

Senate Engrossed House Bill

**FILED**

**JANICE K. BREWER  
SECRETARY OF STATE**

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
Second Regular Session  
2008

CHAPTER 224

**HOUSE BILL 2772**

AN ACT

AMENDING SECTION 45-544, ARIZONA REVISED STATUTES; RELATING TO GROUNDWATER  
WITHDRAWAL.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 45-544, Arizona Revised Statutes, is amended to  
3 read:

4 45-544. Transportation in areas not subject to active  
5 management; damages; upper San Pedro water district;  
6 Little Colorado river plateau and Parker groundwater  
7 basins; definitions

8 A. Except as otherwise provided in this section, section 45-547 and  
9 article 8.1 of this chapter, in areas outside of active management areas:

10 1. Groundwater may be transported:

11 (a) Within a subbasin of a groundwater basin or within a groundwater  
12 basin, if there are no subbasins, without payment of damages.

13 (b) Between subbasins of a groundwater basin, subject to payment of  
14 damages.

15 2. Groundwater shall not be transported away from a groundwater basin.

16 3. Groundwater shall not be transported away from the upper San Pedro  
17 water district if established under title 48, chapter 37.

18 B. Notwithstanding subsection A, paragraph 2 or 3 of this section,  
19 subject to payment of damages:

20 1. A person who at any time during the twelve months before January 1,  
21 1991 was transporting away from the Little Colorado river plateau groundwater  
22 basin or the Parker groundwater basin groundwater that was legally withdrawn  
23 from a well in either groundwater basin has the right, subject to  
24 subsection C of this section, to transport groundwater that is legally  
25 withdrawn from the well or a replacement well in approximately the same  
26 location to another groundwater basin in an annual amount equal to the  
27 greater of the maximum amount of groundwater either:

28 (a) That was withdrawn from the well and transported by the person  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

31 (b) That could have been withdrawn from the well during the twelve  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

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

37 3. A city or town whose service area is located either in the Little  
38 Colorado river plateau groundwater basin and an adjacent groundwater basin or  
39 in the Parker groundwater basin and an adjacent groundwater basin may  
40 transport groundwater that is withdrawn within that portion of its service  
41 area located in the Little Colorado river plateau groundwater basin or the  
42 Parker groundwater basin to the adjacent groundwater basin for the benefit of  
43 landowners and residents within its service area.

1           4. A city, town or private water company whose service area is located  
2 in two adjacent groundwater basins and provides water utility service to  
3 landowners or residents in both basins as of July 1, 1993 may transport  
4 groundwater between those adjacent groundwater basins.

5           5. The transportation of groundwater in which groundwater is  
6 transported away from the groundwater basin and expansions of that transfer  
7 by the same person or its successor for the same purpose are valid if that  
8 transfer was occurring before September 1, 1993.

9           6. A CITY OR TOWN IN THE COCONINO PLATEAU GROUNDWATER BASIN WITH A  
10 POPULATION OF NOT MORE THAN EIGHT THOUSAND PERSONS THAT WAS TRANSPORTING  
11 GROUNDWATER INTO ITS MUNICIPAL WATER SERVICE AREA FROM AN ADJACENT  
12 GROUNDWATER BASIN AS OF JANUARY 1, 2001, FROM WELLS THAT THE DIRECTOR  
13 DETERMINES WERE ERRONEOUSLY DRILLED WITHOUT KNOWLEDGE THAT THE WELLS WERE IN  
14 THE ADJACENT GROUNDWATER BASIN, MAY CONTINUE AND EXPAND THAT TRANSFER SUBJECT  
15 TO ALL OF THE FOLLOWING CONDITIONS:

16           (a) THE GROUNDWATER MAY BE WITHDRAWN ONLY FROM WELLS THAT ARE LOCATED  
17 NOT MORE THAN TWO MILES FROM THE COCONINO PLATEAU GROUNDWATER BASIN BOUNDARY  
18 AND THAT ARE DRILLED TO DEPTHS OF AT LEAST TWO THOUSAND FIVE HUNDRED FEET  
19 BELOW LAND SURFACE.

20           (b) THE GROUNDWATER MAY BE USED ONLY WITHIN THE MUNICIPAL WATER  
21 SERVICE AREA OF THE CITY OR TOWN, AND THE CITY OR TOWN SHALL USE AVAILABLE  
22 SURFACE WATER SUPPLIES WITHIN ITS MUNICIPAL WATER SERVICE AREA TO THE EXTENT  
23 PRACTICABLE.

24           (c) THE TOTAL AMOUNT OF GROUNDWATER THAT MAY BE TRANSPORTED DURING A  
25 YEAR SHALL NOT EXCEED SEVEN HUNDRED ACRE-FEET, EXCEPT THAT A CITY OR TOWN MAY  
26 APPLY TO THE DIRECTOR TO INCREASE THE AMOUNT OF GROUNDWATER THAT MAY BE  
27 TRANSPORTED DURING A YEAR UNDER THIS SUBDIVISION IF ADDITIONAL GROUNDWATER IS  
28 NEEDED TO PROVIDE FIRE PROTECTION FOR THE CITY OR TOWN BECAUSE OF AN  
29 EMERGENCY CONDITION. THE DIRECTOR SHALL POST AN APPLICATION FILED UNDER THIS  
30 SUBDIVISION ON THE DEPARTMENT'S WEBSITE BEFORE APPROVING OR DENYING THE  
31 APPLICATION. THE DIRECTOR SHALL APPROVE AN APPLICATION FILED UNDER THIS  
32 SUBDIVISION IF THE CITY OR TOWN DEMONSTRATES TO THE SATISFACTION OF THE  
33 DIRECTOR THAT AN EMERGENCY CONDITION EXISTS THAT MAKES IT NECESSARY FOR THE  
34 CITY OR TOWN TO TRANSPORT GROUNDWATER IN EXCESS OF THE AMOUNT ALLOWED UNDER  
35 THIS SUBDIVISION TO PROVIDE ADEQUATE FIRE PROTECTION FOR THE CITY OR TOWN.  
36 IF THE DIRECTOR APPROVES AN APPLICATION FILED UNDER THIS SUBDIVISION, THE  
37 DIRECTOR SHALL SPECIFY THE AMOUNT OF GROUNDWATER THAT THE CITY OR TOWN MAY  
38 TRANSPORT IN EXCESS OF THE AMOUNT ALLOWED UNDER THIS SUBDIVISION AND MAY  
39 IMPOSE OTHER CONDITIONS THAT THE DIRECTOR DEEMS APPROPRIATE.

40           (d) THE CITY OR TOWN SHALL NO LONGER TRANSPORT ANY GROUNDWATER  
41 PURSUANT TO THIS PARAGRAPH IF ALL OF THE FOLLOWING APPLY:

42           (i) AFTER JANUARY 1, 2009, THE CITY OR TOWN OBTAINS THE LEGAL RIGHT TO  
43 RECEIVE A NEW SUPPLY OF WATER ORIGINATING FROM OUTSIDE OF ITS CORPORATE  
44 BOUNDARIES, OTHER THAN GROUNDWATER PURSUANT TO THIS PARAGRAPH.

1 (ii) THE SUPPLY OF WATER IS PHYSICALLY AVAILABLE TO THE CITY OR TOWN  
2 THROUGH A CANAL OR PIPELINE.

3 (iii) THE DIRECTOR DETERMINES THAT THE SUPPLY OF WATER, TOGETHER WITH  
4 OTHER WATER SUPPLIES PHYSICALLY AVAILABLE TO THE CITY OR TOWN, OTHER THAN  
5 GROUNDWATER PURSUANT TO THIS PARAGRAPH, IS SUFFICIENT TO PROVIDE A  
6 SUSTAINABLE WATER SUPPLY FOR THE CITY OR TOWN, INCLUDING PROJECTED GROWTH,  
7 AND NOTIFIES THE CITY OR TOWN OF THAT DETERMINATION.

8 ~~6-~~ 7. Groundwater may be transported away from a groundwater basin  
9 for mineral extraction and processing, except that no groundwater may be  
10 transported away from the Parker groundwater basin or the Little Colorado  
11 river plateau groundwater basin for that purpose and, if the district is  
12 established, groundwater shall not be transported away from the upper San  
13 Pedro water district for that purpose except as provided in paragraph 7 of  
14 this subsection.

15 ~~7-~~ 8. If the upper San Pedro water district is established under  
16 title 48, chapter 37:

17 (a) A city, town or private water company whose service area is  
18 located in the district and a groundwater basin adjacent to the district,  
19 other than the upper San Pedro groundwater basin, and that provides water  
20 utility service to landowners or residents in the district and that adjacent  
21 groundwater basin as of July 1, 1993 may transport groundwater between the  
22 district and that adjacent groundwater basin.

23 (b) The transportation of groundwater in which groundwater is  
24 transported away from the district and away from the upper San Pedro  
25 groundwater basin and expansions of that transfer by the same person or its  
26 successor for the same purpose are valid if that transfer was occurring  
27 before September 1, 1993.

28 (c) The transportation of groundwater in which groundwater is  
29 transported away from the district but not away from the upper San Pedro  
30 groundwater basin and expansions of that transfer by the same person or its  
31 successor for the same purpose are valid if that transfer was occurring  
32 before the date the district is established.

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

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

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

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

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

10 E. For the purposes of this section:

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

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

APPROVED BY THE GOVERNOR MAY 20, 2008.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 20, 2008.