

HB 2512 Summary Chart

<u>Issue</u>	<u>HB 2512</u>	<u>Concerns</u>
<p>1. <u>Arizona Colorado River Conservation Program/Intra-State Forbearance</u>: The State proposed a program to facilitate the conservation of water in Lake Mead to protect Arizona's Colorado River supplies.</p>		<ul style="list-style-type: none"> • This tool is absolutely necessary to create conserved water to protect Lake Mead and Arizona's Colorado River supply.
<p>2. <u>Mandatory Adequacy Review</u>: While negotiating a package, the State provided an option that would require the Legislature to publicly review mandatory adequacy requirements periodically with input from the ADWR Director regarding, among other things, whether certain conservation and augmentation measures</p>	<p>Effectively sunsets mandatory adequacy requirements. Would require county boards to periodically review mandatory adequacy provisions and vote on whether to readopt those provisions. Readoption would require unanimous vote.</p> <p>If the vote is not to readopt, mandatory adequacy requirements would be eliminated if the county or the largest city in the county meets eight requirements, which include certain</p>	<ul style="list-style-type: none"> • HB 2512 undermines important consumer protections established in 2007. <ul style="list-style-type: none"> ○ Requires counties to periodically readopt mandatory adequacy provisions by unanimous vote for them to remain in effect. ○ Allows a county to repeal mandatory adequacy without input of the ADWR Director or a determination by the Legislature and does not require a review of the sufficiency of water supplies to meet needs for development.

<p>have been taken and whether there are sufficient water supplies for development. After the review, the Legislature could allow counties and cities to opt out of mandatory adequacy requirements.</p>	<p>conservation and augmentation measures.</p>	
<p>3. <u>Pinal AMA Extinguishment Credit Calculation</u>: The State’s proposal set forth language for extinguishment credit calculation identical to the language approved by Pinal stakeholders.</p> <p>The State’s proposal would also eliminate the groundwater allowance in the Pinal AMA for new certificates as approved by Pinal stakeholders.</p>	<p>Would require the Director to adopt rules through an exempt rulemaking proceeding to calculate extinguishments credits in the Pinal AMA “consistent with [A.R.S. § 45-462].”</p> <p>Does not address the groundwater allowance.</p> <p>Would require the Director to “recalculate the amount of groundwater available for use” after “eliminating ... proposed uses that are no longer economically practicable for actual development and future use.” (Section E(2).)</p>	<ul style="list-style-type: none"> • ADWR already has rules in place to calculate extinguishment credits in the Pinal AMA. HB 2512 does not provide guidance as to how ADWR is to amend its rules to calculate extinguishment credits. • HB 2512 does not address the groundwater allowance. • It appears that Section E(2) would require ADWR to reduce demands in its modeling but leave existing assured water supply determinations intact. This would result in an overallocation of groundwater, seriously undermining the assured water supply program in the Pinal AMA. • ADWR would face significant litigation over the meaning of “no longer economically practicable.”

<p>4. <u>CAWCD Sovereign Immunity</u>: The State’s proposal would prohibit CAWCD from asserting 11th Amendment immunity for claims involving the delivery, transfer, storage, conservation or use of water, to the extent a court determines that CAWCD has sovereign immunity.</p>	<p>Says that CAWCD shall not assert the defense of sovereign immunity under the 11th Amendment only in litigation “to enforce the terms of a Central Arizona Project water delivery contract or subcontract.”</p>	<ul style="list-style-type: none"> • HB 2512’s prohibition on sovereign immunity is not broad enough. • HB 2512 implies that CAWCD has sovereign immunity under the 11th Amendment, which is not the case. • HB 2512 would empower CAWCD to assert the defense against on-river contractors (such as Yuma and MCWA) and against CAWCD contractors and subcontractors with claims not arising under the terms of a CAP water delivery contract or subcontract. • HB 2512 would empower CAWCD to assert the defense against claims involving non-Project water wheeled through the canal pursuant to the CAP System Use Agreement.
<p>5. <u>Approval of CAWCD’s Negotiation of Interstate Agreements</u>: The State’s proposal would prohibit CAWCD from beginning negotiations or entering into an interstate agreement involving Colorado river water without the express written</p>	<p>Subsection A would require CAWCD to “promptly” notify the ADWR Director if CAWCD is a party to discussions on or negotiations of interstate agreements or agreements with the U.S. involving the use, storage or conservation of Colorado River water.</p>	<ul style="list-style-type: none"> • HB 2512 would give CAWCD authority to negotiate and enter interstate agreements regarding Colorado River water without the Director’s approval and without considering statewide impacts. • HB 2512 leaves considerable uncertainty about when CAWCD must notify the Director. • HB 2512’s requirement that the Director inform CAWCD of the

<p>approval of the ADWR Director. The State’s proposal contains a provision clarifying that its proposed language does not authorize interstate transactions that are not otherwise authorized under Arizona’s water banking statutes.</p>	<p>Subsection B would require the Director to inform CAWCD if the Director is a party to discussions and negotiations regarding Colorado River water. (Legislative staff has acknowledged a drafting error in this section.)</p>	<p>Director’s negotiations improperly elevates CAWCD above other Colorado River water users.</p>
<p>6. <u>Interstate Transportation of Water:</u> The State has no proposal on this issue.</p>	<p>Would require Legislative approval of applications to transport water out of state.</p> <p>Adds new language to include Colorado River water in section 45-292 but does not delete language exempting Colorado River water.</p>	<ul style="list-style-type: none"> • HB 2512 may raise constitutional issues. • HB 2512 would make the statute internally inconsistent and potentially allow Colorado River water to be transported out of state.
<p>7. <u>Management Plans Post-2026:</u> The State’s proposal would add three new management periods and require the ADWR Director to establish advisory committees to evaluate the existing conservation requirements</p>	<p>HB 2512 is the same as the State’s proposal except that it would add only one new management period.</p>	<ul style="list-style-type: none"> • Adding only one new management period is not sufficiently proactive and does not provide sufficient certainty for stakeholders. • HB 2512 contains errors and references which appear to be unintentionally retained from ADWR’s proposal.

<p>and irrigation water duties to determine whether they are appropriate for the fifth and sixth management periods.</p>		
<p>8. <u>Containerized Plants</u>: The State’s proposal would allow the holder of a certificate of irrigation grandfathered right to use groundwater withdrawn pursuant to the right to water plants in containers on or above the certificated acres.</p>	<p>HB 2512 is the same as the State’s proposal except that it adds “plant research or plant breeding” as a permissible use.</p>	<ul style="list-style-type: none"> • Addition of the language “plant research or plant breeding” may suggest that irrigation grandfathered rights cannot be used to irrigate plants in the ground for these same activities.
<p>9. <u>Effluent Definition Change</u>: The State has no proposal on this issue.</p>	<p>Provides that effluent is alternatively referred to as “recycled water” for “purposes of departmental information materials only.”</p> <p>This is intended to encourage the reuse of treated effluent.</p>	<ul style="list-style-type: none"> • Using “recycled water” in ADWR’s informational materials in place of “effluent” could confuse the regulated community, as “recycled water” has a different meaning in ADEQ’s rules.
<p>10. <u>Desalination Action Plan</u>: While negotiating a package, the State proposed a session law that</p>	<p>Would add a new permanent section within title 45 (section 45-118) with requirements for a desalination action plan.</p>	<ul style="list-style-type: none"> • ADWR does not have concerns with this proposal. It allows the Director to identify all issues related to desalination, including brine disposal,

<p>would require the ADWR Director to submit a desalination action plan to the Governor, the Legislature, and the Secretary of State by December 31, 2019.</p>	<p>Would require the Director to submit an initial desalination action plan on or before September 30, 2019 and to submit subsequent reports on the plan and its results by December 31 every two years there-after.</p>	<p>area of origin impacts, and disposition of the treated water.</p> <ul style="list-style-type: none"> • The Director may also report on the progress of the Governor’s Water Augmentation Council Desalination Committee.
<p>11. <u>State Forester Responsibilities</u>: The State has no proposal on this issue.</p>	<p>Would place the natural resource conservation districts under the supervision of the state forester (instead of the state land commissioner) and adds powers and duties, including:</p> <ul style="list-style-type: none"> • Publicly recognize water conservation measures, including watershed improvement or protection programs. • Promote to the public water-related advancements and their effect <p>Would add the state forester as a nonvoting ex officio member of the water protection fund commission.</p>	<ul style="list-style-type: none"> • This could create confusion between obligations between ADWR and the State Forester regarding conservation programs. • This may raise issues regarding State Land’s constitutionally-mandated mission.

Colorado River Conservation Program
(Statewide Forbearance)

[New Article 16 in Title 45, Chapter 1]

45-361 Declaration of Policy

- A. The legislature finds that the people and economy of Arizona are dependent in whole or in part upon Colorado river water for their water supply and that as elevations in Lake Mead decline, the people of Arizona face increasing risks of draconian shortages and that this is threatening to do substantial injury to the general economy and welfare of this state and its citizens. The legislature further finds that it is in the best interest of the general economy and welfare of this state and its citizens to authorize a Colorado river conservation program to administer and incentivize the voluntary conservation of Colorado river water within Arizona.
- B. It is therefore declared to be the public policy of this state that in the interest of protecting and stabilizing the general economy and welfare of this state and its citizens it is necessary to incentivize the voluntary conservation of Colorado river water resources of the state and to provide a framework for the administration of efforts to conserve the Colorado river water resources of this state.

45-362 Definitions

In this article, unless the context otherwise requires:

1. “Colorado river water” shall mean water of the main stream of the Colorado river.
2. “Conservation project” shall mean a project that will result in a reduction in a contractor’s consumptive use of Colorado river water.
3. “Contractor” shall mean an entity holding an entitlement to Mainstream water under one of the following:
 - a. The Consolidated Decree entered by the United States supreme court in *Arizona v. California*, 547 U.S. 150 (2006);
 - b. A water delivery contract with the United States through the secretary; or
 - c. A reservation of water by the secretary.
4. “Intentionally created surplus” shall have the same meaning set forth in the Record of Decision for the Adoption of Colorado River Interim Guidelines for

Lower Basin Shortages and Coordinated Operations for Lake Powell and Lake Mead, 73 Federal Register 19873, published on April 11, 2008.

5. “Central Arizona Water Conservation District” shall mean the multi-county water conservation district established under title 48, chapter 2.
6. “Creation plan” shall mean a report to the secretary regarding intentionally created surplus planned to be created by Arizona contractors.
7. “Certification report” shall mean a report to the secretary regarding intentionally created surplus created by Arizona contractors in the previous year.
8. “Secretary” shall mean the secretary of the interior of the United States.
9. “System conservation” shall mean conservation of Colorado river water that will remain in Lake Mead for the benefit of the Colorado river system.
10. “System use agreement” shall mean the central Arizona project system use agreement between the United States and the Central Arizona Water Conservation District, executed on February 2, 2017.

45-363 Colorado river conservation projects

- A. A contractor may submit to the director a proposal for a conservation project within Arizona that would be eligible for creation of intentionally created surplus or system conservation.
- B. Within 30 days of receipt of a proposal for a conservation project from a contractor, or other period if agreed to by the contractor, the director shall post notice of the proposal on the department’s website. The notice shall state that any resident of Arizona may comment in writing within 30 days of the original date that the notice is posted, regarding whether the project will result in a reduction in the contractor’s consumptive use. The notice shall also state where materials related to the proposal are available to the public for review.
- C. Within 60 days of receipt of a proposal for a conservation project from a contractor, or other period if agreed to by the contractor, the director shall consult with the secretary regarding the potential reduction in consumptive use that is likely to be achieved by the conservation project and any other issues
- D. The director shall approve a proposed conservation project within Arizona if, after consideration of any written public comments and consultation with the secretary, the director determines that the conservation project will result in a reduction of the contractor’s consumptive use.

45-364 Administration of intentionally created surplus and system conservation in Arizona

- A. Any Arizona contractor seeking to create intentionally created surplus shall enter an agreement with the director that includes each of the following provisions:
1. An agreement by the contractor to provide to the director by a date certain the information necessary for preparation of the creation plan and the certification report for any year in which the contractor seeks to create intentionally created surplus;
 2. An agreement by the contractor to provide any other information necessary for the creation or delivery of intentionally created surplus;
 3. Notice that the creation of intentionally created surplus is subject to approval and verification by the secretary; and
 4. If the contractor is a tribe with a federally authorized settlement that includes an entitlement to Colorado river water to be delivered through the central Arizona project:
 - a. A requirement that the delivery of intentionally created surplus shall be consistent with the terms of the system use agreement; and
 - b. Provisions for coordination with the Central Arizona Water Conservation District regarding changes to water orders for the creation and delivery of intentionally created surplus.
- B. On or before the date set by the director, any Arizona contractor seeking to create intentionally created surplus in the subsequent year shall so notify the director and shall provide any information the director deems necessary for the creation plan for the subsequent year.
- C. On or before the date set by the secretary, the director shall submit to the secretary a creation plan for the creation of intentionally created surplus by Arizona contractors in the subsequent year. The director shall ensure that the creation plan is consistent with all applicable federal requirements.
- D. On or before the date set by the secretary, the director shall submit to the secretary a certification report verifying any intentionally created surplus created by Arizona contractors in the previous year. The director shall ensure that the certification report is consistent with all applicable federal requirements.
- E. On or before the date set by the director, any Arizona contractor seeking to create system conservation in the subsequent year shall so notify the director.

45-365 Forbearance for intentionally created surplus and system conservation in Arizona

- A. The director, acting on behalf of the State of Arizona, shall forbear a portion of Arizona's entitlement to Colorado river water for the subsequent year in the volume of intentionally created surplus to be created by an Arizona contractor if the director finds all of the following:
1. The contractor will create intentionally created surplus through a conservation project approved by the director pursuant to section 45-363;
 2. The contractor has entered an agreement with the director as provided in section 45-364;
 3. The contractor has entered an agreement with the secretary for the delivery of intentionally created surplus;
 4. The conservation project is consistent with the terms of an agreement in which the necessary parties outside the state of Arizona have agreed to forbear the delivery of intentionally created surplus to the state of Arizona;
 5. The volume of water that is subject to forbearance would have been used by the contractor but for the conservation project; and
 6. The secretary has approved a creation plan for the subsequent year that includes the conservation project and the volume of water to be conserved.
- B. The director, acting on behalf of the State of Arizona, shall forbear a portion of Arizona's entitlement to Colorado river water for the subsequent year in the volume of system conservation to be created by an Arizona contractor if the director finds all of the following:
1. The contractor will create system water through a conservation project approved by the director pursuant to section 45-363;
 2. The contractor has entered an agreement with the secretary for the creation of system conservation;
 3. The volume of water that is subject to forbearance would have been used by the contractor but for the conservation project; and
 4. The conservation project is consistent with the terms of an agreement in which the necessary parties outside the state of Arizona have agreed to forbear the delivery of intentionally created surplus to the state of Arizona.
- C. If an Arizona contractor orders delivery of intentionally created surplus in that contractor's account maintained by the secretary, the director, acting on behalf of the State of Arizona, shall forbear that volume of intentionally created surplus as to any other Arizona contractor.

D. No Arizona contractor may order, request delivery of, divert, or use Colorado river water for which the director has notified the secretary of forbearance pursuant to this Section.

DRAFT

**ARIZONA DEPARTMENT OF WATER RESOURCES
MEMORANDUM**

Date: January 10, 2018
RE: Statutory Authority to Forbear Deliveries of Colorado River Water and CAWCD contract rights

ISSUE

Would legislation authorizing the Director of ADWR to forbear delivery of Colorado River water voluntarily conserved in Lake Mead by Arizona water users violate contract rights held by the Central Arizona Water Conservation District (“CAWCD”)?

SHORT ANSWER

No. CAWCD is not entitled to receive any specific quantity of water under its Contract, and its right to receive water is subject to the availability of Colorado River water delivered pursuant to the 1944 water delivery contract between Arizona and the Secretary of Interior (“1944 Contract”). Arizona, through the Legislature, has the authority to reduce the availability water under the 1944 Contract in the amount of water voluntarily conserved in Lake Mead by other Arizona water users.

Additionally, CAWCD’s contract rights are made expressly subject to changes in state law, and therefore CAWCD has no reasonable expectation of the delivery of conserved water in the face of such a change.

BACKGROUND AND RELEVANT CONTRACTS

The 1944 Contract

After Congress enacted the Boulder Canyon Project Act of 1928, the Secretary of the Interior entered into a water delivery contract with the State of Arizona on February 9, 1944 (“1944 Contract”). The 1944 Contract was subsequently ratified by the Arizona Legislature. A.R.S. § 45-1301.

The 1944 Contract provides that the United States will deliver “and Arizona, or agencies or water users therein, will accept *under this contract* ... so much [Colorado River] water as may be necessary for the beneficial consumptive use for irrigation and domestic uses in Arizona of a maximum of [2.8 MAF].” Section 7(a) (emphasis added).

Section 7(l) provides that deliveries by the United States to individuals, irrigation districts, corporations or political subdivisions within Arizona will be “a discharge pro tanto of the obligations of this [1944] Contract,” recognizing that the 1944 Contract and the deliveries made pursuant to the Contract fulfill the United States’ obligation to deliver Arizona’s annual entitlement for use within the State.

CAWCD’s Master Repayment Contract and 2007 Stipulation

The construction of the Central Arizona Project (“CAP”) was authorized pursuant to the Colorado River Basin Project Act of 1968 (“Basin Project Act”). The Central Arizona Water Conservation District (“CAWCD”) was created by the Arizona

Legislature to contract with the United States for repayment of certain costs for the construction of the CAP. A.R.S. § 48-3701 et seq.

CAWCD entered into a master repayment contract with the U.S. in 1972. Agreeing that the repayment ceiling set forth in the 1972 agreement was insufficient, CAWCD and the U.S. entered into an amended agreement in 1988 (“1988 Repayment Contract” or “Master Repayment Contract”). The 1988 Repayment Contract, by its terms, supersedes and replaces the 1972 agreement. Article 11.

Article 8 of the 1988 Repayment Contract states that deliveries to CAWCD are subject to the availability of water for use in Arizona under the 1944 Contract. *See* 1988 Repayment Contract at Section 8.3(a)(1). Section 8.3(b) of that Agreement provides that “Delivery of Colorado River water by the United States under this contract ... will discharge to that extent the obligation of the United States to deliver water under [the 1944 Contract].” Section 8.7(b) of the 1988 Repayment Contract provides that “The quantity of Colorado River water available under this contract for project purposes shall not exceed the quantity of water available to Arizona under ... Arizona's water delivery contract with the United States....”

In 1995, CAWCD filed suit against the U.S. in *Central Arizona Water Conservation District v. United States, et al.*, No. CIV 95-09625-09-TUC-WDB (EHC) AND CIV 95-1720-PHX-EHC (Consolidated) (“Repayment Litigation”), disputing, among other things, the U.S.’s method for allocating construction costs under the 1988

Repayment Contract and challenging the U.S.’s calculation of CAWCD’s repayment obligation. In 2000, the parties to the litigation reached a settlement and entered into a stipulation that was approved by a judgment entered on November 20, 2007 (“2007 Stipulation”). The 2007 Stipulation provides that the 1988 Repayment Contract “remains in full force and effect” except as otherwise provided in the Stipulation, and provides that to the extent of inconsistencies, the provisions of the 2007 Stipulation shall govern. 2007 Stipulation at ¶ 11.

While the 2007 Stipulation makes express reference to the abrogation of some provisions of the 1988 Repayment Contract, it does not contain provisions abrogating any part of Article 8 of the 1988 Contract.

The 2007 Stipulation provides that “CAWCD shall be entitled to divert all Project Water for the benefit of Project Water users.” 2007 Stipulation at ¶ 5(c). For purposes of the 2007 Stipulation, “Project Water,” is defined as, among other things, “all Colorado River water to which Arizona is entitled under the U.S. Supreme Court Decree in *Arizona v. California* that the CAP Water Supply System is capable of delivering” after satisfaction of higher priority Colorado River rights and subject to 4th Priority contracts for on-River rights not to exceed 164,652 acre-feet per year. *See* 2007 Stipulation at ¶ 5(a)(1). The 2007 Stipulation provides that CAWCD “shall have the exclusive right in its discretion to sell or use all Excess Water for any authorized purpose of the CAP.” 2007 Stipulation at ¶ 5(d)(1). “Excess Water is defined as “all Project

Water that is in excess of the amounts used, resold, or exchanged pursuant to long-term contracts and subcontracts for Project Water service.” 2007 Stipulation at ¶ 5(d)(2).

The 2007 Stipulation also provides that “[t]his Judgment and all actions authorized hereunder are subject to Federal law, State of Arizona law, and such rules and regulations as the Secretary may deem appropriate, as those laws and rules and regulations may be amended” ¶ 11.

LEGAL ANALYSIS

Legislation is being considered that would authorize the Director of ADWR to forbear delivery of Colorado River water that is voluntarily conserved in Lake Mead by Arizona water users. This legislation, as contemplated, would permit the Director to forbear only for volumes of water that, but for the conservation, would otherwise be consumptively used by the conserving entity.

CAWCD has alleged that the proposed legislation would infringe on its “contract rights.” CAWCD is presumably referring to its right under the 1988 Repayment Contract and the 2007 Stipulation to divert Project Water, including its right to use or sell Excess Water; however, to ADWR’s knowledge, CAWCD has not articulated a specific legal theory for its claim of infringement.

The proposed legislation would not conflict with CAWCD’s rights under the 1988 Repayment Contract or the 2007 Stipulation for the reasons set forth below.

Furthermore, such legislation would not violate the Contract Clause or otherwise violate any constitutional provisions.

Legislation Authorizing the Director of ADWR to Forbear Delivery of Conserved Water Would Not Violate Any Contract Right Held by CAWCD.

A. Pursuant to Arizona's rights under the 1944 Contract, the Legislature can authorize the Director to forbear the delivery of conserved water.

Arizona entered into the 1944 Contract in its sovereign role and has retained its rights under that Contract, including the right to have water delivered to agencies or water users in Arizona “under” the 1944 Contract. Section 7(a). The fact that Arizona has a water contract is significant, as the State of California does not have a such a contract with the Secretary. Instead, the Secretary contracts only with “agencies of the State of California.” *See* 1944 Contract Section 7(h). This difference highlights Arizona’s sovereign authority over its 2.8 MAF allocation.

While CAWCD has the power to contract with the Secretary of the Interior for the repayment costs of the CAP, for the delivery of CAP water supplies, and to enter into subcontracts regarding that water, nothing within CAWCD’s enabling legislation abrogates or delegates to CAWCD Arizona’s sovereign rights to Colorado River water. Arizona, then, is free to forbear delivery of Colorado River water pursuant to the 1944 Contract.

CAWCD can claim no valid expectation regarding delivery of water that is forborne by the State. CAWCD is not entitled to receive a specific quantity of water

under its Contract, and CAWCD's Master Repayment Contract specifically notes that deliveries are subject to availability of water under the 1944 Contract. Only water remaining available after Arizona's forbearance would be available as "Project Water" to CAWCD. Nothing in the 2007 Stipulation abrogated the terms of the 1988 Repayment Contract that make delivery of water to CAWCD subject to the availability of water under the 1944 Contract. Only the Legislature can waive a sovereign right. *See* A.R.S. § 45-106 ("An agreement entered into between the [ADWR] director and the United States or a state or government involving a sovereign right or claim of this state is not effective unless approved by the legislature by concurrent resolution."); *see also*, *O'Neill v. United States*, 50 F.3d 677, 686 (9th Cir.1995) ("contractual arrangements, including those to which a sovereign itself is party, remain subject to subsequent legislation by the sovereign.")

Based on all of the forgoing, Arizona may act in its sovereign capacity through the State Legislature to authorize the ADWR Director to forbear the delivery of water that is voluntarily conserved in Lake Mead by Arizona water users.

B. Legislation authorizing the Director to forbear the delivery of conserved water would not violate the Contract Clause or other constitutional provisions because CAWCD's Contract is made expressly subject to changes in state law

CAWCD's rights under the 2007 Stipulation are made expressly subject to Arizona state law as "may be amended." In *Energy Reserves Group, Inc.*, 459 U.S. 400, 416, 103 S. Ct. 697, 74 L. Ed. 2d 569 (1983), the U.S. Supreme Court held that a similar

provision invalidated a claim of substantial impairment in the context of a Contract Clause claim. Other constitutional claims have been invalidated on similar grounds. See *Maricopa-Stanfield Irr. & Drainage Dist. v. United States*, 158 F.3d 428, 439 (9th Cir. 1998) (finding that act of Congress reallocating water did not amount to a taking where the reclamation contract “showed that the parties anticipated legal changes and agreed to limit the U.S.’s liability for shortages”). Because any contractual right CAWCD has to Project Water, including Excess Water, was made expressly subject to future changes to state law, CAWCD cannot claim that its rights are infringed by such changes.

Additionally, the Arizona Legislature has broad authority to define the powers and authorities of CAWCD, which is a creature of state statute and was created for repayment purposes. More specifically, CAWCD “is a tax-levying public improvement district of the state and a municipal corporation” A.R.S. § 48-3702. As such, CAWCD can only exercise those powers enumerated in Arizona constitution or statutes. See *Nw. Fire Dist. v. U.S. Home of Arizona Const. Co.*, 215 Ariz. 492, 496, ¶ 24, 161 P.3d 535, 539 (2007). The primary source of CAWCD’s authority derives from state statute, which as a general matter, the legislature is free to amend. See *Hohokam Irr. & Drainage Dist. v. Arizona Pub. Serv. Co.*, 204 Ariz. 394, 401, ¶ 30, 64 P.3d 836, 843 (2003). CAWCD can have no reasonable expectation that it may exercise any contractual right in contravention of the will of the Arizona Legislature. As the Supreme Court has noted, “One whose rights, such as they are, are subject to state restriction,

cannot remove them from the power of the State by making a contract about them.”
Hudson Water Co. v. McCarter, 209 U.S. 349, 357, 28 S.Ct. 529, 531, 52 L.Ed. 828
(1908).

C. Legislation authorizing the Director to forbear the delivery of conserved water would not otherwise violate the Contract Clause or other constitutional provisions

In analyzing a claim under the Contracts Clause, courts first determine whether the law substantially impairs a contractual relationship. *Energy Reserves*, 459 U.S. at 411. CAWCD would have difficulty demonstrating a substantial impairment of its contractual relationship for the reasons discussed above. However, even if CAWCD could show a substantial impairment, the State law will nevertheless be upheld so long as the State can show “a significant and legitimate public purpose behind the regulation, such as the remedying of a broad and general social or economic problem” and that the “adjustment of the rights and responsibilities of contracting parties is based upon reasonable conditions and is of a character appropriate to the public purpose justifying the legislation’s adoption.” *Id.* at 411–13 (internal citations and quotations omitted).

The State likely can meet this standard here, as the purpose of the proposed legislation is to reduce the risk of catastrophic reductions to the delivery of Arizona’s Colorado River entitlement for the benefit of the State as a whole. The State would only forbear delivery of water that would have been otherwise consumptively used but for voluntary conservation measures taken by the conserving entity. Those conservation

efforts would not occur absent the assurance of forbearance. Therefore, the legislation is a reasonable exercise of the State's police power for the health and welfare of its citizens and is appropriately tailored to its public purpose.

For purposes of constitutional takings law, CAWCD cannot claim any contractual right to receive water where such water is unavailable under the 1944 Contract or where state law prohibits its diversion, for the reasons discussed above. However, additionally, whatever rights CAWCD holds to divert, use, or sell a portion of Arizona's entitlement to Colorado River water likely is not "private" property. *See, e.g., Board of Water Works Trustees of City of Des Moines v. SAC County Board of Supervisors*, 890 N.W. 2d 50, 69 (Iowa 2017). Furthermore, CAWCD would not suffer any economic harm by virtue of the proposed legislation, as the Director would only forbear water that, but for the assurance of forbearance, would have been consumptively used and therefore unavailable to CAWCD.

For all the foregoing reasons, legislation enabling the Director of ADWR to forbear the delivery of conserved water would not violate any constitutional provisions.

CONCLUSION

The Legislature may authorize the Director of ADWR to forbear the delivery of water voluntarily conserved in Lake Mead by Arizona water users. CAWCD's rights under the 1988 Repayment Contract and the 2007 Stipulation are subject to the availability of Colorado River water delivered pursuant to the 1944 Contract. Arizona

has retained the authority to reduce the availability of water under the 1944 Contract. Therefore, Arizona may act in its sovereign capacity, through the Legislature, with respect to the 1944 Contract, to authorize the ADWR Director to forbear the delivery of water that is voluntarily conserved in Lake Mead by Arizona water users.

Additionally, CAWCD's contract rights are made expressly subject to changes in state law, and therefore CAWCD has no reasonable expectation of the delivery of conserved water in the face of such a change. Furthermore, the Arizona Legislature has broad authority to define CAWCD's powers, because CAWCD is a creature of state statute. The Legislature therefore has the authority to prohibit CAWCD from ordering or diverting water forborne by the Director.

Proposed Water Adequacy Legislation Summary

1. Within 30 days prior to the start of the 2023 legislative session, and within 30 days prior to the start of the legislative session every five years thereafter, the director of ADWR shall submit a report to the legislature that includes the following:
 - a. A list of the counties that have adopted a mandatory adequate water supply provision.
 - b. For each county that has adopted a mandatory adequate water supply provision, a description of:
 - i. Any actions taken by the county during the past five years to augment water supplies within the county, including adding water to the aquifers beneath land within the county.
 - ii. Water conservation programs being implemented by the county, including any program for effluent reuse.
 - iii. A description of aquifer levels beneath land within the county.
 - iv. An analysis of the amount of groundwater in storage in each aquifer beneath land within the county and whether sufficient water supplies exist to meet the needs of additional subdivisions within the county, taking into account existing uses of groundwater and surface water in the county.
 - c. For each municipality within the county, a description of:
 - i. Any actions taken by the municipality during the past five years to augment water supplies within the municipality, including adding water to the aquifers beneath land within the municipality.
 - ii. A description of any water conservation programs being implemented by the municipality, including any program for effluent reuse.
 - iii. A description of the aquifer levels beneath land within the municipality.

- iv. An analysis of the amount of groundwater in storage in each aquifer beneath land within the municipality and whether sufficient water supplies exist to meet the needs of additional subdivisions within the municipality, taking into account existing uses of groundwater and surface water in the county.
2. Counties and municipalities shall cooperate with the director in preparing the report by providing any relevant information requested by the director.
3. During the 2023 legislative session, and during the legislative session held every five years thereafter, the appropriate legislative committees shall hold hearings on the report submitted by the director. During the hearings, the public shall be given an opportunity to comment on the report. The director shall participate in the hearings and shall be giving full opportunity to respond to comments on the report from the legislature and the public.
4. Following the legislative committee hearings on the director's report, the legislature may pass a concurrent resolution determining the following:
 - a. Whether any county listed in the report should be allowed to rescind its mandatory adequate water supply provision: (1) because sufficient water supplies exist to meet the needs of additional subdivisions within the county, taking into account existing uses of groundwater and surface water in the county, and (2) considering the county's effective actions during the past five years to augment water supplies within the county, including adding water to the aquifers beneath land within the county, and to implement effective water conservation programs, including any program for effluent reuse.
 - b. Whether any municipality within a county listed in the report should be allowed to adopt an ordinance removing the municipality from the mandatory water adequacy requirements: (1) because sufficient water supplies exist to meet the needs of additional subdivisions within the municipality, taking into account existing uses of groundwater and surface water in the municipality, and (2) considering the municipality's effective actions during the past five years to augment water supplies within the municipality, including adding water to the aquifers beneath land within the municipality, and implement

effective water conservation programs, including any program for effluent reuse.

5. A county that has adopted a mandatory water adequacy provision may rescind the provision by unanimous vote of the board of supervisors if, within four years prior to the rescission, the legislature passed a concurrent resolution pursuant to paragraph 4(a) above finding that the county should be allowed to rescind the provision. If the county rescinds the provision, the county may later readopt the provision by unanimous vote of the board.
6. The following shall apply to a municipality located within a county that has adopted a mandatory water adequacy provision:
 - a. If the county rescinds the provision pursuant to paragraph 5 above, the municipality is no longer subject to mandatory water adequacy requirements. The municipality may at any time thereafter adopt its own mandatory water adequacy ordinance. The municipality shall be subject to the mandatory water adequacy requirements if the county later readopts a mandatory water adequacy provision.
 - b. The municipality may adopt an ordinance removing the municipality from the mandatory water adequacy requirements if, within four years prior to the adoption of the ordinance, the legislature passed a concurrent resolution pursuant to paragraph 4(b) above finding that the municipality should be allowed to adopt such an ordinance.

Session Law to Amend Method of Calculating Extinguishment Credits and
Eliminating Groundwater Allowance for New Certificates in Pinal AMA

Section _____. Extinguishment of irrigation grandfathered rights;
elimination of groundwater allowance; Pinal active management area

A. Notwithstanding any other law or rule, the amount of the assured water supply credit established for extinguishing a grandfathered right in the Pinal active management area is as follows:

1. For the extinguishment of a type 2 non-irrigation grandfathered right, multiply the number of acre-feet indicated on the certificate of grandfathered right by 100.

2. For the extinguishment of all or part of an irrigation grandfathered right, or all or part of a type 1 non-irrigation grandfathered right, multiply 1.5 acre-feet by the number of irrigation acres associated with the extinguished irrigation grandfathered right or the number of acres to which the extinguished type 1 non-irrigation grandfathered right is appurtenant, and then multiply that product by 100, except that:

a. If only a portion of an irrigation grandfathered right or a type 1 non-irrigation grandfathered right is extinguished, only those acres associated with the portion of the right that is extinguished shall be included in the calculation; and

b. If an extinguished irrigation grandfathered right has a debit balance in the corresponding flexibility account established under § 45-467, the amount of the debit shall be subtracted from the amount of the extinguishment credits.

B. For grandfathered rights extinguished in the Pinal active management area after **September 1, 2018**, if the amount of the extinguishment credits remaining unused on the sixth, eleventh, sixteenth or twenty-first anniversary of extinguishment is greater than an amount calculated by multiplying the initial volume of extinguishment credits by the applicable percentage shown in the table below, the amount of unused credits shall be reduced to an amount calculated by multiplying the initial volume of extinguishment credits by the applicable percentage:

Anniversary	Percentage
Sixth	75 percent
Eleventh	50 percent
Sixteenth	25 percent
Twenty-first	0 percent

C. For purposes of subsection B of this section, the amount of extinguishment credits remaining unused on the anniversary date of the extinguishment of a grandfathered right shall be the initial volume of extinguishment credits issued for the extinguishment of the right less:

1. The amount of any of the extinguishment credits previously pledged to a certificate of assured water supply or designation of assured water supply pursuant to R12-15-723, subsections E or F, Arizona administrative code, and reported to the department of water resources as having been used; and

2. The amount of any previous reductions made to the extinguishment credits pursuant to subsection B of this section.

D. Notwithstanding any other law or rule, the groundwater allowance for a certificate of assured water supply in the Pinal active management area is as follows:

1. For an application for a certificate filed before **September 1, 2018**, multiply the annual estimated water demand for the proposed subdivision by 10.

2. For an application for a certificate filed on or after **September 1, 2018**, multiply the annual estimated water demand for the proposed subdivision by 0.

E. Not later than **January 1, 2020**, the director of water resources shall amend the rules adopted pursuant to § 45-576, subsection H, to implement, by rule, the requirements of this section. For this purpose, the director is exempt from the rule making requirements of title 41, chapter 6, Arizona Revised Statutes, except that the director shall file a notice of exempt rule making with the secretary of state who shall publish the rules in Arizona administrative register and the Arizona administrative code. The rules shall have an immediate effective date.

F. This section is repealed from and after **July 1, 2020**.

Revised Proposal Regarding Sovereign Immunity

Section 48-3702, Arizona Revised Statutes, is amended to read:

48-3702. District as municipal corporation

A. A multi-county water conservation district is a tax-levying public improvement district of the state and a municipal corporation to the extent of the powers and privileges conferred by this chapter or granted generally to municipal corporations by the constitution and statutes of the state, including the immunities and exemptions provided by article 13, section 7, of the Constitution of Arizona.

B. TO THE EXTENT THAT ANY COURT FINDS THAT A MULTI-COUNTY CONSERVATION DISTRICT IS ENTITLED TO SOVEREIGN IMMUNITY UNDER THE UNITED STATES CONSTITUTION, SUCH IMMUNITY SHALL BE WAIVED FOR ANY CLAIMS AGAINST THE MULTI-COUNTY WATER CONSERVATION DISTRICT INVOLVING THE DELIVERY, TRANSFER, STORAGE, CONSERVATION OR USE OF WATER.

C. A MULTI-COUNTY WATER CONSERVATION DISTRICT SHALL NOT ASSERT THAT IT IS ENTITLED TO SOVEREIGN IMMUNITY UNDER THE UNITED STATES CONSTITUTION AS A DEFENSE AGAINST A CLAIM INVOLVING THE DELIVERY, TRANSFER, STORAGE, CONSERVATION OR USE OF WATER.

Revised Proposal Regarding Interstate Agreements

Title 48, chapter 22, article 1, Arizona Revised Statutes, is amended by adding a new section 48-3713.04, to read:

48-3713.04. Approvals required for agreements involving Colorado River water

A. NOTWITHSTANDING ANY OTHER LAW, THE DISTRICT SHALL NOT BEGIN NEGOTIATIONS REGARDING ANY AGREEMENT INVOLVING THE USE, TRANSFER, STORAGE, OR CONSERVATION OF COLORADO RIVER WATER OUTSIDE THE STATE WITHOUT THE EXPRESS WRITTEN APPROVAL OF THE DIRECTOR OF WATER RESOURCES.

B. NOTWITHSTANDING ANY OTHER LAW, THE DISTRICT SHALL NOT ENTER INTO ANY AGREEMENT INVOLVING THE USE, TRANSFER, STORAGE, OR CONSERVATION OF COLORADO RIVER WATER OUTSIDE THE STATE WITHOUT THE EXPRESS WRITTEN APPROVAL OF THE DIRECTOR OF WATER RESOURCES.

C. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO AUTHORIZE ANY USE, TRANSFER, STORAGE, OR CONSERVATION OF COLORADO RIVER WATER OUTSIDE THE STATE THAT IS NOT OTHERWISE AUTHORIZED PURSUANT TO TITLE 45, CHAPTER 14, ARTICLE 4 OF THE ARIZONA REVISED STATUTES.

Legislation Adding Three Additional Management Periods And Requiring the Director of Water Resources to Establish Advisory Committees to Evaluate Existing Conservation Requirements and Irrigation Water Duties

45-402. Definitions

In this chapter, unless the context otherwise requires:

1. "Accounting period" means the calendar year, except such other twelve-month period as may be otherwise agreed upon by the director and the owner of a farm or a district on behalf of its landowners.
2. "Active management area" means a geographical area which has been designated pursuant to article 2 of this chapter as requiring active management of groundwater or, in the case of the Santa Cruz active management area, active management of any water, other than stored water, withdrawn from a well.
3. "Animal industry use" means the production, growing and feeding of livestock, range livestock or poultry, as such terms are defined in section 3-1201. Animal industry use is included in the term and general treatment of industry in this chapter, unless specifically provided otherwise.
4. "City" or "town" means a city or town incorporated or chartered under the constitution and laws of this state.
5. "Conservation district" means a multi-county water conservation district established under title 48, chapter 22.
6. "Convey" means to transfer the ownership of a grandfathered right from one person to another.
7. "Date of the designation of the active management area" means:
 - (a) With respect to an initial active management area, June 12, 1980.
 - (b) With respect to a subsequent active management area, the date on which the director's order designating the active management area becomes effective as provided in section 45-414 or the date on which the final results of an election approving the establishment of the active management area pursuant to section 45-415 are certified by the board of supervisors of the county or counties in which the active management area is located.
8. "Exempt well" means a well having a pump with a maximum capacity of not more than thirty-five gallons per minute which is used to withdraw groundwater pursuant to section 45-454.
9. "Expanded animal industry use" means increased water use by an animal industrial enterprise on the land in use by the enterprise on June 12, 1980 or on immediately adjoining land, excluding irrigation uses.
10. "Farm" means an area of irrigated land which is under the same ownership, which is served by a water distribution system common to the irrigated land and to which can be applied common conservation, water measurement and water accounting procedures.
11. "Farm unit" means:
 - (a) With respect to areas outside an active management area and with respect to an active management area other than the Santa Cruz active management area, one or more farms which are irrigated with groundwater and which are contiguous or in proximity to each other with similar soil conditions, crops and cropping patterns.

(b) With respect to the Santa Cruz active management area, one or more farms which are irrigated with water, other than stored water, withdrawn from a well and which are contiguous or in proximity to each other with similar soil conditions, crops and cropping patterns.

12. "Grandfathered right" means a right to withdraw and use groundwater pursuant to article 5 of this chapter based on the fact of lawful withdrawals and use of groundwater prior to the date of the designation of an active management area.

13. "Groundwater basin" means an area which, as nearly as known facts permit as determined by the director pursuant to this chapter, may be designated so as to enclose a relatively hydrologically distinct body or related bodies of groundwater, which shall be described horizontally by surface description.

14. "Groundwater replenishment district" or "replenishment district" means a district that is established pursuant to title 48, chapter 27.

15. "Groundwater withdrawal permit" means a permit issued by the director pursuant to article 7 of this chapter.

16. "Initial active management area" means the Phoenix, Prescott or Pinal active management area established by section 45-411, the Tucson active management area established by section 45-411 and modified by section 45-411.02 and the Santa Cruz active management area established by section 45-411.03.

17. "Integrated farming operation" means:

(a) With respect to land within an irrigation non-expansion area, more than ten acres of land that are contiguous or in close proximity, that may be irrigated pursuant to section 45-437, that are not under the same ownership and that are farmed as a single farming operation.

(b) With respect to land within an active management area, two or more farms that are contiguous or in close proximity, that collectively have more than ten irrigation acres and that are farmed as a single farming operation.

18. "Irrigate" means to apply water to 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 such terms are defined in section 3-1201.

19. "Irrigation acre" means an acre of land, as determined in section 45-465, subsection B, to which an irrigation grandfathered right is appurtenant.

20. "Irrigation district" means a political subdivision, however designated, established pursuant to title 48, chapter 17 or 19.

21. "Irrigation grandfathered right" means a grandfathered right determined pursuant to section 45-465.

22. "Irrigation non-expansion area" means a geographical area which has been designated pursuant to article 3 of this chapter as having insufficient groundwater to provide a reasonably safe supply for the irrigation of the cultivated lands at the current rate of withdrawal.

23. "Irrigation use" means:

(a) With respect to areas outside an active management area and with respect to an active management area other than the Santa Cruz active management area, the use of groundwater 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 such terms are defined in section 3-1201.

(b) With respect to the Santa Cruz active management area, the use of water, other than stored water, withdrawn from a well on two or more acres of land to produce plants or parts of

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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.

24. "Irrigation water duty" or "water duty" means the amount of water in acre-feet per acre that is reasonable to apply to irrigated land in a farm unit during the accounting period, as determined by the director pursuant to sections 45-564 through ~~45-568~~ 45-568.05 or as prescribed in section 45-483.

25. "Member land" means real property that qualifies as a member land of a conservation district as provided by title 48, chapter 22.

26. "Member service area" means the service area of a city, town or private water company that qualifies as a member service area of a conservation district as provided by title 48, chapter 22.

27. "Non-irrigation grandfathered right" means a grandfathered right determined pursuant to section 45-463, 45-464, 45-469 or 45-472.

28. "Non-irrigation use" means:

(a) With respect to areas outside an active management area and with respect to an active management area other than the Santa Cruz active management area, a use of groundwater other than an irrigation use.

(b) With respect to the Santa Cruz active management area, a use of water, other than stored water, withdrawn from a well, other than an irrigation use.

29. "Person" means an individual, public or private corporation, company, partnership, firm, association, society, estate or trust, any other private organization or enterprise, the United States, any state, territory or country or a governmental entity, political subdivision or municipal corporation organized under or subject to the constitution and laws of this state.

30. "Private water company" means:

(a) With respect to areas outside an active management area and with respect to an active management area other than the Santa Cruz active management area, any entity which distributes or sells groundwater, except a political subdivision or an entity which is established pursuant to title 48 and which is not regulated as a public service corporation by the Arizona corporation commission under a certificate of public convenience and necessity. A city or town is not a private water company.

(b) With respect to the Santa Cruz active management area, any entity which distributes or sells water, other than stored water, withdrawn from a well, except a political subdivision or an entity which is established pursuant to title 48 and which is not regulated as a public service corporation by the Arizona corporation commission under a certificate of public convenience and necessity. A city or town is not a private water company.

31. "Service area" means:

(a) With respect to a city or town, the area of land actually being served water, for a non-irrigation use, by the city or town plus:

(i) Additions to such area which contain an operating distribution system owned by the city or town primarily for the delivery of water for a non-irrigation use.

(ii) The service area of a city, town or private water company that obtains its water from the city pursuant to a contract entered into prior to the date of the designation of the active management area.

(b) With respect to a private water company, the area of land of the private water company actually being served water, for a non-irrigation use, by the private water company plus

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additions to such area which contain an operating distribution system owned by the private water company primarily for the delivery of water for a non-irrigation use.

32. "Service area of an irrigation district" means:

(a) With respect to an irrigation district which was engaged in the withdrawal, delivery and distribution of groundwater as of the date of the designation of the active management area, the area of land within the boundaries of the irrigation district actually being served water by the irrigation district at any time during the five years preceding the date of the designation of the active management area plus any areas as of the date of the designation of the active management area within the boundaries of the irrigation district which contain an operating system of canals, flumes, ditches and other works owned or operated by the irrigation district. The service area may be modified pursuant to section 45-494.01.

(b) With respect to an irrigation district which was not engaged in the withdrawal, delivery and distribution of groundwater as of the date of the designation of the active management area:

(i) The acres of member lands within the boundaries of the irrigation district which were legally irrigated at any time from January 1, 1975 through January 1, 1980 for initial active management areas or during the five years preceding the date of the designation of the active management area for subsequent active management areas.

(ii) Any areas as of the date of the designation of the active management area within the boundaries of the irrigation district which contain an operating system of canals, flumes, ditches and other works for the withdrawal, delivery and distribution of water.

33. "Stored water" means water that is stored underground for the purpose of recovery pursuant to a permit issued under chapter 3.1 of this title.

34. "Subbasin" means an area which, as nearly as known facts permit as determined by the director pursuant to this chapter, may be designated so as to enclose a relatively hydrologically distinct body of groundwater within a groundwater basin, which shall be described horizontally by surface description.

35. "Subsequent active management area" means an active management area established after June 12, 1980 pursuant to article 2 of this chapter.

36. "Subsidence" means the settling or lowering of the surface of land which results from the withdrawal of groundwater.

37. "Transportation" means the movement of groundwater from the point of withdrawal to the point of use.

38. "Type 1 non-irrigation grandfathered right" means a non-irrigation grandfathered right associated with retired irrigated land and determined pursuant to section 45-463, 45-469 or 45-472.

39. "Type 2 non-irrigation grandfathered right" means a non-irrigation grandfathered right not associated with retired irrigated land and determined pursuant to section 45-464.

40. "Water district" means an active management area water district that is established under title 48, chapter 28 and that has adopted an ordinance or resolution to undertake water district groundwater replenishment obligations as defined and used in title 48, chapter 28, article 7.

41. "Water district member land" means real property that qualifies as water district member land of a water district as provided by title 48, chapter 28.

42. "Water district member service area" means the service area of the city, town or private water company that qualifies as a water district member service area of a water district as provided by title 48, chapter 28.

43. "Well" means a man-made opening in the earth through which water may be withdrawn or obtained from beneath the surface of the earth except as provided in section 45-591.01.

45-561. Definitions

In this article, unless the context otherwise requires:

1. "Aquifer" means a geologic formation that contains sufficient saturated materials to be capable of storing water and transmitting water in usable quantities to a well.

2. "Augmentation" means to supplement the water supply of an active management area and may include the importation of water into the active management area, storage of water or storage of water pursuant to chapter 3.1 of this title.

3. "Incidental recharge" means the percolation of water to an aquifer after the water has been withdrawn, diverted or received for delivery by a municipal provider for use within its service area, except water that is added to an aquifer pursuant to chapter 3.1 of this title.

4. "Incidental recharge factor" means the ratio of the amount of incidental recharge attributable to a municipal provider during a calendar year to the amount of water withdrawn, diverted or received for delivery by the municipal provider for use within its service area during the year. The amount of incidental recharge attributable to a municipal provider during a calendar year is the amount of water that is incidentally recharged during the year after it is withdrawn, diverted or received for delivery by the municipal provider for use within its service area.

5. "Industrial use" means a non-irrigation use of water not supplied by a city, town or private water company, including animal industry use and expanded animal industry use.

6. "Intermediate water duty" means an irrigation water duty, as defined in section 45-402, which is established by the director during a management period to apply for a specific number of years during the management period.

7. "Large untreated water provider" means a municipal provider that as of January 1, 1990 was serving untreated water to at least five hundred persons or supplying at least one hundred acre-feet of untreated water during a calendar year.

8. "Management period" means a period of years prescribed by sections 45-564 through ~~45-568~~ 45-568.05 during which a prescribed management plan applies.

9. "Mined groundwater" means the amount of groundwater withdrawn or received by a municipal provider from within an active management area during a calendar year for use in its service area, minus both of the following, as applicable:

(a) An amount of water computed by multiplying the amount of water supplied by the municipal provider for use within its service area during the calendar year by the incidental recharge factor established for the municipal provider pursuant to this article.

(b) If the municipal provider is a city or town in the Tucson active management area, the amount of groundwater withdrawn by the municipal provider during the calendar year from land owned or leased by the municipal provider to which a type 1 non-irrigation grandfathered right under section 45-463, subsection A is appurtenant, up to the following amount:

(i) If the municipal provider has made a request to the director as described in section 45-463, subsection F, the amount of groundwater computed by the director under section 45-463,

subsection F, in determining whether to designate or redesignate the municipal provider as having an assured water supply, minus the amount of any groundwater withdrawn by the municipal provider from the land during the period beginning with January 1 of the year in which the request was made and ending on December 31 of the year immediately preceding the calendar year for which the calculation of mined groundwater is being made.

(ii) If the municipal provider has not made a request to the director as described in section 45-463, subsection F, the amount of groundwater that the director would have been required to include in determining whether to designate or redesignate the municipal provider as having an assured water supply, as computed under section 45-463, subsection F, if the municipal provider had made a request to the director as described in that subsection on January 1 of the calendar year for which the calculation of mined groundwater is being made.

10. "Municipal provider" means a city, town, private water company or irrigation district that supplies water for non-irrigation use.

11. "Municipal use" means all non-irrigation uses of water supplied by a city, town, private water company or irrigation district, except for uses of water, other than Colorado river water, released for beneficial use from storage, diversion or distribution facilities to avoid spilling that would otherwise occur due to uncontrolled surface water inflows that exceed facility capacity.

12. "Safe-yield" means a groundwater management goal which attempts to achieve and thereafter maintain a long-term balance between the annual amount of groundwater withdrawn in an active management area and the annual amount of natural and artificial recharge in the active management area.

13. "Small municipal provider" means a municipal provider that supplies two hundred fifty acre-feet or less of water for non-irrigation use during a calendar year. For purposes of this paragraph, the amount of untreated water that is supplied by a large untreated water provider during a year shall not be counted in determining whether the municipal provider supplied two hundred fifty acre-feet or less of water for non-irrigation use.

14. "Untreated water" means water that is not treated to improve its quality and that is supplied by a municipal provider through a distribution system other than a potable water distribution system.

45-563. Management plans in active management areas; management periods; general provisions

A. The director shall develop a management plan for each initial active management area for each of ~~five~~ **EIGHT** management periods pursuant to the guidelines prescribed in sections 45-564 through ~~45-568~~ **45-568.07** and shall adopt the plans only after public hearings held pursuant to sections 45-570 and 45-571. The plans shall include a continuing mandatory conservation program for all persons withdrawing, distributing or receiving groundwater designed to achieve reductions in withdrawals of groundwater.

B. The director shall develop a management plan for the Santa Cruz active management area for the third, ~~fourth and fifth~~ **THROUGH EIGHTH** management periods pursuant to the guidelines prescribed in sections 45-566, ~~45-566.01, 45-567, 45-567.01, 45-568 and 45-568.01~~ **THROUGH 45-568.07** and shall adopt the plans only after public hearings held pursuant to sections 45-570 and 45-571. The plans shall include a continuing mandatory conservation program designed to achieve the management goal of the active management area for all persons withdrawing water, other than stored water, from a well and all persons distributing or receiving

water, other than stored water, from a well. The plans shall also include criteria for the location of new wells and replacement wells in new locations consistent with the management goal of the active management area.

45-563.02. Exemption from irrigation water duties; small irrigation grandfathered rights; criteria; conservation requirement; exception

A. A person who is entitled to use groundwater pursuant to an irrigation grandfathered right is exempt from any irrigation water duties or intermediate water duties established for the farm to which the right is appurtenant under sections 45-564, 45-565, 45-566, 45-567, ~~and~~ 45-568, ~~45-568.03, 45-568.04 AND 45-568.05~~ if both of the following apply:

1. There are ten or fewer irrigation acres in the farm.
2. The farm is not part of an integrated farming operation.

B. The director shall not establish irrigation water duties or intermediate water duties under section 45-566, 45-567, ~~or~~ 45-568, ~~45-568.03, 45-568.04 OR 45-568.05~~ for a farm to which both of the following apply:

1. There are ten or fewer irrigation acres in the farm.
2. The farm is not part of an integrated farming operation.

C. Except as provided in subsection D of this section, a person who is exempt from the irrigation water duties established for a farm pursuant to subsection A of this section or who owns or uses groundwater on a farm for which irrigation water duties are prohibited in subsection B of this section shall not allow any groundwater to flow off the surface of the farm's irrigation acres unless the groundwater is used for a reasonable and beneficial use approved in writing by the director.

D. A person who is required under subsection C of this section to prevent groundwater from flowing off the surface of a farm's irrigation acres may apply to the director for an exemption from the requirement. The director may grant the exemption if the person demonstrates to the satisfaction of the director that one of the following applies:

1. Preventing groundwater from flowing off the surface of the farm's irrigation acres would not be economically feasible.
2. Any groundwater that will flow off the surface of the farm's irrigation acres will be used by a person with an exempt well in lieu of groundwater that otherwise would have been withdrawn from that well.

45-465. Irrigation grandfathered right; determination of acres entitled to and amount; appurtenancy

A. In an active management area, a person who owns land which was legally irrigated in whole or in part with groundwater at any time during the five years preceding January 1, 1980 for initial active management areas or the date of the notice of the initiation of designation procedures or the call for the election for subsequent active management areas, which is capable of being irrigated and which has not been retired from irrigation for a non-irrigation use pursuant to section 45-463 or 45-469 has the right to use groundwater for the irrigation of such land as determined pursuant to subsections B and C of this section.

B. Except as provided in subsection C of this section, the director shall compute the maximum amount of groundwater which may be used pursuant to this section as follows:

1. Determine the farm units, as defined in section 45-402, within the active management area.

2. Determine the irrigation water duty, as defined in section 45-402, for each farm unit in an active management area, pursuant to sections 45-564 through ~~45-568~~ 45-568.05.

3. Determine the water duty acres for each farm within the farm unit. The water duty acres are the highest number of acres in the farm, taking land rotation into account, which were legally irrigated during any one year in the five years preceding January 1, 1980 for initial active management areas or the date of the notice of the initiation of designation procedures or the call for the election for subsequent active management areas.

4. Determine the irrigation acres for each farm within the farm unit. The irrigation acres are the acres in the farm which were legally irrigated at any time during the five years preceding January 1, 1980 for initial active management areas or the date of the notice of the initiation of designation procedures or the call for the election for subsequent active management areas, which are capable of being irrigated and which have not been retired from irrigation for a non-irrigation use pursuant to section 45-463 or 45-469.

5. Multiply the water duty acres for each farm within the farm unit by the irrigation water duty for the farm unit and divide that amount by the number of irrigation acres in the farm. The result shall be the maximum amount of groundwater which may be used per year for the irrigation of each irrigation acre in the farm. If the farm is located in an active management area other than the Santa Cruz active management area and is irrigated solely with groundwater, the amount of groundwater used by the farm for irrigation shall be accounted for pursuant to section 45-467, subsection C. If a farm is located in an active management area other than the Santa Cruz active management area and is irrigated with a combination of surface water and groundwater, the amount of groundwater used by the farm for irrigation shall be accounted for pursuant to section 45-467, subsection D. If a farm is located in the Santa Cruz active management area, the amount of water, other than stored water, withdrawn from a well and used by the farm for irrigation purposes shall be accounted for pursuant to section 45-467, subsection E or F.

C. A person who owns land described in subsection A of this section and whose water use on the land is regulated under a best management practices program that is adopted by the director pursuant to section 45-566.02, subsection F, section 45-567.02, subsection G, ~~or~~ section 45-568.02, subsection G **OR SECTION 45-568.07, SUBSECTION G:**

1. Has the right to use groundwater for an irrigation use on the irrigation acres within that land as those acres are determined pursuant to subsection B, paragraph 4 of this section.

2. Is exempt from the provisions of subsection B of this section with respect to that land.

D. The right to use groundwater pursuant to this section for the irrigation of an irrigation acre is an irrigation grandfathered right and is appurtenant to that acre. An irrigation grandfathered right is owned by the owner of the land to which it is appurtenant and may be leased for an irrigation use with the land to which it is appurtenant.

E. A person who owns or leases irrigation acres may use the total amount of groundwater allowed by the irrigation grandfathered right for such acres for the irrigation of all or a portion of such acres.

F. If the irrigation water duty for the farm unit in which an irrigation acre is located is reduced by the director pursuant to article 9 of this chapter, the amount of groundwater which may be used for the irrigation of such acre pursuant to the irrigation grandfathered right under subsection B of this section is reduced accordingly.

G. For purposes of this chapter, the amount of groundwater which may be used or is used is the amount of groundwater withdrawn by the groundwater user, measured at the point of

withdrawal, and the amount of groundwater received by the groundwater user from an irrigation district or other source.

45-467. Withdrawals in excess of irrigation grandfathered right; withdrawals less than irrigation grandfathered right; flexibility account; conveyances; variance; exemption

A. A person who is entitled to use groundwater pursuant to an irrigation grandfathered right may:

1. In an active management area other than the Santa Cruz active management area, use groundwater in excess of the amount allowed by the right in an amount determined pursuant to subsection I of this section.

2. In the Santa Cruz active management area, use water, other than stored water, withdrawn from a well in excess of the farm's current irrigation water duty multiplied by the farm's water duty acres in an amount determined pursuant to subsection J of this section.

3. Use less than the amount allowed by the right in one accounting period and use the remaining amount allowed by the right in a succeeding accounting period or periods.

B. The director shall establish rules for the maintenance of a flexibility account for each farm in an active management area.

C. If a farm located in an active management area other than the Santa Cruz active management area is irrigated solely with groundwater, the director shall:

1. Register a debit to the account in any accounting period in which the amount of groundwater used for the irrigation of the irrigation acres in the farm is greater than the current irrigation water duty for the farm multiplied by the water duty acres in the farm.

2. Register a credit to the account in any accounting period in which the amount of groundwater used for the irrigation of the irrigation acres in the farm is less than the current irrigation water duty for the farm multiplied by the water duty acres in the farm.

D. Except as provided in subsection G of this section, if a farm located in an active management area other than the Santa Cruz active management area is irrigated with a combination of surface water or effluent, or both, and groundwater, and uses of water by the farm from all sources for irrigation purposes, except for surface water, other than Colorado river water, released for beneficial use from storage, diversion or distribution facilities to avoid spilling that would otherwise occur due to uncontrolled surface water inflows that exceed facility capacity, in the accounting period:

1. Exceed the amount of the current irrigation water duty for the farm multiplied by the water duty acres in the farm, the amount of groundwater used up to the amount of the excess, less any effluent used, shall be registered as a debit to the account.

2. Are less than the amount of the current irrigation water duty for the farm multiplied by the water duty acres in the farm, the amount of water not used which would have been groundwater shall be registered as a credit to the account.

E. If a farm located in the Santa Cruz active management area is irrigated solely with water, other than stored water, withdrawn from a well, the director shall:

1. Register a debit to the account in any accounting period in which the amount of water, other than stored water, withdrawn from a well and used for the irrigation of the irrigation acres in the farm is greater than the current irrigation water duty for the farm multiplied by the water duty acres in the farm. The amount of the debit shall equal the amount of the excess.

2. Register a credit to the account in any accounting period in which the amount of water, other than stored water, withdrawn from a well and used for the irrigation of the irrigation acres in the farm is less than the current irrigation water duty for the farm multiplied by the water duty acres in the farm.

F. If a farm located in the Santa Cruz active management area is irrigated with a combination of surface water not withdrawn from a well and effluent, or both, and water, other than stored water, withdrawn from a well, and uses of water by the farm from all sources for irrigation purposes in the accounting period:

1. Exceed the amount of the current irrigation water duty for the farm multiplied by the water duty acres in the farm, the amount of water, other than stored water, withdrawn from a well and used on the farm up to the amount of the excess, less any effluent used that does not qualify as stored water, shall be registered as a debit to the account.

2. Are less than the amount of the current irrigation water duty for the farm multiplied by the water duty acres in the farm, the amount of water not used which would have been water, other than stored water, withdrawn from a well shall be registered as a credit to the account.

G. Beginning January 1, 1995 through December 31, 1999, if a farm that qualifies under this subsection as determined pursuant to subsection H of this section is irrigated during an accounting period with a combination of surface water or effluent, or both, and groundwater, and uses of water by the farm from all sources for irrigation purposes, except for surface water, other than Colorado river water, released for beneficial use from storage, diversion or distribution facilities to avoid spilling that would otherwise occur due to uncontrolled surface water inflows that exceed facility capacity, in the accounting period:

1. Exceed the amount of the first intermediate irrigation water duty established for the farm pursuant to section 45-565 multiplied by the water duty acres in the farm, the amount of groundwater used up to the amount of the excess, less any effluent used, shall be registered as a debit to the account.

2. Are less than the amount of the current irrigation water duty for the farm multiplied by the water duty acres in the farm, the amount of water not used that would have been groundwater shall be registered as a credit to the account.

3. Exceed or equal the amount of the current irrigation water duty for the farm multiplied by the water duty acres in the farm but are less than or equal to the amount of the first intermediate irrigation water duty established for the farm pursuant to section 45-565 multiplied by the water duty acres in the farm, no credit or debit may be registered to the account.

H. A farm qualifies under subsection G of this section if it is located in an active management area other than the Santa Cruz active management area and either of the following applies:

1. The amount of groundwater used to irrigate the farm during the accounting period does not exceed an amount computed by multiplying the water duty acres in the farm by one and one-half acre-feet of water, except that an electrical district organized under title 48, chapter 12 or an irrigation district may apply to the director no later than March 31 of a year for an increase in that amount for that year for the farms located within the boundaries of the district that do not qualify under paragraph 2 of this subsection. The director shall grant the increase if the district demonstrates that it holds a contract for the purchase of hydroelectric power marketed by the western area power administration or the Arizona power authority and that the use of groundwater during that year by all of the farms within the boundaries of the district that do not qualify under paragraph 2 of this subsection in an amount that does not exceed one and one-half

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acre-feet of water multiplied by the total number of water duty acres of those farms would result in the district being unable to use its hydroelectric power capacity entitlement under the contract. If the director grants the increase, the director shall compute the maximum amount of groundwater that may be used by a farm within the district during the year in order to qualify under subsection G of this section as follows:

(a) Determine the total amount of groundwater that must be used during the year by all farms in the district that do not qualify under paragraph 2 of this subsection to enable the district to efficiently use its hydroelectric kilowatt demand allocation.

(b) Divide the amount determined in subdivision (a) of this paragraph by the total number of water duty acres of the farms in the district that do not qualify under paragraph 2 of this subsection.

(c) Multiply the farm's water duty acres by the quotient in subdivision (b) of this paragraph or two acre-feet of water, whichever is less.

2. The farm is irrigated with water supplied by an irrigation district that owns or leases and operates all of the wells used to withdraw groundwater for irrigation use within the district, and the total amount of groundwater supplied by the irrigation district for irrigation use during the year does not exceed an amount computed by multiplying the total number of water duty acres within the irrigation district by one and one-half acre-feet of water, except that the irrigation district or an electrical district organized under title 48, chapter 12 may apply to the director no later than March 31 of a year for an increase in that amount for that year for the farms located within the boundaries of the irrigation district. The director shall grant the increase if the irrigation district or electrical district demonstrates that it holds a contract for the purchase of hydroelectric power marketed by the western area power administration or the Arizona power authority and that the irrigation district or electrical district would be unable to use its hydroelectric power capacity entitlement under the contract if the total amount of groundwater supplied by the irrigation district for irrigation use during the year does not exceed an amount computed by multiplying the total number of water duty acres within the irrigation district by one and one-half acre-feet of water. If the director grants the increase, the maximum amount of groundwater that may be supplied by the irrigation district for irrigation use during the year in order for the farms located within the boundaries of the irrigation district to qualify under subsection G of this section shall be the lesser of the following:

(a) The amount of groundwater that the director determines must be supplied by the irrigation district for irrigation use during the year to enable the irrigation district or electrical district to efficiently use its hydroelectric kilowatt demand allocation.

(b) An amount of groundwater computed by multiplying the total number of water duty acres within the irrigation district by two acre-feet of water.

I. The maximum excess amount of groundwater that may be used pursuant to this section is equal to fifty per cent of the current irrigation water duty for the farm multiplied by the water duty acres in the farm. An owner of an irrigation grandfathered right and the person using groundwater pursuant to the right violate this section if the flexibility account for the farm in which the irrigation acres to which the right is appurtenant are located is in arrears at any time in excess of this amount. Groundwater equal to the credit balance in the flexibility account may be used at any time.

J. In the Santa Cruz active management area, the maximum excess amount of water, other than stored water, withdrawn from a well that may be used pursuant to this section is equal to fifty per cent of the current irrigation water duty for the farm multiplied by the water duty

acres in the farm. A person using water, other than stored water, withdrawn from a well for an irrigation use in the Santa Cruz active management area violates this section if the flexibility account for the farm is in arrears at any time in excess of this amount. Water, other than stored water, withdrawn from a well in an amount equal to the credit balance in the flexibility account may be used at any time, except that if the water is surface water, the amount that may be used shall not exceed the amount allowed by the decreed or appropriative surface water right.

K. If an irrigation grandfathered right is conveyed for an irrigation use pursuant to section 45-472, each acre conveyed shall carry with it a proportional share of any debits or credits in the flexibility account for the farm. If an irrigation grandfathered right is conveyed for a non-irrigation use pursuant to section 45-472, each acre conveyed shall carry with it a proportional share of any debits in the flexibility account for the farm.

L. A person in an active management area other than the Santa Cruz active management area who is using groundwater pursuant to an irrigation grandfathered right and who is operating under a variance to the irrigation water duty pursuant to section 45-574:

1. May accumulate a maximum debit in an amount equal to fifty per cent of the current irrigation water duty for the farm multiplied by the water duty acres in the farm.

2. Shall accumulate credits pursuant to subsection C or D of this section.

M. A person in the Santa Cruz active management area who is using water, other than stored water, withdrawn from a well for an irrigation use and who is operating under a variance to the irrigation water duty pursuant to section 45-574:

1. May accumulate a maximum debit in an amount equal to fifty per cent of the current irrigation water duty for the farm multiplied by the water duty acres in the farm.

2. Shall accumulate credits pursuant to subsection E or F of this section.

N. In an active management area other than the Santa Cruz active management area, a person using groundwater pursuant to an irrigation grandfathered right shall file a report with the director each year which shall include the amount of groundwater used pursuant to the irrigation grandfathered right and such other information as the director shall require. In the Santa Cruz active management area, a person using water, other than stored water, withdrawn from a well for irrigation use shall file a report with the director each year which shall include the amount of water used on the farm and such other information as the director shall require. The director may consolidate the reporting requirements of this section with the reporting requirements of section 45-632. A person using groundwater pursuant to an irrigation grandfathered right that is regulated under a best management practices program adopted by the director, pursuant to section 45-566.02, subsection F, section 45-567.02, subsection G, ~~or~~ section 45-568.02, subsection F **OR SECTION 45-568.07, SUBSECTION G**, is exempt from the reporting requirements of this subsection for groundwater used pursuant to the irrigation grandfathered right, except that the person shall file a report with the director each year that includes the information required by the best management practices program. A person using groundwater pursuant to an irrigation grandfathered right that is appurtenant to ten or fewer irrigation acres is exempt from the reporting requirements of this subsection for groundwater used pursuant to the irrigation grandfathered right unless one of the following applies:

1. The land to which the irrigation grandfathered right is appurtenant is part of an integrated farming operation.

2. Groundwater is withdrawn from the land to which the irrigation grandfathered right is appurtenant and delivered for use pursuant to either a service area right pursuant to article 6 of this chapter or a grandfathered groundwater right other than an irrigation grandfathered right that

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is appurtenant to irrigation acres that are exempt from irrigation water duties pursuant to section 45-563.02.

3. Groundwater is withdrawn from land that is both owned by the owner of the irrigation grandfathered right and contiguous to the land to which the irrigation grandfathered right is appurtenant and delivered for use pursuant to either a service area right pursuant to article 6 of this chapter or a grandfathered groundwater right other than an irrigation grandfathered right that is appurtenant to irrigation acres that are exempt from irrigation water duties pursuant to section 45-563.02.

O. A person who owns an irrigation grandfathered right that is appurtenant to irrigation acres that were capable of being irrigated as of December 31 of the preceding calendar year and whose farm has registered a credit balance to its flexibility account may convey or sell all or a portion of the credit balance to any person, including the conveyor or seller of the credit balance, who owns another irrigation grandfathered right or who uses groundwater pursuant to another irrigation grandfathered right, except that:

1. A credit balance that is registered to the flexibility account of a farm located within an irrigation district may be transferred only to:

(a) The flexibility account of a farm that is located within the same irrigation district.

(b) The flexibility account of a farm that is located outside of that irrigation district if both farms are located in the same groundwater subbasin and the same active management area and if the farm to which the credits are conveyed is owned or leased by the owner or lessee of the farm from which the credits are conveyed.

2. A credit balance that is registered to the flexibility account of a farm that is not located within an irrigation district may be transferred only to:

(a) The flexibility account of a farm that is located within the same groundwater subbasin and the same active management area and that is not located within an irrigation district.

(b) The flexibility account of a farm that is located within the same groundwater subbasin and the same active management area and that is located within an irrigation district if the farm to which the credits are conveyed is owned or leased by the owner or lessee of the farm from which the credits are conveyed.

3. A credit registered to a flexibility account for a year may be conveyed or sold only during the second calendar year following the year for which the credit was registered.

4. A person who owns a farm that includes protected farmland may not sell or otherwise convey any credit registered to the farm's flexibility account.

P. A person who sells or conveys all or a portion of a credit balance pursuant to subsection O of this section, and the person to whom the credit balance is sold or conveyed, shall notify the director of the sale or conveyance within thirty days after the sale or conveyance on a form prescribed and furnished by the director.

Q. The director shall establish and collect a reasonable fee from the conveyee or purchaser of a credit balance pursuant to subsection O of this section to cover the cost of administrative services and other expenses associated with registering a deduction to the conveyor's or seller's flexibility account balance and an addition to the conveyee's or purchaser's flexibility account balance pursuant to subsection R of this section. The conveyee or purchaser shall pay the fee at the time the notice required pursuant to subsection P of this section is given to the director. The director shall deposit, pursuant to sections 35-146 and 35-147, all fees received under this subsection in the water resources fund established by section 45-117.

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R. A sale or conveyance of all or part of a credit balance under subsection O of this section is effective only if the director receives the notice required by subsection P of this section and the fee required by subsection Q of this section within thirty days after the sale or conveyance. After receiving the notice and the fee, the director shall register a deduction of the credit amount conveyed or sold from the conveyer's or seller's flexibility account balance and the corresponding addition to the conveyee's or purchaser's flexibility account balance. The deduction and addition to the flexibility account balances are effective as of the date of the sale or conveyance.

S. The director shall report to the president of the senate and the speaker of the house of representatives no later than June 30, 2002 on the effect of conveyances of flexibility account credit balances pursuant to subsection O, paragraph 2 of this section on the achievement of the management goal of each active management area as stated in section 45-562 and on the conservation program included in the management plan for each active management area as provided in section 45-565, and any recommended changes to subsection O, paragraph 2 of this section.

T. Except for subsection N of this section, this section does not apply to:

1. A farm if the person entitled to use groundwater on the farm is exempt from the irrigation water duties established for the farm as provided in section 45-563.02, subsection A or if the director may not establish irrigation water duties for the farm as provided in section 45-563.02, subsection B.

2. A farm if water use within the farm is regulated under a best management practices program adopted by the director pursuant to section 45-566.02, subsection F, section 45-567.02, subsection G, ~~or~~ section 45-568.02, subsection F **OR SECTION 45-568.07, SUBSECTION G.**

45-483. Designation of protected farmland; notice; revocation of designation; irrigation water duty; assured water supply credit for extinguishment of irrigation grandfathered right prohibited

A. A person who owns land within an active management area that is legally entitled to be irrigated with groundwater pursuant to an irrigation grandfathered right may apply to the director for designation of the land as protected farmland. On receipt of an application, the director shall grant the application and designate the land identified in the application as protected farmland if the director determines that the land is subject to a conservation easement that prohibits the development of the land for nonagricultural uses pursuant to the federal farmland protection program established by Public Law 104-127 (110 Stat. 888).

B. A person who owns land that has been designated by the director as protected farmland pursuant to subsection A of this section shall notify the director in writing if the conservation easement in the land terminates. The notice shall be given within thirty days after the termination of the easement and shall specify the reason for the termination.

C. After the director designates land as protected farmland pursuant to subsection A of this section, the director shall revoke the designation if either of the following applies:

1. The conservation easement in the land has terminated. If the director revokes a designation of protected farmland under this paragraph, the director shall determine at that time whether the conservation easement terminated because a partial or full condemnation of the land made farming impracticable. The director shall give written notice of the revocation and of the director's determination of whether the easement terminated because a partial or full

condemnation of the land made farming impracticable to the owner at the owner's last address on file with the department.

2. The owner of the land has requested the director to revoke the designation and the conservation easement in the land has not terminated.

D. Notwithstanding any other law, if the director designates land as protected farmland pursuant to subsection A of this section, the irrigation water duty for the land shall be the irrigation water duty in effect for the land under the applicable management plan when the application for designation was filed, including any subsequent adjustments to that water duty as a result of an application for administrative review filed with the director pursuant to section 45-575, subsection A. If the director revokes the designation of protected farmland pursuant to subsection C of this section, the irrigation water duty for the land shall be the irrigation water duty established for the land in the applicable management plan pursuant to section 45-566, 45-567, ~~or~~ 45-568, 45-568.03, 45-568.04 or 45-568.05.

E. Notwithstanding any other law or rule, the director shall not establish or grant an assured water supply credit for the extinguishment of an irrigation grandfathered right under the rules adopted by the director pursuant to section 45-576, subsection H if the land to which the irrigation grandfathered right is appurtenant was previously designated by the director as protected farmland pursuant to subsection A of this section. This subsection shall not apply to land that was designated by the director as protected farmland if the director revoked the designation pursuant to subsection C, paragraph 1 of this section and the director determined at that time that the conservation easement in the land was terminated because a partial or full condemnation of the land made farming impracticable.

F. 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.

45-568. Management plan for fifth management period; guidelines

A. For the fifth management period, 2020 to 2025, the director shall promulgate a management plan for each initial active management area not later than January 1, 2019 pursuant to the guidelines prescribed in section 45-567, subsections A and B, except that:

1. The director shall establish the historic annual net natural recharge for any groundwater replenishment district in the active management area, computed by determining the net natural recharge, as defined by section 48-4401, for the groundwater basin beneath the district during calendar years 1988 through 2017 and dividing the result by thirty.

2. The director may adjust the highest twenty-five per cent of the irrigation water duties established within an area of similar farming conditions pursuant to section 45-567 by reducing each water duty in an amount up to five per cent, except that in making the adjustment, no water duty may be reduced to an amount less than the greater of the following:

(a) The highest water duty within the lowest seventy-five per cent of the water duties computed within the area of similar farming conditions for the fifth management period.

(b) A water duty computed for the farm unit under this paragraph using an irrigation efficiency of eighty per cent.

3. A person who is entitled to use groundwater pursuant to an irrigation grandfathered right may apply to the director at any time during the management period for an exemption from the irrigation water duties established pursuant to this section. The director shall grant the exemption if the person demonstrates to the director's satisfaction that granting the exemption is

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consistent with achieving the management goal of the active management area and that one of the following applies:

(a) Withdrawal of groundwater pursuant to the irrigation grandfathered right during the management period will intercept groundwater that would otherwise flow out of and be lost to the active management area in the next fifteen years without entering another active management area.

(b) Withdrawal of groundwater pursuant to the irrigation grandfathered right during the management period will prevent encroachment of a rising depth to groundwater level that will cause waterlogging problems within the next fifteen years.

B. Within thirty days after the management plan for the fifth management period is adopted, the director shall give written notice in the manner and to the persons prescribed in section 45-565, subsection B and shall give written notice of the non-per capita conservation program established pursuant to section 45-568.01 to all municipal providers. Two years before the compliance date specified in the management plan for any irrigation water duty, intermediate water duty, conservation requirement or intermediate conservation requirement, the director shall give additional written notice by first class mail to the last known addresses of the persons prescribed in section 45-565, subsection B and this subsection.

C. Except for a person who **OBTAINS A VARIANCE UNDER SECTION 45-574 OR WHO** is exempt from irrigation water duties under section 45-563.02, subsection A, all persons notified pursuant to subsection B of this section shall comply with the applicable irrigation water duty or conservation requirements for the fifth management period not later than January 1, 2025 and shall remain in compliance until ~~the legislature determines otherwise~~ **THE APPLICABLE COMPLIANCE DATE ESTABLISHED IN THE MANAGEMENT PLAN FOR THE SIXTH MANAGEMENT PERIOD. IF INTERMEDIATE WATER DUTIES OR INTERMEDIATE CONSERVATION REQUIREMENTS HAVE BEEN ESTABLISHED, A PERSON TO WHOM THOSE WATER DUTIES OR CONSERVATION REQUIREMENTS APPLY SHALL COMPLY WITH THE INTERMEDIATE WATER DUTIES OR INTERMEDIATE CONSERVATION REQUIREMENTS NOT LATER THAN THE COMPLIANCE DATE SPECIFIED IN THE MANAGEMENT PLAN, UNLESS THE PERSON OBTAINS A VARIANCE PURSUANT TO SECTION 45-574 OR IS EXEMPT FROM INTERMEDIATE WATER DUTIES UNDER SECTION 45-563.02, SUBSECTION A. A PERSON WHO OBTAINS A VARIANCE UNDER SECTION 45-574 SHALL COMPLY WITH THE APPLICABLE IRRIGATION WATER DUTY OR CONSERVATION REQUIREMENTS BY THE DATE SPECIFIED IN THE VARIANCE AND SHALL REMAIN IN COMPLIANCE UNTIL THE SUBSEQUENT COMPLIANCE DATE FOR ANY APPLICABLE IRRIGATION WATER DUTY OR CONSERVATION REQUIREMENTS ESTABLISHED IN THE MANAGEMENT PLAN FOR THE FIFTH MANAGEMENT PERIOD OR, IF THAT MANAGEMENT PLAN DOES NOT ESTABLISH ANY APPLICABLE SUBSEQUENT COMPLIANCE DATE, UNTIL THE APPLICABLE COMPLIANCE DATE ESTABLISHED IN THE MANAGEMENT PLAN FOR THE SIXTH MANAGEMENT PERIOD.**

45-568.03. Management plan for sixth management period; guidelines

A. FOR THE SIXTH MANAGEMENT PERIOD, 2025 TO 2035, THE DIRECTOR SHALL PROMULGATE A MANAGEMENT PLAN FOR EACH INITIAL ACTIVE MANAGEMENT AREA NOT LATER THAN JANUARY 1, 2023 PURSUANT TO THE

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GUIDELINES PRESCRIBED IN SECTIONS 45-567, SUBSECTIONS A AND B, 45-568.06 AND 45-568.07, EXCEPT THAT:

1. THE DIRECTOR SHALL ESTABLISH THE HISTORIC ANNUAL NET NATURAL RECHARGE FOR ANY GROUNDWATER REPLENISHMENT DISTRICT IN THE ACTIVE MANAGEMENT AREA, COMPUTED BY DETERMINING THE NET NATURAL RECHARGE, AS DEFINED BY SECTION 48-4401, FOR THE GROUNDWATER BASIN BENEATH THE DISTRICT DURING THE MOST RECENT THIRTY-YEAR PERIOD OF RECORD AND DIVIDING THE RESULT BY THIRTY.

2. THE DIRECTOR MAY ADJUST THE HIGHEST TWENTY-FIVE PER CENT OF THE IRRIGATION WATER DUTIES ESTABLISHED WITHIN AN AREA OF SIMILAR FARMING CONDITIONS PURSUANT TO SECTION 45-567 BY REDUCING EACH WATER DUTY IN AN AMOUNT UP TO FIVE PER CENT, EXCEPT THAT IN MAKING THE ADJUSTMENT, NO WATER DUTY MAY BE REDUCED TO AN AMOUNT LESS THAN THE GREATER OF THE FOLLOWING:

(A) THE HIGHEST WATER DUTY WITHIN THE LOWEST SEVENTY-FIVE PER CENT OF THE WATER DUTIES COMPUTED WITHIN THE AREA OF SIMILAR FARMING CONDITIONS FOR THE SIXTH MANAGEMENT PERIOD.

(B) A WATER DUTY COMPUTED FOR THE FARM UNIT UNDER THIS PARAGRAPH USING AN IRRIGATION EFFICIENCY OF EIGHTY PER CENT.

3. A PERSON WHO IS ENTITLED TO USE GROUNDWATER PURSUANT TO AN IRRIGATION GRANDFATHERED RIGHT MAY APPLY TO THE DIRECTOR AT ANY TIME DURING THE MANAGEMENT PERIOD FOR AN EXEMPTION FROM THE IRRIGATION WATER DUTIES ESTABLISHED PURSUANT TO THIS SECTION. THE DIRECTOR SHALL GRANT THE EXEMPTION IF THE PERSON DEMONSTRATES TO THE DIRECTOR'S SATISFACTION THAT GRANTING THE EXEMPTION IS CONSISTENT WITH ACHIEVING THE MANAGEMENT GOAL OF THE ACTIVE MANAGEMENT AREA AND THAT ONE OF THE FOLLOWING APPLIES:

(A) WITHDRAWAL OF GROUNDWATER PURSUANT TO THE IRRIGATION GRANDFATHERED RIGHT DURING THE MANAGEMENT PERIOD WILL INTERCEPT GROUNDWATER THAT WOULD OTHERWISE FLOW OUT OF AND BE LOST TO THE ACTIVE MANAGEMENT AREA IN THE NEXT FIFTEEN YEARS WITHOUT ENTERING ANOTHER ACTIVE MANAGEMENT AREA.

(B) WITHDRAWAL OF GROUNDWATER PURSUANT TO THE IRRIGATION GRANDFATHERED RIGHT DURING THE MANAGEMENT PERIOD WILL PREVENT ENCROACHMENT OF A RISING DEPTH TO GROUNDWATER LEVEL THAT WILL CAUSE WATERLOGGING PROBLEMS WITHIN THE NEXT FIFTEEN YEARS.

B. WITHIN THIRTY DAYS AFTER THE MANAGEMENT PLAN FOR THE SIXTH MANAGEMENT PERIOD IS ADOPTED, THE DIRECTOR SHALL GIVE WRITTEN NOTICE IN THE MANNER AND TO THE PERSONS PRESCRIBED IN SECTION 45-565, SUBSECTION B AND SHALL GIVE WRITTEN NOTICE OF THE NON-PER CAPITA CONSERVATION PROGRAM ESTABLISHED PURSUANT TO SECTION 45-568.06 TO ALL MUNICIPAL PROVIDERS. TWO YEARS BEFORE THE COMPLIANCE DATE SPECIFIED IN THE MANAGEMENT PLAN FOR ANY IRRIGATION WATER DUTY, INTERMEDIATE WATER DUTY, CONSERVATION REQUIREMENT OR INTERMEDIATE CONSERVATION REQUIREMENT, THE DIRECTOR SHALL GIVE ADDITIONAL WRITTEN NOTICE BY FIRST CLASS MAIL TO THE LAST KNOWN

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ADDRESSES OF THE PERSONS PRESCRIBED IN SECTION 45-565, SUBSECTION B AND THIS SUBSECTION.

C. EXCEPT FOR A PERSON WHO OBTAINS A VARIANCE UNDER SECTION 45-574 OR WHO IS EXEMPT FROM IRRIGATION WATER DUTIES UNDER SECTION 45-563.02, SUBSECTION A, ALL PERSONS NOTIFIED PURSUANT TO SUBSECTION B OF THIS SECTION SHALL COMPLY WITH THE APPLICABLE IRRIGATION WATER DUTY OR CONSERVATION REQUIREMENTS FOR THE SIXTH MANAGEMENT PERIOD NOT LATER THAN JANUARY 1, 2035 AND SHALL REMAIN IN COMPLIANCE UNTIL THE APPLICABLE COMPLIANCE DATE ESTABLISHED IN THE MANAGEMENT PLAN FOR THE SEVENTH MANAGEMENT PERIOD. IF INTERMEDIATE WATER DUTIES OR INTERMEDIATE CONSERVATION REQUIREMENTS HAVE BEEN ESTABLISHED, A PERSON TO WHOM THOSE WATER DUTIES OR CONSERVATION REQUIREMENTS APPLY SHALL COMPLY WITH THE INTERMEDIATE WATER DUTIES OR INTERMEDIATE CONSERVATION REQUIREMENTS NOT LATER THAN THE COMPLIANCE DATE SPECIFIED IN THE MANAGEMENT PLAN, UNLESS THE PERSON OBTAINS A VARIANCE PURSUANT TO SECTION 45-574 OR IS EXEMPT FROM INTERMEDIATE WATER DUTIES UNDER SECTION 45-563.02, SUBSECTION A. A PERSON WHO OBTAINS A VARIANCE UNDER SECTION 45-574 SHALL COMPLY WITH THE APPLICABLE IRRIGATION WATER DUTY OR CONSERVATION REQUIREMENTS BY THE DATE SPECIFIED IN THE VARIANCE AND SHALL REMAIN IN COMPLIANCE UNTIL THE SUBSEQUENT COMPLIANCE DATE FOR ANY APPLICABLE IRRIGATION WATER DUTY OR CONSERVATION REQUIREMENTS ESTABLISHED IN THE MANAGEMENT PLAN FOR THE SIXTH MANAGEMENT PERIOD OR, IF THAT MANAGEMENT PLAN DOES NOT ESTABLISH ANY APPLICABLE SUBSEQUENT COMPLIANCE DATE, UNTIL THE APPLICABLE COMPLIANCE DATE ESTABLISHED IN THE MANAGEMENT PLAN FOR THE SEVENTH MANAGEMENT PERIOD.

45-568.04. Management plan for seventh management period; guidelines

A. FOR THE SEVENTH MANAGEMENT PERIOD, 2035 TO 2045, THE DIRECTOR SHALL PROMULGATE A MANAGEMENT PLAN FOR EACH INITIAL ACTIVE MANAGEMENT AREA NOT LATER THAN JANUARY 1, 2033 PURSUANT TO THE GUIDELINES PRESCRIBED IN SECTIONS 45-567, SUBSECTIONS A AND B, 45-568.06 AND 45-568.07, EXCEPT THAT:

1. THE DIRECTOR SHALL ESTABLISH THE HISTORIC ANNUAL NET NATURAL RECHARGE FOR ANY GROUNDWATER REPLENISHMENT DISTRICT IN THE ACTIVE MANAGEMENT AREA, COMPUTED BY DETERMINING THE NET NATURAL RECHARGE, AS DEFINED BY SECTION 48-4401, FOR THE GROUNDWATER BASIN BENEATH THE DISTRICT DURING THE MOST RECENT THIRTY-YEAR PERIOD OF RECORD AND DIVIDING THE RESULT BY THIRTY.

2. THE DIRECTOR MAY ADJUST THE HIGHEST TWENTY-FIVE PER CENT OF THE IRRIGATION WATER DUTIES ESTABLISHED WITHIN AN AREA OF SIMILAR FARMING CONDITIONS PURSUANT TO SECTION 45-567 BY REDUCING EACH WATER DUTY IN AN AMOUNT UP TO FIVE PER CENT, EXCEPT THAT IN MAKING THE ADJUSTMENT, NO WATER DUTY MAY BE REDUCED TO AN AMOUNT LESS THAN THE GREATER OF THE FOLLOWING:

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(A) THE HIGHEST WATER DUTY WITHIN THE LOWEST SEVENTY-FIVE PER CENT OF THE WATER DUTIES COMPUTED WITHIN THE AREA OF SIMILAR FARMING CONDITIONS FOR THE SEVENTH MANAGEMENT PERIOD.

(B) A WATER DUTY COMPUTED FOR THE FARM UNIT UNDER THIS PARAGRAPH USING AN IRRIGATION EFFICIENCY OF EIGHTY PER CENT.

3. A PERSON WHO IS ENTITLED TO USE GROUNDWATER PURSUANT TO AN IRRIGATION GRANDFATHERED RIGHT MAY APPLY TO THE DIRECTOR AT ANY TIME DURING THE MANAGEMENT PERIOD FOR AN EXEMPTION FROM THE IRRIGATION WATER DUTIES ESTABLISHED PURSUANT TO THIS SECTION. THE DIRECTOR SHALL GRANT THE EXEMPTION IF THE PERSON DEMONSTRATES TO THE DIRECTOR'S SATISFACTION THAT GRANTING THE EXEMPTION IS CONSISTENT WITH ACHIEVING THE MANAGEMENT GOAL OF THE ACTIVE MANAGEMENT AREA AND THAT ONE OF THE FOLLOWING APPLIES:

(A) WITHDRAWAL OF GROUNDWATER PURSUANT TO THE IRRIGATION GRANDFATHERED RIGHT DURING THE MANAGEMENT PERIOD WILL INTERCEPT GROUNDWATER THAT WOULD OTHERWISE FLOW OUT OF AND BE LOST TO THE ACTIVE MANAGEMENT AREA IN THE NEXT FIFTEEN YEARS WITHOUT ENTERING ANOTHER ACTIVE MANAGEMENT AREA.

(B) WITHDRAWAL OF GROUNDWATER PURSUANT TO THE IRRIGATION GRANDFATHERED RIGHT DURING THE MANAGEMENT PERIOD WILL PREVENT ENCROACHMENT OF A RISING DEPTH TO GROUNDWATER LEVEL THAT WILL CAUSE WATERLOGGING PROBLEMS WITHIN THE NEXT FIFTEEN YEARS.

B. WITHIN THIRTY DAYS AFTER THE MANAGEMENT PLAN FOR THE SEVENTH MANAGEMENT PERIOD IS ADOPTED, THE DIRECTOR SHALL GIVE WRITTEN NOTICE IN THE MANNER AND TO THE PERSONS PRESCRIBED IN SECTION 45-565, SUBSECTION B AND SHALL GIVE WRITTEN NOTICE OF THE NON-PER CAPITA CONSERVATION PROGRAM ESTABLISHED PURSUANT TO SECTION 45-568.06 TO ALL MUNICIPAL PROVIDERS. TWO YEARS BEFORE THE COMPLIANCE DATE SPECIFIED IN THE MANAGEMENT PLAN FOR ANY IRRIGATION WATER DUTY, INTERMEDIATE WATER DUTY, CONSERVATION REQUIREMENT OR INTERMEDIATE CONSERVATION REQUIREMENT, THE DIRECTOR SHALL GIVE ADDITIONAL WRITTEN NOTICE BY FIRST CLASS MAIL TO THE LAST KNOWN ADDRESSES OF THE PERSONS PRESCRIBED IN SECTION 45-565, SUBSECTION B AND THIS SUBSECTION.

C. EXCEPT FOR A PERSON WHO OBTAINS A VARIANCE UNDER SECTION 45-574 OR WHO IS EXEMPT FROM IRRIGATION WATER DUTIES UNDER SECTION 45-563.02, SUBSECTION A, ALL PERSONS NOTIFIED PURSUANT TO SUBSECTION B OF THIS SECTION SHALL COMPLY WITH THE APPLICABLE IRRIGATION WATER DUTY OR CONSERVATION REQUIREMENTS FOR THE SEVENTH MANAGEMENT PERIOD NOT LATER THAN JANUARY 1, 2045 AND SHALL REMAIN IN COMPLIANCE UNTIL THE APPLICABLE COMPLIANCE DATE ESTABLISHED IN THE MANAGEMENT PLAN FOR THE EIGHTH MANAGEMENT PERIOD. IF INTERMEDIATE WATER DUTIES OR INTERMEDIATE CONSERVATION REQUIREMENTS HAVE BEEN ESTABLISHED, A PERSON TO WHOM THOSE WATER DUTIES OR CONSERVATION REQUIREMENTS APPLY SHALL COMPLY WITH THE INTERMEDIATE WATER DUTIES OR INTERMEDIATE CONSERVATION REQUIREMENTS NOT LATER THAN THE

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COMPLIANCE DATE SPECIFIED IN THE MANAGEMENT PLAN, UNLESS THE PERSON OBTAINS A VARIANCE PURSUANT TO SECTION 45-574 OR IS EXEMPT FROM INTERMEDIATE WATER DUTIES UNDER SECTION 45-563.02, SUBSECTION A. A PERSON WHO OBTAINS A VARIANCE UNDER SECTION 45-574 SHALL COMPLY WITH THE APPLICABLE IRRIGATION WATER DUTY OR CONSERVATION REQUIREMENTS BY THE DATE SPECIFIED IN THE VARIANCE AND SHALL REMAIN IN COMPLIANCE UNTIL THE SUBSEQUENT COMPLIANCE DATE FOR ANY APPLICABLE IRRIGATION WATER DUTY OR CONSERVATION REQUIREMENTS ESTABLISHED IN THE MANAGEMENT PLAN FOR THE SEVENTH MANAGEMENT PERIOD OR, IF THAT MANAGEMENT PLAN DOES NOT ESTABLISH ANY APPLICABLE SUBSEQUENT COMPLIANCE DATE, UNTIL THE APPLICABLE COMPLIANCE DATE ESTABLISHED IN THE MANAGEMENT PLAN FOR THE EIGHTH MANAGEMENT PERIOD.

45-568.05. Management plan for eighth management period; guidelines

A. FOR THE EIGHTH MANAGEMENT PERIOD, 2045 TO 2055, THE DIRECTOR SHALL PROMULGATE A MANAGEMENT PLAN FOR EACH INITIAL ACTIVE MANAGEMENT AREA NOT LATER THAN JANUARY 1, 2043 PURSUANT TO THE GUIDELINES PRESCRIBED IN SECTIONS 45-567, SUBSECTIONS A AND B, 45-568.06 AND 45-568.07, EXCEPT THAT:

1. THE DIRECTOR SHALL ESTABLISH THE HISTORIC ANNUAL NET NATURAL RECHARGE FOR ANY GROUNDWATER REPLENISHMENT DISTRICT IN THE ACTIVE MANAGEMENT AREA, COMPUTED BY DETERMINING THE NET NATURAL RECHARGE, AS DEFINED BY SECTION 48-4401, FOR THE GROUNDWATER BASIN BENEATH THE DISTRICT DURING THE MOST RECENT THIRTY-YEAR PERIOD OF RECORD AND DIVIDING THE RESULT BY THIRTY.

2. THE DIRECTOR MAY ADJUST THE HIGHEST TWENTY-FIVE PER CENT OF THE IRRIGATION WATER DUTIES ESTABLISHED WITHIN AN AREA OF SIMILAR FARMING CONDITIONS PURSUANT TO SECTION 45-567 BY REDUCING EACH WATER DUTY IN AN AMOUNT UP TO FIVE PER CENT, EXCEPT THAT IN MAKING THE ADJUSTMENT, NO WATER DUTY MAY BE REDUCED TO AN AMOUNT LESS THAN THE GREATER OF THE FOLLOWING:

(A) THE HIGHEST WATER DUTY WITHIN THE LOWEST SEVENTY-FIVE PER CENT OF THE WATER DUTIES COMPUTED WITHIN THE AREA OF SIMILAR FARMING CONDITIONS FOR THE EIGHTH MANAGEMENT PERIOD.

(B) A WATER DUTY COMPUTED FOR THE FARM UNIT UNDER THIS PARAGRAPH USING AN IRRIGATION EFFICIENCY OF EIGHTY PER CENT.

3. A PERSON WHO IS ENTITLED TO USE GROUNDWATER PURSUANT TO AN IRRIGATION GRANDFATHERED RIGHT MAY APPLY TO THE DIRECTOR AT ANY TIME DURING THE MANAGEMENT PERIOD FOR AN EXEMPTION FROM THE IRRIGATION WATER DUTIES ESTABLISHED PURSUANT TO THIS SECTION. THE DIRECTOR SHALL GRANT THE EXEMPTION IF THE PERSON DEMONSTRATES TO THE DIRECTOR'S SATISFACTION THAT GRANTING THE EXEMPTION IS CONSISTENT WITH ACHIEVING THE MANAGEMENT GOAL OF THE ACTIVE MANAGEMENT AREA AND THAT ONE OF THE FOLLOWING APPLIES:

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(A) WITHDRAWAL OF GROUNDWATER PURSUANT TO THE IRRIGATION GRANDFATHERED RIGHT DURING THE MANAGEMENT PERIOD WILL INTERCEPT GROUNDWATER THAT WOULD OTHERWISE FLOW OUT OF AND BE LOST TO THE ACTIVE MANAGEMENT AREA IN THE NEXT FIFTEEN YEARS WITHOUT ENTERING ANOTHER ACTIVE MANAGEMENT AREA.

(B) WITHDRAWAL OF GROUNDWATER PURSUANT TO THE IRRIGATION GRANDFATHERED RIGHT DURING THE MANAGEMENT PERIOD WILL PREVENT ENCROACHMENT OF A RISING DEPTH TO GROUNDWATER LEVEL THAT WILL CAUSE WATERLOGGING PROBLEMS WITHIN THE NEXT FIFTEEN YEARS.

B. WITHIN THIRTY DAYS AFTER THE MANAGEMENT PLAN FOR THE EIGHTH MANAGEMENT PERIOD IS ADOPTED, THE DIRECTOR SHALL GIVE WRITTEN NOTICE IN THE MANNER AND TO THE PERSONS PRESCRIBED IN SECTION 45-565, SUBSECTION B AND SHALL GIVE WRITTEN NOTICE OF THE NON-PER CAPITA CONSERVATION PROGRAM ESTABLISHED PURSUANT TO SECTION 45-568.06 TO ALL MUNICIPAL PROVIDERS. TWO YEARS BEFORE THE COMPLIANCE DATE SPECIFIED IN THE MANAGEMENT PLAN FOR ANY IRRIGATION WATER DUTY, INTERMEDIATE WATER DUTY, CONSERVATION REQUIREMENT OR INTERMEDIATE CONSERVATION REQUIREMENT, THE DIRECTOR SHALL GIVE ADDITIONAL WRITTEN NOTICE BY FIRST CLASS MAIL TO THE LAST KNOWN ADDRESSES OF THE PERSONS PRESCRIBED IN SECTION 45-565, SUBSECTION B AND THIS SUBSECTION.

C. EXCEPT FOR A PERSON WHO OBTAINS A VARIANCE UNDER SECTION 45-574 OR WHO IS EXEMPT FROM IRRIGATION WATER DUTIES UNDER SECTION 45-563.02, SUBSECTION A, ALL PERSONS NOTIFIED PURSUANT TO SUBSECTION B OF THIS SECTION SHALL COMPLY WITH THE APPLICABLE IRRIGATION WATER DUTY OR CONSERVATION REQUIREMENTS FOR THE EIGHTH MANAGEMENT PERIOD NOT LATER THAN JANUARY 1, 2055 AND SHALL REMAIN IN COMPLIANCE UNTIL THE LEGISLATURE DETERMINES OTHERWISE. IF INTERMEDIATE WATER DUTIES OR INTERMEDIATE CONSERVATION REQUIREMENTS HAVE BEEN ESTABLISHED A PERSON TO WHOM THOSE WATER DUTIES OR CONSERVATION REQUIREMENTS APPLY SHALL COMPLY WITH THE INTERMEDIATE WATER DUTIES OR INTERMEDIATE CONSERVATION REQUIREMENTS NOT LATER THAN THE COMPLIANCE DATE SPECIFIED IN THE MANAGEMENT PLAN, UNLESS THE PERSON OBTAINS A VARIANCE PURSUANT TO SECTION 45-574 OR IS EXEMPT FROM INTERMEDIATE WATER DUTIES UNDER SECTION 45-563.02, SUBSECTION A. A PERSON WHO OBTAINS A VARIANCE UNDER SECTION 45-574 SHALL COMPLY WITH THE APPLICABLE IRRIGATION WATER DUTY OR CONSERVATION REQUIREMENTS BY THE DATE SPECIFIED IN THE VARIANCE AND SHALL REMAIN IN COMPLIANCE UNTIL THE SUBSEQUENT COMPLIANCE DATE FOR ANY APPLICABLE IRRIGATION WATER DUTY OR CONSERVATION REQUIREMENTS ESTABLISHED IN THE MANAGEMENT PLAN FOR THE EIGHTH MANAGEMENT PERIOD OR, IF THAT MANAGEMENT PLAN DOES NOT ESTABLISH ANY APPLICABLE SUBSEQUENT COMPLIANCE DATE, UNTIL THE LEGISLATURE DETERMINES OTHERWISE.

45-568.06. Non-per capita conservation program for municipal providers; sixth, seventh and eighth management periods

A. IN ADDITION TO THE PROVISIONS OF THE MANAGEMENT PLANS FOR THE SIXTH, SEVENTH AND EIGHTH MANAGEMENT PERIODS PRESCRIBED BY SECTIONS 45-568.3, 45-568.04 AND 45-568.05, THE DIRECTOR SHALL INCLUDE IN THE MANAGEMENT PLANS A NON-PER CAPITA CONSERVATION PROGRAM FOR MUNICIPAL PROVIDERS. THE PROGRAM SHALL REQUIRE A MUNICIPAL PROVIDER REGULATED UNDER THE PROGRAM TO IMPLEMENT ONE OR MORE WATER CONSERVATION MEASURES IN ITS SERVICE AREA FROM THE LIST ADOPTED BY THE DIRECTOR PURSUANT TO SUBSECTION B OF THIS SECTION, SUBJECT TO APPROVAL BY THE DIRECTOR PURSUANT TO SUBSECTION F OR G OF THIS SECTION. THE PROGRAM MAY PRESCRIBE THE NUMBER OF CONSERVATION MEASURES THAT A PROVIDER MUST IMPLEMENT UNDER THIS SUBSECTION BASED ON THE NUMBER OF SERVICE CONNECTIONS IN THE PROVIDER'S SERVICE AREA.

B. THE DIRECTOR SHALL INCLUDE IN THE NON-PER CAPITA CONSERVATION PROGRAM A LIST AND DESCRIPTION OF CONSERVATION MEASURES THAT MUNICIPAL PROVIDERS REGULATED UNDER THE PROGRAM MUST SELECT FROM TO COMPLY WITH THE REQUIREMENTS ADOPTED PURSUANT TO SUBSECTION A OF THIS SECTION, WHICH MAY INCLUDE THE CONSERVATION MEASURES DESCRIBED IN SECTION 45-567.01, SUBSECTION A, PARAGRAPHS 1 AND 2.

C. IN ADDITION TO THE REQUIREMENTS PRESCRIBED IN SUBSECTION A OF THIS SECTION, A MUNICIPAL PROVIDER REGULATED UNDER THE NON-PER CAPITA CONSERVATION PROGRAM SHALL:

1. INCLUDE IN ITS ANNUAL REPORTS FILED PURSUANT TO SECTION 45-632 A COPY OF THE PROVIDER'S CURRENT WATER RATE STRUCTURE UNLESS NO CHANGES HAVE BEEN MADE TO THE RATE STRUCTURE SINCE IT WAS LAST SUBMITTED TO THE DIRECTOR. A MUNICIPAL PROVIDER REGULATED UNDER THE NON-PER CAPITA CONSERVATION PROGRAM IS ENCOURAGED TO ADOPT A WATER RATE STRUCTURE THAT PROMOTES EFFICIENT USE OF WATER, SUBJECT TO APPROVAL BY THE CORPORATION COMMISSION IF THE PROVIDER IS A PUBLIC SERVICE CORPORATION.

2. FOR AT LEAST FIVE YEARS AFTER A YEAR IN WHICH THE MUNICIPAL PROVIDER IS REGULATED UNDER THE NON-PER CAPITA CONSERVATION PROGRAM, KEEP AND MAINTAIN ACCURATE RECORDS VERIFYING THAT THE MUNICIPAL PROVIDER IMPLEMENTED THE CONSERVATION MEASURES REQUIRED BY THE NON-PER CAPITA CONSERVATION PROGRAM DURING THAT YEAR.

D. THE DIRECTOR SHALL DESIGN THE NON-PER CAPITA CONSERVATION PROGRAM TO ACHIEVE WATER USE EFFICIENCY IN THE SERVICE AREAS OF MUNICIPAL PROVIDERS REGULATED UNDER THE PROGRAM EQUIVALENT TO THE WATER USE EFFICIENCY ASSUMED BY THE DIRECTOR IN ESTABLISHING THE PER CAPITA CONSERVATION REQUIREMENTS FOR THE APPLICABLE MANAGEMENT PLAN PURSUANT TO SECTION 45-568.03, 45-568.04 OR 45-568.05.

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E. EXCEPT AS PROVIDED IN SUBSECTIONS I, J AND K OF THIS SECTION, ON OR BEFORE THE DATE SPECIFIED IN THE MANAGEMENT PLAN, A MUNICIPAL PROVIDER NOTIFIED OF THE NON-PER CAPITA CONSERVATION PROGRAM PURSUANT TO SECTION 45-568.03, SUBSECTION B, 45-568.04, SUBSECTION B, 45-568.05, SUBSECTION B OR 45-571.01, SUBSECTION B SHALL SUBMIT TO THE DIRECTOR, ON A FORM PRESCRIBED BY THE DIRECTOR, A PROVIDER PROFILE THAT CONTAINS THE FOLLOWING INFORMATION:

1. A DESCRIPTION OF THE MUNICIPAL PROVIDER'S EXISTING SERVICE AREA CHARACTERISTICS AND WATER USE PATTERNS.

2. A DESCRIPTION OF THE CONSERVATION MEASURES THE MUNICIPAL PROVIDER IS CURRENTLY IMPLEMENTING AND ANY ADDITIONAL CONSERVATION MEASURES THAT THE PROVIDER INTENDS TO IMPLEMENT TO COMPLY WITH THE NON-PER CAPITA CONSERVATION PROGRAM.

3. AN EXPLANATION OF HOW EACH CONSERVATION MEASURE DESCRIBED IN THE PROVIDER PROFILE IS RELEVANT TO THE MUNICIPAL PROVIDER'S EXISTING SERVICE AREA CHARACTERISTICS OR WATER USE PATTERNS.

F. WITHIN NINETY DAYS AFTER RECEIVING A MUNICIPAL PROVIDER'S PROVIDER PROFILE UNDER SUBSECTION E OF THIS SECTION, THE DIRECTOR SHALL APPROVE OR DISAPPROVE THE PROVIDER PROFILE AND SEND WRITTEN NOTICE OF THE DECISION TO THE MUNICIPAL PROVIDER. THE DIRECTOR SHALL APPROVE THE PROVIDER PROFILE IF THE DIRECTOR DETERMINES THAT THE PROFILE CONTAINS INFORMATION DEMONSTRATING THAT THE MUNICIPAL PROVIDER WILL IMPLEMENT AT LEAST THE MINIMUM NUMBER OF CONSERVATION MEASURES REQUIRED BY THE NON-PER CAPITA CONSERVATION PROGRAM AND THAT THE CONSERVATION MEASURES ARE REASONABLY RELEVANT TO THE MUNICIPAL PROVIDER'S EXISTING SERVICE AREA CHARACTERISTICS OR WATER USE PATTERNS. IF THE DIRECTOR DISAPPROVES THE PROVIDER PROFILE, THE DIRECTOR SHALL INCLUDE WITH THE WRITTEN NOTICE OF THE DECISION THE REASONS FOR THE DISAPPROVAL. A DECISION OF THE DIRECTOR DISAPPROVING A PROVIDER PROFILE IS AN APPEALABLE AGENCY ACTION PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 10. IF THE DIRECTOR FAILS TO SEND THE MUNICIPAL PROVIDER WRITTEN NOTICE APPROVING OR DISAPPROVING THE PROVIDER PROFILE WITHIN NINETY DAYS AFTER RECEIVING THE PROVIDER PROFILE, THE PROVIDER PROFILE SHALL BE DEEMED APPROVED.

G. IF THE DIRECTOR DISAPPROVES A MUNICIPAL PROVIDER'S PROVIDER PROFILE PURSUANT TO SUBSECTION F OF THIS SECTION, WITHIN NINETY DAYS AFTER THE DATE OF THE DIRECTOR'S WRITTEN NOTICE DISAPPROVING THE PROVIDER PROFILE, OR WITHIN NINETY DAYS AFTER THE DIRECTOR'S DECISION IS FINAL IF THE MUNICIPAL PROVIDER FILES A TIMELY NOTICE OF APPEAL OF THE DECISION PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 10, THE MUNICIPAL PROVIDER SHALL REVISE THE PROVIDER PROFILE TO CORRECT THE DEFICIENCIES IDENTIFIED BY THE DIRECTOR IN THE WRITTEN NOTICE AND SUBMIT THE REVISED PROVIDER PROFILE TO THE DIRECTOR. WITHIN NINETY DAYS AFTER RECEIVING A MUNICIPAL PROVIDER'S REVISED PROVIDER PROFILE PURSUANT TO THIS SUBSECTION, THE DIRECTOR SHALL APPROVE OR

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DISAPPROVE THE REVISED PROVIDER PROFILE PURSUANT TO SUBSECTION F OF THIS SECTION. IF THE DIRECTOR DISAPPROVES THE REVISED PROVIDER PROFILE:

1. THE DECISION IS AN APPEALABLE AGENCY ACTION PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 10.

2. THE MUNICIPAL PROVIDER IS IN VIOLATION OF THIS SECTION BEGINNING ON THE DATE THE DIRECTOR'S DECISION IS FINAL UNTIL THE MUNICIPAL PROVIDER SUBMITS A PROVIDER PROFILE THAT IS APPROVED BY THE DIRECTOR, EXCEPT THAT THE PROVIDER SHALL NOT BE IN VIOLATION BEFORE THE COMPLIANCE DATE FOR THE NON-PER CAPITA CONSERVATION PROGRAM SPECIFIED IN THE MANAGEMENT PLAN.

H. EXCEPT AS PROVIDED IN SUBSECTIONS I, J AND K OF THIS SECTION, A MUNICIPAL PROVIDER NOTIFIED OF THE NON-PER CAPITA CONSERVATION PROGRAM PURSUANT TO SECTION 45-568.03, SUBSECTION B, 45-568.04, SUBSECTION B, 45-568.05, SUBSECTION B OR 45-571.01, SUBSECTION B SHALL BE REGULATED UNDER THE PROGRAM BEGINNING ON THE DATE THE DIRECTOR APPROVES THE MUNICIPAL PROVIDER'S PROVIDER PROFILE PURSUANT TO SUBSECTION F OR G OF THIS SECTION, BUT NOT EARLIER THAN THE COMPLIANCE DATE SPECIFIED IN THE MANAGEMENT PLAN. A MUNICIPAL PROVIDER REGULATED UNDER THE NON-PER CAPITA CONSERVATION PROGRAM SHALL COMPLY WITH THE PROGRAM BEGINNING ON THE DATE THE PROVIDER IS FIRST REGULATED UNDER THE PROGRAM.

I. A MUNICIPAL PROVIDER DESIGNATED AS HAVING AN ASSURED WATER SUPPLY PURSUANT TO SECTION 45-576 SHALL NOT BE REGULATED UNDER THE NON-PER CAPITA CONSERVATION PROGRAM, BUT INSTEAD SHALL BE REGULATED UNDER THE PER CAPITA CONSERVATION PROGRAM ESTABLISHED BY THE DIRECTOR IN THE APPLICABLE MANAGEMENT PLAN, UNLESS BOTH OF THE FOLLOWING APPLY:

1. THE MUNICIPAL PROVIDER NOTIFIES THE DIRECTOR IN WRITING THAT IT ELECTS TO BE REGULATED UNDER THE NON-PER CAPITA CONSERVATION PROGRAM AND INCLUDES WITH THE NOTICE A PROVIDER PROFILE THAT CONTAINS THE INFORMATION PRESCRIBED BY SUBSECTION E OF THIS SECTION.

2. THE DIRECTOR APPROVES THE MUNICIPAL PROVIDER'S PROVIDER PROFILE PURSUANT TO SUBSECTION F OF THIS SECTION OR A REVISED PROVIDER PROFILE PURSUANT TO SUBSECTION G OF THIS SECTION. THE MUNICIPAL PROVIDER SHALL BE REGULATED UNDER THE NON-PER CAPITA CONSERVATION PROGRAM BEGINNING ON THE DATE THE DIRECTOR APPROVES THE PROVIDER PROFILE OR A REVISED PROVIDER PROFILE.

J. A LARGE UNTREATED WATER PROVIDER SHALL NOT BE REGULATED UNDER THE NON-PER CAPITA CONSERVATION PROGRAM WITH RESPECT TO ITS DELIVERIES OF UNTREATED WATER. A LARGE UNTREATED WATER PROVIDER SHALL COMPLY WITH ANY CONSERVATION OR RATE OF USE REQUIREMENTS ESTABLISHED FOR DELIVERIES OF UNTREATED WATER BY LARGE UNTREATED WATER PROVIDERS IN THE APPLICABLE MANAGEMENT PLAN WITH RESPECT TO ITS DELIVERIES OF UNTREATED WATER.

K. A SMALL MUNICIPAL PROVIDER SHALL NOT BE REGULATED UNDER THE NON-PER CAPITA CONSERVATION PROGRAM, BUT INSTEAD SHALL COMPLY WITH ANY CONSERVATION REQUIREMENTS ESTABLISHED FOR SMALL MUNICIPAL PROVIDERS IN THE APPLICABLE MANAGEMENT PLAN.

L. A MUNICIPAL PROVIDER THAT IS REGULATED UNDER THE NON-PER CAPITA CONSERVATION PROGRAM ESTABLISHED IN A MANAGEMENT PLAN UNDER THIS SECTION SHALL COMPLY WITH ANY INDIVIDUAL USER REQUIREMENTS PRESCRIBED IN THE APPLICABLE MANAGEMENT PLAN, EXCEPT AS PROVIDED IN SECTION 45-571.02.

M. A MUNICIPAL PROVIDER REGULATED UNDER THE NON-PER CAPITA CONSERVATION PROGRAM ESTABLISHED IN A MANAGEMENT PLAN UNDER THIS SECTION IS EXEMPT FROM THE PER CAPITA CONSERVATION REQUIREMENTS PRESCRIBED IN THE APPLICABLE MANAGEMENT PLAN.

45-568.07. ALTERNATIVE CONSERVATION PROGRAMS FOR AGRICULTURE; SIXTH, SEVENTH AND EIGHTH MANAGEMENT PERIODS

A. IN ADDITION TO THE PROVISIONS OF THE MANAGEMENT PLAN FOR THE SIXTH, SEVENTH AND EIGHTH MANAGEMENT PERIODS PRESCRIBED BY SECTIONS 45-568.03, 45-568.04 AND 45-568.05, THE DIRECTOR SHALL INCLUDE IN THE MANAGEMENT PLANS THE HISTORIC CROPPING PROGRAM PRESCRIBED BY THIS SECTION AS AN ALTERNATIVE AGRICULTURAL CONSERVATION PROGRAM THAT ACHIEVES CONSERVATION EQUIVALENT TO THE AGRICULTURAL CONSERVATION PROGRAM INCLUDED IN THE MANAGEMENT PLAN PURSUANT TO SECTION 45-568.03, 45-568.04 OR 45-568.05.

B. THE DIRECTOR SHALL ESTABLISH THE COMPONENTS OF THE HISTORIC CROPPING PROGRAM IN THE MANAGEMENT PLANS FOR THE SIXTH, SEVENTH AND EIGHTH MANAGEMENT PERIODS TO ASSURE THAT CONSERVATION EQUIVALENT TO THAT REQUIRED BY THE AGRICULTURAL CONSERVATION PROGRAM ESTABLISHED IN THE APPLICABLE MANAGEMENT PLAN PURSUANT TO SECTION 45-568.03, SECTION 45-568.04 OR SECTION 45-568.05 WILL BE ACHIEVED. IN ADDITION TO THE PROGRAM COMPONENTS ESTABLISHED BY THE DIRECTOR, THE HISTORIC CROPPING PROGRAM SHALL INCLUDE THE FOLLOWING PROVISIONS:

1. THE DIRECTOR SHALL CALCULATE THE MAXIMUM ANNUAL GROUNDWATER ALLOTMENT AS PROVIDED IN SECTION 45-465.

2. THE DIRECTOR SHALL CALCULATE THE IRRIGATION WATER DUTY IN THE SAME MANNER AS THAT REQUIRED BY SECTION 45-568.03, SUBSECTION A, 45-568.04, SUBSECTION A, OR 45-568.05, SUBSECTION A, WHICHEVER APPLIES, USING AN IRRIGATION EFFICIENCY OF SEVENTY-FIVE PER CENT. IN AREAS DEEMED BY THE DIRECTOR TO HAVE LIMITING SOILS, THE DIRECTOR MAY USE AN IRRIGATION EFFICIENCY OF SEVENTY PER CENT FOR THE WATER DUTY CALCULATION.

3. THE FLEXIBILITY ACCOUNT PROVISIONS OF SECTION 45-467 APPLY EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION.

4. THE DIRECTOR SHALL NOT REGISTER CREDITS TO THE FLEXIBILITY ACCOUNT ESTABLISHED UNDER SECTION 45-467 THAT CAUSE THE CREDIT

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BALANCE TO EXCEED SEVENTY-FIVE PER CENT OF THE MAXIMUM ANNUAL GROUNDWATER ALLOTMENT ESTABLISHED PURSUANT TO THIS SUBSECTION.

5. ONLY OWNERS OF AN IRRIGATION GRANDFATHERED RIGHT MAY APPLY FOR PARTICIPATION IN THE HISTORIC CROPPING PROGRAM.

C. IN THE MANAGEMENT PLANS, THE DIRECTOR SHALL ESTABLISH CRITERIA THAT THE APPLICANT SHALL SATISFY TO ENTER THE HISTORIC CROPPING PROGRAM TO ASSURE THAT CONSERVATION EQUIVALENT TO THAT REQUIRED BY THE AGRICULTURAL CONSERVATION PROGRAM ESTABLISHED IN THE APPLICABLE MANAGEMENT PLAN PURSUANT TO SECTION 45-568.03, 45-568.04 OR 45-568.05 WILL BE ACHIEVED. AN OWNER OF AN IRRIGATION GRANDFATHERED RIGHT MAY APPLY TO PARTICIPATE IN THE HISTORIC CROPPING PROGRAM BY FILING AN APPLICATION WITH THE DIRECTOR. THE DIRECTOR SHALL NOT APPROVE AN APPLICATION FOR THE HISTORIC CROPPING PROGRAM UNLESS THE APPLICANT SATISFIES THE ENTRANCE CRITERIA ESTABLISHED BY THE DIRECTOR AND THE FOLLOWING CONDITIONS ARE SATISFIED:

1. THE APPLICANT'S ACCUMULATION OF CREDITS IN THE APPLICANT'S FLEXIBILITY ACCOUNT UNDER SECTION 45-467 IS EQUAL TO OR LESS THAN SEVENTY-FIVE PER CENT OF THE FARM'S MAXIMUM ANNUAL GROUNDWATER ALLOTMENT ESTABLISHED PURSUANT TO THE APPLICABLE MANAGEMENT PLAN UNDER SECTION 45-568.03, SUBSECTION A, 45-568.04, SUBSECTION A OR 45-568.05, SUBSECTION A. TO SATISFY THIS REQUIREMENT, THE APPLICANT MAY EITHER SELL OR CONVEY ANY EXCESS CREDITS AS PROVIDED BY SECTION 45-467, OR THE APPLICANT MAY RELINQUISH ANY EXCESS CREDITS.

2. THE APPLICANT'S ACCUMULATION OF DEBITS IN THE APPLICANT'S FLEXIBILITY ACCOUNT UNDER SECTION 45-467 IS EQUAL TO OR LESS THAN TWENTY-FIVE PER CENT OF THE FARM'S MAXIMUM ANNUAL GROUNDWATER ALLOTMENT ESTABLISHED PURSUANT TO THE APPLICABLE MANAGEMENT PLAN UNDER SECTION 45-568.03, SUBSECTION A, 45-568.04, SUBSECTION A OR 45-568.05, SUBSECTION A.

D. IN THE MANAGEMENT PLAN, THE DIRECTOR SHALL ESTABLISH PERFORMANCE STANDARDS THAT THE OWNER OF AN IRRIGATION GRANDFATHERED RIGHT OR ANY PERSON USING GROUNDWATER PURSUANT TO THAT RIGHT SHALL SATISFY WHILE PARTICIPATING IN THE HISTORIC CROPPING PROGRAM TO ASSURE THAT CONSERVATION EQUIVALENT TO THAT REQUIRED BY THE AGRICULTURAL CONSERVATION PROGRAM INCLUDED IN THE APPLICABLE MANAGEMENT PLAN PURSUANT TO SECTION 45-568.03, 45-568.04 OR 45-568.05 WILL BE ACHIEVED. AFTER AN OWNER OF AN IRRIGATION GRANDFATHERED RIGHT HAS BEEN APPROVED FOR PARTICIPATION IN THE HISTORIC CROPPING PROGRAM, THE OWNER OF THAT RIGHT, AND ANY PERSON USING GROUNDWATER PURSUANT TO THAT RIGHT, SHALL MEET BOTH OF THE FOLLOWING CONDITIONS:

1. COMPLY WITH THE PERFORMANCE STANDARDS ESTABLISHED BY THE DIRECTOR.

2. NOT ACCUMULATE DEBITS TO THE FLEXIBILITY ACCOUNT ESTABLISHED UNDER SECTION 45-467 THAT EXCEED TWENTY-FIVE PER CENT OF

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THE MAXIMUM ANNUAL GROUNDWATER ALLOTMENT ESTABLISHED UNDER SUBSECTION B OF THIS SECTION. THE OWNER OF THE IRRIGATION GRANDFATHERED RIGHT, AND ANY PERSON ENTITLED TO USE GROUNDWATER PURSUANT TO THAT RIGHT, VIOLATE THIS SECTION IF THE DEBIT BALANCE EXCEEDS THE AMOUNT STATED IN THIS PARAGRAPH.

E. NOTWITHSTANDING THE PROVISIONS OF SECTION 45-467, AN OWNER OF AN IRRIGATION GRANDFATHERED RIGHT, WHILE PARTICIPATING IN THE HISTORIC CROPPING PROGRAM, SHALL NOT CONVEY OR SELL FLEXIBILITY ACCOUNT CREDITS FROM, OR PURCHASE FLEXIBILITY ACCOUNT CREDITS FOR, THE FLEXIBILITY ACCOUNT REGULATED BY THE HISTORIC CROPPING PROGRAM.

F. THE DIRECTOR MAY INCLUDE IN THE ADOPTION OF, OR A MODIFICATION TO, THE MANAGEMENT PLANS FOR THE SIXTH, SEVENTH AND EIGHTH MANAGEMENT PERIODS ADDITIONAL ALTERNATIVE AGRICULTURAL CONSERVATION PROGRAMS THAT THE DIRECTOR DETERMINES ACHIEVE CONSERVATION THAT IS AT LEAST EQUIVALENT TO THAT REQUIRED UNDER THE AGRICULTURAL CONSERVATION PROGRAM INCLUDED IN THE APPLICABLE MANAGEMENT PLAN PURSUANT TO SECTION 45-568.03, 45-568.04 OR 45-568.05, INCLUDING A CROPPED ACREAGE PROGRAM IN WHICH THE MAXIMUM ANNUAL GROUNDWATER ALLOTMENT IS DETERMINED BASED ON THE CROPS GROWN DURING THE CALENDAR YEAR IN WHICH THE IRRIGATION EFFICIENCY IS APPLIED.

G. THE DIRECTOR SHALL INCLUDE IN THE ADOPTION OF THE MANAGEMENT PLANS FOR THE SIXTH, SEVENTH AND EIGHTH MANAGEMENT PERIODS A BEST MANAGEMENT PRACTICES PROGRAM THAT REQUIRES THE OWNER OF AN IRRIGATION GRANDFATHERED RIGHT AND ANY PERSON USING GROUNDWATER PURSUANT TO THE RIGHT TO IMPLEMENT SPECIFIC AGRICULTURAL CONSERVATION PRACTICES FOR WATER USE ON THE LAND OR FARM UNIT TO WHICH THE RIGHT IS APPURTENANT IN LIEU OF COMPLYING WITH AN IRRIGATION WATER DUTY AND A MAXIMUM ANNUAL GROUNDWATER ALLOTMENT. THE PROGRAM SHALL BE DESIGNED TO ACHIEVE CONSERVATION THAT IS AT LEAST EQUIVALENT TO THAT REQUIRED BY THE AGRICULTURAL CONSERVATION PROGRAM INCLUDED IN THE APPLICABLE MANAGEMENT PLAN PURSUANT TO SECTION 45-568.03, 45-568.04 OR 45-568.05.

45-569. Management goals and management plans for subsequent active management areas

A. Within thirty days of the designation of a subsequent active management area pursuant to article 2 of this chapter, the director shall establish a management goal for the active management area and the number of years in which the goal is to be achieved.

B. Not later than two years after the designation of a subsequent active management area, the director shall promulgate an initial management plan for the active management area and may provide for subsequent management plans to be promulgated during the time set for achieving the management goal. If the director determines that active management is necessary to preserve the existing supply of groundwater for future needs or that land subsidence or fissuring is endangering property or potential groundwater storage capacity, the director, in developing the plan or plans, shall include measures for reducing groundwater withdrawals

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which follow as closely as practicable the program set forth in sections 45-564 through ~~45-568~~ ~~45-568.07~~. If the director determines that active management is necessary because the use of groundwater is resulting in actual or threatened groundwater quality degradation, the director shall, in cooperation with the department of environmental quality, include in the plan or plans a program for prevention or amelioration of groundwater quality problems and a schedule for implementation of the proposed solutions. The director shall submit such program to the legislature for any necessary enabling legislation or coordination with existing programs of the department of environmental quality.

C. All management plans, including the management goal, for a subsequent active management area, shall be adopted only after public hearings pursuant to sections 45-570 and 45-571.

45-574. Variances; application; notice; hearing; issuance

A. A person who requires additional time to comply with an irrigation water duty or conservation requirement established pursuant to ~~section~~ ~~SECTIONS~~ 45-565, ~~45-566~~, ~~45-566.01~~, ~~45-567~~, ~~45-567.01~~, ~~45-568~~ ~~or~~ ~~45-568.01~~ THROUGH 45-568.06 may apply to the director for a variance from the water duty or requirement within ninety days from the date of notice of the water duty or requirement. The application shall include the following:

1. The name and mailing address of the applicant.
2. The name of the active management area in which the use is located.
3. The amount of groundwater currently being withdrawn annually by the person.
4. The irrigation water duty or conservation requirement from which the variance is sought.
5. A general description of the economic circumstances preventing timely compliance with the irrigation water duty or conservation requirement and any information relevant to such circumstances.
6. The sworn statement that the information contained in the application is true and correct to the best belief and knowledge of the applicant.
7. Such other information as the director may require.

B. The director shall give written notice to the applicant of the opportunity for an administrative hearing. An administrative hearing shall be held before the director's decision on the application if the director deems a hearing necessary or a hearing is requested by the applicant.

C. The director may grant a variance upon a showing of compelling economic circumstances. The variance shall specify:

1. The amount of groundwater which may be withdrawn by the person during the variance period, or a schedule of intermediate water duties or conservation requirements to be reached at specified intervals during the variance period.
2. The duration of the variance, which may not exceed five years from the date of the director's final determination of the variance.

D. A party aggrieved by the director's decision 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 irrigated land or non-irrigation use is located.

E. 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. If an

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administrative hearing is held, it shall be conducted in the active management area in which the use is located.

45-575. Administrative review of irrigation water duty and conservation requirements

A. Any aggrieved party may request an administrative review of an irrigation water duty or conservation requirement established pursuant to ~~section SECTIONS 45-565, 45-566, 45-566.01, 45-567, 45-567.01, 45-568 or 45-568.01~~ THROUGH 45-568.06. Except as provided in subsection B of this section, the request must be made not later than ninety days from the date of notice of such duty or requirement given thirty days after the adoption of the management plan or if the notice was given pursuant to section 45-566.01, subsection E or 45-571.02, subsection B, not later than ninety days from the date of the notice.

B. An aggrieved person who claims that extraordinary circumstances not in existence as of the date of notice that was given thirty days after adoption of the management plan justify modification of an irrigation water duty or conservation requirement established pursuant to ~~section SECTIONS 45-565, 45-566, 45-566.01, 45-567, 45-567.01, 45-568 or 45-568.01~~ THROUGH 45-568.06 may request administrative review of the water duty or conservation requirement more than ninety days from the date of notice of the water duty or conservation requirement. The director may modify the water duty or conservation requirement if the aggrieved person demonstrates to the director by clear and convincing evidence that extraordinary circumstances not in existence as of the date of the notice that was given thirty days after adoption of the management plan make it unreasonable to require compliance with a water duty or conservation requirement.

C. The director shall give written notice to the aggrieved party who is requesting an administrative review of the opportunity for an administrative hearing. An administrative hearing shall be held before the director's decision on the application if the director deems a hearing necessary or a hearing is requested by the applicant.

D. A party aggrieved by the director's decision 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 irrigated land or the non-irrigation use is located.

E. 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. If an administrative hearing is held, it shall be conducted in the active management area in which the use is located.

Section _____. Evaluation of conservation requirements and irrigation water duties for fifth, sixth, seventh and eighth management periods; advisory committee; report to governor and legislature

A. The director of water resources shall evaluate the conservation requirements and irrigation water duties required to be established in the management plans for the fifth, sixth, seventh and eighth management period pursuant to sections 45-568 through 45-568.07, Arizona Revised Statutes, to determine whether any changes to those conservation requirements and irrigation water duties are appropriate to achieve reasonable conservation in the active management areas.

B. The director shall establish one or more advisory committees for each active management area to assist the director in the evaluation required by subsection A. The director may also contract with an independent researcher to assist in the evaluation. The evaluation shall

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include a review of the conservation requirements and irrigation water duties established in the management plans for the fifth management period for each active management area to determine whether those conservation requirements should continue for the management plans for the fifth, sixth, seventh and eighth management periods, or whether changes are appropriate.

C. The director shall prepare a report of the director's findings and recommendations and submit the report on or before December 31, 2021 to the governor, the president of the senate, the speaker of the house of representatives, the members of the senate natural resources, energy and water committee, or its successor committee, and the members of the house of representatives energy, environment and natural resources committee, or its successor committee. The report shall include any recommendations for statutory changes.

DRAFT

Legislation allowing irrigation of containerized plants in AMAs pursuant to irrigation grandfathered rights

- Provides flexibility for right holders to adapt to technological advances in agricultural production.

Title 45, chapter 2, article 5, Arizona Revised Statutes, is amended by adding a new section 45-465.04, to read:

45-465.04. Use of groundwater to water plants in containers a non-irrigation use; right to use groundwater withdrawn pursuant to irrigation grandfathered right to water plants in containers; definition

A. THE USE OF GROUNDWATER TO WATER PLANTS IN CONTAINERS ON OR ABOVE THE SURFACE OF THE GROUND IS A NON-IRRIGATION USE.

B. NOTWITHSTANDING SUBSECTION A, IN AN INITIAL ACTIVE MANAGEMENT AREA, A PERSON WHO HOLDS A CERTIFICATE OF IRRIGATION GRANDFATHERED RIGHT MAY WITHDRAW GROUNDWATER PURSUANT TO THE RIGHT AND USE THE GROUNDWATER TO WATER PLANTS IN CONTAINERS ON OR ABOVE THE SURFACE OF THE CERTIFICATED ACRES IF THE PLANTS ARE GROWN 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.

C. A PERSON WHO HOLDS A CERTIFICATE OF IRRIGATION GRANDFATHERED RIGHT SHALL SEPARATELY MEASURE WITH A MEASURING DEVICE APPROVED BY THE DIRECTOR PURSUANT TO SECTION 45-604 ANY GROUNDWATER USED FOR WATERING PLANTS IN CONTAINERS ON OR ABOVE THE SURFACE OF THE CERTIFICATED ACRES AND ANY GROUNDWATER USED FOR AN IRRIGATION USE ON THE CERTIFICATED ACRES.

D. EXCEPT AS PROVIDED IN SECTION 45-563.02, IF A PERSON USES GROUNDWATER TO WATER PLANTS IN CONTAINERS PURSUANT TO SUBSECTION B, THE TOTAL AMOUNT OF WATER USED BY THE PERSON FOR THAT PURPOSE AND FOR ANY IRRIGATION USES ON THE CERTIFICATED ACRES SHALL NOT EXCEED THE AMOUNT ALLOWED BY THE IRRIGATION WATER DUTY FOR THE FARM AS DEFINED IN 45-401(10).

E. THE DIRECTOR SHALL NOT REGISTER CREDITS TO THE FLEXIBILITY ACCOUNT ESTABLISHED PURSUANT TO SECTION 45-467 FOR A FARM IN ANY YEAR IN WHICH THE PERSON WHO HOLDS THE CERTIFICATE OF IRRIGATION GRANDFATHERED RIGHT FOR THE FARM USES GROUNDWATER TO WATER PLANTS IN CONTAINERS ON OR ABOVE THE SURFACE OF THE CERTIFICATED ACRES PURSUANT TO SUBSECTION B.

F. UPON REQUEST BY THE OWNER OF A CERTIFICATE OF IRRIGATION GRANDFATHERED RIGHT, THE DIRECTOR SHALL SEPARATE THE CERTIFICATE INTO TWO CERTIFICATES, WITH ONE CERTIFICATE FOR THOSE CERTIFICATED ACRES ON WHICH PLANTS IN CONTAINERS ARE WATERED WITH GROUNDWATER PURSUANT TO SUBSECTION B AND ONE CERTIFICATE FOR THOSE CERTIFICATED ACRES ON WHICH GROUNDWATER IS USED FOR AN IRRIGATION USE. IF THE DIRECTOR SEPARATES A CERTIFICATE OF IRRIGATION GRANDFATHERED RIGHT INTO TWO CERTIFICATES PURSUANT TO THIS SUBSECTION, THE CERTIFICATED ACRES ASSOCIATED WITH EACH CERTIFICATE SHALL BE CONSIDERED A SEPARATE FARM FOR PURPOSES OF SUBSECTION E. THE DIRECTOR SHALL NOT SEPARATE A CERTIFICATE OF IRRIGATION GRANDFATHERED RIGHT INTO TWO CERTIFICATES PURSUANT TO THIS SUBSECTION IF IT WOULD RESULT IN THE ISSUANCE OF A CERTIFICATE OF IRRIGATION GRANDFATHERED RIGHT WITH LESS THAN TWO CERTIFICATED ACRES.

G. FOR PURPOSES OF THIS SECTION, "CERTIFICATED ACRES" MEANS THE ACRES DESCRIBED ON THE CERTIFICATE OF IRRIGATION GRANDFATHERED RIGHT.

Session Law Requiring Desalination Action Plan

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

Section 1. Desalination action plan; director of water resources; definition; delayed repeal

A. The director of water resources shall prepare a desalination action plan that includes all the following:

1. An identification of areas within the state where brackish groundwater exists in significant amounts.
2. An estimate of the cost to treat and deliver the brackish groundwater for an economically viable use.
3. An identification of areas that would benefit from the use of the treated brackish groundwater.
4. An identification of potential funding sources for the treatment and delivery of the brackish groundwater.
5. An evaluation of the feasibility and cost of disposing the brine product resulting from the treatment of brackish groundwater.

B. The director shall submit the desalination action plan on or before December 31, 2019 to the governor, the president of the senate, the speaker of the house of representatives, the members of the senate natural resources, energy and water committee, or its successor committee, and the members of the house of representatives energy, environment and natural resources committee, or its successor committee.

C. For the purposes of this section, “brackish groundwater” means groundwater that, due to its salinity, requires treatment for an economically viable use.

D. This section is repealed from and after September 30, 2020.