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House Engrossed Senate Bill

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Jane Dee Hull
Secretary of State

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CHAPTER 103

SENATE BILL 1293

AN ACT

AMENDING SECTIONS 9-463.01, 45-112, 45-402, 45-437.02, 45-437.03, 45-465.01, 45-465.02, 45-544, 45-576, 45-578, 45-611, 45-613, 45-614, 45-615, 45-852.01, 45-855.01, 45-871.01, 45-1207, 45-1972, 45-2242 AND 48-4976, ARIZONA REVISED STATUTES; RELATING TO WATERS.

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

Section 1. Section 9-463.01, Arizona Revised Statutes, is amended to read:

9-463.01. Authority

A. Pursuant to the provisions of this article, the legislative body of every municipality shall regulate the subdivision of all lands within its corporate limits.

B. The legislative body of a municipality shall exercise the authority granted in subsection A of this section by ordinance prescribing:

1. Procedures to be followed in the preparation, submission, review and approval or rejection of all final plats.

2. Standards governing the design of subdivision plats.

3. Minimum requirements and standards for the installation of subdivision streets, sewer and water utilities and improvements as a condition of final plat approval.

C. By ordinance, the legislative body of any municipality shall:

1. Require the preparation, submission and approval of a preliminary plat as a condition precedent to submission of a final plat.

2. Establish the procedures to be followed in the preparation, submission, review and approval of preliminary plats.

3. Make requirements as to the form and content of preliminary plats.

4. Determine that certain lands may either not be subdivided, by reason of adverse topography, periodic inundation, adverse soils, subsidence of the earth's surface, high water table, lack of water or other natural or man-made hazard to life or property, or control the lot size, establish special grading and drainage requirements, and impose other regulations deemed reasonable and necessary for the public health, safety or general welfare on any lands to be subdivided affected by such characteristics.

5. Require payment of a proper and reasonable fee by the subdivider based upon the number of lots or parcels on the surface of the land to defray municipal costs of plat review and site inspection.

6. Require the dedication of public streets, sewer and water utility easements or rights-of-way, within the proposed subdivision.

7. Require the preparation and submission of acceptable engineering plans and specifications for the installation of required street, sewer, electric and water utilities, drainage, flood control, adequacy of water and improvements as a condition precedent to recordation of an approved final plat.

8. Require the posting of performance bonds, assurances or such other security as may be appropriate and necessary to assure the installation of required street, sewer, electric and water utilities, drainage, flood control and improvements meeting established minimum standards of design and construction.

D. The legislative body of any municipality may require by ordinance that land areas within a subdivision be reserved for parks, recreational facilities, school sites and fire stations subject to the following conditions:

1. The requirement may only be made upon preliminary plats filed at least thirty days after the adoption of a general or specific plan affecting the land area to be reserved.

2. The required reservations are in accordance with definite principles and standards adopted by the legislative body.

3. The land area reserved shall be of such a size and shape as to permit the remainder of the land area of the subdivision within which the reservation is located to develop in an orderly and efficient manner.

4. The land area reserved shall be in such multiples of streets and parcels as to permit an efficient division of the reserved area in the event that it is not acquired within the prescribed period.

E. The public agency for whose benefit an area has been reserved shall have a period of one year after recording the final subdivision plat to enter into an agreement to acquire such reserved land area. The purchase price shall be the fair market value thereof at the time of the filing of the preliminary subdivision plat plus the taxes against such reserved area from the date of the reservation and any other costs incurred by the subdivider

in the maintenance of such reserved area, including the interest cost incurred on any loan covering such reserved area.

F. If the public agency for whose benefit an area has been reserved does not exercise the reservation agreement set forth in subsection E of this section within such one year period or such extended period as may be mutually agreed upon by such public agency and the subdivider, the reservation of such area shall terminate.

G. The legislative body of every municipality shall comply with all provisions of this article and applicable state statutes pertaining to the hearing, approval or rejection, and recordation of:

1. Final subdivision plats.

2. Plats filed for the purpose of reverting to acreage of land previously subdivided.

3. Plats filed for the purpose of vacating streets or easements previously dedicated to the public.

4. Plats filed for the purpose of vacating or redescribing lot or parcel boundaries previously recorded.

H. Approval of every preliminary and final plat by a legislative body is conditioned upon compliance by the subdivider with:

1. Rules as may be established by the department of transportation relating to provisions for the safety of entrance upon and departure from abutting state primary highways.

2. Rules as may be established by a county flood control district relating to the construction or prevention of construction of streets in land established as being subject to periodic inundation.

3. Rules as may be established by the department of health services or a county health department relating to the provision of domestic water supply and sanitary sewage disposal.

I. If the subdivision is comprised of subdivided lands, as defined in section 32-2101, and is within a groundwater active management area, as defined in section 45-402, the ~~preliminary~~ FINAL plat shall not be approved unless it is accompanied by a certificate of assured water supply issued by the director of water resources, or unless the subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an assured water supply by the director of water resources pursuant to section 45-576 or is exempt from the requirement pursuant to section 45-576. The legislative body of the municipality shall note on the face of the ~~preliminary~~ FINAL plat that a certificate of assured water supply has been submitted with the plat or that the subdivider has obtained a written commitment of water service for the proposed subdivision from a city, town or private water company designated as having an assured water supply, pursuant to section 45-576 or is exempt from the requirement pursuant to section 45-576.

J. Every municipality is responsible for the recordation of all final plats approved by the legislative body and shall receive from the subdivider and transmit to the county recorder the recordation fee established by the county recorder.

K. Pursuant to provisions of applicable state statutes, the legislative body of any municipality may itself prepare or have prepared a plat for the subdivision of land under municipal ownership.

L. The legislative bodies of cities and towns may by ordinance regulate land splits within their corporate limits. Authority granted under this section refers to the determination of division lines, area and shape of the tracts or parcels and does not include authority to regulate the terms or condition of the sale or lease nor does it include the authority to regulate the sale or lease of tracts or parcels not the result of land splits as defined in section 9-463.

Sec. 2. Section 45-112, Arizona Revised Statutes, is amended to read:

45-112. Violations; classification; enforcement

A. A person is guilty of a class 2 misdemeanor who:

1. Knowingly and without authority opens, closes, changes or interferes with a lawfully established head gate, measuring device or water box.

2. Knowingly uses water or conducts into or through such person's ditch water lawfully denied such person by the water superintendent or other competent authority.

3. Without authority uses water to which another is entitled.

4. Without authority diverts water from a stream.

5. Knowingly wastes water to the detriment of another.

6. Diverts a stream to the injury or threatened injury of the lands of another.

7. Uses, stores or diverts water without or before the issuance of a permit to appropriate such waters.

8. Places or maintains an obstruction interfering with the use of works, or prevents convenient access thereto, when an appropriator of water has the lawful right of way for the storage, diversion or carriage of such water.

B. The possession or use of water when it has been lawfully denied by the water superintendent or other competent authority is prima facie evidence of the guilt of the person using it.

C. The water superintendent or his assistants may, within his district, arrest any person violating this section and deliver him to the sheriff or other police officer within the county, and upon delivery shall immediately make A complaint against such person before a justice of the peace. IF NO WATER SUPERINTENDENT HAS BEEN APPOINTED FOR A WATER DISTRICT, ANY AFFECTED PERSON WITHIN THE DISTRICT MAY MAKE A COMPLAINT TO THE SHERIFF

OR OTHER POLICE OFFICER WITHIN THE COUNTY AGAINST A PERSON WHO VIOLATES THIS SECTION.

Sec. 3. Section 45-402, Arizona Revised Statutes, is amended to read:

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, ~~crop~~ 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 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.

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 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~~ 3.1 of this title.

34. "Sub-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 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.

Sec. 4. Section 45-437.02, Arizona Revised Statutes, is amended to read:

45-437.02. <u>Flood damaged acres; substitution of acres; definitions</u>

A. In an irrigation non-expansion area, a person who owns acres of land which may be irrigated pursuant to section 45-437 may permanently retire those acres from irrigation and substitute for those acres the same number

of acres in the same irrigation non-expansion area if the owner demonstrates to the director's satisfaction that all of the following apply:

1. The legally irrigated acres were damaged by floodwaters after being irrigated.

2. It is not economically feasible to restore the flood damaged acres to irrigation use.

~~3. The flood damaged acres have been under the same ownership since the date the acres were first damaged by floodwaters.~~

B. For purposes of this section:

1. "Floodwaters" means a temporary and erosive overflow of waters on lands not normally covered by water which occurred after January 1, 1975.

2. "Legally irrigated acres" means acres which may be irrigated pursuant to section 45-437.

Sec. 5. Section 45-437.03, Arizona Revised Statutes, is amended to read:

45-437.03. Limiting condition; substitution of acres; definition

A. In an irrigation non-expansion area, a person who owns acres of land which are contiguous and which may be irrigated pursuant to section 45-437 may apply to the director to permanently retire a portion of those acres from irrigation and substitute for the retired acres the same number of acres. The director may approve the substitution of acres if the owner demonstrates to the director's satisfaction that all of the following apply:

1. ~~The legally irrigated acres are irregular in shape and the irregularity in shape~~ A LIMITING CONDITION ASSOCIATED WITH THE ACRES TO BE RETIRED FROM IRRIGATION substantially impedes the implementation of more efficient ~~farm management~~ IRRIGATION practices ON THE LEGALLY IRRIGATED ACRES.

2. The substitution of acres will substantially reduce the ~~irregularity in shape of the legally irrigated acres~~ LIMITING CONDITION and will substantially facilitate the implementation of more efficient ~~farm management~~ IRRIGATION practices.

3. The substitute acres are ~~contiguous to~~ WITHIN THE SAME FARM UNIT AS the legally irrigated acres that will not be retired.

~~4. The owner has not previously substituted acres pursuant to this section for the legally irrigated acres.~~

4. THE SUBSTITUTION WILL NOT REDUCE THE NUMBER OF ACRES OF LAND WITHIN THE FARM UNIT THAT ARE ELIGIBLE TO RECEIVE CENTRAL ARIZONA PROJECT WATER.

5. IF THE ACRES TO BE RETIRED ARE LOCATED WITHIN THE EXTERIOR BOUNDARIES OF AN IRRIGATION DISTRICT, THE SUBSTITUTE ACRES WILL BE LOCATED WITHIN THE EXTERIOR BOUNDARIES OF THE SAME IRRIGATION DISTRICT.

6. THE AREA OF LAND WITHIN THE SUBSTITUTE ACRES THAT IS PHYSICALLY CAPABLE OF BEING IRRIGATED AT THE TIME THE APPLICATION FOR SUBSTITUTION OF ACRES IS FILED DOES NOT EXCEED THE AREA OF LAND WITHIN THE ACRES TO BE

RETIRED THAT IS PHYSICALLY CAPABLE OF BEING IRRIGATED AT THE TIME THE APPLICATION FOR SUBSTITUTION OF ACRES IS FILED.

B. For purposes of this section: ~~,~~

1. "Legally irrigated acres" means acres of land which are contiguous and which may be irrigated pursuant to section 45-437.

2. "LIMITING CONDITION" MEANS ANY CONDITION THAT LIMITS THE ACHIEVEMENT OF MORE EFFICIENT IRRIGATION ON THE LEGALLY IRRIGATED ACRES, INCLUDING IRREGULARLY SHAPED LEGALLY IRRIGATED ACRES AND POOR QUALITY SOILS.

Sec. 6. Section 45-465.01, Arizona Revised Statutes, is amended to read:

45-465.01. Flood damaged acres; substitution of acres; definition

A. A person who owns acres of land within an initial active management area which were legally irrigated at any time during the five years preceding January 1, 1980 and which have not been retired from irrigation for a non-irrigation use pursuant to section 45-463 or 45-469 may permanently retire such acres from irrigation and substitute for such acres the same number of acres within the same sub-basin or a contiguous sub-basin of the same initial active management area which were not legally irrigated at any time during the five years preceding January 1, 1980, and has the right to use groundwater for the irrigation of such substitute acres as determined pursuant to section 45-465 calculated on the basis of the acres which were legally irrigated, if the owner demonstrates to the satisfaction of the director that all the following apply:

1. The acres which were irrigated during the five years preceding January 1, 1980 were damaged by floodwaters after being irrigated.

2. It is not economically feasible to restore the flood damaged acres to irrigation use.

~~3. The flood damaged acres have been under the same ownership since the date the acres were first damaged by floodwaters.~~

~~4.~~ 3. The owner has received a certificate of grandfathered right for an irrigation use for the flood damaged acres.

B. Any acres permanently retired from irrigation pursuant to this section relinquish their irrigation grandfathered rights and such rights are deemed to be appurtenant to the substitute acres.

C. For purposes of this section, "floodwaters" means a temporary and erosive overflow of waters on lands not normally covered by water which occurred after January 1, 1975.

Sec. 7. Section 45-465.02, Arizona Revised Statutes, is amended to read:

45-465.02. Limiting condition; substitution of acres; definition

A. A person who owns acres of land described on a certificate of irrigation grandfathered right which have not been retired from irrigation

for a non-irrigation use under section 45-463 or 45-469 may apply to the director to permanently retire a portion of those acres from irrigation and substitute for those acres the same number of acres to which irrigation grandfathered rights are not appurtenant. The director may approve the substitution of acres if the owner demonstrates to the director's satisfaction that all of the following apply:

1. ~~The certificated acres are irregular in shape and the irregularity in shape~~ A LIMITING CONDITION ASSOCIATED WITH THE ACRES TO BE RETIRED FROM IRRIGATION substantially impedes the implementation of more efficient ~~farm management~~ IRRIGATION practices ON THE CERTIFICATED ACRES.

2. The substitution of acres will substantially reduce the ~~irregularity in shape of the certificated acres~~ LIMITING CONDITION and will substantially facilitate the implementation of more efficient ~~farm management~~ IRRIGATION practices.

3. The substitute acres are ~~contiguous to~~ WITHIN THE SAME FARM UNIT AS the certificated acres that will not be retired.

~~4. The owner has not previously substituted acres for the certificate pursuant to this section.~~

4. THE SUBSTITUTION WILL NOT REDUCE THE NUMBER OF ACRES OF LAND WITHIN THE FARM UNIT THAT ARE ELIGIBLE TO RECEIVE CENTRAL ARIZONA PROJECT WATER.

5. IF THE ACRES TO BE RETIRED ARE LOCATED WITHIN THE EXTERIOR BOUNDARIES OF AN IRRIGATION DISTRICT, THE SUBSTITUTE ACRES WILL BE LOCATED WITHIN THE EXTERIOR BOUNDARIES OF THE SAME IRRIGATION DISTRICT.

6. THE AREA OF LAND WITHIN THE SUBSTITUTE ACRES THAT IS PHYSICALLY CAPABLE OF BEING IRRIGATED AT THE TIME THE APPLICATION FOR SUBSTITUTION OF ACRES IS FILED DOES NOT EXCEED THE AREA OF LAND WITHIN THE ACRES TO BE RETIRED THAT IS PHYSICALLY CAPABLE OF BEING IRRIGATED AT THE TIME THE APPLICATION FOR SUBSTITUTION OF ACRES IS FILED.

B. Any acres permanently retired from irrigation pursuant to this section relinquish their irrigation grandfathered rights and such rights are deemed to be appurtenant to the substitute acres. The owner or lessee of the substitute acres has the right to use groundwater to irrigate the substitute acres as determined under section 45-465 calculated on the basis of the acres permanently retired from irrigation.

C. IF THE DIRECTOR APPROVES A SUBSTITUTION OF ACRES UNDER THIS SECTION, THE DIRECTOR MAY MODIFY AN IRRIGATION WATER DUTY ESTABLISHED FOR THE FARM UNIT IN WHICH THE CERTIFICATED ACRES ARE LOCATED TO REFLECT THE REMOVAL OF THE LIMITING CONDITION THAT IS ASSOCIATED WITH THE RETIRED IRRIGATION ACRES. THE MODIFICATION MAY BE MADE WITHOUT COMPLYING WITH SECTION 45-572. THE DIRECTOR SHALL GIVE WRITTEN NOTICE OF THE MODIFICATION TO THE OWNER OF THE CERTIFICATED ACRES WITHIN THIRTY DAYS AFTER THE MODIFICATION. AN AGGRIEVED PERSON MAY REQUEST AN ADMINISTRATIVE REVIEW PURSUANT TO SECTION 45-575 OR A VARIANCE PURSUANT TO SECTION 45-574. UNLESS A VARIANCE IS OBTAINED UNDER SECTION 45-574, THE OWNER OF THE CERTIFICATED ACRES AND THE

PERSON USING GROUNDWATER ON THE CERTIFICATED ACRES SHALL COMPLY WITH THE MODIFIED IRRIGATION WATER DUTY NO LATER THAN THE COMPLIANCE DATE SPECIFIED IN THE MODIFICATION NOTICE WHICH MAY BE LESS THAN TWO YEARS AFTER THE DATE OF THE NOTICE.

~~C.~~ D. For purposes of this section: ~~,~~

1. "Certificated acres" means the acres described on the certificate of irrigation grandfathered right.

2. "LIMITING CONDITION" MEANS ANY CONDITION THAT LIMITS THE ACHIEVEMENT OF MORE EFFICIENT IRRIGATION ON THE CERTIFICATED ACRES, INCLUDING IRREGULARLY SHAPED CERTIFICATED ACRES AND POOR QUALITY SOILS.

Sec. 8. Section 45-544, Arizona Revised Statutes, is amended to read:

45-544. Transportation in areas not subject to active management; damages; Little Colorado river plateau and Parker groundwater basins; definitions

A. Except as otherwise provided in this section and article 8.1 of this chapter, in areas outside of active management areas:

1. Groundwater may be transported:

(a) Within a sub-basin of a groundwater basin or within a groundwater basin, if there are no sub-basins, without payment of damages.

(b) Between sub-basins of a groundwater basin, subject to payment of damages.

2. Groundwater may not be transported away from a groundwater basin.

B. Notwithstanding subsection A, paragraph 2 of this section subject to payment of damages:

1. A person who at any time during the twelve months before January 1, 1991 was transporting away from the Little Colorado river plateau groundwater basin or the Parker groundwater basin groundwater that was legally withdrawn from a well in either groundwater basin has the right, subject to subsection C of this section, to transport groundwater that is legally withdrawn from the well or a replacement well in approximately the same location to another groundwater basin in an annual amount equal to the greater of the maximum amount of groundwater either:

(a) That was withdrawn from the well and transported by the person away from the groundwater basin in any one of the five calendar years immediately preceding January 1, 1991.

(b) That could have been withdrawn from the well during the twelve month period, taking into account the pump capacity and specific capacity of the well during that period, or twenty-five acre-feet, whichever is less.

2. A person may transport groundwater by motor vehicle from the Little Colorado river plateau groundwater basin or the Parker groundwater basin to an adjacent groundwater basin for domestic purposes or stock watering.

3. A city or town whose service area is located either in the Little Colorado river plateau groundwater basin and an adjacent groundwater basin or in the Parker groundwater basin and an adjacent groundwater basin may

transport groundwater that is withdrawn within that portion of its service area located in the Little Colorado river plateau groundwater basin or the Parker groundwater basin to the adjacent groundwater basin for the benefit of landowners and residents within its service area.

4. A city, ~~or~~ town OR PRIVATE WATER COMPANY whose service area is located in two adjacent groundwater basins and provides water utility service to landowners or residents in both basins as of July 1, 1993, may transport groundwater between those adjacent groundwater basins.

5. ~~A~~ THE TRANSPORTATION OF groundwater ~~transfer~~ in which groundwater is transported away from the groundwater basin and expansions of that transfer by the same person or its successor for the same purpose are valid if that transfer was occurring before September 1, 1993.

6. Groundwater may be transported away from a groundwater basin for mineral extraction and processing, ~~subject to payment of damages~~ except that no groundwater may be transported away from the Parker groundwater basin or the Little Colorado river plateau groundwater basin FOR THAT PURPOSE.

C. The director may limit by order the amount of groundwater withdrawn from a well in the Little Colorado river plateau groundwater basin for transportation away from the basin pursuant to subsection B, paragraph 1 of this section in any year in which the director determines that the projected withdrawals from the well for that purpose will unreasonably increase damage to surrounding land or other water users and if the well:

1. Was drilled on or before January 1, 1991.

2. Was not completed on January 1, 1991, but a notice of intention to drill the well was on file on that date.

3. Is a replacement well, in approximately the same location, for a well described in paragraph 1 or 2 of this subsection.

D. Groundwater may be withdrawn from a well drilled in the Little Colorado river plateau groundwater basin after January 1, 1991, except a replacement well in approximately the same location or a well drilled after that date pursuant to a notice of intention to drill that was on file with the department on that date, for transportation away from the basin pursuant to subsection B, paragraph 1 of this section only if the location of the well complies with the rules adopted pursuant to section 45-598, subsection A to prevent unreasonably increasing damage to surrounding land or other water users from the concentration of wells.

E. For purposes of this section:

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

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

1 Sec. 9. Section 45-576, Arizona Revised Statutes, is amended to read:
2 45-576. Certificate of assured water supply; designated cities,
3 towns and private water companies; exemptions;
4 definition
5 A. A person who proposes to offer subdivided lands, as defined in
6 section 32-2101, for sale or lease in an active management area shall apply
7 for and obtain a certificate of assured water supply from the director prior
8 to presenting the plat for approval to the city, town or county in which the
9 land is located, where such is required, and prior to filing with the state
10 real estate commissioner a notice of intention to offer such lands for sale
11 or lease, pursuant to section 32-2181, unless the subdivider has obtained a
12 written commitment of water service for the subdivision from a city, town or
13 private water company designated as having an assured water supply pursuant
14 to this section.
15 B. A city, town or county may approve a subdivision plat only if the
16 subdivider has obtained a certificate of assured water supply from the
17 director or the subdivider has obtained a written commitment of water service
18 for the subdivision from a city, town or private water company designated as
19 having an assured water supply pursuant to this section. The city, town or
20 county shall note on the face of the approved plat that a certificate of
21 assured water supply has been submitted with the plat or that the subdivider
22 has obtained a written commitment of water service for the proposed
23 subdivision from a city, town or private water company designated as having
24 an assured water supply~~,~~ pursuant to this section.
25 C. The state real estate commissioner may issue a public report
26 authorizing the sale or lease of subdivided lands only if the subdivider,
27 owner or agent has obtained a certificate of assured water supply from the
28 director or the subdivider has obtained a written commitment of water service
29 for the lands from a city, town or private water company designated as having
30 an assured water supply pursuant to this section.
31 D. The director shall designate private water companies in active
32 management areas that have an assured water supply. If a city or town
33 acquires a private water company which has contracted for central Arizona
34 project water, the city or town shall assume the private water company's
35 contract for central Arizona project water.
36 E. The director shall designate cities and towns in active management
37 areas where an assured water supply exists. If a city or town has entered
38 into a contract for central Arizona project water, the city or town is deemed
39 to continue to have an assured water supply until December 31, 1997.
40 Commencing on January 1, 1998, the determination that the city or town has
41 an assured water supply is subject to review by the director and the director
42 may determine that a city or town does not have an assured water supply.
43 F. The director shall notify the mayors of all cities and towns in
44 active management areas and the chairmen of the boards of supervisors of

counties in which active management areas are located of the cities, towns and private water companies designated as having an assured water supply and any modification of that designation within thirty days of the designation or modification. Persons proposing to offer subdivided lands served by those designated cities, towns and private water companies for sale or lease are exempt from applying for and obtaining a certificate of assured water supply.

G. This section does not apply in the case of the sale of lands for developments which are subject to a mineral extraction and processing permit or an industrial use permit pursuant to sections 45-514 and 45-515.

H. The director shall adopt rules to carry out the purposes of this section no later than January 1, 1995.

~~I. A person who proposes to offer unsubdivided land as defined in section 32-2101 for sale or lease in an active management area shall obtain a water report as required under section 45-108 before the recording of a plat or issuance of a public report.~~

~~J.~~ I. For purposes of this section, "assured water supply" means all of the following:

1. Sufficient groundwater, surface water or effluent of adequate quality will be continuously available to satisfy the water needs of the proposed use for at least one hundred years. Beginning January 1 of the calendar year following the year in which a groundwater replenishment district is required to submit its preliminary plan pursuant to section 45-576.02, subsection A, paragraph 1, with respect to an applicant that is a member of the district, "sufficient groundwater" for purposes of this paragraph means that the proposed groundwater withdrawals that the applicant will cause over a period of one hundred years will be of adequate quality and will not exceed, in combination with other withdrawals from land in the replenishment district, a depth to water of one thousand feet or the depth of the bottom of the aquifer, whichever is less. In determining depth to water for the purposes of this paragraph, the director shall consider the combination of:

(a) The existing rate of decline.

(b) The proposed withdrawals.

(c) The expected water requirements of all recorded lots that are not yet served water and that are located in the service area of a municipal provider.

2. The projected groundwater use is consistent with the management plan and achievement of the management goal for the active management area.

3. The financial capability has been demonstrated to construct the ~~delivery system and any treatment works~~ WATER FACILITIES necessary to make the supply of water available for the proposed use, INCLUDING A DELIVERY SYSTEM AND ANY STORAGE FACILITIES OR TREATMENT WORKS. THE DIRECTOR MAY ACCEPT EVIDENCE OF THE CONSTRUCTION ASSURANCES REQUIRED BY SECTION 9-463.01, 11-806.01 OR 32-2181 TO SATISFY THIS REQUIREMENT.

Sec. 10. Section 45-578, Arizona Revised Statutes, is amended to read:

45-578. Notice; objections; hearing; issuance of certificate; appeals

A. ~~When the application for a certificate of assured water supply is determined complete and correct,~~ The director shall~~, within fifteen days of such determination,~~ give notice of the application~~,~~ FOR A CERTIFICATE OF ASSURED WATER SUPPLY once each week for two consecutive weeks in a newspaper of general circulation in the ~~county or counties in which the~~ active management area in which the applicant proposes to ~~withdraw groundwater is located~~ USE WATER. THE FIRST PUBLICATION SHALL OCCUR WITHIN FIFTEEN DAYS AFTER THE APPLICATION IS DETERMINED COMPLETE AND CORRECT OR AT ANY EARLIER TIME AS THE APPLICANT MAY REQUEST AFTER THE APPLICATION IS DETERMINED COMPLETE. IF THE APPLICATION IS SUBSTANTIALLY MODIFIED AFTER NOTICE OF THE APPLICATION IS GIVEN PURSUANT TO THIS SUBSECTION, THE DIRECTOR SHALL GIVE NOTICE OF THE APPLICATION AS MODIFIED IN THE MANNER PRESCRIBED BY THIS SUBSECTION. THE FIRST PUBLICATION OF ANY SUBSEQUENT NOTICE SHALL OCCUR WITHIN FIFTEEN DAYS AFTER THE MODIFIED APPLICATION IS DETERMINED COMPLETE AND CORRECT OR AT ANY EARLIER TIME AS THE APPLICANT MAY REQUEST AFTER THE MODIFIED APPLICATION IS DETERMINED COMPLETE.

B. Notice pursuant to subsection A of this section shall state that objections to the issuance of the certificate may be filed by residents of the active management area, in writing, with the director within fifteen days after the last publication of notice. An objection shall state the name and mailing address of the objector, be signed by the objector, his agent or his attorney and clearly set forth reasons why the certificate should not be issued. The grounds for objection are limited to whether the certificate application meets the criteria for determining an assured water supply set forth in section 45-576, subsection I.

C. In appropriate cases, including cases where a proper written objection to the certificate application has been filed, the director may hold a hearing on the application. The director shall, thirty days prior to the date of the hearing, give notice of the hearing to the applicant and to any person who filed a proper written objection to the issuance of the certificate. The hearing shall be scheduled for not less than sixty days nor more than ninety days after the expiration of the time in which to file objections. A hearing shall be conducted as provided in section 45-480, subsection B.

D. Upon finding that an assured water supply exists for the proposed use, the director shall issue a certificate of assured water supply to the applicant. Upon finding that an assured water supply does not exist, the director shall deny the application and return it to the applicant.

E. An aggrieved party or a person who contested a certificate by filing a proper objection pursuant to subsection B of this section may appeal the decision to the superior court.

F. If the application for a certificate of assured water supply is for land in an active management area where an active management area water district exists under title 48, chapter 28, when the application is determined to be complete and correct, the director shall transmit a copy of the application to the district.

Sec. 11. Section 45-611, Arizona Revised Statutes, is amended to read:

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

A. Except as provided in section 45-411.01, subsection C and subsection B of this section and except for the Santa Cruz active management area, the director shall levy and collect an annual groundwater withdrawal fee from each person withdrawing groundwater in an active management area or the person who owns the right to withdraw the groundwater, in an amount not to exceed five dollars per acre-foot of groundwater withdrawn and beneficially used. In the Santa Cruz active management area, the director shall levy and collect an annual withdrawal fee from persons who withdraw water, other than stored water, from a well in an amount not to exceed five dollars per acre-foot of water, other than stored water, that is withdrawn and beneficially used. For purposes of this article, the annual withdrawal fee levied and collected in the Santa Cruz active management area shall be considered a groundwater withdrawal fee. The actual amount of the fee shall be set by the director as follows:

1. For administration and enforcement of this chapter, an amount not less than fifty cents and not greater than one dollar per acre-foot per year. The initial fee for administration and enforcement shall be levied as soon as practicable after the active management area is established.

2. For augmentation of the water supply of the active management area, ~~and~~ conservation assistance to water users within the active management area AND MONITORING AND ASSESSING WATER AVAILABILITY WITHIN THE ACTIVE MANAGEMENT AREA, an amount not greater than two dollars per acre-foot per year. If a permanent board of directors of an active management area water district assumes office under section 48-4831, the fee for augmentation under this paragraph shall not be levied in that active management area.

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

B. A person, other than an irrigation district, who withdraws groundwater in an active management area from a non-exempt well for use

pursuant to an irrigation grandfathered right that is appurtenant to ten or fewer irrigation acres and the person who owns the right to withdraw the groundwater are exempt from the groundwater withdrawal fee requirements of subsection A of this section for those withdrawals unless the irrigation acres are part of an integrated farming operation.

Sec. 12. Section 45-613, Arizona Revised Statutes, is amended to read:

45-613. Use of withdrawal fees collected for augmentation and conservation and purchase and retirement of grandfathered rights

A. Monies collected IN AN ACTIVE MANAGEMENT AREA for purposes of augmentation, ~~and~~ conservation assistance and ~~purchase and retirement of grandfathered rights~~ MONITORING AND ASSESSING WATER AVAILABILITY under section 45-611, subsection A, ~~paragraphs~~ PARAGRAPH 2 ~~and 3~~ shall be used ONLY to finance ~~programs only for the benefit of the active management area in which they are collected~~ THE AUGMENTATION AND CONSERVATION ASSISTANCE PROGRAMS THAT ARE PART OF THE MANAGEMENT PLAN FOR THE ACTIVE MANAGEMENT AREA AND TO FUND ANY PROJECTS THAT ARE AUTHORIZED BY THE DIRECTOR FOR MONITORING AND ASSESSING WATER AVAILABILITY WITHIN THE ACTIVE MANAGEMENT AREA.

B. MONIES COLLECTED IN AN ACTIVE MANAGEMENT AREA FOR THE PURPOSE OF PURCHASING AND RETIRING GRANDFATHERED RIGHTS UNDER SECTION 45-611, SUBSECTION A, PARAGRAPH 3 SHALL BE USED ONLY TO FINANCE THE PROGRAM FOR THE PURCHASE AND RETIREMENT OF GRANDFATHERED RIGHTS THAT IS PART OF THE MANAGEMENT PLAN FOR THE ACTIVE MANAGEMENT AREA.

Sec. 13. Section 45-614, Arizona Revised Statutes, is amended to read:

45-614. Setting groundwater withdrawal fee; statement entered in record; statement transmitted to state treasurer; notice; payment; penalty

A. The director, not later than October 1 each year, shall set the groundwater withdrawal fee for each active management area for the following calendar year. In setting the fee, the director shall consider, among other things:

1. The estimated financial requirements for the next fiscal year.

2. The estimated amount of groundwater which will be withdrawn in the active management areas, except the Santa Cruz active management area, in the next calendar year.

3. The estimated amount of water, other than stored water, that will be withdrawn from wells in the Santa Cruz active management area in the next calendar year.

4. The amount of monies collected from groundwater withdrawal fees in the preceding calendar year.

5. Any monies expected to be available for use from the groundwater enforcement fund.

B. The director shall enter in the records of the department a statement of the estimated financial requirements for the next fiscal year

and a statement of the groundwater withdrawal fees for each active management area for the next calendar year, itemized to show the amounts to be levied for administration and enforcement, augmentation, ~~and~~ conservation assistance AND MONITORING AND ASSESSING WATER AVAILABILITY and THE purchase and retirement of grandfathered rights. The director shall transmit to the state treasurer a copy of the itemized statement of the groundwater withdrawal fees.

C. Within thirty days after the director sets the groundwater withdrawal fees for the next calendar year, the director shall give notice of the fees by:

1. Giving written notice to the clerk of the board of supervisors of the county or counties in which the active management area is located and to the mayor of each city or town, to each private water company and to the presiding officer of each political subdivision established pursuant to title 48, chapter 17, 18, 19 or 20 and located in the active management area.

2. Written notice to all holders of groundwater withdrawal permits in the active management area.

D. A person who, under section 45-604, subsection B, is not required to use and does not use a water measuring device to measure withdrawals made pursuant to a type 2 non-irrigation grandfathered right or a groundwater withdrawal permit shall pay an amount equal to the groundwater withdrawal fee set by the director for the calendar year multiplied by the number of acre-feet of the grandfathered right or the groundwater withdrawal permit.

E. The groundwater withdrawal fee shall be paid to the department at the time the person withdrawing the water files a report on annual withdrawals pursuant to section 45-632. If a person who is required under section 45-611 to pay a groundwater withdrawal fee for calendar year 1985 or any subsequent calendar year fails to pay the fee for the calendar year in question on or before March 31 of the following year, the director may assess and collect a penalty of ten per cent of the unpaid fee, without compounding, for each month or portion of a month that the fee is delinquent. The total penalty assessed under this subsection shall not exceed sixty per cent of the unpaid fee. The director shall transmit all penalties collected under this section to the state treasurer for deposit in the state general fund.

Sec. 14. Section 45-615, Arizona Revised Statutes, is amended to read:

45-615. <u>Remittance of collections to state treasurer; divisions of collections into funds</u>

Except as provided in section 45-113, the director shall remit all monies collected by the department pursuant to section 45-611, subsection A, paragraphs 2 and 3 and any other monies received for that purpose to the state treasurer. Based on the statement of the director transmitted pursuant to section 45-614, subsection B, the monies collected shall be allocated as follows:

1. Except as provided in paragraph 2 of this section, monies received for the purpose of augmentation of the water supply of the active management area, ~~and~~ conservation assistance to water users within the active management area AND MONITORING AND ASSESSING WATER AVAILABILITY WITHIN THE ACTIVE MANAGEMENT AREA shall be kept in an augmentation and conservation assistance fund. The state treasurer shall maintain within the fund separate accounts for each active management area. All interest earned from the investments shall be credited to the fund.

2. If an active management area water district has been established in an active management area, all monies received pursuant to section 45-611, subsection A, paragraph 2 for the purpose of augmentation of the water supply of that active management area shall be transmitted to the secretary-treasurer of the district for deposit in the general fund of the district.

3. Monies received for the purpose of purchase and retirement of grandfathered rights shall be kept in a purchase and retirement fund. The state treasurer shall maintain within the fund separate accounts for each active management area. All interest earned from the investments shall be credited to the fund.

Sec. 15. Section 45-852.01, Arizona Revised Statutes, is amended to read:

45-852.01. Long-term storage accounts

A. The director shall establish one long-term storage account for each person holding long-term storage credits. The director shall establish subaccounts within the long-term storage account according to each active management area, irrigation non-expansion area, groundwater basin or groundwater sub-basin in which the person's stored water is located. The long-term storage account shall be further subdivided by type of water, if the person holds long-term storage credits for more than one type of water.

B. Water stored pursuant to a water storage permit at a storage facility may be credited to a long-term storage account if the director determines that all of the following apply:

1. The water that was stored was water that cannot reasonably be used directly.

2. If the stored water was stored at a storage facility within an active management area, either:

(a) The water would not have been naturally recharged within the active management area.

(b) If the water was stored at a managed underground storage facility that has been designated as a facility that could add value to a national park, national monument or state park and the water stored is effluent, the water stored is water that could have been used or disposed of by the storer by means other than discharging the effluent into the stream.

3. The stored water was not recovered on an annual basis pursuant to section 45-851.01.

C. The director shall credit ~~one hundred~~ NINETY-FIVE per cent of the recoverable amount of stored water that meets the requirements of subsection B of this section to the storer's long-term storage account, except that:

1. If the water was stored at a managed underground storage facility that had not been designated at the time of storage as a facility that could add value to a national park, national monument or state park and the water stored is effluent, the director shall credit to the storer's long-term storage account fifty per cent of the recoverable amount of water that meets the requirements of subsection B of this section.

2. If the water was stored at a groundwater savings facility and the storer has not met the burden of proving that one hundred per cent of the in lieu water was used on a gallon-for-gallon substitute basis for groundwater, the director shall credit to the storer's long-term storage account only the percentage of the in lieu water that meets the requirements of subsection B of this section and that was proven to the director's satisfaction as being used on a gallon-for-gallon substitute basis for groundwater.

3. EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPHS 1 AND 2 OF THIS SUBSECTION, THE DIRECTOR SHALL CREDIT TO THE STORER'S LONG-TERM STORAGE ACCOUNT ONE HUNDRED PER CENT OF THE RECOVERABLE AMOUNT OF WATER THAT MEETS THE REQUIREMENTS OF SUBSECTION B OF THIS SECTION IF ANY OF THE FOLLOWING APPLY:

(a) THE WATER STORED WAS EFFLUENT.

(b) THE WATER WAS STORED IN AN ACTIVE MANAGEMENT AREA AND THE STORED WATER IS WATER FROM OUTSIDE THE ACTIVE MANAGEMENT AREA THAT WOULD NOT HAVE REACHED THE ACTIVE MANAGEMENT AREA WITHOUT THE EFFORTS OF THE HOLDER OF THE LONG-TERM STORAGE CREDITS.

(c) THE WATER WAS STORED OUTSIDE AN ACTIVE MANAGEMENT AREA AND THE STORED WATER IS WATER FROM OUTSIDE THE GROUNDWATER BASIN IN WHICH THE WATER WAS STORED THAT WOULD NOT HAVE REACHED THE GROUNDWATER BASIN WITHOUT THE EFFORTS OF THE HOLDER OF THE LONG-TERM STORAGE CREDITS.

D. The director shall credit a person's long-term storage account by the amount of long-term storage credits assigned to that person by another holder of long-term storage credits pursuant to section 45-854.01.

E. The director shall debit the appropriate subaccount of a person's long-term storage account:

1. One hundred ~~ten~~ per cent of the amount of stored water that the holder of the long-term storage credits has recovered during the calendar year pursuant to the permit. ~~, except that:~~

~~(a) If the stored water is effluent, one hundred per cent of the amount of stored water the holder of the long-term storage credits has recovered during the calendar year.~~

~~(b) If the water was stored in an active management area and the stored water is water from outside of the active management area that would not have reached the active management area without the efforts of the holder of the long-term storage credits, one hundred per cent of the amount of stored water that the holder of the long-term storage credits has recovered during the calendar year.~~

~~(c) If the water was stored outside of an active management area and the stored water is water from outside of the groundwater basin in which the water was stored that would not have reached the groundwater basin without the efforts of the holder of the long-term storage credits, one hundred per cent of the amount of stored water the holder of the long-term storage credits has recovered during the calendar year.~~

~~(d) Except as provided in subdivisions (a) and (b) of this paragraph, if the water was stored in an active management area and the storer of the long-term storage credits recovers stored water from a well within the area of impact of the stored water, one hundred five per cent of the amount of stored water the holder of the long-term storage credits has recovered during the calendar year.~~

2. The amount of long-term storage credits that the person has assigned to another person or transferred to a master replenishment account, conservation district account or water district account.

3. If the water was stored in an active management area, the amount of water during the calendar year that migrates to a location outside the active management area or to a location within the active management area where it cannot be beneficially used within a reasonable period of time by persons other than the storer with rights to withdraw and use groundwater.

4. If the water was stored outside of an active management area, the amount of water during the calendar year that migrates to a location outside the groundwater basin in which the storage facility is located or to a location in the groundwater basin where it cannot be beneficially used within a reasonable period of time by persons other than the storer with rights to withdraw and use groundwater.

5. The amount of long-term storage credits that the storer, pursuant to section 45-853.01, subsection B, has applied to offset groundwater withdrawn or used in excess of the storer's per capita municipal conservation requirements under the second management plan.

F. To the extent the total amount of water withdrawn by a person from wells designated as recovery wells pursuant to section 45-834.01 during a calendar year exceeds the amount of stored water recovered by the person on an annual basis pursuant to section 45-851.01 and the amount of long-term storage credits recovered by the person, the excess amount of water recovered shall be considered groundwater withdrawn pursuant to chapter 2 of this title.

Sec. 16. Section 45-855.01, Arizona Revised Statutes, is amended to read:

45-855.01. Effect of long-term storage credits on assured water supply and adequate water supply

A. In an active management area, except as provided in section 45-853.01, subsection C, and on the request of a person who holds long-term storage credits, the director shall include ~~between ninety and one hundred per cent of~~ the amount of long-term storage credits requested by the person in determining whether to issue a certificate of assured water supply to the person pursuant to section 45-576, or if the person is a city, town or private water company, whether to designate or redesignate the city, town or private water company as having an assured water supply. This subsection shall not be construed to prohibit or require the director to include projected additions to a long-term storage account in determining whether to issue a certificate of assured water supply to the person, or if the person is a city, town or private water company, whether to designate or redesignate the city, town or private water company as having an assured water supply.

B. Outside an active management area, except as provided in section 45-853.01, subsection C and on the request of a person who holds long-term storage credits, the director shall include ~~between ninety and one hundred per cent of~~ the amount of long-term storage credits requested by the person in determining whether to issue a report of adequate water supply pursuant to section 45-108 for a subdivision to the person, or if the person is a city, town or private water company, whether to designate the city, town or private water company as having an adequate water supply. This subsection shall not be construed to prohibit or require the director to include projected additions to a long-term storage account in determining whether to issue a report of adequate water supply for a subdivision to the person, or if the person who holds the long-term storage account is a city, town or private water company, whether to designate the city, town or private water company as having an adequate water supply.

C. Long-term storage credits included by the director in making the determinations and designations in subsections A and B of this section are not assignable by the person holding the credits, unless the director has determined that the credits will continue to be used for the subdivision for which the certificate of assured water supply or certificate of adequate water supply has been issued or for the service area that has been designated as having an assured water supply or an adequate water supply.

Sec. 17. Section 45-871.01, Arizona Revised Statutes, is amended to read:

45-871.01. Permit application; fee; notice of application; objections; hearing; appeal

A. The director shall prescribe and furnish application forms for the permits prescribed by articles 2 and 3 of this chapter. The application

forms shall require the applicant to submit the information needed by the director to determine whether the permit may be issued. The director shall establish and collect a reasonable fee from the applicant to cover the cost of administrative services and other expenses associated with evaluating and issuing each permit. All fees collected pursuant to this subsection shall be remitted pursuant to section 45-615, paragraph 1.

B. On receipt of an application for a permit pursuant to this chapter, the director shall endorse on the application the date of its receipt and shall keep a record of the application. The director shall conduct a review of the application within one hundred days of receipt of the application. If the director determines in the review that the application is incomplete or incorrect, the director shall notify the applicant and the review period is extended by fifteen days. The application is incomplete or incorrect until the applicant files the information requested in the application. The director may conduct independent investigations as necessary to determine whether the application should be approved or rejected.

C. If the application is for water storage at an underground storage facility that is exempt from the requirement for an aquifer protection permit under section 49-250, subsection B, paragraph 12, the director of water resources shall consult with the director of environmental quality and shall develop a coordinated and unified permit review process, which conforms to the time schedule prescribed by this section, to determine whether the permit application is correct and whether the development of a plan of action for monitoring and data analysis shall be required.

D. Except as provided in subsection E of this section, if the application is determined to be complete and correct and the application is for a storage facility permit or a water storage permit, the director, within fifteen days of that determination or a longer period if requested by the applicant, shall give notice of the application once each week for two consecutive weeks in a newspaper of general circulation in the county or counties in which persons reside who could reasonably be expected to be affected by the water storage. The director shall also give notice by first class mail to each city, town, private water company, irrigation district and electrical district that serves land within the area of impact of the stored water. The notice shall state that persons who may be adversely affected by the water storage may file written objections to the issuance of the permit with the director for fifteen days after the last publication of notice. An objection shall state the name and mailing address of the objector, shall be signed by the objector or the objector's agent or attorney and shall clearly set forth the reasons why the permit should not be issued. The grounds for objection are limited to whether the application meets the criteria for issuing the permit being requested as prescribed by articles 2 and 3 of this chapter.

E. If the application is determined to be complete and correct and the application is for a water storage permit to store Colorado river water at a storage facility where storage of Colorado river water has previously been permitted, the director may issue the permit within twenty days of that determination if all of the following apply:

1. The holder of the storage facility permit with which the water storage permit will be affiliated has consented to the water storage.

2. The water storage permit will not require a modification of an affiliated water storage facility permit.

3. Colorado river water will be the only type of water stored under the water storage permit.

4. The applicant has the right to use the Colorado river water.

F. Except as provided in section 45-834.01, subsection D, if the application is determined to be complete and correct and the application is for a recovery well permit, the director, within fifteen days of the determination or a longer period if requested by the applicant, shall give notice of the application once each week for two consecutive weeks in a newspaper of general circulation in the county in which the applicant proposes to recover stored water. If the application is for a well within the area of impact of the stored water, the director shall also give notice by first class mail to each city, town, private water company, irrigation district or electrical district that serves land within the area of impact. If the applicant is a city, town, private water company or irrigation district and the application is for a well within the service area of the applicant but outside the area of impact of the stored water, the director shall also give notice to each city, town, private water company or irrigation district that serves land within the service area of the applicant. If the application is for a well located within three miles outside of the exterior boundaries of the service area of a city, town, private water company or irrigation district, the applicant shall give notice of the application by first class mail to each city, town, private water company or irrigation district within that distance. The applicant shall file proof of the notice with the director. The notice shall state that persons who may be adversely affected by the recovery well may file written objections to the issuance of the permit with the director for fifteen days after the last publication of notice. An objection shall state the name and mailing address of the objector, shall be signed by the objector or the objector's agent or attorney and shall clearly set forth reasons why the permit should not be issued. The grounds for objection are limited to whether the application meets the criteria for issuing a recovery well permit as set forth in section ~~45-834~~ 45-834.01, subsection B. For the purposes of this subsection, if the proposed recovery well is located within three miles outside of the exterior boundaries of the service area of a city, town, private water company or irrigation district, a city, town, private water

company or irrigation district within that distance shall be considered a person who may be adversely affected by the recovery well.

G. In appropriate cases, including cases in which a proper objection to the permit application has been filed, the director may hold a hearing. At least thirty days before the hearing, the director shall notify the applicant and any person who filed a proper objection to the issuance of the permit. The hearing shall be scheduled for at least sixty days but not more than ninety days after the expiration of the time in which to file objections. The hearing shall be conducted as provided in section 45-480, subsection B.

H. If a hearing is held, the director shall issue a decision and order either affirming or modifying the hearing officer's determination within six months of the notice of the hearing, or within ninety days in the case of an application under article 6 of this chapter. If a hearing is not held, the director shall issue a decision and order within six months of the date notice of the application is first given pursuant to subsection D or F of this section, or within ninety days in the case of an application under article 6 of this chapter. The director shall record and endorse the approval or rejection of the application on the application. If the permit is denied, the director shall return a copy of the application to the applicant specifically stating the reasons for denial.

I. The applicant or any person who filed a proper objection to the application may appeal the decision to superior court as provided in section 45-405.

Sec. 18. Section 45-1207, Arizona Revised Statutes, is amended to read:

45-1207. <u>Approval or disapproval of applications; commencing construction</u>

A. Upon receipt of an application, the director shall approve, disapprove or approve subject to conditions necessary to insure safety.

B. A defective application shall not be rejected, but notice of the defects shall be sent to the applicant by registered mail. If the applicant fails to file a perfected application within thirty days, the original shall be canceled unless further time is allowed.

C. No application shall be approved in less than ten days from its receipt, nor shall an application be retained more than sixty days after it is filed unless the director finds that additional information is necessary. AN APPLICANT MAY REQUEST THAT THE DIRECTOR EXPEDITE THE REVIEW OF THE APPLICATION THROUGH THE EMPLOYMENT OF AN EXPERT CONSULTANT ON A CONTRACT BASIS PURSUANT TO SECTION 45-104, SUBSECTION D TO ASSIST THE DIRECTOR IN REVIEWING THE APPLICATION. IF AN APPLICANT REQUESTS AN EXPEDITED REVIEW OF THE APPLICATION PURSUANT TO THIS SUBSECTION AND THE DIRECTOR EMPLOYS A CONSULTANT, THE APPLICANT SHALL PAY TO THE DEPARTMENT THE COST OF THE

CONSULTANT'S SERVICES IN ADDITION TO ANY OTHER FEES THAT THE APPLICANT IS REQUIRED TO PAY UNDER THIS CHAPTER.

D. If the director disapproves an application, one copy shall be returned with a statement of his objections. If an application is approved, the approval shall be attached to the application and a copy returned by registered mail. Approval shall be granted under terms, conditions and limitations which the director deems necessary to safeguard life and property.

E. Construction shall be commenced within one year after the date of approval of the application or such approval is void. The director upon written application and good cause shown may extend the time for commencing construction. Notice by registered mail shall be given to the director at least ten days before construction is commenced.

Sec. 19. Section 45-1972, Arizona Revised Statutes, is amended to read:

45-1972. Groundwater augmentation and conservation assistance fee; transfer to authority

A. Within sixty days after the authority is formed, the state treasurer shall transfer to the secretary-treasurer of the authority one-half of all unencumbered monies and the accrued interest on those monies that were collected in the prior year ~~for the purposes of augmentation of the water supply of the active management area and conservation assistance to water users within the active management area~~ pursuant to section 45-611, subsection A, paragraph 2 ~~and section 45-615, paragraph 1~~.

B. Beginning in the year the authority is formed, and in each year thereafter on or before June 15, the state treasurer shall transfer to the secretary-treasurer of the authority one-half of all unencumbered monies collected in that year ~~for the purposes of augmentation of the water supply of the active management area and conservation assistance to water users within the active management area~~ pursuant to section 45-611, subsection A, paragraph 2 ~~and section 45-615, paragraph 1~~.

C. The secretary-treasurer shall deposit the transferred monies in the general fund of the authority, and the authority may spend the monies to carry out the purposes of this chapter.

Sec. 20. Section 45-2242, Arizona Revised Statutes, is amended to read:

45-2242. Functional powers of the board

A. The board, for and in the name of the authority, may:

1. Lawfully acquire, sell, lease, exchange, occupy, manage, possess or otherwise dispose of real and personal property, easements and rights-of-way that are necessary or required for the uses and purposes of the authority.

2. Construct, maintain and operate all works and other property acquired and used for any of the projects owned by the authority.

3. Acquire, hold, assign or otherwise dispose of credits registered to storage accounts under any provision of chapter ~~3~~ 3.1 of this title.

4. Accept appointment or other authorization and act as agent of any authority member to acquire, transport, deliver, treat or recharge water.

5. Acquire electricity or other forms of energy necessary to transport water or operate authority projects.

6. Subject to the requirements of section 45-2281, make grants to its members from the grant fund established in section 45-2281 to fund water acquisition, water reuse or water conservation programs proposed by authority members.

7. Plan, coordinate, construct, operate, maintain and dismantle water augmentation projects including treatment, recharge, underground storage and recovery and retention projects and, in conjunction with county flood control districts, flood control projects for water augmentation purposes.

8. Obtain grants and provide technical and financial assistance to authority members relating to the development of water supplies and water conservation plans.

9. With the permission of any affected authority member, negotiate with the United States in conjunction with the department regarding the administration, implementation or interpretation of:

(a) Colorado river water contracts of the authority.

(b) Subcontracts of the authority.

(c) Colorado river water contracts of authority members.

(d) Diversion of Colorado river water in the county in which the authority is formed.

10. Conduct any other activities that are reasonably necessary and related to the powers and duties described by this chapter.

B. The board may:

1. Apply for and hold, in its own name or on behalf of an authority member, any permits required by law to engage in the activities described in this chapter.

2. Take conveyances for all property acquired by the authority in the authority's name.

3. Sell, lease, exchange or otherwise dispose of any of the authority's property that is no longer necessary or suitable for the uses and purposes of the authority and execute, acknowledge and deliver all such conveyances, leases, contracts or other instruments as the board deems necessary.

4. Institute and maintain actions and proceedings necessary to enforce, maintain, protect or preserve all contracts, subcontracts, rights, privileges and immunities created under or granted by this chapter.

Sec. 21. Section 48-4976, Arizona Revised Statutes, is amended to read:

48-4976. Reports

A. On or before March 31 of each year after the recordation of the instrument described in section 48-4975, subsection C, each municipal provider delivering water to water district member land shall file a report with the district, with the director of water resources and with the county assessor and treasurer of the county where the water district member lands are located, that contains the following information for the preceding calendar year, which is the reporting year:

1. The amount of groundwater delivered by the municipal provider to each parcel of water district member land, identified by the applicable tax parcel number, and the basis for the calculation of the amount of groundwater delivered.

2. The amount of groundwater delivered by the municipal provider to the water district member land, and the basis for the calculation of the amount of groundwater delivered.

3. The amount of excess groundwater delivered by the municipal provider to the water district member land, and the basis for the calculation of the amount of excess groundwater delivered.

4. The water district parcel replenishment obligation of each parcel of water district member land, identified by the applicable tax parcel number.

5. Such other information as the district may reasonably require.

B. On or before March 31 of each year after the publication of the resolution described in section 48-4981, each municipal provider delivering water to a water district member service area shall file a report with the district and with the director of water resources that contains the following information for the preceding calendar year, which is the reporting year:

1. The amount of groundwater delivered by the municipal provider to all customers within the water district member service area, and the basis for the calculation of the amount of groundwater delivered.

2. The amount of excess groundwater delivered by the municipal provider to all customers within the water district member service area, and the basis for the calculation of the amount of excess groundwater delivered.

3. Such other information as the district may reasonably require.

C. The district shall confirm the calculation of the water district parcel replenishment obligation of each parcel of the water district member land and the water district service area replenishment obligation of each water district member service area, using the information provided in subsections A and B of this section.

D. To the extent allowed by the assured water supply rules adopted by the department of water resources pursuant to section 45-576, subsection ~~L~~ H, in calculating the excess groundwater of a water district member land or a water district member service area, the municipal provider shall reduce the amount of groundwater that may be used, consistent with such rules, at a

water district member land or delivered for use within the water district member service area and that is not derived from credits on a straight-line basis over the applicable period of years prescribed in such rules. The municipal provider may apply any credits applicable to the water district member land or the water district member service area as permitted under such rules.

E. The district shall prepare and file with the director of water resources on or before August 31 of each year for the prior calendar year, which is the reporting year, an annual report that includes the following information:

1. The total amount of water that was stored by the district during the reporting year pursuant to each water storage permit issued to the district under title 45, chapter 3.1.

2. The amount of water stored by the district during the reporting year to be credited to the district's water district account pursuant to title 45, chapter 3.1.

3. The water district groundwater replenishment obligations for the reporting year and for the two calendar years preceding the reporting year, and the extent to which the district has completed the water district groundwater replenishment obligations applicable to each of those years.

4. The information prescribed in section 45-676.01.

5. The amount of water stored by the district during the reporting year to be credited to the district's long-term storage account pursuant to title 45, chapter 3.1.

6. The amount of long-term storage credits the district has transferred and credited to its water district account during the reporting year pursuant to title 45, chapter 3.1.

F. The district and the municipal providers required to file reports under this section shall maintain current, accurate records of the information required to be included in the reports.

G. If a municipal provider fails to file a report as required by the district, the district may assess a penalty of up to one thousand dollars per day that the report is overdue.

H. The district and the director of water resources shall determine the form of any reports to be submitted by a municipal provider pursuant to this chapter. Each report shall contain either a sworn statement or a certification under penalty of perjury that the information contained in the report is true and correct according to the best belief and knowledge of the person submitting the report.

Sec. 22. Long-term storage account debit

On the effective date of this act, the director of water resources shall debit from each existing long-term storage account established pursuant to section 45-852.01, Arizona Revised Statutes, an amount equal to five per

cent of the balance of each type of water that is represented in that long-term storage account except:

1. If the water stored was effluent.

2. If the water was stored in an active management area and the stored water is water from outside the active management area that would not have reached the active management area without the efforts of the holder of the long-term storage credits.

3. If the water was stored outside an active management area and the stored water is water from outside the groundwater basin in which the water was stored that would not have reached the groundwater basin without the efforts of the holder of the long-term storage credits.

Sec. 23. Use of unencumbered augmentation and conservation assistance monies for monitoring and assessing water availability

Notwithstanding title 45, chapter 2, article 11, Arizona Revised Statutes, unencumbered monies that are collected in an active management area before calendar year 1998 pursuant to section 45-611, subsection A, paragraph 2, Arizona Revised Statutes, for augmentation of the active management area's water supply and for conservation assistance to water users within the active management area may also be used by the director of water resources to fund any project that is authorized by the director for monitoring and assessing water availability within the active management area.

Sec. 24. Emergency

This act is an emergency measure that is necessary to preserve the public peace, health or safety and is operative immediately as provided by law.

APPROVED BY THE GOVERNOR APRIL 9, 1996.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 9, 1996.