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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)

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

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

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

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who owns the right to withdraw the groundwater, in an amount not to exceed five dollars per acre-foot of groundwater withdrawn and beneficially used.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to withdraw the water, in an amount not to exceed five dollars per acre-foot of water, other than stored water, that is withdrawn and beneficially used.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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 3. Section 45-841.01, Arizona Revised Statutes, as amended by this act, is amended to read:

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

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

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

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

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

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

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

1. A written notice of the ~~party's~~ PARTIES' intent to begin the delivery of central Arizona project water that ~~is~~ WAS MADE available to the Indian community BY THE WATER RIGHTS SETTLEMENT to the holder of grandfathered groundwater rights in an active management area.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 4. Section 45-2423, Arizona Revised Statutes, is amended to read:

45-2423. <u>Powers and duties of authority</u>

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

1. Administer the Arizona water banking fund in accordance with this chapter.

2. Coordinate its staffing needs with the director and CAWCD.

3. Coordinate the storage of water and distribution and extinguishment of long-term storage credits with the director in accordance with this chapter and the water management objectives set forth in chapter 2 of this title.

4. Coordinate with CAWCD for the purchase, delivery and storage of Colorado river water delivered through the central Arizona project in accordance with this chapter.

5. Coordinate and confer with state agencies, municipal corporations, special districts, authorities, other political subdivisions, private entities, Indian communities and the United States on matters within their jurisdiction relating to the policy and purposes of this chapter.

6. Determine, on an annual basis, the quantity of Colorado river water to be stored by the authority and where that storage will occur.

7. Account for, hold and distribute or extinguish long-term storage credits in accordance with this chapter.

8. Comply with all aspects of chapter 3.1 of this title.

9. PERFORM THE AUTHORITY'S REPLENISHMENT RESPONSIBILITIES UNDER CHAPTER 15, ARTICLE 3 OF THIS TITLE WITH MONIES APPROPRIATED FROM THE STATE GENERAL FUND BY THE LEGISLATURE FOR THAT PURPOSE AND TO THE EXTENT THAT MONIES APPROPRIATED BY THE LEGISLATURE FOR THAT PURPOSE ARE NOT AVAILABLE, WITH MONIES COLLECTED IN THE PINAL ACTIVE MANAGEMENT AREA PURSUANT TO SECTION 45-611, SUBSECTION C, PARAGRAPH 3.

~~9.~~ 10. Adopt an official seal for the authentication of its records, decisions and resolutions.

~~10.~~ 11. Keep the minutes of its meetings and all records, reports and other information relating to its work and programs in permanent form, systematically indexed and filed.

B. The authority, acting through its commission, may:

1. Apply for and hold water storage permits.

2. Accrue, exchange, assign, lend and hold long-term storage credits in accordance with this chapter.

3. Exchange Colorado river water for any type of water in accordance with chapter 4 of this title.

4. Enter into water banking services agreements.

5. Charge fees for water banking services.

6. Apply for and hold any water quality permit required for water storage by the department of environmental quality under title 49, chapter 2, article 3 or by federal law.

7. Make and execute all contracts, including intergovernmental agreements pursuant to title 11, chapter 7, article 3, that shall be signed by the chairperson, or in the chairperson's absence the vice-chairperson, and attested by the secretary, necessary to:

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

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

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

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

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

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

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

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

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

8. Sue and be sued.

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

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

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

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

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

45-2425. <u>Arizona water banking fund</u>

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 6. Section 45-2457, Arizona Revised Statutes, is amended to read:

45-2457. <u>Accounting; rules of operation</u>

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

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

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

TITLE, for the benefit of municipal and industrial users of Colorado river water in this state that are outside of the service area of CAWCD.

2. The authority may distribute long-term storage credits accrued with general fund appropriations, OTHER THAN GENERAL FUND APPROPRIATIONS FOR REPLENISHMENT UNDER CHAPTER 15, ARTICLE 3 OF THIS TITLE, for both of the following:

(a) To make water available to a municipal and industrial user of Colorado river water in this state that is outside of the service area of CAWCD, if both of the following apply:

(i) The municipal and industrial user would otherwise suffer a water shortage. The authority may distribute long-term credits to the extent reasonably necessary to offset the water shortage.

(ii) The authority collects reimbursement for the cost to the authority of replacing the long-term storage credits distributed. The authority may replace the long-term storage credits in any year it deems appropriate but shall use good faith efforts to replace the long-term storage credits at a reasonable cost to the person who is responsible for reimbursing the authority for the credits distributed.

(b) To make water available to CAWCD to the extent necessary for CAWCD to meet the demands of its municipal and industrial subcontractors, if all of the following apply:

(i) CAWCD's normal diversions from the Colorado river have been or will be disrupted by shortages on the river or by disruptions in the operation of the central Arizona project.

(ii) The authority does not distribute for this purpose the long-term storage credits reserved in accordance with paragraph 1.

(iii) The authority collects reimbursement from CAWCD for the cost to the authority of replacing the long-term storage credits distributed. The authority may replace the long-term storage credits in any year it deems appropriate but shall use good faith efforts to replace the long-term storage credits at a reasonable cost to CAWCD.

3. The authority may distribute or extinguish long-term storage credits accrued with general fund appropriations, OTHER THAN GENERAL FUND APPROPRIATIONS FOR REPLENISHMENT UNDER CHAPTER 15, ARTICLE 3 OF THIS TITLE, to implement the settlement of water right claims by Indian communities in this state.

4. On request from the director, the authority may extinguish long-term storage credits accrued with general fund appropriations, OTHER THAN GENERAL FUND APPROPRIATIONS FOR REPLENISHMENT UNDER CHAPTER 15, ARTICLE 3 OF THIS TITLE, to fulfill the water management objectives set forth in chapter 2 of this title.

5. The authority may exchange long-term storage credits accrued with general fund appropriations for long-term storage credits held by other persons if the long-term storage credits received by the authority were stored in a location that better enables the authority to fulfill the purposes and policies of this chapter than were the long-term storage credits

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 15

GILA RIVER INDIAN COMMUNITY WATER SETTLEMENT PROGRAM

ARTICLE 1. ADMINISTRATION

45-2601. Definitions

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

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

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

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

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

5. "EASTERN PROTECTION ZONE" MEANS THE EASTERN PROTECTION ZONE NORTH OR THE EASTERN PROTECTION ZONE SOUTH.

6. "EASTERN PROTECTION ZONE NORTH" MEANS THE EASTERN PROTECTION ZONE NORTH ESTABLISHED UNDER SECTION 45-2602, SUBSECTION A.

7. "EASTERN PROTECTION ZONE SOUTH" MEANS THE EASTERN PROTECTION ZONE SOUTH ESTABLISHED UNDER SECTION 45-2602, SUBSECTION A.

8. "GILA RIVER MAINTENANCE AREA" MEANS THE GILA RIVER MAINTENANCE AREA ESTABLISHED UNDER SECTION 45-2603, SUBSECTION A.

9. "GILA RIVER MAINTENANCE AREA IMPACT ZONE" MEANS THE GILA RIVER MAINTENANCE AREA IMPACT ZONE ESTABLISHED UNDER SECTION 45-2603, SUBSECTION B.

10. "GLOBE EQUITY DECREE" MEANS THE DECREE DATED JUNE 29, 1935 AND ENTERED IN UNITED STATES OF AMERICA v. GILA VALLEY IRRIGATION DISTRICT, GLOBE EQUITY NO. 59, ET AL. BY THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA AND INCLUDES ALL COURT ORDERS AND DECISIONS SUPPLEMENTAL TO THAT DECREE.

11. "INDUSTRIAL USE" MEANS ALL OF THE FOLLOWING:

(a) A NONIRRIGATION USE OF WATER COMMENCED AFTER DECEMBER 31, 2002 THAT IS NOT SUPPLIED BY A MUNICIPAL PROVIDER, INCLUDING ANIMAL INDUSTRY USE AND EXPANDED ANIMAL INDUSTRY USE.

(b) A USE OF GROUNDWATER COMMENCED BEFORE JANUARY 1, 2003 BY A HOLDER OF A TYPE 1 NONIRRIGATION GRANDFATHERED RIGHT IN EXISTENCE ON DECEMBER 31, 2002, OTHER THAN A TYPE 1 NONIRRIGATION GRANDFATHERED RIGHT HELD BY A MUNICIPAL PROVIDER AND OTHER THAN A USE UNDER ANOTHER GROUNDWATER RIGHT OR PERMIT, IN EXCESS OF THE AMOUNT ALLOWED UNDER THE TYPE 1 NONIRRIGATION GRANDFATHERED RIGHT.

(c) A USE OF GROUNDWATER COMMENCED BEFORE JANUARY 1, 2003 BY A HOLDER OF A TYPE 2 NONIRRIGATION GRANDFATHERED RIGHT IN EXISTENCE ON DECEMBER 31, 2002, OTHER THAN A TYPE 2 NONIRRIGATION GRANDFATHERED RIGHT HELD BY A MUNICIPAL PROVIDER, IN EXCESS OF THE AMOUNT ALLOWED UNDER THE RIGHT AND FOR WHICH THE HOLDER HAS NO OTHER GROUNDWATER RIGHT.

(d) A USE OF GROUNDWATER COMMENCED BEFORE JANUARY 1, 2003 BY A HOLDER OF A GENERAL INDUSTRIAL USE PERMIT ISSUED UNDER SECTION 45-515 AND IN EXISTENCE ON DECEMBER 31, 2002, OTHER THAN A USE UNDER ANOTHER GROUNDWATER RIGHT OR PERMIT, IN EXCESS OF THE AMOUNT ALLOWED UNDER THE GENERAL INDUSTRIAL USE PERMIT.

12. "IRRIGATION USE" MEANS THE USE OF WATER ON TWO OR MORE ACRES OF LAND TO PRODUCE PLANTS OR PARTS OF PLANTS FOR SALE OR HUMAN CONSUMPTION, OR FOR USE AS FEED FOR LIVESTOCK, RANGE LIVESTOCK OR POULTRY, AS THOSE TERMS ARE DEFINED IN SECTION 3-1201.

13. "MUNICIPAL ACRE" MEANS THE ACRE OR ACRES OF LAND WITHIN A PROTECTION ZONE, ON WHICH WATER PUMPED FROM WITHIN A PROTECTION ZONE IS SUPPLIED BY A MUNICIPAL PROVIDER, ON WHICH WATER USE WAS FIRST COMMENCED AFTER DECEMBER 31, 2002 AND FOR WHICH THE WATER USE IS REPORTED PURSUANT TO SECTION 45-632, 45-875.01 OR 45-2602.

14. "MUNICIPAL PROVIDER" MEANS A CITY, TOWN, PRIVATE WATER COMPANY OR IRRIGATION DISTRICT THAT SUPPLIES WATER FOR NONIRRIGATION USE.

15. "MUNICIPAL USE" MEANS A NONIRRIGATION USE OF WATER COMMENCED AFTER DECEMBER 31, 2002 AND SUPPLIED BY A MUNICIPAL PROVIDER ON MUNICIPAL ACRES.

16. "NONIRRIGATION USE" MEANS A USE OF WATER WITHDRAWN FROM A WELL, OTHER THAN AN IRRIGATION USE.

17. "RESERVATION" MEANS THE GILA RIVER INDIAN COMMUNITY RESERVATION.

18. "SETTLEMENT AGREEMENT" MEANS THE AGREEMENT ENTITLED THE "GILA RIVER INDIAN COMMUNITY WATER RIGHTS SETTLEMENT AGREEMENT", DATED FEBRUARY 4, 2003 BETWEEN THE COMMUNITY, THIS STATE AND OTHER PARTIES, AS AMENDED BEFORE THE EFFECTIVE DATE OF THIS SECTION, A COPY OF WHICH IS ON FILE IN THE DEPARTMENT.

19. "SOUTHSIDE PROTECTION ZONES" MEANS THE EASTERN PROTECTION ZONE NORTH, THE EASTERN PROTECTION ZONE SOUTH, THE WESTERN MUNICIPAL PROTECTION ZONE, THE WESTERN MUNICIPAL AND INDUSTRIAL PROTECTION ZONE AND THE CENTRAL PROTECTION ZONE.

20. "STOCKPOND" MEANS A POND THAT HAS A CAPACITY OF NOT MORE THAN FIFTEEN ACRE-FEET AND THAT IS USED SOLELY FOR WATERING LIVESTOCK OR WILDLIFE. A POND USED PRIMARILY FOR FISHING OR FOR THE CULTURING OF FISH IS NOT A STOCKPOND.

21. "STORED WATER" MEANS WATER THAT HAS BEEN STORED OR SAVED UNDERGROUND PURSUANT TO A STORAGE PERMIT ISSUED UNDER CHAPTER 3.1 OF THIS TITLE.

22. "UNDERGROUND WATER" MEANS WATER, OTHER THAN STORED WATER, WITHDRAWN FROM A WELL.

23. "WATER COMPANY" MEANS EITHER OF THE FOLLOWING:

(a) A PRIVATE WATER COMPANY THAT AS OF JANUARY 1, 2000 WAS REGULATED AS A PUBLIC SERVICE CORPORATION BY THE ARIZONA CORPORATION COMMISSION AND WAS WITHDRAWING UNDERGROUND WATER FROM LANDS NOW WITHIN THE EASTERN PROTECTION ZONE NORTH.

(b) ANY SUCCESSOR OF A PRIVATE WATER COMPANY DESCRIBED IN SUBDIVISION (a) OF THIS PARAGRAPH.

24. "WESTERN MUNICIPAL AND INDUSTRIAL PROTECTION ZONE" MEANS THE WESTERN MUNICIPAL AND INDUSTRIAL PROTECTION ZONE ESTABLISHED UNDER SECTION 45-2602, SUBSECTION A.

25. "WESTERN MUNICIPAL PROTECTION ZONE" MEANS THE WESTERN MUNICIPAL PROTECTION ZONE ESTABLISHED UNDER SECTION 45-2602, SUBSECTION A.

26. "WESTERN PROTECTION ZONES" MEANS THE WESTERN MUNICIPAL PROTECTION ZONE AND THE WESTERN MUNICIPAL AND INDUSTRIAL PROTECTION ZONE.

45-2603. <u>Establishment of Gila river maintenance area and Gila river maintenance area impact zone; notice of intention to drill</u>

A. THE GILA RIVER MAINTENANCE AREA IS ESTABLISHED ON THE EFFECTIVE DATE OF THIS SECTION. THE BOUNDARIES OF THE GILA RIVER MAINTENANCE AREA ARE SHOWN ON THE MAP THAT IS DATED JULY, 2002 AND THAT IS ON FILE IN THE DEPARTMENT. THE MAP SHALL BE AVAILABLE FOR EXAMINATION BY THE PUBLIC DURING REGULAR BUSINESS HOURS.

B. THE GILA RIVER MAINTENANCE AREA IMPACT ZONE IS ESTABLISHED ON THE EFFECTIVE DATE OF THIS SECTION. THE BOUNDARIES OF THE GILA RIVER MAINTENANCE

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

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

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

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

ARTICLE 4. DAMS WITHIN GILA RIVER MAINTENANCE AREA

45-2631. <u>Construction or enlargement of new dams within maintenance area; prohibited; exceptions</u>

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

B. THIS SECTION DOES NOT APPLY TO:

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

(a) FLOOD CONTROL STRUCTURES.

(b) STRUCTURES FOR IMPOUNDING MINE TAILINGS.

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

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

(e) GROUNDWATER IMPOUNDMENTS.

(f) EFFLUENT IMPOUNDMENTS.

(g) STOCKPONDS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. THIS SECTION DOES NOT APPLY TO:

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

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

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

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

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

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

45-2602. <u>Establishment of southside protection zones; reporting requirements</u>

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

1. THE EASTERN PROTECTION ZONE NORTH.
2. THE EASTERN PROTECTION ZONE SOUTH.
3. THE WESTERN MUNICIPAL AND INDUSTRIAL PROTECTION ZONE.
4. THE WESTERN MUNICIPAL PROTECTION ZONE.
5. THE CENTRAL PROTECTION ZONE.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45-2604. <u>Conservation requirements for persons using groundwater in central protection zone no less restrictive than in third management plan</u>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45-2621. Definitions

IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

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

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

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

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

45-2622. Annual southside replenishment obligations

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45-2623. <u>Satisfaction of southside replenishment obligations</u>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45-2624. Southside replenishment bank; credits

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. PAY THE AUTHORITY THE ACTUAL OR ESTIMATED COST OF REPLENISHING THE WATER UNDER SECTION 45-2623, SUBSECTION C AS DETERMINED BY THE AUTHORITY AND INCLUDED IN THE NOTICE DESCRIBED IN SUBSECTION E OF THIS SECTION.

2. IF APPROVED BY THE AUTHORITY, DELIVER WATER OR LONG-TERM STORAGE CREDITS TO THE AUTHORITY IN THE AMOUNT OF THE REPLENISHMENT OBLIGATION.

E. NO LATER THAN DECEMBER 31 OF EACH YEAR, THE AUTHORITY SHALL SEND WRITTEN NOTICE TO EACH PERSON WHO HAS AN INDIVIDUAL REPLENISHMENT OBLIGATION FOR THE PRECEDING YEAR. THE NOTICE SHALL BE SENT BY FIRST-CLASS MAIL TO THE PERSON'S MAILING ADDRESS ON FILE WITH THE DEPARTMENT. THE NOTICE SHALL SPECIFY THE AMOUNT OF THE REPLENISHMENT OBLIGATION, THE AUTHORITY'S ACTUAL OR ESTIMATED COST OF REPLENISHING THE WATER UNDER SECTION 45-2623, SUBSECTION C, THE DATE BY WHICH THE PERSON MUST SATISFY THE REPLENISHMENT OBLIGATION AND THE MANNER IN WHICH THE PERSON MAY SATISFY THE REPLENISHMENT OBLIGATION.

F. IF A PERSON WITH AN INDIVIDUAL REPLENISHMENT OBLIGATION FAILS TO SATISFY THE REPLENISHMENT OBLIGATION BY THE DATE SPECIFIED IN THE WRITTEN NOTICE RECEIVED FROM THE AUTHORITY, THE PERSON SHALL BE SUBJECT TO AN ENFORCEMENT ACTION BY THE DEPARTMENT PURSUANT TO ARTICLE 6 OF THIS CHAPTER.

G. THE DIRECTOR SHALL INCLUDE WRITTEN NOTICE OF THE REQUIREMENTS OF THIS SECTION IN ANY GROUNDWATER WITHDRAWAL PERMIT, NONIRRIGATION GRANDFATHERED RIGHT AUTHORIZATION TO DRILL A NONEXEMPT WELL UNDER SECTION 45-596 OR RECOVERY WELL PERMIT ISSUED IN AN EASTERN PROTECTION ZONE OR THE WESTERN MUNICIPAL AND INDUSTRIAL PROTECTION ZONE AFTER THE EFFECTIVE DATE OF THIS SECTION.

ARTICLE 6. ENFORCEMENT

45-2651. Inspections, investigations and audits

A. THE DIRECTOR OR THE DIRECTOR'S AUTHORIZED REPRESENTATIVE MAY ENTER, AT REASONABLE TIMES, PRIVATE OR PUBLIC PROPERTY AND THE OWNER, MANAGER OR OCCUPANT OF THE PROPERTY SHALL PERMIT THE ENTRY TO ASCERTAIN COMPLIANCE WITH THIS CHAPTER.

B. INSPECTIONS AND INVESTIGATIONS UNDER SUBSECTION A SHALL BE ON REASONABLE NOTICE TO THE OWNER, MANAGER OR OCCUPANT OF THE PROPERTY UNLESS REASONABLE GROUNDS EXIST TO BELIEVE THAT SUCH NOTICE WOULD FRUSTRATE THE ENFORCEMENT OF THIS CHAPTER. THE DIRECTOR MAY APPLY FOR AND OBTAIN WARRANTS. IF WARRANTS ARE REQUIRED BY LAW, THE DIRECTOR SHALL APPLY FOR AND OBTAIN WARRANTS FOR ENTRY AND INSPECTION TO CARRY OUT THE ADMINISTRATIVE AND ENFORCEMENT PURPOSES OF THIS ARTICLE.

C. THE DIRECTOR SHALL PROVIDE A WRITTEN REPORT OF EACH INSPECTION, INVESTIGATION AND AUDIT UNDER THIS SECTION TO THE PERSON WHO IS SUBJECT TO THE ACTION.

45-2652. Cease and desist order; hearing; injunctive relief

A. IF THE DIRECTOR HAS REASON TO BELIEVE THAT A PERSON IS VIOLATING OR HAS VIOLATED THIS CHAPTER OR AN ORDER ISSUED PURSUANT TO THIS CHAPTER, THE DIRECTOR MAY GIVE THE PERSON WRITTEN NOTICE THAT THE PERSON MAY APPEAR AND SHOW CAUSE AT AN ADMINISTRATIVE HEARING IN THE COUNTY IN WHICH THE VIOLATION IS ALLEGED TO HAVE OCCURRED WHY THE PERSON SHOULD NOT BE ORDERED TO CEASE AND DESIST FROM THE VIOLATION.

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

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

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

45-2653. Violation; civil penalties

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

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

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

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

45-2654. Violation; classification

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

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

CHAPTER 16

TOHONO O'ODHAM WATER SETTLEMENT PROGRAM

ARTICLE 1. GENERAL PROVISIONS

45-2701. Definitions

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

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

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

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

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

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

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

45-2702. Jurisdiction

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

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

2. THE TOHONO O'ODHAM SETTLEMENT AGREEMENT.

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

ARTICLE 2. SAN XAVIER RESERVATION WATER PROTECTION PROGRAM

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 11. Water firming program for Arizona Indian tribes

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

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

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

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

Sec. 12. Arizona water firming program study commission

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

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

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

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

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

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

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

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

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

4. The Gila River Indian community.

5. The Tohono O'odham nation.

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

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

8. Hardrock mining industries.

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

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

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

Sec. 13. Delayed repeal

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

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

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

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

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

Sec. 15. Conditional enactment; written notice

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

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

Sec. 16. Conditional delayed repeal; conditional enactment

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

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