

**Proposed Legislation from Sustainability Policies Stakeholder Process
Draft – September 1, 2008**

45-576.01. Determining consistency with management goal in a replenishment district, conservation district and water district

A. For the purpose of determining whether an assured water supply exists, the director shall find that a groundwater replenishment district member's projected use is consistent with achieving the management goal for the active management area under section 45-576 if:

1. The land for which a certificate or the city, town or private water company for which a designation is sought is in a groundwater replenishment district established pursuant to title 48, chapter 27.
2. The director has made either a preliminary determination that has not expired or a final determination that the district's plan for operation is consistent with achieving the management goal according to section 45-576.03, subsection E.
3. The master replenishment account established pursuant to section 45-858.01 does not have a debit balance that exceeds the cumulative amount of the district's debits accrued during the four preceding calendar years.

B. For the purpose of determining whether an assured water supply exists, the director shall find that a projected use is consistent with achieving the management goal for the active management area under section 45-576 if all of the following apply:

1. The land for which a certificate is sought is a member land, or the service area of a city, town or private water company for which a designation is sought is a member service area, in a conservation district as provided by title 48, chapter 22, article 4, or the land for which a certificate is sought is a water district member land, or the service area for which a designation is sought is a water district member service area in a water district as provided by title 48, chapter 28, article 7.

~~2. The director has made a determination that has not expired that the most recent plan for operation submitted under section 45-576.02, subsection C or E by the conservation district or the water district, whichever is obligated to replenish groundwater on behalf of the land for which a certificate is sought or the service area of a city, town or private water company for which a designation is sought, is consistent with achieving the management goal for the active management area in which the use is located according to section 45-576.03, subsection N or O, as applicable.~~

THE DIRECTOR'S MOST RECENT DETERMINATION PURSUANT TO SECTION 45-576.03, SUBSECTION N OR O THAT THE PLAN FOR OPERATION SUBMITTED BY THE CONSERVATION DISTRICT OR WATER DISTRICT IS CONSISTENT WITH ACHIEVING THE MANAGEMENT GOAL FOR THE ACTIVE MANAGEMENT AREA IN WHICH THE USE IS LOCATED HAS NOT EXPIRED.

[Comment: this is a technical change suggested by ADWR to correct a problem with the current

statute. Under the existing language, there will be a gap in time between the date a plan is submitted and the date the director determines whether the plan is consistent with the management goal. During that gap, the determination that will be in effect will not be for the most recent plan, but for the previously submitted plan.]

3. The conservation district or the water district, whichever is obligated to replenish groundwater on behalf of the land for which a certificate is sought or the service area of a city, town or private water company for which a designation is sought, is currently in compliance with its groundwater replenishment obligation for the active management area in which the use is located, as determined by the director pursuant to section 45-859.01 or 45-860.01.

45-576.03. Director's review of plans

A. Within sixty days after receiving a groundwater replenishment district's preliminary and long-range plans pursuant to section 45-576.02, the director shall determine if the district has submitted sufficient information to determine whether the district's plan for operation is consistent with the management goal of the active management area. If the director determines that the information is insufficient for such a determination, the director shall notify the district of the insufficiency in writing and shall specify what additional information is required. The district shall provide the information to the director within thirty days after receiving the notice.

B. On determining that the district's preliminary or long-range plan is complete, the director shall publish notice in a newspaper of general statewide circulation once each week for two consecutive weeks:

1. Requesting public comment concerning information supplied by the district to meet the requirements of section 45-576.02.

2. Setting a date and location of a public hearing to be held pursuant to subsection C of this section.

C. The director shall hold a public hearing within sixty days after the last day of notice under subsection B of this section. The hearing shall be conducted in an informal manner without adhering to the rules of evidence required in judicial proceedings. Any person, including the department, shall have an opportunity to comment on or to present evidence concerning the submitted plan.

D. The district shall respond in writing to all public comments whether received at the hearing or otherwise received by a date announced by the director.

E. Within one hundred twenty days after the hearing on the preliminary plan, the director shall issue a preliminary decision determining whether or not the plan for district operation shall be designated as being consistent with achieving the management goal. If the director determines that the preliminary plan for district operation is consistent with achieving the management goal, the designation expires on January 1 of the thirteenth calendar year following the calendar year in which the district is established. Within one hundred twenty days after the hearing on the long-range plan, the director shall issue a final decision determining whether or not the plan for district operation shall be designated as being consistent with achieving the management goal. The director shall include findings with the decision and a summary of all public comments received in writing and public comments made at the public hearing.

F. The director shall issue a decision that the district's plan for operation is consistent with achieving the management goal if the director finds that the district has the current capability to meet the district members' replenishment obligations for the five calendar years following the calendar year in which the district submits its plan and, in addition, the director makes either of the following findings, as applicable:

1. If the director is evaluating the preliminary plan, that the district has established an adequate plan for obtaining financing and water resources that are necessary to meet the district members' replenishment obligations through the eighteenth calendar year following the year in which the district is established.

2. If the director is evaluating the long-range plan, that the district has established an adequate plan to meet the projected replenishment obligations through the first calendar year in which achieving safe-yield is required.

G. Unless the district successfully appeals the director's decision pursuant to subsection H of this section, if the director has made a determination that the district's plan for operation is not consistent with achieving the management goal, the director shall notify the district of the inconsistency in writing and shall specify how the district's plan for operation is inconsistent with achieving the management goal. The district shall modify its proposed plan and resubmit the plan, and the director shall review the plan as provided by section 45-576.02 and this section, except that the director shall only hold a hearing regarding those matters that the district has modified in its resubmitted plan.

H. The director's determination under subsection E of this section is subject to rehearing or review and to judicial review as provided in section 45-114, subsection C, but the court shall not issue a temporary restraining order or preliminary injunction to prevent the director from acting under this chapter while the action is pending.

I. Within sixty days after receiving a conservation district's plan or a water district's plan pursuant to section 45-576.02, including a revised plan pursuant to subsection R of this section, the director shall determine if the conservation district or water district, as the case may be, has submitted sufficient information to determine whether the conservation district's plan for operation is consistent with the management goals of each of the active management areas in which a member land or member service area is or may be located or whether the water district's plan for operation is consistent with the management goal of the active management area in which a water district member land or a water district member service area is or may be located. If the director determines that the information is insufficient for such a determination, the director shall notify the conservation district or water district, as the case may be, of the insufficiency in writing and shall specify what additional information is required. The conservation district or water district, as the case may be, shall provide the information to the director within a reasonable time as specified by the director.

J. On determining that the conservation district's plan or the water district's plan, as the case may be, is complete, the director shall publish notice in a newspaper of general statewide circulation once each week for two consecutive weeks:

1. Requesting public comment concerning information supplied by the conservation district or water district, as the case may be, to meet the requirements of section 45-576.02.

2. Setting a date and location of a public hearing to be held pursuant to subsection K of this section.

K. The director shall hold a public hearing within sixty days after the last day of the notice under subsection J of this section. The hearing shall be conducted in an informal manner without adhering to the rules of evidence required in judicial proceedings. Any person, including the department, shall have an opportunity to comment on or to present evidence concerning the submitted plan.

L. The conservation district or the water district, as the case may be, shall respond in writing to all public comments whether received at the hearing or otherwise received by a date announced by the director.

M. Within sixty days after the hearing on the first plan required under section 45-576.02, subsection C or the first plan required under section 45-576.02, subsection E and within one hundred twenty days after the hearing on any subsequent plan required under section 45-576.02, subsection C or E, including a revised plan pursuant to subsection R of this section, the director shall issue a decision for each of the active management areas in which a member land or member service area is or may be located, and the active management area in which a water district member land or water district member service area is or may be located, ~~determining~~ AS TO whether or not the plan submitted with respect to an active management area ~~shall be designated as being~~ IS consistent with achieving the management goal of the active management area. THE DIRECTOR SHALL INCLUDE FINDINGS WITH THE DECISION AND A SUMMARY OF ALL PUBLIC COMMENTS RECEIVED IN WRITING AND PUBLIC COMMENTS MADE AT THE PUBLIC HEARING. If the ~~director determines~~ DIRECTOR'S DECISION INCLUDES A DETERMINATION that the plan submitted for an active management area is consistent with achieving the management goal of that active management area, EXCEPT AS PROVIDED IN SUBSECTION S OF THIS SECTION, the ~~designation~~ DETERMINATION expires on ~~January 1~~ DECEMBER 31 of the year following the year in which the conservation district or the water district, as the case may be, is required to submit its next plan under section 45-576.02, subsections C and E, OR THE DATE THE DIRECTOR ISSUES A DECISION DETERMINING THAT THE NEXT PLAN IS CONSISTENT WITH ACHIEVING THE MANAGEMENT GOAL OF THE ACTIVE MANAGEMENT AREA, WHICHEVER OCCURS FIRST. ~~The director shall include findings with the decision and a summary of all public comments received in writing and public comments made at the hearing.~~ [Comment: The drafters have used the word "determination" rather than "designation" to avoid confusion with a designation of assured water supply.]

N. The director shall make a determination that the conservation district's plan is consistent with achieving the management goal for each active management area if all of the following have been demonstrated:

1. The conservation district has identified sufficient water supplies to meet its replenishment obligations for current members during the twenty calendar years following the submission of the plan and has identified additional water supplies potentially available for the district's projected groundwater replenishment obligations for the one hundred calendar years following the submission of the plan for current members and potential members based on reasonable projections of real property and service areas that could qualify for membership in the ten years

September 1, 2008 - DRAFT - Proposed Legislation from Sustainability Policies Stakeholders' Process

following the submission of the plan.

2. The replenishment reserve target for each active management area was calculated as prescribed in section 48-3772, subsection E, and the district is developing a replenishment reserve in each active management area pursuant to section 48-3772, subsection E.

3. The conservation district has identified sufficient capacity at storage facilities and projects to be used for replenishment purposes during the twenty calendar years following the submission of the plan.

4. The district has made a reasonable estimate of its projected replenishment obligations for the one hundred calendar years following the submission of the ten year plan as required by section 45-576.02, subsection C, paragraph 2, subdivision (b).

O. The director shall issue a decision that the water district's plan is consistent with achieving the management goal of the active management area in which the water district is located if the director finds that the water district has the current capability to meet the current and projected water district groundwater replenishment obligation, as that term is defined and used in title 48, chapter 28, for the five calendar years following the calendar year in which the water district submits its plan and, in addition, the director finds the water district has established an adequate plan to meet the projected water district groundwater replenishment obligation for the twenty calendar years following the calendar year in which the plan was submitted.

P. Unless the conservation district or water district successfully appeals the director's decision pursuant to subsection Q of this section, if the director ~~has made a determination~~ FINDS for one or more active management areas that the conservation district's plan for operation or the water district's plan is not consistent with achieving the management goal of an active management area, the director shall notify the conservation district or water district, as the case may be, of the inconsistency in writing and shall specify how the conservation district's plan for operation or the water district's plan is inconsistent with achieving the management goal. The conservation district or water district, as the case may be, shall modify its proposed plan and resubmit the plan within sixty days after it has been notified in writing of the director's decision, and the director shall review the plan as provided by section 45-576.02 and this section, except that the director shall only hold a hearing regarding those matters that the conservation district or water district, as the case may be, has modified in its resubmitted plan.

Q. The director's ~~determination~~ DECISION under subsection M or R of this section is subject to rehearing or review and to judicial review as provided in section 45-114, subsection C, but the court shall not issue a temporary restraining order or preliminary injunction to prevent the director from acting under this chapter while the action is pending.

R. If, at any time between the second anniversary and the ~~sixth~~ EIGHTH anniversary of the director's determination of consistency with the management goal, the director ~~determines~~ FINDS that there has been either an unexpected increase in the conservation district's projected groundwater replenishment obligations or an unexpected reduction in water supplies available to meet the conservation district's current obligations such that the conservation district's plan no longer demonstrates consistency with the management goal for one or more active management areas, the director shall require the conservation district to submit a revised plan for operation. The revised plan for operation shall be submitted within ~~two~~ ONE calendar years YEAR of the date that the director notifies the conservation district of such a ~~determination~~ FINDING,

September 1, 2008 - DRAFT - Proposed Legislation from Sustainability Policies Stakeholders' Process

UNLESS THE DIRECTOR EXTENDS THIS TIME FOR GOOD CAUSE. The director shall review, hold a hearing on and make a ~~determination~~ DECISION on the revised plan as provided by this section, except that the director shall only hold a hearing regarding those conditions that have changed.

S. Unless the conservation district successfully appeals the director's ~~determination~~ DECISION pursuant to subsection Q of this section, if the ~~director has made a determination~~ DIRECTOR'S DECISION INCLUDES A FINDING for one or more active management areas that the conservation district's revised plan for operation is not consistent with achieving the management goal of that active management area pursuant to this section and the conservation district is unable to satisfy the director's concerns within sixty days after the director has notified the conservation district of the ~~determination~~ DECISION, the DETERMINATION THAT THE district's plan IS CONSISTENT WITH THE MANAGEMENT GOAL OF THE ACTIVE MANAGEMENT AREA shall expire.

48-3774. Qualification as member land

A. Real property qualifies as member land only if all of the following apply:

1. The real property is located in an active management area in which a part of the central Arizona project aqueduct is located.
2. The real property is not in a member service area or in a groundwater replenishment district under chapter 27 of this title.
3. The real property is not a water district member land or a parcel of water district member land, or in a water district member service area established under chapter 28 of this title.
4. The conditions stated in section 45-576.01, subsection B, paragraphs 2 and 3 are satisfied with respect to the district at the time of the qualification.
5. The owner of the real property, or other person or entity, such as a property owners' or homeowners' association, if the person or entity has proper authority, records a declaration, WHICH HAS BEEN APPROVED BY THE DISTRICT, against the real property in the official records of the county where the real property is located that:
 - (a) Contains the legal description of the real property.
 - (b) Declares the intent of the owner that the real property qualify as member land under this chapter.
 - (c) Declares that, in order to permit the delivery of excess groundwater to the real property, each parcel of member land thereafter established at the real property is subject to a parcel replenishment obligation and to a replenishment assessment to be determined by the district.
 - (d) Declares that qualifying as member land and subjecting the real property to the parcel replenishment obligation and the replenishment assessment directly benefits the real property by increasing the potential of the property to qualify for a certificate of assured water supply issued by the department of water resources pursuant to title 45, chapter 2, article 9, thereby allowing the development, use and enjoyment of the real property.
 - (e) Contains a covenant that is binding against the real property and each parcel of member land thereafter established at the real property to pay to the district a replenishment assessment based on the parcel replenishment obligation in an amount determined by the district pursuant to section 48-3772, subsection A.

September 1, 2008 - DRAFT - Proposed Legislation from Sustainability Policies Stakeholders' Process

(f) Declares that the district may impose a lien on the real property and each parcel of member land thereafter established at the real property to secure payment of the replenishment assessment and any applicable replenishment reserve fee.

(g) Declares that the covenants, conditions and restrictions contained in the declaration run with the land and bind all successors and assigns of the owner.

B. The declaration may contain covenants, conditions and restrictions in addition to those prescribed by this section. The declaration may be an amendment or supplement to covenants, conditions and restrictions recorded against developed or undeveloped land.

C. Notwithstanding subsection A of this section, no real property qualifies as member land unless the municipal provider that will provide water to the real property that is subject to the declaration records in the official records of the county where the real property is located an ~~instrument~~ AGREEMENT BETWEEN THE DISTRICT AND THE MUNICIPAL PROVIDER that contains both of the following:

1. The legal description of the real property and the tax parcel numbers for the real property.
2. An agreement by the municipal provider to submit to the district by March 31 of each year after the recordation of the instrument the information prescribed by section 48-3775, subsection A and such other information as the district may reasonably request.