENISHMENT OBLIGATION FOR THE WESTERN MUNICIPAL PROTECTION ZONE FOR THE YEAR, EXCEPT THAT IF THE RESULT IS LESS THAN ZERO, THERE IS NO REPLENISHMENT OBLIGATION.

3. THE DIRECTOR SHALL CALCULATE THE MUNICIPAL AND INDUSTRIAL REPLENISHMENT OBLIGATION FOR THE EASTERN PROTECTION ZONE NORTH FOR THE YEAR AS FOLLOWS:

(a) DETERMINE THE TOTAL AMOUNT OF UNDERGROUND WATER AND STORED WATER WITHDRAWN DURING THE YEAR FROM WITHIN THE EASTERN PROTECTION ZONE NORTH FOR MUNICIPAL USES AND INDUSTRIAL USES WITHIN AN EASTERN PROTECTION ZONE, AS REPORTED TO THE DIRECTOR UNDER SECTIONS 45-632, 45-875.01 AND 45-2602. FOR THE PURPOSES OF THIS SUBDIVISION, STORED WATER DOES NOT INCLUDE ANY WATER STORED AT A STORAGE FACILITY LOCATED WITHIN THE EASTERN PROTECTION ZONE NORTH OR ANY WATER STORED AND RECOVERED ON AN ANNUAL BASIS PURSUANT TO SECTION 45-851.01.

(b) DETERMINE THE TOTAL AMOUNT OF UNDERGROUND WATER AND STORED WATER WITHDRAWN DURING THE YEAR BY A WATER COMPANY FROM WITHIN THE EASTERN PROTECTION ZONE SOUTH AND USED FOR MUNICIPAL USES WITHIN THE EASTERN PROTECTION ZONE NORTH. FOR THE PURPOSES OF THIS SUBDIVISION, STORED WATER DOES NOT INCLUDE ANY WATER STORED AT A STORAGE FACILITY LOCATED WITHIN THE EASTERN PROTECTION ZONE SOUTH OR ANY WATER STORED AND RECOVERED ON AN ANNUAL BASIS PURSUANT TO SECTION 45-851.01.

(c) ADD THE VOLUMES OF WATER IN SUBDIVISIONS (a) AND (b) OF THIS PARAGRAPH AND THEN DIVIDE THE SUM BY THE TOTAL NUMBER OF MUNICIPAL ACRES AND INDUSTRIAL ACRES WITHIN THE EASTERN PROTECTION ZONES ON WHICH THE WATER WAS USED DURING THE YEAR.

(d) MULTIPLY THE TOTAL NUMBER OF MUNICIPAL ACRES AND INDUSTRIAL ACRES WITHIN THE EASTERN PROTECTION ZONES ON WHICH THE WATER DETERMINED IN SUBDIVISION (c) OF THIS PARAGRAPH WAS USED DURING THE YEAR BY 2.33 ACRE- FEET.

(e) SUBTRACT THE PRODUCT IN SUBDIVISION (d) OF THIS PARAGRAPH FROM THE QUOTIENT IN SUBDIVISION (c) OF THIS PARAGRAPH. THE RESULT IS THE MUNICIPAL AND INDUSTRIAL REPLENISHMENT OBLIGATION FOR THE EASTERN PROTECTION ZONE NORTH FOR THE YEAR, EXCEPT THAT IF THE RESULT IS LESS THAN ZERO, THERE IS NO REPLENISHMENT OBLIGATION.

4. THE DIRECTOR SHALL CALCULATE THE MUNICIPAL AND INDUSTRIAL REPLENISHMENT OBLIGATION FOR THE EASTERN PROTECTION ZONE SOUTH FOR THE YEAR AS FOLLOWS:

(a) DETERMINE THE TOTAL AMOUNT OF UNDERGROUND WATER AND STORED WATER WITHDRAWN DURING THE YEAR FROM WITHIN THE EASTERN PROTECTION ZONE SOUTH FOR MUNICIPAL USES AND INDUSTRIAL USES WITHIN AN EASTERN PROTECTION ZONE, AS REPORTED TO THE DIRECTOR UNDER SECTIONS 45-632, 45-875.01 AND 45-2602. FOR THE PURPOSES OF THIS SUBDIVISION, STORED WATER DOES NOT INCLUDE ANY WATER STORED AT A STORAGE FACILITY LOCATED WITHIN

THE EASTERN PROTECTION ZONE SOUTH OR ANY WATER STORED AND RECOVERED ON AN ANNUAL BASIS PURSUANT TO SECTION 45-851.01.

(b) DETERMINE THE TOTAL AMOUNT OF UNDERGROUND WATER AND STORED WATER WITHDRAWN DURING THE YEAR BY A WATER COMPANY FROM WITHIN THE EASTERN PROTECTION ZONE SOUTH AND USED FOR MUNICIPAL USES WITHIN THE EASTERN PROTECTION ZONE NORTH. FOR THE PURPOSES OF THIS SUBDIVISION, STORED WATER DOES NOT INCLUDE ANY WATER STORED AT A STORAGE FACILITY LOCATED WITHIN THE EASTERN PROTECTION ZONE SOUTH OR ANY WATER STORED AND RECOVERED ON AN ANNUAL BASIS PURSUANT TO SECTION 45-851.01.

(c) SUBTRACT THE VOLUME IN SUBDIVISION (b) OF THIS PARAGRAPH FROM THE VOLUME IN SUBDIVISION (a) OF THIS PARAGRAPH AND THEN DIVIDE THE DIFFERENCE BY THE TOTAL NUMBER OF MUNICIPAL ACRES AND INDUSTRIAL ACRES WITHIN THE EASTERN PROTECTION ZONES ON WHICH THE WATER DETERMINED IN SUBDIVISION (a) OF THIS PARAGRAPH OTHER THAN WATER DETERMINED IN SUBDIVISION (b) OF THIS PARAGRAPH WAS USED DURING THE YEAR.

(d) MULTIPLY THE TOTAL NUMBER OF MUNICIPAL ACRES AND INDUSTRIAL ACRES WITHIN THE EASTERN PROTECTION ZONES ON WHICH THE WATER DETERMINED IN SUBDIVISION (a) OF THIS PARAGRAPH OTHER THAN WATER DETERMINED IN SUBDIVISION (b) OF THIS PARAGRAPH WAS USED DURING THE YEAR BY 2.33 ACRE-FEET.

(e) SUBTRACT THE PRODUCT IN SUBDIVISION (d) OF THIS PARAGRAPH FROM THE QUOTIENT IN SUBDIVISION (c) OF THIS PARAGRAPH. THE RESULT IS THE MUNICIPAL AND INDUSTRIAL REPLENISHMENT OBLIGATION FOR THE EASTERN PROTECTION ZONE SOUTH FOR THE YEAR, EXCEPT THAT IF THE RESULT IS LESS THAN ZERO, THERE IS NO REPLENISHMENT OBLIGATION.

5. THE DIRECTOR SHALL CALCULATE THE IRRIGATION REPLENISHMENT OBLIGATION FOR THE WESTERN MUNICIPAL AND INDUSTRIAL PROTECTION ZONE AND THE WESTERN MUNICIPAL PROTECTION ZONE FOR THE YEAR AS FOLLOWS:

(a) DETERMINE THE TOTAL AMOUNT OF UNDERGROUND WATER AND STORED WATER WITHDRAWN DURING THE YEAR FROM WITHIN THE WESTERN MUNICIPAL AND INDUSTRIAL PROTECTION ZONE AND THE WESTERN MUNICIPAL PROTECTION ZONE AND USED FOR THE IRRIGATION OF LANDS WITHIN THOSE PROTECTION ZONES, AS REPORTED TO THE DIRECTOR ON THE ANNUAL REPORTS REQUIRED BY SECTIONS 45-632, 45-875.01 AND 45-2602. FOR THE PURPOSES OF THIS SUBDIVISION, STORED WATER DOES NOT INCLUDE ANY WATER STORED AT A STORAGE FACILITY LOCATED WITHIN THE WESTERN MUNICIPAL AND INDUSTRIAL PROTECTION ZONE OR THE WESTERN MUNICIPAL PROTECTION ZONE.

(b) FOR EACH FARM WITHIN THE WESTERN MUNICIPAL AND INDUSTRIAL PROTECTION ZONE AND THE WESTERN MUNICIPAL PROTECTION ZONE FOR WHICH AN ANNUAL REPORT IS FILED UNDER SECTION 45-632, 45-875.01 OR 45-2602 FOR THE YEAR, CALCULATE THE MAXIMUM AMOUNT OF GROUNDWATER THAT MAY BE USED ON THE FARM FOR IRRIGATION PURPOSES DURING THE YEAR WITHOUT CAUSING THE FLEXIBILITY ACCOUNT FOR THE FARM TO BE IN ARREARS IN EXCESS OF THE AMOUNT ALLOWED UNDER SECTION 45-467, SUBSECTION I. IN MAKING THIS CALCULATION, THE DIRECTOR SHALL USE THE IRRIGATION WATER DUTY ESTABLISHED FOR THE FARM FOR THE THIRD MANAGEMENT PERIOD PURSUANT TO SECTION 45-566, SUBSECTION A, PARAGRAPH 1.

(c) ADD TOGETHER THE AMOUNT CALCULATED FOR EACH FARM UNDER SUBDIVISION (b) OF THIS PARAGRAPH.

(d) SUBTRACT THE AMOUNT IN SUBDIVISION (c) OF THIS PARAGRAPH FROM THE AMOUNT IN SUBDIVISION (a) OF THIS PARAGRAPH. THE DIFFERENCE IS THE IRRIGATION REPLENISHMENT OBLIGATION FOR THE YEAR FOR THE WESTERN MUNICIPAL AND INDUSTRIAL PROTECTION ZONE AND THE WESTERN MUNICIPAL PROTECTION ZONE, EXCEPT THAT IF THE DIFFERENCE IS LESS THAN ZERO, THERE IS NO REPLENISHMENT OBLIGATION.

6. THE DIRECTOR SHALL CALCULATE THE IRRIGATION REPLENISHMENT OBLIGATION FOR THE EASTERN PROTECTION ZONE NORTH AND THE EASTERN PROTECTION ZONE SOUTH FOR THE YEAR AS FOLLOWS:

(a) DETERMINE THE TOTAL AMOUNT OF UNDERGROUND WATER AND STORED WATER WITHDRAWN DURING THE YEAR FROM WITHIN THE EASTERN PROTECTION ZONE NORTH AND THE EASTERN PROTECTION ZONE SOUTH AND USED FOR THE IRRIGATION OF LANDS WITHIN THOSE PROTECTION ZONES, AS REPORTED TO THE DIRECTOR ON THE ANNUAL REPORTS REQUIRED BY SECTION 45-632, SECTION 45-875.01, SUBSECTION D AND SECTION 45-2602. FOR THE PURPOSES OF THIS SUBDIVISION, STORED WATER DOES NOT INCLUDE ANY WATER STORED AT A STORAGE FACILITY LOCATED WITHIN THE EASTERN PROTECTION ZONE NORTH OR THE EASTERN PROTECTION ZONE SOUTH.

(b) FOR EACH FARM WITHIN THE EASTERN PROTECTION ZONE NORTH AND THE EASTERN PROTECTION ZONE SOUTH FOR WHICH AN ANNUAL REPORT IS FILED UNDER SECTION 45-632, 45-875.01 OR 45-2602 FOR THE YEAR, CALCULATE THE MAXIMUM AMOUNT OF GROUNDWATER THAT MAY BE USED ON THE FARM FOR IRRIGATION PURPOSES DURING THE YEAR WITHOUT CAUSING THE FLEXIBILITY ACCOUNT FOR THE FARM TO BE IN ARREARS IN EXCESS OF THE AMOUNT ALLOWED UNDER SECTION 45-467, SUBSECTION I. IN MAKING THIS CALCULATION, THE DIRECTOR SHALL USE THE

IRRIGATION WATER DUTY ESTABLISHED FOR THE FARM FOR THE THIRD MANAGEMENT PERIOD PURSUANT TO SECTION 45-566, SUBSECTION A, PARAGRAPH 1.

(c) ADD TOGETHER THE AMOUNT CALCULATED FOR EACH FARM UNDER SUBDIVISION (b) OF THIS PARAGRAPH.

(d) SUBTRACT THE AMOUNT IN SUBDIVISION (c) OF THIS PARAGRAPH FROM THE AMOUNT IN SUBDIVISION (a) OF THIS PARAGRAPH. THE DIFFERENCE IS THE IRRIGATION REPLENISHMENT OBLIGATION FOR THE YEAR FOR THE EASTERN PROTECTION ZONE NORTH AND THE EASTERN PROTECTION ZONE SOUTH, EXCEPT THAT IF THE DIFFERENCE IS LESS THAN ZERO, THERE IS NO REPLENISHMENT OBLIGATION.

7. THROUGH 2023, THE DIRECTOR SHALL CALCULATE THE WATER COMPANY REPLENISHMENT OBLIGATION FOR THE YEAR BY DETERMINING THE AMOUNT OF UNDERGROUND WATER AND STORED WATER WITHDRAWN DURING THE YEAR FROM WITHIN AN EASTERN PROTECTION ZONE BY A WATER COMPANY AND TRANSPORTED FOR MUNICIPAL USES OUTSIDE OF THE EASTERN PROTECTION ZONES AND THEN SUBTRACTING FROM THAT AMOUNT ONE THOUSAND TWO HUNDRED SEVENTY-FIVE ACRE-FEET. THE DIFFERENCE IS THE WATER COMPANY REPLENISHMENT OBLIGATION FOR THE YEAR, EXCEPT THAT IF THE DIFFERENCE IS LESS THAN ZERO, THERE IS NO REPLENISHMENT OBLIGATION. FOR THE PURPOSES OF THIS PARAGRAPH, STORED WATER DOES NOT INCLUDE ANY WATER STORED AT A STORAGE FACILITY LOCATED WITHIN AN EASTERN PROTECTION ZONE AND RECOVERED WITHIN THAT PROTECTION ZONE.

45-2623. Satisfaction of southside replenishment obligations

A. THE AUTHORITY SHALL SATISFY THE SOUTHSIDE REPLENISHMENT OBLIGATIONS FOR A PARTICULAR YEAR NO LATER THAN JUNE 1 OF THE THIRD CALENDAR YEAR FOLLOWING THAT YEAR, EXCEPT THAT THE AUTHORITY SHALL SATISFY THE IRRIGATION REPLENISHMENT OBLIGATIONS DESCRIBED IN SECTION 45-2622, SUBSECTION B, PARAGRAPHS 5 AND 6 FOR A PARTICULAR YEAR NO LATER THAN JUNE 1 OF THE FIFTH CALENDAR YEAR AFTER THAT YEAR.

B. A SOUTHSIDE REPLENISHMENT OBLIGATION FOR A YEAR IS SATISFIED WHEN THE AUTHORITY PERFORMS ONE OR MORE OF THE REPLENISHMENT ACTIVITIES DESCRIBED IN SUBSECTION C OF THIS SECTION IN AN AMOUNT EQUAL TO THE REPLENISHMENT OBLIGATION.

C. THE AUTHORITY SHALL SATISFY A SOUTHSIDE REPLENISHMENT OBLIGATION FOR A YEAR BY PERFORMING ONE OR MORE OF THE FOLLOWING REPLENISHMENT ACTIVITIES, AS APPLICABLE:

1. FOR ANY REPLENISHMENT OBLIGATION, THE AUTHORITY MAY DELIVER WATER ACQUIRED BY THE AUTHORITY UNDER CHAPTER 14 OF THIS TITLE TO THE COMMUNITY FOR DIRECT USE OR FOR UNDERGROUND STORAGE AND RECOVERY WITHIN THE RESERVATION. THE AUTHORITY SHALL NOT DELIVER WATER TO THE COMMUNITY UNDER THIS PARAGRAPH UNLESS THE COMMUNITY AGREES IN WRITING TO ACCEPT THE WATER AND SPECIFIES IN WRITING THE LOCATIONS, TIMES AND QUANTITIES OF THE DELIVERIES.

2. FOR A REPLENISHMENT OBLIGATION APPLICABLE TO THE WESTERN MUNICIPAL AND INDUSTRIAL PROTECTION ZONE OR THE WESTERN MUNICIPAL PROTECTION ZONE, THE AUTHORITY MAY EXTINGUISH LONG-TERM STORAGE CREDITS EARNED OR ACQUIRED BY THE AUTHORITY UNDER CHAPTER 3.1 OF THIS TITLE, AS AUTHORIZED BY CHAPTER 14 OF THIS TITLE, AND TO WHICH BOTH OF THE FOLLOWING APPLY:

(a) THE CREDITS WERE EARNED WITHIN FIVE YEARS BEFORE THE DATE THE CREDITS ARE EXTINGUISHED.

(b) THE CREDITS WERE EARNED FOR THE STORAGE OF WATER IN THE WESTERN MUNICIPAL AND INDUSTRIAL PROTECTION ZONE OR THE WESTERN MUNICIPAL PROTECTION ZONE.

3. FOR A REPLENISHMENT OBLIGATION APPLICABLE TO THE EASTERN PROTECTION ZONE NORTH OR THE EASTERN PROTECTION ZONE SOUTH, THE AUTHORITY MAY EXTINGUISH LONG-TERM STORAGE CREDITS EARNED OR ACQUIRED BY THE AUTHORITY UNDER CHAPTER 3.1 OF THIS TITLE, AS AUTHORIZED UNDER CHAPTER 14 OF THIS TITLE, AND TO WHICH BOTH OF THE FOLLOWING APPLY:

(a) THE CREDITS WERE EARNED WITHIN SEVEN YEARS BEFORE THE DATE THE CREDITS ARE EXTINGUISHED.

(b) THE CREDITS WERE EARNED FOR THE STORAGE OF WATER IN THE EASTERN PROTECTION ZONE NORTH OR THE EASTERN PROTECTION ZONE SOUTH.

4. FOR ANY REPLENISHMENT OBLIGATION, THE AUTHORITY MAY DEBIT THE COMMUNITY'S ACCOUNT IN THE SOUTHSIDE REPLENISHMENT BANK ESTABLISHED UNDER SECTION 45-2624 IN AN AMOUNT NOT TO EXCEED THE AMOUNT OF WATER IN THE ACCOUNT.

D. THE AUTHORITY SHALL MAINTAIN IN ITS RECORDS AN ACCOUNT OF THE REPLENISHMENT ACTIVITIES PERFORMED BY THE AUTHORITY TO SATISFY A SOUTHSIDE REPLENISHMENT OBLIGATION. ANY WATER DELIVERED TO THE COMMUNITY UNDER SUBSECTION C, PARAGRAPH 1 OF THIS SECTION, ANY LONG-TERM STORAGE CREDITS EXTINGUISHED UNDER SUBSECTION C, PARAGRAPHS 2 AND 3 OF THIS SECTION AND ANY DEBITS REGISTERED TO THE SOUTHSIDE REPLENISHMENT BANK UNDER SUBSECTION C, PARAGRAPH 4 OF THIS SECTION

SHALL BE APPLIED TOWARD THE SATISFACTION OF A REPLENISHMENT OBLIGATION ON AN ACRE-FOOT PER ACRE-FOOT BASIS.

E. AFTER THE AUTHORITY PERFORMS A REPLENISHMENT ACTIVITY UNDER SUBSECTION C OF THIS SECTION, THE AUTHORITY SHALL NOTIFY THE COMMUNITY THAT THE REPLENISHMENT ACTIVITY HAS BEEN PERFORMED AND IDENTIFY THE REPLENISHMENT OBLIGATION FOR WHICH THE ACTIVITY WAS PERFORMED.

45-2624. Southside replenishment bank; credits

A. THE SOUTHSIDE REPLENISHMENT BANK IS ESTABLISHED AS A SEPARATE BANK IN THE RECORDS OF THE AUTHORITY. THE AUTHORITY SHALL ESTABLISH AN ACCOUNT IN THE SOUTHSIDE REPLENISHMENT BANK FOR THE COMMUNITY.

B. BEGINNING WITH THE FIRST CALENDAR YEAR IN WHICH THIS SECTION BECOMES EFFECTIVE, THE AUTHORITY SHALL ANNUALLY DELIVER TO THE COMMUNITY IN THE MANNER PROVIDED IN SUBSECTION D OF THIS SECTION, AND AT NO COST TO THE COMMUNITY, NOT LESS THAN ONE THOUSAND ACRE-FEET OF WATER ACQUIRED BY THE AUTHORITY UNDER CHAPTER 14 OF THIS TITLE UNTIL THE COMMUNITY'S ACCOUNT HAS A CREDIT BALANCE OF FIFTEEN THOUSAND ACRE-FEET. THE AUTHORITY SHALL REGISTER ONE CREDIT TO THE COMMUNITY'S ACCOUNT FOR EACH ACRE-FOOT OF WATER DELIVERED TO THE COMMUNITY UNDER THIS SUBSECTION.

C. IF ANY DEBIT REGISTERED TO THE SOUTHSIDE REPLENISHMENT BANK UNDER SECTION 45-2623, SUBSECTION C, PARAGRAPH 4 CAUSES THE COMMUNITY'S ACCOUNT TO HAVE A CREDIT BALANCE OF LESS THAN FIVE THOUSAND ACRE-FEET, THE AUTHORITY SHALL DELIVER WATER TO THE COMMUNITY IN THE MANNER PROVIDED IN SUBSECTION D OF THIS SECTION IN AN AMOUNT SUFFICIENT TO BRING THE BALANCE UP TO AT LEAST FIVE THOUSAND ACRE-FEET BY THE END OF THE CALENDAR YEAR.

D. THE AUTHORITY SHALL ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE COMMUNITY PURSUANT TO TITLE 11, CHAPTER 7, ARTICLE 3, WHICH SHALL DESCRIBE IN DETAIL THE PROCEDURES FOR THE DELIVERY OF WATER TO THE COMMUNITY UNDER THIS SECTION, INCLUDING THE METHOD BY WHICH THE COMMUNITY WILL SCHEDULE AND ORDER WATER THAT THE AUTHORITY IS REQUIRED TO DELIVER TO THE COMMUNITY UNDER SUBSECTIONS B AND C OF THIS SECTION. THE PROCEDURES SHALL NOT REQUIRE THE AUTHORITY TO DELIVER IN ANY MONTH MORE THAN ELEVEN PER CENT OF THE WATER REQUIRED TO BE DELIVERED DURING A YEAR UNDER SUBSECTION B OF THIS SECTION.

45-2625. Replenishment related to transportation of underground water or stored water away from an eastern protection zone or a western protection zone for nonirrigation use

IF A PERSON TRANSPORTING UNDERGROUND WATER OR STORED WATER AWAY FROM AN EASTERN PROTECTION ZONE OR A WESTERN PROTECTION ZONE FOR A NONIRRIGATION USE ELECTS TO REPLENISH THE UNDERGROUND WATER OR STORED WATER SO THAT THE TRANSPORTATION QUALIFIES AS AN AUTHORIZED TRANSPORTATION UNDER SECTION 45-2611, SUBSECTION B, PARAGRAPH 2, THE PERSON SHALL REPLENISH THE WATER BY PERFORMING ONE OR BOTH OF THE FOLLOWING REPLENISHMENT ACTIVITIES IN AN AMOUNT EQUIVALENT TO THE AMOUNT OF WATER TRANSPORTED:

1. PAY THE AUTHORITY AN AMOUNT OF MONEY SUFFICIENT TO ALLOW THE AUTHORITY TO CREDIT THE COMMUNITY'S ACCOUNT BY DELIVERING WATER TO THE COMMUNITY IN ACCORDANCE WITH THE DELIVERY PROCEDURES SET FORTH IN THE INTERGOVERNMENTAL AGREEMENT DESCRIBED IN SECTION 45-2624, SUBSECTION D. ANY CREDITS REGISTERED TO THE COMMUNITY'S ACCOUNT UNDER THIS PARAGRAPH SHALL NOT BE USED TO MEET THE AUTHORITY'S REQUIREMENT TO DELIVER WATER TO THE COMMUNITY UNDER SECTION 45-2624, SUBSECTION B OR C.
2. REPLENISH WATER IN ANY MANNER THAT IS APPROVED IN WRITING BY THE COMMUNITY AND THAT IS NOT PROHIBITED UNDER THIS TITLE.

45-2626. Individual replenishment obligations of persons using underground water or stored water within an eastern protection zone or a western protection zone for industrial use; enforcement action; notice

A. IF THERE IS A MUNICIPAL AND INDUSTRIAL REPLENISHMENT OBLIGATION FOR THE EASTERN PROTECTION ZONE NORTH FOR ANY YEAR, AS CALCULATED UNDER SECTION 45-2622, SUBSECTION B, ANY PERSON WHO WITHDRAWS UNDERGROUND WATER OR STORED WATER FROM WITHIN THAT PROTECTION ZONE DURING THE YEAR FOR AN INDUSTRIAL USE WITHIN AN EASTERN PROTECTION ZONE IN AN AMOUNT THAT EXCEEDS A VOLUME CALCULATED BY MULTIPLYING THE NUMBER OF INDUSTRIAL ACRES ASSOCIATED WITH THE INDUSTRIAL USE BY THREE AND ONE-HALF ACRE-FEET SHALL HAVE AN INDIVIDUAL REPLENISHMENT OBLIGATION FOR THAT YEAR IN THE AMOUNT OF THE EXCESS, EXCEPT THAT IF THE INDUSTRIAL USE WAS COMMENCED PRIOR TO JANUARY 1, 2003, THE REPLENISHMENT OBLIGATION SHALL BE LIMITED TO THE VOLUME OF GROUNDWATER WITHDRAWN IN EXCESS OF THE AMOUNT ALLOWED UNDER THE INDUSTRIAL USER'S TYPE 1 NONIRRIGATION GRANDFATHERED RIGHT, TYPE 2 NONIRRIGATION GRANDFATHERED RIGHT OR GENERAL INDUSTRIAL USE PERMIT ISSUED UNDER SECTION 45-515. FOR THE PURPOSES OF THIS SUBSECTION, STORED WATER DOES NOT INCLUDE ANY WATER STORED AT A STORAGE FACILITY LOCATED WITHIN THE EASTERN PROTECTION ZONE NORTH OR ANY WATER STORED AND RECOVERED ON AN ANNUAL BASIS PURSUANT TO SECTION 45-851.01.

B. IF THERE IS A MUNICIPAL AND INDUSTRIAL REPLENISHMENT OBLIGATION FOR THE EASTERN PROTECTION ZONE SOUTH FOR ANY YEAR, AS CALCULATED UNDER SECTION 45-2622, SUBSECTION B, ANY PERSON WHO WITHDRAWS UNDERGROUND WATER OR STORED WATER FROM WITHIN THAT PROTECTION ZONE DURING THE YEAR FOR AN INDUSTRIAL USE WITHIN AN EASTERN PROTECTION ZONE IN AN AMOUNT THAT EXCEEDS A VOLUME CALCULATED BY MULTIPLYING THE NUMBER OF INDUSTRIAL ACRES ASSOCIATED WITH THE INDUSTRIAL USE BY THREE AND ONE-HALF ACRE-FEET SHALL HAVE AN INDIVIDUAL REPLENISHMENT OBLIGATION FOR THAT YEAR IN THE AMOUNT OF THE EXCESS, EXCEPT THAT IF THE INDUSTRIAL USE WAS COMMENCED PRIOR TO JANUARY 1, 2003, THE REPLENISHMENT OBLIGATION SHALL BE LIMITED TO THE VOLUME OF GROUNDWATER WITHDRAWN IN EXCESS OF THE AMOUNT ALLOWED UNDER THE INDUSTRIAL USER'S TYPE 1 NONIRRIGATION GRANDFATHERED RIGHT, TYPE 2 NONIRRIGATION GRANDFATHERED RIGHT OR GENERAL INDUSTRIAL USE PERMIT ISSUED UNDER SECTION 45-515. FOR THE PURPOSES OF THIS SUBSECTION, STORED WATER DOES NOT INCLUDE ANY WATER STORED AT A STORAGE FACILITY LOCATED WITHIN THE EASTERN PROTECTION ZONE SOUTH OR ANY WATER STORED AND RECOVERED ON AN ANNUAL BASIS PURSUANT TO SECTION 45-851.01.

C. IF THERE IS A MUNICIPAL AND INDUSTRIAL REPLENISHMENT OBLIGATION FOR THE WESTERN MUNICIPAL AND INDUSTRIAL PROTECTION ZONE FOR ANY YEAR, AS CALCULATED UNDER SECTION 45-2622, SUBSECTION B, ANY PERSON WHO WITHDRAWS UNDERGROUND WATER OR STORED WATER FROM WITHIN THAT PROTECTION ZONE DURING THE YEAR FOR AN INDUSTRIAL USE WITHIN THAT PROTECTION ZONE IN AN AMOUNT THAT EXCEEDS A VOLUME CALCULATED BY MULTIPLYING THE NUMBER OF INDUSTRIAL ACRES ASSOCIATED WITH THE INDUSTRIAL USE BY THREE AND ONE-HALF ACRE-FEET SHALL HAVE AN INDIVIDUAL REPLENISHMENT OBLIGATION FOR THAT YEAR IN THE AMOUNT OF THE EXCESS, EXCEPT THAT IF THE INDUSTRIAL USE WAS COMMENCED PRIOR TO JANUARY 1, 2003, THE REPLENISHMENT OBLIGATION SHALL BE LIMITED TO THE VOLUME OF GROUNDWATER WITHDRAWN IN EXCESS OF THE AMOUNT ALLOWED UNDER THE INDUSTRIAL USER'S TYPE 1 NONIRRIGATION GRANDFATHERED RIGHT, TYPE 2 NONIRRIGATION GRANDFATHERED RIGHT OR GENERAL INDUSTRIAL USE PERMIT ISSUED UNDER SECTION 45-515. FOR THE PURPOSES OF THIS SUBSECTION, STORED WATER DOES NOT INCLUDE ANY WATER STORED AT A STORAGE FACILITY LOCATED WITHIN THE WESTERN MUNICIPAL AND INDUSTRIAL PROTECTION ZONE OR ANY WATER STORED AND RECOVERED ON AN ANNUAL BASIS PURSUANT TO SECTION 45-851.01.

D. A PERSON WHO HAS AN INDIVIDUAL REPLENISHMENT OBLIGATION UNDER SUBSECTION A, B OR C OF THIS SECTION SHALL SATISFY THE OBLIGATION NO LATER THAN TWELVE MONTHS AFTER THE AUTHORITY SENDS WRITTEN NOTICE OF THE OBLIGATION TO THE PERSON AS PROVIDED IN SUBSECTION E OF THIS SECTION. THE PERSON SHALL SATISFY THE OBLIGATION BY PERFORMING ONE OF THE FOLLOWING REPLENISHMENT ACTIVITIES IN AN AMOUNT EQUIVALENT TO THE REPLENISHMENT OBLIGATION:

1. PAY THE AUTHORITY THE ACTUAL OR ESTIMATED COST OF REPLENISHING THE WATER UNDER SECTION 45-2623, SUBSECTION C AS DETERMINED BY THE AUTHORITY AND INCLUDED IN THE NOTICE DESCRIBED IN SUBSECTION E OF THIS SECTION.

2. IF APPROVED BY THE AUTHORITY, DELIVER WATER OR LONG-TERM STORAGE CREDITS TO THE AUTHORITY IN THE AMOUNT OF THE REPLENISHMENT OBLIGATION.

E. NO LATER THAN DECEMBER 31 OF EACH YEAR, THE AUTHORITY SHALL SEND WRITTEN NOTICE TO EACH PERSON WHO HAS AN INDIVIDUAL REPLENISHMENT OBLIGATION FOR THE PRECEDING YEAR. THE NOTICE SHALL BE SENT BY FIRST-CLASS MAIL TO THE PERSON'S MAILING ADDRESS ON FILE WITH THE DEPARTMENT. THE NOTICE SHALL SPECIFY THE AMOUNT OF THE REPLENISHMENT OBLIGATION, THE AUTHORITY'S ACTUAL OR ESTIMATED COST OF REPLENISHING THE WATER UNDER SECTION 45-2623, SUBSECTION C, THE DATE BY WHICH THE PERSON MUST SATISFY THE REPLENISHMENT OBLIGATION AND THE MANNER IN WHICH THE PERSON MAY SATISFY THE REPLENISHMENT OBLIGATION.

F. IF A PERSON WITH AN INDIVIDUAL REPLENISHMENT OBLIGATION FAILS TO SATISFY THE REPLENISHMENT OBLIGATION BY THE DATE SPECIFIED IN THE WRITTEN NOTICE RECEIVED FROM THE AUTHORITY, THE PERSON SHALL BE SUBJECT TO AN ENFORCEMENT ACTION BY THE DEPARTMENT PURSUANT TO ARTICLE 6 OF THIS CHAPTER.

G. THE DIRECTOR SHALL INCLUDE WRITTEN NOTICE OF THE REQUIREMENTS OF THIS SECTION IN ANY GROUNDWATER WITHDRAWAL PERMIT, NONIRRIGATION GRANDFATHERED RIGHT AUTHORIZATION TO DRILL A NONEXEMPT WELL UNDER SECTION 45-596 OR RECOVERY WELL PERMIT ISSUED IN AN EASTERN PROTECTION ZONE OR THE WESTERN MUNICIPAL AND INDUSTRIAL PROTECTION ZONE AFTER THE EFFECTIVE DATE OF THIS SECTION.

ARTICLE 6. ENFORCEMENT

45-2651. Inspections, investigations and audits

A. THE DIRECTOR OR THE DIRECTOR'S AUTHORIZED REPRESENTATIVE MAY ENTER, AT REASONABLE TIMES, PRIVATE OR PUBLIC PROPERTY AND THE OWNER, MANAGER OR

OCCUPANT OF THE PROPERTY SHALL PERMIT THE ENTRY TO ASCERTAIN COMPLIANCE WITH THIS CHAPTER.

B. INSPECTIONS AND INVESTIGATIONS UNDER SUBSECTION A SHALL BE ON REASONABLE NOTICE TO THE OWNER, MANAGER OR OCCUPANT OF THE PROPERTY UNLESS REASONABLE GROUNDS EXIST TO BELIEVE THAT SUCH NOTICE WOULD FRUSTRATE THE ENFORCEMENT OF THIS CHAPTER. THE DIRECTOR MAY APPLY FOR AND OBTAIN WARRANTS. IF WARRANTS ARE REQUIRED BY LAW, THE DIRECTOR SHALL APPLY FOR AND OBTAIN WARRANTS FOR ENTRY AND INSPECTION TO CARRY OUT THE ADMINISTRATIVE AND ENFORCEMENT PURPOSES OF THIS ARTICLE.

C. THE DIRECTOR SHALL PROVIDE A WRITTEN REPORT OF EACH INSPECTION, INVESTIGATION AND AUDIT UNDER THIS SECTION TO THE PERSON WHO IS SUBJECT TO THE ACTION.

45-2652. Cease and desist order; hearing; injunctive relief

A. IF THE DIRECTOR HAS REASON TO BELIEVE THAT A PERSON IS VIOLATING OR HAS VIOLATED THIS CHAPTER OR AN ORDER ISSUED PURSUANT TO THIS CHAPTER, THE DIRECTOR MAY GIVE THE PERSON WRITTEN NOTICE THAT THE PERSON MAY APPEAR AND SHOW CAUSE AT AN ADMINISTRATIVE HEARING IN THE COUNTY IN WHICH THE VIOLATION IS ALLEGED TO HAVE OCCURRED WHY THE PERSON SHOULD NOT BE ORDERED TO CEASE AND DESIST FROM THE VIOLATION.

B. THE DECISION AND ORDER OF THE DIRECTOR UNDER THIS SECTION MAY TAKE SUCH FORM AS THE DIRECTOR DETERMINES TO BE REASONABLE AND APPROPRIATE AND MAY INCLUDE A DETERMINATION OF VIOLATION, A CEASE AND DESIST ORDER, THE RECOMMENDATION OF A CIVIL PENALTY AND AN ORDER DIRECTING THAT POSITIVE STEPS BE TAKEN TO ABATE OR AMELIORATE ANY HARM OR DAMAGE ARISING FROM THE VIOLATION. THE PERSON AFFECTED MAY SEEK JUDICIAL REVIEW OF THE FINAL DECISION OF THE DIRECTOR AS PROVIDED IN SECTION 45-114, SUBSECTION B IN THE SUPERIOR COURT IN THE COUNTY IN WHICH THE VIOLATION IS ALLEGED TO HAVE OCCURRED.

C. IF THE PERSON CONTINUES THE VIOLATION AFTER THE DIRECTOR HAS ISSUED A FINAL DECISION AND ORDER PURSUANT TO SUBSECTION B OF THIS SECTION, THE DIRECTOR MAY APPLY FOR A TEMPORARY RESTRAINING ORDER OR PRELIMINARY OR PERMANENT INJUNCTION FROM THE SUPERIOR COURT IN THE COUNTY IN WHICH THE VIOLATION IS ALLEGED TO HAVE OCCURRED ACCORDING TO THE ARIZONA RULES OF CIVIL PROCEDURE. A DECISION TO SEEK INJUNCTIVE RELIEF DOES NOT PRECLUDE OTHER FORMS OF RELIEF OR ENFORCEMENT AGAINST THE VIOLATOR.

D. SECTION 45-114, SUBSECTIONS A AND B GOVERN ADMINISTRATIVE PROCEEDINGS, REHEARING OR REVIEW AND JUDICIAL REVIEW OF FINAL DECISIONS OF THE DIRECTOR UNDER THIS SECTION.

45-2653. Violation; civil penalties

A. A PERSON WHO IS DETERMINED PURSUANT TO SECTION 45-2652 TO BE IN VIOLATION OF THIS CHAPTER OR AN ORDER ISSUED PURSUANT TO THIS CHAPTER MAY BE ASSESSED A CIVIL PENALTY IN AN AMOUNT NOT EXCEEDING ONE THOUSAND DOLLARS PER DAY OF VIOLATION.

B. AN ACTION TO RECOVER PENALTIES UNDER THIS SECTION SHALL BE BROUGHT BY THE DIRECTOR IN THE SUPERIOR COURT IN THE COUNTY IN WHICH THE VIOLATION OCCURRED.

C. IN DETERMINING THE AMOUNT OF THE PENALTY, THE COURT SHALL CONSIDER THE DEGREE OF HARM CAUSED BY THE VIOLATION, WHETHER THE VIOLATION WAS KNOWING OR WILFULL, THE PAST CONDUCT OF THE DEFENDANT, WHETHER THE DEFENDANT SHOULD HAVE BEEN ON NOTICE OF THE VIOLATION, WHETHER THE DEFENDANT HAS TAKEN STEPS TO CEASE, REMOVE OR MITIGATE THE VIOLATION AND ANY OTHER RELEVANT INFORMATION.

D. ALL CIVIL PENALTIES ASSESSED PURSUANT TO THIS SECTION SHALL BE DEPOSITED, PURSUANT TO SECTIONS 35-146 AND 35-147, IN THE STATE GENERAL FUND.

45-2654. Violation; classification

UNLESS OTHERWISE PROVIDED, A PERSON WHO KNOWINGLY VIOLATES OR REFUSES TO COMPLY WITH THIS CHAPTER OR AN ORDER ISSUED PURSUANT TO THIS CHAPTER IS GUILTY OF A CLASS 2 MISDEMEANOR. A PERSON WHO, AFTER NOTICE OF A VIOLATION, CONTINUES IN VIOLATION OF THIS CHAPTER OR AN ORDER ISSUED PURSUANT TO THIS CHAPTER IS GUILTY OF A SEPARATE OFFENSE FOR EACH DAY OF VIOLATION.

Sec. 10. Title 45, Arizona Revised Statutes, is amended by adding chapter 16, to read:
CHAPTER 16

TOHONO O'ODHAM WATER SETTLEMENT PROGRAM

ARTICLE 1. GENERAL PROVISIONS

45-2701. Definitions

UNLESS THE CONTEXT OTHERWISE REQUIRES, THE TERMS DEFINED IN SECTIONS 45-402 AND 45-802.01 HAVE THE SAME MEANING IN THIS CHAPTER AND FOR THE PURPOSES OF THIS CHAPTER:

1. "EXEMPT WELL" MEANS A WELL THAT QUALIFIES AS AN EXEMPT WELL UNDER SECTION 45-454 IN EFFECT ON JANUARY 1, 2005.

2. "NATION" MEANS THE TOHONO O'ODHAM NATION ORGANIZED UNDER A CONSTITUTION APPROVED IN ACCORDANCE WITH SECTION 16 OF THE ACT OF JUNE 18, 1934 (25 UNITED STATES CODE SECTION 476).
3. "NONEXEMPT WELL" MEANS ANY WELL, INCLUDING A RECOVERY WELL, THAT DOES NOT QUALIFY AS AN EXEMPT WELL OR A REPLACEMENT WELL.
4. "REPLACEMENT WELL" MEANS A WELL THAT QUALIFIES AS A REPLACEMENT WELL AT APPROXIMATELY THE SAME LOCATION UNDER THE RULES ADOPTED BY THE DIRECTOR PURSUANT TO SECTION 45-579, SUBSECTION B AND THAT IS NO MORE THAN SIX HUNDRED SIXTY FEET FROM THE WELL IT IS REPLACING.
5. "RESERVATION" MEANS THE SAN XAVIER INDIAN RESERVATION ESTABLISHED BY EXECUTIVE ORDER OF JULY 1, 1874.
6. "TOHONO O'ODHAM SETTLEMENT AGREEMENT" MEANS THE AGREEMENT DATED APRIL 30, 2003 BETWEEN THE NATION, THIS STATE AND OTHER PARTIES, AS AMENDED BEFORE THE EFFECTIVE DATE OF THIS SECTION, A COPY OF WHICH IS ON FILE IN THE DEPARTMENT.

45-2702. Jurisdiction

THE SUPERIOR COURT THAT HAS JURISDICTION OVER THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE GILA RIVER SYSTEM AND SOURCE HAS JURISDICTION OVER ALL CIVIL ACTIONS RELATING TO THE INTERPRETATION AND ENFORCEMENT OF ALL OF THE FOLLOWING:

1. TITLE III OF THE ARIZONA WATER SETTLEMENTS ACT (P.L. 108-451), INCLUDING SECTIONS 312(d) AND 312(h).
2. THE TOHONO O'ODHAM SETTLEMENT AGREEMENT.
3. THE GROUNDWATER PROTECTION PROGRAM ESTABLISHED PURSUANT TO ARTICLE 2 OF THIS CHAPTER.

ARTICLE 2. SAN XAVIER RESERVATION WATER PROTECTION PROGRAM

45-2711. Applications to drill nonexempt wells in the Tucson active management area; well impact analysis; requirements; exception

A. EXCEPT AS PROVIDED IN SUBSECTIONS B AND E OF THIS SECTION, IN THE TUCSON ACTIVE MANAGEMENT AREA, ON RECEIPT OF AN APPLICATION TO DRILL A NEW NONEXEMPT WELL, INCLUDING A NOTICE OF INTENTION TO DRILL A NEW NONEXEMPT WELL UNDER SECTION 45-596, THE DIRECTOR SHALL CONDUCT A HYDROLOGIC ANALYSIS TO DETERMINE THE PROJECTED IMPACTS OF THE PROPOSED WITHDRAWALS FROM THE WELL ON THE WATER LEVELS AT THE EXTERIOR BOUNDARIES OF THE RESERVATION. THE DIRECTOR SHALL CONDUCT THE ANALYSIS USING THE METHODOLOGY USED BY THE DIRECTOR TO DETERMINE WELL IMPACTS UNDER THE RULES ADOPTED BY THE DIRECTOR UNDER SECTION 45-598. IF THE

DIRECTOR DETERMINES THAT THE PROJECTED WITHDRAWALS FROM THE WELL OVER THE INITIAL FIVE-YEAR PERIOD OF WITHDRAWALS WILL CAUSE A WATER LEVEL DECLINE OF TEN FEET OR MORE AT ANY POINT ON THE EXTERIOR BOUNDARIES OF THE RESERVATION, THE DIRECTOR SHALL DENY THE APPLICATION UNLESS THE APPLICANT OBTAINS AND SUBMITS TO THE DIRECTOR THE NATION'S WRITTEN CONSENT TO DRILL THE WELL.

B. EXCEPT AS PROVIDED IN SUBSECTION E OF THIS SECTION, IF THE DIRECTOR RECEIVES AN APPLICATION TO DRILL A NEW NONEXEMPT WELL, INCLUDING A NOTICE OF INTENTION TO DRILL A NEW NONEXEMPT WELL UNDER SECTION 45-596, AT A LOCATION WITHIN TWO MILES OF THE EXTERIOR BOUNDARIES OF THE RESERVATION AND THE COMBINED MAXIMUM PUMPING CAPACITY OF ALL PROPOSED WELLS INCLUDED IN THE APPLICATION THAT WILL BE LOCATED WITHIN TWO MILES OF THE EXTERIOR BOUNDARIES OF THE RESERVATION IS FIVE HUNDRED GALLONS PER MINUTE OR MORE, THE DIRECTOR SHALL DENY THE APPLICATION TO DRILL THE WELL UNLESS THE APPLICANT SUBMITS ONE OF THE FOLLOWING TO THE DIRECTOR:

1. A HYDROLOGIC STUDY DEMONSTRATING TO THE DIRECTOR'S SATISFACTION BOTH OF THE FOLLOWING:

(a) THAT THE WATER LEVEL AT THE PROPOSED WELL SITE IS DECLINING AT LESS THAN AN AVERAGE RATE OF TWO FEET PER YEAR BASED ON ANNUAL WATER LEVEL DATA COLLECTED DURING THE FIVE YEARS BEFORE THE DATE THE APPLICATION WAS FILED.

(b) THAT THE PROJECTED WITHDRAWALS FROM ALL OF THE PROPOSED WELLS TO BE LOCATED WITHIN TWO MILES OF THE EXTERIOR BOUNDARIES OF THE RESERVATION OVER THE INITIAL FIVE-YEAR PERIOD OF WITHDRAWALS WILL NOT CAUSE A WATER LEVEL DECLINE OF TEN FEET OR MORE AT ANY POINT ON THE EXTERIOR BOUNDARIES OF THE RESERVATION.

2. A HYDROLOGIC STUDY DEMONSTRATING TO THE DIRECTOR'S SATISFACTION THAT THE PROJECTED WITHDRAWALS FROM ALL OF THE PROPOSED WELLS TO BE LOCATED WITHIN TWO MILES OF THE EXTERIOR BOUNDARIES OF THE RESERVATION OVER THE INITIAL FIVE-YEAR PERIOD OF WITHDRAWALS WILL NOT CAUSE A WATER LEVEL DECLINE OF FIVE FEET OR MORE AT ANY POINT ON THE EXTERIOR BOUNDARIES OF THE RESERVATION.

3. THE NATION'S WRITTEN CONSENT TO THE DRILLING OF THE WELL.

C. IN DETERMINING THE WATER LEVEL DECLINES CAUSED BY A PROPOSED WELL UNDER SUBSECTION B, PARAGRAPH 1 OR 2 OF THIS SECTION, OR IN DETERMINING THE AVERAGE ANNUAL WATER LEVEL CHANGE AT A PROPOSED WELL SITE UNDER

SUBSECTION B, PARAGRAPH 1 OF THIS SECTION, THE FOLLOWING SHALL NOT BE CONSIDERED:

1. THE EFFECTS ON WATER LEVELS OF PUMPING FROM WELLS WITHIN THE RESERVATION.

2. THE EFFECTS ON WATER LEVELS OF UNDERGROUND STORAGE FACILITIES LOCATED WITHIN TWO MILES OF THE EXTERIOR BOUNDARIES OF THE RESERVATION AND RECOVERY WELLS LOCATED WITHIN TWO MILES OF THE EXTERIOR BOUNDARIES OF THE RESERVATION, EXCEPT THAT IN DETERMINING THE AVERAGE ANNUAL WATER LEVEL CHANGE AT A PROPOSED WELL SITE UNDER SUBSECTION B, PARAGRAPH 1 OF THIS SECTION, THE STORAGE OF WATER AT AN UNDERGROUND STORAGE FACILITY LOCATED WITHIN TWO MILES OF THE EXTERIOR BOUNDARIES OF THE RESERVATION SHALL BE CONSIDERED IF THE WATER IS STORED BY THE APPLICANT OR BY ANOTHER PERSON ON BEHALF OF THE APPLICANT.

D. FOR PURPOSES OF SUBSECTION B OF THIS SECTION, IF AN APPLICANT SUBMITS TWO OR MORE APPLICATIONS TO DRILL A NEW NONEXEMPT WELL WITHIN AN EIGHTEEN-MONTH PERIOD, THE APPLICATIONS SHALL BE CONSIDERED ONE APPLICATION.

E. THIS SECTION DOES NOT APPLY TO AN APPLICATION TO DRILL A RECOVERY WELL UNDER SECTION 45-834.01 IF THE RECOVERY WELL WILL BE LOCATED WITHIN TWO MILES OF THE EXTERIOR BOUNDARIES OF THE RESERVATION AND WILL BE PERMITTED TO RECOVER ONLY WATER STORED AT AN UNDERGROUND STORAGE FACILITY LOCATED WITHIN ONE MILE OF THE RECOVERY WELL.

F. THE DIRECTOR SHALL NOT ISSUE A PERMIT UNDER SECTION 45-513, 45-514, 45-516, 45-517, 45-518, 45-519 OR 45-519.01 IF THE APPLICANT FOR THE PERMIT PROPOSES TO WITHDRAW GROUNDWATER FROM A NEW WELL OR WELLS AND THE DIRECTOR IS REQUIRED TO DENY THE APPLICATION UNDER THIS SECTION.

G. AN APPLICATION FOR A PERMIT TO WITHDRAW GROUNDWATER PURSUANT TO CHAPTER 2, ARTICLE 7 OF THIS TITLE SHALL INCLUDE A HYDROLOGIC STUDY DESCRIBED IN SUBSECTION B, PARAGRAPH 1 OR 2 OF THIS SECTION OR THE CONSENT DESCRIBED IN SUBSECTION B, PARAGRAPH 3 OF THIS SECTION IF THE APPLICANT PROPOSES TO WITHDRAW GROUNDWATER FROM A NEW WELL OR WELLS WITHIN TWO MILES OF THE EXTERIOR BOUNDARIES OF THE RESERVATION AND THE COMBINED MAXIMUM PUMPING CAPACITY OF THOSE WELLS IS FIVE HUNDRED GALLONS PER MINUTE OR MORE. THIS SUBSECTION DOES NOT APPLY TO AN APPLICATION FOR A GENERAL INDUSTRIAL USE PERMIT UNDER SECTION 45-515.

H. A NOTICE OF INTENTION TO DRILL UNDER SECTION 45-596 SHALL INCLUDE A HYDROLOGIC STUDY DESCRIBED IN SUBSECTION B, PARAGRAPH 1 OR 2 OF THIS

SECTION OR THE CONSENT DESCRIBED IN SUBSECTION B, PARAGRAPH 3 OF THIS SECTION IF THE PROPOSED WELL OR WELLS ARE NONEXEMPT WELLS TO BE LOCATED WITHIN TWO MILES OF THE EXTERIOR BOUNDARIES OF THE RESERVATION AND THE COMBINED MAXIMUM PUMPING CAPACITY OF THOSE WELLS IS FIVE HUNDRED GALLONS PER MINUTE OR MORE. NOTWITHSTANDING SECTION 45-596, SUBSECTION D, THE DIRECTOR SHALL NOT AUTHORIZE THE DRILLING OF A WELL UNDER SECTION 45-596 IF THE DIRECTOR IS REQUIRED TO DENY THE NOTICE OF INTENTION TO DRILL UNDER THIS SECTION.

I. AN APPLICATION FOR A PERMIT TO CONSTRUCT A NEW WELL OR REPLACEMENT WELL IN A NEW LOCATION UNDER SECTION 45-599 SHALL INCLUDE A HYDROLOGIC STUDY DESCRIBED IN SUBSECTION B, PARAGRAPH 1 OR 2 OF THIS SECTION OR THE CONSENT DESCRIBED IN SUBSECTION B, PARAGRAPH 3 OF THIS SECTION IF THE PROPOSED WELL OR WELLS ARE WITHIN TWO MILES OF THE EXTERIOR BOUNDARIES OF THE RESERVATION AND THE COMBINED MAXIMUM PUMPING CAPACITY OF THOSE WELLS IS FIVE HUNDRED GALLONS PER MINUTE OR MORE. NOTWITHSTANDING SECTION 45-599, SUBSECTION C, THE DIRECTOR SHALL DENY AN APPLICATION FOR A PERMIT FOR A NEW WELL OR A REPLACEMENT WELL IN A NEW LOCATION UNDER SECTION 45-599 IF THE DIRECTOR IS REQUIRED TO DENY THE APPLICATION UNDER THIS SECTION.

J. AN APPLICATION FOR A RECOVERY WELL PERMIT UNDER SECTION 45-834.01 SHALL INCLUDE A HYDROLOGIC STUDY DESCRIBED IN SUBSECTION B, PARAGRAPH 1 OR 2 OF THIS SECTION OR THE CONSENT DESCRIBED IN SUBSECTION B, PARAGRAPH 3 OF THIS SECTION IF THE PROPOSED RECOVERY WELL OR WELLS ARE WITHIN TWO MILES OF THE EXTERIOR BOUNDARIES OF THE RESERVATION AND THE COMBINED MAXIMUM PUMPING CAPACITY OF THOSE WELLS IS FIVE HUNDRED GALLONS PER MINUTE OR MORE. NOTWITHSTANDING SECTION 45-834.01, SUBSECTION B, THE DIRECTOR SHALL DENY AN APPLICATION FOR A RECOVERY WELL UNDER SECTION 45-834.01 IF THE DIRECTOR IS REQUIRED TO DENY THE APPLICATION UNDER THIS SECTION.

[45-2712. Notice of well applications to nation; objection; hearing; appeal](#)

A. BEFORE MAKING A DECISION ON AN APPLICATION DESCRIBED IN SECTION 45-2711, SUBSECTION B, THE DIRECTOR SHALL MAIL WRITTEN NOTICE OF THE APPLICATION TO THE NATION, INCLUDING A COPY OF THE APPLICATION, AND PROVIDE THE NATION AN OPPORTUNITY TO OBJECT TO THE APPLICATION IN THE MANNER PROVIDED IN SUBSECTION B OF THIS SECTION.

B. THE NATION MAY FILE WITH THE DIRECTOR A WRITTEN OBJECTION TO AN APPLICATION DESCRIBED IN SECTION 45-2711, SUBSECTION B WITHIN SIXTY DAYS AFTER THE DIRECTOR MAILES WRITTEN NOTICE OF THE APPLICATION TO THE NATION.

THE GROUNDS FOR OBJECTION ARE LIMITED TO WHETHER THE APPLICATION SHOULD BE DENIED UNDER SECTION 45-2711, SUBSECTION B.

C. IF THE NATION FILES A TIMELY OBJECTION TO AN APPLICATION PURSUANT TO SUBSECTION B OF THIS SECTION, THE DIRECTOR SHALL SCHEDULE AN ADMINISTRATIVE HEARING ON THE OBJECTION WITHIN SIXTY DAYS AFTER RECEIVING THE OBJECTION. THE ADMINISTRATIVE HEARING SHALL BE HELD BY AN ADMINISTRATIVE LAW JUDGE OF THE OFFICE OF ADMINISTRATIVE HEARINGS UNDER TITLE 41, CHAPTER 6, ARTICLE 10 AND THE NATION SHALL BE A PARTY TO THE HEARING. NOTWITHSTANDING ANY OTHER LAW, THE ADMINISTRATIVE LAW JUDGE SHALL ISSUE A RECOMMENDED DECISION TO THE DIRECTOR WITHIN THIRTY DAYS AFTER THE CLOSE OF THE HEARING AND THE DIRECTOR SHALL ISSUE A FINAL ADMINISTRATIVE DECISION WITHIN THIRTY DAYS AFTER RECEIVING THE ADMINISTRATIVE LAW JUDGE'S RECOMMENDED DECISION. THE DIRECTOR'S FINAL ADMINISTRATIVE DECISION IS SUBJECT TO JUDICIAL REVIEW BY THE SUPERIOR COURT HAVING JURISDICTION OVER THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE GILA RIVER SYSTEM AND SOURCE IF A PARTY TO THE ADMINISTRATIVE HEARING FILES AN ACTION FOR JUDICIAL REVIEW WITHIN THIRTY DAYS AFTER THE DATE THE DIRECTOR MAILES NOTICE OF THE FINAL ADMINISTRATIVE DECISION TO THE PARTY.

D. IF THE DIRECTOR RECEIVES AN APPLICATION TO DRILL A REPLACEMENT WELL IN THE TUCSON ACTIVE MANAGEMENT AREA AT A LOCATION WITHIN TWO MILES OF THE EXTERIOR BOUNDARIES OF THE RESERVATION, BEFORE MAKING A DECISION ON THE APPLICATION, THE DIRECTOR SHALL MAIL WRITTEN NOTICE OF THE APPLICATION TO THE NATION, INCLUDING A COPY OF THE APPLICATION, AND PROVIDE THE NATION AN OPPORTUNITY TO OBJECT TO THE APPLICATION IN THE MANNER PROVIDED IN SUBSECTION E OF THIS SECTION.

E. THE NATION MAY FILE WITH THE DIRECTOR A WRITTEN OBJECTION TO AN APPLICATION DESCRIBED IN SUBSECTION D OF THIS SECTION. THE WRITTEN OBJECTION SHALL BE FILED WITHIN SIXTY DAYS AFTER THE DIRECTOR MAILES WRITTEN NOTICE OF THE APPLICATION TO THE NATION. THE GROUNDS FOR OBJECTION ARE LIMITED TO WHETHER THE PROPOSED WELL QUALIFIES AS A REPLACEMENT WELL. IF THE NATION FILES A TIMELY OBJECTION TO THE APPLICATION, THE HEARING AND APPEAL PROVISIONS SET FORTH IN SUBSECTION C OF THIS SECTION APPLY.

F. IF THE DIRECTOR FAILS TO COMPLY WITH A REQUIREMENT IN THIS SECTION, THE NATION MAY BRING AN ACTION IN THE SUPERIOR COURT HAVING JURISDICTION OVER THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE GILA

RIVER SYSTEM AND SOURCE TO OBTAIN AN ORDER COMPELLING THE DIRECTOR'S COMPLIANCE.

Sec. 11. Water firming program for Arizona Indian tribes

A. The director of the department of water resources shall develop a water firming program for the purpose of ensuring that, after the United States secretary of interior publishes in the federal register the statements of findings described in sections 207(c) and 302(c) of the Arizona water settlements act (P.L. 108-541), the following amounts of the non-Indian agricultural priority central Arizona project water reallocated to Arizona Indian tribes under section 104(a)(1) of the Arizona water settlements act (P.L. 108-451), for a period of one hundred years, shall be delivered during water shortages in the same manner as central Arizona project water with a municipal and industrial delivery priority is delivered during water shortages:

1. Fifteen thousand acre-feet of the non-Indian agricultural priority central Arizona project water reallocated to the Gila River Indian community under section 104(a)(1)(A)(i) of the Arizona water settlements act (P.L. 108-451).
2. Eight thousand seven hundred twenty-four acre-feet of the non-Indian agricultural priority central Arizona project water reallocated to Arizona Indian tribes under section 104(a)(1)(A)(iii) of the Arizona water settlements act (P.L. 108-451).

B. The director of the department of water resources shall assist the United States secretary of interior in carrying out the secretary's obligations to firm twenty-eight thousand two hundred acre-feet of non-Indian agricultural priority central Arizona project water reallocated to the Tohono O'odham nation under section 104(a)(1)(A)(ii) of the Arizona water settlements act (P.L. 108-451) in accordance with section 306 of the southern Arizona water rights settlement amendments act, as added by section 301 of the Arizona water settlements act (P.L. 108-451).

Sec. 12. Arizona water firming program study commission

A. The Arizona water firming program study commission is established. The purpose of the commission is to:

1. Study the options for a water firming program that would satisfy the requirements of section 105(b)(2) of the Arizona water settlements act (P.L. 108-451).
2. Identify appropriate mechanisms for the firming of water under the water firming program, including storage and recovery with specification of authorized entities to recover the water and determination of the financial structure for the recovery, as well as forbearance, and other alternative mechanisms.
3. Study the existing powers and duties of the Arizona water banking authority and the general statutory authorities necessary to implement the firming program and to make

recommendations regarding appropriate statutory and regulatory provisions that are necessary to fully implement the water firming program.

B. The commission consists of members who are appointed by the director of the department of water resources and who represent at least the following entities:

1. Municipal and industrial priority central Arizona project water users.
2. Agricultural improvement districts established pursuant to title 48, chapter 17, Arizona Revised Statutes.
3. Non-Indian agricultural priority central Arizona project water users.
4. The Gila River Indian community.
5. The Tohono O'odham nation.
6. A multi-county water conservation district established under title 48, chapter 22, Arizona Revised Statutes.
7. The Arizona water banking authority established under title 45, chapter 14, Arizona Revised Statutes.
8. Hardrock mining industries.

C. The director of the department of water resources shall serve as chairperson of the commission. All members appointed by the director shall be knowledgeable in water resource management in this state. The president of the senate and the speaker of the house of representatives, or their designees, shall serve as nonvoting ex officio members of the commission.

D. The department of water resources shall provide staff support for the commission.

E. The commission shall submit to the legislature an interim report of its activities on or before November 1, 2005 and shall report its final findings and recommendations to the legislature on or before January 6, 2006. The commission shall provide copies of each report to the secretary of state and the director of the Arizona state library, archives and public records.

Sec. 13. [Delayed repeal](#)

Section 12 of this act, establishing the Arizona water firming program study commission, is repealed on June 1, 2006.

Sec. 14. [State and tribal cooperation for acquisition of certain land](#)

A. This state recognizes the interest of the Gila River Indian community to acquire and to place into trust status a parcel of land located within the exterior boundaries of the community's reservation. This state, through any of its authorized agencies, in cooperation with the community and on application of the community shall take actions in accordance with Arizona law for the acquisition of the property designated as section 36, township 4 south, range 4 east, Gila and Salt river base and meridian, to include

the maximum right, title and interest in that property, including mineral rights as permitted by Arizona law.

B. For purposes of a finding by the secretary of interior or for any other legal requirement, the state and the community agree that this section combined with the enactment of the firming program authorized by this act fully satisfies section 207(c)(1)(E) of the Arizona water settlements act (P.L. 108-451).

Sec. 15. Conditional enactment; written notice

A. Sections 45-611, 45-2423, 45-2425 and 45-2457, Arizona Revised Statutes, as amended by this act, sections 45-2602 and 45-2604, Arizona Revised Statutes, as added by this act, title 45, chapter 15, articles 2, 3 and 6, Arizona Revised Statutes, as added by this act, and title 45, chapter 16, Arizona Revised Statutes, as added by this act, are effective only if on or before December 31, 2010 the United States secretary of interior publishes in the federal register the statements of findings described in sections 207(c)(1) and 302(c) of the Arizona water settlements act (P.L. 108-451).

B. The director of the department of water resources shall promptly provide written notice to the executive director of the Arizona legislative council of the date of publication of the findings or if the condition prescribed in subsection A of this section is not met. The date of publication is the effective date of the conditional enactment.

Sec. 16. Conditional delayed repeal; conditional enactment

A. Title 45, chapter 15, Arizona Revised Statutes, as added by this act, and section 11 of this act, relating to the establishment of the water firming program for Arizona Indian tribes, are repealed if the condition prescribed in section 15 of this act is not met.

B. Section 45-841.01, Arizona Revised Statutes, as amended by section 3 of this act, is effective only if the condition prescribed in section 15 of this act is not met.

APPROVED BY THE GOVERNOR APRIL 18, 2005.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 18, 2005.

**ARIZONA DEPARTMENT OF WATER RESOURCES
LEGISLATIVE IMPLEMENTATION PLAN**

**SB 1190 New Exempt Wells; Restrictions; Exemptions
47th Legislature, 1st Regular Session (2005)**

BILL NUMBER: SB 1190, Chapter 254

SHORT TITLE: New Exempt Wells: Restrictions; Exemptions

PRIME SPONSORS:

House:	O'Halleran Pierce Robson
Senate:	Allen Arzberger Blendu Cannell Flake Huppenthal

BILL SUMMARY: SB 1190 contains the following provisions:

Restricts the drilling of new (January 1, 2006 and after) exempt wells on land if any part of the land is within 100 feet of the operating water distribution system of a designated municipal provider as shown on a digitized service area map provided to the Arizona Department of Water Resources (ADWR) by the provider. A new exempt well may be drilled on land that is within 100 feet of a designated provider's operating distribution system if the landowner demonstrates to the director's satisfaction that any of the following apply:

- The municipal provider does not provide written verification of municipal water service to the landowner within 30 days after the landowner submitted a written request for municipal service.
- The municipal service connection costs more than the cost of drilling and equipping the well.
- The prospective well owner cannot obtain an easement in order to hook up to the municipal system.

- If the prospective well owner cannot meet any of the above-listed conditions, he may still drill the well if he provides written verification from the municipal provider that he will not receive or request municipal service while operating the exempt well. If the well owner subsequently receives municipal water service, the well may not be used as an exempt well. An exempt well drilled under this exception may not be considered by ADWR when determining the potential impacts of a proposed non-exempt well under the well spacing rules.

This restriction does not apply to “replacement” exempt wells, nor does it apply to remediation wells used for remediating groundwater quality problems if certain conditions are met.

SIGNIFICANCE TO AGENCY:

Prior to the enactment of this legislation, a person could receive water from a municipal provider (generally in-home use) and drill an exempt well and withdraw groundwater for exterior use. By doing drilling an exempt well, the homeowner could avoid paying the cost of municipal water, which could be significant for large, high water using lots. Most municipal rate structures are conservation based, which means that the more water you use, the higher your rates. This situation would tend to discourage conservation efforts by municipal providers. In addition, since the exempt well restriction only applies when municipal providers are designated as having an assured water supply, it is clear that this statute will result in less groundwater being pumped. Less groundwater will be pumped because the water that is delivered to the lot by a designated provider will be a renewable water source and not groundwater.

REQUIRED OUTCOME(S):

- **Rule**
Rule changes are anticipated. The Well Rules Stakeholders Group will identify specific rules that will require changes.
- **Legislation**
An amendment may be needed to clarify that the relevant date for determining whether an exempt well may be drilled under the statute is the date the NOI to drill the well is filed, not the date well drilling commences. The literal language of the statute prohibits the drilling of an exempt well if the land on which the well is to be drilled is within 100 feet of a designated provider’s operating distribution system at the time drilling is to commence, even though ADWR issued a drilling authority to the landowner because the land was not within 100 feet of the system when the NOI was filed.
- **Substantive Policy**
ADWR will develop internal procedures within the Notice of Intent Section. The Stakeholders Group may assist in this activity. ADWR may consider issuing a substantive policy statement informing the public of the Department’s interpretation of

the statute with respect to the relevant date for determining whether an exempt well may be drilled (i.e., the date the NOI is filed, rather than the date well drilling commences).

ACTION(S) REQUIRED:

ADWR staff will meet internally (NOI and GIS sections) to identify exempt well application process revisions. Primary areas for consideration are:

- Obtaining updated water service area maps from designated providers
- Developing GIS covers for use in the application review process
- Developing new forms for drilling within a designated provider's distribution system.
- Reviewing the new process with well drillers and Stakeholders Group and making appropriate changes.
- Developing a Substantive Policy, if necessary.
- Implementing the new process by January 2006.

DIVISION STAFF SUPPORT REQUIRED:

- Legal Division
- NOI Section
- GIS Section
- AMA Staff

TIMELINE:

2005

- June
 - Internal meeting to begin discussions on process changes. Identify preliminary procedural revisions, GIS products, application form revisions and new form development.
- July
 - Internal meeting to review and discuss draft, new application procedure, GIS product mock-up, draft new and revised forms.
- August
 - Request service area/distribution system maps from designated providers.
- September
 - Present all NOI application revisions to well drillers and Stakeholders Group; make appropriate revisions.
- October
 - If necessary, prepare a substantive agency policy
- November
 - Have GIS covers, forms and in-office procedures finalized.

- January
- Implement revised review process for exempt wells.

State of Arizona
Senate
Forty-seventh Legislature
First Regular Session
2005

CHAPTER 254

SENATE BILL 1190

AN ACT

AMENDING SECTION 45-454, ARIZONA REVISED STATUTES; AMENDING SECTION 45-596, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2003, CHAPTER 165, SECTION 1; AMENDING SECTION 48-2978, ARIZONA REVISED STATUTES; RELATING TO THE GROUNDWATER CODE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 45-454, Arizona Revised Statutes, is amended to read:

45-454. Exemption of small non-irrigation wells; definitions

A. Withdrawals of groundwater for non-irrigation uses from wells having a pump with a maximum capacity of not more than thirty-five gallons per minute which were drilled before April 28, 1983 or which were drilled after April 28, 1983 pursuant to a notice of intention to drill which was on file with the department on such date are exempt from ~~the provisions of~~ this chapter, except that:

1. Wells drilled before June 12, 1980 which are not abandoned or capped or wells which were not completed on June 12, 1980 but for which a notice of intention to drill was on file with the Arizona water commission on such date are subject to subsections ~~F, G and H~~ I, J AND K of this section and must be registered pursuant to section 45-593. If two or more wells in an active management area are exempt under this paragraph and are used to serve the same non-irrigation use at the same location, the aggregate quantity of groundwater withdrawn from the wells shall not exceed fifty-six acre-feet per year.
2. Wells drilled between June 12, 1980 and April 28, 1983, except as provided in paragraph 1 of this subsection, and wells drilled after April 28, 1983 pursuant to a notice of intention to drill which was on file with the department on April 28, 1983, are subject to subsections ~~C, E, F, and G~~ H, I AND J of this section.

B. Withdrawals of groundwater for non-irrigation uses from wells having a pump with a maximum capacity of not more than thirty-five gallons per minute drilled on or after April 28, 1983, except wells drilled after April 28, 1983 pursuant to a notice of intention

to drill which was on file with the department on such date, are exempt from ~~the provisions of~~ this chapter, except that:

1. Such wells are subject to subsections ~~E-F~~ through ~~G-J~~ of this section.
2. In an active management area, other than a subsequent active management area designated for a portion of a groundwater basin in the regional aquifer systems of northern Arizona, withdrawals of groundwater from such wells for non-irrigation uses other than domestic purposes and stock watering shall not exceed ten acre-feet per year.
3. In a subsequent active management area that is designated for a portion of a groundwater basin in the regional aquifer systems of northern Arizona, groundwater withdrawn from such wells may be used only for domestic purposes and stock watering.

C. ON OR AFTER JANUARY 1, 2006, AN EXEMPT WELL OTHERWISE ALLOWED BY THIS SECTION MAY NOT BE DRILLED ON LAND IF ANY PART OF THE LAND IS WITHIN ONE HUNDRED FEET OF THE OPERATING WATER DISTRIBUTION SYSTEM OF A MUNICIPAL PROVIDER WITH AN ASSURED WATER SUPPLY DESIGNATION WITHIN THE BOUNDARIES OF AN ACTIVE MANAGEMENT AREA ESTABLISHED ON OR BEFORE JULY 1, 1994, AS SHOWN ON A DIGITIZED SERVICE AREA MAP PROVIDED TO THE DIRECTOR BY THE MUNICIPAL PROVIDER AND UPDATED BY THE MUNICIPAL PROVIDER AS SPECIFIED BY THE DIRECTOR.

D. ON REQUEST FROM THE OWNER OF THE LAND ON WHICH AN EXEMPT WELL IS PROHIBITED PURSUANT TO SUBSECTION C OF THIS SECTION ON A FORM PRESCRIBED BY THE DIRECTOR, THE DIRECTOR SHALL ISSUE AN EXEMPTION FROM SUBSECTION C OF THIS SECTION IF THE LANDOWNER DEMONSTRATES TO THE SATISFACTION OF THE DIRECTOR THAT ANY OF THE FOLLOWING APPLIES:

1. THE LANDOWNER SUBMITTED A WRITTEN REQUEST FOR SERVICE TO THE MUNICIPAL PROVIDER THAT OPERATES THE DISTRIBUTION SYSTEM AND THE MUNICIPAL PROVIDER DID NOT PROVIDE WRITTEN VERIFICATION TO THE LANDOWNER WITHIN THIRTY CALENDAR DAYS AFTER RECEIPT OF THE REQUEST THAT WATER SERVICE IS AVAILABLE TO THE LANDOWNER AFTER PAYMENT OF ANY APPLICABLE FEE TO THE MUNICIPAL PROVIDER.
2. THE TOTAL CAPITAL COST AND FEES FOR CONNECTING TO THE OPERATING WATER DISTRIBUTION SYSTEM EXCEED THE TOTAL CAPITAL COST AND FEES FOR DRILLING AND FULLY EQUIPPING AN EXEMPT WELL.
3. IF THE APPLICANT MUST OBTAIN AN EASEMENT ACROSS OTHER LAND TO CONNECT TO THE WATER DISTRIBUTION SYSTEM OF THE MUNICIPAL PROVIDER, THE APPLICANT SENT THE OWNER OF THE LAND A REQUEST FOR THE EASEMENT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AND EITHER THE APPLICANT DID NOT RECEIVE A

RESPONSE TO THE REQUEST WITHIN THIRTY CALENDAR DAYS OF MAILING THE REQUEST OR THE REQUEST WAS DENIED.

4. THE LANDOWNER DOES NOT QUALIFY FOR AN EXEMPTION PURSUANT TO PARAGRAPHS 1, 2 OR 3 OF THIS SUBSECTION AND THE LANDOWNER PROVIDES WRITTEN VERIFICATION FROM THE MUNICIPAL PROVIDER THAT THE LANDOWNER SHALL NOT RECEIVE OR REQUEST WATER SERVICE FROM THE MUNICIPAL PROVIDER WHILE THE EXEMPT WELL IS OPERATIONAL. THE EXEMPTION FOR THAT WELL IS REVOKED IF THE LANDOWNER OR ANY SUBSEQUENT LANDOWNER RECEIVES WATER SERVICE FROM THE MUNICIPAL PROVIDER. IN DETERMINING WHETHER TO APPROVE OR REJECT A PERMIT APPLICATION FILED UNDER SECTION 45-599, THE DIRECTOR SHALL NOT CONSIDER ANY IMPACTS THE PROPOSED WELL MAY HAVE ON AN EXEMPT WELL DRILLED PURSUANT TO THIS PARAGRAPH.

E. THIS SECTION DOES NOT PROHIBIT A PROPERTY OWNER, AFTER JANUARY 1, 2006, FROM DRILLING A REPLACEMENT EXEMPT WELL FOR A LAWFUL EXEMPT WELL IF THE REPLACEMENT WELL DOES NOT INCREASE THE TOTAL NUMBER OF OPERABLE EXEMPT WELLS ON THE APPLICANT'S LAND.

F. A REMEDIATION WELL DRILLED FOR THE PURPOSE OF REMEDIATING GROUNDWATER IS EXEMPT FROM THIS SECTION IF IT MEETS ONE OF THE FOLLOWING:

1. THE REMEDIATION WELL IS FOR AN APPROVED DEPARTMENT OF ENVIRONMENTAL QUALITY OR UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REMEDIATION PROGRAM.
2. A REGISTERED GEOLOGIST CERTIFIES THAT THE REMEDIATION WELL IS FOR THE PURPOSE OF REMEDIATION.

~~G.~~ G. A person shall file a notice of intention to drill with the director pursuant to section 45-596 before drilling an exempt well or causing an exempt well to be drilled.

~~H.~~ H. The registered well owner shall file a completion report pursuant to section 45-600, subsection B.

~~I.~~ I. In an active management area only one exempt well may be drilled or used to serve the same non-irrigation use at the same location, except that a person may drill or use a second exempt well to serve the same non-irrigation use at the same location if the director determines that all of the following apply:

1. Because of its location, the first exempt well is not capable of consistently producing more than three gallons per minute of groundwater when equipped with a pump with a maximum capacity of thirty-five gallons per minute.
2. The second exempt well is located on the same parcel of land as the first exempt well, the parcel of land is at least one acre in size, all groundwater withdrawn from both

exempt wells is used on that parcel of land and there are no other exempt wells on that parcel of land.

3. Combined withdrawals from both wells do not exceed five acre-feet per year.

4. If the second exempt well is drilled after January 1, 2000, the county health authority for the county in which the well is located or any other local health authority that controls the installation of septic tanks or sewer systems in the county has approved the location of the well in writing after physically inspecting the well site.

5. Use of two wells for the same non-irrigation use at the same location is not contrary to the health and welfare of the public.

~~F.~~ J. An exempt well is subject to sections 45-594 and 45-595.

~~G.~~ K. Groundwater withdrawn from an exempt well may be transported only pursuant to ~~the provisions of~~ articles 8 and 8.1 of this chapter.

~~H.~~ L. A person who owns land from which exempt withdrawals were being made as of the date of the designation of the active management area is not eligible for a certificate of grandfathered right for a type 2 non-irrigation use for such withdrawals.

~~I.~~ M. ~~H.~~ FOR THE PURPOSES OF this section:

1. "Domestic purposes" means uses related to the supply, service and activities of households and private residences and includes the application of water to less than two acres of land to produce plants or parts of plants for sale or human consumption, or for use as feed for livestock, range livestock or poultry, as such terms are defined in section 3-1201.

2. "MUNICIPAL PROVIDER" MEANS A CITY, TOWN, PRIVATE WATER COMPANY OR IRRIGATION DISTRICT THAT SUPPLIES WATER FOR NON-IRRIGATION USE.

~~2.~~ 3. "Stock watering" means the watering of livestock, range livestock, or poultry, as such terms are defined in section 3-1201.

Sec. 2. Section 45-596, Arizona Revised Statutes, as amended by Laws 2003, chapter 165, section 1, is amended to read:

45-596. Notice of intention to drill; fee

A. In an area not subject to active management, a person may not drill or cause to be drilled any well or deepen an existing well without first filing notice of intention to drill pursuant to subsection C of this section or obtaining a permit pursuant to section 45-834.01. Only one notice of intention to drill is required for all wells that are drilled by or for the same person to obtain geophysical, mineralogical or geotechnical data within a single section of land.

B. In an active management area, a person may not drill or cause to be drilled an exempt well, a replacement well in approximately the same location or any other well for which a permit is not required under this article, article 7 of this chapter or section

45-834.01 or deepen an existing well without first filing a notice of intention to drill pursuant to subsection C of this section. Only one notice of intention to drill is required for all wells that are drilled by or for the same person to obtain geophysical, mineralogical or geotechnical data within a single section of land.

C. A notice of intention to drill shall be filed with the director on a form which is prescribed and furnished by the director and which shall include:

1. The name and mailing address of the person filing the notice.
2. The legal description of the land upon which the well is proposed to be drilled and the name and mailing address of the owner of the land.
3. The legal description of the location of the well on the land.
4. The depth, diameter and type of casing of the proposed well.
5. Such legal description of the land upon which the groundwater is proposed to be used as may be required by the director to administer this chapter.
6. When construction is to begin.
7. The proposed uses to which the groundwater will be applied.
8. The name and well driller's license number of the well driller who is to construct the well.
9. The design pumping capacity of the well.
10. If for a replacement well, the maximum capacity of the original well and the distance of the replacement well from the original well.
11. Proof that the director determines to be satisfactory that the person proposing to construct the well holds a valid license issued by the registrar of contractors pursuant to title 32, chapter 10 and that the license is of the type necessary to construct the well described in the notice of intention to drill. If the proposed well driller does not hold a valid license, the director may accept proof that the proposed well driller is exempt from licensing as prescribed by section 32-1121.
12. If any water from the proposed well will be used for domestic purposes as defined in section 45-454, evidence of compliance with the requirements of subsection F of this section.
13. If for a second exempt well at the same location for the same use pursuant to section 45-454, subsection ~~E~~I, proof that the requirements of that subsection are met.
14. If for a well to obtain geophysical, mineralogical or geotechnical data within a single section of land, the information prescribed by this subsection for each well that will be included in that section of land before each well is drilled.
15. Such other information as the director may require.

D. Upon receiving a notice of intention to drill and the fee required by subsection I of this section, the director shall endorse on the notice the date of its receipt. The director

shall then determine whether all information that is required has been submitted and whether the requirements of subsection C, paragraphs 11 and 12 of this section have been met. If so, within fifteen days of receipt of the notice, the director shall record the notice, mail a drilling card that authorizes the drilling of the well to the well driller identified in the notice and mail written notice of the issuance of the drilling card to the person filing the notice of intention to drill at the address stated in the notice. Upon receipt of the drilling card, the well driller may proceed to drill or deepen the well as described in the notice of intention to drill. If the director determines that the required information has not been submitted or that the requirements of subsection C, paragraphs 11 and 12 of this section have not been met, the director shall mail a statement of the determination to the person giving the notice to the address stated in the notice, and the person giving the notice may not proceed to drill or deepen the well.

E. The well shall be completed within one year after the date of the notice. If the well is not completed within one year, the person shall file a new notice before proceeding with further construction.

F. If any water from a proposed well will be used for domestic purposes as defined in section 45-454 on a parcel of land of five or fewer acres, the applicant shall submit a well site plan of the property with the notice of intention to drill. The site plan shall:

1. Include the county assessor's parcel identification number.
2. Show the proposed well location and the location of any septic tank or sewer system that is either located on the property or within one hundred feet of the proposed well site.
3. Show written approval by the county health authority that controls the installation of septic tanks or sewer systems in the county, or by the local health authority in areas where the authority to control installation of septic tanks or sewer systems has been delegated to a local authority. In areas where there is no local or county authority that controls the installation of septic tanks or sewer systems, the applicant shall apply for approval directly to the department of water resources.

G. Before approving a well site plan submitted pursuant to subsection F of this section, the county or local health authority or the department of water resources, as applicable, pursuant to subsection F of this section, shall review the well site plan and determine whether the proposed well location complies with applicable local laws, ordinances and regulations and any laws or rules adopted under this title and title 49 regarding the placement of wells and the proximity of wells to septic tanks or sewer systems. If the health authority or the department of water resources, as applicable, pursuant to subsection F of this section, finds that the proposed well location complies with this title and title 49 and with local requirements, it shall endorse the site plan and

the proposed well placement in a manner indicating approval. On endorsement, the director of water resources shall approve the construction of the well, if all remaining requirements have been met. If the health authority is unable to determine whether the proposed well location complies with this title and title 49 and local requirements, it shall indicate this on the site plan and the decision to approve or reject the proposed construction rests with the director of water resources. If parcel size, geology or location of improvements on the property prevents the well from being drilled in accordance with this title and title 49 or local requirements, the property owner may apply for a variance. The property owner shall make the request for a variance to the county or local authority if a county or local law, ordinance or regulation prevents the proposed construction. If a law or rule adopted under this title or title 49 prevents the proposed construction, the property owner shall make the request for a variance directly to the department of water resources. The request for a variance shall be in the form and shall contain the information that the department of water resources, county or local authority may require. The department of water resources, or the county or local authority whose law, ordinance or regulation prevents the proposed construction, may expressly require that a particular variance shall include certification by a registered professional engineer or geologist that the location of the well will not pose a health hazard to the applicant or surrounding property or inhabitants. If all necessary variances are obtained, the director of water resources shall approve the construction of the well if all remaining requirements have been met.

H. If a well that was originally drilled as an exploration well, a monitor well or a piezometer well or for any use other than domestic use is later proposed to be converted to use for domestic purposes as defined in section 45-454, the well owner shall file a notice of intention to drill and shall comply with this section before the well is converted and any water from that well is used for domestic purposes.

I. A notice of intention to drill filed under this section shall be accompanied by a filing fee of one hundred fifty dollars, except that a notice filed for a proposed well that will not be located within an active management area or an irrigation nonexpansion area, that will be used solely for domestic purposes as defined in section 45-454 and that will have a pump with a maximum capacity of not more than thirty-five gallons per minute shall be accompanied by a filing fee of fifty dollars if filed before July 1, 2004, seventy-five dollars if filed from July 1, 2004 through June 30, 2005 and one hundred dollars if filed on or after July 1, 2005. The director shall deposit, pursuant to sections 35-146 and 35-147, all fees collected pursuant to this subsection in the well administration and enforcement fund established by section 45-606.

Sec. 3. Section 48-2978, Arizona Revised Statutes, is amended to read:

48-2978. General powers of board of directors

In order to accomplish the purposes of the district the board may:

1. Purchase or acquire water rights.
2. Acquire or lease real estate and personal property when necessary.
3. Acquire and hold stock in irrigation ditch and reservoir companies.
4. Lease, sell and otherwise dispose of real estate and personal property.
5. Construct, acquire or purchase canals, ditches, reservoirs, reservoir sites, water, water rights, rights-of-way or other property deemed necessary for the use of the district.
6. Acquire the right to enlarge any ditch, canal or reservoir already constructed or partially constructed.
7. Provide for the construction, operation, leasing and control of plants for the generation, distribution, sale and lease of electrical energy, including sale to municipalities, corporations, public utility districts or individuals of electrical energy so generated.
8. Make appropriations of water for irrigation and power purposes.
9. Refer to the qualified electors of the district any optional or administrative measure or method of procedure or any other matter or proposition the board deems necessary or advisable.
10. Establish tolls or charges for service of irrigation, domestic water, electricity and other commodities.
11. Control the finances and property of the district.
12. Appropriate money and provide for the payment of district debts and expenses.
13. Exercise exclusive control over the laterals, ditches, canals, rights-of-way and other property of the district, prevent encumbering thereof, abate and remove all encumbrances and obstructions thereon, make improvements thereon, vacate any right-of-way not necessary for the further use of the district and protect such right-of-way from encroachment and injuries.
14. Erect and maintain transmission lines and pipelines, culverts, roads and crossways, and prevent obstructions thereon.
15. Provide the district with water, electricity and other public conveniences and necessities, and engage in any and all activities, enterprises and occupations within the powers and privileges of municipalities generally.
16. Apply surplus money in the district treasury to liquidation of district debts or to the creation of a sinking fund pursuant to section 48-2979.
17. Make, amend or repeal resolutions, bylaws and rules necessary for the government of or for carrying into effect the powers vested in irrigation districts or any department

or officer thereof, and enforce observance thereof by imposition of penalties. The board may impose penalties not exceeding:

(a) Five hundred dollars for violations by persons who use water for domestic purposes, as defined ~~by IN section 45-454, subsection 1.~~

(b) Five thousand dollars for violations by persons who use water for purposes other than domestic purposes.

APPROVED BY THE GOVERNOR MAY 4, 2005.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 4, 2005.

**ARIZONA DEPARTMENT OF WATER RESOURCES
LEGISLATIVE IMPLEMENTATION PLAN**

**SB 1235 Water; CAGR D Omnibus
47th Legislature, 1st Regular Session (2005)**

BILL NUMBER: SB 1235, Chapter 198

SHORT TITLE: Water; CAGR D Omnibus

PRIME SPONSORS: Representatives: Brown
Chase
Mason
O'Halleran
Rios

Senators: Arzberger
Flake

BILL SUMMARY: SB 1235 makes numerous changes to statutes relating to the Central Arizona Groundwater Replenishment District (CAGR D), including replenishment taxes, activation fees and reserve targets. SB 1235 contains the following provisions:

Replenishment Obligations and Taxes

- Prohibits a water provider from serving water for another municipal provider who is delinquent in payment of the replenishment tax until all outstanding replenishment taxes are paid. This provision does not apply to irrigation districts that commence service of groundwater to an industrial user.
- Specifies that termination or lapsing of an Assured Water Supply Designation does not release a member of CAGR D from an obligation to replenish excess groundwater withdrawals.
- States that a service provider must pay all delinquent replenishment taxes, including interest, incurred by its predecessor, to qualify as a member of CAGR D.
- Outlines CAGR D's replenishment obligation in the event that a municipal provider is delinquent in paying its replenishment taxes.

Activation Fees

- Requires CAGR D members to pay activation fees before the State Real Estate Commissioner can issue a public report authorizing the sale or lease of subdivided land. Requires CAGR D to levy the activation fees as follows:
 - A one-time fee for subdivisions within member lands that are enrolled before May 6, 2004 and that have not been issued a public report. The fee is against each housing unit in the subdivision.
 - A one-time fee against each housing unit to be constructed within a subdivision enrolled in the CAGR D on or after May 6, 2004.
- Requires CAGR D to establish the activation fees each year, and states that the activation fees are to be used to acquire water rights and develop the infrastructure necessary to perform replenishment obligations.

Reserve Target

- Requires CAGR D to calculate a reserve target for the Phoenix, Pinal and Tucson (Active Management Areas (AMAs) and outlines the new formula.
- Authorizes CAGR D to adjust the reserve target on approval from the Director.
- Authorizes the Director to determine if the replenishment reserve target and projected replenishment obligations are consistent with the Management Goal of the AMA.

Conservation District Credits

- Authorizes the Director to allow CAGR D to transfer credits before January 1, 2030.
- Requires the application to transfer credits to include:
 - The reason for the request.
 - The amount of credits to be transferred.
 - The plans for replacing the credits.

Other Provisions

- States that CAGR D must use water that was stored in a state demonstration project before July 1, 1996 for the benefit of member lands located in the AMA in which the water was originally stored.
- Defines *projected 100 year replenishment obligation* as CAGR D's total projected annual groundwater replenishment obligation at AMA build-out, multiplied by 100.

- Requires CAGR D to revise their preliminary and long-range plans if the Director determines that it is no longer consistent with the Management Goal of the AMA.

SIGNIFICANCE TO AGENCY: SB 1235 contains provisions that relate to the Central Arizona Groundwater Replenishment District Plan of Operation. Overall, the legislation strengthens the Plan of Operation and has beneficial consequences for water management.

REQUIRED OUTCOMES:

- **Rule**
No rule changes are needed to implement the legislation.
- **Legislation**
No legislative changes to implement the legislation are anticipated at this time.
- **Substantive Policy**
No substantive policies are needed to implement the legislation.

ACTIONS REQUIRED: SB 1235 requires no agency action.

DIVISION STAFF SUPPORT REQUIRED: SB 1235 requires no division staff support.

TIMELINE: There is no agency action required, and, therefore, no timeline for action.

State of Arizona
Senate
Forty-seventh Legislature
First Regular Session
2005

CHAPTER 198

SENATE BILL 1235

AN ACT

AMENDING SECTIONS 32-2181, 32-2183, 32-2197.08, 45-492, 45-493, 45-494, 45-576, 45-576.03, 45-859.01, 45-896.01, 48-3701, 48-3771, 48-3772, 48-3780 AND 48-3781, ARIZONA REVISED STATUTES; RELATING TO MULTI-COUNTY WATER CONSERVATION DISTRICTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 32-2181, Arizona Revised Statutes, is amended to read:

32-2181. Notice to commissioner of intention to subdivide lands; unlawful acting in concert; exceptions; deed restrictions; definition

A. Before offering subdivided lands for sale or lease, the subdivider shall notify the commissioner in writing of the subdivider's intention. The notice shall contain:

1. The name and address of the owner. If the holder of any ownership interest in the land is other than an individual, such as a corporation, partnership or trust, a statement naming the type of legal entity and listing the interest and the extent of any interest of each principal in the entity. For the purposes of this section, "principal" means any person or entity having a ten per cent or more financial interest or, if the legal entity is a trust, each beneficiary of the trust holding a ten per cent or more beneficial interest.
2. The name and address of the subdivider.
3. The legal description and area of the land.
4. A true statement of the condition of the title to the land, including all encumbrances on the land, and a statement of the provisions agreed to by the holder of any blanket encumbrance enabling a purchaser to acquire title to a lot or parcel free of the lien of the blanket encumbrance on completion of all payments and performance of all of the terms and provisions required to be made or performed by the purchaser under the real estate sales contract by which the purchaser has acquired the lot or parcel. The subdivider shall file copies of documents acceptable to the department containing these provisions with the commissioner before the sale of any subdivision lot or parcel subject to a blanket encumbrance.

5. The terms and conditions on which it is intended to dispose of the land, together with copies of any real estate sales contract, conveyance, lease, assignment or other instrument intended to be used, and any other information the owner or the owner's agent or subdivider desires to present.
6. A map of the subdivision, which ~~which~~ THAT has been filed in the office of the county recorder in the county in which the subdivision is located.
7. A brief but comprehensive statement describing the land on and the locality in which the subdivision is located.
8. A statement of the provisions that have been made for permanent access and provisions, if any, for health department approved sewage and solid waste collection and disposal and public utilities in the proposed subdivision, including water, electricity, gas and telephone facilities.
9. A statement as to the location of the nearest public common and high schools available for the attendance of school age pupils residing on the subdivision property.
10. A statement of the use or uses for which the proposed subdivision will be offered.
11. A statement of the provisions, if any, limiting the use or occupancy of the parcels in the subdivision, together with copies of any restrictive covenants affecting all or part of the subdivision.
12. The name and business address of the principal broker selling or leasing, within this state, lots or parcels in the subdivision.
13. A true statement of the approximate amount of indebtedness ~~which~~ THAT is a lien on the subdivision or any part of the subdivision and ~~which~~ THAT was incurred to pay for the construction of any on-site or off-site improvement, or any community or recreational facility.
14. A true statement or reasonable estimate, if applicable, of the amount of any indebtedness ~~which~~ THAT has been or is proposed to be incurred by an existing or proposed special district, entity, taxing area or assessment district, within the boundaries of which the subdivision, or any part of the subdivision, is located, and ~~which~~ THAT is to pay for the construction or installation of any improvement or to furnish community or recreational facilities to the subdivision, and which amounts are to be obtained by ad valorem tax or assessment, or by a special assessment or tax upon the subdivision or any part of the subdivision.
15. A true statement as to the approximate amount of annual taxes, special assessments or fees to be paid by the buyer for the proposed annual maintenance of common facilities in the subdivision.
16. A statement of the provisions for easements for permanent access for irrigation water where applicable.

17. A true statement of assurances for the completion of off-site improvements, such as roads, utilities, community or recreational facilities and other improvements to be included in the offering or represented as being in the offering, and approval of the offering by the political subdivision with authority. This statement shall include a trust agreement or any other evidence of assurances for delivery of the improvements and a statement of the provisions, if any, for the continued maintenance of the improvements.

18. A true statement of the nature of any improvements to be installed by the subdivider, the estimated schedule for completion and the estimated costs related to the improvements ~~which~~ THAT will be borne by purchasers of lots in the subdivision.

19. A true statement of the availability of sewage disposal facilities and other public utilities including water, electricity, gas and telephone facilities in the subdivision, the estimated schedule for their installation, and the estimated costs related to the facilities and utilities ~~which~~ THAT will be borne by purchasers of lots in the subdivision.

20. A true statement as to whether all or any portion of the subdivision is located in an open range or area in which livestock may roam at large under the laws of this state and what provisions, if any, have been made for the fencing of the subdivision to preclude livestock from roaming within the subdivided lands.

21. If the subdivider is a subsidiary corporation, a true statement identifying the parent corporation and any of the following in which the parent or any of its subsidiaries is or has been involved within the past five years:

(a) Any subdivision in this state.

(b) Any subdivision, wherever located, for which registration is required pursuant to the federal interstate land sales full disclosure act.

(c) Any subdivision, wherever located, for which registration would have been required pursuant to the federal interstate land sales full disclosure act but for the exemption for subdivisions whose lots are all twenty acres or more in size.

22. A true statement identifying all other subdivisions, designated in paragraph 21 of this subsection, in which any of the following is or, within the last five years, has been directly or indirectly involved:

(a) The holder of any ownership interest in the land.

(b) The subdivider.

(c) Any principal or officer in the holder or subdivider.

23. A true statement as to whether all or any portion of the subdivision is located in territory in the vicinity of a military airport or ancillary military facility as defined in section 28-8461, in territory in the vicinity of a public airport as defined in section 28-8486, on or after July 1, 2001, in a high noise or accident potential zone as defined in

section 28-8461 or on or after July 1 of the year in which the subdivision becomes located in a high noise or accident potential zone. The statement required pursuant to this paragraph does not require the amendment or refile of any notice filed before July 1, 2001 or before July 1 of the year in which the subdivision becomes located in a high noise or accident potential zone.

24. If the subdivision is a conversion from multifamily rental to condominiums as defined in section 33-1202, a true statement as to the following:

- (a) That the property is a conversion from multifamily rental to condominiums.
- (b) The date original construction was completed.

25. Other information and documents and certifications as the commissioner may reasonably require.

B. The commissioner, ~~upon~~ **ON** application, may grant a subdivider of lots or parcels within a subdivision for which a public report was previously issued by the commissioner an exemption from all or part of the notification requirements of subsection A of this section. The subdivider shall file a statement with the commissioner indicating the change of ownership in the lots or parcels together with any material changes occurring subsequent to the original approval of the subdivision within which the lots or parcels are located. The statement shall further refer to the original approval by the commissioner.

C. If the subdivision is within a groundwater active management area, as defined in section 45-402, the subdivider shall accompany the notice with a certificate of assured water supply issued by the director of water resources along with proof that all applicable ~~replenishment reserve~~ fees have been paid pursuant to ~~section~~ **SECTIONS 48-3772 AND 48-3774.01**, unless the subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an assured water supply by the director of water resources pursuant to section 45-576 or is exempt from the requirement pursuant to section 45-576. If the subdivider has submitted a certificate of assured water supply to a city, town or county prior to approval of the plat by the city, town or county and this has been noted on the face of the plat, the submission constitutes compliance with this subsection if the subdivider provides proof to the commissioner that all applicable ~~replenishment reserve~~ fees have been paid pursuant to ~~section~~ **SECTIONS 48-3772 AND 48-3774.01**.

D. It is unlawful for a person or group of persons acting in concert to attempt to avoid ~~the provisions of~~ this article by acting in concert to divide a parcel of land or sell subdivision lots by using a series of owners or conveyances or by any other method ~~which~~ **THAT** ultimately results in the division of the lands into a subdivision or the sale of subdivided land. The plan or offering is subject to ~~the provisions of~~ this article.

Unlawful acting in concert pursuant to this subsection with respect to the sale or lease of subdivision lots requires proof that the real estate licensee or other licensed professional knew or with the exercise of reasonable diligence should have known that property which the licensee listed or for which the licensee acted in any capacity as agent was subdivided land subject to ~~the provisions of~~ this article.

E. A creation of six or more lots, parcels or fractional interests in improved or unimproved land, lots or parcels of any size is subject to the provisions of this article except when:

1. Each of the lots, parcels or fractional interests represents, on a partition basis, thirty-six acres or more in area of land located in this state including to the centerline of dedicated roads or easements, if any, contiguous to the land in which the interests are held.

2. The lots, parcels or fractional interests are the result of a foreclosure sale, the exercise by a trustee under a deed of trust of a power of sale or the grant of a deed in lieu of foreclosure. This paragraph does not allow circumvention of the requirements of this article.

3. The lots, parcels, or fractional interests are created by a valid order or decree of a court pursuant to and through compliance with title 12, chapter 8, article 7 or by operation of law. This paragraph does not allow circumvention of the requirements of this article.

4. The lots, parcels or fractional interests consist of interests in any oil, gas or mineral lease, permit, claim or right therein and such interests are regulated as securities by the United States or by this state.

5. The lots, parcels or fractional interests are registered as securities under the laws of the United States or the laws of this state or are exempt transactions under ~~the provisions of~~ section 44-1844, 44-1845 or 44-1846.

6. The commissioner by special order exempts offerings or dispositions of any lots, parcels or fractional interests from compliance with ~~the provisions of~~ this article ~~upon~~ **ON** written petition and ~~upon~~ **ON** a showing satisfactory to the commissioner that compliance is not essential to the public interest or for the protection of buyers.

F. In areas outside of groundwater active management areas established pursuant to title 45, chapter 2, article 2, if the director of water resources, pursuant to section 45-108, reports an inadequate on-site supply of water to meet the needs projected by the developer or if no water is available, the state real estate commissioner shall require that all promotional material and contracts for the sale of lots in subdivisions approved by the commissioner adequately display the director of water resources' report or the

developer's brief summary of the report as approved by the commissioner on the proposed water supply for the subdivision.

G. The commissioner may require the subdivider to supplement the notice of intention to subdivide lands and may require the filing of periodic reports to update the information contained in the original notice of intention to subdivide lands.

H. The commissioner may authorize the subdivider to file as the notice of intention to subdivide lands, in lieu of some or all of the requirements of subsection A of this section, a copy of the statement of record filed with respect to the subdivision pursuant to the federal interstate land sales full disclosure act if the statement complies with the requirements of the act and the regulations pertinent to the act.

I. Neither a real estate sales contract, conveyance, lease, assignment or other instrument to transfer any interest in subdivided land nor any covenant or restriction affecting real property shall contain any provision limiting the right of any party to appear or testify in support of or opposition to zoning changes, building permits or any other official acts affecting real property before a governmental body or official considering zoning changes, building permits or any other official acts affecting real property, whether the property is located within or outside of the boundaries of the subdivision. All contractual provisions ~~which~~ THAT conflict with this subsection are declared to be contrary to public policy. Nothing contained in this subsection shall prohibit private restrictions on the use of any real property.

J. Before offering subdivided lands for lease or sale the subdivider who makes any promises through any form of advertising media that the subdivided lands will be exclusively a retirement community or one ~~which~~ THAT is limited to the residency of adults or senior citizens shall include the promises in the deed restrictions affecting any interest in real property within the subdivided lands.

Sec. 2. Section 32-2183, Arizona Revised Statutes, is amended to read:

32-2183. Subdivision public reports; denial of issuance; unlawful sales; voidable sale or lease; order prohibiting sale or lease; investigations; hearings; summary orders

A. Upon examination of a subdivision, the commissioner, unless there are grounds for denial, shall issue to the subdivider a public report authorizing the sale or lease in this state of the lots, parcels or fractional interests within the subdivision. The report shall contain the data obtained in accordance with section 32-2181 and any other information which the commissioner determines is necessary to implement the purposes of this article. If any of the lots, parcels or fractional interests within the subdivision are located within territory in the vicinity of a military airport or ancillary military facility as defined in section 28-8461 or under a military training route as delineated in the military training route map prepared pursuant to section 37-102, the

report shall include, in bold twelve point font block letters on the first page of the report, the statements required pursuant to section 28-8484, subsection A or section 32-2183.05 and, if the department has been provided a map prepared pursuant to section 28-8484, subsection B or section 37-102, the report shall include a copy of the map. The military airport report requirements do not require the amendment or reissuance of any public report issued on or before December 31, 2001 or on or before December 31 of the year in which the lots, parcels or fractional interests within a subdivision become territory in the vicinity of a military airport or ancillary military facility. The military training route report requirements do not require the amendment or reissuance of any public report issued on or before December 31, 2004. The commissioner shall require the subdivider to reproduce the report, make the report available to each prospective customer and furnish each buyer or lessee with a copy before the buyer or lessee signs any offer to purchase or lease, taking a receipt therefor.

B. Notwithstanding subsection A of this section, a subdivider may elect to prepare a final public report for use in the sale of improved lots as defined in section 32-2101, as follows:

1. The subdivider shall prepare the public report and provide a copy of the report to the commissioner with the submission of the notification required by sections 32-2181 and 32-2184 and shall comply with all other requirements of this article.
2. An initial filing fee of five hundred dollars or an amended filing fee of two hundred fifty dollars shall accompany the notification required by paragraph 1 of this subsection.
3. The department shall assign a registration number to each notification and public report submitted pursuant to this subsection and shall maintain a database of all of these submissions. The subdivider shall place the number on each public report.
4. The department shall determine within fifteen business days after the receipt of the notification and public report whether the notification and public report are administratively complete. The commissioner either may issue a certification that the notification and public report are administratively complete or may deny issuance of the certification if it appears that the application or project is not in compliance with all legal requirements, that the applicant has a background of violations of state or federal law or that the applicant or project presents an unnecessary risk of harm to the public.
5. A subdivider may commence sales or leasing activities as permitted under this article after obtaining a certificate of administrative completeness from the commissioner.
6. Before or after the commissioner issues a certificate of administrative completeness, the department may examine any public report, subdivision or applicant that has applied for or received the certificate. If the commissioner determines that the

subdivider or subdivision is not in compliance with any requirement of state law or that grounds exist under this chapter to suspend, deny or revoke a public report, the commissioner may commence an administrative action under section 32-2154 or 32-2157. If the subdivider immediately corrects the deficiency and comes into full compliance with state law, the commissioner shall vacate any action that the commissioner may have commenced pursuant to section 32-2154 or 32-2157.

7. The department shall provide forms and guidelines for the submission of the notification and public report pursuant to this section.

C. The commissioner may suspend, revoke or deny issuance of a public report on any of the following grounds:

1. Failure to comply with ~~any of the provisions of~~ this article or the rules of the commissioner pertaining to this article.
2. The sale or lease would constitute misrepresentation to or deceit or fraud of the purchasers or lessees.
3. Inability to deliver title or other interest contracted for.
4. Inability to demonstrate that adequate financial or other arrangements acceptable to the commissioner have been made for completion of all streets, sewers, electric, gas and water utilities, drainage and flood control facilities, community and recreational facilities and other improvements included in the offering.
5. Failure to make a showing that the lots, parcels or fractional interests can be used for the purpose for which they are offered.
6. The owner, agent, subdivider, officer, director or partner, subdivider trust beneficiary holding ten per cent or more direct or indirect beneficial interest or, if a corporation, any stockholder owning ten per cent or more of the stock in the corporation has:
 - (a) Been convicted of a felony or misdemeanor involving fraud or dishonesty or involving conduct of any business or a transaction in real estate, cemetery property, time-share intervals or membership camping campgrounds or contracts.
 - (b) Been permanently or temporarily enjoined by order, judgment or decree from engaging in or continuing any conduct or practice in connection with the sale or purchase of real estate or cemetery property, time-share intervals, membership camping contracts or campgrounds, or securities or involving consumer fraud or the racketeering laws of this state.
 - (c) Had an administrative order entered against him by a real estate regulatory agency or security regulatory agency.
 - (d) Had an adverse decision or judgment entered against him involving fraud or dishonesty or involving the conduct of any business or transaction in real estate,

cemetery property, time-share intervals or membership camping campgrounds or contracts.

(e) Disregarded or violated ~~any of the provisions of~~ this chapter or the rules of the commissioner pertaining to this chapter.

(f) Controlled an entity to which subdivision (b), (c), (d) or (e) applies.

7. Procurement or an attempt to procure a public report by fraud, misrepresentation or deceit or by filing an application for a public report ~~which~~ THAT is materially false or misleading.

8. Failure of the declaration for a condominium created pursuant to title 33, chapter 9, article 2 to comply with the requirements of section 33-1215 or failure of the plat for the condominium to comply with the requirements of section 33-1219. The commissioner may require an applicant for a public report to submit a notarized statement signed by the subdivider or an engineer or attorney licensed to practice in this state certifying that the condominium plat and declaration of condominium are in compliance with the requirements of sections 33-1215 and 33-1219. If the notarized statement is provided, the commissioner is entitled to rely on this statement.

9. Failure of any blanket encumbrance or valid supplementary agreement executed by the holder of the blanket encumbrance to contain provisions that enable the purchaser to acquire title to a lot or parcel free of the lien of the blanket encumbrance, on completion of all payments and performance of all of the terms and provisions required to be made or performed by the purchaser under the real estate sales contract by which the purchaser has acquired the lot or parcel. The subdivider shall file copies of documents acceptable to the commissioner containing these provisions with the commissioner before the sale of any subdivision lot or parcel subject to a blanket encumbrance.

10. Failure to demonstrate permanent access to the subdivision lots or parcels.

11. The use of the lots presents an unreasonable health risk.

D. It is unlawful for a subdivider to sell any lot in a subdivision unless one of the following occurs:

1. All proposed or promised subdivision improvements are completed.

2. The completion of all proposed or promised subdivision improvements is assured by financial arrangements acceptable to the commissioner. The financial arrangements may be made in phases for common community and recreation facilities required by a municipality or county as a stipulation for approval of a plan for a master planned community.

3. The municipal or county government agrees to prohibit occupancy and the subdivider agrees not to close escrow for lots in the subdivision until all proposed or promised subdivision improvements are completed.

4. The municipal or county government enters into an assurance agreement with any trustee not to convey lots until improvements are completed within the portion of the subdivision containing these lots, if the improvements can be used and maintained separately from the improvements required for the entire subdivision plat. The agreement shall be recorded in the county in which the subdivision is located.

E. If the subdivision is within a groundwater active management area, as defined in section 45-402, the commissioner shall deny issuance of a public report or the use of any exemption pursuant to section 32-2181.02, subsection B unless the subdivider has been issued a certificate of assured water supply by the director of water resources and has paid all applicable ~~replenishment reserve~~ fees pursuant to ~~section~~ **SECTIONS 48-3772 AND 48-3774.01**, or unless the subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an assured water supply by the director of water resources pursuant to section 45-576 or is exempt from the requirement pursuant to section 45-576.

F. A subdivider shall not sell or lease or offer for sale or lease in this state any lots, parcels or fractional interests in a subdivision without first obtaining a public report from the commissioner except as provided in section 32-2181.01 or 32-2181.02. Unless exempt, the sale or lease of subdivided lands prior to issuance of the public report or failure to deliver the public report to the purchaser or lessee shall render the sale or lease rescindable by the purchaser or lessee. An action by the purchaser or lessee to rescind the transaction shall be brought within three years of the date of execution of the purchase or lease agreement by the purchaser or lessee. In any rescission action, the prevailing party is entitled to reasonable attorney fees as determined by the court.

G. Any applicant objecting to the denial of a public report, within thirty days after receipt of the order of denial, may file a written request for a hearing. The commissioner shall hold the hearing within twenty days after receipt of the request for a hearing unless the party requesting the hearing has requested a postponement. If the hearing is not held within twenty days after a request for a hearing is received, plus the period of any postponement, or if a proposed decision is not rendered within forty-five days after submission, the order of denial shall be rescinded and a public report issued.

H. On the commissioner's own motion, or when the commissioner has received a complaint and has satisfactory evidence that the subdivider or the subdivider's agent is violating ~~any provision set forth in~~ this article or the rules of the commissioner or has engaged in any unlawful practice as defined in section 44-1522 with respect to the sale

of subdivided lands or deviated from the provisions of the public report, the commissioner may investigate the subdivision project and examine the books and records of the subdivider. For the purpose of examination, the subdivider shall keep and maintain records of all sales transactions and funds received by the subdivider pursuant to the sales transactions and shall make them accessible to the commissioner upon reasonable notice and demand.

I. On the commissioner's own motion, or when the commissioner has received a complaint and has satisfactory evidence that any person has violated ~~any of the provisions of~~ this article or the rules of the commissioner or has engaged in any unlawful practice as defined in section 44-1522 with respect to the sale of subdivided lands or deviated from the provisions of the public report or special order of exemption, or has been indicted for fraud or against whom an information for fraud has been filed or has been convicted of a felony, before or after the commissioner issues the public report as provided in subsection A of this section, the commissioner may conduct an investigation of the matter, issue a summary order as provided in section 32-2157, or hold a public hearing and, after the hearing, may issue the order or orders the commissioner deems necessary to protect the public interest and ensure compliance with the law, rules or public report or the commissioner may bring action in any court of competent jurisdiction against the person to enjoin the person from continuing the violation or engaging in or doing any act or acts in furtherance of the violation. The court may make orders or judgments, including the appointment of a receiver, necessary to prevent the use or employment by a person of any unlawful practices, or which may be necessary to restore to any person in interest any monies or property, real or personal, that may have been acquired by means of any practice in this article declared to be unlawful.

J. When it appears to the commissioner that a person has engaged in or is engaging in a practice declared to be unlawful by this article and that the person is concealing assets or self or has made arrangements to conceal assets or is about to leave the state, the commissioner may apply to the superior court, ex parte, for an order appointing a receiver of the assets of the person or for a writ of ne exeat, or both.

K. The court, ~~upon~~ **ON** receipt of an application for the appointment of a receiver or for a writ of ne exeat, or both, shall examine the verified application of the commissioner and other evidence that the commissioner may present the court. If satisfied that the interests of the public require the appointment of a receiver or the issuance of a writ of ne exeat without notice, the court shall issue an order appointing the receiver or issue the writ, or both. If the court determines that the interests of the public will not be

harmful by the giving of notice, the court shall set a time for a hearing and require notice be given as the court deems satisfactory.

L. If the court appoints a receiver without notice, the court shall further direct that a copy of the order appointing a receiver be served ~~upon~~ ON the person engaged in or engaging in a practice declared to be unlawful under this article by delivering the order to the last address of the person ~~which~~ THAT is on file with the state real estate department. The order shall inform the person that the person has the right to request a hearing within ten days of the date of the order and, if requested, the hearing shall be held within thirty days from the date of the order.

Sec. 3. Section 32-2197.08, Arizona Revised Statutes, is amended to read:

32-2197.08. Issuance of public report by commissioner on timeshare plan; denial of issuance; additional information; use of another state's public report

A. On examination of a timeshare plan, the commissioner, unless there are grounds for denial, shall approve for use by the developer a public report authorizing the sale or lease of the timeshare interests within the timeshare plan. For all timeshare interests sold in this state, the commissioner shall require the developer to reproduce the public report and furnish each prospective customer with a copy, taking a receipt for each copy. The public report shall be made available to each prospective purchaser in written format and may also be made available in CD-ROM or other electronic format as approved by the commissioner. The public report shall include the following:

1. The name and principal address of the owner and developer.
2. A description of the type of timeshare interests being offered.
3. A description of the existing and proposed accommodations and amenities of the timeshare plan, including type and number, any use restrictions and any required fees for use.
4. A description of any accommodations and amenities that are committed to be built, including:
 - (a) The developer's schedule of commencement and completion of all accommodations and amenities.
 - (b) The estimated number of accommodations per site that may become subject to the timeshare plan.
5. A brief description of the duration, phases and operation of the timeshare plan.
6. The current annual budget if available or the projected annual budget for the timeshare plan. The budget shall include:
 - (a) A statement of the amount or a statement that there is no amount included in the budget as a reserve for repairs and replacement.

(b) The projected common expense liability, if any, by category of expenditures for the timeshare plan.

(c) A statement of any services or expenses that are not reflected in the budget and that the developer provides or pays.

7. A description of any liens, defects or encumbrances on or affecting the title to the timeshare interests.

8. A statement that by midnight of the seventh calendar day after execution of the purchase agreement a purchaser may cancel any purchase agreement for a timeshare interest from a developer together with a statement providing the name and street address where the purchaser should mail any notice of cancellation. However, if, by agreement of the parties through the purchase agreement, the purchase agreement allows for cancellation of the purchase agreement for a period of time exceeding seven calendar days, the public report shall include a statement that the cancellation of the purchase agreement is allowed for that period of time exceeding seven calendar days.

9. A description of any bankruptcies, pending suits, adjudications or disciplinary actions material to the timeshare interests of which the developer has knowledge.

10. Any restrictions on alienation of any number or portion of any timeshare interests.

11. Any current or expected fees or charges to be paid by timeshare purchasers for the use of any amenities related to the timeshare plan.

12. The extent to which financial arrangements have been provided for completion of all promised improvements.

13. If the timeshare plan provides purchasers with the opportunity to participate in any exchange programs, a description of the name and address of the exchange companies and the method by which a purchaser accesses the exchange programs.

14. Any other information that the developer, with the approval of the commissioner, desires to include in the public report.

15. If the developer is offering a multisite timeshare plan, the following information, which may be disclosed in a written, graphic or tabular form:

(a) A description of each component site, including the name and address of each component site.

(b) The number of accommodations and timeshare periods, expressed in periods of use availability, committed to the multisite timeshare plan and available for use by purchasers.

(c) Each type of accommodation in terms of the number of bedrooms, bathrooms and sleeping capacity and a statement of whether or not the accommodation contains a full kitchen. For the purposes of this subdivision, "full kitchen" means a kitchen having a minimum of a dishwasher, range, oven, sink and refrigerator.

- (d) A description of amenities available for use by the purchaser at each component site.
- (e) A description of the reservation system, including the following:
 - (i) The entity responsible for operating the reservation system.
 - (ii) A summary of the rules governing access to and use of the reservation system.
 - (iii) The existence of and an explanation regarding any priority reservation features that affect a purchaser's ability to make reservations for the use of a given accommodation on a first reserved, first served basis.
- (f) A description of any right to make any additions, substitutions or deletions of accommodations or amenities and a description of the basis on which accommodations and amenities may be added to, substituted in or deleted from the multisite timeshare plan.
- (g) A description of the purchaser's liability for any fees associated with the multisite timeshare plan.
- (h) The location and the anticipated relative use demand of each component site in a multisite timeshare plan as well as any periodic adjustment or amendment to the reservation system that may be needed in order to respond to actual purchaser use patterns and changes in purchaser use demand for the accommodations existing at the time within the multisite timeshare plan.
- (i) Any other information reasonably required by the commissioner or established by rule necessary for the protection of purchasers of timeshare interests in timeshare plans.
- (j) Any other information that the developer, with the approval of the commissioner, desires to include in the public report.

16. If a developer offers a nonspecific timeshare interest in a multisite timeshare plan, the information set forth in paragraphs 1 through 14 of this subsection as to each component site.

17. Any other information that the commissioner determines or establishes by rule is necessary to implement the purpose of this article.

B. In the event of denial, suspension or revocation, grounds shall be set forth in writing at the time of denial, suspension or revocation. The commissioner may deny, suspend or revoke the public report on any of the following grounds:

1. Failure to comply with ~~any of the provisions of~~ this article or the rules of the commissioner pertaining to this article.
2. The sale or lease would constitute misrepresentation to or deceit or fraud of the purchasers or lessees.

3. Inability to demonstrate that adequate financial or other arrangements acceptable to the commissioner have been made for completion of the timeshare property, installation of all streets, sewers, electric, gas and water utilities, drainage, flood control and other similar improvements included in the offering.

4. The developer, including if an entity, an officer, director, member, manager, partner, owner, trust beneficiary holding ten per cent or more beneficial interest, stockholder owning ten per cent or more of the stock or other person exercising control of the entity, has:

(a) Been convicted of a felony or misdemeanor involving theft, fraud or dishonesty or involving the conduct of any business or a transaction in real estate, cemetery property, timeshare interests or membership camping campgrounds or contracts.

(b) Been permanently or temporarily enjoined by order, judgment or decree from engaging in or continuing any conduct or practice in connection with the sale or purchase of real estate, cemetery property, timeshare interests, membership camping campgrounds or contracts, or securities or involving consumer fraud or the Arizona racketeering laws.

(c) Had an administrative order entered against him by a real estate regulatory agency or securities regulatory agency.

(d) Had an adverse decision or judgment entered against him involving fraud or dishonesty or involving the conduct of any business in or a transaction in real estate, cemetery property, timeshare interests or membership camping campgrounds or contracts.

(e) Disregarded or violated ~~any of the provisions of~~ this chapter or the rules of the commissioner pertaining to this chapter.

(f) Participated in, operated or held an interest in any entity to which subdivision (b), (c), (d), or (e) of this paragraph applies.

5. If within this state, the timeshare property is incompatible with the existing neighborhood and would introduce into a neighborhood a character of property or use ~~which~~ THAT would clearly be detrimental to property values in that neighborhood.

C. If the timeshare property is within a groundwater active management area, as defined in section 45-402, the commissioner shall deny issuance of a public report unless the developer has been issued a certificate of assured water supply by the director of water resources and has paid all applicable ~~replenishment reserve~~ fees pursuant to ~~section~~ SECTIONS 48-3772 AND 48-3774.01, or unless the developer has obtained a written commitment of water service for the timeshare property from a city, town or private water company designated as having an assured water supply by the director of water resources pursuant to section 45-576.

D. In addition to providing to each prospective customer a copy of the public report as required in subsection A of this section, the developer shall also provide to each customer before the close of any transaction information and materials that identify any timeshare exchange companies currently under contract and disclosure statements regarding the use of the timeshare exchange companies, as well as any additional information the commissioner deems appropriate.

E. The commissioner may authorize for use in this state by a developer of a timeshare plan in which all accommodations are located outside of this state a current public report that is issued by another jurisdiction or an equivalent registration and disclosure document that is required before offering a timeshare plan for sale, lease or use and that is issued by another jurisdiction. This authorization does not constitute an exemption from other applicable requirements of this article.

Sec. 4. Section 45-492, Arizona Revised Statutes, is amended to read:

45-492. Withdrawals by cities, towns and private water companies within service areas; contract to supply groundwater

A. Except as provided in subsection D of this section, in an active management area, a city, town or private water company shall have the right to withdraw and transport groundwater within its service area for the benefit of landowners and residents within its service area, and the landowners and residents are entitled to use the groundwater delivered, subject to:

1. ~~The provisions of~~ Articles 8 and 8.1 of this chapter relating to transportation of groundwater.
2. Conservation requirements developed by the director pursuant to article 9 of this chapter.

3. SECTION 45-493, SUBSECTION D.

B. Claims of landowners to irrigation grandfathered rights or type 1 or 2 non-irrigation grandfathered rights shall be subject to ~~the provisions of~~ article 5 of this chapter.

C. A city, town or private water company may contract to supply groundwater to a city, town or private water company in the same active management area if it is consistent with the management plan for the active management area and section 45-576 and is approved by the director.

D. In an active management area, a city, town or private water company whose service area has qualified as a member service area under title 48, chapter 22, or as a water district member service area under title 48, chapter 28, has the right to withdraw and transport groundwater within its service area for the benefit of landowners and residents within its service area, and the landowners and residents are entitled to use the groundwater delivered, subject to ~~the provisions of~~ subsection A of this section and,

to the extent the groundwater delivered is considered excess groundwater as defined and used in title 48, chapter 22 or 28, as applicable, subject to the payment by the city, town or private water company of the replenishment tax levied from time to time by a conservation district under title 48, chapter 22, or a water district under title 48, chapter 28, whichever is applicable. A city, town or private water company shall be deemed to have failed to pay the replenishment tax only if the conservation district or the water district provides notice to the department of a delinquency in the payment of the replenishment tax pursuant to section 48-3781, subsection G or section 48-4982, subsection G, as applicable.

Sec. 5. Section 45-493, Arizona Revised Statutes, is amended to read:

45-493. Limitations on extensions of service areas; prohibition on formation of private water company for irrigation purpose; prohibition on service without payment of tax

A. In an active management area, the service area of a city, town or private water company may not be extended primarily for any of the following purposes:

1. Including a well field within the service area.
2. Furnishing disproportionately large amounts of water to an industrial or any other large water user unless it is consistent with the management plan for the active management area and is approved by the director.
3. Including irrigation acres within the exterior boundaries of the service area to extinguish the right to convey irrigation grandfathered rights to a non-irrigation use.

B. Within an active management area, a city, town or private water company may not extend its service area for the purpose of withdrawing and distributing groundwater for irrigation purposes.

C. Subsequent to the date of the designation of the active management area, a private water company may not be formed within an active management area to withdraw and distribute groundwater for irrigation purposes.

D. IF A MUNICIPAL PROVIDER WHOSE SERVICE AREA HAS QUALIFIED AS A MEMBER SERVICE AREA UNDER TITLE 48, CHAPTER 22 TERMINATES WATER SERVICE TO ANY PORTION OF THE SERVICE AREA AND FAILS TO PAY THE REPLENISHMENT TAX LEVIED BY A CONSERVATION DISTRICT UNDER TITLE 48, CHAPTER 22 FOR THAT AREA, ANOTHER MUNICIPAL PROVIDER SHALL NOT COMMENCE SERVICE OF GROUNDWATER UNDER SECTION 45-492, SUBSECTION A OR D OR SECTION 45-494 TO LANDOWNERS AND RESIDENTS WITHIN THAT AREA WITHOUT FIRST MAKING ARRANGEMENTS TO PAY ALL OUTSTANDING REPLENISHMENT TAXES TO THE CONSERVATION DISTRICT. THIS SUBSECTION DOES NOT APPLY TO THE COMMENCEMENT OF SERVICE OF GROUNDWATER BY AN IRRIGATION DISTRICT TO AN INDUSTRIAL USER UNDER

SECTION 45-497. FOR THE PURPOSES OF THIS SUBSECTION, "MUNICIPAL PROVIDER" HAS THE SAME MEANING PRESCRIBED IN SECTION 45-561.

Sec. 6. Section 45-494, Arizona Revised Statutes, is amended to read:

45-494. Withdrawals by irrigation districts in initial active management areas

In an initial active management area established pursuant to section 45-411:

1. An irrigation district existing and engaged in the withdrawal, delivery and distribution of groundwater as of January 1, 1977 shall have the right, subject to section 45-496 AND SECTION 45-493, SUBSECTION D:

(a) To withdraw and transport groundwater within its service area for the benefit of landowners within its service area, and the landowners are entitled to use the groundwater delivered, provided claims of landowners to irrigation grandfathered rights or type 1 or 2 non-irrigation grandfathered rights shall be subject to ~~the provisions of~~ article 5 of this chapter.

(b) If legally withdrawing and transporting groundwater from outside its service area for use within its service area as of January 1, 1977, to continue to withdraw and transport the amount of groundwater legally being withdrawn as of January 1, 1977.

2. An irrigation district ~~which~~ THAT was not engaged in the withdrawal, delivery and distribution of groundwater as of January 1, 1977 shall be limited to the right, subject to section 45-496, to:

(a) Contract for surface water from a multi-county water conservation district and deliver and distribute such water within its service area for irrigation purposes.

(b) If, as of January 1, 1983, the district had been recommended by the director to receive an allocation of municipal and industrial water from the central Arizona project, contract for surface water from a multi-county water conservation district and deliver such surface water to cities, towns or private water companies for municipal, industrial and domestic purposes, subject to the following conditions:

(i) The cities, towns and private water companies shall distribute the water within the boundaries of the district in effect as of the date of validation of the district's central Arizona project subcontract.

(ii) In contracting for the delivery of such surface water, the district shall offer the water, first, to cities and towns ~~which~~ THAT distribute water to land within the boundaries of the district or to land adjacent or contiguous to the district and, second, if the cities or towns are unwilling or unable to take and distribute such surface water, to private water companies within the boundaries of the district ~~which~~ THAT have not been recommended to receive or have not received an allocation of municipal and industrial water from the central Arizona project.

(iii) Notwithstanding article 5 of this chapter, the original owner and any new owner of a type 1 non-irrigation grandfathered right created pursuant to section 45-469 ~~which~~ **THAT** is appurtenant to land in the district to which such surface water is distributed by a city, town or private water company may use groundwater withdrawn pursuant to that right only on the land to which the right is appurtenant.

(iv) The district may amend its contract, or execute a new contract, with the United States secretary of the interior and a multi-county water conservation district to provide for the conversion of irrigation water deliveries to municipal and industrial water deliveries as provided by law and pursuant to the secretary's regulations relating to conversion, but such amendment may be made or new contract executed only if the amount of municipal and industrial water for which the district would qualify by conversion of lands from irrigation to non-irrigation uses exceeds the secretary's initial express allocation of municipal and industrial water to the district for the year 2034 and only to the extent of the excess.

(v) Such surface water shall not be distributed by any city, town or private water company to any land with respect to which an allocation of municipal and industrial water from the central Arizona project has been made or recommended for some person other than the district.

(c) Contract to purchase, deliver and distribute effluent within its service area for irrigation purposes.

(d) Withdraw, deliver and distribute within its service area the amount of groundwater allowed by the current irrigation water duty of each member farm multiplied by the water duty acres in that farm less any portion of such amount withdrawn by individual members.

(e) Continue but not expand any non-irrigation water service being lawfully provided as of the date of the designation of the active management area, except as provided in subdivision (b) of this paragraph and in section 45-497, subsection B.

Sec. 7. Section 45-576, Arizona Revised Statutes, is amended to read:

45-576. Certificate of assured water supply; designated cities, towns and private water companies; exemptions; definition

A. A person who proposes to offer subdivided lands, as defined in section 32-2101, for sale or lease in an active management area shall apply for and obtain a certificate of assured water supply from the director prior to presenting the plat for approval to the city, town or county in which the land is located, where such is required, and prior to filing with the state real estate commissioner a notice of intention to offer such lands for sale or lease, pursuant to section 32-2181, unless the subdivider has obtained a

written commitment of water service for the subdivision from a city, town or private water company designated as having an assured water supply pursuant to this section.

B. A city, town or county may approve a subdivision plat only if the subdivider has obtained a certificate of assured water supply from the director or the subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an assured water supply pursuant to this section. The city, town or county shall note on the face of the approved plat that a certificate of assured water supply has been submitted with the plat or that the subdivider has obtained a written commitment of water service for the proposed subdivision from a city, town or private water company designated as having an assured water supply pursuant to this section.

C. The state real estate commissioner may issue a public report authorizing the sale or lease of subdivided lands only ~~if~~ **ON COMPLIANCE WITH EITHER OF THE FOLLOWING:**

1. The subdivider, owner, or agent has obtained a certificate of assured water supply from the director and has paid **ANY ACTIVATION FEE REQUIRED UNDER SECTION 48-3772, SUBSECTION A, PARAGRAPH 7, AND** any replenishment reserve fee required under section 48-3774.01, subsection A, paragraph 2. ~~or~~

2. If the subdivider has obtained a written commitment of water service for the lands from a city, town or private water company designated as having an assured water supply pursuant to this section **AND THE SUBDIVIDER, OWNER OR AGENT HAS PAID ANY ACTIVATION FEE REQUIRED UNDER SECTION 48-3772, SUBSECTION A, PARAGRAPH 7.**

D. The director shall designate private water companies in active management areas that have an assured water supply. If a city or town acquires a private water company that has contracted for central Arizona project water, the city or town shall assume the private water company's contract for central Arizona project water.

E. The director shall designate cities and towns in active management areas where an assured water supply exists. If a city or town has entered into a contract for central Arizona project water, the city or town is deemed to continue to have an assured water supply until December 31, 1997. Commencing on January 1, 1998, the determination that the city or town has an assured water supply is subject to review by the director and the director may determine that a city or town does not have an assured water supply.

F. The director shall notify the mayors of all cities and towns in active management areas and the chairmen of the boards of supervisors of counties in which active management areas are located of the cities, towns and private water companies designated as having an assured water supply and any modification of that designation

within thirty days of the designation or modification. If the service area of the city, town or private water company has qualified as a member service area pursuant to title 48, chapter 22, article 4, the director shall also notify the conservation district of the designation or modification and shall report the projected average annual replenishment obligation for the member service area based on the projected and committed average annual demand for water within the service area during the effective term of the designation or modification subject to any limitation in an agreement between the conservation district and the city, town or private water company. For each city, town or private water company that qualified as a member service area under title 48, chapter 22 and was designated as having an assured water supply before January 1, 2004, the director shall report to the conservation district on or before January 1, 2005 the projected average annual replenishment obligation based on the projected and committed average annual demand for water within the service area during the effective term of the designation subject to any limitation in an agreement between the conservation district and the city, town or private water company. Persons proposing to offer subdivided lands served by those designated cities, towns and private water companies for sale or lease are exempt from applying for and obtaining a certificate of assured water supply.

G. This section does not apply in the case of the sale of lands for developments that are subject to a mineral extraction and processing permit or an industrial use permit pursuant to sections 45-514 and 45-515.

H. The director shall adopt rules to carry out the purposes of this section no later than January 1, 1995.

I. For the purposes of this section, "assured water supply" means all of the following:

1. Sufficient groundwater, surface water or effluent of adequate quality will be continuously available to satisfy the water needs of the proposed use for at least one hundred years. Beginning January 1 of the calendar year following the year in which a groundwater replenishment district is required to submit its preliminary plan pursuant to section 45-576.02, subsection A, paragraph 1, with respect to an applicant that is a member of the district, "sufficient groundwater" for THE purposes of this paragraph means that the proposed groundwater withdrawals that the applicant will cause over a period of one hundred years will be of adequate quality and will not exceed, in combination with other withdrawals from land in the replenishment district, a depth to water of one thousand feet or the depth of the bottom of the aquifer, whichever is less. In determining depth to water for the purposes of this paragraph, the director shall consider the combination of:

- (a) The existing rate of decline.

(b) The proposed withdrawals.

(c) The expected water requirements of all recorded lots that are not yet served water and that are located in the service area of a municipal provider.

2. The projected groundwater use is consistent with the management plan and achievement of the management goal for the active management area.

3. The financial capability has been demonstrated to construct the water facilities necessary to make the supply of water available for the proposed use, including a delivery system and any storage facilities or treatment works. The director may accept evidence of the construction assurances required by section 9-463.01, 11-806.01 or 32-2181 to satisfy this requirement.

J. IF THE DIRECTOR DESIGNATES A MUNICIPAL PROVIDER AS HAVING AN ASSURED WATER SUPPLY UNDER THIS SECTION AND THE DESIGNATION LAPSES OR OTHERWISE TERMINATES WHILE THE MUNICIPAL PROVIDER'S SERVICE AREA IS A MEMBER SERVICE AREA OF A CONSERVATION DISTRICT, THE MUNICIPAL PROVIDER OR ITS SUCCESSOR SHALL CONTINUE TO COMPLY WITH THE CONSISTENCY WITH MANAGEMENT GOAL REQUIREMENTS IN THE RULES ADOPTED BY THE DIRECTOR UNDER SUBSECTION H OF THIS SECTION AS IF THE DESIGNATION WAS STILL IN EFFECT WITH RESPECT TO THE MUNICIPAL PROVIDER'S DESIGNATION USES. WHEN DETERMINING COMPLIANCE BY THE MUNICIPAL PROVIDER OR ITS SUCCESSOR WITH THE CONSISTENCY WITH MANAGEMENT GOAL REQUIREMENTS IN THE RULES, THE DIRECTOR SHALL CONSIDER ONLY WATER DELIVERED BY THE MUNICIPAL PROVIDER OR ITS SUCCESSOR TO THE MUNICIPAL PROVIDER'S DESIGNATION USES. A PERSON IS THE SUCCESSOR OF A MUNICIPAL PROVIDER IF THE PERSON COMMENCES WATER SERVICE TO USES THAT WERE PREVIOUSLY DESIGNATION USES OF THE MUNICIPAL PROVIDER. ANY GROUNDWATER DELIVERED BY THE MUNICIPAL PROVIDER OR ITS SUCCESSOR TO THE MUNICIPAL PROVIDER'S DESIGNATION USES IN EXCESS OF THE AMOUNT ALLOWED UNDER THE CONSISTENCY WITH MANAGEMENT GOAL REQUIREMENTS IN THE RULES SHALL BE CONSIDERED EXCESS GROUNDWATER FOR PURPOSES OF TITLE 48, CHAPTER 22. FOR THE PURPOSES OF THIS SUBSECTION, "DESIGNATION USES" MEANS ALL WATER USES SERVED BY A MUNICIPAL PROVIDER ON THE DATE THE MUNICIPAL PROVIDER'S DESIGNATION OF ASSURED WATER SUPPLY LAPSES OR OTHERWISE TERMINATES AND ALL RECORDED LOTS WITHIN THE MUNICIPAL PROVIDER'S SERVICE AREA THAT WERE NOT BEING SERVED BY THE MUNICIPAL PROVIDER ON THAT DATE BUT THAT RECEIVED FINAL PLAT APPROVAL FROM A CITY, TOWN OR COUNTY ON OR BEFORE THAT DATE. DESIGNATION USES DO NOT INCLUDE INDUSTRIAL USES SERVED BY AN IRRIGATION DISTRICT UNDER SECTION 45-497.

Sec. 8. Section 45-576.03, Arizona Revised Statutes, is amended to read:

45-576.03. [Director's review of plans](#)

A. Within sixty days after receiving a groundwater replenishment district's preliminary and long-range plans pursuant to section 45-576.02, the director shall determine if the district has submitted sufficient information to determine whether the district's plan for operation is consistent with the management goal of the active management area. If the director determines that the information is insufficient for such a determination, the director shall notify the district of the insufficiency in writing and shall specify what additional information is required. The district shall provide the information to the director within thirty days after receiving the notice.

B. On determining that the district's preliminary or long-range plan is complete, the director shall publish notice in a newspaper of general statewide circulation once each week for two consecutive weeks:

1. Requesting public comment concerning information supplied by the district to meet the requirements of section 45-576.02.
2. Setting a date and location of a public hearing to be held pursuant to subsection C of this section.

C. The director shall hold a public hearing within sixty days after the last day of notice under subsection B of this section. The hearing shall be conducted in an informal manner without adhering to the rules of evidence required in judicial proceedings. Any person, including the department, shall have an opportunity to comment on or to present evidence concerning the submitted plan.

D. The district shall respond in writing to all public comments whether received at the hearing or otherwise received by a date announced by the director.

E. Within one hundred twenty days after the hearing on the preliminary plan, the director shall issue a preliminary decision determining whether or not the plan for district operation shall be designated as being consistent with achieving the management goal. If the director determines that the preliminary plan for district operation is consistent with achieving the management goal, the designation expires on January 1 of the thirteenth calendar year following the calendar year in which the district is established. Within one hundred twenty days after the hearing on the long-range plan, the director shall issue a final decision determining whether or not the plan for district operation shall be designated as being consistent with achieving the management goal. The director shall include findings with the decision and a summary of all public comments received in writing and public comments made at the public hearing.

F. The director shall issue a decision that the district's plan for operation is consistent with achieving the management goal if the director finds that the district has the current capability to meet the district members' replenishment obligations for the five calendar years following the calendar year in which the district submits its plan and, in addition, the director makes either of the following findings, as applicable:

1. If the director is evaluating the preliminary plan, that the district has established an adequate plan for obtaining financing and water resources that are necessary to meet the district members' replenishment obligations through the eighteenth calendar year following the year in which the district is established.

2. If the director is evaluating the long-range plan, that the district has established an adequate plan to meet the projected replenishment obligations through the first calendar year in which achieving safe-yield is required.

G. Unless the district successfully appeals the director's decision pursuant to subsection H of this section, if the director has made a determination that the district's plan for operation is not consistent with achieving the management goal, the director shall notify the district of the inconsistency in writing and shall specify how the district's plan for operation is inconsistent with achieving the management goal. The district shall modify its proposed plan and resubmit the plan, and the director shall review the plan as provided by section 45-576.02 and this section, except that the director shall only hold a hearing regarding those matters that the district has modified in its resubmitted plan.

H. The director's determination under subsection E of this section is subject to rehearing or review and to judicial review as provided in section 45-114, subsection C, but the court shall not issue a temporary restraining order or preliminary injunction to prevent the director from acting under this chapter while the action is pending.

I. Within sixty days after receiving a conservation district's plan or a water district's plan pursuant to section 45-576.02, including a revised plan pursuant to subsection R of this section, the director shall determine if the conservation district or water district, as the case may be, has submitted sufficient information to determine whether the conservation district's plan for operation is consistent with the management goals of each of the active management areas in which a member land or member service area is or may be located or whether the water district's plan for operation is consistent with the management goal of the active management area in which a water district member land or a water district member service area is or may be located. If the director determines that the information is insufficient for such a determination, the director shall notify the conservation district or water district, as the case may be, of the insufficiency in writing and shall specify what additional information is required. The

conservation district or water district, as the case may be, shall provide the information to the director within a reasonable time as specified by the director.

J. On determining that the conservation district's plan or the water district's plan, as the case may be, is complete, the director shall publish notice in a newspaper of general statewide circulation once each week for two consecutive weeks:

1. Requesting public comment concerning information supplied by the conservation district or water district, as the case may be, to meet the requirements of section 45-576.02.
2. Setting a date and location of a public hearing to be held pursuant to subsection K of this section.

K. The director shall hold a public hearing within sixty days after the last day of the notice under subsection J of this section. The hearing shall be conducted in an informal manner without adhering to the rules of evidence required in judicial proceedings. Any person, including the department, shall have an opportunity to comment on or to present evidence concerning the submitted plan.

L. The conservation district or the water district, as the case may be, shall respond in writing to all public comments whether received at the hearing or otherwise received by a date announced by the director.

M. Within sixty days after the hearing on the first plan required under section 45-576.02, subsection C or the first plan required under section 45-576.02, subsection E and within one hundred twenty days after the hearing on any subsequent plan required under section 45-576.02, subsection C or E, including a revised plan pursuant to subsection R of this section, the director shall issue a decision for each of the active management areas in which a member land or member service area is or may be located, and the active management area in which a water district member land or water district member service area is or may be located, determining whether or not the plan submitted with respect to an active management area shall be designated as being consistent with achieving the management goal of the active management area. If the director determines that the plan submitted for an active management area is consistent with achieving the management goal of that active management area, the designation expires on January 1 of the year following the year in which the conservation district or the water district, as the case may be, is required to submit its next plan under section 45-576.02, subsections C and E. The director shall include findings with the decision and a summary of all public comments received in writing and public comments made at the public hearing.

N. The director shall make a determination that the conservation district's plan is consistent with achieving the management goal for each active management area if all of the following have been demonstrated:

1. The conservation district has identified sufficient water supplies to meet its replenishment obligations for current members during the twenty calendar years following the submission of the plan and has identified additional water supplies potentially available for the district's projected groundwater replenishment obligations for the one hundred calendar years following the submission of the plan for current members and potential members based on reasonable projections of real property and service areas that could qualify for membership in the ten years following the submission of the plan.

2. The **REPLENISHMENT RESERVE TARGET FOR EACH ACTIVE MANAGEMENT AREA WAS CALCULATED AS PRESCRIBED IN SECTION 48-3772, SUBSECTION E, AND THE** district is developing a replenishment reserve in each active management area pursuant to section 48-3772, subsection E.

3. The conservation district has identified sufficient capacity at storage facilities and projects to be used for replenishment purposes during the twenty calendar years following the submission of the plan.

4. **THE DISTRICT HAS MADE A REASONABLE ESTIMATE OF ITS PROJECTED REPLENISHMENT OBLIGATIONS FOR THE ONE HUNDRED CALENDAR YEARS FOLLOWING THE SUBMISSION OF THE TEN-YEAR PLAN AS REQUIRED BY SECTION 45-576.02, SUBSECTION C, PARAGRAPH 2, SUBDIVISION (b).**

O. The director shall issue a decision that the water district's plan is consistent with achieving the management goal of the active management area in which the water district is located if the director finds that the water district has the current capability to meet the current and projected water district groundwater replenishment obligation, as that term is defined and used in title 48, chapter 28, for the five calendar years following the calendar year in which the water district submits its plan and, in addition, the director finds the water district has established an adequate plan to meet the projected water district groundwater replenishment obligation for the twenty calendar years following the calendar year in which the plan was submitted.

P. Unless the conservation district or water district successfully appeals the director's decision pursuant to subsection Q of this section, if the director has made a determination for one or more active management areas that the conservation district's plan for operation or the water district's plan is not consistent with achieving the management goal of an active management area, the director shall notify the conservation district or water district, as the case may be, of the inconsistency in

writing and shall specify how the conservation district's plan for operation or the water district's plan is inconsistent with achieving the management goal. The conservation district or water district, as the case may be, shall modify its proposed plan and resubmit the plan within sixty days after it has been notified in writing of the director's decision, and the director shall review the plan as provided by section 45-576.02 and this section, except that the director shall only hold a hearing regarding those matters that the conservation district or water district, as the case may be, has modified in its resubmitted plan.

Q. The director's determination under subsection M or R of this section is subject to rehearing or review and to judicial review as provided in section 45-114, subsection C, but the court shall not issue a temporary restraining order or preliminary injunction to prevent the director from acting under this chapter while the action is pending.

R. If, at any time between the second anniversary and the sixth anniversary of the director's determination of consistency with the management goal, the director determines that there has been either an unexpected increase in the conservation district's projected groundwater replenishment obligations or an unexpected reduction in water supplies available to meet the conservation district's current obligations such that the conservation district's plan no longer demonstrates consistency with the management goal for one or more active management areas, the director ~~may~~ **SHALL** require the conservation district to submit a revised plan for operation. The revised plan for operation shall be submitted within two calendar years of the date that the director notifies the conservation district of such a determination. The director shall review, hold a hearing on and make a determination on the revised plan as provided by this section, except that the director shall only hold a hearing regarding those conditions that have changed.

S. Unless the conservation district successfully appeals the director's determination pursuant to subsection Q of this section, if the director has made a determination for one or more active management areas that the conservation district's revised plan for operation is not consistent with achieving the management goal of that active management area pursuant to this section and the conservation district is unable to satisfy the director's concerns within sixty days after the director has notified the conservation district of the determination, the district's plan shall expire.

Sec. 9. Section 45-859.01, Arizona Revised Statutes, is amended to read:

45-859.01. Conservation district account; replenishment reserve subaccount; debits and credits

A. The director shall establish a long-term storage account and a conservation district account for each active management area in which a member land or member service

area is or may be located. The director shall establish a replenishment reserve subaccount within the long-term storage account for each active management area in which a member land or member service area is or may be located.

B. For each reporting year, the groundwater replenishment obligation as defined in section 48-3701 for each active management area shall be debited from the conservation district account for that active management area.

C. For each reporting year, the contract replenishment obligation as defined in section 48-3701 for each active management area shall be debited from the conservation district account for that active management area.

D. On application by a conservation district to the director, credits in the conservation district's long-term storage account for an active management area, including credits earned through the use of excess capacity of each project permitted under article 6 of this chapter, shall be transferred and credited to its conservation district account for the same active management area.

E. After January 1, 2030 [OR EARLIER, ON APPROVAL OF THE DIRECTOR OF WATER RESOURCES PURSUANT TO SUBSECTION K OF THIS SECTION](#), on application by a conservation district to the director, credits in the conservation district's replenishment reserve subaccount for an active management area shall be transferred and credited to its conservation district account for the same active management area, except that any such transfer that would cause the balance in the replenishment reserve subaccount for an active management area to fall below twenty-five per cent of the reserve target for that active management area shall be subject to the approval of the director.

F. Except as provided in subsection E of this section, credits in a replenishment reserve subaccount may be assigned or transferred out of the replenishment reserve subaccount only on application by the conservation district to the director and only if the director determines that the assignment or transfer is warranted due to a reduction in the reserve target as defined in section 48-3701. If credits in a replenishment reserve subaccount are assigned or transferred to any account other than a conservation district account, then five per cent of the assigned or transferred credits shall be permanently extinguished.

G. For each reporting year, the director shall credit the conservation district's conservation district account by the amount of water stored by the conservation district during the reporting year, if the conservation district has requested the director to credit the stored water directly to its conservation district account and the stored water would otherwise be eligible for credits in a long-term storage account.

H. For each reporting year, the director shall credit the conservation district's replenishment reserve subaccount for each active management area by the amount of

long-term storage credits developed by the conservation district in that active management area during the reporting year for that purpose.

I. By October 31 of each year, the director shall determine whether the conservation district has completed the groundwater replenishment obligation for each active management area as prescribed by section 48-3771.

J. Credits in a conservation district account may not be assigned or transferred out of the conservation district account.

K. A CONSERVATION DISTRICT MAY APPLY TO THE DIRECTOR TO TRANSFER CREDITS IN THE CONSERVATION DISTRICT'S REPLENISHMENT RESERVE SUBACCOUNT FOR AN ACTIVE MANAGEMENT AREA TO ITS CONSERVATION DISTRICT ACCOUNT FOR THE SAME ACTIVE MANAGEMENT AREA EARLIER THAN JANUARY 1, 2030. THE APPLICATION SHALL SPECIFY THE REASON FOR THE REQUEST, STATE THE AMOUNT OF CREDITS SOUGHT TO BE TRANSFERRED AND INCLUDE A PLAN FOR REPLACING THE CREDITS IN THE REPLENISHMENT RESERVE SUBACCOUNT. THE DIRECTOR SHALL APPROVE THE APPLICATION IF THE DIRECTOR DETERMINES THAT BOTH OF THE FOLLOWING APPLY:

1. THE CONSERVATION DISTRICT HAS DEMONSTRATED GOOD CAUSE FOR THE TRANSFER.

2. THE CONSERVATION DISTRICT'S PLAN FOR REPLACING THE TRANSFERRED CREDITS IS ADEQUATE.

Sec. 10. Section 45-896.01, Arizona Revised Statutes, is amended to read:

45-896.01. Assumption of responsibility for stored water

A. Notwithstanding section 45-895.01, if a groundwater replenishment district is established pursuant to title 48, chapter 27 on or before July 1, 1996 in the Phoenix active management area:

1. The multi-county water conservation district and the groundwater replenishment district shall share equally any water that is stored in a state demonstration project in that active management area. The shares shall be calculated after the director has determined the amount of stored water to be reserved pursuant to paragraph 2 of this subsection.

2. The director shall determine the quantity of any water that is stored for the benefit of municipal and industrial users that are not member lands or member service areas of the multi-county water conservation district and that are located in Maricopa county and the right to use that amount of water is reserved to those municipal and industrial users. Those municipal and industrial users may recover and use the water as otherwise provided by statute or rule but shall apply to the multi-county water conservation district for the use of the water.

3. On or before December 31, 1996, unexpended and unencumbered monies, liabilities, facilities and equipment of a state demonstration project shall be transferred to the multi-county water conservation district and the groundwater replenishment district in equal shares.

B. Notwithstanding section 45-895.01, if a permanent active management area water district is established pursuant to title 48, chapter 28 on or before July 1, 1996 in the Tucson active management area:

1. The multi-county water conservation district and the active management area water district shall share equally any water that is stored in a state demonstration project located in that active management area. The shares shall be calculated after the director has determined the amount of stored water to be reserved pursuant to paragraph 2 of this subsection.

2. The director shall determine the quantity of any water that is stored for the benefit of municipal and industrial users that are not member lands or member service areas of the multi-county water conservation district and that are located in Pima county and the right to use that amount of water is reserved to those municipal and industrial users. Those municipal and industrial users may recover and use the water as otherwise provided by statute or rule but shall apply to the multi-county water conservation district for the use of the water.

3. On or before December 31, 1996, unexpended and unencumbered monies, liabilities, facilities and equipment of a state demonstration project shall be transferred to the multi-county water conservation district and the active management area water district in equal shares.

C. Notwithstanding section 45-895.01 and only to the extent that subsection A or B of this section does not apply:

1. Not later than December 31, 1996, facilities, equipment and liabilities of a state demonstration project located in a multi-county water conservation district shall be transferred to the multi-county water conservation district.

2. The multi-county water conservation district shall use the monies in the state water storage fund established by section 45-897.01 to expediently store water and construct underground storage facilities until that fund is exhausted.

3. On July 1, 1996 the multi-county water conservation district shall assume responsibility for water that is stored by that date in a state demonstration project located in the district. ~~Before July 1, 1996 the director shall determine the quantity of water that has been stored for the benefit of municipal and industrial users that are located in Maricopa or Pima counties but that are not member lands or member service areas of the multi-county water conservation district. The right to use that quantity of~~

~~benefit of those municipal and industrial users.~~ The water ~~not reserved for this purpose~~ shall be used for the benefit of member lands or member service areas of the multi-county water conservation district **THAT ARE LOCATED IN THE ACTIVE MANAGEMENT AREA IN WHICH THE WATER WAS ORIGINALLY STORED.**

4. Periodically after July 1, 1996, until the state water storage fund is exhausted, the director shall determine the quantity of water that has been stored with the use of monies from the state water storage fund for the benefit of municipal and industrial users that are located in Maricopa or Pima county but that are not member lands or member service areas of the multi-county water conservation district. The director shall transfer those quantities of long-term storage credits to the Arizona water banking authority. The Arizona water banking authority shall use the long-term storage credits transferred pursuant to this paragraph in accordance with section 45-2457, subsection B, paragraph 7.

5. Long-term storage credits **THAT ARE** earned after July 1, 1996 with the use of monies in the state water storage fund established by section 45-897.01 **AND** that are not transferred to the Arizona water banking authority pursuant to paragraph 4 of this subsection shall be transferred to the multi-county water conservation district and shall be used for the benefit of member lands or member service areas of the multi-county water conservation district.

Sec. 11. Section 48-3701, Arizona Revised Statutes, is amended to read:

48-3701. Definitions

In this chapter, unless the context otherwise requires:

1. "Active management area" means an active management area established under title 45, chapter 2, article 2.
2. "Board" means the board of directors of a multi-county water conservation district.
3. "Contract replenishment obligation" means an amount of groundwater that the district contracts to replenish in a year on behalf of a municipal provider pursuant to a contract authorized under section 48-3772, subsection B, paragraph 9.
4. "Credits" means any groundwater in addition to the amount of groundwater that may be used at a member land or delivered within a member service area for use within the member service area pursuant to the applicable assured water supply rules adopted by the department of water resources.
5. "Declaration" means an instrument recorded against real property and conforming to the requirements prescribed by section 48-3774, subsection A, paragraph 5.
6. "District" means a multi-county water conservation district organized under the authority of this chapter.

7. "Excess groundwater" means an amount of groundwater equal to that amount of groundwater delivered to a member land in a calendar year or delivered within a member service area by the municipal provider for that member service area in a calendar year in excess of the amount of groundwater that may be used at the member land in that calendar year or that may be delivered by the municipal provider for use within the member service area in that calendar year and consistent with the applicable assured water supply rules adopted by the department of water resources for the active management area where the member land or the member service area is located.
8. "Excess groundwater increment" means the amount by which excess groundwater reported for a member service area under section 48-3775, subsection B in any year exceeds the maximum amount of excess groundwater reported for that member service area in any prior year.
9. "Groundwater replenishment obligation" means, for each active management area in which member lands or member service areas are or may be located, the total of the cumulative parcel replenishment obligation of all parcels of member land in that active management area for a particular calendar year plus the cumulative service area replenishment obligation of all member service areas in that active management area for a particular calendar year.
10. "Member land" means any real property that meets the requirements of section 48-3774.
11. "Member service area" means the service area of a municipal provider that qualifies as a member service area under section 48-3780, including any additions to or extensions of the service area.
12. "Multi-county water conservation district" means a district composed of three or more counties that have joined together for the creation of a district.
13. "Municipal provider" means a city, town or private water company or an irrigation district that supplies water for non-irrigation use.
14. "Parcel of member land" means any portion of member land for which the tax assessor for the county in which the member land is located has issued a separate county parcel number.
15. "Parcel replenishment obligation" means, with respect to any particular parcel of member land, an amount of groundwater that is equal to the amount of groundwater delivered to the parcel of member land in a calendar year multiplied by the percentage that the excess groundwater of the applicable member land for that year bears to the total amount of groundwater delivered to the applicable member land during that year.
16. "Population" means the population determined in the most recent United States decennial census.

17. "Private water company" has the same meaning prescribed in section 45-402.

18. "PROJECTED ONE HUNDRED YEAR REPLENISHMENT OBLIGATION" MEANS FOR EACH ACTIVE MANAGEMENT AREA, THE DISTRICT'S TOTAL PROJECTED ANNUAL GROUNDWATER REPLENISHMENT OBLIGATION AT ACTIVE MANAGEMENT AREA BUILD-OUT, MULTIPLIED BY ONE HUNDRED.

~~18.~~ 19. "Replenish" means to increase the amount of groundwater in an aquifer through water storage pursuant to title 45, chapter 3.1 for the purpose of meeting the obligations of article 4 of this chapter.

~~19.~~ 20. "Reserve target" means, ~~for each active management area, twenty times the sum of the district's total projected average annual replenishment obligations, as reported by the director of water resources pursuant to section 45-576, subsection F and section 45-578, subsection F, for all parcels of category 1 member land as prescribed in section 48-3774.01 and all member service areas in that active management area. Reserve target does not include replenishment obligations under resolutions adopted pursuant to section 48-3772, subsection B, paragraph 10 or replenishment obligations that will be met using water supplies that are currently held by the district and that are determined by the director of water resources to be consistent with assured water supply requirements pursuant to section 45-576~~ THE VOLUME CALCULATED FOR EACH ACTIVE MANAGEMENT AREA AS PRESCRIBED BY SECTION 48-3772, SUBSECTION E.

~~20.~~ 21. "Resolution" means a resolution adopted by the governing body of a city or town, by the board of directors of a private water company that is a corporation, by the general partners of a private water company that is a partnership or by the individual owners of a private water company that is individually owned.

~~21.~~ 22. "Secretary" means the secretary of the interior of the United States of America.

~~22.~~ 23. "Service area" has the same meaning prescribed in section 45-402.

~~23.~~ 24. "Service area replenishment obligation" means, with respect to any particular member service area, the excess groundwater of that member service area in a particular calendar year reduced by the replenishment credits, if any, applied by the municipal provider with respect to the member service area under section 48-3772, subsection H.

~~24.~~ 25. "Water storage" has the same meaning prescribed in section 45-802.01.

Sec. 12. Section 48-3771, Arizona Revised Statutes, is amended to read:

48-3771. District replenishment obligations; replenishment location; source of replenishment; exception

A. For each active management area in which member lands or member service areas are or may be located, the district shall replenish groundwater in an amount equal to

the groundwater replenishment obligation for that active management area. [EXCEPT AS PROVIDED IN SECTION 48-3781, SUBSECTION G](#), the district shall complete the replenishment of the groundwater replenishment obligation of that active management area applicable to a particular year within three full calendar years after the year that the district incurs the groundwater replenishment obligation. Replenishment of the groundwater replenishment obligation of an active management area applicable to a particular year is complete when the amount of water added to aquifers through water storage that has been credited directly to the district's conservation district account pursuant to title 45, chapter 3.1, plus long-term storage credits that have been transferred from the district's long-term storage account to its conservation district account pursuant to title 45, chapter 3.1, less the groundwater replenishment obligation of member lands and member service areas located in the active management area and applicable to previous years, less the contract replenishment obligations relative to municipal providers in the active management area for previous years and the year of the calculation, equals or exceeds the groundwater replenishment obligation of the active management area for that year.

B. With respect to the portion of the groundwater replenishment obligation attributable to a parcel of member land or a member service area, the district shall replenish groundwater in the active management area where the parcel of member land or the member service area is located in an amount equal to the groundwater replenishment obligation applicable to that parcel of member land or that member service area.

C. Except as provided by title 45, chapter 3.1, the district may replenish groundwater with central Arizona project water or water from any other lawfully available source except groundwater withdrawn from within an active management area.

D. Notwithstanding any other provision of this chapter, if a parcel of member land is included in the service area of a municipal provider that is not a member service area but that has been designated as having an assured water supply under section 45-576, the parcel of member land has no parcel replenishment obligation and the district has no groundwater replenishment obligation attributable to that parcel of member land for as long as the designation remains in effect.

E. Notwithstanding any other provision of this chapter, if a parcel of member land is included in the service area of a municipal provider that is a member service area and that has been designated as having an assured water supply under section 45-576, the parcel of member land has no further parcel replenishment obligation.

Sec. 13. Section 48-3772, Arizona Revised Statutes, is amended to read:

[48-3772. Duties and powers of district regarding replenishment](#)

A. The district shall:

1. Establish annually the costs and expenses to replenish groundwater pursuant to this article with respect to all parcels of member lands and all member service areas located in each active management area, including capital expenses, the operation, maintenance, replacement and administrative costs and expenses of the district, replenishment reserve costs and expenses as provided in subsection E of this section and reasonable reserves. Separate calculations of costs and expenses shall be made for each active management area in which member lands or member service areas are located and for each membership category. Costs and expenses attributed by the district to contract replenishment obligations shall not be included in these calculations.
2. Provide for the payment of all costs and expenses to replenish groundwater pursuant to this chapter and the payment of operation, maintenance, replacement and administrative costs and expenses of the district.
3. Levy an annual replenishment assessment against each parcel of member land pursuant to section 48-3778 and an annual replenishment tax against each municipal provider that has a member service area pursuant to section 48-3781 to pay the district's costs and expenses as established pursuant to paragraph 1 of this subsection.
4. Levy a contract replenishment tax against municipal providers that are parties to contracts authorized under subsection B, paragraph 9 of this section to pay the district's costs and expenses to replenish groundwater based on contract replenishment obligations.
5. Establish and maintain reserve accounts in amounts as may be deemed necessary to perform the district's obligations under this article.
6. Fulfill all obligations under resolutions adopted pursuant to subsection B, paragraph 10 of this section.

7. LEVY AN ACTIVATION FEE AS FOLLOWS:

(a) FOR SUBDIVISIONS WITHIN MEMBER LANDS AND MEMBER SERVICE AREAS THAT ARE ENROLLED BEFORE MAY 6, 2004 AND THAT HAD NOT BEEN ISSUED A PUBLIC REPORT BEFORE THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION, THE DISTRICT SHALL LEVY A ONE-TIME ACTIVATION FEE AGAINST EACH HOUSING UNIT TO BE CONSTRUCTED WITHIN THE SUBDIVISION.

(b) FOR SUBDIVISIONS WITHIN MEMBER LANDS AND MEMBER SERVICE AREAS THAT ARE ENROLLED ON OR AFTER MAY 6, 2004, THE DISTRICT SHALL LEVY A ONE-TIME ACTIVATION FEE AGAINST EACH HOUSING UNIT TO BE CONSTRUCTED WITHIN THE SUBDIVISION.

(c) THE ACTIVATION FEE SHALL BE PAID TO THE DISTRICT BEFORE ISSUANCE OF A PUBLIC REPORT FOR EACH REAL ESTATE SUBDIVISION IDENTIFIED IN SUBDIVISION

(a) OR (b) OF THIS PARAGRAPH, AS PROVIDED IN SECTION 45-576, SUBSECTION C.

(d) THE ACTIVATION FEE SHALL BE ESTABLISHED ANNUALLY BY THE DISTRICT. REVENUES FROM THE ACTIVATION FEE TOGETHER WITH REVENUES FROM OTHER SOURCES THAT ARE LEGALLY AVAILABLE TO THE DISTRICT FOR THOSE USES SHALL BE USED BY THE DISTRICT TO ACQUIRE WATER RIGHTS AND DEVELOP INFRASTRUCTURE NECESSARY FOR THE DISTRICT TO PERFORM ITS REPLENISHMENT OBLIGATIONS.

B. The district may:

1. Acquire, develop, construct, operate, maintain, replace and acquire permits for water storage, storage facilities and recovery wells for replenishment purposes.
2. Acquire, transport, hold, exchange, own, lease, store or replenish water, except groundwater withdrawn from an active management area, subject to the provisions of title 45, for the benefit of member lands and member service areas.
3. Acquire, hold, exchange, own, lease, retire or dispose of water rights for the benefit of member lands and member service areas.
4. Require municipal providers to provide such information, in such form and within the time limits prescribed by the district, as may be necessary to carry out the purpose of this chapter.
5. Levy and collect assessments, fees, charges, taxes and other revenues as are provided in this chapter for the financing of replenishment activities.
6. Contract for or perform feasibility studies of water storage, storage facilities and recovery wells for replenishment purposes.
7. Acquire real and personal property for water storage, storage facilities and recovery wells for replenishment purposes by purchase, lease, donation, dedication, exchange or other lawful means.
8. Use any facilities and any excess storage capacity of any state demonstration projects undertaken pursuant to title 45, chapter 3.1 for water storage for replenishment purposes.
9. Subject to subsection G of this section, contract with any municipal provider having a member service area to replenish groundwater on behalf of the municipal provider and with respect to the member service area in an amount in excess of the sum of the service area replenishment obligations applicable to the member service area for all years in which the district has not completed the replenishment of the groundwater replenishment obligation for the member service area.
10. Adopt resolutions granting water availability status to a member service area of a city, town or private water company and committing to replenish a specified average annual volume of water in a location where the city, town or private water company

may physically access the water for service to its customers, if all of the following apply:

(a) The district has reviewed its requirements for transportation of central Arizona project water, its contracts, subcontracts, letter agreements, excess water contracts, and other contractual obligations and its member service area and member land requirements and has determined that the district can meet those obligations and that capacity remains in the central Arizona project to meet the obligations undertaken through the resolution.

(b) The resolution acknowledges that the commitment to replenish the specified average annual volume of water in the location cited in the resolution shall be a permanent obligation of the district, unless one of the following applies:

(i) A permanent substitute supply of water is found for the city, town or private water company and the substitution is approved by the director of water resources, thus terminating the water availability status of the member service area.

(ii) The requirements of section 45-576.07, subsection A are not met, and thus the director of water resources does not issue an order granting or maintaining the city, town or private water company as having an assured water supply based in whole or in part on section 45-576.07. If no order is issued within two years of the district adopting the resolution, the resolution may be repealed, and the district shall be relieved of all obligations under the resolution.

(c) The average annual volume of water specified in the resolution, when added to the average annual volume of water specified in all other resolutions adopted pursuant to this paragraph, does not exceed twenty thousand acre-feet.

(d) The district has entered into an agreement with the city, town or private water company under which the city, town or private water company will hold for the district's future use, and provide to the district when needed, sufficient water to meet the obligations undertaken by the district through the resolution.

(e) The district determines that the obligations undertaken by the district through the resolution will not increase annual replenishment assessment rates or costs to central Arizona project contract and subcontract holders and its member service areas and member lands.

(f) The director of water resources has found, pursuant to section 45-576.07, subsection H, that the district has the capability to grant water availability status to member service areas.

11. Provide in resolutions adopted pursuant to paragraph 10 of this subsection that the district may fulfill its obligations under the resolution in any year by directly delivering

to the city, town or private water company the water that otherwise would have been replenished pursuant to the resolution, if all of the following apply:

(a) The district has reviewed its requirements for transportation of central Arizona project water, its contracts, subcontracts, letter agreements, excess water contracts, and other contractual obligations, its member service area and member land requirements and has determined that the district can meet those obligations and that capacity remains in the central Arizona project to make direct deliveries pursuant to this paragraph.

(b) The district determines that the delivery will not increase annual replenishment assessment rates or costs to central Arizona project contract and subcontract holders, its member service area and member lands.

12. Enter into agreements with a city, town or private water company that will have water made available to it through a resolution adopted pursuant to paragraph 10 of this subsection and under which the city, town or private water company compensates the district for the costs and fair value of the water supply provided by the district.

C. The functions of the district under subsection B, paragraph 1 of this section may be performed on behalf of the district by other persons under contract with the district.

D. For purposes of determining the annual costs and expenses of the district under subsection A, paragraph 1 of this section, the district shall amortize capital costs and expenses, including interest as determined by the district, over the useful life of the capital improvements, as determined by the district. The capital costs of the facilities of any state demonstration projects used by the district pursuant to subsection B, paragraph 8 of this section shall not be included in the capital costs and expenses amortized by the district under this subsection.

E. The district shall establish and maintain a replenishment reserve as follows:

1. THE DISTRICT SHALL CALCULATE A RESERVE TARGET FOR EACH OF THE THREE ACTIVE MANAGEMENT AREAS WITHIN THE DISTRICT AND SHALL IDENTIFY THE RESERVE TARGET IN THE PLAN OF OPERATION PREPARED PURSUANT TO SECTION 45-576.02. THE RESERVE TARGET FOR EACH ACTIVE MANAGEMENT AREA SHALL BE CALCULATED AS FOLLOWS:

(a) ESTABLISH THE PROJECTED ONE HUNDRED YEAR REPLENISHMENT OBLIGATION FOR EACH ACTIVE MANAGEMENT AREA. FOR THE PURPOSES OF THIS SUBDIVISION, EACH ACTIVE MANAGEMENT AREA'S PROJECTED ONE HUNDRED YEAR REPLENISHMENT OBLIGATION DOES NOT INCLUDE REPLENISHMENT OBLIGATIONS UNDER RESOLUTIONS ADOPTED PURSUANT TO SUBSECTION B, PARAGRAPH 10 OF THIS SECTION OR REPLENISHMENT OBLIGATIONS FOR CATEGORY 2 MEMBER LANDS.

(b) SUBTRACT FROM THE ACTIVE MANAGEMENT AREA'S PROJECTED ONE HUNDRED YEAR REPLENISHMENT OBLIGATION THE SUM OF THE FOLLOWING VOLUMES OF WATER DERIVED FROM SOURCES IDENTIFIED IN THE PLAN AS WATER THAT THE DISTRICT PLANS TO USE TO MEET ITS REPLENISHMENT OBLIGATIONS FOR THAT ACTIVE MANAGEMENT AREA:

(i) THE ANNUAL VOLUME OF EACH NONDECLINING, LONG-TERM MUNICIPAL AND INDUSTRIAL SUBCONTRACT FOR CENTRAL ARIZONA PROJECT WATER MULTIPLIED BY ONE HUNDRED.

(ii) THE ANNUAL VOLUME OF WATER UNDER LEASES OR CONTRACTS THAT CAN BE MADE PHYSICALLY AND LEGALLY AVAILABLE TO THE DISTRICT CONSISTENT WITH THE RULES ADOPTED PURSUANT TO SECTION 45-576, SUBSECTION H, MULTIPLIED BY THE NUMBER OF YEARS, NOT TO EXCEED ONE HUNDRED, IN WHICH THE WATER IS TO BE MADE AVAILABLE TO THE DISTRICT. THE WATER NEED NOT BE CONTINUOUSLY AVAILABLE TO BE INCLUDED IN THIS ITEM. A LEASE OR CONTRACT SHALL NOT BE CONSIDERED UNDER THIS ITEM IF THE WATER TO BE MADE AVAILABLE UNDER THE LEASE OR CONTRACT IS FOR A TERM OF LESS THAN TWENTY YEARS.

(iii) THE TOTAL VOLUME OF GROUNDWATER THAT THE DISTRICT PLANS TO TRANSPORT TO THE ACTIVE MANAGEMENT AREA DURING THE NEXT ONE HUNDRED YEARS AS ALLOWED BY TITLE 45, CHAPTER 2, ARTICLE 8.1.

(iv) THE TOTAL VOLUME OF ALL SOURCES OF WATER NOT IDENTIFIED IN ITEMS (i), (ii) OR (iii) OF THIS SUBDIVISION THAT WILL NOT BE HELD BY THE DISTRICT UNDER A LEASE OR CONTRACT. VOLUMES TO BE INCLUDED UNDER THIS ITEM MUST BE CONSISTENT WITH THE RULES ADOPTED BY THE DIRECTOR PURSUANT TO SECTION 45-576, SUBSECTION H.

(c) MULTIPLY THE RESULT FROM SUBDIVISION (b) OF THIS PARAGRAPH BY TWENTY PER CENT. THE RESULT IS THE RESERVE TARGET FOR THE ACTIVE MANAGEMENT AREA.

2. THE RESERVE TARGET FOR AN ACTIVE MANAGEMENT AREA MAY BE ADJUSTED BY THE DISTRICT, SUBJECT TO THE APPROVAL OF THE DIRECTOR OF WATER RESOURCES, BASED ON CHANGES IN EITHER OF THE FOLLOWING:

(a) THE ACTIVE MANAGEMENT AREA'S PROJECTED ONE HUNDRED YEAR REPLENISHMENT OBLIGATION.

(b) THE VOLUMES OF WATER IDENTIFIED IN THE PLAN OF OPERATION PREPARED PURSUANT TO SECTION 45-576.02 AS WATER THAT THE DISTRICT PLANS TO USE TO MEET ITS REPLENISHMENT OBLIGATIONS FOR THAT ACTIVE MANAGEMENT AREA.

~~4.~~ 3. The district shall include a replenishment reserve charge in the annual replenishment assessment levied against all parcels of category 1 member land as

provided in section 48-3774.01 and in the annual replenishment tax levied against all municipal providers that have member service areas as provided in section 48-3780.01. The replenishment reserve charge for each active management area is established annually by the district based on the reserve target for that active management area.

~~2.~~ 4. The district shall levy a replenishment reserve fee against category 1 member lands pursuant to section 48-3774.01 and against member service areas pursuant to section 48-3780.01. For category 1 member lands the fee is equal to twice the applicable replenishment reserve charge multiplied by the total projected average annual replenishment obligation for the member lands as reported by the director of water resources pursuant to section 45-578, subsection F. For member service areas the fee is equal to twice the applicable replenishment reserve charge multiplied by the excess groundwater increment. With the approval of the district and the director of water resources, long-term storage credits as defined in section 45-802.01 may be assigned to the district's replenishment reserve subaccount in lieu of paying the replenishment reserve fee.

~~3.~~ 5. The district shall use replenishment reserve charges and replenishment reserve fees collected within each active management area together with all interest earned on the charges and fees to store water in that active management area in advance of groundwater replenishment obligations for the purpose of developing long-term storage credits as defined in section 45-802.01 that shall be credited to the replenishment reserve subaccount for that active management area as provided in section 45-859.01.

~~4.~~ 6. Beginning on January 1, 2030 OR EARLIER, ON APPROVAL OF THE DIRECTOR OF WATER RESOURCES PURSUANT TO SECTION 45-859.01, SUBSECTION K, the district may transfer credits from a replenishment reserve subaccount to a conservation district account as provided in section 45-859.01 to satisfy its groundwater replenishment obligations.

~~5.~~ 7. If the district transfers credits from the replenishment reserve subaccount for an active management area pursuant to section 45-859.01, subsection E, the district shall include in the annual replenishment assessment levied against all parcels of category 1 member land in that active management area and, except as provided in section 48-3780.01, subsection B, in the annual replenishment tax levied against all municipal providers that have member service areas in that active management area a reserve replacement component to fund the replacement of the transferred credits. The district shall use all monies from the reserve replacement component collected within an active management area together with all interest earned on the monies to develop long-term storage credits as defined in section 45-802.01 within that active management area to

be credited to the replenishment reserve subaccount for that active management area as provided in section 45-859.01.

~~6.~~ 8. For the purposes of establishing and maintaining the replenishment reserve, the district shall have access to excess central Arizona project water equivalent to but no more than the access the Arizona water banking authority has for the purposes specified in section 45-2401, subsection H, paragraph 2.

F. Groundwater replenished by the district pursuant to a contract to replenish groundwater under subsection B, paragraph 9 of this section shall not be credited to a replenishment reserve subaccount established under section 45-859.01.

G. The district shall not enter into a contract authorized under subsection B, paragraph 9 of this section unless the district has determined that the contract will not adversely affect the district's ability to fulfill its obligations under this chapter. For each contract entered into under subsection B, paragraph 9 of this section, the district shall perform its contract replenishment obligations in the active management area in which the service area of the municipal provider that is the party to the contract is located.

H. If the district replenishes groundwater on behalf of a municipal provider pursuant to a contract to replenish groundwater under subsection B, paragraph 9 of this section, the amount of groundwater so replenished shall be a replenishment credit to the municipal provider that may be applied by the municipal provider on notice to the district to reduce the service area replenishment obligations applicable to the municipal provider.

I. In the Phoenix active management area, the district, to the extent reasonably feasible, shall replenish groundwater in the east portion of the active management area and in the west portion of the active management area in the approximate proportion that the groundwater replenishment obligation attributable in a particular year to member lands and member service areas located in the east portion of the active management area bears to the groundwater replenishment obligation attributable in that year to member lands and member service areas located in the west portion of the active management area. For THE purposes of this subsection, the boundary between the east Salt river valley subbasin and the west Salt river valley subbasin is the boundary between the east and west portions of the active management area.

J. The costs and expenses charged by the district to an active management area water district established under chapter 28 of this title for delivery of surplus central Arizona project water to such active management area water district for replenishment purposes shall not exceed the costs and expenses for delivery of such water that are or would be included by the district in the costs and expenses of replenishment for

member lands and member service areas within the active management area in which such active management area water district is situated.

Sec. 14. Section 48-3780, Arizona Revised Statutes, is amended to read:

48-3780. Qualification as a member service area; termination

A. The service area of a municipal provider qualifies as a member service area only if all of the following apply:

1. The service area is located in an active management area in which a part of the central Arizona project aqueduct is located.
2. The municipal provider is not a member of a groundwater replenishment district established pursuant to chapter 27 of this title.
3. The service area of the municipal provider is not a water district member service area under chapter 28 of this title.
4. If the municipal provider or its predecessor previously terminated member service area status pursuant to subsection B of this section, the service area or any portion of the service area has not been a member service area for at least ten years. The district may waive this requirement if the district and the director of water resources determine that previously unforeseen circumstances necessitate requalification of the service area.
5. If the municipal provider or its predecessor previously terminated member service area status pursuant to subsection B of this section, the municipal provider agrees to pay to the district all charges that would have otherwise been imposed by the district had the member service area status remained in effect during the period since termination became effective.

6. IF ALL OR A PORTION OF THE SERVICE AREA HAS PREVIOUSLY QUALIFIED AS A MEMBER SERVICE AREA, THE MUNICIPAL PROVIDER AGREES TO PAY AN AMOUNT EQUAL TO THE AMOUNT OF THE REPLENISHMENT TAXES ASSESSED AGAINST ITS PREDECESSOR THAT WERE NOT PAID, PLUS INTEREST CALCULATED IN ACCORDANCE WITH SECTION 48-3782, SUBSECTION A.

~~6.~~ **7.** The conditions stated in section 45-576.01, subsection B, paragraphs 2 and 3 are satisfied with respect to the district at the time of the qualification.

~~7.~~ **8.** The municipal provider publishes a resolution once each week for two consecutive weeks in a newspaper of general circulation in the county or counties where the service area is located that:

- (a) Has attached to it a current map of the municipal provider's service area.
- (b) Declares the intent of the municipal provider that the service area qualify as a member service area under this chapter.
- (c) Declares that, for the privilege of withdrawing and delivering excess groundwater within its service area and to ensure the continued exercise of that privilege, the

municipal provider shall pay an annual replenishment tax to be determined by the district.

(d) Contains a covenant, binding against the municipal provider, to pay to the district an annual replenishment tax based on the service area replenishment obligation in an amount determined by the district as necessary to allow the district to perform the groundwater replenishment obligations.

(e) Authorizes the municipal provider to enter into a written commitment with the district in the form and substance satisfactory to the district regarding payment of the annual replenishment tax.

(f) Declares that the resolution applies to the service area of the municipal provider as it currently exists and to all additions to and extensions of the service area.

(g) Declares that the resolution is irrevocable for as long as the district is obligated to perform the groundwater replenishment obligations.

B. A service area previously accepted as a member service area pursuant to subsection A of this section terminates its member service area status only if all of the following apply:

1. The municipal provider for the member service area has submitted an application to the district requesting termination of member service area status.

2. The municipal provider for the member service area has submitted an application to the director of water resources requesting modification of the municipal provider's assured water supply designation under section 45-576 that eliminates the municipal provider's reliance on member service area status.

3. The applications provide evidence satisfactory to the director of water resources that the municipal provider has obtained a substitute supply of water, other than groundwater, that is determined by the director of water resources to be consistent with assured water supply requirements pursuant to section 45-576 and that is sufficient to eliminate the municipal provider's reliance on member service area status.

4. The director of water resources has approved the municipal provider's application to modify its assured water supply designation based on the addition of the substitute water supply.

5. The municipal provider publishes a resolution once each week for two consecutive weeks in a newspaper of general circulation in the county or counties where the service area is located that:

(a) Has attached to it a current map of the municipal provider's service area.

(b) Declares the intent of the municipal provider to terminate the service area's member service area status.

(c) Declares that the district is no longer obligated to perform the groundwater replenishment obligations on behalf of the service area.

(d) Revokes the resolution for the member service area provided for in subsection A, paragraph 7 of this section.

6. All amounts owed by the water provider on behalf of the member service area to the district have been paid.

7. The municipal provider has paid or made arrangements suitable to the district for repayment of any capital costs incurred by the district specifically on behalf of the member service area.

Sec. 15. Section 48-3781, Arizona Revised Statutes, is amended to read:

48-3781. Annual replenishment tax; contract replenishment tax

A. On or before the third Monday of August of each year after the qualification of the member service area of any municipal provider, the district shall levy a replenishment tax against each municipal provider having a qualified member service area for the privilege of withdrawing and delivering excess groundwater within the member service area. The replenishment tax shall be calculated by the district in accordance with this article and shall be sufficient to produce the amount of money estimated as needed to pay the costs and expenses to replenish groundwater established under section 48-3772, subsection A, and taking into account any annual replenishment assessment levied under section 48-3778.

B. The district shall promptly transmit a statement to each municipal provider having a member service area stating the amount of the annual replenishment tax and any replenishment reserve fee due under section 48-3780.01.

C. On or before the third Monday of August of each year after the district enters into any contract to replenish water pursuant to section 48-3772, subsection B, paragraph 9, the district shall levy a tax against each municipal provider that is a party to a contract to replenish groundwater at the assessment rate provided in the applicable contract. The district shall promptly transmit a statement to each municipal provider that is a party to a contract to replenish groundwater stating the amount of the replenishment tax due under the contract.

D. On or before October 15 of each year, each municipal provider that has a member service area shall pay to the district an amount equal to the annual replenishment tax levied by the district and any replenishment reserve fee due under section 48-3780.01.

E. On or before October 15 of each year, each municipal provider that is a party to a contract to replenish groundwater under section 48-3772, subsection B, paragraph 9 shall pay to the district the contract replenishment tax levied by the district pursuant to the contract.

F. Annual replenishment taxes and contract replenishment taxes collected by the district shall be deposited, pursuant to sections 35-146 and 35-147, in the special fund established pursuant to section 48-3773, subsection A, paragraph 3 and shall be expended by the district only for the purposes authorized by this article.

G. If a municipal provider is delinquent for more than ninety days in the payment of its replenishment tax, the district shall promptly notify the director of water resources of the delinquency. EXCEPT AS PROVIDED IN SUBSECTION H OF THIS SECTION, FOR ANY MUNICIPAL PROVIDER THAT IS DELINQUENT FOR MORE THAN NINETY DAYS IN THE PAYMENT OF ITS REPLENISHMENT TAX, THE DISTRICT SHALL COMPLETE THE REPLENISHMENT OF THE SERVICE AREA REPLENISHMENT OBLIGATION. THE DISTRICT SHALL COMPLETE THAT OBLIGATION WITHIN THREE FULL CALENDAR YEARS AFTER THE YEAR THAT THE DISTRICT IS PAID AN AMOUNT EQUAL TO THE DELINQUENT REPLENISHMENT TAX, PLUS INTEREST CALCULATED IN ACCORDANCE WITH SECTION 48-3782, SUBSECTION A, OR WITHIN TEN FULL CALENDAR YEARS AFTER THE YEAR THAT THE DISTRICT INCURS THE SERVICE AREA REPLENISHMENT OBLIGATION, WHICHEVER IS SOONER.

H. THE DISTRICT IS NOT REQUIRED TO COMPLETE THE REPLENISHMENT OF THE SERVICE AREA OBLIGATION OF A MUNICIPAL PROVIDER THAT IS DELINQUENT FOR MORE THAN NINETY DAYS IN THE PAYMENT OF ITS REPLENISHMENT TAX IF BOTH OF THE FOLLOWING APPLY:

1. THE DISTRICT IS NOT PAID AN AMOUNT EQUAL TO THE DELINQUENT REPLENISHMENT TAX, PLUS INTEREST CALCULATED IN ACCORDANCE WITH SECTION 48-3782, SUBSECTION A, WITHIN TEN FULL CALENDAR YEARS AFTER THE YEAR THAT THE DISTRICT INCURS THE SERVICE AREA REPLENISHMENT OBLIGATION.
2. THE MUNICIPAL PROVIDER OR ITS SUCCESSOR HAS VIOLATED SECTION 45-492, SUBSECTION D OR SECTION 45-493, SUBSECTION D AND THE DIRECTOR OF WATER RESOURCES HAS NOT COMMENCED AN ENFORCEMENT ACTION AGAINST THE MUNICIPAL PROVIDER OR ITS SUCCESSOR FOR THE VIOLATION WITHIN TEN FULL CALENDAR YEARS AFTER THE YEAR THAT THE DISTRICT INCURS THE SERVICE AREA REPLENISHMENT OBLIGATION.

APPROVED BY THE GOVERNOR APRIL 25, 2005.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 25, 2005.

**ARIZONA DEPARTMENT OF WATER RESOURCES
LEGISLATIVE IMPLEMENTATION PLAN**

**SB 1318 Omnibus; Flood Control
47th Legislature, 1st Regular Session (2005)**

BILL NUMBER: SB 1318, Chapter 257

SHORT TITLE: Omnibus; Flood Control

PRIME SPONSORS: Representatives: Chase
Nelson

Senators: Arzberger
Bee
Blendu
Flake

BILL SUMMARY: SB 1318 allows a county flood control district (district) to inspect development on properties located in a floodplain, allows a district to enter into contracts to implement flood control enhancement solutions and modifies the definition of development as it relates to management of floodplains and watercourses.

Flood Prevention Districts

Qualified Electors and Elected Directors

- Allows any qualified elector of a Flood Prevention District to be elected as a Director of division of the District.
- Expands the pool of qualified electors who may register and cast votes in elections within the District and who may serve as Directors if elected by a division of the District. These new qualified electors include:
 - A designated officer or agent of a corporation that owns real property within the District, that has paid taxes and that has permission from their Board of Directors.
 - A designated partner of a partnership that owns real property within the District, that has paid taxes and that has permission from all partners.
 - The designated trustee of a trust that owns property within the district, that has paid taxes and that has permission by all the trustees of the trust

- An administrator of the estate of a deceased person who owns real property within the District and has paid taxes.
- The guardian of a minor or incompetent person who owns real property within the District and has paid taxes.

Division of a District

- Requires the Board of Supervisors to divide a proposed Flood Prevention District into three or five divisions that are nearly equal in size.
- Specifies that, when requested in the petition, three directors who are resident electors and freeholders of the district will be elected by the qualified electors of the district.
- States that qualified electors for a Flood Prevention District are the same as the qualified electors for a Drainage District, unless otherwise specified.

Other Provisions

- The section related to Flood Prevention Districts contains a delayed repeal date of January 1, 2016.

County Flood Control Districts

Definitions

- Defines *development* as any man-made change to improved or unimproved real estate, including buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.
- Modifies the definition of *floodplain* to mean any area in a watercourse that has been or may be covered partially or wholly by floodwater from a one hundred-year flood. (*Note: A one hundred-year flood is a flood that has a one per cent chance of being equaled or exceeded in a one-year period.*)

Contracts

- Either on its own or by contract, allows a District to implement a variety of measures to prevent flood damage or to manage the floodplain to minimize flood damage. In addition, the district may coordinate flood warnings and flood response plans with other entities.

Inspections

- Authorizes a District or its agent to enter and inspect any development on property that is located in a floodplain in order to determine whether the owner is in violation of laws

regarding structures built in floodplains. The inspection may be carried out based on prior written authorization or may be conducted in the case of an emergency at any time. The district may not inspect records or files on site, or the interior of any building. To inspect a property in a floodplain, the district must:

- Attempt to provide written notice of an inspection to the owner at least 48 hours in advance.
- Allow the owner to accompany the district inspector on the inspection.
- Comply with safety requirements of the site.
- Prepare a report of any inspections that are made.
- Send a copy of the report to the owner within 30 days of the inspection.
- Make the report available in the records of the District.

Development in Watercourses or Floodplains

- Prohibits any *development* in a delineated floodplain that will divert, retard or obstruct the flow of waters in any watercourse without authorization from the District in which the watercourse is located. Current law prohibits the *construction of structures* in a delineated floodplain or in a watercourse in such a way as to divert, retard or obstruct the flow of waters and classifies violations as a class 2 misdemeanor (4 months/\$750).

Other Provisions

- States that the floodplain regulations adopted by a district are intended to carry out the requirements of the National Flood Insurance Program. Specifies that any terms not defined in Arizona Revised Statutes have the meaning set by federal code, effective on January 1, 2005.

SIGNIFICANCE TO AGENCY: SB 1318 has no direct significance to the agency.

REQUIRED OUTCOMES: There are no required agency outcomes.

ACTION REQUIRED: No agency action is required.

DIVISION STAFF SUPPORT REQUIRED: No division staff support is required,

TIMELINE: No timeline for implementation is required.

State of Arizona
Senate
Forty-seventh Legislature
First Regular Session
2005

CHAPTER 257

SENATE BILL 1318

AN ACT

AMENDING SECTIONS 48-2607 AND 48-2609, ARIZONA REVISED STATUTES; AMENDING TITLE 48, CHAPTER 18, ARTICLE 10, ARIZONA REVISED STATUTES, BY ADDING SECTION 48-2816; AMENDING SECTIONS 48-3601, 48-3603, 48-3609, 48-3613, 48-3614 AND 48-3615, ARIZONA REVISED STATUTES; PROVIDING FOR DELAYED REPEAL OF SECTION 48-2816, ARIZONA REVISED STATUTES, AS ADDED BY THIS ACT; RELATING TO FLOOD DISTRICTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 48-2607, Arizona Revised Statutes, is amended to read:

48-2607. District divisions; number of directors; exception

A. When the boundaries of the proposed district are defined and established, the board of supervisors shall make an order dividing the district into three or five divisions as nearly equal in size as practicable, which shall be numbered consecutively. One director, who shall be an elector and a resident freeholder of the division, shall be elected as provided in this article by each division.

B. When requested in the petition, three directors, who shall be resident electors and freeholders of the district, shall be elected at large by the qualified electors of the district.

C. THIS SECTION DOES NOT APPLY IN THE CASE OF THE DIVISION OF A FLOOD PROTECTION DISTRICT AS PROVIDED BY SECTION 48-2816.

Sec. 2. Section 48-2609, Arizona Revised Statutes, is amended to read:

48-2609. Qualifications of electors; exception

~~No~~ A person ~~shall be~~ **IS NOT** entitled to vote at any election held under ~~the provisions of~~ this chapter unless ~~he possesses~~ **THE PERSON HAS** all the qualifications required of electors for state officers under the general election laws, ~~and is the owner of real property located within the boundaries of the district on which he has paid taxes~~ **HAVE BEEN PAID** as shown by the county tax roll next preceding the date of the election.

THIS SECTION DOES NOT APPLY IN THE CASE OF A FLOOD PROTECTION DISTRICT AS PROVIDED BY SECTION 48-2816.

Sec. 3. Title 48, chapter 18, article 10, Arizona Revised Statutes, is amended by adding section 48-2816, to read:

48-2816. Flood protection district divisions; directors; qualification of electors

A. THE BOARD OF SUPERVISORS SHALL ORDER THE DISTRICT TO BE DIVIDED INTO THREE OR FIVE DIVISIONS, NUMBERED CONSECUTIVELY AND AS NEARLY EQUAL IN SIZE AS PRACTICABLE.

B. ONE DIRECTOR, WHO SHALL BE AN ELECTOR AND A RESIDENT LANDOWNER, OR A QUALIFIED ELECTOR, IN EACH DIVISION SHALL BE ELECTED FOR THE DIVISION AS PROVIDED IN THIS ARTICLE. IN ADDITION, IF REQUESTED IN THE PETITION FOR ORGANIZING THE DISTRICT, THREE DIRECTORS, WHO SHALL BE RESIDENT ELECTORS AND LANDOWNERS IN THE DISTRICT, SHALL BE ELECTED AT LARGE BY THE QUALIFIED ELECTORS OF THE DISTRICT.

C. TO BE ELIGIBLE TO VOTE IN A DISTRICT ELECTION, A PERSON MUST QUALIFY UNDER SECTION 48-2609, EXCEPT AS OTHERWISE PROVIDED BY THIS SECTION AND SUBJECT TO THE FOLLOWING:

1. FOR THE PURPOSE OF ORGANIZING A NEW FLOOD PROTECTION DISTRICT, THE QUALIFICATIONS OF ELECTORS ARE THE SAME AS PROVIDED BY THIS CHAPTER FOR THE ORGANIZATION OF DRAINAGE DISTRICTS.

2. THE ADMINISTRATOR OR EXECUTOR OF THE ESTATE OF A DECEASED PERSON, AND THE GUARDIAN OF A MINOR OR INCOMPETENT PERSON WHO IS APPOINTED AND QUALIFIED UNDER THE LAWS OF THIS STATE, MAY REGISTER AND CAST THE VOTE OF THE ESTATE OR PERSON REPRESENTED BY THE ADMINISTRATOR OR EXECUTOR.

3. THE OFFICER OR AGENT OF A CORPORATION IN WHOSE NAME TITLE TO PROPERTY IN THE DISTRICT ON WHICH IT HAS PAID TAXES AS SHOWN ON THE MOST RECENT TAX ROLL AND WHO IS DESIGNATED AND AUTHORIZED BY A RESOLUTION OF THE CORPORATE BOARD OF DIRECTORS IS A QUALIFIED ELECTOR AND MAY REGISTER AND CAST THE VOTE OF THE CORPORATION.

4. THE GENERAL PARTNER OF A PARTNERSHIP IN WHOSE NAME TITLE TO PROPERTY IN THE DISTRICT ON WHICH IT HAS PAID TAXES AS SHOWN ON THE MOST RECENT TAX ROLL AND WHO IS DESIGNATED AND AUTHORIZED IN WRITING BY ALL OF THE GENERAL PARTNERS IS A QUALIFIED ELECTOR AND MAY REGISTER AND CAST THE VOTE OF THE PARTNERSHIP.

5. THE TRUSTEE OF A TRUST, OR IF THERE IS MORE THAN ONE TRUSTEE, A TRUSTEE WHO IS DESIGNATED AND AUTHORIZED IN WRITING BY ALL OF THE TRUSTEES, IN WHOSE NAME TITLE TO PROPERTY IN THE DISTRICT ON WHICH IT HAS PAID TAXES

AS SHOWN ON THE MOST RECENT TAX ROLL IS A QUALIFIED ELECTOR AND MAY REGISTER AND CAST THE VOTE OF THE TRUST.

Sec. 4. Section 48-3601, Arizona Revised Statutes, is amended to read:

48-3601. Definitions

In this article, unless the context otherwise requires:

1. "Area of jurisdiction" means the incorporated and unincorporated areas of the county, including public lands, excluding those incorporated areas of cities or towns which have elected to assume floodplain management powers and duties pursuant to section 48-3610.
2. "Board" means the board of directors of a flood control district organized under this article.
3. "DEVELOPMENT" MEANS ANY MAN-MADE CHANGE TO IMPROVED OR UNIMPROVED REAL ESTATE, INCLUDING BUILDINGS OR OTHER STRUCTURES, MINING, DREDGING, FILLING, GRADING, PAVING, EXCAVATION OR DRILLING OPERATIONS OR STORAGE OF EQUIPMENT OR MATERIALS.
- ~~3~~ 4. "District" means a flood control district organized pursuant to this article.
- ~~4~~ 5. "Flood" or "floodwaters" means a temporary rise in water level including groundwater or overflow of water onto lands not normally covered by water.
- ~~5~~ 6. "Floodplain" means ~~the ANY areas adjoining the channel of IN~~ a watercourse ~~including areas where drainage is or may be restricted by man-made structures~~ which have been or may be covered partially or wholly by floodwater from the one hundred-year flood.
- ~~6~~ 7. "Floodplain regulations" means the codes, ordinances and other regulations adopted pursuant to this article relating to the use of land and construction within the floodway and floodplain areas.
- ~~7~~ 8. "Floodway" means the ~~channel~~ AREA of a river or other watercourse and the adjacent land areas necessary in order to discharge the one hundred-year flood without cumulatively increasing the water surface elevation more than one foot.
- ~~8~~ 9. "One hundred-year flood" or "base flood" means a flood that has a one per cent chance of being equalled or exceeded in a one year period, based on the criteria established by the director of water resources.
- ~~9~~ 10. "Person" means an individual or ~~his~~ THE INDIVIDUAL'S agent, A firm, partnership, association or corporation, or AN agent of the aforementioned groups, or this state or its agencies or political subdivisions.
- ~~10~~ 11. "Regulatory flood elevation" means the elevation which is one foot above the base flood elevation for a watercourse for which the base flood elevation has been

determined and shall be as determined by the criteria developed by the director of water resources for all other watercourses.

~~11-~~ 12. "Watercourse" means a lake, river, creek, stream, wash, arroyo, channel or other topographic feature on or over which waters flow at least periodically.

Watercourse includes specifically designated areas in which substantial flood damage may occur.

Sec. 5. Section 48-3603, Arizona Revised Statutes, is amended to read:

~~48-3603.~~ Powers, duties and immunities of district and board; exemptions

A. A county flood control district organized under this article is a political taxing subdivision of this state and has all the powers, privileges and immunities granted generally to municipal corporations by the constitution and laws of this state including immunity of its property and bonds from taxation.

B. The board of directors shall exercise all powers and duties in the acquisition and operation of the properties of the district and in carrying out its regulatory functions under this article as are ordinarily exercised by the governing body of a municipal corporation.

C. A district organized under this article, acting through its board of directors, may:

1. Acquire by eminent domain, purchase, donation, dedication, exchange or other lawful means rights-of-way for and construct, operate and maintain flood control works and storm drainage facilities within or without the district for the benefit of the district.
2. Acquire by eminent domain, purchase, donation, dedication, exchange or other lawful means and dispose of by sale, exchange or other lawful means real and personal property within the boundaries of the district.
3. Contract and join with this state, the United States or any other flood control district or floodplain board, municipality, political subdivision, governmental agency, irrigation or agricultural improvement district, association, corporation or individual in acquiring, constructing, maintaining and operating flood control works, and regulating floodplains.
4. Enter into contracts of indemnity to indemnify this state, the United States or any other flood control district, municipality, political subdivision, governmental agency, irrigation or agricultural improvement district, association, corporation or individual against liability by virtue of injuries, losses or damages occurring through the use of their facilities, structures, streets, rights-of-way or properties in connection with the operation of a flood control district and the regulation of floodplains.
5. Acquire and maintain existing flood control and drainage facilities within the district for the benefit of the district if mutually agreeable to the owners of such facilities.
6. Acquire, convert and maintain surplus irrigation facilities as storm drainage facilities if mutually agreeable to owners of such facilities.

7. Construct, maintain and operate flood control and storm drainage facilities and regulate floodplains in the district by agreement with this state, counties, other municipal corporations, political subdivisions and other persons and reimburse such agencies or persons for the cost of the work.
8. On the dissolution of any other flood control district, assume the assets and obligations of the other district.
9. Enter into intergovernmental agreements with other public agencies pursuant to title 11, chapter 7, article 3 to carry out the objects and purposes of the district.
10. Apply for, obtain, expend and repay flood control loans pursuant to title 45, chapter 8, article 5.
11. Apply to the director of water resources for alternative flood control assistance for flood control projects pursuant to section 45-1471, except that the director shall not grant any such assistance for any project unless ~~he~~ THE DIRECTOR has approved the project in advance of planning.
12. Sue and be sued, enter into contracts and generally do all things which may be necessary to construct, acquire and maintain facilities, operate the district and perform its regulatory functions and which are in the interests of the district.
13. Adopt such rules and bylaws for its orderly operation as it sees fit.
14. Appoint a chief engineer and general manager, who may be the county engineer.
15. Appoint a treasurer, who may be the county treasurer, an attorney, who may be the county attorney, and other employees it considers desirable and necessary to carry out the purposes of the district. Any other work required by the district may be performed by regular employees of the county on assignment by the board of supervisors, except that regular county employees shall not undertake construction projects with an estimated cost of five thousand dollars or more.
16. Allow variances from the terms or regulations adopted pursuant to this article to the extent permitted by section 48-3609, subsection B, paragraph 7 and if, owing to peculiar conditions, a strict interpretation would work an unnecessary hardship, if in granting the variance the general intent and purposes of this article and the regulations will be preserved.
17. Construct, operate and maintain artificial groundwater recharge facilities, and, if organized in a county having a population of more than five hundred thousand persons according to the most recent United States decennial census, underground storage and recovery facilities, if they have flood control benefits, and contract and join with the United States, this state and other governmental units for the purpose of constructing, operating and maintaining multipurpose groundwater recharge, underground storage and recovery and flood control facilities, except that a district shall not expend district

funds for any underground storage and recovery facility that does not have flood control benefits.

18. Acquire real property by purchase, donation, dedication, exchange or other lawful means, except by eminent domain, in areas suitable for groundwater recharge projects.

19. Cooperate and join with other entities that engage in underground water storage and recovery projects under title 45, chapter 3, including multi-county water conservation districts and other political subdivisions.

20. EITHER ALONE, OR BY ENTERING INTO ANY COMBINATION OF CONTRACTS WITH THIS STATE, THE UNITED STATES, ANY OTHER FLOOD CONTROL DISTRICT, A FLOODPLAIN BOARD, A MUNICIPALITY OR OTHER POLITICAL SUBDIVISION, A GOVERNMENT AGENCY, AN IRRIGATION OR AGRICULTURAL IMPROVEMENT DISTRICT OR AN ASSOCIATION, CORPORATION OR INDIVIDUAL, IMPLEMENT FLOOD CONTROL ENHANCEMENT SOLUTIONS INCLUDING:

(a) ASSISTANCE FOR PROPERTY OWNERS WITHIN THE FLOODPLAIN AND THROUGH THE ELEVATION, BANK STABILIZATION AND FLOOD PROOFING OF EXISTING STRUCTURES.

(b) PRESERVATION AND RESTORATION OF THE FLOODPLAIN.

(c) MAINTENANCE OF FLOOD WARNING SYSTEMS AND ASSOCIATED FLOOD RESPONSE PLANS.

D. The board shall adopt and enforce floodplain regulations as provided in section 48-3609.

E. The board may adopt a fee schedule for review of applications for permits and variances from or interpretations of the floodplain regulations.

F. The affirmative vote of a majority of the board of directors is necessary to approve any measure. One member may adjourn any meeting at which a quorum is not present.

G. The board shall keep a proper written record of all of its proceedings, which shall be open to public inspection.

H. The accounts of the district are subject to annual and other audits as provided by law.

I. ~~The provisions of~~ Section 9-403 ~~do~~ DOES not apply to a flood control district organized under this article and ~~the provisions of~~ section 9-402 ~~do~~ DOES not apply when the district is selling property to a political subdivision. If any property sold by the district to a political subdivision without complying with section 9-402 is subsequently sold by the political subdivision as undeveloped property for a price exceeding the original sale price, the district shall be paid the difference between the original price and the subsequent sale price. For the purposes of this subsection, "political

subdivision" means any incorporated city or town, school district, charter school, community college or university.

Sec. 6. Section 48-3609, Arizona Revised Statutes, is amended to read:

48-3609. Floodplain delineation; regulation of use; federal requirements and definitions

A. Except as provided in section 48-3610, the board within its area of jurisdiction shall delineate or may by rule require developers of land to delineate for areas where development is ongoing or imminent, and thereafter as development becomes imminent, floodplains consistent with the criteria developed by the director of water resources.

B. Except as provided in section 48-3610, the board shall adopt and enforce regulations governing floodplains and floodplain management in its area of jurisdiction which shall include the following:

1. Regulations for all development of land, construction of residential, commercial or industrial structures or uses of any kind which may divert, retard or obstruct floodwater and threaten public health or safety or the general welfare.
2. Regulations which establish minimum flood protection elevations and flood damage prevention requirements for uses, structures and facilities which are vulnerable to flood damage. Regulations adopted under this section shall comply with state and local land use plans and ordinances, if any.
3. Regulations which provide for coordination by the district with all other interested and affected political subdivisions and state agencies.
4. Regulations that require any residential structure built in a floodplain to be constructed so as to place the lowest floor elevation of the structure at or above the regulatory flood elevation, that require commercial or industrial structures to be flood proofed or elevated to or above the regulatory flood elevation and that prohibit any activity in a designated floodway, including fill, that would increase the water surface elevation during a base flood.
5. Regulations to allow a mobile home located in a floodplain on August 3, 1984 to be replaced by another mobile home if:
 - (a) The mobile home to be replaced was not damaged by a flood to more than fifty per cent of its value before the flood.
 - (b) The replacement mobile home is elevated so that the bottom of the structural frame or the lowest point of any attached appliances, whichever is lower, is at or above the regulatory flood elevation.
6. Regulations that require all new placement of mobile homes to be anchored to prevent flotation, collapse or movement.

7. Variance procedures to permit variances from the regulations that do not result in danger or damage to persons or property in floodplains in the area of jurisdiction. Variances may be granted only if special circumstances, such as size, shape, topography, location or surroundings of the property, would cause the strict application of the regulations to deprive the property of privileges enjoyed by similar property in the floodplain. A variance is subject to conditions to ensure that the variance does not constitute a grant of special privileges inconsistent with the limitations on similar property in the floodplain.

C. Waste disposal systems shall not be installed wholly or partially in a regulatory floodway.

D. Water supply, water treatment and sewage collection and disposal systems built in a regulatory floodplain shall be designed to prevent or minimize floodwater infiltrating the systems and to prevent or minimize floodwater contamination during the base flood.

E. Floodplain regulations enacted pursuant to this article may only be adopted after a public hearing at which parties in interest and other citizens have an opportunity to be heard. At least thirty days before the hearing, a notice of the time and place of the hearing shall be published in a newspaper of general circulation within the county or, if no newspaper of general circulation is regularly published, in a newspaper of general circulation nearest the area of jurisdiction. A notice of any hearing accompanied by a copy of each of the proposed regulations shall be furnished to the director at least thirty days before the date of the hearing. A copy of any regulation adopted by a district pursuant to this article shall within five days thereafter be filed with the director and with each political subdivision and municipal corporation in the area of jurisdiction.

F. All development of land, construction of residential, commercial or industrial structures or future development within delineated floodplain areas is prohibited unless floodplain regulations have been adopted pursuant to this article for such floodplain area and are in full force and effect.

G. Before adopting regulations the board may issue a special permit authorizing construction or development if the board finds that construction or development is not a danger to persons or property.

H. Unless expressly provided, this article and any regulations adopted pursuant to this article do not affect:

1. Existing legal uses of property or the right to continuation of such legal use.

However, if a nonconforming use of land or a building or structure is discontinued for twelve months or destroyed to the extent of fifty per cent of its value, as determined by a competent appraiser, any further use shall comply with this article and regulations of the district.

2. Reasonable repair or alteration of property for the purposes for which the property was legally used on August 3, 1984 or on the date any regulations affecting such property take effect, except that any alteration, addition or repair to a nonconforming building or structure which would result in increasing its flood damage potential by fifty per cent or more shall be either flood proofed or elevated to or above the regulatory flood elevation.

3. Reasonable repair of structures constructed with the written authorization required by section 48-3613.

4. Facilities constructed or installed pursuant to a certificate of environmental compatibility issued pursuant to title 40, chapter 2, article 6.2.

I. Within one hundred twenty days after completion of construction of any flood control protective works which changes the rate of flow during the flood or the configuration of the floodplain upstream or downstream from or adjacent to the project, the person or agency responsible for installation of the project shall provide to the governing bodies of all jurisdictions affected by the project a new delineation of all floodplains affected by the project. The new delineation shall be done according to the criteria adopted by the director of water resources.

J. A flood control district or appropriate public agency which has failed to adopt or enforce floodplain regulations required by this section shall not be eligible for disaster relief identified by section 35-192, subsection D, paragraphs 3 and 5. The director of water resources shall advise the director of the division of emergency management within the department of emergency and military affairs of such failure to comply.

K. A DISTRICT AND ITS AGENTS MAY HAVE REASONABLE ACCESS AS PROVIDED BY WRITTEN AUTHORIZATION ISSUED PURSUANT TO SECTION 48-3613 OR IF NO AUTHORIZATION HAS BEEN ISSUED DURING BUSINESS HOURS OR IN THE CASE OF AN EMERGENCY, AT ANY TIME, TO ENTER AND INSPECT ANY DEVELOPMENT ON REAL PROPERTY THAT IS LOCATED IN A FLOODPLAIN IN ORDER TO DETERMINE WHETHER AN OWNER IS IN VIOLATION OF THIS CHAPTER. THIS SUBSECTION DOES NOT AUTHORIZE THE INSPECTION OF ANY RECORDS OR FILES ON A SITE OR THE INTERIOR OF ANY BUILDING. A DISTRICT SHALL ATTEMPT TO PROVIDE WRITTEN NOTICE TO THE OWNER AT LEAST FORTY-EIGHT HOURS IN ADVANCE THAT THE REAL PROPERTY IS TO BE INSPECTED AND THAT THE OWNER OR THE OWNER'S AGENT MAY ACCOMPANY THE DISTRICT INSPECTOR ON THE INSPECTION. A DISTRICT INSPECTOR SHALL COMPLY WITH ANY SAFETY REQUIREMENTS THAT MAY BE APPLICABLE TO A PARTICULAR SITE. THE DISTRICT SHALL PREPARE A REPORT OF ANY INSPECTIONS MADE PURSUANT TO THIS SUBSECTION. THE REPORT SHALL BE MADE AVAILABLE IN

THE RECORDS OF THE DISTRICT AND A COPY SENT TO THE OWNER WITHIN THIRTY DAYS AFTER THE INSPECTION.

L. THE FLOODPLAIN REGULATIONS ADOPTED BY A DISTRICT PURSUANT TO THIS CHAPTER ARE INTENDED TO CARRY OUT THE REQUIREMENTS OF THE NATIONAL FLOOD INSURANCE PROGRAM AND ANY TERM NOT OTHERWISE DEFINED IN THIS CHAPTER SHALL HAVE THE MEANING SET FORTH IN 44 CODE OF FEDERAL REGULATIONS PARTS 59 THROUGH 78, AS EFFECTIVE ON JANUARY 1, 2005.

Sec. 7. Section 48-3613, Arizona Revised Statutes, is amended to read:

48-3613. Authorization required for development in watercourses; exceptions; enforcement

A. Except as provided in section 48-3625 and in this section, a person shall not ~~construct any structure~~ ENGAGE IN ANY DEVELOPMENT which will divert, retard or obstruct the flow of waters in any watercourse without securing written authorization from the board of the district in which the watercourse is located. Where the watercourse is a delineated floodplain, ~~no structure shall be constructed~~ DEVELOPMENT SHALL TAKE PLACE in the floodplain without written authorization from the board of the district in which the floodplain is located.

B. Written authorization is not required FOR nor shall the board prohibit:

1. The construction of bridges, culverts, dikes and other structures necessary for the construction of public highways, roads and streets intersecting or crossing a watercourse.
2. The construction of storage dams for watering livestock or wildlife and structures on banks of a watercourse to prevent erosion of or damage to adjoining land if the structure will not divert, retard or obstruct the natural channel of the watercourse or dams for the conservation of floodwaters as permitted by title 45, chapter 6.
3. Construction of tailing dams and waste disposal areas used in connection with mining and metallurgical operations. This paragraph does not exempt those sand and gravel operations which will divert, retard or obstruct the flow of waters in a watercourse from complying with and acquiring authorization from the board pursuant to regulations adopted by the board under this article.
4. Other construction if it is determined by the board that written authorization is unnecessary.
5. Any flood control district, county, city, town or other political subdivision from exercising powers granted to it under this article.
6. The construction of streams, waterways, lakes and other auxiliary facilities in conjunction with development of public parks and recreation facilities by a public agency or political subdivision.

7. The construction and erection of poles, towers, foundations, support structures, guy wires, and other facilities related to power transmission as constructed by any utility whether a public service corporation or a political subdivision.

C. Before any construction authorized by subsection B of this section may begin, the person must submit plans for the construction to the board for review and comment.

D. In addition to other penalties or remedies otherwise provided by law, this state, a political subdivision or a person who may be damaged or has been damaged as a result of the unauthorized diversion, retardation or obstruction of a watercourse has the right to commence, maintain and prosecute any appropriate action or pursue any remedy to enjoin, abate or otherwise prevent any person from violating or continuing to violate this section or regulations adopted pursuant to this article. If a person is found to be in violation of this section, the court shall require the violator to either comply with this section if authorized by the board or remove the obstruction and restore the watercourse to its original state. The court may also award such monetary damages as are appropriate to the injured parties resulting from the violation, including reasonable costs and attorney fees.

Sec. 8. Section 48-3614, Arizona Revised Statutes, is amended to read:

48-3614. Declaration of public nuisance; abatement

~~Every new structure, building, fill, excavation or~~ ALL development located or maintained in a floodplain since August 8, 1973 in violation of this article or of floodplain regulations established by the board and without written authorization from the board is a public nuisance per se and may be abated, prevented or restrained by action of this state or any of its political subdivisions.

Sec. 9. Section 48-3615, Arizona Revised Statutes, is amended to read:

48-3615. Violation; classification

A. It is unlawful for a person **TO ENGAGE IN ANY DEVELOPMENT OR** to divert, retard or obstruct the flow of waters in a watercourse if it creates a hazard to life or property without securing the written authorization required by section 48-3613. Where the watercourse is a delineated floodplain, it is unlawful to ~~excavate or build any structure~~ **ENGAGE IN ANY DEVELOPMENT** affecting the flow of waters without securing written authorization required by section 48-3613.

B. A person who violates this section is guilty of a class 2 misdemeanor.

Sec. 10. Delayed repeal; savings

A. Section 48-2816, Arizona Revised Statutes, as added by this act, is repealed from and after December 31, 2015.

B. The repeal of section 48-2816, Arizona Revised Statutes, as provided by this section, does not affect the terms of office of incumbent members of the board of directors of

any flood protection district. Members elected pursuant to section 48-2816, Arizona Revised Statutes, as added by this act, and serving on December 31, 2015 may continue to serve for the remainder of their terms of office.

APPROVED BY THE GOVERNOR MAY 4, 2005.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 4, 2005.

**ARIZONA DEPARTMENT OF WATER RESOURCES
LEGISLATIVE IMPLEMENTATION PLAN**

**SB 1336 Rural Water Legislative Study Committee
47th Legislature, 1st Regular Session (2005)**

BILL NUMBER: SB 1336, Chapter 281

SHORT TITLE: Rural Water Legislative Study Committee

PRIME SPONSORS: Representatives: Aguirre
Brown
Cannell
Chase
Mason
Paton

Senators: Arzberger
Bee
Blendu
Cannell
Flake

BILL SUMMARY: SB 1336 creates a Rural Water Legislative Study Committee comprised of the following members:

- Appointed by the President of the Senate:
 - One Senator representing a county with a population between 175,000 and 250,000 people.
 - Two Senators representing counties with populations less than 175,000 people.
 - One member who represents counties in rural Arizona.
 - One member who represents natural resource conservation districts in rural Arizona.
 - One member who represents the hardrock mining industry in rural Arizona.
 - One member who has experience in marketing or developing properties in rural Arizona.

- Appointed by the Speaker of the House of Representatives:
 - One Representative from a county with a population between 175,000 and 250,000 people.
 - Two Representatives from counties with populations less than 175,000 people.
 - One member who represents cities and towns in rural Arizona.
 - One agricultural producer representing the rural agricultural community.
 - One member who represents an agricultural improvement district.
 - One member who represents an irrigation district in rural Arizona.

- Requires the Committee to elect a chairperson out of the Legislative members of the Committee.

- Requires the Committee to evaluate information related to water supplies in rural Arizona and water use in rural Arizona, to determine effective methods of reclamation of water, to review options for developing alternative supplies of water, to review opportunities for the reuse of water in Arizona, to identify resources needed to enhance available supplies and infrastructure needs, to review information about amounts of evaporation from lands and foliage, to review measures that enhance the value of water rights and to identify opportunities for the conservation of water in rural Arizona. The Committee may request Type your question here, and then click Search. information from organizations, universities and governmental entities.

- Requires the Committee to submit a report of its findings by December 31, 2006.

- Defines *rural Arizona* as a county with a population of less than 250,000 people.

- Contains a delayed repeal date of September 30, 2007.

SIGNIFICANCE TO AGENCY: Unknown at this time.

REQUIRED OUTCOMES: Unknown at this time.

ACTIONS REQUIRED: Unknown at this time.

DIVISION STAFF SUPPORT REQUIRED: Unknown at this time.

TIMELINE: Unknown at this time.

State of Arizona
Senate
Forty-seventh
Legislature
First Regular Session
2005

CHAPTER 281

SENATE BILL 1336

AN ACT

ESTABLISHING THE RURAL WATER LEGISLATIVE STUDY COMMITTEE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Rural water legislative study committee; definition

A. The rural water legislative study committee is established consisting of the following members:

1. One member of the senate who represents a county with a population of more than one hundred seventy-five thousand persons but less than two hundred fifty thousand persons and who is appointed by the president of the senate.
2. One member of the house of representatives who represents a county with a population of more than one hundred seventy-five thousand persons but less than two hundred fifty thousand persons and who is appointed by the speaker of the house of representatives.
3. Two members of the senate who represent a county with a population of less than one hundred seventy-five thousand persons and who are appointed by the president of the senate.
4. Two members of the house of representatives who represent a county with a population of less than one hundred seventy-five thousand persons and who are appointed by the speaker of the house of representatives.
5. One member who represents cities and towns in rural Arizona and who is appointed by the speaker of the house of representatives.
6. One member who represents counties in rural Arizona and who is appointed by the president of the senate.
7. One agricultural producer who represents the agricultural community in rural Arizona and who is appointed by the speaker of the house of representatives.
8. One member who represents the natural resource conservation districts in rural Arizona and who is appointed by the president of the senate.

9. One member who represents an agricultural improvement district and who is appointed by the speaker of the house of representatives.
 10. One member who represents the hardrock mining industry in rural Arizona and who is appointed by the president of the senate.
 11. One member who represents an irrigation district in rural Arizona and who is appointed by the speaker of the house of representatives.
 12. One member who has experience in marketing or developing properties in rural Arizona and who is appointed by the president of the senate.
- B. Not more than four of the members who are appointed pursuant to subsection A, paragraphs 1 through 4 shall be from the same political party.
- C. The committee shall select a chairperson from among its legislative members who are appointed pursuant to subsection A, paragraphs 1 through 4.
- D. The committee may request assistance from agencies, universities and organizations.
- E. The rural water legislative study committee shall:
1. Evaluate information related to all water supplies in rural Arizona.
 2. Evaluate information related to water use in rural Arizona.
 3. Determine the most effective methods of reclamation of water lost through natural processes in rural Arizona.
 4. Review options for developing alternative supplies of water in rural Arizona.
 5. Review opportunities for the reuse of water in rural Arizona.
 6. Identify the resources needed to enhance available supplies and infrastructure needs in rural Arizona.
 7. Review information about the amounts of evaporation and transpiration from lands and foliage in rural Arizona.
 8. Review measures to enhance the value of water rights and protect water rights in rural Arizona.
 9. Identify the opportunities for the conservation of water in rural Arizona.
 10. Submit a report of its findings and recommendations to the speaker of the house of representatives and the president of the senate on or before December 31, 2006. The committee shall provide a copy of the report to the secretary of state and the director of the Arizona state library, archives and public records.
- F. For the purposes of this section, "rural Arizona" means a county with a population of less than two hundred fifty thousand persons.

Sec. 2. [Delayed repeal](#)

This act is repealed from and after September 30, 2007.

APPROVED BY THE GOVERNOR MAY 11, 2005.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 12, 2005.

**ARIZONA DEPARTMENT OF WATER RESOURCES
LEGISLATIVE IMPLEMENTATION PLAN**

**SB 1522 Environmental Protections; Budget
47th Legislature, 1st Regular Session (2005)**

BILL NUMBER: SB 1522, Chapter 332

SHORT TITLE: Environmental Protections; Budget

PRIME SPONSORS: Senators: Bee
Bennett
Blendu
Burns
Huppenthal

BILL SUMMARY: SB 1522 contains the following provisions that are relevant to the Arizona Department of Water Resources:

- Provides that all monies received through an interstate water banking agreement with the state of Nevada that are not used to purchase or store water or otherwise fulfill contractual obligations with the state of Nevada are subject to legislative appropriation.
- Appropriates \$800,000 in FY 2005-2006 and \$796,000 in FY 2006-2007 from the watercraft licensing fund to the Department of Administration to comply with this state's obligation relating to the settlement of the Zuni Indian Tribes water claims pursuant to the Zuni Indian Tribe Water Rights Settlement Act of 2003.

SIGNIFICANCE TO AGENCY: There is no direct significance to the agency itself, but settling Indian claims to water rights adds certainty to water claims. Settling these claims has beneficial implications for our State's ability to manage its water supply.

REQUIRED OUTCOMES: There are no required outcomes.

ACTION REQUIRED: ADWR must send a letter to the Arizona Department of Administration requesting that funds be transferred to implement the settlement agreement.

DIVISION STAFF SUPPORT REQUIRED:

- Legal Division
- Director's Office

TIMELINE: The date on which the letter is to be sent to the Department of Administration is unknown at this time.

Senate Engrossed

State of Arizona
Senate
Forty-seventh
Legislature
First Regular Session
2005

Chapter 332

SENATE BILL 1522

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45-2425. Arizona water banking fund

A. The Arizona water banking fund is established and shall include subaccounts based on funding sources. The authority shall administer the banking fund in accordance with this chapter.

B. The banking fund consists of all of the following:

1. Monies appropriated from the state general fund by the legislature.
2. Reimbursement for the distribution of long-term storage credits, collected by the authority in accordance with section 45-2457, subsection B, paragraph 2.
3. Monies paid to the authority by the recipients of in lieu water at a groundwater savings facility, in accordance with section 45-2455, subsection C.
4. Monies collected in accordance with section 45-611, subsection C, paragraph 3.
5. Monies deposited in the banking fund in accordance with section 48-3715.03, subsection B.
6. Monies paid to the authority by agencies that have entered into interstate water banking agreements with the authority in accordance with section 45-2471. **ALL MONIES RECEIVED THROUGH AN INTERSTATE WATER BANKING AGREEMENT WITH THE STATE OF NEVADA THAT ARE NOT USED TO PURCHASE OR STORE WATER OR OTHERWISE FULFILL CONTRACTUAL OBLIGATIONS WITH THE STATE OF NEVADA ARE SUBJECT TO LEGISLATIVE APPROPRIATION.**
7. Monies paid to the authority by persons and Indian communities in this state that have entered into water banking services agreements with the authority in accordance with section 45-2458.

C. In addition to the monies prescribed in this section, the authority may accept any gifts, grants or donations and deposit those monies in the banking fund.

D. Monies in the banking fund are exempt from lapsing under section 35-190. On notice from the authority, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the banking fund. **THE AUTHORITY MAY INVEST THE MONIES PAID TO THE AUTHORITY IN ACCORDANCE WITH SECTION 45-2471, ARIZONA REVISED STATUTES, WITH THE STATE TREASURER PURSUANT TO SECTION 35-326, ARIZONA REVISED STATUTES.**

E. The authority may use the banking fund to pay all reasonable expenses incurred in carrying out its duties and responsibilities in accordance with this chapter.

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Sec. 10. Appropriations; purpose; reversion

A. Notwithstanding section 5-323, Arizona Revised Statutes, or any other law, the sum of \$800,000 is appropriated from the watercraft licensing fund established pursuant to section 5-323, Arizona Revised Statutes, in fiscal year 2005-2006 and the sum of \$796,000 is appropriated from the watercraft licensing fund in fiscal year 2006-2007 to the department of administration to comply with this state's obligation relating to the settlement of the Zuni Indian Tribe's water rights claims pursuant to the Zuni Indian Tribe Water Rights Settlement Act of 2003 (P.L. 108-34).

B. The amounts appropriated in subsection A revert to the watercraft licensing fund if the secretary of the interior does not publish notice in the Federal Register on or before December 31, 2006 that the terms of the settlement have been satisfied.

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