

ARIZONA WATER BANKING AUTHORITY
Wednesday, March 16, 2005

No.	NAME (Please print)	Phone No.
1	JIM PETERSON	(520) 297-2771
2	Tom Buschatzke	602 261 8532
3	ALAN P. KLEINMAN	702-293-8087
4	SHANE LEONARD	480-988-9588
5	Bob McLean	602-248-8482
6	Harry Kuzguyan	213 217 6082
7	Larry Dozner	
8	DAVE CROCKETT	520 887 4192 ✓
9	ANDREW BONEMAN	1102.254.5908
10	Tom Griffin	928-754-2555 →
11	McChin Peterson	702-485-2672
12	Mark Myers	520-742-0416
13	ROSE WOLFE	520 682-2716
14	Tom Maher	702-862-3702
15	Jody Payer	775-885-5000 #101
16	STEVE WARREN	775-885-5000 #108
17	PAUL NELSON	602-216-3828
18	John Hetrick	
19	Eric Kamienski	480-350-2608.
20	Rich Siegel (SAP)	On file
21	PAUL SMITH	602 923 1000
22	PAUL DEMME	623-485-0445
23	PERRI BENEMENIS	602-495-5874
24	Kai	520-744-1573

No.	NAME (Please Print)	Phone No.
25	Gary L. Parker	520-296-1344 ext 61
26	Denise Forbes	602-440-4884
27	Gary Givers	869 623-2158
28	Jodi Gould	623-869-2565
29	Marge Haberman	602-262-5357
30	Brian Henning	623-869-2567
31	Kenneth Seashole	520-770-3800
32	Marvin Cohen	480-425-2633
33	Dennis Rul	520-791-2666
34	John Bodenchuk	520 770 5817
35	Tong Harbor	623 869-2107
36	Beth Miller	480-312-5009
37	Vin Warden	480 496 9928
38	Karl KOHLHOFF	480 5224339
39	MIKE LEONARD RUED	480-988-9586
40		
41		
42		
43		
44		

Arizona Water Banking Authority
500 North Third Street, Phoenix, Arizona 85004
Telephone 602-417-2418
Fax 602-417-2401
Web Page: www.awba.state.az.us

PLEASE POST

NOTICE OF PUBLIC MEETING

Pursuant to A.R.S. § 38-431.02, notice is hereby given that there will be a meeting of the Arizona Water Banking Authority Commission on March 16, 2005 at 10:00 a.m. at the Arizona Department of Water Resources, 500 North Third Street, Phoenix, Arizona 85004, third floor conference room. The meeting is open to the general public. A copy of the agenda for the meeting is posted below.

Dated this 15th day of March, 2005

FINAL AGENDA
Arizona Water Banking Authority Commission Meeting

- I. Welcome/Opening Remarks
- II. Introduction of New Authority Member
- III. Consideration of Motion for Executive Session per A.R.S. § 38-431.03(A)(3) and (4) for Consultation with AWBA Attorneys to obtain Legal Advice Regarding Potential Appropriation of AWBA Funds [The Executive Session of the AWBA Commission is not open to the public. The meeting open to the public will reconvene no earlier than 10:30 a.m.]
- IV. Reconvene in Open Session
- V. Consideration of Action Pursuant to Executive Session
- VI. Approval of Minutes of December 9, 2004 Meeting
- VII. Water Banking Staff Activities
 - Deliveries
 - Preliminary drafting of 2004 Annual Report
 - Agreements approved in December
 - Multi-Species Conservation Program
- VIII. Discussion Regarding Status of Agreement to Firm Future Supplies
- IX. Discussion and Potential Action Regarding 2005 Annual Plan of Operation
 - Discussion regarding inclusion of interstate water banking and GSF partner cost share decrease
 - Potential approval of amended 2005 Annual Plan of Operation

Arizona Water Banking Authority meeting

- X. Discussion and Potential Approval of Amendments to Excess Water Contract
 - Revised CAP billing proposal
- XI. Interstate Water Banking
 - Update on discussions regarding expenditure of funds obtained pursuant to the Amended Agreement for Interstate Water Banking
 - Status of request for development of ICUA by Metropolitan Water District of Southern California
- XII. Discussion Regarding Indian Firming
- XIII. Call to the Public

Future Meeting Date:

Wednesday, June 15, 2005

All visitors must stop at the lobby to sign-in and receive a visitor's badge. Badges are to be displayed at all times. Visitors are also required to return to the lobby to sign out and return their badges. Thank you for your assistance in this matter.

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting Nan Flores at (602) 417-2418. Requests should be made as early as possible to allow time to arrange the accommodation.

ARIZONA WATER BANKING AUTHORITY
Draft Minutes¹

December 9, 2004
Arizona Department of Water Resources



AUTHORITY MEMBERS
Herbert R. Guenther, Chairman
George R. Renner, Vice-Chairman
Charles L. Cahoy, Secretary
John Mawhinney
Maureen S. George

EX OFFICIO MEMBERS
Representative Jake Flake
Senator Linda Binder

Welcome/Opening Remarks

Senator Herb Guenther welcomed the attendees. All members of the Authority except Maureen George were present. Ms. George joined the meeting via telephone conference call.

Approval of Minutes of September 15, 2004 and November 15, 2004 Meetings

The Authority approved the minutes of both meetings.

Water Banking Staff Activities

Tim Henley reviewed water deliveries and stated that deliveries are pretty much right on projected and should be on target at the end of the year. Actual deliveries are above projected in the Tucson AMA, as the USF facilities were able to take more water than projected later in the year. Additionally, some interstate water was banked in 2004.

Mr. Henley informed the Authority that the Arizona Water Settlement Act (Act) had passed through Congress and was waiting Presidential signature. He stated that this would again bring the issue of Indian firming to the forefront and AWBA staff will be working on this in the future. John Mawhinney questioned whether there had been any substantive changes to the Act and Gregg Houtz replied that there had been no change with respect to the AWBA, i.e. the quantities to be firming had not changed.

Mr. Henley updated the Authority on the status of the Seven Basin states discussions regarding shortages. He noted that the technical group had not met recently because the principals were meeting and would provide further guidance to the technical group at a later date.

Discussion and Potential Approval of Agreement to Firm Future Supplies

Mr. Henley briefly reviewed the history of the process leading up to this agreement and stated that a key point is that it creates a subaccount within the AWBA long-term storage account and does not involve a transfer of credits to the Mohave County Water Authority (MCWA) until there is an actual shortage. Ryan Smith reviewed the agreement, specifically noting changes made since the last version had been distributed. The changes he noted were:

- (1) The agreement currently shows 0 acre-feet of credits in Appendix A because MCWA did not obtain budget approval for this agreement. The number of credits will be increased as money is obtained and/or as other contractors become party to the agreement. The absolute end date to amend Appendix A is July 15, 2005;
- (2) The agreement has a provision to renegotiate if the number of credits determined to be reasonable (currently 420,000 acre-feet) changes;
- (3) Section 3.1.7. identifies (via Appendix B) the number of credits already developed using

¹ Please note that these are not formal minutes but a summary of discussion and action of the meeting. Official minutes are prepared prior to the next Authority meeting and are approved at that meeting.

general fund appropriation revenues and states that the AWBA's obligation above that number of credits is contingent on additional general fund appropriations being given to the AWBA;

(4) Addition of a reasonable provision with respect to replacement costs; and

(5) Section 5.4.1. now grants parties within the MCWA rights under the contract.

Ms. George thanked staff for their efforts on developing this agreement and reiterated that the MCWA doesn't have a funding mechanism but depends on its member agencies for funding. Chuck Cahoy had a minor technical change to 3.1.1. Mr. Mawhinney questioned where the down payment was within the agreement. Mr. Smith noted that it was called "prepayment" and was calculated by the multiplying the number of credits identified in Appendix A by \$20. That prepayment will be paid in 20 quarterly payments. Mr. Mawhinney questioned whether there would be multiple agreements of this type for the other on-river users. Mr. Henley stated that there could be, but it is anticipated that those entities would partner with the MCWA and thus be covered under this agreement. Ms. George stated that it is the intent of MCWA to make an offer to all entities within Mohave County to be covered by this agreement. A motion was made to approve the agreement with the technical change and contingent on approval by the MCWA. The motion carried.

Interstate Water Banking

Mr. Henley stated that the 10,000 acre-feet of interstate storage approved in the 2004 Amended Plan of Operation had been completed and that the Southern Nevada Water Authority (SNWA) had been billed for it. He informed the Authority that additional water had recently become available for December 2004. Staff had directed that the water be stored in three CAP facilities in Tucson as they were the only facilities with operational capacity. Entities in Tucson had proposed a different storage protocol, however, Mr. Henley informed the Authority that staff's recommendation was against that. Marvin Cohen informed the Authority that the concern with storage in the CAP facilities was ability to recover. Mark Myers stated that recovery should not be an issue at the proposed facilities.

Mr. Henley reviewed the most current version of the proposed amendments to the Agreement for Interstate Water Banking. The agreement was distributed to the public. Mr. Mawhinney asked whether staff were certain the agreement was drafted in a way to protect the money from "scavengers". The reply was that it currently is not, however, the agreement is drafted in such a manner that the money won't be requested until the Authority is assured that it will only be used for its intended purpose. He asked Gregg Houtz to discuss potential alternatives being evaluated. Mr. Houtz informed the Authority that a similar situation is facing the states involved in the Multi-Species Conservation Program (MSCP), i.e. preserving funds for future use. The CAWCD is having outside counsel investigate alternatives. To that end, ADWR staff has only done preliminary research into escrow accounts and interest accounts and are waiting for the CAWCD review to be completed. Mr. Mawhinney asked if an Authority action would be needed before funds were requested. Mr. Henley said that it would.

George Renner informed the Authority that the CAWCD Board had considered the issue of amending the agreement at their last meeting. He stated that the discussion paper was very helpful and that the amended agreement had been changed in such a way that the CAWCD approved a motion authorizing Mr. Renner to support the amendment by a vote of 12 to 1 with

two members absent. He stated that he was convinced that amending the agreement was in the best interest of Arizona and provided a good example to the other Seven Basin states that negotiation can be successful. Ms. George reiterated that the AWBA has no recovery authority and that was a concern of hers. Mr. Henley stated that the AWBA has the Agreement for Development of Intentionally Created Unused Apportionment (ICUA) with CAWCD to facilitate recovery. Larry Dozier updated the Authority on the current status of recovery planning from their end. Mr. Cahoy stated that he felt that the most current version of the amended agreement was a significant improvement over earlier versions and that the changes helped address many of his concerns. He stated that he felt that it would be shortsighted of Arizona to not assist Nevada. Mr. Mawhinney stated that the Authority had sent a letter to CAP requesting development of a recovery plan and he was not overly pleased with their response, however, he thought that execution of the amended agreement would help stimulate development of a recovery plan. He stated that he felt the agreement would provide benefit not only to Arizona but also to our neighbors. Senator Guenther invited comment from Pat Mulroy. Ms. Mulroy extended her thanks and thanks on behalf of Richard Bunker. She stated that execution of this amended agreement is truly historic for Southern Nevada. She noted that Nevada's conservation program has been effective and that they are aggressively looking at developing their in-state resources. Nonetheless, a bridge was needed due to loss of surpluses under the ISG and this amended agreement will help alleviate concerns over the loss of surpluses. She also stated that the CAP's junior priority status is an idea whose time has passed. Alan Stephens stated that the governor's office supported approval of the amended agreement. Other statements of support came from Bob McCain (AMWUA), Perri Benemelis (City of Phoenix) and Mr. Cohen (Tucson Water). On a motion by Mr. Renner and second by Ms. George, the Authority unanimously approved the amendments to the Agreement for Interstate Water Banking. Mr. Henley discussed the issue of development of ICUA for Southern California and informed the Authority that a letter agreement had been signed by Richard Gastelum of the Metropolitan Water District of Southern California. He stated that the Authority is really only a "middle man" in this process as the credits being used to develop ICUA were stored in the early 1990's under the demonstration project between CAP and Metropolitan. Mr. Renner informed the Authority that he did not think this issue would be coming before the Authority for action at this time, and suggested that the item be tabled because the CAWCD was currently evaluating their position on developing the ICUA. In response to a question regarding why, Mr. Renner stated that the CAWCD felt that California owed Arizona 1 million acre-feet of water delivered during the ISG development process and that California had not demonstrated good faith in their dealings with Arizona. Mr. Henley stated that he would recommend no action be taken in light of Mr. Renner's comments because the Authority is truly only a "middle man" in this deal. Mr. Cahoy stated that he was concerned about the ramifications of this because it is not an AWBA issue and he does not want to get entangled between the CAWCD and Metropolitan. Senator Guenther stated that the agenda item would be carried forward.

Mr. Renner asked to be excused, as there would still be a quorum in his absence. Mr. Renner left the meeting at this time.

Discussion and Approval of 2005 Annual Plan of Operation

Mr. Henley noted that this was the meeting where the Plan of Operation is discussed and approved. He briefly reviewed the Plan. He noted that the governor approved a budget that included a \$2 million transfer in FY 2005 from the Authority and that the money could not come from the *ad valorem* tax revenues. He also noted that the accounting table is a bit different this year due to the retention of the *ad valorem* taxes by the CAP and that the written comment

regarding changing the recovery language submitted by Mr. Cohen was included for discussion. Mr. Mawhinney questioned the Authority's role with regard to recovery. Mr. Henley stated that it was not really a role but that the Authority should provide assistance because development of a recovery plan would assist the Authority in making decisions regarding storage. Mr. Mawhinney moved that the language suggested by Mr. Cohen be included in the Plan. Ms. George noted that no interstate water banking was planned and asked if it would be included at a later date if water became available. Mr. Henley stated that it would be included via an amendment to the Plan as was done in 2004. Ms. George supported the recovery concept and seconded the motion to include the language in the Plan. Statements of support for the recovery language were made by Bob McCain (AMWUA) and Mark Myers (Town of Marana). The motion approving the Plan of Operation with recovery language included and minor or technical revisions passed.

CY 2005 Water Delivery Budget

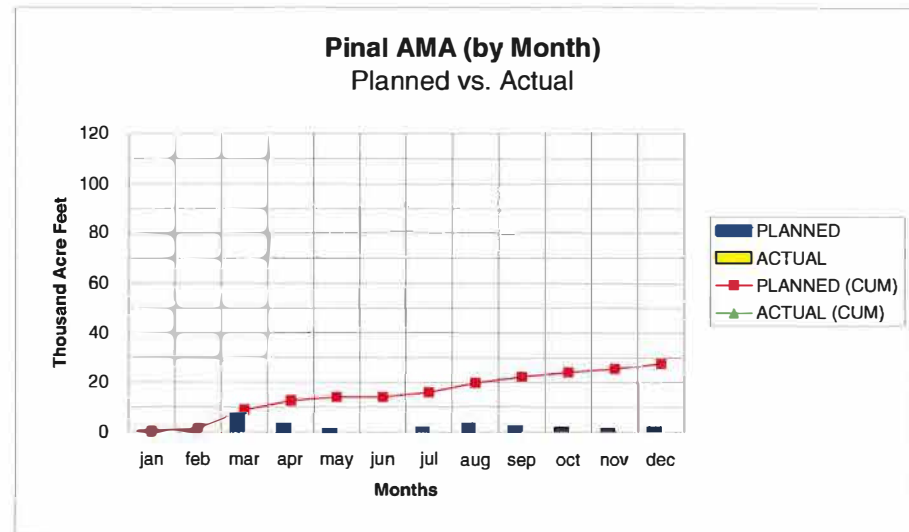
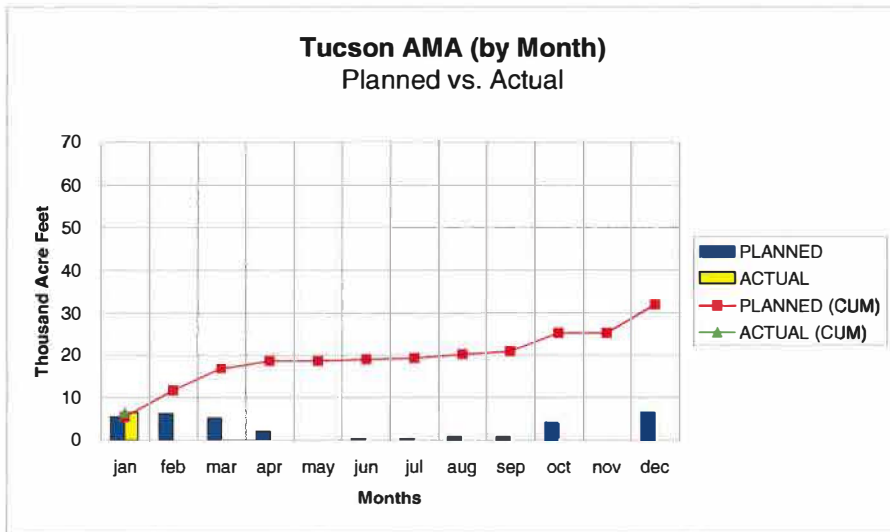
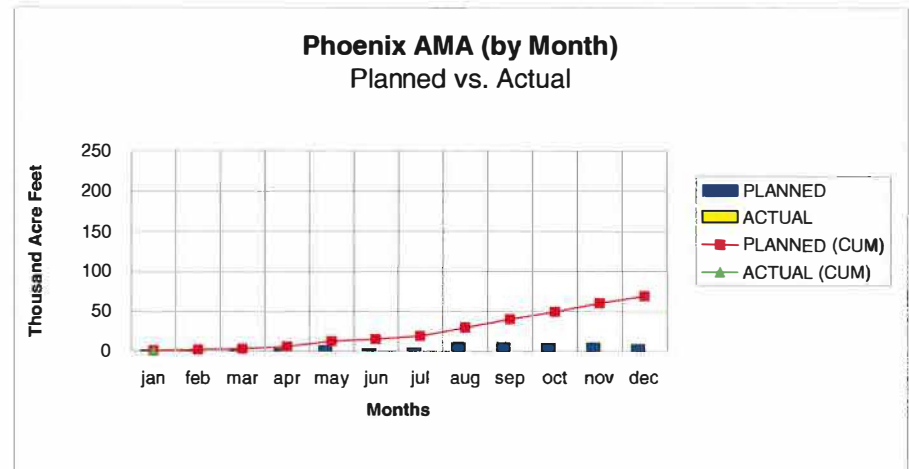
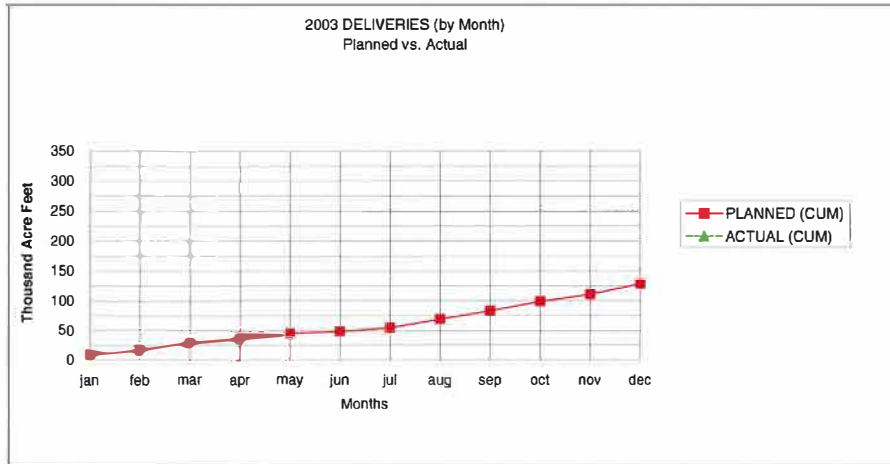
Mr. Henley briefly reviewed the water delivery budget. Mr. Mawhinney stated that he had received several comments from CAWCD Board members about the AWBA budget and requested that a user-friendlier budget format be considered. The CY 2005 Water Delivery Budget was approved.

Call to the Public

Questions and comments made by the public are included in the above discussion under the agenda item in which they were made. There was no additional public comment at this time.

The meeting concluded at 12:05 p.m.

2005 Plan of Operation



Actual deliveries updated
Plan of Operation

15-Feb-05
1-Jan-05

	jan	feb	mar	apr	may	jun	jul	aug	sep	oct	nov	dec	total
Phoenix AMA													
GRUSP	0	0	0	0	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0	0	0	0	0
AGUA FRIA	500	0	0	1,000	1,000	0	0	0	0	0	1,000	1,500	5,000
CHCID	0	0	0	0	0	0	0	0	0	0	0	0	0
	0	0	50	50	50	100	75	75	50	83	0	0	533
NMIDD	0	0	0	0	0	0	0	0	0	0	0	0	0
	0	0	0	0	4,000	1,500	3,000	6,000	6,500	6,000	5,584	2,500	35,084
QCID	0	0	0	0	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	2,285	2,000	800	960	1,600	7,645
TID	0	0	0	0	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0	0	0	0	0
SRP	0	0	0	0	0	0	0	0	0	0	0	0	0
	800	800	800	800	800	0	0	800	800	800	800	800	8,000
MWD	0	0	0	0	0	0	0	0	0	0	0	0	0
	0	0	0	1,050	1,050	1,050	1,050	1,050	1,050	0	0	0	6,300
HIEROGLYPHIC	0	0	0	0	0	0	0	0	0	0	0	0	0
	0	100	100	0	0	0	0	0	0	1,767	2,417	2,416	6,800
Subtotal	0	0	0	0	0	0	0	0	0	0	0	0	0
Total to date	0	0	0	0	0	0	0	0	0	0	0	0	0
Projected total to date	1,300	2,200	3,150	6,050	12,950	15,600	19,725	29,935	40,335	49,785	60,546	69,362	69,362
Pinal AMA													
CAIDD	0	0	0	0	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	2,000	2,000	1,500	1,000	1,000	1,500	9,000
MSIDD	63	0	0	0	0	0	0	0	0	0	0	0	63
	300	0	1,960	880	1,440	0	0	1,750	920	720	450	580	9,000
HIDD	103	0	0	0	0	0	0	0	0	0	0	0	103
	275	1,000	5,600	2,625	0	0	0	0	0	0	0	0	9,500
Subtotal	166	0	0	0	0	0	0	0	0	0	0	0	166
Total to date	166	166	166	166	166	166	166	166	166	166	166	166	166
Projected total to date	575	1,575	9,135	12,640	14,080	14,080	16,080	19,830	22,250	23,970	25,420	27,500	27,500
Tucson AMA													
Avra Valley	402	0	0	0	0	0	0	0	0	0	0	0	402
	338	338	338	0	0	338	338	338	300	247	0	650	3,225
Clearwater	0	0	0	0	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	0	0	4,000	0	6,000	10,000
Pima Mine	2,185	0	0	0	0	0	0	0	0	0	0	0	2,185
	2,040	2,040	2,040	819	0	0	0	0	0	0	0	0	6,939
Lower Santa Cruz	3,847	0	0	0	0	0	0	0	0	0	0	0	3,847
	3,000	3,800	2,800	1,100	0	0	0	0	0	0	0	0	10,700
Kai Red Rock	0	0	0	0	0	0	0	0	0	0	0	0	0
	0	0	0	0	0	0	0	500	500	0	0	0	1,000
Subtotal	6,434	0	0	0	0	0	0	0	0	0	0	0	6,434
Total to date	6,434	6,434	6,434	6,434	6,434	6,434	6,434	6,434	6,434	6,434	6,434	0	6,434
Projected total to date	5,378	11,556	16,734	18,653	18,653	18,991	19,329	20,167	20,967	25,214	25,214	31,864	31,864
TOTAL													
TOTAL	6,600	0	0	0	0	0	0	0	0	0	0	0	6,600
Total to date	6,600	6,600	6,600	6,600	6,600	6,600	6,600	6,600	6,600	6,600	6,600	6,600	13,200
Projected total to date	7,253	15,331	29,019	37,343	45,683	48,671	55,134	69,932	83,552	98,969	111,180	128,726	128,726

Phone: (928) 505-7785

Law Offices

Fax: (928) 505-7786

of

Maureen Rose George

2000 McCulloch Boulevard, Suite D

Lake Havasu City, AZ 86403

E-mail: mrglaw@npgcable.com

March 7, 2005

Arizona American Water Company
Arizona State Parks
Brooke Water Company

McAllister Subdivision
Marble Canyon Company
Crystal Beach Water Conservation District

Re: Agreement to Firm Future Water Supplies

To Whom It May Concern:

I am general counsel for the Mohave County Water Authority (MCWA). The Authority has been working with the Arizona Water Bank (AWBA) since its inception to guarantee the availability of a back up supply of water to 4th priority M&I contract holders in Mohave County. The legislation creating the water bank specifically called for the set aside of long term storage credits to protect M&I holders of 4th priority contracts, on the mainstem of the Colorado, from cutbacks in times of declared shortages on the river. The Bank did in fact use general fund dollars to create a bank of long term storage credits ostensibly for use along the river. Unfortunately, there had been no legal obligation to use the credits for that purpose and they were being looked at for possible use in the various Indian settlements.

Due to our concern that these credits might not be available to use in times of shortage because of use for other purposes we asked the Bank to approve an agreement setting aside a certain number of credits for use only in Mohave County. The Bank approved that agreement at its December meeting. Among other things, the contractors along the river must elect, by June of 2005, whether or not to participate in the agreement and to make a prepayment of \$20 an acre foot for each credit to be set aside for their use.

Attached for your information are the following:

1. Firming agreement with AWBA dated February 4, 2005.
2. List of Mohave County 4th priority M&I contract holders and the estimated amount of credits to hold them harmless from shortage through 2096. (It should be noted that the Bank, in response to a question raised by the Bullhead City Council, has agreed we can take some or all of the estimated needed number of credits).

"As you drink the water, remember the spring."

- Chinese proverb -

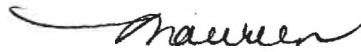
Agreement to Firm Future Water Supplies
March 7, 2005
Page 2

3. Copy of a presentation made to the Bullhead City Council on the issue.

Please let me know prior to May 1 if you intend to participate in this agreement. Please call if you have any questions in regard to the foregoing.

Thank you for your consideration of this important issue.

Sincerely,

A handwritten signature in cursive script, appearing to read "Maureen", with a long horizontal flourish extending to the left.

Maureen Rose George

cc: Tom Griffin, MCWA
Tim Henley, AWBA

INTERSTATE WATER BANKING

~~The Plan does not include an interstate water banking component. However, in the event that conditions change and opportunities may present themselves, the Plan may be amended to include interstate water banking as was done in 2002 and 2004.~~

Since the 2005 Plan was approved in December, there has been significant change in the water demands of many CAP customers resulting in a number of requests for remarketing of scheduled water. Consequently, CAP informed the AWBA that more than 300,000 acre feet of water are available in 2005. Recognizing the financial constraints associated with intrastate storage in the Tucson and Pinal AMA, the 2005 Plan has been amended to include interstate water banking. The quantity of water projected for interstate storage has not yet been definitively determined but storage facility capacity will be utilized to the maximum extent possible. Additionally, there exists the potential for the AWBA to purchase credits from CAP to meet the AWBA's obligation to Nevada. The credits were previously stored for interstate purposes under the CAP's demonstration project.

Amended Table 2 with USF storage at maximum
ARIZONA WATER BANKING AUTHORITY
 Water Delivery Schedule
 Calendar Year 2005
 (ACRE-FEET)

Deliveries
from
existing
2005
Plan
(AF)

		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total		
1	Estimated CAP Deliveries + Losses : (M&I, Indian, Ag Pool, Incentive Recharge)	31,300	28,720	36,200	123,600	149,700	187,200	184,000	138,900	88,700	66,800	44,400	44,000	1,123,520		
2	Available Excess CAP Capacity for AWBA:	6,600	7,278	40,000	57,600	49,500	27,000	27,500	65,000	52,200	45,000	50,000	50,000	477,678		
AWBA -- Recharge Sites :		Permitted Capacity (AF)	Requested Capacity (AF)													
PHOENIX A M A :														AMA TOTAL	81,362	69,362
3	USF GRUSP	200,000	10,000	0	0	0	0	0	0	2,500	2,500	2,500	2,500	10,000	0	
4	HIEROGLYPHIC MTN	35,000	6,800	0	100	100	0	0	0	0	1,767	2,417	2,416	6,800	6,800	
5	AGUA FRIA	100,000	5,000	0	0	0	1,000	1,000	0	0	0	1,500	1,500	5,000	5,000	
	TONOPAH	150,000	10,000	0	0	0	0	0	0	0	0	0	10,000	10,000	0	
6	GSF CHCID	3,000	533	0	0	50	50	50	100	75	75	50	83	0	533	
7	MWD	18,000	6,300	0	0	0	1,050	1,050	1,050	1,050	1,050	0	0	6,300	6,300	
8	NEW MAGMA	54,000	35,084	0	0	0	4,000	1,500	3,000	6,000	6,500	6,000	5,584	35,084	35,084	
9	QUEEN CREEK	28,000	7,645	0	0	0	0	0	0	2,285	2,000	800	960	7,645	7,645	
10	SRP	200,000	0	0	0	0	0	0	0	0	0	0	0	0	8,000	
PINAL A M A :														AMA TOTAL	27,500	27,500
11	GSF CAIDD	110,000	9,000	0	0	0	0	0	2,000	2,000	1,500	1,000	1,000	9,000	9,000	
12	HOHOKAM	55,000	9,500	275	1,000	5,600	2,625	0	0	0	0	0	0	9,500	9,500	
13	MSIDD	120,000	9,000	300	0	1,960	880	1,440	0	0	1,750	920	720	580	9,000	
TUCSON A M A :														AMA TOTAL	91,320	31,864
14	USF AVRA VALLEY	11,000	3,289	402	338	338	0	0	338	338	338	300	247	650	3,289	
15	CAVSARP	60,000	17,800	0	0	0	0	0	0	0	0	6,400	4,000	6,400	10,000	
16	PIMA MINE ROAD	30,000	24,584	2,185	2,040	2,040	2,200	2,200	2,200	2,200	2,040	1,540	2,039	1,700	24,584	
17	LOWER SANTA CRUZ	30,000	45,647	3,847	3,800	3,800	3,800	3,800	3,800	3,800	3,800	3,800	3,800	3,800	45,647	
18	GSF KAI - RED ROCK	11,231	1,000	0	0	0	0	0	0	500	500	0	0	1,000	1,000	
19	TOTAL (USF + GSF):			7,009	7,278	13,888	11,605	13,540	8,988	12,463	19,998	21,160	24,857	24,250	35,146	200,182
20	Remaining CAP Capacity:	[409]	0	26,112	45,995	35,960	18,012	15,037	45,002	31,040	20,143	25,750	14,854	277,496		

¹This is water delivered for both interstate and intrastate water banking and includes 2,495 acre feet stored at TID.

Potential for Increased Deliveries to GSF Partners

Partner	Water (AF) that Could be Taken at Various Prices			
	\$30	\$28	\$27	\$26
HIDD	5,000	5,000	5,000	5,000
TID	-	-	-	-
MSIDD	-	unknown	10,000	up to 40,000
CAIDD	-	-	10,000	30,000
Total	5,000	5,000	25,000	75,000

There was no response received from BKW Farms, NMIDD and RWCD. The offer was not made to MWD because they had already turned back all scheduled AWBA water. QCID was also not contacted as their water use has decreased significantly in the past three years.

Discussion Regarding Funds Obtained Pursuant to the Amended Agreement for Interstate Water Banking

Discussion

Pursuant to the amended Agreement for Interstate Water Banking (Amended Agreement), payment from the Southern Nevada Water Authority will be received in two ways:

- \$100 million to be used to guarantee that AWBA can meet the terms of the agreement; this payment will be made upon request of the AWBA and, per the Amended Agreement, deposited into a "Resource Account"
- \$230 million will be paid in 10 payments of \$23 million beginning in 2009 through 2018 and deposited into an "Operating Account"

The money held in the "Operating Account" will be used to pay CAP for the cost of water delivery and to pay facility operators for storage, as needed. This account will be reconciled once all long-term storage credits have been stored. The money held in the "Resource Account" will serve to guarantee that the terms of the amended agreement can be met. In order to insure that the money held in the "Resource Account" remains available to the AWBA to meet the terms of the Amended Agreement, staff was directed to examine potential options with respect to secured accounts.

In mid-February, AWBA staff met with ADWR counsel to discuss the results of the legal research conducted regarding account options. ADWR counsel informed AWBA staff that once the funds came under AWBA ownership there was no authority to deposit the funds into a private financial institution and the funds would be required to be deposited into an account within the State Treasury.

On March 11, 2005, AWBA staff and ADWR counsel met with representatives from the State Treasurer's Office to discuss account and investment options. Treasurer's Office representatives confirmed that all monies become agency funds upon distribution to the AWBA and are therefore limited by the statutory authorities of the AWBA. Currently, the AWBA only has the authority to deposit funds into the agency fund at the State Treasury. This fund has no protection from either legislative or executive sweeps.

Potential Options

- The AWBA could potentially direct funds to the Local Government Investment pool (LGIP) through a contractual agreement with an entity authorized to invest in that pool, such as the CAWCD
- The AWBA could pursue statutory change to permit investment in the LGIP
- The AWBA could deposit all money in the AWBA fund as is currently done with all other AWBA funds.



CENTRAL ARIZONA PROJECT

P.O. Box 43020 • Phoenix, Arizona 85080-3020 • 23636 North Seventh Street (85024)
(602) 869-2333 • www.cap-az.com

Agenda Number 5.

February 22, 2005

Mr. Dennis Underwood
Vice President, Colorado River
Metropolitan Water District of Southern California
700 Alameda Street, 7th Street
Los Angeles, CA 90012

Dear Dennis:

In October 1992 the Metropolitan Water District (MWD) and the Central Arizona Water Conservation District (CAWCD) entered into an Agreement for a Demonstration Project on Underground Storage of Colorado River Water (Agreement) and subsequently amended that Agreement in 1995. While there were no official rules or regulations in place to provide for interstate underground storage arrangements at that time, the Lower Basin states, the primary water contractors for Colorado River water, and the U.S. Bureau of Reclamation (Reclamation) acknowledged and supported the Agreement. MWD paid CAWCD for 89,000 af of water stored in Arizona pursuant to that Agreement. MWD was entitled to withdraw that stored water (and be charged 1.10 af for each af withdrawn until the 89,000 af account was depleted) through exchange by diverting a like amount of water from the Colorado River.

Initial plans were made between MWD and CAWCD to begin withdrawal of credits in 2003, but efforts were terminated primarily due to lack of need by MWD. Plans were again initiated for 2005, but are now stalled.

In the past few years, Reclamation has implemented rules to administer interstate banking. The state of Arizona has created the Arizona Water Banking Authority (AWBA) as the entity in Arizona with the authority to enter into interstate agreements. The AWBA, the Southern Nevada Water Authority (SNWA), CAWCD, and Reclamation have entered into the agreements necessary to accomplish interstate storage and recovery with SNWA. At this time, there are no similar agreements with MWD.

Various CAWCD programs associated with the recently enacted Arizona Water Settlements Act have reduced the supply of CAP water available for CAP irrigation districts. We were planning on exchange programs with those districts to assist in recovery of stored water. The reduced supply of CAP water available to those districts makes recovery of significant amounts of stored water in each year more problematic.

Mr. Dennis Underwood
Metropolitan Water District of Southern California
February 22, 2005
Page 2

To make it simpler and easier for MWD and CAWCD to plan for the availability of future water supplies, I suggest we terminate the Agreement. CAP would refund to MWD all funds paid by MWD to CAWCD with interest at the rate CAP has earned on its investments. All long-term CAP funds are invested by the Arizona State Treasurer. The attached table shows the payments received and interest earned through December 2004. The total amount to be refunded is approximately \$12,800,000.

If MWD is willing to terminate the Agreement in exchange for a refund of payments with interest, please let me know. We will need to agree on the payment amount and seek Board approval to make that payment.

Sincerely,

Larry R. Dozier
Deputy General Manager

:smu

O:\2005 Board Meetings\03-03-05 cawcd board\Recovery of Water Banked for MWD ltr to Underwood.doc
226.01

Attachment

cc: Ted Cooke

Brian Henning
Tom McCann
George Renner
Sid Wilson

METROPOLITAN WATER DISTRICT
Purchase of Long Term Water Storage Credits
Thru 12/31/04

LONG TERM WATER STORAGE CREDITS					INTEREST			Total	
Year	Paid Date	A/F	Costs A/F	Amount	CY	Rate	Amount		Total
1992	12/31/1992	15,000	\$68.00	\$1,020,000.00				\$798,515.51	\$1,818,515.51
					1992	3.79%	105.91		
					1993	3.79%	38,662.01		
					1994	6.25%	66,173.00		
					1995	6.30%	70,871.28		
					1996	5.76%	68,878.78		
					1997	5.90%	74,616.77		
					1998	6.12%	81,965.63		
					1999	5.86%	83,286.62		
					2000	6.43%	96,743.21		
					2001	5.12%	81,986.72		
					2002	3.20%	53,865.28		
					2003	2.39%	41,518.01		
					2004	2.24%	39,842.28		
1993	10/21/1993	35,000	70.00	2,450,000.00				1,789,523.98	4,239,523.98
					1993	3.79%	18,316.60		
					1994	6.25%	154,269.79		
					1995	6.30%	165,222.94		
					1996	5.76%	160,577.82		
					1997	5.90%	173,954.84		
					1998	6.12%	191,087.33		
					1999	5.86%	194,166.96		
					2000	6.43%	225,538.44		
					2001	5.12%	191,136.50		
					2002	3.20%	125,576.68		
					2003	2.39%	96,791.36		
					2004	2.24%	92,884.72		
1995	1/19/1996	39,000	114.00	4,446,000.00				2,297,624.39	6,743,624.39
					1996	5.76%	243,869.80		
					1997	5.90%	276,702.32		
					1998	6.12%	303,954.21		
					1999	5.86%	308,852.84		
					2000	6.43%	358,754.08		
					2001	5.12%	304,032.42		
					2002	3.20%	199,749.30		
					2003	2.39%	153,961.77		
					2004	2.24%	147,747.64		
Total		89,000		\$7,916,000.00			4,885,663.88	4,885,663.88	\$12,801,663.88

* Interest calculated through 12/31/04

**Interest calculation for 12/31/92 uses 1993 interest rate



BOARD AGENDA BRIEF

ACTION ITEM

Agenda Number 7.

CONTACT: Larry R. Dozier Thomas W. McCann
(623) 869-2377 (623) 869-2343
ldozier@cap-az.com tmccann@cap-az.com

DATE: February 23, 2005

AGENDA ITEM: Consideration of Action to Approve Amendment to Excess Water Contract Between CAWCD and Arizona Water Banking Authority

STAFF RECOMMENDATION:

Staff recommends that the Board approve the attached amendment to the excess water contract between CAWCD and the Arizona Water Banking Authority.

BUDGET IMPLICATIONS:

Budget impacts? Yes No

Expenditures? \$

Funds available in the year 2005 budget: \$

Additional funds needed:

Year _____ Amount \$ _____

Year _____ Amount \$ _____

Revenues? \$

Year-end impacts on budget:

PREVIOUS BOARD ACTION/ACTIVITY:

The Board approved the current CAP excess water contract with AWBA in June 2002.

ISSUE SUMMARY/DESCRIPTIONS:

The current contract provides that AWBA will make levelized monthly payments based on the annual AWBA water schedule. This arrangement is not consistent with the changes CAWCD has recently made in the disposition of four-cent tax revenues. The proposed amendment provides that AWBA will pay the amount billed by CAWCD each month based on actual deliveries in the previous month. This procedure allows CAWCD improved flexibility in applying four-cent tax revenues to AWBA costs.

The current contract also provides for an annual reconciliation for all AWBA water deliveries. For intrastate storage deliveries, the reconciliation is limited to comparing the volume of water actually delivered to the scheduled amount. The change in billing described above renders this provision moot. Accordingly, the proposed amendment provides that CAWCD will perform an annual cost reconciliation only for AWBA deliveries for interstate storage.

SUGGESTED MOTION:

I move that the Board of Directors approve the amendment to the excess water contract between CAWCD and the Arizona Water Banking Authority as presented by staff.

O:\2005 Board Meetings\03-03-05 cawcd board\Amendment of AWBA excess water contract.doc

Water Service Charges

10. (a) By August 1 of each year, CAWCD shall establish water service charges for water to be delivered under this Agreement during the following year for interstate and intrastate storage.

(b) By the 20th of each month, CAWCD shall bill AWBA for water delivered in the preceding month under this Agreement. The payment due shall be computed by multiplying the total amount of water delivered in the preceding month by that portion of the applicable water service charge that is not paid directly to CAWCD by Groundwater Savings Facility Operators in accordance with Article 11.

(c) AWBA shall pay or provide for payment of the amount billed by CAWCD within 30 days.

(d) If, during any year in which water is being delivered for interstate storage under this Agreement, CAWCD determines that its interstate water storage costs will increase 20% or more over the estimates CAWCD used to establish the water service charge for interstate storage for that year, it shall within thirty (30) days of becoming aware of such increase: (1) notify AWBA in writing of the increase and (2) provide AWBA with an estimate of the increased costs for water delivery for interstate storage for that year. Following such notice, CAWCD shall give AWBA a reasonable opportunity to amend its interstate storage schedule for the remainder of that year.

(e) By May 31 of each year, CAWCD shall reconcile the actual operation, maintenance, and replacement costs and energy costs associated with water delivered for interstate storage to the costs estimated when the water service rate for interstate storage was established. If that year-end account reconciliation demonstrates that money is owed to CAWCD, AWBA shall pay the amount owed within 30 days of CAWCD's invoice. If funds are due to AWBA, CAWCD shall pay AWBA the amount due within 30 days of completing the reconciliation. Upon termination of this Agreement for any reason, CAWCD shall provide AWBA a reconciliation for any year or partial

year for which a reconciliation has not been performed. The obligation to provide the reconciliation, and of either party to pay any funds as a result of the reconciliation, shall survive termination of this Agreement.

PLEASE NOTE: In most BUT NOT ALL instances, the page and line numbering of bills on this web site correspond to the page and line numbering of the official printed version of the bills.

House Engrossed

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

HOUSE BILL 2728

AN ACT

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

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

4 45-611. Groundwater withdrawal fee; amounts and purposes of
5 fee; exception

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

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

24 2. For augmentation of the water supply of the active management area,
25 conservation assistance to water users within the active management area and
26 monitoring and assessing water availability within the active management
27 area, an amount not greater than two dollars per acre-foot per year.

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

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

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

8 1. IN THE TUCSON AND PHOENIX ACTIVE MANAGEMENT AREAS, beginning in
9 2017, for administration and enforcement of this chapter, an amount of at
10 least fifty cents but not more than one dollar per acre-foot per year. IN
11 THE PINAL ACTIVE MANAGEMENT AREA, BEGINNING IN 2017, FOR ADMINISTRATION AND
12 ENFORCEMENT OF THIS CHAPTER, AN AMOUNT OF NOT MORE THAN ONE DOLLAR PER
13 ACRE-FOOT PER YEAR.

14 2. Through 2016, for augmentation of the water supply of the active
15 management area, conservation assistance to water users within the active
16 management area and monitoring and assessing water availability within the
17 active management area, an amount of not more than fifty cents per acre-foot
18 per year, and after 2016, an amount of not more than two dollars per
19 acre-foot per year. If a permanent board of directors of an active
20 management area water district assumes office under section 48-4831, the fee
21 for augmentation under this paragraph shall not be levied in that active
22 management area.

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

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

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

3 45-841.01. Accrual of long-term storage credits; Indian water
4 rights settlements

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43 Sec. 4. Section 45-2423, Arizona Revised Statutes, is amended to read:
44 45-2423. Powers and duties of authority

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

- 1 1. Administer the Arizona water banking fund in accordance with this
2 chapter.
- 3 2. Coordinate its staffing needs with the director and CAWCD.
- 4 3. Coordinate the storage of water and distribution and extinguishment
5 of long-term storage credits with the director in accordance with this
6 chapter and the water management objectives set forth in chapter 2 of this
7 title.
- 8 4. Coordinate with CAWCD for the purchase, delivery and storage of
9 Colorado river water delivered through the central Arizona project in
10 accordance with this chapter.
- 11 5. Coordinate and confer with state agencies, municipal corporations,
12 special districts, authorities, other political subdivisions, private
13 entities, Indian communities and the United States on matters within their
14 jurisdiction relating to the policy and purposes of this chapter.
- 15 6. Determine, on an annual basis, the quantity of Colorado river water
16 to be stored by the authority and where that storage will occur.
- 17 7. Account for, hold and distribute or extinguish long-term storage
18 credits in accordance with this chapter.
- 19 8. Comply with all aspects of chapter 3.1 of this title.
- 20 9. PERFORM THE AUTHORITY'S REPLENISHMENT RESPONSIBILITIES UNDER
21 CHAPTER 15, ARTICLE 3 OF THIS TITLE WITH MONIES APPROPRIATED FROM THE STATE
22 GENERAL FUND BY THE LEGISLATURE FOR THAT PURPOSE AND TO THE EXTENT THAT
23 MONIES APPROPRIATED BY THE LEGISLATURE FOR THAT PURPOSE ARE NOT AVAILABLE,
24 WITH MONIES COLLECTED IN THE PINAL ACTIVE MANAGEMENT AREA PURSUANT TO SECTION
25 45-611, SUBSECTION C, PARAGRAPH 3.
- 26 ~~9-~~ 10. Adopt an official seal for the authentication of its records,
27 decisions and resolutions.
- 28 ~~10-~~ 11. Keep the minutes of its meetings and all records, reports and
29 other information relating to its work and programs in permanent form,
30 systematically indexed and filed.
- 31 B. The authority, acting through its commission, may:
 - 32 1. Apply for and hold water storage permits.
 - 33 2. Accrue, exchange, assign, lend and hold long-term storage credits
34 in accordance with this chapter.
 - 35 3. Exchange Colorado river water for any type of water in accordance
36 with chapter 4 of this title.
 - 37 4. Enter into water banking services agreements.
 - 38 5. Charge fees for water banking services.
 - 39 6. Apply for and hold any water quality permit required for water
40 storage by the department of environmental quality under title 49, chapter 2,
41 article 3 or by federal law.
 - 42 7. Make and execute all contracts, including intergovernmental
43 agreements pursuant to title 11, chapter 7, article 3, that shall be signed
44 by the chairperson, or in the chairperson's absence the vice-chairperson, and
45 attested by the secretary, necessary to:

1 (a) Obtain for storage Colorado river water delivered through the
2 central Arizona project. Agreements by which the authority obtains Colorado
3 river water are exempt from the requirements of title 41, chapter 23.

4 (b) Obtain effluent for storage but only after the authority has
5 stored all available excess Central Arizona project water or when central
6 Arizona project water is otherwise unavailable or undeliverable.

7 (c) Affiliate water storage permits held by the authority with storage
8 facility permits.

9 (d) Store Colorado river water at permitted storage facilities.

10 (e) Distribute long-term storage credits earned by the authority to
11 make water available to municipal and industrial users of Colorado river
12 water in this state that are inside or outside of the CAWCD service area, in
13 accordance with the provisions of this chapter.

14 (f) Store Colorado river water in Arizona on behalf of appropriately
15 authorized agencies in California and Nevada.

16 (g) Cause a decrease in Arizona diversions from the Colorado river,
17 ensuring that Arizona will use less than its full entitlement to Colorado
18 river water in years in which California and Nevada agencies are
19 contractually authorized to call on the water stored on their behalf by the
20 authority.

21 (h) Distribute long-term storage credits earned by the authority on
22 behalf of agencies in California and Nevada to Colorado river water users in
23 Arizona to use in place of Colorado river water that would have otherwise
24 been used by those Arizona users.

25 (i) REPLENISH WATER PURSUANT TO CHAPTER 15, ARTICLE 3 OF THIS TITLE,
26 INCLUDING ENTERING INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE GILA RIVER
27 INDIAN COMMUNITY PURSUANT TO SECTION 45-2624.

28 8. Sue and be sued.

29 9. Perform all other acts necessary for the authority to carry out its
30 purposes, powers and duties in accordance with this chapter.

31 10. Submit a request for a general fund appropriation to the
32 legislature each year. A request shall be accompanied by a budget detailing
33 how the appropriation would be used and justifying the need for the
34 appropriation.

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

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

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

45 45-2425. Arizona water banking fund

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

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

5 1. Monies appropriated from the state general fund by the legislature
6 FOR WATER BANKING PURPOSES OTHER THAN REPLENISHMENT UNDER CHAPTER 15, ARTICLE
7 3 OF THIS TITLE.

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

10 ~~2-~~ 3. Reimbursement for the distribution of long-term storage
11 credits, collected by the authority in accordance with section 45-2457,
12 subsection B, paragraph 2.

13 ~~3-~~ 4. Monies paid to the authority by the recipients of in lieu water
14 at a groundwater savings facility, in accordance with section 45-2455,
15 subsection C.

16 ~~4-~~ 5. Monies collected in accordance with section 45-611, subsection
17 C, paragraph 3.

18 ~~5-~~ 6. Monies deposited in the banking fund in accordance with section
19 48-3715.03, subsection B.

20 ~~6-~~ 7. Monies paid to the authority by agencies that have entered into
21 interstate water banking agreements with the authority in accordance with
22 section 45-2471.

23 ~~7-~~ 8. Monies paid to the authority by persons and Indian communities
24 in this state that have entered into water banking services agreements with
25 the authority in accordance with section 45-2458.

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

29 D. Monies in the banking fund are exempt from lapsing under section
30 35-190. On notice from the authority, the state treasurer shall invest and
31 divest monies in the fund as provided by section 35-313, and monies earned
32 from investment shall be credited to the banking fund.

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

36 Sec. 6. Section 45-2457, Arizona Revised Statutes, is amended to read:
37 45-2457. Accounting; rules of operation

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

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

44 1. The authority shall reserve a reasonable number of long-term
45 storage credits accrued with general fund appropriations, OTHER THAN GENERAL
46 FUND APPROPRIATIONS FOR REPLENISHMENT UNDER CHAPTER 15, ARTICLE 3 OF THIS

1 TITLE, for the benefit of municipal and industrial users of Colorado river
2 water in this state that are outside of the service area of CAWCD.
3 2. The authority may distribute long-term storage credits accrued with
4 general fund appropriations, OTHER THAN GENERAL FUND APPROPRIATIONS FOR
5 REPLENISHMENT UNDER CHAPTER 15, ARTICLE 3 OF THIS TITLE, for both of the
6 following:
7 (a) To make water available to a municipal and industrial user of
8 Colorado river water in this state that is outside of the service area of
9 CAWCD, if both of the following apply:
10 (i) The municipal and industrial user would otherwise suffer a water
11 shortage. The authority may distribute long-term credits to the extent
12 reasonably necessary to offset the water shortage.
13 (ii) The authority collects reimbursement for the cost to the
14 authority of replacing the long-term storage credits distributed. The
15 authority may replace the long-term storage credits in any year it deems
16 appropriate but shall use good faith efforts to replace the long-term storage
17 credits at a reasonable cost to the person who is responsible for reimbursing
18 the authority for the credits distributed.
19 (b) To make water available to CAWCD to the extent necessary for CAWCD
20 to meet the demands of its municipal and industrial subcontractors, if all of
21 the following apply:
22 (i) CAWCD's normal diversions from the Colorado river have been or
23 will be disrupted by shortages on the river or by disruptions in the
24 operation of the central Arizona project.
25 (ii) The authority does not distribute for this purpose the long-term
26 storage credits reserved in accordance with paragraph 1.
27 (iii) The authority collects reimbursement from CAWCD for the cost to
28 the authority of replacing the long-term storage credits distributed. The
29 authority may replace the long-term storage credits in any year it deems
30 appropriate but shall use good faith efforts to replace the long-term storage
31 credits at a reasonable cost to CAWCD.
32 3. The authority may distribute or extinguish long-term storage
33 credits accrued with general fund appropriations, OTHER THAN GENERAL FUND
34 APPROPRIATIONS FOR REPLENISHMENT UNDER CHAPTER 15, ARTICLE 3 OF THIS TITLE,
35 to implement the settlement of water right claims by Indian communities in
36 this state.
37 4. On request from the director, the authority may extinguish
38 long-term storage credits accrued with general fund appropriations, OTHER
39 THAN GENERAL FUND APPROPRIATIONS FOR REPLENISHMENT UNDER CHAPTER 15, ARTICLE
40 3 OF THIS TITLE, to fulfill the water management objectives set forth in
41 chapter 2 of this title.
42 5. The authority may exchange long-term storage credits accrued with
43 general fund appropriations for long-term storage credits held by other
44 persons if the long-term storage credits received by the authority were
45 stored in a location that better enables the authority to fulfill the
46 purposes and policies of this chapter than were the long-term storage credits

1 exchanged by the authority. For the purposes of this paragraph, the
2 authority may make exchanges of long-term storage credits stored in one
3 active management area for long-term storage credits stored in a different
4 active management area or of long-term storage credits stored in one
5 groundwater basin for long-term storage credits stored in a different
6 groundwater basin.

7 6. The authority shall distribute or extinguish long-term storage
8 credits accrued with monies collected in accordance with section 45-611,
9 subsection C, paragraph 3 only for the benefit of the active management area
10 in which the monies were collected. The authority may distribute or
11 extinguish these long-term storage credits to implement the settlement of
12 water right claims by Indian communities in this state or, on request from
13 the director, to meet the water management objectives set forth in chapter 2
14 of this title. THE AUTHORITY MAY USE THE MONIES COLLECTED IN THE PINAL
15 ACTIVE MANAGEMENT AREA UNDER SECTION 45-611, SUBSECTION C, PARAGRAPH 3 TO
16 ACQUIRE LONG-TERM STORAGE CREDITS FOR REPLENISHMENT PURPOSES UNDER CHAPTER
17 15, ARTICLE 3 OF THIS TITLE.

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

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

36 (a) The total number of credits determined to be available by the
37 authority under this paragraph multiplied by the percentage produced by
38 dividing a numerator equaling the amount of revenues paid pursuant to section
39 48-3715.02, subsections B and C by taxpayers that are within both the
40 boundaries of the municipal provider that is experiencing the shortage and
41 the boundaries of the surface water supply system that is experiencing the
42 shortage by a denominator equaling the total revenues paid pursuant to
43 section 48-3715.02, subsections B and C by all taxpayers that are located
44 within both the boundaries of a municipal water provider and the boundaries
45 of a surface water supply system in the county. In making these
46 computations, the authority shall use the amounts of revenue paid by

1 taxpayers during the most recent tax year for which this information is
2 available.

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

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

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

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

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

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

29 CHAPTER 15

30 GILA RIVER INDIAN COMMUNITY WATER SETTLEMENT PROGRAM

31 ARTICLE 1. ADMINISTRATION

32 45-2601. Definitions

33 UNLESS THE CONTEXT OTHERWISE REQUIRES, THE TERMS DEFINED IN SECTIONS
34 45-402 AND 45-802.01 HAVE THE SAME MEANING IN THIS CHAPTER AND FOR THE
35 PURPOSES OF THIS CHAPTER:

36 1. "CENTRAL PROTECTION ZONE" MEANS THE CENTRAL PROTECTION ZONE
37 ESTABLISHED UNDER SECTION 45-2602.

38 2. "COMMUNITY" MEANS THE GILA RIVER INDIAN COMMUNITY, A GOVERNMENT
39 COMPOSED OF MEMBERS OF THE PIMA TRIBE AND THE MARICOPA TRIBE AND ORGANIZED
40 UNDER SECTION 16 OF THE ACT OF JUNE 18, 1934 (25 UNITED STATES CODE SECTION
41 476).

42 3. "DAM" HAS THE MEANING PRESCRIBED IN SECTION 45-1201 ON JANUARY 1,
43 2005.

44 4. "DESIGNED STORAGE CAPACITY" MEANS THE STORAGE CAPACITY IN ACRE-FEET
45 OF A RESERVOIR AT THE ELEVATION OF THE LOWEST SPILLWAY IN THE DAM IMPOUNDING
46 WATER IN THE RESERVOIR, AS THE DAM WAS ORIGINALLY CONSTRUCTED.

- 1 5. "EASTERN PROTECTION ZONE" MEANS THE EASTERN PROTECTION ZONE NORTH
2 OR THE EASTERN PROTECTION ZONE SOUTH.
- 3 6. "EASTERN PROTECTION ZONE NORTH" MEANS THE EASTERN PROTECTION ZONE
4 NORTH ESTABLISHED UNDER SECTION 45-2602, SUBSECTION A.
- 5 7. "EASTERN PROTECTION ZONE SOUTH" MEANS THE EASTERN PROTECTION ZONE
6 SOUTH ESTABLISHED UNDER SECTION 45-2602, SUBSECTION A.
- 7 8. "GILA RIVER MAINTENANCE AREA" MEANS THE GILA RIVER MAINTENANCE AREA
8 ESTABLISHED UNDER SECTION 45-2603, SUBSECTION A.
- 9 9. "GILA RIVER MAINTENANCE AREA IMPACT ZONE" MEANS THE GILA RIVER
10 MAINTENANCE AREA IMPACT ZONE ESTABLISHED UNDER SECTION 45-2603, SUBSECTION B.
- 11 10. "GLOBE EQUITY DECREE" MEANS THE DECREE DATED JUNE 29, 1935 AND
12 ENTERED IN UNITED STATES OF AMERICA v. GILA VALLEY IRRIGATION DISTRICT, GLOBE
13 EQUITY NO. 59, ET AL. BY THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
14 ARIZONA AND INCLUDES ALL COURT ORDERS AND DECISIONS SUPPLEMENTAL TO THAT
15 DECREE.
- 16 11. "INDUSTRIAL USE" MEANS ALL OF THE FOLLOWING:
- 17 (a) A NONIRRIGATION USE OF WATER COMMENCED AFTER DECEMBER 31, 2002
18 THAT IS NOT SUPPLIED BY A MUNICIPAL PROVIDER, INCLUDING ANIMAL INDUSTRY USE
19 AND EXPANDED ANIMAL INDUSTRY USE.
- 20 (b) A USE OF GROUNDWATER COMMENCED BEFORE JANUARY 1, 2003 BY A HOLDER
21 OF A TYPE 1 NONIRRIGATION GRANDFATHERED RIGHT IN EXISTENCE ON DECEMBER 31,
22 2002, OTHER THAN A TYPE 1 NONIRRIGATION GRANDFATHERED RIGHT HELD BY A
23 MUNICIPAL PROVIDER AND OTHER THAN A USE UNDER ANOTHER GROUNDWATER RIGHT OR
24 PERMIT, IN EXCESS OF THE AMOUNT ALLOWED UNDER THE TYPE 1 NONIRRIGATION
25 GRANDFATHERED RIGHT.
- 26 (c) A USE OF GROUNDWATER COMMENCED BEFORE JANUARY 1, 2003 BY A HOLDER
27 OF A TYPE 2 NONIRRIGATION GRANDFATHERED RIGHT IN EXISTENCE ON DECEMBER 31,
28 2002, OTHER THAN A TYPE 2 NONIRRIGATION GRANDFATHERED RIGHT HELD BY A
29 MUNICIPAL PROVIDER, IN EXCESS OF THE AMOUNT ALLOWED UNDER THE RIGHT AND FOR
30 WHICH THE HOLDER HAS NO OTHER GROUNDWATER RIGHT.
- 31 (d) A USE OF GROUNDWATER COMMENCED BEFORE JANUARY 1, 2003 BY A HOLDER
32 OF A GENERAL INDUSTRIAL USE PERMIT ISSUED UNDER SECTION 45-515 AND IN
33 EXISTENCE ON DECEMBER 31, 2002, OTHER THAN A USE UNDER ANOTHER GROUNDWATER
34 RIGHT OR PERMIT, IN EXCESS OF THE AMOUNT ALLOWED UNDER THE GENERAL INDUSTRIAL
35 USE PERMIT.
- 36 12. "IRRIGATION USE" MEANS THE USE OF WATER ON TWO OR MORE ACRES OF
37 LAND TO PRODUCE PLANTS OR PARTS OF PLANTS FOR SALE OR HUMAN CONSUMPTION, OR
38 FOR USE AS FEED FOR LIVESTOCK, RANGE LIVESTOCK OR POULTRY, AS THOSE TERMS ARE
39 DEFINED IN SECTION 3-1201.
- 40 13. "MUNICIPAL ACRE" MEANS THE ACRE OR ACRES OF LAND WITHIN A
41 PROTECTION ZONE, ON WHICH WATER PUMPED FROM WITHIN A PROTECTION ZONE IS
42 SUPPLIED BY A MUNICIPAL PROVIDER, ON WHICH WATER USE WAS FIRST COMMENCED
43 AFTER DECEMBER 31, 2002 AND FOR WHICH THE WATER USE IS REPORTED PURSUANT TO
44 SECTION 45-632, 45-875.01 OR 45-2602.
- 45 14. "MUNICIPAL PROVIDER" MEANS A CITY, TOWN, PRIVATE WATER COMPANY OR
46 IRRIGATION DISTRICT THAT SUPPLIES WATER FOR NONIRRIGATION USE.

- 1 15. "MUNICIPAL USE" MEANS A NONIRRIGATION USE OF WATER COMMENCED AFTER
2 DECEMBER 31, 2002 AND SUPPLIED BY A MUNICIPAL PROVIDER ON MUNICIPAL ACRES.
- 3 16. "NONIRRIGATION USE" MEANS A USE OF WATER WITHDRAWN FROM A WELL,
4 OTHER THAN AN IRRIGATION USE.
- 5 17. "RESERVATION" MEANS THE GILA RIVER INDIAN COMMUNITY RESERVATION.
- 6 18. "SETTLEMENT AGREEMENT" MEANS THE AGREEMENT ENTITLED THE "GILA RIVER
7 INDIAN COMMUNITY WATER RIGHTS SETTLEMENT AGREEMENT", DATED FEBRUARY 4, 2003
8 BETWEEN THE COMMUNITY, THIS STATE AND OTHER PARTIES, AS AMENDED BEFORE THE
9 EFFECTIVE DATE OF THIS SECTION, A COPY OF WHICH IS ON FILE IN THE DEPARTMENT.
- 10 19. "SOUTHSIDE PROTECTION ZONES" MEANS THE EASTERN PROTECTION ZONE
11 NORTH, THE EASTERN PROTECTION ZONE SOUTH, THE WESTERN MUNICIPAL PROTECTION
12 ZONE, THE WESTERN MUNICIPAL AND INDUSTRIAL PROTECTION ZONE AND THE CENTRAL
13 PROTECTION ZONE.
- 14 20. "STOCKPOND" MEANS A POND THAT HAS A CAPACITY OF NOT MORE THAN
15 FIFTEEN ACRE-FEET AND THAT IS USED SOLELY FOR WATERING LIVESTOCK OR WILDLIFE.
16 A POND USED PRIMARILY FOR FISHING OR FOR THE CULTURING OF FISH IS NOT A
17 STOCKPOND.
- 18 21. "STORED WATER" MEANS WATER THAT HAS BEEN STORED OR SAVED
19 UNDERGROUND PURSUANT TO A STORAGE PERMIT ISSUED UNDER CHAPTER 3.1 OF THIS
20 TITLE.
- 21 22. "UNDERGROUND WATER" MEANS WATER, OTHER THAN STORED WATER, WITHDRAWN
22 FROM A WELL.
- 23 23. "WATER COMPANY" MEANS EITHER OF THE FOLLOWING:
- 24 (a) A PRIVATE WATER COMPANY THAT AS OF JANUARY 1, 2000 WAS REGULATED
25 AS A PUBLIC SERVICE CORPORATION BY THE ARIZONA CORPORATION COMMISSION AND WAS
26 WITHDRAWING UNDERGROUND WATER FROM LANDS NOW WITHIN THE EASTERN PROTECTION
27 ZONE NORTH.
- 28 (b) ANY SUCCESSOR OF A PRIVATE WATER COMPANY DESCRIBED IN SUBDIVISION
29 (a) OF THIS PARAGRAPH.
- 30 24. "WESTERN MUNICIPAL AND INDUSTRIAL PROTECTION ZONE" MEANS THE
31 WESTERN MUNICIPAL AND INDUSTRIAL PROTECTION ZONE ESTABLISHED UNDER SECTION
32 45-2602, SUBSECTION A.
- 33 25. "WESTERN MUNICIPAL PROTECTION ZONE" MEANS THE WESTERN MUNICIPAL
34 PROTECTION ZONE ESTABLISHED UNDER SECTION 45-2602, SUBSECTION A.
- 35 26. "WESTERN PROTECTION ZONES" MEANS THE WESTERN MUNICIPAL PROTECTION
36 ZONE AND THE WESTERN MUNICIPAL AND INDUSTRIAL PROTECTION ZONE.
- 37 45-2603. Establishment of Gila river maintenance area and Gila
38 river maintenance area impact zone; notice of
39 intention to drill
- 40 A. THE GILA RIVER MAINTENANCE AREA IS ESTABLISHED ON THE EFFECTIVE
41 DATE OF THIS SECTION. THE BOUNDARIES OF THE GILA RIVER MAINTENANCE AREA ARE
42 SHOWN ON THE MAP THAT IS DATED JULY, 2002 AND THAT IS ON FILE IN THE
43 DEPARTMENT. THE MAP SHALL BE AVAILABLE FOR EXAMINATION BY THE PUBLIC DURING
44 REGULAR BUSINESS HOURS.
- 45 B. THE GILA RIVER MAINTENANCE AREA IMPACT ZONE IS ESTABLISHED ON THE
46 EFFECTIVE DATE OF THIS SECTION. THE BOUNDARIES OF THE GILA RIVER MAINTENANCE

1 AREA IMPACT ZONE ARE SHOWN ON THE MAP THAT IS DATED JULY, 2002 AND THAT IS ON
2 FILE IN THE DEPARTMENT.

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

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

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

15 ARTICLE 4. DAMS WITHIN GILA RIVER MAINTENANCE AREA
16 45-2631. Construction or enlargement of new dams within
17 maintenance area: prohibited: exceptions

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

23 B. THIS SECTION DOES NOT APPLY TO:

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

25 (a) FLOOD CONTROL STRUCTURES.

26 (b) STRUCTURES FOR IMPOUNDING MINE TAILINGS.

27 (c) IMPOUNDMENTS WITHIN HARDROCK MINES OR INDUSTRIAL FACILITIES, OR
28 BOTH, FOR ENVIRONMENTAL CONTROL OR PROCESS MANAGEMENT PURPOSES.

29 (d) IMPOUNDMENTS FOR DIVERTING SURFACE WATER FLOWS AROUND HARDROCK
30 MINES OR INDUSTRIAL FACILITIES, OR BOTH.

31 (e) GROUNDWATER IMPOUNDMENTS.

32 (f) EFFLUENT IMPOUNDMENTS.

33 (g) STOCKPONDS.

34 (h) IMPOUNDMENTS THAT MAY BE CONSTRUCTED TO STORE WATER OTHERWISE
35 AUTHORIZED TO BE USED BY A PARTY TO THE SETTLEMENT AGREEMENT.

36 (i) DAMS USED TO DIVERT OR STORE WATER THAT IS DECREED WATER UNDER THE
37 GLOBE EQUITY DECREE.

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

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

45 4. THE MODIFICATION OR REPAIR OF A DAM WITHIN THE GILA RIVER
46 MAINTENANCE AREA AS NECESSARY TO COMPLY WITH THE DAM SAFETY REQUIREMENTS IN

1 CHAPTER 6 OF THIS TITLE AND ANY RULES ADOPTED BY THE DIRECTOR UNDER THAT
2 CHAPTER, IF THE MODIFICATION OR REPAIR DOES NOT INCREASE THE DESIGNED STORAGE
3 CAPACITY OF THE DAM. FOR THE PURPOSES OF THIS PARAGRAPH, "MODIFICATION OR
4 REPAIR OF A DAM" INCLUDES THE DESILTING, LINING OR REHABILITATION OF A DAM.

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

9 D. ANY VIOLATIONS OF THIS ARTICLE ARE SUBJECT TO ENFORCEMENT UNDER
10 ARTICLE 6 OF THIS CHAPTER ON THE EFFECTIVE DATE OF ARTICLE 6 OF THIS CHAPTER,
11 AND SUCH ENFORCEMENT MAY INCLUDE INJUNCTIVE RELIEF THAT REQUIRES REMOVAL OF
12 ANY STRUCTURES CONSTRUCTED IN VIOLATION OF THIS ARTICLE. ANY DELAY BETWEEN
13 THE DATE OF THE ALLEGED VIOLATION OF THIS ARTICLE AND THE DATE OF ANY
14 ENFORCEMENT ACTION PURSUANT TO ARTICLE 6 OF THIS CHAPTER SHALL NOT BE A
15 FACTOR IN DETERMINING WHETHER TO ISSUE AN INJUNCTION PURSUANT TO ARTICLE 6 OF
16 THIS CHAPTER.

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

19 45-2641. Irrigation of new lands in Gila river maintenance area
20 with water withdrawn or diverted from Gila river
21 maintenance area impact zone prohibited; exception

22 A. EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION, A PERSON SHALL
23 NOT USE WATER WITHDRAWN OR DIVERTED WITHIN THE GILA RIVER MAINTENANCE AREA
24 IMPACT ZONE TO IRRIGATE LAND WITHIN THE GILA RIVER MAINTENANCE AREA UNLESS
25 THE LAND WAS IRRIGATED WITH WATER FROM ANY SOURCE AT ANY TIME FROM JANUARY 1,
26 2000 THROUGH THE EFFECTIVE DATE OF THIS SECTION. FOR THE PURPOSES OF THIS
27 SECTION, WATER IS WITHDRAWN OR DIVERTED WITHIN THE GILA RIVER MAINTENANCE
28 AREA IMPACT ZONE IF ONE OF THE FOLLOWING APPLIES:

29 1. THE WATER IS WITHDRAWN FROM A WELL LOCATED WITHIN THE GILA RIVER
30 MAINTENANCE AREA IMPACT ZONE.

31 2. THE WATER IS SURFACE WATER DIVERTED ON THE SURFACE AT A LOCATION
32 WITHIN THE GILA RIVER MAINTENANCE AREA IMPACT ZONE.

33 3. THE WATER IS WITHDRAWN BY A WELL LOCATED OUTSIDE OF THE GILA RIVER
34 MAINTENANCE AREA IMPACT ZONE AND THE WELL'S CONE OF DEPRESSION CAPTURES
35 SURFACE WATER WITHIN THE GILA RIVER MAINTENANCE AREA IMPACT ZONE AS
36 DETERMINED BY A CONE OF DEPRESSION TEST ADOPTED BY THE SUPERIOR COURT WITH
37 JURISDICTION OVER THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE
38 GILA RIVER SYSTEM AND SOURCE.

39 B. THIS SECTION DOES NOT APPLY TO:

40 1. THE IRRIGATION OF LANDS PURSUANT TO AN APPROPRIATIVE RIGHT WITH A
41 PRIORITY DATE EARLIER THAN THE EFFECTIVE DATE OF THIS SECTION AND THE
42 IRRIGATION OF LANDS TO WHICH THE RIGHT IS SEVERED AND TRANSFERRED.

43 2. THE IRRIGATION OF LANDS IF THE IRRIGATION IS ALLOWED UNDER THE
44 SETTLEMENT AGREEMENT.

45 3. THE IRRIGATION OF LANDS WITHIN THE PORTION OF THE GILA RIVER
46 MAINTENANCE AREA LOCATED IN COCHISE COUNTY.

1 4. THE IRRIGATION OF LANDS IF THE IRRIGATION IS ALLOWED UNDER THE
2 GLOBE EQUITY DECREE OR UNDER OTHER RIGHTS DECREED BEFORE THE EFFECTIVE DATE
3 OF THIS SECTION AND THE IRRIGATION OF LANDS TO WHICH THE RIGHT IS SEVERED AND
4 TRANSFERRED.

5 C. ANY VIOLATIONS OF THIS ARTICLE ARE SUBJECT TO ENFORCEMENT UNDER
6 ARTICLE 6 OF THIS CHAPTER ON THE EFFECTIVE DATE OF ARTICLE 6 OF THIS CHAPTER,
7 AND SUCH ENFORCEMENT MAY INCLUDE INJUNCTIVE RELIEF THAT REQUIRES REMOVAL OF
8 ANY STRUCTURES CONSTRUCTED IN VIOLATION OF THIS ARTICLE. ANY DELAY BETWEEN
9 THE DATE OF THE ALLEGED VIOLATION OF THIS ARTICLE AND THE DATE OF ANY
10 ENFORCEMENT ACTION PURSUANT TO ARTICLE 6 OF THIS CHAPTER SHALL NOT BE A
11 FACTOR IN DETERMINING WHETHER TO ISSUE AN INJUNCTION PURSUANT TO ARTICLE 6 OF
12 THIS CHAPTER.

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

16 45-2602. Establishment of southside protection zones; reporting
17 requirements

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

- 20 1. THE EASTERN PROTECTION ZONE NORTH.
- 21 2. THE EASTERN PROTECTION ZONE SOUTH.
- 22 3. THE WESTERN MUNICIPAL AND INDUSTRIAL PROTECTION ZONE.
- 23 4. THE WESTERN MUNICIPAL PROTECTION ZONE.
- 24 5. THE CENTRAL PROTECTION ZONE.

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

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

35 1. THE AMOUNT OF UNDERGROUND WATER WITHDRAWN WITHIN THE SOUTHSIDE
36 PROTECTION ZONE AND THE NAME OF THE PROTECTION ZONE.

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

41 3. THE AMOUNT OF ANY WATER REPLENISHED DURING THE YEAR PURSUANT TO
42 SECTION 45-2611, SUBSECTION B, PARAGRAPH 2, THE WATER USE FOR WHICH THE WATER
43 WAS REPLENISHED AND THE MANNER IN WHICH THE WATER WAS REPLENISHED.

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

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

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

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

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

10 4. SHALL COMPLY WITH THE REQUIREMENTS PRESCRIBED IN SECTION 45-632,
11 SUBSECTIONS N, O AND P AND IS SUBJECT TO THE PENALTIES PRESCRIBED IN SECTION
12 45-632, SUBSECTION O AS IF THE REPORT WAS REQUIRED BY SECTION 45-632.

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

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

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

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

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

32 4. THE AMOUNT OF ANY WATER REPLENISHED DURING THE YEAR PURSUANT TO
33 SECTION 45-2611, SUBSECTION B, PARAGRAPH 2, THE WATER USE FOR WHICH THE WATER
34 WAS REPLENISHED AND THE MANNER IN WHICH THE WATER WAS REPLENISHED.

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

38 45-2604. Conservation requirements for persons using
39 groundwater in central protection zone no less
40 restrictive than in third management plan

41 NOTWITHSTANDING ANY OTHER LAW, BEGINNING ON THE EFFECTIVE DATE OF THIS
42 SECTION, WHEN ADOPTING OR MODIFYING A MANAGEMENT PLAN FOR THE PINAL ACTIVE
43 MANAGEMENT AREA PURSUANT TO CHAPTER 2, ARTICLE 9 OF THIS TITLE, THE
44 CONSERVATION REQUIREMENTS ADOPTED BY THE DIRECTOR FOR PERSONS USING
45 GROUNDWATER WITHIN THE CENTRAL PROTECTION ZONE SHALL BE NO LESS RESTRICTIVE
46 THAN THE CONSERVATION REQUIREMENTS FOR PERSONS USING GROUNDWATER WITHIN THE

1 CENTRAL PROTECTION ZONE AS ESTABLISHED IN THE MANAGEMENT PLAN FOR THE PINAL
2 ACTIVE MANAGEMENT AREA FOR THE THIRD MANAGEMENT PERIOD IN EFFECT ON JANUARY
3 1, 2005 OR AS ADJUSTED AFTER THAT DATE AS A RESULT OF JUDICIAL REVIEW OR
4 ADMINISTRATIVE REVIEW PURSUANT TO SECTION 45-570 OR 45-575.

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

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

10 45-2611. Transportation of underground water and stored water
11 away from an eastern protection zone or western
12 protection zone prohibited; exceptions

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

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

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

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

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

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

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

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

44 7. THROUGH 2023, THE TRANSPORTATION OF UNDERGROUND WATER AND STORED
45 WATER WITHDRAWN BY A WATER COMPANY WITHIN AN EASTERN PROTECTION ZONE AND
46 TRANSPORTED BY THE WATER COMPANY FOR MUNICIPAL USES OUTSIDE OF THE EASTERN

1 PROTECTION ZONES. FOR THE PURPOSES OF THIS PARAGRAPH, STORED WATER DOES NOT
2 INCLUDE ANY WATER STORED WITHIN AN EASTERN PROTECTION ZONE AND RECOVERED
3 WITHIN THAT PROTECTION ZONE.

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

11 ARTICLE 3. REPLENISHMENT OF UNDERGROUND WATER AND STORED
12 WATER WITHDRAWN IN EASTERN PROTECTION ZONES AND
13 WESTERN PROTECTION ZONES

14 45-2621. Definitions

15 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

16 1. "AUTHORITY" MEANS THE ARIZONA WATER BANKING AUTHORITY ESTABLISHED
17 BY SECTION 45-2421 OR ITS SUCCESSOR.

18 2. "COMMUNITY'S ACCOUNT" MEANS THE ACCOUNT ESTABLISHED FOR THE
19 COMMUNITY IN THE SOUTHSIDE REPLENISHMENT BANK PURSUANT TO SECTION 45-2624.

20 3. "INDUSTRIAL ACRE" MEANS THE ACRE OR ACRES IN AN EASTERN PROTECTION
21 ZONE OR IN THE WESTERN MUNICIPAL AND INDUSTRIAL PROTECTION ZONE ON WHICH
22 WATER IS USED FOR AN INDUSTRIAL USE AND FOR WHICH THE WATER USE IS REPORTED
23 TO THE DIRECTOR UNDER SECTION 45-632, 45-875.01 OR 45-2602.

24 4. "SOUTHSIDE REPLENISHMENT OBLIGATION" MEANS A REPLENISHMENT
25 OBLIGATION CALCULATED UNDER SECTION 45-2622.

26 45-2622. Annual southside replenishment obligations

27 A. NO LATER THAN OCTOBER 1 OF EACH CALENDAR YEAR FOLLOWING THE YEAR IN
28 WHICH THIS SECTION BECOMES EFFECTIVE, THE DIRECTOR SHALL CALCULATE THE
29 SOUTHSIDE REPLENISHMENT OBLIGATIONS FOR THE PRECEDING CALENDAR YEAR AND
30 NOTIFY THE AUTHORITY OF THE AMOUNT OF THE OBLIGATIONS.

31 B. THE DIRECTOR SHALL CALCULATE THE SOUTHSIDE REPLENISHMENT
32 OBLIGATIONS FOR A CALENDAR YEAR AS FOLLOWS:

33 1. THE DIRECTOR SHALL CALCULATE THE MUNICIPAL AND INDUSTRIAL
34 REPLENISHMENT OBLIGATION FOR THE WESTERN MUNICIPAL AND INDUSTRIAL PROTECTION
35 ZONE FOR THE YEAR AS FOLLOWS:

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

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

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

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

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

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

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

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

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

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

35 (a) DETERMINE THE TOTAL AMOUNT OF UNDERGROUND WATER AND STORED WATER
36 WITHDRAWN DURING THE YEAR FROM WITHIN THE EASTERN PROTECTION ZONE NORTH FOR
37 MUNICIPAL USES AND INDUSTRIAL USES WITHIN AN EASTERN PROTECTION ZONE, AS
38 REPORTED TO THE DIRECTOR UNDER SECTIONS 45-632, 45-875.01 AND 45-2602. FOR
39 THE PURPOSES OF THIS SUBDIVISION, STORED WATER DOES NOT INCLUDE ANY WATER
40 STORED AT A STORAGE FACILITY LOCATED WITHIN THE EASTERN PROTECTION ZONE NORTH
41 OR ANY WATER STORED AND RECOVERED ON AN ANNUAL BASIS PURSUANT TO SECTION
42 45-851.01.

43 (b) DETERMINE THE TOTAL AMOUNT OF UNDERGROUND WATER AND STORED WATER
44 WITHDRAWN DURING THE YEAR BY A WATER COMPANY FROM WITHIN THE EASTERN
45 PROTECTION ZONE SOUTH AND USED FOR MUNICIPAL USES WITHIN THE EASTERN
46 PROTECTION ZONE NORTH. FOR THE PURPOSES OF THIS SUBDIVISION, STORED WATER

1 DOES NOT INCLUDE ANY WATER STORED AT A STORAGE FACILITY LOCATED WITHIN THE
2 EASTERN PROTECTION ZONE SOUTH OR ANY WATER STORED AND RECOVERED ON AN ANNUAL
3 BASIS PURSUANT TO SECTION 45-851.01.

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

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

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

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

19 (a) DETERMINE THE TOTAL AMOUNT OF UNDERGROUND WATER AND STORED WATER
20 WITHDRAWN DURING THE YEAR FROM WITHIN THE EASTERN PROTECTION ZONE SOUTH FOR
21 MUNICIPAL USES AND INDUSTRIAL USES WITHIN AN EASTERN PROTECTION ZONE, AS
22 REPORTED TO THE DIRECTOR UNDER SECTIONS 45-632, 45-875.01 AND 45-2602. FOR
23 THE PURPOSES OF THIS SUBDIVISION, STORED WATER DOES NOT INCLUDE ANY WATER
24 STORED AT A STORAGE FACILITY LOCATED WITHIN THE EASTERN PROTECTION ZONE SOUTH
25 OR ANY WATER STORED AND RECOVERED ON AN ANNUAL BASIS PURSUANT TO SECTION
26 45-851.01.

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

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

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

44 (e) SUBTRACT THE PRODUCT IN SUBDIVISION (d) OF THIS PARAGRAPH FROM THE
45 QUOTIENT IN SUBDIVISION (c) OF THIS PARAGRAPH. THE RESULT IS THE MUNICIPAL
46 AND INDUSTRIAL REPLENISHMENT OBLIGATION FOR THE EASTERN PROTECTION ZONE SOUTH

1 FOR THE YEAR, EXCEPT THAT IF THE RESULT IS LESS THAN ZERO, THERE IS NO
2 REPLENISHMENT OBLIGATION.

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

6 (a) DETERMINE THE TOTAL AMOUNT OF UNDERGROUND WATER AND STORED WATER
7 WITHDRAWN DURING THE YEAR FROM WITHIN THE WESTERN MUNICIPAL AND INDUSTRIAL
8 PROTECTION ZONE AND THE WESTERN MUNICIPAL PROTECTION ZONE AND USED FOR THE
9 IRRIGATION OF LANDS WITHIN THOSE PROTECTION ZONES, AS REPORTED TO THE
10 DIRECTOR ON THE ANNUAL REPORTS REQUIRED BY SECTIONS 45-632, 45-875.01 AND
11 45-2602. FOR THE PURPOSES OF THIS SUBDIVISION, STORED WATER DOES NOT INCLUDE
12 ANY WATER STORED AT A STORAGE FACILITY LOCATED WITHIN THE WESTERN MUNICIPAL
13 AND INDUSTRIAL PROTECTION ZONE OR THE WESTERN MUNICIPAL PROTECTION ZONE.

14 (b) FOR EACH FARM WITHIN THE WESTERN MUNICIPAL AND INDUSTRIAL
15 PROTECTION ZONE AND THE WESTERN MUNICIPAL PROTECTION ZONE FOR WHICH AN ANNUAL
16 REPORT IS FILED UNDER SECTION 45-632, 45-875.01 OR 45-2602 FOR THE YEAR,
17 CALCULATE THE MAXIMUM AMOUNT OF GROUNDWATER THAT MAY BE USED ON THE FARM FOR
18 IRRIGATION PURPOSES DURING THE YEAR WITHOUT CAUSING THE FLEXIBILITY ACCOUNT
19 FOR THE FARM TO BE IN ARREARS IN EXCESS OF THE AMOUNT ALLOWED UNDER SECTION
20 45-467, SUBSECTION I. IN MAKING THIS CALCULATION, THE DIRECTOR SHALL USE THE
21 IRRIGATION WATER DUTY ESTABLISHED FOR THE FARM FOR THE THIRD MANAGEMENT
22 PERIOD PURSUANT TO SECTION 45-566, SUBSECTION A, PARAGRAPH 1.

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

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

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

34 (a) DETERMINE THE TOTAL AMOUNT OF UNDERGROUND WATER AND STORED WATER
35 WITHDRAWN DURING THE YEAR FROM WITHIN THE EASTERN PROTECTION ZONE NORTH AND
36 THE EASTERN PROTECTION ZONE SOUTH AND USED FOR THE IRRIGATION OF LANDS WITHIN
37 THOSE PROTECTION ZONES, AS REPORTED TO THE DIRECTOR ON THE ANNUAL REPORTS
38 REQUIRED BY SECTION 45-632, SECTION 45-875.01, SUBSECTION D AND SECTION
39 45-2602. FOR THE PURPOSES OF THIS SUBDIVISION, STORED WATER DOES NOT INCLUDE
40 ANY WATER STORED AT A STORAGE FACILITY LOCATED WITHIN THE EASTERN PROTECTION
41 ZONE NORTH OR THE EASTERN PROTECTION ZONE SOUTH.

42 (b) FOR EACH FARM WITHIN THE EASTERN PROTECTION ZONE NORTH AND THE
43 EASTERN PROTECTION ZONE SOUTH FOR WHICH AN ANNUAL REPORT IS FILED UNDER
44 SECTION 45-632, 45-875.01 OR 45-2602 FOR THE YEAR, CALCULATE THE MAXIMUM
45 AMOUNT OF GROUNDWATER THAT MAY BE USED ON THE FARM FOR IRRIGATION PURPOSES
46 DURING THE YEAR WITHOUT CAUSING THE FLEXIBILITY ACCOUNT FOR THE FARM TO BE IN

1 ARREARS IN EXCESS OF THE AMOUNT ALLOWED UNDER SECTION 45-467, SUBSECTION
2 I. IN MAKING THIS CALCULATION, THE DIRECTOR SHALL USE THE IRRIGATION WATER
3 DUTY ESTABLISHED FOR THE FARM FOR THE THIRD MANAGEMENT PERIOD PURSUANT TO
4 SECTION 45-566, SUBSECTION A, PARAGRAPH 1.

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

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

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

23 45-2623. Satisfaction of southside replenishment obligations

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

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

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

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

43 2. FOR A REPLENISHMENT OBLIGATION APPLICABLE TO THE WESTERN MUNICIPAL
44 AND INDUSTRIAL PROTECTION ZONE OR THE WESTERN MUNICIPAL PROTECTION ZONE, THE
45 AUTHORITY MAY EXTINGUISH LONG-TERM STORAGE CREDITS EARNED OR ACQUIRED BY THE

1 AUTHORITY UNDER CHAPTER 3.1 OF THIS TITLE, AS AUTHORIZED BY CHAPTER 14 OF
2 THIS TITLE, AND TO WHICH BOTH OF THE FOLLOWING APPLY:

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

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

8 3. FOR A REPLENISHMENT OBLIGATION APPLICABLE TO THE EASTERN PROTECTION
9 ZONE NORTH OR THE EASTERN PROTECTION ZONE SOUTH, THE AUTHORITY MAY EXTINGUISH
10 LONG-TERM STORAGE CREDITS EARNED OR ACQUIRED BY THE AUTHORITY UNDER CHAPTER
11 3.1 OF THIS TITLE, AS AUTHORIZED UNDER CHAPTER 14 OF THIS TITLE, AND TO WHICH
12 BOTH OF THE FOLLOWING APPLY:

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

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

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

21 D. THE AUTHORITY SHALL MAINTAIN IN ITS RECORDS AN ACCOUNT OF THE
22 REPLENISHMENT ACTIVITIES PERFORMED BY THE AUTHORITY TO SATISFY A SOUTHSIDE
23 REPLENISHMENT OBLIGATION. ANY WATER DELIVERED TO THE COMMUNITY UNDER
24 SUBSECTION C, PARAGRAPH 1 OF THIS SECTION, ANY LONG-TERM STORAGE CREDITS
25 EXTINGUISHED UNDER SUBSECTION C, PARAGRAPHS 2 AND 3 OF THIS SECTION AND ANY
26 DEBITS REGISTERED TO THE SOUTHSIDE REPLENISHMENT BANK UNDER SUBSECTION C,
27 PARAGRAPH 4 OF THIS SECTION SHALL BE APPLIED TOWARD THE SATISFACTION OF A
28 REPLENISHMENT OBLIGATION ON AN ACRE-FOOT PER ACRE-FOOT BASIS.

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

33 45-2624. Southside replenishment bank; credits

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

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

45 C. IF ANY DEBIT REGISTERED TO THE SOUTHSIDE REPLENISHMENT BANK UNDER
46 SECTION 45-2623, SUBSECTION C, PARAGRAPH 4 CAUSES THE COMMUNITY'S ACCOUNT TO

1 HAVE A CREDIT BALANCE OF LESS THAN FIVE THOUSAND ACRE-FEET, THE AUTHORITY
2 SHALL DELIVER WATER TO THE COMMUNITY IN THE MANNER PROVIDED IN SUBSECTION D
3 OF THIS SECTION IN AN AMOUNT SUFFICIENT TO BRING THE BALANCE UP TO AT LEAST
4 FIVE THOUSAND ACRE-FEET BY THE END OF THE CALENDAR YEAR.

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

13 45-2625. Replenishment related to transportation of underground
14 water or stored water away from an eastern
15 protection zone or a western protection zone for
16 nonirrigation use

17 IF A PERSON TRANSPORTING UNDERGROUND WATER OR STORED WATER AWAY FROM AN
18 EASTERN PROTECTION ZONE OR A WESTERN PROTECTION ZONE FOR A NONIRRIGATION USE
19 ELECTS TO REPLENISH THE UNDERGROUND WATER OR STORED WATER SO THAT THE
20 TRANSPORTATION QUALIFIES AS AN AUTHORIZED TRANSPORTATION UNDER SECTION
21 45-2611, SUBSECTION B, PARAGRAPH 2, THE PERSON SHALL REPLENISH THE WATER BY
22 PERFORMING ONE OR BOTH OF THE FOLLOWING REPLENISHMENT ACTIVITIES IN AN AMOUNT
23 EQUIVALENT TO THE AMOUNT OF WATER TRANSPORTED:

24 1. PAY THE AUTHORITY AN AMOUNT OF MONEY SUFFICIENT TO ALLOW THE
25 AUTHORITY TO CREDIT THE COMMUNITY'S ACCOUNT BY DELIVERING WATER TO THE
26 COMMUNITY IN ACCORDANCE WITH THE DELIVERY PROCEDURES SET FORTH IN THE
27 INTERGOVERNMENTAL AGREEMENT DESCRIBED IN SECTION 45-2624, SUBSECTION D. ANY
28 CREDITS REGISTERED TO THE COMMUNITY'S ACCOUNT UNDER THIS PARAGRAPH SHALL NOT
29 BE USED TO MEET THE AUTHORITY'S REQUIREMENT TO DELIVER WATER TO THE COMMUNITY
30 UNDER SECTION 45-2624, SUBSECTION B OR C.

31 2. REPLENISH WATER IN ANY MANNER THAT IS APPROVED IN WRITING BY THE
32 COMMUNITY AND THAT IS NOT PROHIBITED UNDER THIS TITLE.

33 45-2626. Individual replenishment obligations of persons using
34 underground water or stored water within an eastern
35 protection zone or a western protection zone for
36 industrial use; enforcement action; notice

37 A. IF THERE IS A MUNICIPAL AND INDUSTRIAL REPLENISHMENT OBLIGATION FOR
38 THE EASTERN PROTECTION ZONE NORTH FOR ANY YEAR, AS CALCULATED UNDER SECTION
39 45-2622, SUBSECTION B, ANY PERSON WHO WITHDRAWS UNDERGROUND WATER OR STORED
40 WATER FROM WITHIN THAT PROTECTION ZONE DURING THE YEAR FOR AN INDUSTRIAL USE
41 WITHIN AN EASTERN PROTECTION ZONE IN AN AMOUNT THAT EXCEEDS A VOLUME
42 CALCULATED BY MULTIPLYING THE NUMBER OF INDUSTRIAL ACRES ASSOCIATED WITH THE
43 INDUSTRIAL USE BY THREE AND ONE-HALF ACRE-FEET SHALL HAVE AN INDIVIDUAL
44 REPLENISHMENT OBLIGATION FOR THAT YEAR IN THE AMOUNT OF THE EXCESS, EXCEPT
45 THAT IF THE INDUSTRIAL USE WAS COMMENCED PRIOR TO JANUARY 1, 2003, THE
46 REPLENISHMENT OBLIGATION SHALL BE LIMITED TO THE VOLUME OF GROUNDWATER

1 WITHDRAWN IN EXCESS OF THE AMOUNT ALLOWED UNDER THE INDUSTRIAL USER'S TYPE 1
2 NONIRRIGATION GRANDFATHERED RIGHT, TYPE 2 NONIRRIGATION GRANDFATHERED RIGHT
3 OR GENERAL INDUSTRIAL USE PERMIT ISSUED UNDER SECTION 45-515. FOR THE
4 PURPOSES OF THIS SUBSECTION, STORED WATER DOES NOT INCLUDE ANY WATER STORED
5 AT A STORAGE FACILITY LOCATED WITHIN THE EASTERN PROTECTION ZONE NORTH OR ANY
6 WATER STORED AND RECOVERED ON AN ANNUAL BASIS PURSUANT TO SECTION 45-851.01.

7 B. IF THERE IS A MUNICIPAL AND INDUSTRIAL REPLENISHMENT OBLIGATION FOR
8 THE EASTERN PROTECTION ZONE SOUTH FOR ANY YEAR, AS CALCULATED UNDER SECTION
9 45-2622, SUBSECTION B, ANY PERSON WHO WITHDRAWS UNDERGROUND WATER OR STORED
10 WATER FROM WITHIN THAT PROTECTION ZONE DURING THE YEAR FOR AN INDUSTRIAL USE
11 WITHIN AN EASTERN PROTECTION ZONE IN AN AMOUNT THAT EXCEEDS A VOLUME
12 CALCULATED BY MULTIPLYING THE NUMBER OF INDUSTRIAL ACRES ASSOCIATED WITH THE
13 INDUSTRIAL USE BY THREE AND ONE-HALF ACRE-FEET SHALL HAVE AN INDIVIDUAL
14 REPLENISHMENT OBLIGATION FOR THAT YEAR IN THE AMOUNT OF THE EXCESS, EXCEPT
15 THAT IF THE INDUSTRIAL USE WAS COMMENCED PRIOR TO JANUARY 1, 2003, THE
16 REPLENISHMENT OBLIGATION SHALL BE LIMITED TO THE VOLUME OF GROUNDWATER
17 WITHDRAWN IN EXCESS OF THE AMOUNT ALLOWED UNDER THE INDUSTRIAL USER'S TYPE 1
18 NONIRRIGATION GRANDFATHERED RIGHT, TYPE 2 NONIRRIGATION GRANDFATHERED RIGHT
19 OR GENERAL INDUSTRIAL USE PERMIT ISSUED UNDER SECTION 45-515. FOR THE
20 PURPOSES OF THIS SUBSECTION, STORED WATER DOES NOT INCLUDE ANY WATER STORED
21 AT A STORAGE FACILITY LOCATED WITHIN THE EASTERN PROTECTION ZONE SOUTH OR ANY
22 WATER STORED AND RECOVERED ON AN ANNUAL BASIS PURSUANT TO SECTION 45-851.01.

23 C. IF THERE IS A MUNICIPAL AND INDUSTRIAL REPLENISHMENT OBLIGATION FOR
24 THE WESTERN MUNICIPAL AND INDUSTRIAL PROTECTION ZONE FOR ANY YEAR, AS
25 CALCULATED UNDER SECTION 45-2622, SUBSECTION B, ANY PERSON WHO WITHDRAWS
26 UNDERGROUND WATER OR STORED WATER FROM WITHIN THAT PROTECTION ZONE DURING THE
27 YEAR FOR AN INDUSTRIAL USE WITHIN THAT PROTECTION ZONE IN AN AMOUNT THAT
28 EXCEEDS A VOLUME CALCULATED BY MULTIPLYING THE NUMBER OF INDUSTRIAL ACRES
29 ASSOCIATED WITH THE INDUSTRIAL USE BY THREE AND ONE-HALF ACRE-FEET SHALL HAVE
30 AN INDIVIDUAL REPLENISHMENT OBLIGATION FOR THAT YEAR IN THE AMOUNT OF THE
31 EXCESS, EXCEPT THAT IF THE INDUSTRIAL USE WAS COMMENCED PRIOR TO JANUARY 1,
32 2003, THE REPLENISHMENT OBLIGATION SHALL BE LIMITED TO THE VOLUME OF
33 GROUNDWATER WITHDRAWN IN EXCESS OF THE AMOUNT ALLOWED UNDER THE INDUSTRIAL
34 USER'S TYPE 1 NONIRRIGATION GRANDFATHERED RIGHT, TYPE 2 NONIRRIGATION
35 GRANDFATHERED RIGHT OR GENERAL INDUSTRIAL USE PERMIT ISSUED UNDER SECTION
36 45-515. FOR THE PURPOSES OF THIS SUBSECTION, STORED WATER DOES NOT INCLUDE
37 ANY WATER STORED AT A STORAGE FACILITY LOCATED WITHIN THE WESTERN MUNICIPAL
38 AND INDUSTRIAL PROTECTION ZONE OR ANY WATER STORED AND RECOVERED ON AN ANNUAL
39 BASIS PURSUANT TO SECTION 45-851.01.

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

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

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

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

20 45-2653. Violation: civil penalties

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

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

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

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

36 45-2654. Violation: classification

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

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

44 CHAPTER 16
45 TOHONO O'ODHAM WATER SETTLEMENT PROGRAM
46 ARTICLE 1. GENERAL PROVISIONS

1 45-2701. Definitions

2 UNLESS THE CONTEXT OTHERWISE REQUIRES, THE TERMS DEFINED IN SECTIONS
3 45-402 AND 45-802.01 HAVE THE SAME MEANING IN THIS CHAPTER AND FOR THE
4 PURPOSES OF THIS CHAPTER:

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

7 2. "NATION" MEANS THE TOHONO O'ODHAM NATION ORGANIZED UNDER A
8 CONSTITUTION APPROVED IN ACCORDANCE WITH SECTION 16 OF THE ACT OF JUNE 18,
9 1934 (25 UNITED STATES CODE SECTION 476).

10 3. "NONEXEMPT WELL" MEANS ANY WELL, INCLUDING A RECOVERY WELL, THAT
11 DOES NOT QUALIFY AS AN EXEMPT WELL OR A REPLACEMENT WELL.

12 4. "REPLACEMENT WELL" MEANS A WELL THAT QUALIFIES AS A REPLACEMENT
13 WELL AT APPROXIMATELY THE SAME LOCATION UNDER THE RULES ADOPTED BY THE
14 DIRECTOR PURSUANT TO SECTION 45-579, SUBSECTION B AND THAT IS NO MORE THAN
15 SIX HUNDRED SIXTY FEET FROM THE WELL IT IS REPLACING.

16 5. "RESERVATION" MEANS THE SAN XAVIER INDIAN RESERVATION ESTABLISHED
17 BY EXECUTIVE ORDER OF JULY 1, 1874.

18 6. "TOHONO O'ODHAM SETTLEMENT AGREEMENT" MEANS THE AGREEMENT DATED
19 APRIL 30, 2003 BETWEEN THE NATION, THIS STATE AND OTHER PARTIES, AS AMENDED
20 BEFORE THE EFFECTIVE DATE OF THIS SECTION, A COPY OF WHICH IS ON FILE IN THE
21 DEPARTMENT.

22 45-2702. Jurisdiction

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

27 1. TITLE III OF THE ARIZONA WATER SETTLEMENTS ACT (P.L. 108-451),
28 INCLUDING SECTIONS 312(d) AND 312(h).

29 2. THE TOHONO O'ODHAM SETTLEMENT AGREEMENT.

30 3. THE GROUNDWATER PROTECTION PROGRAM ESTABLISHED PURSUANT TO ARTICLE
31 2 OF THIS CHAPTER.

32 ARTICLE 2. SAN XAVIER RESERVATION WATER PROTECTION PROGRAM

33 45-2711. Applications to drill nonexempt wells in the Tucson
34 active management area; well impact analysis;
35 requirements; exception

36 A. EXCEPT AS PROVIDED IN SUBSECTIONS B AND E OF THIS SECTION, IN THE
37 TUCSON ACTIVE MANAGEMENT AREA, ON RECEIPT OF AN APPLICATION TO DRILL A NEW
38 NONEXEMPT WELL, INCLUDING A NOTICE OF INTENTION TO DRILL A NEW NONEXEMPT WELL
39 UNDER SECTION 45-596, THE DIRECTOR SHALL CONDUCT A HYDROLOGIC ANALYSIS TO
40 DETERMINE THE PROJECTED IMPACTS OF THE PROPOSED WITHDRAWALS FROM THE WELL ON
41 THE WATER LEVELS AT THE EXTERIOR BOUNDARIES OF THE RESERVATION. THE DIRECTOR
42 SHALL CONDUCT THE ANALYSIS USING THE METHODOLOGY USED BY THE DIRECTOR TO
43 DETERMINE WELL IMPACTS UNDER THE RULES ADOPTED BY THE DIRECTOR UNDER SECTION
44 45-598. IF THE DIRECTOR DETERMINES THAT THE PROJECTED WITHDRAWALS FROM THE
45 WELL OVER THE INITIAL FIVE-YEAR PERIOD OF WITHDRAWALS WILL CAUSE A WATER
46 LEVEL DECLINE OF TEN FEET OR MORE AT ANY POINT ON THE EXTERIOR BOUNDARIES OF

1 THE RESERVATION, THE DIRECTOR SHALL DENY THE APPLICATION UNLESS THE APPLICANT
2 OBTAINS AND SUBMITS TO THE DIRECTOR THE NATION'S WRITTEN CONSENT TO DRILL THE
3 WELL.

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

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

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

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

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

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

31 C. IN DETERMINING THE WATER LEVEL DECLINES CAUSED BY A PROPOSED WELL
32 UNDER SUBSECTION B, PARAGRAPH 1 OR 2 OF THIS SECTION, OR IN DETERMINING THE
33 AVERAGE ANNUAL WATER LEVEL CHANGE AT A PROPOSED WELL SITE UNDER SUBSECTION B,
34 PARAGRAPH 1 OF THIS SECTION, THE FOLLOWING SHALL NOT BE CONSIDERED:

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

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

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

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

9 F. THE DIRECTOR SHALL NOT ISSUE A PERMIT UNDER SECTION 45-513, 45-514,
10 45-516, 45-517, 45-518, 45-519 OR 45-519.01 IF THE APPLICANT FOR THE PERMIT
11 PROPOSES TO WITHDRAW GROUNDWATER FROM A NEW WELL OR WELLS AND THE DIRECTOR IS
12 REQUIRED TO DENY THE APPLICATION UNDER THIS SECTION.

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

22 H. A NOTICE OF INTENTION TO DRILL UNDER SECTION 45-596 SHALL INCLUDE A
23 HYDROLOGIC STUDY DESCRIBED IN SUBSECTION B, PARAGRAPH 1 OR 2 OF THIS SECTION
24 OR THE CONSENT DESCRIBED IN SUBSECTION B, PARAGRAPH 3 OF THIS SECTION IF THE
25 PROPOSED WELL OR WELLS ARE NONEXEMPT WELLS TO BE LOCATED WITHIN TWO MILES OF
26 THE EXTERIOR BOUNDARIES OF THE RESERVATION AND THE COMBINED MAXIMUM PUMPING
27 CAPACITY OF THOSE WELLS IS FIVE HUNDRED GALLONS PER MINUTE OR MORE.
28 NOTWITHSTANDING SECTION 45-596, SUBSECTION D, THE DIRECTOR SHALL NOT
29 AUTHORIZE THE DRILLING OF A WELL UNDER SECTION 45-596 IF THE DIRECTOR IS
30 REQUIRED TO DENY THE NOTICE OF INTENTION TO DRILL UNDER THIS SECTION.

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

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

1 NOTWITHSTANDING SECTION 45-834.01, SUBSECTION B, THE DIRECTOR SHALL DENY AN
2 APPLICATION FOR A RECOVERY WELL UNDER SECTION 45-834.01 IF THE DIRECTOR IS
3 REQUIRED TO DENY THE APPLICATION UNDER THIS SECTION.

4 45-2712. Notice of well applications to nation; objection;
5 hearing; appeal

6 A. BEFORE MAKING A DECISION ON AN APPLICATION DESCRIBED IN SECTION
7 45-2711, SUBSECTION B, THE DIRECTOR SHALL MAIL WRITTEN NOTICE OF THE
8 APPLICATION TO THE NATION, INCLUDING A COPY OF THE APPLICATION, AND PROVIDE
9 THE NATION AN OPPORTUNITY TO OBJECT TO THE APPLICATION IN THE MANNER PROVIDED
10 IN SUBSECTION B OF THIS SECTION.

11 B. THE NATION MAY FILE WITH THE DIRECTOR A WRITTEN OBJECTION TO AN
12 APPLICATION DESCRIBED IN SECTION 45-2711, SUBSECTION B WITHIN SIXTY DAYS
13 AFTER THE DIRECTOR MAILES WRITTEN NOTICE OF THE APPLICATION TO THE NATION.
14 THE GROUNDS FOR OBJECTION ARE LIMITED TO WHETHER THE APPLICATION SHOULD BE
15 DENIED UNDER SECTION 45-2711, SUBSECTION B.

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

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

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

1 F. IF THE DIRECTOR FAILS TO COMPLY WITH A REQUIREMENT IN THIS SECTION,
2 THE NATION MAY BRING AN ACTION IN THE SUPERIOR COURT HAVING JURISDICTION OVER
3 THE GENERAL ADJUDICATION OF ALL RIGHTS TO USE WATER IN THE GILA RIVER SYSTEM
4 AND SOURCE TO OBTAIN AN ORDER COMPELLING THE DIRECTOR'S COMPLIANCE.

5 Sec. 11. Water firming program for Arizona Indian tribes

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

17 1. Fifteen thousand acre-feet of the non-Indian agricultural priority
18 central Arizona project water reallocated to the Gila River Indian community
19 under section 104(a)(1)(A)(i) of the Arizona water settlements act
20 (P.L. 108-451).

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

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

33 Sec. 12. Arizona water firming program study commission

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

36 1. Study the options for a water firming program that would satisfy
37 the requirements of section 105(b)(2) of the Arizona water settlements act
38 (P.L. 108-451).

39 2. Identify appropriate mechanisms for the firming of water under the
40 water firming program, including storage and recovery with specification of
41 authorized entities to recover the water and determination of the financial
42 structure for the recovery, as well as forbearance, and other alternative
43 mechanisms.

44 3. Study the existing powers and duties of the Arizona water banking
45 authority and the general statutory authorities necessary to implement the
46 firming program and to make recommendations regarding appropriate statutory

1 and regulatory provisions that are necessary to fully implement the water
2 firming program.

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

6 1. Municipal and industrial priority central Arizona project water
7 users.

8 2. Agricultural improvement districts established pursuant to title
9 48, chapter 17, Arizona Revised Statutes.

10 3. Non-Indian agricultural priority central Arizona project water
11 users.

12 4. The Gila River Indian community.

13 5. The Tohono O'odham nation.

14 6. A multi-county water conservation district established under title
15 48, chapter 22, Arizona Revised Statutes.

16 7. The Arizona water banking authority established under title 45,
17 chapter 14, Arizona Revised Statutes.

18 8. Hardrock mining industries.

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

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

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

31 Sec. 13. Delayed repeal

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

34 Sec. 14. State and tribal cooperation for acquisition of
35 certain land

36 A. This state recognizes the interest of the Gila River Indian
37 community to acquire and to place into trust status a parcel of land located
38 within the exterior boundaries of the community's reservation. This state,
39 through any of its authorized agencies, in cooperation with the community and
40 on application of the community shall take actions in accordance with Arizona
41 law for the acquisition of the property designated as section 36, township 4
42 south, range 4 east, Gila and Salt river base and meridian, to include the
43 maximum right, title and interest in that property, including mineral rights
44 as permitted by Arizona law.

45 B. For purposes of a finding by the secretary of interior or for any
46 other legal requirement, the state and the community agree that this section

1 combined with the enactment of the firming program authorized by this act
2 fully satisfies section 207(c)(1)(E) of the Arizona water settlements act
3 (P.L. 108-451).

4 Sec. 15. Conditional enactment; written notice

5 A. Sections 45-611, 45-2423, 45-2425 and 45-2457, Arizona Revised
6 Statutes, as amended by this act, sections 45-2602 and 45-2604, Arizona
7 Revised Statutes, as added by this act, title 45, chapter 15, articles 2, 3
8 and 6, Arizona Revised Statutes, as added by this act, and title 45, chapter
9 16, Arizona Revised Statutes, as added by this act, are effective only if on
10 or before December 31, 2010 the United States secretary of interior publishes
11 in the federal register the statements of findings described in sections
12 207(c)(1) and 302(c) of the Arizona water settlements act (P.L. 108-451).

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

18 Sec. 16. Conditional delayed repeal; conditional enactment

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

23 B. Section 45-841.01, Arizona Revised Statutes, as amended by section
24 3 of this act, and section 11 of this act, relating to the establishment of
25 the water firming program for Arizona Indian tribes, are effective only if
26 the condition prescribed in section 15 of this act is not met.

PLEASE NOTE: In most BUT NOT ALL instances, the page and line numbering of bills on this web site correspond to the page and line numbering of the official printed version of the bills.

REFERENCE TITLE: environmental protections; budget reconciliation

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

HB 2735

Introduced by
Representatives Robson, Pearce, Tully, Weiers J: Mason, Pierce (with
permission of committee on Rules)

AN ACT

AMENDING SECTIONS 45-2471, 49-542.05, 49-543 AND 49-551, ARIZONA REVISED STATUTES; MAKING FUND TRANSFERS; RELATING TO ENVIRONMENTAL BUDGET RECONCILIATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 45-2471, Arizona Revised Statutes, is amended to
3 read:

4 45-2471. Interstate water banking agreements; annual reports
5 and updates

6 A. The authority may negotiate and enter into interstate water banking
7 agreements with appropriately authorized agencies in California and Nevada,
8 if all of the following apply:

9 1. The provisions of section 45-2427, subsection C have been met.

10 2. The director and at least two other voting members of the
11 commission vote in agreement to enter into an interstate WATER banking
12 agreement.

13 3. The authority ~~shall~~ DOES not enter into agreements with California
14 and Nevada agencies that require the authority to reduce Arizona diversions
15 from the Colorado river more than a total of one hundred thousand acre-feet
16 of water in any one year.

17 4. No interstate WATER banking agreement ~~may be~~ IS inconsistent with
18 the decree.

19 B. In each interstate water banking agreement, the authority may agree
20 to store Colorado river water in Arizona so that the stored water may be used
21 in place of Arizona diversions from the Colorado river in years in which the
22 California or Nevada agency requests water from the authority.

23 C. In each interstate water banking agreement, the California or
24 Nevada agency shall agree to pay to the authority all costs that are or will
25 be incurred by the authority in storing and recovering Colorado river water
26 pursuant to the interstate banking agreement. The costs include all of the
27 following:

28 1. The cost of acquiring Colorado river water.

29 2. The cost of delivering that Colorado river water through the
30 central Arizona project to a storage facility, including fees for the
31 operation, maintenance, pumping energy and capital costs of the central
32 Arizona project as established by CAWCD.

33 3. Amounts equivalent to taxes ordinarily paid by CAWCD subcontractors
34 and their customers to pay for the repayment, operation and maintenance costs
35 of the central Arizona project, to the extent those equivalent amounts are
36 not collected by paragraph 8 of this subsection.

37 4. The cost of storing that Colorado river water.

38 5. The cost of constructing, operating and maintaining a storage
39 facility to the extent that facility stores water for the California or
40 Nevada agency.

41 6. The cost of recovering the stored water and delivering it to
42 Colorado river water users in this state to use in place of Colorado river
43 water that would otherwise be used.

1 7. A fee equivalent to the approximate amount of administrative, legal
2 and technical expenses incurred by the authority in storing water for the
3 California or Nevada agency, recovering that stored water and making an
4 equivalent amount of Colorado river water available to the California or
5 Nevada agency.

6 8. Any fee paid in lieu of taxes pursuant to section 48-3715,
7 subsection B by the authority in acquiring the water to be stored.

8 D. In each water banking agreement, the authority shall agree that in
9 years in which the California or Nevada agency requests recovery of water
10 stored in Arizona, the authority shall cause a decrease in Arizona diversions
11 from the Colorado river by the amount of water requested for recovery by the
12 California or Nevada agency, thus creating unused entitlement for delivery to
13 that agency by the United States secretary of the interior pursuant to
14 article ii(b)(6) of the decree. These WATER banking agreements may provide
15 that during years when the secretary of the interior has declared a shortage
16 on the Colorado river, no decrease in Arizona diversions shall be required.

17 E. Each interstate WATER banking agreement shall specify that if the
18 California or Nevada agency breaches the terms of the agreement, the
19 authority shall cease creating unused entitlement for that entity until the
20 breach is cured.

21 F. THE ARIZONA WATER BANKING AUTHORITY SHALL PRESENT ANNUAL REPORTS TO
22 THE JOINT LEGISLATIVE BUDGET COMMITTEE NO LATER THAN SEPTEMBER 30 OF EACH
23 YEAR ON THE EXPENDITURE PLAN FOR MONIES RECEIVED PURSUANT TO EACH AGREEMENT
24 FOR INTERSTATE WATER BANKING FOR THE CURRENT FISCAL YEAR. EACH REPORT SHALL
25 INCLUDE THE AMOUNT OF AND SPECIFIC USE AND JUSTIFICATION FOR:

- 26 1. ALL RECEIPTS OR EXPENDITURES NOT INCLUDED IN ANY PREVIOUS REPORT.
- 27 2. ALL PLANNED EXPENDITURES TO BANK OR PROVIDE WATER FOR ANOTHER STATE
28 AND THE AMOUNT OF WATER PURCHASED.
- 29 3. ALL PLANNED EXPENDITURES TO BANK OR PROVIDE WATER FOR THIS STATE
30 AND THE AMOUNT OF WATER PURCHASED.
- 31 4. ALL OTHER PLANNED EXPENDITURES.
- 32 5. ACTUAL RECEIPTS AND EXPENDITURES FROM THE PRIOR FISCAL YEAR.
- 33 6. ALL REVENUES PROJECTED TO BE RECEIVED THROUGH THE AGREEMENT IN BOTH
34 THE CURRENT AND FUTURE FISCAL YEARS.

35 G. THE ARIZONA WATER BANKING AUTHORITY SHALL PROVIDE TO THE JOINT
36 LEGISLATIVE BUDGET COMMITTEE AN UPDATE TO EACH REPORT PURSUANT TO SUBSECTION
37 F OF THIS SECTION NO LATER THAN MARCH 30 OF EACH YEAR THAT INCLUDES ANY
38 CHANGES TO THE REPORT, INCLUDING JUSTIFICATION FOR THE CHANGES.

39 Sec. 2. Section 49-542.05, Arizona Revised Statutes, is amended to
40 read:

41 49-542.05. Alternative fuel vehicles

42 A. Except for a vehicle fueled by hydrogen, the following apply:

- 43 1. Each original equipment manufactured alternative fuel vehicle that
44 is registered in or used to commute into area A or area B pursuant to section
45 49-542, subsection A is subject to the emissions inspection requirements
46 prescribed in this article including subsection C of this section.

1 2. Each alternative fuel vehicle that is not an original equipment
2 manufactured alternative fuel vehicle and that is registered in or used to
3 commute into area A or area B pursuant to section 49-542, subsection A is
4 subject to the emissions inspection requirements prescribed in this article
5 ~~except that the provisions of section 49-543, subsection B do not apply.~~

6 B. Except for a vehicle fueled by hydrogen, for each vehicle that is
7 registered in or used to commute into area A or area B as prescribed by
8 section 49-542, subsection A and that is either an original equipment
9 manufactured alternative fuel vehicle or an alternative fuel vehicle that is
10 not an original equipment manufactured alternative fuel vehicle, the vehicle
11 shall be tested before the vehicle is registered in this state as an
12 alternative fuel vehicle both while operating on gasoline and while operating
13 on alternative fuel, if applicable. In the fourth registration year and in
14 subsequent years, the vehicle shall be tested both while operating on
15 gasoline and while operating on alternative fuel, if applicable, pursuant to
16 the requirements of section 49-542.

17 C. For all emissions inspections before the fourth registration year
18 after purchase or lease of a new original equipment manufactured alternative
19 fuel vehicle, the owner of the vehicle shall do one of the following:

- 20 1. Have the vehicle inspected pursuant to this article.
21 2. Pay a twenty-five dollar fee in area A and a nine dollar fee in
22 area B. The owner shall pay this fee together with the registration fee for
23 the vehicle to the registering officer. The registering officer shall
24 deposit, pursuant to sections 35-146 and 35-147, these fees in the air
25 quality fund established by section 49-551. The registering officer may
26 enter into an intergovernmental agreement with another department of this
27 state to collect and deposit the fee. An owner who chooses to have an
28 emissions inspection pursuant to this article is not required to pay the fee
29 prescribed in this paragraph for that emissions test cycle.

30 D. The registration renewal notice required for the second and third
31 registration year of a new original equipment manufactured alternative fuel
32 vehicle shall include a notice to the vehicle owner that even though an
33 emissions inspection test is not required pursuant to subsection B of this
34 section the owner may choose to have an emissions inspection because of
35 vehicle emissions performance warranty limitations on emissions components of
36 the vehicle.

37 E. The department of environmental quality shall compile and maintain
38 data regarding the results of emissions inspections of all alternative fuel
39 vehicles pursuant to this article.

1 Sec. 3. Section 49-543, Arizona Revised Statutes, is amended to read:
2 49-543. Emissions inspection costs; disposition; fleet
3 inspection; certificates

4 A. The director shall fix, regulate and alter in accordance with this
5 section the fees required to be paid for the full costs of the vehicle
6 emissions inspection program pursuant to this article including
7 administration, implementation and enforcement.

8 ~~B. Except as provided in section 49-542.05, for all the emissions~~
9 ~~inspections prior to the sixth registration year after purchase or lease of a~~
10 ~~new vehicle, the owner of the vehicle shall do one of the following:~~

- 11 ~~1. Have the vehicle inspected pursuant to this article.~~
12 ~~2. Pay a twenty five dollar fee in area A and a nine dollar fee in~~
13 ~~area B. The owner shall pay this fee together with the registration fee for~~
14 ~~the vehicle to the registering officer. The registering officer shall~~
15 ~~deposit, pursuant to sections 35-146 and 35-147, these fees in the air~~
16 ~~quality fund established by section 49-551. The registering officer may~~
17 ~~enter into an intergovernmental agreement with another department of this~~
18 ~~state to collect and deposit the fee. An owner who chooses to have an~~
19 ~~emissions inspection pursuant to this article is not required to pay the fee~~
20 ~~prescribed in this paragraph for that emissions test cycle.~~

21 ~~E.~~ B. Except as provided in section 49-542.05, the registration
22 renewal notice required for the second through fifth registration year of a
23 new vehicle shall include a notice to the vehicle owner that even though an
24 emissions inspection test is not required pursuant to section 49-542,
25 subsection J, paragraph 2, subdivision (d) the owner may choose to have an
26 emissions inspection because of vehicle emissions performance warranty
27 limitations on emissions components of the vehicle.

28 ~~D.~~ C. The fees charged for official emissions inspection shall be
29 uniform as applied to each class of vehicle which shall be defined by the
30 director. Except for fees collected by the director pursuant to section
31 49-546, the inspection fees required to be paid pursuant to this article may
32 be collected with the registration fee by the registering officer at the time
33 and place of motor vehicle registration pursuant to title 28, chapter 7,
34 article 5 and deposited, pursuant to sections 35-146 and 35-147, in the
35 emissions inspection fund in accordance with the rules adopted by the
36 director or may be collected by the independent contractor at the time of
37 inspection by means of an approved check or cash.

38 ~~E.~~ D. Any person, except a person who has been issued a certificate
39 of waiver pursuant to section 49-542, subsection L, whose vehicle has been
40 inspected at an official emissions inspection station ~~shall~~, if the vehicle
41 was not found to comply with the minimum standards, SHALL have the vehicle
42 repaired, including recommended repair or replacement of emissions control
43 devices as a result of tampering, and have the right within sixty consecutive
44 calendar days but not thereafter to return the vehicle for one reinspection
45 without charge. The department may provide for additional reinspections
46 without charge. A vehicle shall not be deemed to pass a reinspection unless

1 the tampering discovered during the tampering inspection is repaired with new
 2 or reconditioned emissions control devices.

3 ~~F~~ E. The department shall issue certificates of inspection to owners
 4 of fleet emissions inspection stations. Each certificate shall be validated
 5 by the fleet emissions inspection stations in a manner required by the
 6 director at the time that each owner's fleet vehicle has been inspected or
 7 has passed inspection. The validated certificate of inspection shall
 8 indicate at the time of registration that the owner's fleet vehicle has been
 9 inspected and that the vehicle has passed inspection.

10 ~~G~~ F. The director shall fix an emissions inspection fee before
 11 inspection certificates may be issued to the owner of any fleet emissions
 12 inspection station. Such fee shall be uniform for each inspection
 13 certificate issued and shall be based ~~upon~~ ON the director's estimated costs
 14 to the state of administering and enforcing ~~the provisions of~~ this article as
 15 they apply to fleet emissions inspection stations and the vehicles inspected
 16 in fleet emissions inspection stations. The director shall deposit, pursuant
 17 to sections 35-146 and 35-147, all such monies collected by the director
 18 pursuant to this article in the emissions inspection fund.

19 Sec. 4. Section 49-551, Arizona Revised Statutes, is amended to read:
 20 49-551. Air quality fee; air quality fund; purpose

21 A. Every person who is required to register a motor vehicle in this
 22 state pursuant to section 28-2153 shall pay, in addition to the registration
 23 fee, an annual air quality fee at the time of vehicle registration of one
 24 dollar fifty cents. Unless and until the United States environmental
 25 protection agency grants a waiver for diesel fuel pursuant to section
 26 211(c)(4) of the clean air act, every person who is required to register a
 27 diesel powered motor vehicle in this state with a declared gross weight as
 28 defined in section 28-5431 of more than eight thousand five hundred pounds
 29 and every person who is subject to an apportioned fee for diesel powered
 30 motor vehicles collected pursuant to title 28, chapter 7, articles 7 and 8
 31 shall pay an additional apportioned diesel fee of ten dollars.

32 B. The registering officer shall collect the fees and immediately
 33 deposit, pursuant to sections 35-146 and 35-147, the air quality fees in the
 34 air quality fund established pursuant to subsection C of this section and
 35 shall deposit the diesel fees in the voluntary vehicle repair and retrofit
 36 program fund established pursuant to section 49-474.03.

37 C. An air quality fund is established consisting of monies received
 38 pursuant to this section, section 49-542.05, ~~section 49-543,~~ gifts, grants
 39 and donations, and monies appropriated by the legislature. The department of
 40 environmental quality shall administer the fund. Monies in the fund are
 41 exempt from the provisions of section 35-190 relating to the lapsing of
 42 appropriations. Interest earned on monies in the fund shall be credited to
 43 the fund. ~~Monies in the fund that are received pursuant to section 49-543~~
 44 ~~shall be placed in a separate account and shall only be used for those~~
 45 ~~purposes that are prescribed in subsection F of this section or section~~

1 ~~49-551.01. Except as provided in subsection F of this section,~~ Monies in the
2 air quality fund shall be used, subject to legislative appropriation, for:

3 1. Air quality research, experiments and programs conducted by or for
4 the department for the purpose of bringing area A or area B into or
5 maintaining area A or area B in attainment status, improving air quality in
6 areas of this state outside area A or area B and reducing emissions of
7 particulate matter, carbon monoxide, oxides of nitrogen, volatile organic
8 compounds and hazardous air pollutants throughout the state.

9 2. Monitoring visible air pollution and developing and implementing
10 programs to reduce emissions of pollutants that contribute to visible air
11 pollution in counties with a population of four hundred thousand persons or
12 more.

13 3. Developing and adopting rules in compliance with sections
14 49-426.03, 49-426.04, 49-426.05 and 49-426.06.

15 D. The department shall transfer four hundred thousand dollars from
16 the air quality fund to the department of administration for the purposes
17 prescribed by section 49-588 in eight installments in each of the first eight
18 months of a fiscal year.

19 E. This section does not apply to an electrically powered golf cart or
20 an electrically powered vehicle.

21 ~~F. The disbursement of monies for air quality control programs and~~
22 ~~measures from the monies received pursuant to section 49-543 shall be~~
23 ~~pursuant to this subsection. The monies shall be used for programs and~~
24 ~~measures in counties that contain a portion of area A or area B. The~~
25 ~~department may use up to five per cent of the annual revenues for the costs~~
26 ~~of administration. The balance shall be used for funding the following:~~

27 1. ~~A voluntary lawn and garden equipment emissions reduction program~~
28 ~~established pursuant to section 49-474.02. Five per cent of the monies shall~~
29 ~~be used for this purpose.~~

30 2. ~~A voluntary vehicle repair and retrofit program established~~
31 ~~pursuant to section 49-474.03. Fifteen per cent of the monies shall be used~~
32 ~~for this purpose.~~

33 3. ~~The diesel vehicle low emissions incentive grant program~~
34 ~~established by section 49-551.01. Thirty per cent of the monies shall be~~
35 ~~used for this purpose. Grants for fuels shall not exceed the incremental~~
36 ~~cost differential from conventional diesel fuel, excluding taxes.~~

37 4. ~~The voluntary accelerated purchase of tier 2 and tier 3 equipment~~
38 ~~described in section 49-558. Grant funding shall not exceed one half of the~~
39 ~~incremental cost difference between the initial capital cost of tier 2 and~~
40 ~~tier 3 equipment and conventional diesel equipment. Ten per cent of the~~
41 ~~monies shall be used for this purpose.~~

42 5. ~~Fifteen per cent for making grants to fund the following~~
43 ~~activities:~~

44 (a) ~~A travel reduction ordinance program.~~

45 (b) ~~A voluntary no drive day program.~~

1 ~~6. Any other measures or programs that have been evaluated by the~~
 2 ~~department. The evaluation shall include at least a review and assessment of~~
 3 ~~the health and environmental impacts of the measures or programs. The~~
 4 ~~department may evaluate measures or programs adopted by other jurisdictions.~~
 5 ~~Twenty five per cent of the monies shall be used for this purpose. The~~
 6 ~~department may make grants for the purposes of this paragraph.~~

7 ~~7. If the amount of monies authorized pursuant to paragraphs 1 through~~
 8 ~~6 of this subsection have not been expended or encumbered in any fiscal year,~~
 9 ~~the amount shall be used for funding any of the purposes described in this~~
 10 ~~subsection.~~

11 ~~G. The annual report of the department shall include a section on the~~
 12 ~~grants awarded pursuant to subsection F of this section.~~

13 Sec. 5. Underground storage tank assurance account; transfer of
 14 monies; uses

15 Notwithstanding any other law, the administrative cap established in
 16 section 49-1051, subsection B, paragraphs 2 and 3, Arizona Revised Statutes,
 17 is suspended for fiscal year 2005-2006 and the department of environmental
 18 quality may transfer \$6,031,000 from the assurance account of the underground
 19 storage tank revolving fund for administrative costs of the underground
 20 storage tank leak prevention program and funding for the used oil program.

21 Sec. 6. Off-highway vehicle recreation fund; use

22 Notwithstanding section 28-1176, Arizona Revised Statutes, the Arizona
 23 state parks board may spend up to \$692,100 from the Arizona state parks board
 24 portion of the off-highway vehicle fund in fiscal years 2005-2006 and
 25 2006-2007 for parks board operating expenses.

26 Sec. 7. State parks enhancement fund; use

27 Notwithstanding section 41-511.11, Arizona Revised Statutes, or any
 28 other law, all monies, except those necessary for the lease-purchase payments
 29 for the Tonto Natural Bridge State Park, are available for the operating of
 30 state parks in fiscal years 2005-2006 and 2006-2007 as appropriated by the
 31 legislature in the general appropriations act.

32 Sec. 8. Arizona water protection fund; use

33 Notwithstanding section 45-2112, subsection B, Arizona Revised
 34 Statutes, the annual appropriation from the state general fund to the Arizona
 35 water protection fund for fiscal year 2005-2006 shall be as specified in the
 36 general appropriations act.

37 Sec. 9. In lieu fees; deposit

38 A. Notwithstanding sections 49-543 and 49-551, Arizona Revised
 39 Statutes, or any other law, the first \$10,000,000 in revenues received from
 40 in lieu fees pursuant to section 49-543, subsection B, paragraph 2, Arizona
 41 Revised Statutes, shall be deposited in the state general fund in fiscal year
 42 2005-2006.

1 B. Notwithstanding sections 49-543 and 49-551, Arizona Revised
2 Statutes, or any other law, \$500,000 of in lieu fee revenues received in
3 excess of \$10,000,000 shall be deposited in the air quality fund in fiscal
4 year 2005-2006. Monies deposited in the air quality fund pursuant to this
5 subsection shall be appropriated to the department of environmental quality
6 in fiscal year 2005-2006 for operating costs.

7 C. Notwithstanding sections 49-543 and 49-551, Arizona Revised
8 Statutes, or any other law, in lieu fee revenues received in excess of
9 \$10,500,000 shall be deposited in the air quality fund in fiscal year
10 2005-2006. Monies deposited in the air quality fund pursuant to this
11 subsection shall be appropriated to the department of environmental quality
12 in fiscal year 2005-2006 for grants to school districts to purchase new
13 school buses. The grants shall not exceed the incremental cost difference
14 between conventional diesel fuel school buses, excluding taxes, and new buses
15 that are fueled by compressed natural gas. Monies appropriated pursuant to
16 this subsection that are unencumbered or unexpended on June 30, 2008 shall
17 revert to the state general fund.

18 Sec. 10. WQARF transfer from corporate income tax: suspension

19 Notwithstanding section 49-282, subsection B, Arizona Revised Statutes,
20 or any other law, the state treasurer shall transfer only \$11,000,000 from
21 the corporate income tax collected pursuant to title 43, chapter 11, article
22 2, Arizona Revised Statutes, to the water quality assurance revolving fund in
23 fiscal year 2005-2006. These monies are in addition to revenues from sources
24 specified in section 49-282, subsection A, paragraphs 2 through 11 and 13,
25 Arizona Revised Statutes. No monies from the transaction privilege and
26 severance tax clearing account established pursuant to section 42-5029,
27 subsection D, paragraph 4, Arizona Revised Statutes, shall be deposited in
28 the water quality assurance revolving fund in fiscal year 2005-2006.

29 Sec. 11. Effective date

30 Sections 49-542.05, 49-543 and 49-551, Arizona Revised Statutes, as
31 amended by this act, are effective from and after June 30, 2006.

IPAG Comments RE March 16, 2005 AWBA Agenda Items

V. Discussion and Potential Action Regarding 2005 Annual Plan of Operation

- **Discussion regarding inclusion of interstate water banking and GSF partner cost share decrease**

IPAG believes that pricing can be an appropriate tool for achieving the AWBA's policy objectives, and supports the proposal to decrease the GSF partner cost-share in recognition of this year's unique operational issues.

- **Potential approval of amended 2005 Annual Plan of Operation**

IPAG reaffirms its previous 2005 storage priority recommendations for the Tucson AMA, and supports the use of interstate water to fully utilize any additional available recharge capacity.

IPAG also believes that AWBA staff may need additional operational flexibility to meet the AWBA's annual objectives in light of fluctuating circumstance. IPAG encourages the Authority Commissioners to consider developing general policy guidance for storage decisions that staff can then use to adjust to changing conditions during the year. This policy guidance could address a variety of issues, including: a range of projected CAP availability; utilization of State Demonstration Projects; and potential recovery options.

VII. Interstate Water Banking

- **Update on discussions regarding expenditure of funds obtained pursuant to the Amended Agreement for Interstate Water Banking**

The IPAG strongly supports maintaining the integrity and intent of the interstate agreement with Nevada. IPAG supports ongoing efforts to protect the \$100 million, including potential repayment of expenditures by beneficiaries. IPAG members are particularly concerned that the funds may be swept without taking into account the large number of unmet water infrastructure needs in the Tucson AMA and rest of the three-county CAP service area. Examples include: mitigating subsidence to maintain canal capacity; increasing total canal capacity; extending the CAP to reach subcontractors in Green Valley; storage, treatment and delivery facilities for northwestern Tucson; recovery infrastructure; and pipelines to make the FICO & AVID GSFs operational.

**ARIZONA DEPARTMENT OF WATER RESOURCES**

500 North Third Street, Phoenix, Arizona 85004

Telephone 602 417-2410

Fax 602 417-2415

JANET NAPOLITANO
Governor**HERBERT R. GUENTHER**
Director**ARIZONA DEPARTMENT OF WATER RESOURCES****SUBSTANTIVE POLICY STATEMENT****Policy and Procedures for Transferring an Entitlement of Colorado River Water**

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

Policy and Procedures for Transferring an Entitlement of Colorado River Water

TABLE OF CONTENTS

I. INTRODUCTION	3
DEFINITION OF WATER ENTITLEMENTS	3
FEDERAL AND STATE AUTHORITIES	3
PURPOSE OF POLICY	4
II. SCOPE OF POLICY	4
GENERAL APPLICATION	4
ENTITLEMENT TRANSFER ACTIONS.....	4
<i>Conveyance of an Entitlement</i>	5
<i>Lease of an Entitlement</i>	5
<i>Assignment of an Entitlement</i>	5
QUANTIFICATION OF AN ENTITLEMENT AVAILABLE FOR CONVEYANCE OR LEASE.....	5
III. CONSULTATION PROCESS	6
REQUEST FOR CONSULTATION	6
WATER MANAGEMENT PLANS	6
OTHER CONSIDERATIONS.....	7
<i>Beneficial Use and Water Demand</i>	7
<i>1944 Mexican Treaty Obligations</i>	8
PUBLIC NOTICE PROCESS	8
<i>Conveyances and Leases</i>	8
<i>Assignments</i>	8
IV. EFFECTIVE DATE	9

I. INTRODUCTION

This statement of policy applies to the transfer by non-federal Arizona contractors of mainstream Colorado River entitlements allocated for irrigation and municipal and industrial (M&I) purposes within the State of Arizona.

Definition of Water Entitlements

The right or authorization to beneficially use Colorado River water is defined as an entitlement. Entitlements held by non-federal Arizona Colorado River water users are created by decree of the United States Supreme Court (Court) or through a contract with the Secretary of the Interior (Secretary) under Section 5 of the Boulder Canyon Project Act (BCPA) of December 21, 1928.

Federal and State Authorities

The BCPA federalized the administration of Colorado River water rights by requiring a contract with the Secretary to use Colorado River water under either Section 4 or 5 of the Act. A contractual right, issued under the authority of the BCPA, is a permanent entitlement administered by the U.S. Bureau of Reclamation (Reclamation).

Pursuant to A.R.S. § 45-105, the Director of the Arizona Department of Water Resources (Department) is generally responsible for formulating plans and programs for the development, management, conservation and use of surface water and groundwater throughout the state. Consistent with this responsibility, under A.R.S. § 45-107, entities which contemplate the transfer of their entitlements are required to cooperate, confer and obtain the advice of the Director.

In 1994, the state legislature reemphasized the importance of the role of the Director in the distribution of Colorado River water within the state. The specific statutory mandate in A.R.S. § 45-107(D) states:

Individuals, irrigation districts, corporations, state departments, agencies, boards, commissions and political subdivisions of the state shall cooperate, confer with and obtain the advice of the director as to those negotiations, contracts and subcontracts described in subsection C that affect the allocation and use of main stream Colorado river water or the allocation and use of Colorado river water delivered through the central Arizona project. For a proposed contract or subcontract or a proposed amendment of a contract or subcontract that will result in a transfer of an allocation or entitlement of Colorado river water, including central Arizona project water, from a non-Indian Arizona contractor or subcontractor for a term of more than one year, the obligation to cooperate, confer with and obtain the advice of the director shall include *the obligation to submit to the director for review the proposed contract or subcontract or the proposed amendment, and all related exhibits and agreements, prior to its execution by the contractor or subcontractor.* (Emphasis added)

Pursuant to the aforementioned statutory responsibility and authority, the Director will review any proposed transfer by a non-federal Arizona contractor of a Colorado River entitlement for the purpose of determining the potential impacts caused by the redistribution of water. After review, the Director will recommend to the Secretary the appropriate redistribution of mainstream Colorado River water supplies consistent with the policies and laws of the state. The importance of the

Director's review is underscored by the fact that mainstream water is, in most cases, the only dependable supply of water for urban, industrial and agricultural water users located within the accounting surface or floodplain of the Colorado River. Therefore, due to the importance of the distribution of Colorado River water to the welfare and economy of the state, explicit policy and procedures are necessary to ensure adequate and consistent evaluation of any proposed transfer of a Colorado River entitlement.

Purpose of Policy

The purposes of this policy are: 1) to establish a procedure to obtain the advice and review of the Director; and 2) to describe the criteria and analysis the Department will utilize to evaluate proposed transfers, including conveyances, leases or assignments, of mainstream Colorado River water.

The Director's advice to and consultation with the Secretary will be consistent with these policies and procedures.

II. SCOPE OF POLICY

General Application

This policy applies to the transfer of a Colorado River entitlement within the State of Arizona for a period of more than one year. It does not pertain to transfer actions involving the export of water to another state or to Mexico.

It is limited to non-federal Arizona entities or individuals holding a valid Colorado River water delivery contract with the Secretary. It applies to all priorities of entitlements held by this category of Colorado River water users (see Appendix A for definitions of priorities).

With the potential exception of proposed entitlement assignments, the Department will not recommend the conveyance or lease of any entitlement to unused or surplus Colorado River water apportionment. If such entitlements are not needed by a contractor, the Department will recommend that the unneeded contract be terminated and, if necessary, a new one created.

Subcontract, lease or water use conversion actions within an existing contract service area that are conducted in accordance with an existing Colorado River water delivery contract are not subject to this policy.

Entitlement Transfer Actions

Conveyances, leases and assignments are separate types of entitlement transfer actions. The review and consultation process with the Director varies depending on the type of transfer action that is requested and the type of entitlement that is involved. The specific entitlement transfer actions are described below.

Conveyance of an Entitlement

An entitlement transfer action is considered a conveyance when a Colorado River contractor proposes to permanently transfer all or a portion of its entitlement to another entity that will not serve the same contract service area and/or proposes to change the type of water use.

Lease of an Entitlement

A lease is a temporary transfer action involving all or a portion of a Colorado River entitlement. The purpose for leasing an entitlement is to provide a temporary water supply to another party located outside of the existing contract service area without the contractor permanently relinquishing or abandoning the entitlement. Generally, leases are inappropriate for permanent municipal and industrial water uses that cannot be interrupted or discontinued. If a water entitlement lease is proposed for a period of more than five years, the applicant for the lease action must demonstrate that the existing water use will not be abandoned and explain why a long-term lease is necessary for the intended new use. The Department will review the applicant's justification for a long-term lease and may recommend a lease for more than five years duration. However, if a long-term water supply is needed, the parties should consider a permanent conveyance.

Assignment of an Entitlement

An entitlement transfer action is considered an assignment when a Colorado River contractor proposes to permanently convey all or a portion of its entitlement to another entity that will serve the same type of use within the same contract service area.

Quantification of an Entitlement Available for Conveyance or Lease

Contract assignment actions do not involve a change in type of use or a change in the place of use. As such, assignment actions are not subject to the following limitations that may be applied to the conveyance or lease of an entitlement.

The amount of water available for conveyance or lease will be limited to the quantity of water that will result in a consumptive use that is no greater than the maximum amount of the entitlement. During the review of an application to transfer, the Director will consider several factors. These factors include the past and reasonable future quantity of consumptive use of water associated with the entitlement, potential negative impacts to the water supplies of other Colorado River entitlement holders, water quality impacts related to return flows and other pertinent impacts that could occur as a result of the proposed transfer.

Within Arizona, the amount of water associated with a Colorado River entitlement is limited to a specific maximum amount that may be consumptively used or diverted on an annual basis. In a few instances, entitlements are limited to the amount of water that may be beneficially used.

A consumptive use entitlement limits the quantity of water that may be consumed by an entitlement holder. Consumptive use is the amount of water diverted less the amount that is returned to the mainstream by the entitlement holder. The amount of a consumptive use entitlement that may be available for conveyance or lease will be limited to the maximum amount of the entitlement.

A diversion entitlement is limited by the quantity of water that may be diverted by the entitlement holder. Any return flow that results from the use is credited to Arizona's 2.8 million acre-feet allocation and is available to other water users. A proposed conveyance or lease must not negatively impact the quantity of water available to other entitlement holders. If the new use will result in the same return flow to the mainstream as the retired use, the amount of entitlement available for conveyance or lease for the new use will be limited to the maximum amount of the diversion entitlement. If the proposed new use will result in reduced return flow, the amount of water that will be available for conveyance or lease will be limited to the consumptive use associated with the maximum amount of the diversion entitlement.

A beneficial use entitlement is limited by the quantity of water that may be beneficially used by an entitlement holder for a specific type of use in a specific place of use. To determine how much water may be available for conveyance or lease with this type of entitlement, the amount of water that is beneficially used on an annual basis must be quantified as an annual consumptive use. The consumptive use amount that may be conveyed or leased will be limited to the quantity of water that is no greater than the maximum amount of the entitlement that was consumptively used by the entitlement holder.

III. CONSULTATION PROCESS

Request for Consultation

The Director must be consulted prior to the execution of a transfer of a water delivery contract. The request for consultation with the Director must be made in writing by the entity proposing to transfer its entitlement and include contact information for the parties involved in the proposed transaction.

Water Management Plans

Each request for consultation involving the conveyance or lease of an entitlement must include a water use management plan. Development of a management plan will generally not be necessary for most proposed assignment actions. The amount of information needed for a particular assignment action will be determined upon the initiation of consultation with the Director.

The Director will use the water use management plan information to evaluate the proposed transfer action and make recommendations to the Secretary. The water use management plans will also be available for public review and comment. These plans must include, at a minimum, the following information.

For the entity transferring the entitlement:

- a. A description and quantification of the proposed water use to be transferred;
- b. A map of the contract area and the location of the retired water use and associated points of diversion and return;
- c. A description of how the existing water use will be terminated;
- d. A demonstration that the transfer will not interfere or infringe upon any vested or existing water rights within its contract service area;

- e. For partial transfer of an entitlement, an explanation of all expected changes to water provider operations and deliveries to remaining customers due to the proposed transfer;
- f. An explanation of how the transfer is consistent with local area ordinances, rules and regulations;
- g. A description and quantification of the proposed new water use.

For the receiving entity:

- h. A map showing the service area, points of diversion and points of return associated with the new use;
- i. Calculations showing the amount of Colorado River water that will be diverted, consumptively used and returned to the river;
- j. A demonstration of its ability to divert, convey and consumptively use water within a reasonable timeframe;
- k. A demonstration that the transfer will not interfere or infringe upon any vested or existing water rights within its contract service area;
- l. A list that identifies and quantifies all water supplies currently available to meet its current, committed and projected municipal and industrial (M&I) water demand;
- m. An explanation showing how the conveyance is consistent with local area ordinances, rules and regulations, including those limiting the use of potable water supplies for lakes, golf courses, etc.;
- n. Entities proposing to temporarily lease an entitlement must provide information describing the intent to terminate the Colorado River water use or substitute water supplies at the conclusion of the lease.

In addition to the water management plan information, the Department will need to be provided with the necessary approvals that are signed by all parties to the proposed transfer and provided with any proposed contracts or agreements, all addendum and attachments to same and all related exhibits and agreements.

Other Considerations

When considering a proposed transfer action, in addition to evaluating the required information listed above, the Department will also assess beneficial use and Mexican Treaty obligation issues.

Beneficial Use and Water Demand

The Department will not consider transfer actions for speculative purposes. Therefore, for all proposed entitlement transfer actions, the entity receiving the entitlement must demonstrate that the water will be put to beneficial use. The beneficial use may be an existing one associated with current, committed and/or projected M&I water demands or it may be a proposed new M&I use.

Applicants that do not possess the ability to immediately divert, convey and consumptively use the water will not be excluded from the application and consideration process. However, in addition to their application, they must submit a fully developed plan that describes how they will divert, convey and use the water within a reasonable timeframe.

1944 Mexican Treaty Obligations

Proposed conveyance actions will be evaluated to ensure that the transaction will not negatively impact the United States' ability to meet its 1944 Treaty obligations for delivery of Colorado River water to Mexico or to meet the Minute 242 salinity control requirement.

Public Notice Process

Conveyances and Leases

To initiate a consultation, the parties to a proposed transfer action shall submit water management plans and all other related exhibits and agreements to the Director at least one hundred fifty (150) days prior to contract execution.

After all of the necessary documents and information have been submitted, the Department will advertise the proposed conveyance or lease once per week for two (2) consecutive weeks in a newspaper of general circulation within the state. The Department will also provide a notice to the county planning and zoning department office within the county of origin. The contractor conveying its entitlement must provide notice of the proposed action to all water users within its contract service area. Notices may also be sent to a list of other interested parties. The list, which will be kept on file with the Department, will be composed of individuals and entities that wish to be advised of pending requests to initiate a Colorado River contract transfer action. All documents submitted to the Department will be made available to the public upon request.

The Department will accept public comment on the proposed transfer action for thirty (30) days following the second advertisement. Public comment will be considered during the Department's review. The Director will issue a recommendation regarding the conveyance or lease to the Secretary within sixty (60) days from the end of the public comment period, unless additional time is needed to resolve claims of negative impacts to third parties.

Some entities or individuals may claim that they will be negatively impacted if a conveyance or lease, as proposed, is approved. When potentially negative impacts are claimed, the Department will notify the entity giving up its entitlement and the receiving entity(s) about the claimed impacts. The Department will provide up to ninety (90) days for all parties to attempt to resolve or mitigate the claimed impacts and to provide information to the Secretary. If agreed upon by all parties, an extension may be requested if more time is needed to resolve outstanding issues.

As a result of negotiations, if the proposed agreement changes the distribution of water, the Department will review the revised transfer action and make a recommendation to the Secretary. If the parties cannot agree to resolve or mitigate the claimed impacts, the Department will make its recommendation independently from the parties at the end of the negotiation period.

Assignments

The parties to the assignment shall submit a request for consultation and supporting documentation to the Director at least forty-five (45) days prior to execution.

The Department will conduct an expedited review of the assignment of an entitlement. Because the allocation will be used to serve the same use within the same area, it will be presumed to be consistent with the state's water management objectives and will not be subject to public review and comment. The Director will issue a recommendation to the Secretary within thirty (30) days after all necessary documents have been submitted for review.

IV. EFFECTIVE DATE

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

DATED this 24TH day of May, 2004.



Herbert R. Guenther

Director

Arizona Department of Water Resources

APPENDIX A

First Priority

Satisfaction of Present Perfected Rights as defined and provided for in the Decree.

Second Priority

Satisfaction of Secretarial Reservations and Perfected Rights established or effective prior to September 30, 1968.

Third Priority

Satisfaction of Entitlements pursuant to contracts between the United States and water users in the State of Arizona executed on or before September 30, 1968.

Fourth Priority

Satisfaction of entitlements pursuant to: (i) contracts, Secretarial Reservations, and other arrangements between the United States and water users in the State of Arizona entered into or established subsequent to September 30, 1968, for use on Federal, State, or privately owned lands in the State of Arizona (for a total quantity of not to exceed 164,652 acre-feet of diversions annually); and (ii) Contract No. 14-06-W-245 dated December 15, 1972, as amended, between the United States and the Central Arizona Water Conservation District for the delivery of Mainstream Water for the Central Arizona Project, including use of Mainstream Water on Indian lands.

Entitlements having fourth-priority as defined in (i) and (ii) herein are coequal. Reductions in Entitlements having a fourth priority shall be borne by each Entitlement holder in the same proportion as its Entitlement, or as required by law, regulation, or Secretarial determination. If, however, a reduction-sharing agreement is entered into between two or more such authorized users, then the reduction shall be shared among the parties as provided in the agreement, subject to approval by the Contracting Officer after consultation with ADWR.

Fifth Priority

Satisfaction of Entitlements to any Unused Arizona Entitlement.

Any entity with a contract for fifth-priority water shall utilize its fifth-priority Entitlement only after the Contracting Officer has determined that Mainstream Water is available under applicable law or regulation, and the Contracting Officer provides written notification that such Mainstream Water is available in a specific year, subject to the scheduling and the reduction provisions of the contract. Reduction or elimination of the fifth-priority water use shall be determined by the Contracting Officer after consultation with ADWR, or on the basis of the contract dates, or as required by law or regulation.

Sixth Priority

Satisfaction of Entitlements to Surplus Water.

Any contractor for sixth-priority water shall utilize its sixth-priority Entitlement only after the Contracting Officer has determined that Mainstream Water is available under applicable law or regulation, and the Contracting Officer provides written notification that such Mainstream Water is available in a specific year, subject to the scheduling and reduction provisions of the contract. Reduction or elimination of the sixth-priority water use shall be as determined by the Contracting Officer or on the basis of the contract dates, or as required by law or regulation.