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ARIZONA DEPARTMENT OF WATER RESOURCES SUBSTANTIVE POLICY STATEMENT CRITERIA FOR CONSISTENCY WITH A.R.S. § 45-132(B)(3) BODIES OF WATER ACCESSIBLE TO PUBLIC; OWNERSHIP/OPERATION BY GOVERNMENT ENTITY

This substantive policy statement is advisory only. A substantive policy statement does not include procedural documents that only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona administrative procedures act. If you believe that this substantive policy statement does impose additional requirements or penalties on regulated parties, you may petition the agency under Arizona Revised Statutes § 41-1033 for a review of the statement.

I. BACKGROUND

A.R.S. § 45-132, commonly known as the Lakes Bill, defines the term "body of water" and restricts the filling or refilling of bodies of water for landscape, scenic, or recreational purposes in an AMA. A.R.S. § 45-132(B) provides for several exemptions to these restrictions, such as if the body of water was historically in existence, if it is filled with effluent, or if it is part of a golf course or recharge facility. One exemption set forth in 45-132(B)(3) allows a body of water to be filled and refilled with any type of water for landscape, scenic, or recreation purposes if *"the body of water is located in a recreational facility that is open to the public and owned or operated by the United States, this state, a city, town or county, a flood control district established under Title 48, Chapter 21 or a multi-county water conservation district established under Title 48, Chapter 22."*

The following guidelines are to be used in determining whether a particular new or proposed body of water is open to the public; and whether the ownership/operational requirements set forth in A.R.S. 45-132(B)(3) are met. Although the Department will ultimately determine on a case-by-case basis whether a proposed body of water meets the criteria set forth in A.R.S. 45-132(B)(3), the following guidelines are intended to inform the public of criteria that the Department will consider in making this determination.

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II. CRITERIA TO BE CONSIDERED IN MAKING DETERMINATION OF COMPLIANCE WITH A.R.S. § 45-132(B)(3):

1. The public must have permanent, unobstructed access to the recreational facility.

2. There must be clearly visible signage posted at the recreational facility, including a statement that the facility is open to the public. The existence of the facility must also be made known to the public by listing it on the governmental entity's Website or other commonly used media, such as maps, brochures, or advertisements.

3. There must be adequate parking available at the recreational facility.

4. If there is a charge to enter or use the recreational facility, then it must apply to all users.

5. The recreational facility containing the body of water must be owned or operated by the governmental entity at all times, including at the time of first filling.

6. In those cases where the recreational facility containing the body of water is owned by a private entity but operated by a governmental entity, a copy of a contract or written memorandum of understanding demonstrating the relationship may be requested by the Department.

III. EFFECTIVE DATE

This substantive policy statement shall become effective immediately. The Director may modify or revoke this policy at any time.

Date: 11 OCTOBER 2007

Herbert R. Guenther, Director
Arizona Department of Water Resources

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45-131. Definitions
In this article, unless the context otherwise requires:

1. "Body of water" means a body of water in an active management area established under chapter 2 of this title, including a lake, pond, lagoon or swimming pool, that has a surface area greater than twelve thousand three hundred twenty square feet and that is filled or refilled for landscape, scenic or recreational purposes. A body of water that is used incidentally for landscape, scenic or recreational purposes is deemed not to be filled or refilled for landscape, scenic or recreational purposes. Only for the purpose of determining the surface area of a body of water, two or more bodies of water that are connected are considered to be one body of water.

2. "Swimming pool" means an artificially constructed pool for swimming purposes that meets the applicable design standards and specifications for swimming pools prescribed by the director of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

45-132. Filling large bodies of water for landscape, scenic or recreational purposes prohibited; exceptions; preemption

A. Except as provided in subsection B of this section, in an active management area established under chapter 2 of this title, a person shall not use any water for the purpose of filling or refilling all or a portion of a body of water.

B. This section does not apply to a body of water if any of the following applies:

1. The body of water was filled before January 1, 1987. If the surface area of the body of water is increased on or after January 1, 1987, this exception does not apply to the quantity of water that is added.

2. The director has determined that substantial capital investment has been made in the physical on-site construction of the body of water before January 1, 1987. If the surface area of the body of water is increased after it is initially filled, this exception does not apply to the quantity of water that is added.

3. The body of water is located in a recreational facility that is open to the public and owned or operated by the United States, this state, a city, town or county, a flood control district established under title 48, chapter 21 or a multi-county water conservation district established under title 48, chapter 22.

4. The body of water is filled and refilled exclusively with any one or any combination of the following:
   (a) Effluent.
   (b) Storm water runoff that is not subject to appropriation under section 45-141.
   (c) Poor quality water used pursuant to a permit issued under subsections C and D of this section.

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(d) Groundwater withdrawn pursuant to a drainage water withdrawal permit issued under section 45-519.
(e) Groundwater withdrawn in the first year of a temporary dewatering permit issued under section 45-518.
(f) Groundwater withdrawn as part of a remedial action under title 49, chapter 2, article 5.
(g) Water used pursuant to a permit for interim water use issued under section 45-133.
(h) Surface water except central Arizona project water that, as determined by the director, physically occurs at such times, in such quantities or under such other circumstances that it cannot be physically captured and beneficially used by any other holder of an appropriative right.

5. The body of water is an integral part of a golf course which complies with any applicable conservation requirements in the management plan for the active management area adopted under chapter 2, article 9 of this title.

6. The body of water is unsealed and is an integral part of an underground storage facility for which the director has issued a permit under chapter 3.1 of this title.

7. The body of water is a swimming pool that is owned and operated by a hotel, motel, country club or resort and has a surface area equal to or less than forty-three thousand five hundred sixty square feet. If a hotel, motel, country club or resort has more than one swimming pool, only one of those swimming pools may have a surface area greater than twelve thousand three hundred twenty square feet.

C. A person who seeks to use poor quality groundwater to fill or refill all or a portion of a body of water shall apply to the director for a permit to use the groundwater for that purpose. The director may issue a permit if the applicant demonstrates that all of the following apply:

1. The applicant otherwise has a right to use the proposed source of groundwater for the proposed purpose.

2. The groundwater because of its poor quality cannot be used for another beneficial purpose at the present time and it is not economically feasible to treat and transport the groundwater and use it for another beneficial purpose.

3. The withdrawal of the groundwater is consistent with the management plan and achievement of the management goal for the active management area.

D. A permit issued pursuant to subsection C of this section may be issued for a period of up to thirty-five years. The director shall determine the duration of the permit on the basis of the estimated life of the source of poor quality groundwater and the potential for future beneficial use. The director shall monitor the use of groundwater pursuant to the permit and shall terminate the permit if any of the conditions for issuance of the permit no longer applies. A permit may be renewed subject to the same criteria used in granting the original permit.

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E. This section preempts all municipal and county laws, charters, ordinances, rules and regulations relating to the use of any water to fill or refill all or a portion of a body of water, except that this section does not preempt a law, charter, ordinance, rule or regulation that has previously been adopted, passed or enacted or is subsequently adopted, passed or enacted if the provisions of the law, charter, ordinance, rule or regulation are more restrictive than the provisions of this section.

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