Legislative Summary 2010

Governor Bruce Babbitt signing the Arizona Groundwater Management Act into law on June 12, 1980.

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Arizona Municipal Water Users Association

Those present at the signing of the 1980 Arizona Groundwater Management Act

listed from left to right are:

1. Jim Bush
2. Frank McElhaney
3. Polly Rosenbaum
4. Bob McCain
5. Andrea Morgante
6. Barbara Goldberg
7. Kathy Ferris
8. Stan Turley
9. Leo Corbent
10. Center: Governor Bruce Babbitt
11. Frank Kelley
12. Jamie Sossaman
13. Burton Barr
14. Jim Johnson
15. Larry Hawke
16. John Mawhinney
17. Leroy Michael
18. Hamilton Catlin
19. Bill Stephens
20. Bill Swink
21. Jack Taylor

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AMWUA

Final Legislative

Summary

2010

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Introduction

In 2010, the 49th Arizona Legislature grappled with many serious issues, not the least of which included significant pieces of water-related legislation, and adjourned relatively early -- missing the 100-day target by just a few days.

Departing from recent practice, the Legislature and the Governor came to a budget agreement early in the session. The State's fiscal condition remained weak and revenues continued to miss their targeted levels. The final budget agreement included significant cuts to agencies, as well as referrals to the ballot for other budget related items. Included in this list was a May Special Election to impose a temporary sales tax to fill public safety and health shortfalls, as well as referrals to the November General Election to lift restrictions on voter-approved special funds and programs, such as First Things First. The budget package also included additional cuts that would be conditional on the failure of the temporary sales tax increase. At the same time the House was pushing for a set of business tax cuts and shifts, a special session was called to authorize the Governor to sue in opposition to the recently passed federal health care legislation. The budget package also featured a move to remove general fund support for some agencies – including ADWR and ADEQ – and replacing those revenues with increases in permitting fees.

The 49th Arizona Legislature, Second Regular Session

- **Adjourned Sine Die on April 29th at 11:09 PM**
- **109 Days**
- **1233 Bills Introduced**
- **352 Bills Passed**
- **210 Bills Signed (5/02)**

AMWUA's 2010 Record

Tracked more than 70 Bills

Engaged on 17

Successful outcomes on 17 of 17

One result of this move toward increased reliance on fee revenue was a push by the regulated community, including AMWUA, to protect that revenue from legislative sweeps. The ADWR and ADEQ bills were amended to specify that their revenues are to be "Held in Trust" and not be subject to sweeps for other General Fund purposes. The regulated community was also successful in creating a fee commission that is to meet during the 2010 interim to study agencies' fee needs and the legal framework for future fee increases in light of the constraints posed by Proposition 108.

Late in the session, illegal immigration moved into the national spotlight as the Legislature adopted SB1070. This garnered weeks of national attention, including frequent coverage on the nation's television news networks, national print media, in addition to satirical treatment on comedy shows, such as Saturday Night Live.

The session also featured a very strong push by the chambers of commerce and others to make significant changes to regulatory processes in the state. These included changes to the Governor's Regulatory Review Council (GRRC), the Office of Administrative Hearings, attempts to remove the Federal jurisdiction in Arizona, attempts to prevent state agencies from regulating in similar areas, and a move to require general permits, rather than individual permits.

The Legislature took up many significant water issues this session. The bill to provide for additional sustainability and bonding authority of the Central Arizona Groundwater Replenishment District (CAGRD) moved forward this year after stalling last session. The Legislature codified the settlement on groundwater in the Big Chino Sub-basin. Stakeholders also reached a compromise to create a commission to review the statewide need for water supplies and infrastructure. The mining industry also pushed a measure, HB2617, which contained significant water policy -- including removal of conditions for Aquifer Protection Permits, expansion of uses of water from mitigation activities, and removal of well spacing requirements for mitigation activities.

The Arizona Municipal Water Users Association played an active role in many of these debates. Working closely with a number of allies, AMWUA was successful in defeating many harmful bills and minimizing the impacts of others. AMWUA successfully supported the passage of other positive bills that will benefit AMWUA's members and the water community.

AMWUA looks forward to continuing its work at the Legislature to further sound water management and good governance in Arizona.

AMWUA's 2010 Legislative Summary provides a comprehensive accounting of this session's legislative activity and the potential impacts on Arizona's water interests. This includes not only the direct water policies and agency budgets, but also those measures that affect water by way of a broader or more generic regulatory application. To that end, the Summary includes:

1) **AMWUA 2010 Tracking Sheet**: AMWUA's quick reference guide to bills moving through the Legislature. It contains AMWUA's position, a brief bill summary, and each bill's status. The web-based version contains links to detailed information about the bills and AMWUA's position papers.

2) **Enacted Water Bills**: These are the bills that passed and were signed by the Governor. In addition to the AMWUA Summary, this section includes, for reference purposes, the final text of the bills.

3) **Water Bills Not Enacted**: Bills that either failed to pass or were vetoed by the Governor. These bills feature a summary. This section includes a list of water-related technical correction/striker vehicles that either did not pass or were stricken with non-water legislation.

4) **Enacted Regulatory Bills**: Bills that indirectly affect water interests and were enacted. These bills are summarized.

5) **Regulatory Bills Not Enacted**: Bills that indirectly affect water interests which failed to pass or were vetoed by the Governor.

6) **Fiscal Year 2011 Arizona Department of Water Resources Budget Summary**

7) **AMWUA's Resolutions**: AMWUA's guiding principles, as adopted by the AMWUA Board of Directors, prior to each Legislative Session. AMWUA staff, the Water Resources Advisory Group, and the AMWUA Management Board use these resolutions to inform others of AMWUA's positions on specific legislative proposals throughout the session.

8) **Index**: A reference of locations of important concepts that provide the context for the legislative proposals.

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Legislative Session Tracking Sheet 2010

Bill[i]	Sponsor	Description	AMWUA Position[ii]	Last Action[iii]
HB2081: ADWR Continuation	Mason	Continues ADWR to July 1, 2020	**SUPPORT**	4/5 Signed by the Governor (Laws 2010 Chapter 15)
HB2083: Drought Emergency Groundwater Transfer	Mason	Allows temporary transportation of groundwater in areas outside an AMA during a declared drought or water shortage-related emergency and is subject to numerous conditions. This bill was amended to clarify Groundwater Transportation Prohibitions for CAGRD. Conference Committee technical amendment.	Monitor	5/7 Signed by the Governor (Laws 2010 Chapter 252)
HB2152: Voluntary Remediation Program	Barnes	Continues ADEQ's voluntary remediation program to July 1, 2020.	Monitor	4/14 Signed by the Governor (Laws 2010 Chapter 45)
HB2171: Water Exchanges; Technical Correction	Tobin	Striker vehicle	Monitor	2/25 House Water and Energy HELD
HB2180: Aquifer Protection; Natural Gas Storage	Seel	Exempts class 2 injection wells for natural gas	Monitor	Ref: House Water and Energy

		storage purposes from Aquifer Protection Permit requirements.		
HB2218: Irrigation Districts; Contracts	Jim Weiers	Raises the threshold for non-bid contracts from $10k to $30k. Removes State Certification as one of the two entities required to declare an emergency to circumvent bid advertisements for contracts. Senate Finance amendment added CPI index.	Monitor	4/14 Signed by the Governor (Laws 2010 Chapter 47)
HB2249: Municipal Development Fees; Refunds	Biggs	If a facility is not completed within seven (7) years after the first development fee is collected, the municipality must refund any fees that were collected. Exempts water, wastewater and sewer.	Monitor	Ref: Senate Gov 3/29 House; Passed 40-19
HB2255: ~~Technical Correction; AMAs~~ S/E Landlord Utility Fees	Jones	Amended 2/22 with S/E relating to landlord for utilities and garbage	Monitor	5/03 Signed by the Governor (Laws 2010 Chapter 212)
HB2257: ~~Municipal Taxation & Fees; Notice~~ **S/E Same subject posted**	Antenori	60-day written notice of any new or increased tax, fee or rate on a commercial entity.	Monitor	5/11 Signed by the Governor (Laws 2010 Chapter 316)
HB2259: Development Fees; Proportional Share	Biggs	Requires proportional share of costs for new and existing development. IIP must identify existing sources of funds and amounts and sources of funds paid by existing residents. Requires that existing funds be spent before any development fees. Identifies sources and amounts of revenue to pay bonds that will be associated with capital improvements.	Monitor	3/25 House COW; Passed 2/2 House Gov; Passed 6-2

HB2260: Regulatory Rulemaking	Tobin	Various changes to statutes governing regulatory rule making, including creating a "general permit" (defined) and requiring new permit rules to use general permits, except in specified circumstances, prohibiting rules that are more stringent than federal law without express statutory authority, and allowing summary rulemaking for the repeal of "ineffective" rules that do not increase compliance costs or reduce entity rights. Amended to create a commission on privatization.	Monitor	5/10 Signed by the Governor (Laws 2010 Chapter 287)
HB2282: ~~Transparency; Political Subdivisions~~ **S/E Same Subject**	Montenegro	**STRIKE EVERYTHING AMENDMENT**: Adds local governments to entities that must publish to an official website, with a searchable database, receipts and expenditures. Includes vendor information, amount and date of payment, city, and legislative district. Must provide information within 30 days of the close of a fiscal year. SCOW amendment removes requirement to crosslink expenditures with contracts.	Monitor	5/10 Signed by the Governor (Laws 2010 Chapter 288)
HB2289: Water Recharge; Direct Use	Pratt	Groundwater delivered for direct use to an irrigation district within the same AMA is excluded from the calculation of the amount of groundwater withdrawn, if the water is withdrawn for mining. [Resolution Copper] Amended in House Environment to sunset in 2025 and retroactive to Dec 31, 2009. House Floor Amendment to correct drafting error.	Monitor	4/23 Signed by the Governor (Laws 2010 Chapter 131)

HB2290: Waste Tires; Abandoned Mines	Jones	Allows, with the permission of the State Mine Inspector, tires to be used to fill mines until 2015. Defines mine-fill as an acceptable method for the disposal of waste tires. Adds "an abandoned mine filled with waste tires" to the Title 49 definition of a solid waste facility. Removes from the definition of "waste tire" any tire that has been disposed of in an abandoned mine. Creates a demonstration project for the use of waste tires in abandoned mines. The demonstration project is charged with the study of the effectiveness of the use of waste tires and the impacts on public safety and water quality.	**OPPOSE**	3/8 Ref SNRIPD
HB2407: Municipal Sales Tax; Utilities	Antenori	Prohibits a city from charging a sales tax on the provision of water, gas or electricity outside of the city limits.	Monitor	2/18 House COW Retained
HB2448: CAGRD Revenue Bonding Sustainability	Tobin	Enables CAWCD to bond for CAGRD replenishment water supplies (see also SB1141). Amended in House to match SB1141. (SUBSTITUTED with SB1141, passed and transmitted to the Governor)	Monitor	See SB1141
HB2450: Water and Wastewater Charges	Antenori	A city may not require any person, other than the person with whom the city contracted, to pay unpaid water and wastewater service rates and charges. AMENDED to limit the	Monitor	5/11 Signed by the Governor (Laws 2010 Chapter 320)

		charges to single-family residential.		
HB2458: Home Sales; Water Supply Disclosure	Ableser	For a subdivision outside an AMA, requires a subdivider to record with the Plat a document containing a statement of water adequacy or inadequacy.	Monitor	Ref: HWE; HCom
HB2478:S/E Development Fees Moratorium Continuation	Konopnicki	HB2478, as amended, continues by one year (to 2012) the moratorium on development fee increases that can be adopted by cities. The bill also defines the "date of imposition" of the fees for the purpose of the moratorium. The bill amends Laws 2009, 3rd Special Session, chapter 7, section 41.	Monitor	4/26 Signed by the Governor (Laws 2010 Chapter 153)
HB2561 S/E Groundwater Transfers; Big Chino	Mason	Allows a city or town in the Prescott AMA to transfer from the Big Chino Sub-basin up to 8068 acre-feet of groundwater, plus an increment over 231 acre-fee, for compliance with an Indian water settlement. The transfer is conditional upon the relinquishment of a CAP allocation and the entering into of a federally approved settlement agreement with an Indian tribe. [SRP/Prescott Settlement] [See also SB1445] (Substituted with SB1445, passed and transmitted to the Governor.)	SUPPORT	See SB1445
HB2573: Cities; Water Softeners; Salts	Mason	Permits cities to regulate the use, installation, and disposal of water softeners that discharge sodium into a water or	Monitor	2/11 House Water and Energy; Failed 4-4

		wastewater system.		
HB2574: Renewable Energy Districts	Mason	Enables cities and towns to form improvement districts for the purpose of acquiring and installing water conservation and renewable energy infrastructure and equipment. Amended in HWE to require districts to provide a list of parcels included to the County Assessor. House Floor technical fix related to authorized governing body.	Monitor	4/7 Senate Finance; HELD
HB2582: Technical Correction; Dry Wells	Barnes	Striker vehicle	Monitor	Introduced
HB2583: Technical Correction; Water Quality	Barnes	Striker vehicle	Monitor	Introduced
HB2584: Technical Correction; Water Quality Fund	Barnes	Striker vehicle	Monitor	Introduced
HB2585: Technical Correction; Underground Storage; Closure	Barnes	Striker vehicle	Monitor	Introduced
HB2586: S/E Agency Fees	Biggs	Amends FY11 Environment BRB to require 30-day public comment period on proposed fees and establishes a fees commission to look at agency fees and the legal structure for future increases/decreases in fees. Amended in Senate COW to be a bipartisan commission	Support	5/10 Signed by the Governor (Laws 2010 Chapter 290)
HB2597: Tax Credits; Exemptions; Sunset	Chabin	Requires all future statutes that provide a tax credit or exemption to have a 7-year sunset. Inserts a 7-year sunset in numerous tax credits, including agricultural water	Monitor	2/22 HWM Failed 4-4

		conservation systems, solar hot water stub outs, and pollution control.		
HB2617: Mining; Water; Permits; Rules	Jones	Numerous changes to permitting related to mining operations and water including those related to remediation and aquifer protection. Amended to add ADWR and ADEQ fee setting with rulemaking exemption. House Substituted Floor Amendment removed fees, removed ALJ/OAH provisions, and narrowed water components. Section relating to Mine Inspector lawsuits was removed. Most serious AMWUA concerns resolved.	Oppose	5/11 Signed by the Governor (Laws 2010 Chapter 309) See Signing Statement
HB2653: IGAs; Separate Legal Entities	Pratt	Enables cities, towns, counties, other political subdivisions, and certain Title 48 special taxing districts to form separate legal entities via IGA (see also SB1092).	Monitor	5/11 Signed by the Governor (Laws 2010 Chapter 328)
HB2661: Statewide Water Augmentation	Tobin	Would create a 15-person commission to study 1) water needs in each county in the next 50 and 100 years and 2) the CAP, CAGRD, SRP, and Water Bank storage and delivery obligations. Commission shall develop recommendations and legislation for the development and financing of future water acquisitions, infrastructure, and infrastructure financing, and the development of a Statewide Water Augmentation Authority to identify and	Support as Amended	5/11 Signed by the Governor (Laws 2010 Chapter 329)

		develop new sources and infrastructure. Commission may recommend making modifications to any existing agency or authority in order to accomplish some or all of the proposed authority's duties. ADWR may provide a technical committee to assist the Commission. Requires the commission to submit report findings and suggested legislation by 12/15/2010. Commission repeals Sept. 30, 2011. AMENDED in HWE to have the commission appointed by ADWR and specify the commission's duties to identify statewide water and water infrastructure needs. (REMOVES AMWUA OPPOSITION)		
HB2676: ~~Energy Parks Authority~~ S/E University Athletic Facilities	Nichols	Establishes an Energy Parks Authority for the purpose of creating and financing energy generation and transmission facilities. House Gov Amendment S/E AMENDMENT ADOPTED Re: University Athletic Facilities.	Monitor	4/23 Signed by the Governor (Laws 2010 Chapter 140)
HB2723: ~~AMA Techincal Correction~~ S/E Minors in Vehicles	Goodale	Repeals conflicting versions of 48-4831 passed in 1993 relating to board members of AMA Water Districts. PROPOSED S/E AMENDMENT Re: Minors in Vehicles.	Monitor	4/27 House Concur
HB2744: Bottled Water Surcharge	Mason	Noncarbonated, unflavored, unfortified bottled water for human consumption is subject to a charge levied by the state at 5	Monitor	2/25 House Water and Energy; Failed 4-4

		cents per individually sold bottle, 5% of the price of a multipack, 5 cents per gallon, if transferred to a customer's bottle or delivered to the customer. Payable by the retailer along with typical sales tax. Does not apply to bottles sold in restaurants. First $25 million goes to ADWR, next $10 million to ADEQ Water Quality, remainder to cities, towns and counties. Requires 2/3 vote because prop 108 applies.		
HB2767: Water Quality Fees	Jones	Establishes a committee to assist ADEQ Director in the setting of fees. Allows the ADEQ Director to set the following fees by Rule: Aquifer Protection Permit, Discharge Annual Fees (adds Recharge facility to taxable list), AZPDES, Dry Well for Disposal, as session law sets numerous temporary maximum fees. SNRIPD amendment added two members to the commission. Amended in Senate to provide "Held in Trust" language for fees collected by ADEQ.	Monitor	5/7 Signed By the Governor (Laws 2010 Chapter 265)
HB2778: HOAs; Rainwater Systems	Young Wright	HOAs may not prohibit the installation of a rainwater-harvesting device. HOAs may adopt reasonable rules relating to aesthetics, dimensions, and placement of devices. Defines rainwater harvesting device.	Monitor	Ref: House Gov
HB2781: Well Ownership Council Recommendations	Young Wright	Directs ADWR to prepare a report by 2013 on the conditions that contribute to an AMA	Monitor	3/8 Rules OK

		projecting to fail to meet its 2025 Safe-Yield goals. Requires new owners of registered wells to record, with the county recorder, a document that specifies the well registration number and the information that is currently required to be reported to the ADWR director (see ARS 45-593). AS AMENDED.		
HCR2015: Navajo Generating Station	Tobin	Note to Congress in support of the NGS's economic impacts and supporting a balanced approach to environmental policies that may affect the plant.	Monitor	Ref: House Environment
HCR2033: Development Fees; Authority	Chad Campbell	Amends the Arizona Constitution to prohibit the Legislature from passing laws that impede the local administration and assessment of development fees.	Monitor	Introduced
SB1092: IGAs; Separate Legal Entities	Paton	Enables Cities, Towns, Counties, other political subdivisions, and certain Title 48 special taxing districts to form separate legal entities via IGA. (see also HB2653)	Monitor	Ref: Senate Finance
SB1126: Intrastate Nuclear Fuel	Melvin	Exempts, under certain conditions, nuclear fuels produced in Arizona from federal regulation.	Monitor	2/23 Senate Com HELD
SB1141: CAGRD Revenue Bonding Sustainability	Nelson	Enables CAWCD to bond for CAGRD replenishment water supplies. Pierce amendment added in SNRIPD to limit water supply sources that can be acquired for	**SUPPORT**	5/10 Signed by the Governor (Laws 2010 Chapter 300)

		replenishment purposes.		
SB1194:AZ Power Authority; Bonding	Pierce	Expands APA bonding authority for transmission lines and projects in the State Water and Power Plan. Same subject S/E to restore requirements on the APA Strike Everything Same Subject	Monitor	4/26 Signed by the Governor (Laws 2010 Chapter 165)
SB1198: Utility Lines; Extension Charges	S Allen	Prohibits a public service corporation from charging for the 1st 1,000 feet of service line extension if the cost is less than $10k. Requirements for various credits in master planned communities.	Monitor	2/22 NRIPD; Passed Amended 5-1
SB1223: ~~Underground Storage; Preexisting Use~~ **S/E Public Rights-of-Way; Claim**	S Allen	Amends statute relating to disputes over the division of water and is amended to read that the section (45-173) does not authorize interference with lawful land uses in existence at the time an underground storage facility was issued a permit. NOTE: CAP Recharge Facility/Sand & Gravel issue. PROPOSED S/E Public Rights of Way.	Oppose – underlying bill	2/22 NRIP HELD

SB1235: Hazardous Substances; Insurance	Burton Cahill	Requires a person who is required to file a risk management plan for the Clean Air Act to purchase liability insurance for the release of hazardous substances.	Monitor	Ref: Senate Finance
SB1241: ~~Water Recharge; Direct Reuse~~ S/E Expenditure Limitation Superior	S Allen	Groundwater delivered for direct use to an irrigation district within the same AMA is excluded from the calculation of the amount of groundwater withdrawn, if the water is withdrawn for mining. [Resolution Copper] See also HB2289. S/E relating to Town of Superior's penalties for violating its expenditure limit.	Monitor	4/8 NRRA S/E; Passed 7-0
SB1264: Comprehensive Reporting of Govt	Paton	Web-based reporting of expenditures, revenues, benchmarks, etc.	Monitor	2/23 Senate Appropriations; Passed 6-3
SB1276: Water Monitoring Asst. Program; Cont.	Nelson	Extends ADEQ WMAP sunset to 2020	Monitor	5/7 Signed by the Governor (Laws 2010 Chapter 277)
SB1277: Max Daily Load Program; Cont.	Nelson	Extends ADEQ MDL sunset to 2020	Monitor	5/7 Signed by the Governor (Laws 2010 Chapter 278)

SB1296: Energy and Water Savings Account	Waring	Enables a city, town, county or school district to create W&E Savings account in order to execute a guaranteed energy cost savings contract. Establishes requirements for entering into a guaranteed energy cost savings contract and repeals sections of Title 34 related to performance contracts and design standards for energy efficiency.	Monitor	Ref: SNRIPD & Senate Gov
SB1316: Natural Watercourse; Prior Land Use	S Allen	The list of requirements whereby a water channel may be permitted to be used as a location for an underground storage facility is expanded to include that the new use does not interfere with lawful uses of the channel, including land uses, that existed prior to the issuance of the underground storage facility permit (see also SB1223).	OPPOSE	Ref: SNRIPD
SB1335 S/E Fees Principles	Verschoor	S/E relating to Fee Principles for Agencies	Monitor	3/23 Rules OK
SB1348 Regulatory Reform	Burns	Numerous regulatory review changes. Including online database administered by Secretary of State; allows summary rulemaking for obsolete rules; change the GRRC economic impact standards to clear and convincing evidence; establishes a commission on privatization; extends the rulemaking moratorium	Monitor	Ref House Com 3/22 Senate; Passed 18-11
SB1355: Water Assessments	Pierce	Allows ADWR to charge various assessments	Oppose	2/22 SNRIPD HELD

		on water use. Part of the ADWR self-funding plan (2 of 2; see also SB1359).		
SB1356: Water Bank Excess CAP	Pierce	Defines excess CAP water. Affirms existing water bank authority to acquire excess CAP water for Indian Firming, Indian Settlements, M&I shortage storage, and Interstate Banking Agreements.	Support	4/26 Signed by the Governor (Laws 2010 Chapter 168)
SB1359: ADWR Fund	Pierce	Creates the Water Resources Fund. Changes fees that are currently statutorily fixed to being set by rule. Directs fees to be deposited in WRF. NRIPD Amendment removed most of AMWUA's concerns with respect to exemption to rulemaking and the elimination of certain special funds. Amended in House to provide that fee revenues be "Held in Trust."	Support	5/7 Signed by the Governor (Laws 2010 Chapter 282)

SB1379: County Water Authority Industrial Use	Gould	Expands the Definition of Industrial Use to include non-agriculture water provided by a city water provider (by way of striking language).	Monitor	Ref: SNRIPD
SB1398: Local Coordination; Federal Regulation	S Allen	Would require the city to demand that the federal government coordinate with the city before implementing any regulation that is more restrictive than the city's regulation. If the Feds fail to coordinate, the city would be required to hold a hearing and vote on whether to engage in litigation with the federal government. Allows a person to file written demand to the city to demand federal coordination. If within 60 days, the city does not comply and injury is caused, the person may file a special action. Defines "coordination" and "less restrictive."	Monitor	4/28 Signed by the Governor (Laws 2010 Chapter 189)
SB1400: Irrigation Grandfathered Right	C Gray	Permits an irrigation district with grandfathered rights to withdraw excess groundwater within an AMA for the purpose of complying with dust control requirements.	Oppose	2/22 SNRIPD HELD
SB1408: AG Best Management; Dust Control	Melvin	Amends dust control requirements on irrigation districts for Ag use. See in context of SB1400, relating to groundwater withdrawals.	Monitor	4/16 Signed by the Governor (Laws 2010, Chapter 82)

SB1414: Multicounty Conservation District; Energy	Nelson	Allows CAWCD to acquire new sources of energy from any lawful source.	Monitor	2/22 SNRIPD HELD
SB1445: Groundwater Transfer; Big Chino Sub-basin	Pierce	Allows a city or town in the Prescott AMA to transfer from the Big Chino Sub-basin up to 8068 acre-feet of groundwater plus an increment over 231 acre-feet for compliance with an Indian water settlement. The transfer is conditional upon the relinquishment of a CAP allocation and the entering into of a federally approved settlement agreement with an Indian tribe. [SRP/Prescott Settlement] [see also HB2561]	SUPPORT	4/26 Signed by the Governor (Laws 2010 Chapter 171)
SCR1046: Intrastate Waters	C Gray	Proposed constitutional amendment to declare that the State of Arizona has only regulatory jurisdiction over intrastate waters. Defines navigable waters as those on which routine interstate commerce can float. HWE amendment removes the Navigable waters definition.	Monitor	4/8 House Water and Energy; Passed 5-2 Amended

[i] Hyperlink connects to the State Legislature's website for the bill, where you can find sponsor information, bill text, amendments, votes and the status history of the bill.

[ii] Hyperlink connects to the AMWUA factsheet for the bill. Positions in **BOLD** reflect high-attention measures.

[iii] Hyperlink connects to the vote detail for the last major vote activity, where applicable. Ref= Referred to Committee (example, ref:HWE; HApprops means Referred to House Water and Energy and House Appropriations)

ENACTED WATER BILLS

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HB2081: Department Of Water Resources; Continuation

AMWUA supports the continuation of the Arizona Department of Water Resources. ADWR's services are an important part of the sound management of water in Arizona. Such services include administration of our State's Active Management Areas, administration of the Assured and Adequate Water Supply programs, permitting of wells, enforcement of conservation requirements, and water data management.

ADWR is also responsible for Dam Safety, Flood Warnings, Floodplain Management, and the administration of Surface Water Rights throughout Arizona.

The department also manages the Arizona Water Bank, which helps ensure that Arizona uses and protects its fair share of Colorado River water.

HB2081 extends the sunset date for the Department of Water Resources to July 1, 2020.

HB2081, as session law, also specifies the purpose of ADWR is to:

1. Focus the responsibility for water management and administration of water-related programs in this state.

2. Stabilize the use of water resources in this state according to management practices, procedures, standards, and plans provided for by statute.

3. Compile and maintain information that is necessary for effective management, administration, and planning for water resources and programs.

The bill also provides, retroactivity to July 1, 2010, to ensure continuity of the Department in the event that the general effective date of legislation for this year is later than July, 1, 2010.

(Final 5/3/2010)
Sponsor: Representative Mason
Last Action: Signed by the Governor Laws 2010 Chapter 15

House Engrossed

State of Arizona
House of Representatives
Forty-ninth Legislature
Second Regular Session
2010

CHAPTER 15

HOUSE BILL 2081

AN ACT

REPEALING SECTION 41-3010.10, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 27, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-3020.10; RELATING TO THE DEPARTMENT OF WATER RESOURCES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Repeal

Section 41-3010.10, Arizona Revised Statutes, is repealed.

Sec. 2. Title 41, chapter 27, article 2, Arizona Revised Statutes, is amended by adding section 41-3020.10, to read:

41-3020.10. Department of water resources; termination July 1, 2020

A. THE DEPARTMENT OF WATER RESOURCES TERMINATES ON JULY 1, 2020.

B. TITLE 45, CHAPTER 1, ARTICLE 1 IS REPEALED ON JANUARY 1, 2021.

Sec. 3. Purpose

Pursuant to section 41-2955, subsection B, Arizona Revised Statutes, the legislature continues the department of water resources to:

1. Focus the responsibility for water management and administration of water-related programs in this state.

2. Stabilize the use of water resources in this state according to management practices, procedures, standards and plans provided for by statute.
3. Compile and maintain information that is necessary for effective management, administration and planning for water resources and programs.

Sec. 4. Retroactivity
Sections 1 and 2 of this act are effective retroactively to July 1, 2010.

APPROVED BY THE GOVERNOR APRIL 5, 2010.
FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 5, 2010.

HB2083: Drought Emergency

HB2083 provides, as session law, an exemption to the prohibition on the transportation away from a groundwater basin during declared drought emergencies. A similar provision has passed as session law frequently in the past decade. The exemption would apply only outside of an Active Management Area.

The bill includes ten conditions, all of which must be met, in order to trigger the transportation authority:

1. The Governor has declared an emergency due to lack of precipitation or a water shortage pursuant to ARS35-192.

2. The groundwater to be transferred is drawn from a well that is in existence on the date of the Governor's Declaration of Emergency.

3. The city or town, if the well is located in a city or town, has consented to the groundwater withdrawal.

4. If the well is located in a political subdivision established pursuant to Title 48, Chapter 17 or 19, that political subdivision has consented to the groundwater withdrawal.

5. If the water is to be transported from one county to another, the county of origin has consented to the groundwater withdrawal.

6. The groundwater is to be transported only by motor vehicle or train.

7. The groundwater transportation is necessary to provide water supplies for domestic, stock watering or potable municipal water service in a location included in the emergency declaration.

8. The groundwater transported will be used only for domestic, stock water or potable municipal water service purposes.

9. The county, city, town or other political subdivision within which the transported water is to be used has implemented an emergency conservation plan sufficient to prevent the nonessential use of groundwater.

10. The groundwater will not be used in an active management area.

If all of the conditions are met, the Director is directed to approve the application and that approval is valid for six months, or until the Director determines that the transportation of groundwater is no longer necessary. The approval may be continued, upon request, for an additional six months if the Director determines that the conditions remain in effect. Groundwater transported pursuant to this act would be subject to the payment of damages and may not be transported to subsidize insufficient supplies due to continued growth or deficient base water supplies.

HB2083 was amended in Senate COW with trailer language to clarify that the proceeds of bonding authority provided by SB1141 CAGRD Bonding would not be used to acquire water supplies from McMullen Valley. A conference committee further amended the bill with a technical correction that provided that only the session law portion of the bill relating to drought emergency transfers and not the CAGRD provision would automatically repeal next year.

(Final 5/12/10)
Sponsor: Representative Mason
Last Action: Signed by the Governor Laws 2010 Chapter 252

Conference Engrossed

State of Arizona
House of Representatives
Forty-ninth Legislature
Second Regular Session
2010

CHAPTER 252

HOUSE BILL 2083

AN ACT

AMENDING SECTION 48-3772, ARIZONA REVISED STATUTES, AS AMENDED BY SENATE BILL 1141, SECTION 7, FORTY-NINTH LEGISLATURE, SECOND REGULAR SESSION, AS TRANSMITTED TO THE GOVERNOR; RELATING TO DROUGHT EMERGENCY GROUNDWATER TRANSFERS; 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 48-3772, Arizona Revised Statutes, as amended by Senate Bill 1141, section 7, forty-ninth legislature, second regular session, as transmitted to the governor, is amended to read:

48-3772. Duties and powers of district regarding replenishment

A. The district shall:

1. Establish annually the costs and expenses to replenish groundwater pursuant to this article with respect to all parcels of member lands and all member service areas located in each active management area, including capital expenses, debt service expenses, the operation, maintenance, replacement and administrative costs and expenses of the district, replenishment reserve costs and expenses as provided in subsection E of this section and reasonable reserves. Separate calculations of costs and expenses shall be made for each active management area in which member lands or member service areas are located and for each membership category. Costs and expenses attributed by the district to contract replenishment obligations shall not be included in these calculations.

2. Provide for the payment of all costs and expenses to replenish groundwater pursuant to this chapter and the payment of operation, maintenance, replacement and administrative costs and expenses and debt service expenses of the district.
3. Levy an annual replenishment assessment against each parcel of member land pursuant to section 48-3778 and an annual replenishment tax against each municipal provider that has a member service area pursuant to section 48-3781 to pay the district's costs and expenses as established pursuant to paragraph 1 of this subsection.
4. Levy a contract replenishment tax against municipal providers that are parties to contracts authorized under subsection B, paragraph 9 of this section to pay the district's costs and expenses to replenish groundwater based on contract replenishment obligations.
5. Establish and maintain reserve accounts in amounts as may be deemed necessary to perform the district's obligations under this article.
6. Fulfill all obligations under resolutions adopted pursuant to subsection B, paragraph 10 of this section.
7. Levy an activation fee as follows:
(a) For subdivisions within member lands and member service areas that are enrolled before May 6, 2004 and that had not been issued a public report before August 12, 2005, the district shall levy a one-time activation fee against each housing unit to be constructed within the subdivision.
(b) For subdivisions within member lands and member service areas that are enrolled on or after May 6, 2004, the district shall levy a one-time activation fee against each housing unit to be constructed within the subdivision.
(c) The activation fee shall be paid to the district before issuance of a public report for each real estate subdivision identified in subdivision (a) or (b) of this paragraph, as provided in section 45-576, subsection C.
(d) The activation fee shall be established annually by the district. Revenues from the activation fee together with revenues from other sources that are legally available to the district for those uses shall be used by the district to acquire, lease or exchange water or water rights and develop infrastructure necessary for the district to perform its replenishment obligations.
8. For any year, set all of its rates and charges associated with the acquisition, lease or exchange of water or water rights and development of infrastructure necessary for the district to perform its replenishment obligations, other than the annual membership dues established pursuant to section 48-3779, so that the total projected revenues from revenue sources other than the annual membership dues, that are legally available to the district in that year to pay costs associated with the acquisition, lease or exchange of water or water rights and

development of infrastructure necessary for the district to perform its replenishment obligations, shall be at least three times the total projected revenues from the annual membership dues in that year. For the purposes of this paragraph, costs associated with the acquisition, lease or exchange of water or water rights do not include the annual costs associated with delivery of water for replenishment purposes.

B. The district may:

1. Acquire, develop, construct, operate, maintain, replace and acquire permits for water storage, storage facilities and recovery wells for replenishment purposes.

2. Acquire, transport, hold, exchange, own, lease, store or replenish water, except groundwater withdrawn from an active management area, subject to the provisions of title 45, for the benefit of member lands and member service areas.

3. Acquire, hold, exchange, own, lease, retire or dispose of water rights for the benefit of member lands and member service areas.

4. Require municipal providers to provide such information, in such form and within the time limits prescribed by the district, as may be necessary to carry out the purpose of this chapter.

5. Levy and collect assessments, fees, charges, taxes and other revenues as are provided in this chapter for the financing of replenishment activities.

6. Contract for or perform feasibility studies of water storage, storage facilities and recovery wells for replenishment purposes.

7. Acquire real and personal property for water storage, storage facilities and recovery wells for replenishment purposes by purchase, lease, donation, dedication, exchange or other lawful means.

8. Use any facilities and any excess storage capacity of any state demonstration projects undertaken pursuant to title 45, chapter 3.1 for water storage for replenishment purposes.

9. Subject to subsection G of this section, contract with any municipal provider having a member service area to replenish groundwater on behalf of the municipal provider and with respect to the member service area in an amount in excess of the sum of the service area replenishment obligations applicable to the member service area for all years in which the district has not completed the replenishment of the groundwater replenishment obligation for the member service area.

10. Adopt resolutions granting water availability status to a member service area of a city, town or private water company and committing to replenish a specified average annual volume of water in a location where the city, town or private water company may physically access the water for service to its customers, if all of the following apply:

(a) The district has reviewed its requirements for transportation of central Arizona project water, its contracts, subcontracts, letter agreements, excess water contracts, and other contractual obligations and its member service area and member land requirements and has determined that the district can meet those obligations and that capacity remains in the central Arizona project to meet the obligations undertaken through the resolution.

(b) The resolution acknowledges that the commitment to replenish the specified average annual volume of water in the location cited in the resolution shall be a permanent obligation of the district, unless one of the following applies:

(i) A permanent substitute supply of water is found for the city, town or private water company and the substitution is approved by the director of water resources, thus terminating the water availability status of the member service area.

(ii) The requirements of section 45-576.07, subsection A are not met, and thus the director of water resources does not issue an order granting or maintaining the city, town or private water company as having an assured water supply based in whole or in part on section 45-576.07. If no order is issued within two years of the district adopting the resolution, the resolution may be repealed, and the district shall be relieved of all obligations under the resolution.

(c) The average annual volume of water specified in the resolution, when added to the average annual volume of water specified in all other resolutions adopted pursuant to this paragraph, does not exceed twenty thousand acre-feet.

(d) The district has entered into an agreement with the city, town or private water company under which the city, town or private water company will hold for the district's future use, and provide to the district when needed, sufficient water to meet the obligations undertaken by the district through the resolution.

(e) The district determines that the obligations undertaken by the district through the resolution will not increase annual replenishment assessment rates or costs to central Arizona project contract and subcontract holders and its member service areas and member lands.

(f) The director of water resources has found, pursuant to section 45-576.07, subsection H, that the district has the capability to grant water availability status to member service areas.

11. Provide in resolutions adopted pursuant to paragraph 10 of this subsection that the district may fulfill its obligations under the resolution in any year by directly delivering to the city, town or private water company the water that otherwise would have been replenished pursuant to the resolution, if all of the following apply:

(a) The district has reviewed its requirements for transportation of central Arizona project water, its contracts, subcontracts, letter agreements, excess water contracts, and other contractual obligations, its member service area and member land requirements and has

determined that the district can meet those obligations and that capacity remains in the central Arizona project to make direct deliveries pursuant to this paragraph.

(b) The district determines that the delivery will not increase annual replenishment assessment rates or costs to central Arizona project contract and subcontract holders, its member service area and member lands.

12. Enter into agreements with a city, town or private water company that will have water made available to it through a resolution adopted pursuant to paragraph 10 of this subsection and under which the city, town or private water company compensates the district for the costs and fair value of the water supply provided by the district.

13. Issue revenue bonds pursuant to article 3 of this chapter to fund the costs and expenses of the district for the acquisition, lease or exchange of water or water rights and the development of infrastructure necessary for the district to perform its replenishment obligations subject to the following:

(a) The principal of, interest and premiums, if any, on revenue bonds issued pursuant to article 3 of this chapter to acquire, lease or exchange water or water rights and develop infrastructure necessary for the district to perform its replenishment obligations are not payable from any revenues of the district other than revenues generated or collected pursuant to this article that are legally available to the district for those purposes and revenues from the investment of the proceeds of the bonds.

(b) The district may not use the proceeds of the bonds to acquire or lease:

(i) Groundwater, as defined in section 45-101, except as expressly authorized in sections 45-547, ~~45-552,~~ 45-553 and 45-554.

(ii) Surface water, as defined in section 45-101, that is the subject of a general adjudication pursuant to title 45, chapter 1, article 9.

(c) Nothing in subdivision (b) of this paragraph prohibits the district from acquiring or leasing central Arizona project water.

14. Except as provided in section 48-3780.01, subsection B, in addition to any other assessments, fees, charges or taxes levied and collected under this chapter, or under any declaration, contract or agreement entered into under this chapter, charge annual dues for membership pursuant to section 48-3779 against each parcel of member land and each municipal provider that has a member service area.

C. The functions of the district under subsection B, paragraph 1 of this section may be performed on behalf of the district by other persons under contract with the district.

D. The capital costs of the facilities of any state demonstration projects used by the district pursuant to subsection B, paragraph 8 of this section shall not be included in the capital costs and expenses established by the district under subsection A, paragraph 1 of this section.

E. The district shall establish and maintain a replenishment reserve as follows:

1. The district shall calculate a reserve target for each of the three active management areas within the district and shall identify the reserve target in the plan of operation prepared pursuant to section 45-576.02. The reserve target for each active management area shall be calculated as follows:

(a) Establish the projected one hundred year replenishment obligation for each active management area. For the purposes of this subdivision, each active management area's projected one hundred year replenishment obligation does not include replenishment obligations under resolutions adopted pursuant to subsection B, paragraph 10 of this section or replenishment obligations for category 2 member lands.

(b) Subtract from the active management area's projected one hundred year replenishment obligation the sum of the following volumes of water derived from sources identified in the plan as water that the district plans to use to meet its replenishment obligations for that active management area:

(i) The annual volume of each nondeclining, long-term municipal and industrial subcontract for central Arizona project water multiplied by one hundred.

(ii) The annual volume of water under leases or contracts that can be made physically and legally available to the district consistent with the rules adopted pursuant to section 45-576, subsection H, multiplied by the number of years, not to exceed one hundred, in which the water is to be made available to the district. The water need not be continuously available to be included in this item. A lease or contract shall not be considered under this item if the water to be made available under the lease or contract is for a term of less than twenty years.

(iii) The total volume of groundwater that the district plans to transport to the active management area during the next one hundred years as allowed by title 45, chapter 2, article 8.1.

(iv) The total volume of all sources of water not identified in items (i), (ii) or (iii) of this subdivision that will not be held by the district under a lease or contract. Volumes to be included under this item must be consistent with the rules adopted by the director pursuant to section 45-576, subsection H.

(c) Multiply the result from subdivision (b) of this paragraph by twenty per cent. The result is the reserve target for the active management area.

2. The reserve target for an active management area may be adjusted by the district, subject to the approval of the director of water resources, based on changes in either of the following:
(a) The active management area's projected one hundred year replenishment obligation.
(b) The volumes of water identified in the plan of operation prepared pursuant to section 45-576.02 as water that the district plans to use to meet its replenishment obligations for that active management area.
3. The district shall include a replenishment reserve charge in the annual replenishment assessment levied against all parcels of category 1 member land as provided in section 48-3774.01 and in the annual replenishment tax levied against all municipal providers that have member service areas as provided in section 48-3780.01. The replenishment reserve charge for each active management area is established annually by the district based on the reserve target for that active management area.
4. The district shall levy a replenishment reserve fee against category 1 member lands pursuant to section 48-3774.01 and against member service areas pursuant to section 48-3780.01. For category 1 member lands the fee is equal to twice the applicable replenishment reserve charge multiplied by the total projected average annual replenishment obligation for the member lands as reported by the director of water resources pursuant to section 45-578, subsection F. For member service areas the fee is equal to twice the applicable replenishment reserve charge multiplied by the excess groundwater increment. With the approval of the district and the director of water resources, long-term storage credits as defined in section 45-802.01 may be assigned to the district's replenishment reserve subaccount in lieu of paying the replenishment reserve fee.
5. The district shall use replenishment reserve charges and replenishment reserve fees collected within each active management area together with all interest earned on the charges and fees to store water in that active management area in advance of groundwater replenishment obligations for the purpose of developing long-term storage credits as defined in section 45-802.01 that shall be credited to the replenishment reserve subaccount for that active management area as provided in section 45-859.01.
6. Beginning on January 1, 2030 or earlier, on approval of the director of water resources pursuant to section 45-859.01, subsection K, the district may transfer credits from a replenishment reserve subaccount to a conservation district account as provided in section 45-859.01 to satisfy its groundwater replenishment obligations.
7. If the district transfers credits from the replenishment reserve subaccount for an active management area pursuant to section 45-859.01, subsection E, the district shall include in the annual replenishment assessment levied against all parcels of category 1 member land in that

active management area and, except as provided in section 48-3780.01, subsection B, in the annual replenishment tax levied against all municipal providers that have member service areas in that active management area a reserve replacement component to fund the replacement of the transferred credits. The district shall use all monies from the reserve replacement component collected within an active management area together with all interest earned on the monies to develop long-term storage credits as defined in section 45-802.01 within that active management area to be credited to the replenishment reserve subaccount for that active management area as provided in section 45-859.01.

8. For the purposes of establishing and maintaining the replenishment reserve, the district shall have access to excess central Arizona project water equivalent to but no more than the access the Arizona water banking authority has for the purposes specified in section 45-2401, subsection H, paragraph 2.

F. Groundwater replenished by the district pursuant to a contract to replenish groundwater under subsection B, paragraph 9 of this section shall not be credited to a replenishment reserve subaccount established under section 45-859.01.

G. The district shall not enter into a contract authorized under subsection B, paragraph 9 of this section unless the district has determined that the contract will not adversely affect the district's ability to fulfill its obligations under this chapter. For each contract entered into under subsection B, paragraph 9 of this section, the district shall perform its contract replenishment obligations in the active management area in which the service area of the municipal provider that is the party to the contract is located.

H. If the district replenishes groundwater on behalf of a municipal provider pursuant to a contract to replenish groundwater under subsection B, paragraph 9 of this section, the amount of groundwater so replenished shall be a replenishment credit to the municipal provider that may be applied by the municipal provider on notice to the district to reduce the service area replenishment obligations applicable to the municipal provider.

I. In the Phoenix active management area, the district, to the extent reasonably feasible, shall replenish groundwater in the east portion of the active management area and in the west portion of the active management area in the approximate proportion that the groundwater replenishment obligation attributable in a particular year to member lands and member service areas located in the east portion of the active management area bears to the groundwater

replenishment obligation attributable in that year to member lands and member service areas located in the west portion of the active management area. For the purposes of this subsection, the boundary between the east Salt river valley subbasin and the west Salt river valley subbasin is the boundary between the east and west portions of the active management area.

J. The costs and expenses charged by the district to an active management area water district established under chapter 28 of this title for delivery of surplus central Arizona project water to such active management area water district for replenishment purposes shall not exceed the costs and expenses for delivery of such water that are or would be included by the district in the costs and expenses of replenishment for member lands and member service areas within the active management area in which such active management area water district is situated.

Sec. 2. Drought emergency groundwater transfer; delayed repeal

A. Notwithstanding section 45-544, subsection A, paragraph 2, Arizona Revised Statutes, in areas outside of active management areas, groundwater may be transported away from a groundwater basin on application to and approval by the director of the department of water resources. The director shall post the application on the department's website before approving the application.

B. The director of the department of water resources shall approve a request to transport groundwater away from a groundwater basin outside of an active management area if the director finds that all of the following apply:

1. The governor has declared an emergency due to lack of precipitation or a water shortage pursuant to section 35-192, Arizona Revised Statutes.
2. The groundwater to be transported will be withdrawn from a well that is in existence as of the date of the governor's declaration of emergency.
3. If the groundwater to be transported will be withdrawn from a well within the incorporated area of a city or town, the city or town has consented to the groundwater withdrawal.
4. If the groundwater to be transported will be withdrawn from a well within the boundaries of a political subdivision, however designated, established pursuant to title 48, chapter 17 or 19, Arizona Revised Statutes, the political subdivision has consented to the groundwater withdrawal.
5. If the groundwater to be transported will be withdrawn from a well within the boundaries of a county for use in another county, the county from which the groundwater will be withdrawn has consented to the groundwater withdrawal.

6. The groundwater to be transported will be transported only by motor vehicle or train.
7. The groundwater transportation is necessary to provide water supplies for domestic, stock watering or potable municipal water service purposes in a location included in the emergency declaration.
8. The groundwater to be transported will be used only for domestic, stock watering or potable municipal water service purposes.
9. The county, city, town or other political subdivision within which the transported water is to be used has implemented an emergency conservation plan sufficient to prevent nonessential use of the groundwater.
10. The groundwater to be transported will not be used in an active management area.

C. If the director of the department of water resources approves the request to transport groundwater away from a groundwater basin outside of an active management area pursuant to subsection B of this section, the approval is valid for six months, or until the director determines that the groundwater transportation is no longer necessary to provide water supplies for domestic, stock watering or potable municipal water service purposes in a location experiencing a water shortage. On request, the director may extend the approval of the groundwater transportation for one additional six month period on the expiration of the original approval period, if the director determines that all of the requirements of subsection B of this section continue to apply. On expiration or revocation of the approval to transport groundwater, the transportation of the groundwater shall immediately cease.

D. The director of the department of water resources shall approve or deny a request to transport groundwater away from a groundwater basin outside of an active management area within thirty days of the receipt of the request. Title 41, chapter 6, article 7.1, Arizona Revised Statutes, does not apply to this act.

E. Groundwater transported away from a groundwater basin outside of an active management area pursuant to this act is subject to the payment of damages.

F. Water transported pursuant to this section shall not be transported to subsidize insufficient supplies due to continued growth or deficient base water supplies.

G. This section is repealed from and after April 30, 2011.

Sec. 3. Legislative intent

It is the intent of this legislature by section 2 of this act to provide interim water use for true emergencies.

Sec. 4. Retroactivity

Section 2 of this act is effective retroactively to from and after April 30, 2010.

Sec. 5. Conditional enactment

Section 48-3772, Arizona Revised Statutes, as amended by this act, does not become effective unless Senate Bill 1141, forty-ninth legislature, second regular session, relating to groundwater replenishment, becomes law.

APPROVED BY THE GOVERNOR MAY 7, 2010.
FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 7, 2010.

HB2152: Voluntary Remediation Program; Continuation

HB2152 would extend the sunset date of ADEQ's Voluntary Remediation Program (VRP). VRP facilitates the investigation and remediation of contaminated sites. According to ADEQ, the program has been used to remediate and close 158 sites. This bill would extend VRP another 10 years, to July 1, 2010. The bill makes no substantive changes to VPR.

VRP is a voluntary program that enables property owners to enter into a remediation program that is coordinated with ADEQ. This applies to both water and soil remediation. Successful completion of VPR results in a determination of No Further Action (NFA) from ADEQ.

VPR is not available for:

1. Cleanup at a site that has qualified for hazardous waste interim status, or to which ADEQ has issued a hazardous waste permit under A.R.S. § 49-922

2. Cleanup at a site where an underground storage tank corrective action is being done pursuant to A.R.S. § 49-1005, if reimbursement of costs from the State Assurance Fund is sought

3. Any cleanup at a site where an action is required by:
    a. a written agreement with the director
    b. a judicial judgment or decree; or,
    c. an administrative order issued by the director before a VRP application was submitted

4. Any cleanup at a site listed on the WQARF Registry [see A.R.S § 49-287.01(D)]

5. A remediation that is in the process of being required in a judicial action filed and served before the date of application

(Final 5/3/2010)
Sponsor: Representative Barnes
Last Action: Signed by the Governor Laws 2010 chapter 45

House Engrossed

State of Arizona
House of Representatives
Forty-ninth Legislature
Second Regular Session
2010

CHAPTER 45

HOUSE BILL 2152

AN ACT

AMENDING SECTION 49-186, ARIZONA REVISED STATUTES; RELATING TO THE VOLUNTARY REMEDIATION PROGRAM.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 49-186, Arizona Revised Statutes, is amended to read:

49-186. Rules; program termination; no licensing

A. The department shall adopt rules as necessary to implement section 49-179. The adoption of rules under this section is not a prerequisite for implementation of this article.

B. The program established by this article ends on July 1, ~~2010~~ 2020 pursuant to section 41-3102.

C. Title 41, chapter 6, article 7.1 and section 41-1009 do not apply to this article.

APPROVED BY THE GOVERNOR APRIL 14, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 14, 2010.

HB2289: Water Recharge; Direct Use

HB2289 would change the definition of "water that cannot reasonably be used directly" to include the amount of groundwater that is withdrawn by a permitted storer for mining purposes if that amount of groundwater is delivered to an irrigation district for direct use during the same year. This exemption applies only if the irrigation district demonstrates a reduction in the amount of groundwater it otherwise would have withdrawn. The bill requires that the irrigation district be located in the same AMA as the location from where the groundwater was withdrawn.

Resolution Copper, a mining operation in Superior, Arizona, is the entity that proposed this change. Resolution Copper has an agreement to transfer, via a 27-mile pipeline, the groundwater it has withdrawn pursuant to its Dewatering Permit to the New Magma Irrigation District (NMID), rather than discharging the treated water into the Queen Creek. Resolution Copper's dewatering permit was recently extended to 2029.

Resolution Copper is requesting the change in order to allow them to receive the full amount of long-term storage credits for CAP excess water. Resolution Copper argues that because the groundwater they convey to NMID can be used directly – and statute permits credit only on water that "cannot reasonably be used directly," it reduces the long-term storage credits Resolution Copper can receive.

The language, as introduced, is narrowly tailored to Resolution Copper's circumstances. From a broader groundwater management perspective, HB2289 furthers AMWUA's interests in supporting the principles of safe-yield.

See also: SB1241

The bill was amended in House Environment to make the bill retroactive to the beginning of 2010 and provided a 2025 sunset.

(Final 5/3/2010)
Sponsor: Rep. Pratt
Last Action: 4/23 Signed by the Governor Laws 2010 Chapter 131

House Engrossed

State of Arizona
House of Representatives
Forty-ninth Legislature
Second Regular Session
2010

CHAPTER 131

HOUSE BILL 2289

AN ACT

AMENDING SECTION 45-802.01, ARIZONA REVISED STATUTES; AMENDING SECTION 45-802.01, ARIZONA REVISED STATUTES, AS AMENDED BY THIS ACT; RELATING TO UNDERGROUND WATER STORAGE, SAVINGS AND REPLENISHMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 45-802.01, Arizona Revised Statutes, is amended to read:

45-802.01. Definitions

Unless the context otherwise requires, the terms defined in section 45-402 have the same meanings in this chapter and:

1. "Aquifer" means a geologic formation that contains sufficient saturated material to be capable of storing water and transmitting water in usable quantities to a well.

2. "Area of impact" means, as projected on the land surface, the area where the stored water has migrated or is located.

3. "CERCLA" means the comprehensive environmental response, compensation, and liability act of 1980, as amended (P.L. 96-510; 94 Stat. 2767; 42 United States Code sections 9601 through 9657), commonly known as "superfund".

4. "Constructed underground storage facility" means a facility that meets the requirements of section 45-811.01 and that is designed and constructed to store water underground pursuant to permits issued under this chapter.

5. "District" means a groundwater replenishment district established under title 48, chapter 27.

6. "District member" means a member of the groundwater replenishment district as provided by title 48, chapter 27.

7. "Electrical district" means a corporate body established pursuant to title 48, chapter 12.
8. "Groundwater savings facility" means a facility that meets the requirements of section 45-812.01 in an active management area or an irrigation non-expansion area at which groundwater withdrawals are eliminated or reduced by recipients who use in lieu water on a gallon-for-gallon substitute basis for groundwater that otherwise would have been pumped from within that active management area or irrigation non-expansion area.
9. "In lieu water" means water that is delivered by a storer to a groundwater savings facility pursuant to permits issued under this chapter and that is used in an active management area or an irrigation non-expansion area by the recipient on a gallon-for-gallon substitute basis for groundwater that otherwise would have been pumped from within that active management area or irrigation non-expansion area.
10. "Long-term storage account" means an account established pursuant to section 45-852.01.
11. "Long-term storage credit" means stored water that meets the requirements of section 45-852.01 and that has been credited to a long-term storage account.
12. "Managed underground storage facility" means a facility that meets the requirements of section 45-811.01 and that is designed and managed to utilize the natural channel of a stream to store water underground pursuant to permits issued under this chapter through artificial and controlled releases of water other than surface water naturally present in the stream. Surface water flowing in its natural channel is not a managed underground storage facility.
13. "Master replenishment account" means an account established pursuant to section 45-858.01 for a groundwater replenishment district.
14. "Recipient" means a person who receives in lieu water for use at a groundwater savings facility.
15. "Recoverable amount" means the amount of water, as determined by the director, that will reach the aquifer through water storage.
16. "Replenishment" means the storage of water or use of long-term storage credits by a groundwater replenishment district to fulfill its duties under title 48, chapter 27, article 3, by a multi-county water conservation district to fulfill its duties under title 48, chapter 22, article 4 or by an active management area water district to fulfill its duties under title 48, chapter 28, article 7.
17. "Reserve target" has the same meaning prescribed in section 48-3701.
18. "Storage facility" means a groundwater savings facility or an underground storage facility.
19. "Stored water" means water that has been stored or saved underground pursuant to a storage permit issued under this chapter.

20. "Storer" means the holder of a water storage permit issued pursuant to section 45-831.01 or a person to whom a water storage permit has been conveyed pursuant to section 45-831.01, subsection F.

21. "Underground storage facility" means a constructed underground storage facility or a managed underground storage facility.

22. "Water that cannot reasonably be used directly" means water that the storer cannot reasonably put to a direct use during the calendar year, including:

(a) Except as provided in subdivision (b) or except for an agricultural improvement district as provided in subdivision (d), if the storer is a municipal provider, the amount of central Arizona project water that exceeds the amount of mined groundwater withdrawn during the calendar year by the storer in the active management area in which the storer's service area is located. If the storer withdrew mined groundwater during a calendar year in which the storer stored central Arizona project water underground pursuant to the storage permit, the amount of central Arizona project water stored underground during that year equal to the amount of mined groundwater withdrawn from the active management area in which the storer's service area is located shall not be credited to the storer's long-term storage account but may be considered as being available for recovery by the storer on an annual basis under section 45-851.01. In calculating the amount of mined groundwater withdrawn by the storer from the active management area, the director, at the request of the storer, shall exclude any groundwater withdrawn, treated and delivered for direct use as part of a remedial action undertaken pursuant to CERCLA or title 49, chapter 2, article 5. For the purposes of this subdivision, "mined groundwater" and "municipal provider" have the same meanings prescribed in section 45-561.

(b) If the storer is a municipal provider that has been designated as having an assured water supply pursuant to section 45-576, the amount of central Arizona project water that exceeds the amount of deficit groundwater withdrawn during the calendar year by the storer in the active management area in which the storer's service area is located. If the storer withdrew deficit groundwater during a calendar year in which the storer stored central Arizona project water underground pursuant to the storage permit, the amount of the central Arizona project water stored underground during that year equal to the amount of deficit groundwater withdrawn from the active management area in which the storer's service area is located shall not be credited to the storer's long-term storage account but may be considered as being available for recovery by the storer on an annual basis pursuant to section 45-851.01. In calculating the amount of deficit groundwater withdrawn by the storer from the active management area, the director, at the request of the storer, shall exclude any groundwater

withdrawn, treated and delivered for direct use as part of a remedial action undertaken pursuant to CERCLA or title 49, chapter 2, article 5. For the purposes of this subdivision, "municipal provider" has the same meaning prescribed in section 45-561 and "deficit groundwater" means that amount of groundwater withdrawn within an active management area for delivery and use within a service area by a municipal provider in excess of the amount of groundwater that may be withdrawn by the municipal provider consistent with the achievement of the active management area's management goals as prescribed by rules adopted by the director pursuant to section 45-576.

(c) Except as provided in subdivision (d), if the storer is not a municipal provider, the amount of central Arizona project water stored in an active management area that exceeds the amount of groundwater withdrawn during the calendar year by the storer in that active management area. If the storer withdrew groundwater in an active management area during a calendar year in which the storer stored central Arizona project water underground in that active management area pursuant to the storage permit, the amount of central Arizona project water stored underground during that year equal to the amount of groundwater withdrawn from the active management area shall not be credited to the storer's long-term storage account but may be considered as being available for recovery by the storer on an annual basis under section 45-851.01. FOR THE PURPOSES OF THIS SUBDIVISION, "MUNICIPAL PROVIDER" HAS THE SAME MEANING PRESCRIBED IN SECTION 45-561. In calculating the amount of groundwater withdrawn by the storer from the active management area, the director, at the request of the storer, shall exclude:

(i) THE AMOUNT OF ~~any~~ groundwater withdrawn, treated and delivered for direct use as part of a remedial action undertaken pursuant to CERCLA or title 49, chapter 2, article 5. ~~For the purposes of this subdivision, "municipal provider" has the same meaning prescribed in section 45-561.~~

(ii) THE AMOUNT OF GROUNDWATER WITHDRAWN BY THE STORER DURING THE YEAR FOR MINERAL EXTRACTION AND METALLURGICAL PROCESSING AND DELIVERED DURING THAT YEAR FOR DIRECT USE TO AN IRRIGATION DISTRICT THAT IS ESTABLISHED PURSUANT TO TITLE 48, CHAPTER 19 AND THAT IS LOCATED IN THE SAME ACTIVE MANAGEMENT AREA FROM WHICH THE AMOUNT OF GROUNDWATER WAS WITHDRAWN TO THE EXTENT THAT THE IRRIGATION DISTRICT OR ITS CUSTOMERS DEMONSTRATE A REDUCTION IN THE AMOUNT OF GROUNDWATER THAT THEY OTHERWISE WOULD HAVE WITHDRAWN DURING THAT YEAR WITHIN THE IRRIGATION DISTRICT.

(d) The amount of central Arizona project water stored in an active management area in any year after 1994 by an agricultural improvement district established pursuant to title 48, chapter

17 for use at those portions of electrical generating facilities that are constructed or expanded after June 12, 1980, subject to both of the following:

(i) If groundwater was used during a year in an active management area at those portions of the electrical generating facilities that were owned and operated by the agricultural improvement district and that were constructed or expanded after June 12, 1980, the amount of the central Arizona project water stored during that year equal to the amount of the groundwater withdrawn during the year for use at those portions of the facilities that were owned and operated by the agricultural improvement district and that were constructed or expanded after June 12, 1980 shall not be credited to the agricultural improvement district's long-term storage account but may be considered as being available for recovery by the agricultural improvement district on an annual basis under section 45-851.01.

(ii) Long-term storage credits accrued as a result of the storage of the central Arizona project water may be recovered within the active management area by the agricultural improvement district only for the purpose of providing central Arizona project water to electrical generating facilities that were owned and operated by the agricultural improvement district and only pursuant to any water requirement included in a facility's certificate of environmental compatibility. Subject to section 45-854.01, the long-term storage credits may be assigned by the agricultural improvement district only to the owner of an electrical generating facility for use pursuant to any water requirement included in that facility's certificate of environmental compatibility.

(e) Surface water made available by dams constructed or modified after August 13, 1986.

(f) Until the year 2025:

(i) Effluent.

(ii) If the storage facility is in an active management area, water from outside the active management area that would not have reached the active management area without the efforts of the storer.

(iii) If the storage facility is outside of an active management area, water from outside the groundwater basin in which the storage facility is located that would not have reached the groundwater basin without the efforts of the storer.

(g) Water that is delivered through the central Arizona project and that is acquired by the Arizona water banking authority.

23. "Water storage" means adding water to an aquifer or saving water in an aquifer pursuant to permits issued under this chapter.

24. "Water storage permit" means a permit issued pursuant to section 45-831.01 to store water at a storage facility.

Sec. 2. Section 45-802.01, Arizona Revised Statutes, as amended by section 1 of this act, is amended to read:

45-802.01. Definitions

Unless the context otherwise requires, the terms defined in section 45-402 have the same meanings in this chapter and:

1. "Aquifer" means a geologic formation that contains sufficient saturated material to be capable of storing water and transmitting water in usable quantities to a well.

2. "Area of impact" means, as projected on the land surface, the area where the stored water has migrated or is located.

3. "CERCLA" means the comprehensive environmental response, compensation, and liability act of 1980, as amended (P.L. 96-510; 94 Stat. 2767; 42 United States Code sections 9601 through 9657), commonly known as "superfund".

4. "Constructed underground storage facility" means a facility that meets the requirements of section 45-811.01 and that is designed and constructed to store water underground pursuant to permits issued under this chapter.

5. "District" means a groundwater replenishment district established under title 48, chapter 27.

6. "District member" means a member of the groundwater replenishment district as provided by title 48, chapter 27.

7. "Electrical district" means a corporate body established pursuant to title 48, chapter 12.

8. "Groundwater savings facility" means a facility that meets the requirements of section 45-812.01 in an active management area or an irrigation non-expansion area at which groundwater withdrawals are eliminated or reduced by recipients who use in lieu water on a gallon-for-gallon substitute basis for groundwater that otherwise would have been pumped from within that active management area or irrigation non-expansion area.

9. "In lieu water" means water that is delivered by a storer to a groundwater savings facility pursuant to permits issued under this chapter and that is used in an active management area or an irrigation non-expansion area by the recipient on a gallon-for-gallon substitute basis for groundwater that otherwise would have been pumped from within that active management area or irrigation non-expansion area.

10. "Long-term storage account" means an account established pursuant to section 45-852.01.

11. "Long-term storage credit" means stored water that meets the requirements of section 45-852.01 and that has been credited to a long-term storage account.

12. "Managed underground storage facility" means a facility that meets the requirements of section 45-811.01 and that is designed and managed to utilize the natural channel of a stream to store water underground pursuant to permits issued under this chapter through artificial and controlled releases of water other than surface water naturally present in the stream. Surface water flowing in its natural channel is not a managed underground storage facility.
13. "Master replenishment account" means an account established pursuant to section 45-858.01 for a groundwater replenishment district.
14. "Recipient" means a person who receives in lieu water for use at a groundwater savings facility.
15. "Recoverable amount" means the amount of water, as determined by the director, that will reach the aquifer through water storage.
16. "Replenishment" means the storage of water or use of long-term storage credits by a groundwater replenishment district to fulfill its duties under title 48, chapter 27, article 3, by a multi-county water conservation district to fulfill its duties under title 48, chapter 22, article 4 or by an active management area water district to fulfill its duties under title 48, chapter 28, article 7.
17. "Reserve target" has the same meaning prescribed in section 48-3701.
18. "Storage facility" means a groundwater savings facility or an underground storage facility.
19. "Stored water" means water that has been stored or saved underground pursuant to a storage permit issued under this chapter.
20. "Storer" means the holder of a water storage permit issued pursuant to section 45-831.01 or a person to whom a water storage permit has been conveyed pursuant to section 45-831.01, subsection F.
21. "Underground storage facility" means a constructed underground storage facility or a managed underground storage facility.
22. "Water that cannot reasonably be used directly" means water that the storer cannot reasonably put to a direct use during the calendar year, including:
(a) Except as provided in subdivision (b) or except for an agricultural improvement district as provided in subdivision (d), if the storer is a municipal provider, the amount of central Arizona project water that exceeds the amount of mined groundwater withdrawn during the calendar year by the storer in the active management area in which the storer's service area is located. If the storer withdrew mined groundwater during a calendar year in which the storer stored central Arizona project water underground pursuant to the storage permit, the amount of central Arizona project water stored underground during that year equal to the amount of mined groundwater withdrawn from the active management area in which the storer's service

area is located shall not be credited to the storer's long-term storage account but may be considered as being available for recovery by the storer on an annual basis under section 45-851.01. In calculating the amount of mined groundwater withdrawn by the storer from the active management area, the director, at the request of the storer, shall exclude any groundwater withdrawn, treated and delivered for direct use as part of a remedial action undertaken pursuant to CERCLA or title 49, chapter 2, article 5. For the purposes of this subdivision, "mined groundwater" and "municipal provider" have the same meanings prescribed in section 45-561.

(b) If the storer is a municipal provider that has been designated as having an assured water supply pursuant to section 45-576, the amount of central Arizona project water that exceeds the amount of deficit groundwater withdrawn during the calendar year by the storer in the active management area in which the storer's service area is located. If the storer withdrew deficit groundwater during a calendar year in which the storer stored central Arizona project water underground pursuant to the storage permit, the amount of the central Arizona project water stored underground during that year equal to the amount of deficit groundwater withdrawn from the active management area in which the storer's service area is located shall not be credited to the storer's long-term storage account but may be considered as being available for recovery by the storer on an annual basis pursuant to section 45-851.01. In calculating the amount of deficit groundwater withdrawn by the storer from the active management area, the director, at the request of the storer, shall exclude any groundwater withdrawn, treated and delivered for direct use as part of a remedial action undertaken pursuant to CERCLA or title 49, chapter 2, article 5. For the purposes of this subdivision, "municipal provider" has the same meaning prescribed in section 45-561 and "deficit groundwater" means that amount of groundwater withdrawn within an active management area for delivery and use within a service area by a municipal provider in excess of the amount of groundwater that may be withdrawn by the municipal provider consistent with the achievement of the active management area's management goals as prescribed by rules adopted by the director pursuant to section 45-576.

(c) Except as provided in subdivision (d), if the storer is not a municipal provider, the amount of central Arizona project water stored in an active management area that exceeds the amount of groundwater withdrawn during the calendar year by the storer in that active management area. If the storer withdrew groundwater in an active management area during a calendar year in which the storer stored central Arizona project water underground in that active management area pursuant to the storage permit, the amount of central Arizona project water stored underground during that year equal to the amount of groundwater withdrawn from the active

management area shall not be credited to the storer's long-term storage account but may be considered as being available for recovery by the storer on an annual basis under section 45-851.01. ~~For the purposes of this subdivision, "municipal provider" has the same meaning prescribed in section 45-561.~~ In calculating the amount of groundwater withdrawn by the storer from the active management area, the director, at the request of the storer, shall exclude~~:~~

~~(i) The amount of~~ ANY groundwater withdrawn, treated and delivered for direct use as part of a remedial action undertaken pursuant to CERCLA or title 49, chapter 2, article 5. FOR THE PURPOSES OF THIS SUBDIVISION, "MUNICIPAL PROVIDER" HAS THE SAME MEANING PRESCRIBED IN SECTION 45-561.

~~(ii) The amount of groundwater withdrawn by the storer during the year for mineral extraction and metallurgical processing and delivered during that year for direct use to an irrigation district that is established pursuant to title 48, chapter 19 and that is located in the same active management area from which the amount of groundwater was withdrawn to the extent that the irrigation district or its customers demonstrate a reduction in the amount of groundwater that they otherwise would have withdrawn during that year within the irrigation district.~~

(d) The amount of central Arizona project water stored in an active management area in any year after 1994 by an agricultural improvement district established pursuant to title 48, chapter 17 for use at those portions of electrical generating facilities that are constructed or expanded after June 12, 1980, subject to both of the following:

(i) If groundwater was used during a year in an active management area at those portions of the electrical generating facilities that were owned and operated by the agricultural improvement district and that were constructed or expanded after June 12, 1980, the amount of the central Arizona project water stored during that year equal to the amount of the groundwater withdrawn during the year for use at those portions of the facilities that were owned and operated by the agricultural improvement district and that were constructed or expanded after June 12, 1980 shall not be credited to the agricultural improvement district's long-term storage account but may be considered as being available for recovery by the agricultural improvement district on an annual basis under section 45-851.01.

(ii) Long-term storage credits accrued as a result of the storage of the central Arizona project water may be recovered within the active management area by the agricultural improvement district only for the purpose of providing central Arizona project water to electrical generating facilities that were owned and operated by the agricultural improvement district and only pursuant to any water requirement included in a facility's certificate of environmental compatibility. Subject to section 45-854.01, the long-term storage credits may be assigned by

the agricultural improvement district only to the owner of an electrical generating facility for use pursuant to any water requirement included in that facility's certificate of environmental compatibility.

(e) Surface water made available by dams constructed or modified after August 13, 1986.

(f) Until the year 2025:

(i) Effluent.

(ii) If the storage facility is in an active management area, water from outside the active management area that would not have reached the active management area without the efforts of the storer.

(iii) If the storage facility is outside of an active management area, water from outside the groundwater basin in which the storage facility is located that would not have reached the groundwater basin without the efforts of the storer.

(g) Water that is delivered through the central Arizona project and that is acquired by the Arizona water banking authority.

23. "Water storage" means adding water to an aquifer or saving water in an aquifer pursuant to permits issued under this chapter.

24. "Water storage permit" means a permit issued pursuant to section 45-831.01 to store water at a storage facility.

Sec. 3. Retroactivity

Section 45-802.01, Arizona Revised Statutes, as amended by section 1 of this act, applies retroactively to from and after December 31, 2009.

Sec. 4. Effective date

Section 45-802.01, Arizona Revised Statutes, as amended by section 2 of this act, is effective from and after December 31, 2024.

APPROVED BY THE GOVERNOR APRIL 23, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 26, 2010.

HB2617: Mining; Water; Permits; Rules

The final version of HB2617 makes numerous changes to the groundwater code with respect to the withdrawal of groundwater for mitigation purposes. During the course of the legislative session, these expansions were limited to apply only to uses related to metal mining operations.

Among these Title 45 changes are:

- Specifies that groundwater may be used to fill man-made lakes, if that groundwater is part of a mitigation activity.

- Exempts from well spacing requirements new well construction and withdrawals undertaken by a metal mining operation's compliance with a mitigation order issued by ADEQ. Requires that withdrawals, made pursuant to this exemption, shall be put to reasonable and beneficial use, including within the same AMA.

- Requires the metal mining operation to pay a groundwater withdrawal fee.

- Expands Type 2 Non-Irrigation Grandfathered rights definition to include all groundwater withdrawals used for any mineral extraction or processing use (including Sand and Gravel).

- Allows a metal mining operation located between the Upper San Pedro and Douglas groundwater basins to transport groundwater between those basins to the extent necessary to comply with a mitigation order issued by ADEQ. The metal mining operation shall notify the ADWR director of this activity and shall include a copy of the order in the notification.

- Expands to the requirement of notice to drill for a remediation well, mitigation of a nonhazardous release.

HB2617 also allows ADWR to hire consultants to expedite permitting.

The bill requires ADEQ to avoid duplication of laws and specifies that ADEQ's permits will not be more stringent than corresponding federal laws, unless authorized by statute. This provision is not to be construed so as to conflict with a standard set by an Indian tribe pursuant to federal law.

HB2617 allows ADEQ to hire consultants to expedite permitting.

HB2617 removes the disclosure requirement for persons involved in litigation where the state or the department (ADEQ) is a party.

The bill removes from the list of uses that require an Aquifer Protection Permit uses that are permitted under AZPDES. ADEQ maintains that this does not reduce the department's ability to require an APP if the department demonstrates that the discharge may impact an aquifer.

The bill makes numerous changes to the process by which ADWR and ADEQ coordinate permitting activities for metal mining operations. This includes a 120-day shot clock and allows the ADWR and ADEQ directors to waive requirements in order to comply with a permit's requirements. The waiver of requirements is not to adversely affect any other party.

HB2617 also creates a mining council consisting of members of the mining industry and two public members. The council may make recommendations to ADWR, ADEQ, Department of Mining and Mineral Resources, and any other department, with respect to policies that directly affect the mining industry. The departments' directors may accept those recommendations.

Earlier versions of the bill contained objectionable provisions relating to:

- The bypass of the Office of Administrative Hearings for the appeal of agency actions
- Agency fees
- Authority of the Mine Inspector to engage in litigation on behalf of the mining industry

These provisions were removed.

AMWUA has residual concerns about the administration of the use of consultants to expedite permits. The first concern is that this authority should not be used in such a way that would adversely affect applicants that submitted before the request for expedited service in cases where the priority date matters – such as AWS. The second concern is about the administration with respect to the qualified consultant pool and conflicts of interest. AMWUA would like to see measures put in place to ensure there are not conflicts of interest among the consultants and applicants.

AMWUA did not request a veto of HB2617.

(FINAL 5/14/2010)

Sponsor: Representative Jones
Last Action: Signed by the Governor Laws 2010 Chapter 309

STATE OF ARIZONA

JANICE K. BREWER
EXECUTIVE OFFICE
GOVERNOR

May 11, 2010

The Honorable Ken Bennett
Secretary of State
1700 W. Washington
Phoenix, Arizona 85007

RE: HB 2617 (mining amendments; water; permits; rules)

Dear Secretary Bennett:

Today I signed HB 2617. I have heard from various sources, including Tribes, about their concerns regarding this legislation. I have heard from mining interests about the benefits of this legislation. I have also heard from my advisors about the impacts of this legislation. Let me assure the citizens of this State, as both the Director of the Arizona Department of Water Resources (ADWR) and the Director of the Arizona Department of Environmental Quality (ADEQ) have assured me, this legislation will not impact the State's ability to protect the natural resources and environment of this great State.

I have attached a memo issued jointly by the two Directors that responds to the concerns I have heard expressed. After you have read the memo, I believe it will become clear that many concerns probably resulted from individuals misinterpreting the

rather complex statutes that govern the water and environment regulatory powers of these two agencies. To the extent concerns still exist, I have instructed the Directors to open a dialogue with stakeholders to determine if any modifications or clarifications should be considered for enactment next legislative session.

Sincerely,

Janice K. Brewer

Governor

cc: The Honorable Kirk Adams
The Honorable Robert Burns
The Honorable Russell Jones

Date: May 11, 2010

To: Governor Janice K. Brewer

From: Director Benjamin Grumbles
Director Herb Guenther

Subject: HB2617

After reviewing HB2617, both ADWR and ADEQ believe this legislation should not harm the State's obligations and authorities to protect our water resources and environment. In addition, this legislation contains several provisions which should help the agencies in fuelling their missions. For example, HB 2617 allows ADWR and ADEQ to contract with private industry to write all types of permits, including mining permits, while still maintaining control over the ultimate decision (see A.R.S. § 45-104(H), page 8, lines 1-11 and A.R.S. § 49104(C)(2), page 23, lines 43-45 through page 24, Ones 1-8). This allows agencies to focus their limited resources on other areas, allows for permittees to receive their permits more quickly, and creates jobs in the private sector.

ADEQ would also like to clear up any misunderstanding regarding the provision preventing the agency from imposing requirements more stringent than federal standards addressing the same subject matter (see A.R.S. § 49-104(A)(17), page 21, lines 22-27). This provision adds some certainty for sectors subject to environmental regulation, including mining. It assures anyone who is already subject to a federal standard that ADEQ will not adopt or try to enforce a conflicting standard. It requires ADEQ to have clear statutory authority to impose requirements that conflict with federal laws on the same subject. If there is no federal law on the subject, this restriction on ADEQ does not apply. For example, if there is no federal drinking water standard for a contaminant (like sulfate, salinity, etc.), this provision would not preclude ADEQ from addressing such contaminants in standards, rules, permits, or orders. There is nothing in this legislation that prevents ADEQ from addressing environmental issues that the federal government has not yet addressed.

ADEQ has heard from tribal leaders, specific concerns with this provision and the impacts it may have on their interests, specifically as it relates to water quality within tribal boundaries. This provision (A.R.S. § 49-104(A)(17), page 21, lines 22-27), even without the final sentence dealing directly with tribal standards, will not negatively impact ADEQ's continued recognition and protection of water quality standards set by tribes. Nevertheless, in response to the tribal concerns raised during the drafting of the legislation, ADEQ worked with tribal representatives and other stakeholders to come up with the final sentence, which states that "[t]his provision shall not be construed to adversely affect standards adopted by Indian tribes under federal".

In addition to prohibiting ADEQ's conflict with federal law, this bill also eliminates potential unnecessary duplication in water permitting, by removing the requirement that all "point sources discharges to navigable waters" requiring a surface water permit under the Clean Water Act also require an Aquifer Protection Permit (APP) (see A.R.S. § 49-241(13)(9), page 26, line 24). This legislative action to remove an automatic redundancy in permitting for all types of facilities, not just mining, will result in minimal impact, if any, on ADEQ's ability to protect our underground waters. Even with this legislation, there will remain a number of laws that protect Arizona's aquifers from surface water discharges. First, any point source discharge to navigable waters will still require a surface water Arizona Pollutant Discharge Elimination System (AZPDES) permit from ADEQ under State law and the Clean Water Act[1] Furthermore, any facility causing a point source discharge failing into one of the remaining categories automatically requiring an APP (e.g., all surface impoundments, mine tailings, mine ponds, mine leaching operations, and sewage treatment facilities) will still be required to obtain an APP. Finally, the requirement that any activity which causes a reasonable probability that a pollutant will reach and aquifer, regardless of whether if falls into one of the listed categories, still exists, and will require an APP. Because these protections still remain, and given that ADEQ now has the authority to determine on a case-by-case basis whether point source discharge activities have a potential to impact groundwater, removing this automatic redundancy in permitting is prudent.

In another provision dealing with surface water discharges and groundwater protection, language has been inserted to clarify where ADEQ must evaluate aquifer water quality standards in determining whether to revoke a general stormwater APP in favor of requiring an individual APP (see A.R.S. § 49-245.01(B), page 32, lines 38 and 43-44). This addition provides regulatory clarity to all who are subject to this general permit by requiring ADEQ to evaluate compliance with water quality standards in the same manner under the stormwater general APP as it does in all other APPs. Under A.R.S. § 49-244, ADEQ is required to designate a "point of compliance" for each facility receiving an APP and the point of compliance is the "point at which compliance with aquifer water quality standards shall be determined." This new addition regarding the stormwater general APP merely requires ADEQ to evaluate aquifer water quality standards in the same manner as every other type of APP.

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[1] Unlike when the requirement to automatically obtain an APP was first enacted, ADEQ, not EPA, issues these surface water permits. ADEQ can now to determine on a case-by-case basis if surface water discharges will require additional restrictions to prevent impacts to the underlying aquifer.

Senate Engrossed House Bill

State of Arizona
House of Representatives
Forty-ninth Legislature
Second Regular Session
2010

CHAPTER 309

HOUSE BILL 2617

AN ACT

AMENDING SECTIONS 27-121, 41-1001.01, 41-1002, 41-1052 AND 41-1077, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 27, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-3020.01; AMENDING TITLE 41, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 46; AMENDING SECTIONS 45-104, 45-132, 45-454.01, 45-471, 45-544, 45-596, 49-104, 49-109, 49-241, 49-243 AND 49-245.01, ARIZONA REVISED STATUTES; AMENDING TITLE 49, CHAPTER 2, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 49-290.02; RELATING TO MINING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 27-121, Arizona Revised Statutes, is amended to read:

27-121. Qualifications of mine inspector; duties; deputies; salary; immunity

A. The state mine inspector shall be a resident of this state at least two years before election, not under thirty years of age, and shall have been practically engaged in, and acquainted with, mines and mining in this state, and shall have had at least four years' experience in ~~underground~~ mining ~~and three additional years in either underground mining, smelting, open pit mining,~~ or experience in any industry under the jurisdiction of the state mine inspector, OR BOTH.

B. No person may be an inspector or deputy inspector while an employee, director or officer of a mining, milling or smelting company.

C. The inspector, and each deputy, shall devote full time to official duties.

D. The inspector shall receive an annual salary pursuant to section 41-1904 and necessary traveling expenses when traveling in discharge of official duties.

E. The mine inspector shall have a seal bearing the words "Mine Inspector, State of Arizona", which shall be affixed to official documents.

F. Any claim or action against the mine inspector or the inspector's deputies, agents or employees in their official capacity as described in this title shall be brought against the state of Arizona and not against the mine inspector, deputy, agent or employee individually.

Sec. 2. Section 41-1001.01, Arizona Revised Statutes, is amended to read:

41-1001.01. Regulatory bill of rights

A. To ensure fair and open regulation by state agencies, a person:

1. Is eligible for reimbursement of fees and other expenses if the person prevails by adjudication on the merits against an agency in a court proceeding regarding an agency decision as provided in section 12-348.

2. Is eligible for reimbursement of the person's costs and fees if the person prevails against any agency in an administrative hearing as provided in section 41-1007.

3. Is entitled to have an agency not charge the person a fee unless the fee for the specific activity is expressly authorized as provided in section 41-1008.

4. Is entitled to receive the information and notice regarding inspections prescribed in section 41-1009.

5. May review the full text or summary of all rule making activity, the summary of substantive policy statements and the full text of executive orders in the register as provided in article 2 of this chapter.

6. May participate in the rule making process as provided in articles 3, 4, 4.1 and 5 of this chapter, including:

(a) Providing written or oral comments on proposed rules to an agency as provided in section 41-1023 and having the agency adequately address those comments as provided in section 41-1052, subsection ~~C~~ D.

(b) FILING AN EARLY REVIEW PETITION WITH THE GOVERNOR'S REGULATORY REVIEW COUNCIL AS PROVIDED IN ARTICLE 5 OF THIS CHAPTER.

~~(b)~~ (c) Providing written or oral comments on rules to the governor's regulatory review council DURING THE MANDATORY SIXTY-DAY COMMENT PERIOD as provided in article 5 of this chapter.

7. Is entitled to have an agency not base a licensing decision in whole or in part on licensing conditions or requirements that are not specifically authorized by statute, rule or state tribal gaming compact as provided in section 41-1030, subsection B.

8. Is entitled to have an agency not make a rule under a specific grant of rule making authority that exceeds the subject matter areas listed in the specific statute or not make a rule under a general grant of rule making authority to supplement a more specific grant of rule making authority as provided in section 41-1030, subsection C.

9. May allege that an existing agency practice or substantive policy statement constitutes a rule and have that agency practice or substantive policy statement declared void because the practice or substantive policy statement constitutes a rule as provided in section 41-1033.

10. May file a complaint with the administrative rules oversight committee concerning:

(a) A rule's, practice's or substantive policy statement's lack of conformity with statute or legislative intent as provided in section 41-1047.

(b) An existing statute, rule, practice alleged to constitute a rule or substantive policy statement that is alleged to be duplicative or onerous as provided in section 41-1048.

11. May have the person's administrative hearing on contested cases and appealable agency actions heard by an independent administrative law judge as provided in articles 6 and 10 of this chapter.

12. May have administrative hearings governed by uniform administrative appeal procedures as provided in articles 6 and 10 of this chapter.

13. May have an agency approve or deny the person's license application within a predetermined period of time as provided in article 7.1 of this chapter.

14. Is entitled to receive written notice from an agency on denial of a license application:

(a) That justifies the denial with references to the statutes or rules on which the denial is based as provided in section 41-1076.

(b) That explains the applicant's right to appeal the denial as provided in section 41-1076.

15. Is entitled to receive information regarding the license application process at the time the person obtains an application for a license as provided in section 41-1079.

16. May receive public notice and participate in the adoption or amendment of agreements to delegate agency functions, powers or duties to political subdivisions as provided in section 41-1026.01 and article 8 of this chapter.

17. May inspect all rules and substantive policy statements of an agency, including a directory of documents, in the office of the agency director as provided in section 41-1091.
18. May file a complaint or inquiry with the advocate for private property rights regarding constitutional taking as provided in chapter 8, article 1.1 of this title.
19. May file a complaint with the office of the ombudsman-citizens aide to investigate administrative acts of agencies as provided in chapter 8, article 5 of this title.
20. UNLESS SPECIFICALLY AUTHORIZED BY STATUTE, MAY EXPECT STATE AGENCIES TO AVOID DUPLICATION OF OTHER LAWS THAT DO NOT ENHANCE REGULATORY CLARITY AND TO AVOID DUAL PERMITTING TO THE EXTENT PRACTICABLE AS PRESCRIBED IN SECTION 41-1002.

B. The enumeration of the rights listed in subsection A of this section does not grant any additional rights that are not prescribed in the sections referenced in subsection A of this section.

Sec. 3. Section 41-1002, Arizona Revised Statutes, is amended to read:
41-1002. Applicability and relation to other law
A. THIS ARTICLE AND articles ~~1~~ 2 through 5 of this chapter apply to all agencies and all proceedings not expressly exempted.

B. This chapter creates only procedural rights and imposes only procedural duties. They are in addition to those created and imposed by other statutes. To the extent that any other statute would diminish a right created or duty imposed by this chapter, the other statute is superseded by this chapter, unless the other statute expressly provides otherwise.

C. An agency may grant procedural rights to persons in addition to those conferred by this chapter so long as rights conferred on other persons by any provision of law are not substantially prejudiced.

D. UNLESS SPECIFICALLY AUTHORIZED BY STATUTE, AN AGENCY SHALL AVOID DUPLICATION OF OTHER LAWS THAT DO NOT ENHANCE REGULATORY CLARITY AND SHALL AVOID DUAL PERMITTING TO THE EXTENT PRACTICABLE.

Sec. 4. Section 41-1052, Arizona Revised Statutes, is amended to read:
41-1052. Council review and approval

A. Before filing a final rule with the secretary of state, an agency shall prepare, transmit to the council and the committee and obtain the council's approval of the rule and its preamble and economic, small business and consumer impact statement ~~which~~ THAT meets the requirements of section 41-1055.

B. THE COUNCIL SHALL ACCEPT AN EARLY REVIEW PETITION OF A PROPOSED RULE, IN WHOLE OR IN PART, IF THE PROPOSED RULE IS ALLEGED TO VIOLATE ANY OF THE CRITERIA PRESCRIBED IN SUBSECTION D OF THIS SECTION AND IF THE EARLY PETITION IS FILED BY A PERSON WHO WOULD BE ADVERSELY IMPACTED BY THE PROPOSED RULE. THE COUNCIL MAY DETERMINE WHETHER THE PROPOSED RULE, IN WHOLE OR IN PART, VIOLATES ANY OF THE CRITERIA PRESCRIBED IN SUBSECTION D OF THIS SECTION.

~~B.~~ C. Within ~~ninety~~ ONE HUNDRED TWENTY days of receipt of the rule, preamble and economic, small business and consumer impact statement, the council shall review and approve or return, in whole or in part, the rule, preamble or economic, small business and consumer impact statement. An agency may resubmit a rule, preamble or economic, small business and consumer impact statement if the council returns the rule, economic, small business and consumer impact statement or preamble, in whole or in part, to the agency.

~~C.~~ D. The council shall not approve the rule unless:

1. The economic, small business and consumer impact statement contains the information, data and analysis prescribed by this article.
2. The economic, small business and consumer impact statement is generally accurate.
3. The probable benefits of the rule outweigh the probable costs of the rule.
4. The rule is clear, concise and understandable.
5. The rule is not illegal, inconsistent with legislative intent or beyond the agency's statutory authority.
6. The agency adequately addressed the comments on the proposed rule and any supplemental proposals.
7. The rule is not a substantial change, considered as a whole, from the proposed rule and any supplemental notices.
8. The preamble discloses a reference to any study relevant to the rule that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rule.

~~D.~~ E. The council shall verify that a rule with new fees does not violate section 41-1008. The council shall not approve a rule that contains a fee increase unless two-thirds of the voting quorum present vote to approve the rule.

~~E.~~ F. The council shall verify that a rule with an immediate effective date complies with section 41-1032. The council shall not approve a rule with an immediate effective date unless two-thirds of the voting quorum present vote to approve the rule.

~~F.~~ G. The council may require a representative of an agency whose rule is under examination to attend a council meeting and answer questions. The council may also communicate to the agency its comments on any rule, preamble or economic, small business and consumer impact statement and require the agency to respond to its comments in writing.

~~G.~~ H. AT ANY TIME DURING THE SIXTY DAYS IMMEDIATELY FOLLOWING RECEIPT OF THE RULE, a person may submit written comments to the council that are within the scope of subsection ~~C~~ D, ~~D~~ E or ~~E~~ F of this section. The council may permit oral comments at a council meeting within the scope of subsection ~~C~~ D, ~~D~~ E or ~~E~~ F of this section.

~~H.~~ I. If the agency makes a good faith effort to comply with the requirements prescribed in this article and has explained in writing the methodology used to produce the economic, small business and consumer impact statement, the rule may not be invalidated after it is finalized on the ground that the contents of the economic, small business and consumer impact statement are insufficient or inaccurate or on the ground that the council erroneously approved the rule, except as provided for by section 41-1056.01.

~~I.~~ J. The absence of comments pursuant to subsection ~~C~~ D, ~~D~~ E or ~~E~~ F of this section or article 4.1 of this chapter does not prevent the council from acting pursuant to this section.

Sec. 5. Section 41-1077, Arizona Revised Statutes, is amended to read:

41-1077. Consequence for agency failure to comply with overall time frame; refund; penalty

A. If an agency does not issue to an applicant the written notice granting or denying a license within the overall time frame or within the time frame extension pursuant to section 41-1075, the agency shall refund to the applicant all fees charged for reviewing and acting on the application for the license and shall excuse payment of any such fees that have not yet been paid. The agency shall not require an applicant to submit an application for a refund pursuant

to this subsection. The refund shall be made within thirty days after the expiration of the overall time frame or the time frame extension. The agency shall continue to process the application subject to subsection B of this section. Notwithstanding any other statute, the agency shall make the refund from the fund in which the application fees were originally deposited. This section applies only to license applications that were subject to substantive review.

B. Except for license applications that were not subject to substantive review, the agency shall pay a penalty to the state general fund for each month after the expiration of the overall time frame or the time frame extension until the agency issues written notice to the applicant granting or denying the license. The agency shall pay the penalty from the agency fund in which the application fees were originally deposited. The penalty shall be ~~one~~ TWO AND ONE-HALF per cent of the total fees received by the agency for reviewing and acting on the application for each license that the agency has not granted or denied on the last day of each month after the expiration of the overall time frame or time frame extension for that license.

Sec. 6. Title 41, chapter 27, article 2, Arizona Revised Statutes, is amended by adding section 41-3020.01, to read:

41-3020.01. Mining advisory council; termination July 1, 2020

A. THE MINING ADVISORY COUNCIL TERMINATES ON JULY 1, 2020.

B. TITLE 41, CHAPTER 46 IS REPEALED ON JANUARY 1, 2021.

Sec. 7. Title 41, Arizona Revised Statutes, is amended by adding chapter 46, to read:

CHAPTER 46

MINING ADVISORY COUNCIL

ARTICLE 1. GENERAL PROVISIONS

41-4601. Mining advisory council

A. THE MINING ADVISORY COUNCIL IS ESTABLISHED CONSISTING OF THE FOLLOWING MEMBERS:

1. THE STATE MINE INSPECTOR OR THE STATE MINE INSPECTOR'S DESIGNEE.

2. ONE MEMBER WHO REPRESENTS A SMALL COMPANY THAT IS ACTIVELY ENGAGED IN THE MINING INDUSTRY AND WHO IS APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

3. TWO MEMBERS WHO ARE ACTIVELY ENGAGED IN THE AGGREGATE MINING INDUSTRY AND WHO ARE APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.
4. TWO MEMBERS WHO REPRESENT LARGE COMPANIES THAT ARE ACTIVELY ENGAGED IN THE MINING INDUSTRY AND WHO ARE APPOINTED BY THE PRESIDENT OF THE SENATE.
5. ONE MEMBER WHO REPRESENTS A MINING SUPPLIER COMPANY THAT IS ACTIVELY ENGAGED IN THE MINING INDUSTRY AND WHO IS APPOINTED BY THE PRESIDENT OF THE SENATE.
6. TWO MEMBERS OF THE PUBLIC WHO HAVE NATURAL RESOURCES EXPERIENCE AND WHO ARE APPOINTED BY THE GOVERNOR.

B. THE INITIAL MEMBERS APPOINTED PURSUANT TO SUBSECTION A, PARAGRAPHS 2 THROUGH 6 SHALL ASSIGN THEMSELVES BY LOT TO TWO, THREE, FOUR AND FIVE YEARS IN OFFICE. ALL SUBSEQUENT MEMBERS SERVE FIVE YEAR TERMS OF OFFICE. A MEMBER MAY CONTINUE TO SERVE UNTIL THE MEMBER'S SUCCESSOR IS APPOINTED AND ASSUMES OFFICE. A MEMBER MAY NOT BE APPOINTED TO MORE THAN ONE FULL TERM PLUS APPOINTMENT TO FILL A VACANCY FOR THE REMAINDER OF AN UNEXPIRED TERM.

C. THE APPOINTING AUTHORITY MAY REMOVE A MEMBER FOR CAUSE. IN ADDITION, A MEMBER IS DEEMED TO HAVE VACATED THE MEMBER'S OFFICE IF THE MEMBER:
1. CEASES TO ENGAGE IN THE MEMBER'S QUALIFYING OCCUPATION.
2. NO LONGER RESIDES IN THIS STATE.
3. IS ABSENT WITHOUT EXCUSE FROM THREE CONSECUTIVE REGULAR MEETINGS OF THE COUNCIL.
4. RESIGNS, DIES OR BECOMES UNABLE TO PERFORM THE MEMBER'S DUTIES.

D. MEMBERS OF THE ADVISORY COUNCIL ARE NOT ELIGIBLE TO RECEIVE COMPENSATION BUT ARE ELIGIBLE FOR REIMBURSEMENT OF EXPENSES PURSUANT TO TITLE 38, CHAPTER 4, ARTICLE 2. THE ADVISORY COUNCIL IS A PUBLIC BODY FOR PURPOSES OF TITLE 38, CHAPTER 3, ARTICLE 3.1.

E. THE ADVISORY COUNCIL FUNCTIONS INCLUDE:
1. SELECTING A CHAIRPERSON AND VICE-CHAIRPERSON FROM AMONG ITS MEMBERS.
2. HOLDING MEETINGS AT THE CALL OF THE CHAIRPERSON OR A MAJORITY OF ITS MEMBERS.
3. REVIEWING MINING POLICY IN THIS STATE AS ESTABLISHED BY LAW AND AS ADMINISTERED IN ALL FUNCTIONAL AREAS OF STATE GOVERNMENT.

4. REVIEWING, ADVISING AND MAKING RECOMMENDATIONS TO STATE AGENCIES ON PROPOSED RULES AND BUDGET ALLOCATIONS AFFECTING MINING.

F. THE ADVISORY COUNCIL MAY CONDUCT PERIODIC ANALYSES OF AGENCY POLICY AFFECTING MINING, INCLUDING POLICY AS REFLECTED BY DECISIONS OF ADMINISTRATIVE LAW JUDGES AND AGENCY DIRECTORS.

G. IN ADOPTING ADMINISTRATIVE RULES AND BUDGETS, EACH STATE AGENCY MAY INCLUDE THE COMMENTS OF THE ADVISORY COUNCIL IN THE OFFICIAL RECORD. IN ADOPTING RULES AFFECTING MINING, EACH STATE AGENCY MAY CONSIDER THE RECOMMENDATIONS OF THE ADVISORY COUNCIL.

Sec. 8. Section 45-104, Arizona Revised Statutes, is amended to read:

45-104. Department organization; deputy directors; employees; legal counsel; branch offices; consultants

A. The director may establish and organize divisions within the department and otherwise organize the department in the manner the director deems necessary to make the operation of the department efficient and effective.

B. The director may appoint a deputy director to each division or organizational unit that the director may establish. Deputy directors are exempt from the state personnel system, shall serve at the pleasure of the director and are entitled to receive compensation pursuant to section 38-611.

C. The director, within the classification and pay scales adopted by the state personnel board, may employ, define the duties of and prescribe the terms and conditions of employment of such clerical, technical, professional and administrative personnel as necessary to efficiently perform the responsibilities of the department. Compensation for all employees shall be pursuant to section 38-611.

D. The director may employ on a contract basis geologists, hydrologists, consulting engineers, other expert consultants and engineering and other assistants as the director deems advisable, who are not subject to the classification provided for in title 41, chapter 4, article 5.

E. The director may utilize the services of accounting, legal or engineering personnel made available by any department or agency of this state, who shall serve without additional compensation.

F. The director may employ legal counsel to advise and represent the department in connection with legal matters before other departments and agencies of this state, and represent the department and this state in litigation concerning affairs of the department. Legal counsel is not subject to the classification provided for in title 41, chapter 4, article 5.

G. The director shall maintain the director's office in Phoenix and may establish a branch office of the department in each active management area established pursuant to chapter 2, article 2 of this title.

H. THE DIRECTOR ON BEHALF OF THE DEPARTMENT MAY CONTRACT WITH PRIVATE CONSULTANTS FOR THE PURPOSES OF ASSISTING THE DEPARTMENT IN REVIEWING APPLICATIONS FOR LICENSES, PERMITS OR OTHER AUTHORIZATIONS TO DETERMINE WHETHER AN APPLICANT MEETS THE CRITERIA FOR ISSUANCE OF THE LICENSE, PERMIT OR OTHER AUTHORIZATION. IF THE DEPARTMENT CONTRACTS WITH A CONSULTANT UNDER THIS SUBSECTION, AN APPLICANT MAY REQUEST THAT THE DEPARTMENT EXPEDITE THE APPLICATION REVIEW BY REQUESTING THAT THE DEPARTMENT USE THE SERVICES OF THE CONSULTANT AND BY AGREEING TO PAY THE DEPARTMENT THE COSTS OF THE CONSULTANT'S SERVICES. NOTWITHSTANDING ANY OTHER LAW, MONIES PAID BY APPLICANTS FOR EXPEDITED REVIEWS PURSUANT TO THIS SUBSECTION ARE APPROPRIATED TO THE DEPARTMENT FOR USE IN PAYING CONSULTANTS FOR SERVICES.

Sec. 9. Section 45-132, Arizona Revised Statutes, is amended to read:

45-132. Filling large bodies of water for landscape, scenic or recreational purposes prohibited; exceptions; preemption

A. Except as provided in subsection B of this section, in an active management area established under chapter 2 of this title, a person shall not use any water for the purpose of filling or refilling all or a portion of a body of water.

B. This section does not apply to a body of water if any of the following applies:

1. The body of water was filled before January 1, 1987. If the surface area of the body of water is increased on or after January 1, 1987, this exception does not apply to the quantity of water that is added.

2. The director has determined that substantial capital investment has been made in the physical on-site construction of the body of water before January 1, 1987. If the surface area of the body of water is increased after it is initially filled, this exception does not apply to the quantity of water that is added.

3. The body of water is located in a recreational facility that is open to the public and owned or operated by the United States, this state, a city, town or county, a flood control district established under title 48, chapter 21 or a multi-county water conservation district established under title 48, chapter 22.

4. The body of water is filled and refilled exclusively with any one or any combination of the following:

(a) Effluent.

(b) Storm water runoff that is not subject to appropriation under section 45-141.

(c) Poor quality water used pursuant to a permit issued under subsections C and D of this section.

(d) Groundwater withdrawn pursuant to a drainage water withdrawal permit issued under section 45-519.

(e) Groundwater withdrawn in the first year of a temporary dewatering permit issued under section 45-518.

(f) Groundwater withdrawn as part of a remedial action under title 49, chapter 2, article 5, INCLUDING MITIGATION OF A NONHAZARDOUS RELEASE UNDERTAKEN PURSUANT TO AN ORDER ISSUED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY PURSUANT TO SECTION 49-286.

(g) Water used pursuant to a permit for interim water use issued under section 45-133.

(h) Surface water except central Arizona project water that, as determined by the director, physically occurs at such times, in such quantities or under such other circumstances that it cannot be physically captured and beneficially used by any other holder of an appropriative right.

5. The body of water is an integral part of a golf course ~~which~~ THAT complies with any applicable conservation requirements in the management plan for the active management area adopted under chapter 2, article 9 of this title.

6. The body of water is unsealed and is an integral part of an underground storage facility for which the director has issued a permit under chapter 3.1 of this title.

7. The body of water is a swimming pool that is owned and operated by a hotel, motel, country club or resort and has a surface area equal to or less than forty-three thousand five hundred sixty square feet. If a hotel, motel, country club or resort has more than one swimming pool, only one of those swimming pools may have a surface area greater than twelve thousand three hundred twenty square feet.

C. A person who seeks to use poor quality groundwater to fill or refill all or a portion of a body of water shall apply to the director for a permit to use the groundwater for that purpose. The director may issue a permit if the applicant demonstrates that all of the following apply:
1. The applicant otherwise has a right to use the proposed source of groundwater for the proposed purpose.
2. The groundwater because of its poor quality cannot be used for another beneficial purpose at the present time and it is not economically feasible to treat and transport the groundwater and use it for another beneficial purpose.
3. The withdrawal of the groundwater is consistent with the management plan and achievement of the management goal for the active management area.

D. A permit issued pursuant to subsection C of this section may be issued for a period of up to thirty-five years. The director shall determine the duration of the permit on the basis of the estimated life of the source of poor quality groundwater and the potential for future beneficial use. The director shall monitor the use of groundwater pursuant to the permit and shall terminate the permit if any of the conditions for issuance of the permit no longer applies. A permit may be renewed subject to the same criteria used in granting the original permit.

E. This section preempts all municipal and county laws, charters, ordinances, rules and regulations relating to the use of any water to fill or refill all or a portion of a body of water, except that this section does not preempt a law, charter, ordinance, rule or regulation that has previously been adopted, passed or enacted or is subsequently adopted, passed or enacted if ~~the provisions of~~ the law, charter, ordinance, rule or regulation ~~are~~ IS more restrictive than ~~the provisions of~~ this section.

Sec. 10. Section 45-454.01, Arizona Revised Statutes, is amended to read:
45-454.01. Exemption of superfund remedial action activities; use requirements; definition

A. New well construction and withdrawal, treatment and reinjection OF GROUNDWATER into the aquifer ~~of groundwater~~ that occur as a part of and on the site of a remedial action undertaken pursuant to CERCLA are exempt from this chapter, except that:

1. A well that is exempt under this ~~section~~ SUBSECTION is subject to sections 45-594, 45-595, 45-596, ~~and~~ 45-600 AND 45-605, but no authorization to drill need be obtained before drilling.

2. If the groundwater that is withdrawn is not reinjected into the aquifer, the groundwater shall be put to reasonable and beneficial use.

3. A person who uses groundwater withdrawn in an active management area pursuant to this ~~section~~ SUBSECTION shall pay the groundwater withdrawal fee for the groundwater the person withdrew or received and shall use the groundwater only pursuant to articles 5 through 12 of this chapter. A city, town, private water company or irrigation district that serves groundwater pursuant to article 6 of this chapter is deemed to have used the groundwater for purposes of this paragraph.

B. NEW WELL CONSTRUCTION AND WITHDRAWAL, TREATMENT AND REINJECTION OF GROUNDWATER INTO THE AQUIFER THAT OCCUR AS PART OF A REMEDIAL ACTION RELATING TO METAL MINING ACTIVITIES OR A MITIGATION ORDER RELATING TO METAL MINING ACTIVITIES AND THAT ARE UNDERTAKEN PURSUANT TO TITLE 49, CHAPTER 2, ARTICLE 5 FOR THE PURPOSE OF PREVENTING THE MIGRATION OF A HAZARDOUS OR NONHAZARDOUS SUBSTANCE ARE EXEMPT FROM THIS CHAPTER, EXCEPT THAT:

1. A WELL THAT IS EXEMPT UNDER THIS SUBSECTION IS SUBJECT TO SECTIONS 45-594, 45-595, 45-596, 45-600 AND 45-605, BUT AUTHORIZATION TO DRILL IS NOT REQUIRED BEFORE DRILLING.

2. IF THE GROUNDWATER THAT IS WITHDRAWN IS NOT REINJECTED INTO THE AQUIFER, THE GROUNDWATER SHALL BE PUT TO REASONABLE AND BENEFICIAL USE. IF THE GROUNDWATER IS WITHDRAWN WITHIN AN ACTIVE MANAGEMENT AREA AND IS NOT REINJECTED INTO THE AQUIFER, THE GROUNDWATER SHALL BE PUT TO REASONABLE AND BENEFICIAL USE WITHIN THE SAME ACTIVE MANAGEMENT AREA AS FOLLOWS:

(a) AT THE METAL MINING FACILITY PURSUANT TO A GROUNDWATER WITHDRAWAL PERMIT ISSUED UNDER SECTION 45-514 OR A TYPE 2 NON-IRRIGATION GRANDFATHERED RIGHT ISSUED UNDER SECTION 45-464.

(b) AT ANOTHER LOCATION PURSUANT TO A GRANDFATHERED RIGHT ISSUED UNDER ARTICLE 5 OF THIS CHAPTER OR A SERVICE AREA RIGHT UNDER ARTICLE 6 OF THIS CHAPTER.

3. A PERSON WHO USES GROUNDWATER WITHDRAWN IN AN ACTIVE MANAGEMENT AREA PURSUANT TO THIS SUBSECTION SHALL PAY THE GROUNDWATER WITHDRAWAL FEE FOR THE

GROUNDWATER THE PERSON WITHDREW OR RECEIVED. THE GROUNDWATER USE IS SUBJECT TO ARTICLES 8, 8.1, 9, 10, 11 AND 12 OF THIS CHAPTER. A CITY, TOWN, PRIVATE WATER COMPANY OR IRRIGATION DISTRICT THAT SERVES GROUNDWATER PURSUANT TO ARTICLE 6 OF THIS CHAPTER IS DEEMED TO HAVE USED THE GROUNDWATER FOR THE PURPOSES OF THIS PARAGRAPH.

~~B.~~ C. For THE purposes of this section, "CERCLA" means the comprehensive environmental response, compensation, and liability act of 1980, as amended (P.L. 96-510; 94 Stat. 2767; 42 United States Code sections 9601 through 9657), commonly known as "superfund".

Sec. 11. Section 45-471, Arizona Revised Statutes, is amended to read:

45-471. Use of type 2 non-irrigation grandfathered right by owner

A. The owner of a type 2 non-irrigation grandfathered right pursuant to section 45-464 may use groundwater withdrawn pursuant to the right for any non-irrigation purpose at any location, subject to the provisions governing transportation of groundwater in article 8 of this chapter, except that, if the right is based on withdrawals of groundwater:

1. For the extraction or processing of minerals, the owner may use groundwater withdrawn pursuant to the right only for the purpose of mineral extraction or processing. FOR THE PURPOSES OF THIS ARTICLE, MINERAL EXTRACTION AND PROCESSING USE OF GROUNDWATER MEANS ALL WITHDRAWALS AND USES OF GROUNDWATER RELATED TO A MINING OPERATION INCLUDING COMPLIANCE WITH APPLICABLE ENVIRONMENTAL CONTROLS.

2. For the generation of electrical energy, the owner may use groundwater withdrawn pursuant to the right only for electrical energy generation.

B. The owner of a type 2 non-irrigation grandfathered right may withdraw groundwater pursuant to the right only from those wells listed on the certificate of grandfathered right.

C. The owner of a type 2 non-irrigation grandfathered right may request the director to issue a revised certificate to reflect new or additional points of withdrawal. If a proposed new or additional point of withdrawal is a well ~~which~~ THAT was drilled pursuant to a permit or notice of intention to drill filed after June 12, 1980, the owner shall demonstrate that the proposed withdrawals will not cause unreasonably increasing damage to surrounding land or other water users, and in the Santa Cruz active management area, that the proposed withdrawals will be consistent with the management plan for the active management area.

D. If a type 2 non-irrigation grandfathered right is leased, the lessee may use groundwater withdrawn pursuant to the right subject to ~~the provisions of~~ subsections A, B and C of this section.

Sec. 12. Section 45-544, Arizona Revised Statutes, is amended to read:

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

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

1. Groundwater may be transported:

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

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

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

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

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

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

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

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

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

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

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

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

6. A city or town in the Coconino plateau groundwater basin with a population of not more than eight thousand persons that was transporting groundwater into its municipal water service area from an adjacent groundwater basin as of January 1, 2001, from wells that the director determines were erroneously drilled without knowledge that the wells were in the adjacent groundwater basin, may continue and expand that transfer subject to all of the following conditions:

(a) The groundwater may be withdrawn only from wells that are located not more than two miles from the Coconino plateau groundwater basin boundary and that are drilled to depths of at least two thousand five hundred feet below land surface.

(b) The groundwater may be used only within the municipal water service area of the city or town, and the city or town shall use available surface water supplies within its municipal water service area to the extent practicable.

(c) The total amount of groundwater that may be transported during a year shall not exceed seven hundred acre-feet, except that a city or town may apply to the director to increase the amount of groundwater that may be transported during a year under this subdivision if additional groundwater is needed to provide fire protection for the city or town because of an emergency condition. The director shall post an application filed under this subdivision on the department's website before approving or denying the application. The director shall approve an application filed under this subdivision if the city or town demonstrates to the satisfaction of the director that an emergency condition exists that makes it necessary for the city or town to transport groundwater in excess of the amount allowed under this subdivision to provide adequate fire protection for the city or town. If the director approves an application filed under this subdivision, the director shall specify the amount of groundwater that the city or town may

transport in excess of the amount allowed under this subdivision and may impose other conditions that the director deems appropriate.

(d) The city or town shall no longer transport any groundwater pursuant to this paragraph if all of the following apply:

(i) After January 1, 2009, the city or town obtains the legal right to receive a new supply of water originating from outside of its corporate boundaries, other than groundwater pursuant to this paragraph.

(ii) The supply of water is physically available to the city or town through a canal or pipeline.

(iii) The director determines that the supply of water, together with other water supplies physically available to the city or town, other than groundwater pursuant to this paragraph, is sufficient to provide a sustainable water supply for the city or town, including projected growth, and notifies the city or town of that determination.

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

8. If the upper San Pedro water district is established under title 48, chapter 37:

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

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

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

9. A METAL MINING FACILITY THAT IS LOCATED IN BOTH THE UPPER SAN PEDRO AND DOUGLAS GROUNDWATER BASINS MAY TRANSPORT GROUNDWATER BETWEEN THE TWO BASINS TO THE EXTENT THAT THE TRANSPORTATION IS NECESSARY TO COMPLY WITH AN ORDER ISSUED BY

THE DIRECTOR OF ENVIRONMENTAL QUALITY PURSUANT TO TITLE 49, CHAPTER 2, ARTICLE 5, INCLUDING AN ORDER ISSUED BY THE DIRECTOR OF ENVIRONMENTAL QUALITY PURSUANT TO SECTION 49-286. BEFORE TRANSPORTING GROUNDWATER PURSUANT TO THIS PARAGRAPH, A METAL MINING FACILITY SHALL GIVE WRITTEN NOTICE TO THE DIRECTOR OF WATER RESOURCES, WHICH SHALL INCLUDE A COPY OF THE ORDER REQUIRING THE REMEDIAL ACTION OR MITIGATION ACTIVITIES.

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

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

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

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

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

E. For the purposes of this section:

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

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

Sec. 13. Section 45-596, Arizona Revised Statutes, is amended to read:

45-596. Notice of intention to drill; fee

A. In an area not subject to active management, a person may not drill or cause to be drilled any well or deepen an existing well without first filing notice of intention to drill pursuant to subsection C of this section or obtaining a permit pursuant to section 45-834.01. Only one notice of intention to drill is required for all wells that are drilled by or for the same person to obtain geophysical, mineralogical or geotechnical data within a single section of land.

B. In an active management area, a person may not drill or cause to be drilled an exempt well, a replacement well in approximately the same location or any other well for which a permit is not required under this article, article 7 of this chapter or section 45-834.01 or deepen an existing well without first filing a notice of intention to drill pursuant to subsection C of this section. Only one notice of intention to drill is required for all wells that are drilled by or for the same person to obtain geophysical, mineralogical or geotechnical data within a single section of land.

C. A notice of intention to drill shall be filed with the director on a form ~~which~~ THAT is prescribed and furnished by the director and ~~which~~ THAT shall include:

1. The name and mailing address of the person filing the notice.
2. The legal description of the land ~~upon~~ ON which the well is proposed to be drilled and the name and mailing address of the owner of the land.
3. The legal description of the location of the well on the land.
4. The depth, diameter and type of casing of the proposed well.
5. Such legal description of the land ~~upon~~ ON which the groundwater is proposed to be used as may be required by the director to administer this chapter.
6. When construction is to begin.
7. The proposed uses to which the groundwater will be applied.
8. The name and well driller's license number of the well driller who is to construct the well.
9. The design pumping capacity of the well.
10. If for a replacement well, the maximum capacity of the original well and the distance of the replacement well from the original well.
11. Proof that the director determines to be satisfactory that the person proposing to construct the well holds a valid license issued by the registrar of contractors pursuant to title 32, chapter 10 and that the license is of the type necessary to construct the well described in the notice of intention to drill. If the proposed well driller does not hold a valid license, the director may accept proof that the proposed well driller is exempt from licensing as prescribed by section 32-1121.

12. If any water from the proposed well will be used for domestic purposes as defined in section 45-454, evidence of compliance with the requirements of subsection F of this section.
13. If for a second exempt well at the same location for the same use pursuant to section 45-454, subsection I, proof that the requirements of that subsection are met.
14. If for a well to obtain geophysical, mineralogical or geotechnical data within a single section of land, the information prescribed by this subsection for each well that will be included in that section of land before each well is drilled.
15. Such other information as the director may require.

D. ~~Upon~~ ON receiving a notice of intention to drill and the fee required by subsection L of this section, the director shall endorse on the notice the date of its receipt. The director shall then determine whether all information that is required has been submitted and whether the requirements of subsection C, paragraphs 11 and 12 and subsection I of this section have been met. If so, within fifteen days of receipt of the notice, or such longer time as provided in subsection J of this section, the director shall record the notice, mail a drilling card that authorizes the drilling of the well to the well driller identified in the notice and mail written notice of the issuance of the drilling card to the person filing the notice of intention to drill at the address stated in the notice. ~~Upon~~ ON receipt of the drilling card, the well driller may proceed to drill or deepen the well as described in the notice of intention to drill. If the director determines that the required information has not been submitted or that the requirements of subsection C, paragraphs 11 and 12 or subsection I of this section have not been met, the director shall mail a statement of the determination to the person giving the notice to the address stated in the notice, and the person giving the notice may not proceed to drill or deepen the well.

E. The well shall be completed within one year after the date of the notice unless the director approves a longer period of time pursuant to this subsection. If the well is not completed within one year or within the time approved by the director pursuant to this subsection, the person shall file a new notice before proceeding with further construction. At the time the drilling card for the well is issued, the director may provide for and approve a completion period that is greater than one year but not to exceed five years from the date of the notice if both of the following apply:
1. The proposed well is a nonexempt well within an active management area and qualifies as a replacement well in approximately the same location as prescribed in rules adopted by the director pursuant to section 45-597.

2. The applicant has submitted evidence that demonstrates one of the following:
(a) This state or a political subdivision of this state has acquired or has begun a condemnation action to acquire the land on which the original well is located.
(b) The original well has been rendered inoperable due to flooding, subsidence or other extraordinary physical circumstances that are beyond the control of the well owner.

F. If any water from a proposed well will be used for domestic purposes as defined in section 45-454 on a parcel of land of five or fewer acres, the applicant shall submit a well site plan of the property with the notice of intention to drill. The site plan shall:
1. Include the county assessor's parcel identification number.
2. Show the proposed well location and the location of any septic tank or sewer system that is either located on the property or within one hundred feet of the proposed well site.
3. Show written approval by the county health authority that controls the installation of septic tanks or sewer systems in the county, or by the local health authority in areas where the authority to control installation of septic tanks or sewer systems has been delegated to a local authority. In areas where there is no local or county authority that controls the installation of septic tanks or sewer systems, the applicant shall apply for approval directly to the department of water resources.

G. Before approving a well site plan submitted pursuant to subsection F of this section, the county or local health authority or the department of water resources, as applicable, pursuant to subsection F of this section, shall review the well site plan and determine whether the proposed well location complies with applicable local laws, ordinances and regulations and any laws or rules adopted under this title and title 49 regarding the placement of wells and the proximity of wells to septic tanks or sewer systems. If the health authority or the department of water resources, as applicable, pursuant to subsection F of this section, finds that the proposed well location complies with this title and title 49 and with local requirements, it shall endorse the site plan and the proposed well placement in a manner indicating approval. On endorsement, the director of water resources shall approve the construction of the well, if all remaining requirements have been met. If the health authority is unable to determine whether the proposed well location complies with this title and title 49 and local requirements, it shall indicate this on the site plan and the decision to approve or reject the proposed construction rests with the director of water resources. If parcel size, geology or location of improvements on the property prevents the well from being drilled in accordance with this title and title 49 or local requirements, the property owner may apply for a variance. The property owner shall

make the request for a variance to the county or local authority if a county or local law, ordinance or regulation prevents the proposed construction. If a law or rule adopted under this title or title 49 prevents the proposed construction, the property owner shall make the request for a variance directly to the department of water resources. The request for a variance shall be in the form and shall contain the information that the department of water resources, county or local authority may require. The department of water resources, or the county or local authority whose law, ordinance or regulation prevents the proposed construction, may expressly require that a particular variance shall include certification by a registered professional engineer or geologist that the location of the well will not pose a health hazard to the applicant or surrounding property or inhabitants. If all necessary variances are obtained, the director of water resources shall approve the construction of the well if all remaining requirements have been met.

H. If a well that was originally drilled as an exploration well, a monitor well or a piezometer well or for any use other than domestic use is later proposed to be converted to use for domestic purposes as defined in section 45-454, the well owner shall file a notice of intention to drill and shall comply with this section before the well is converted and any water from that well is used for domestic purposes.

I. Except as prescribed in subsection K of this section, the director shall not approve the drilling of the well if the director determines that the well will likely cause the migration of contaminated groundwater from a remedial action site to another well, resulting in unreasonably increasing damage to the owner of the well or persons using water from the well. In making this determination, the director of water resources shall follow the applicable criteria in the rules adopted by the director of water resources pursuant to section 45-598, subsection A and shall consult with the director of environmental quality. For the purposes of this subsection:

1. "Contaminated groundwater" means groundwater that has been contaminated by a release of a hazardous substance, as defined in section 49-201, or a pollutant, as defined in section 49-201.

2. "Remedial action site" means any of the following:

(a) The site of a remedial action undertaken pursuant to the comprehensive environmental response, compensation, and liability act of 1980, as amended (P.L. 96-510; 94 Stat. 2767; 42 United States Code sections 9601 through 9657), commonly known as "superfund".

(b) The site of a corrective action undertaken pursuant to title 49, chapter 6.

(c) The site of a voluntary remediation action undertaken pursuant to title 49, chapter 1, article 5.
(d) The site of a remedial action undertaken pursuant to title 49, chapter 2, article 5, INCLUDING MITIGATION OF A NONHAZARDOUS RELEASE UNDERTAKEN PURSUANT TO AN ORDER ISSUED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY PURSUANT TO SECTION 49-286.
(e) The site of a remedial action undertaken pursuant to the resource conservation and recovery act of 1976 (P.L. 94-580; 90 Stat. 2795; 42 United States Code sections 6901 through 6992).
(f) The site of remedial action undertaken pursuant to the department of defense environmental restoration program (P.L. 99-499; 100 Stat. 1719; 10 United States Code section 2701).

J. Except as prescribed in subsection K of this section, the director shall approve or deny the drilling of a well within forty-five days after receipt of the notice of intention to drill if one of the following applies:
1. The proposed well is located within a remedial action site.
2. The proposed well is located within one mile of any of the following remedial action sites:
(a) A remedial action undertaken pursuant to title 49, chapter 2, article 5, INCLUDING MITIGATION OF A NONHAZARDOUS RELEASE UNDERTAKEN PURSUANT TO AN ORDER ISSUED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY PURSUANT TO SECTION 49-286.
(b) A remedial action undertaken pursuant to the comprehensive environmental response, compensation, and liability act of 1980, as amended (P.L. 96-510; 94 Stat. 2767; 42 United States Code sections 9601 through 9657), commonly known as "superfund".
(c) A remedial action undertaken pursuant to the department of defense environmental restoration program (P.L. 99-499; 100 Stat. 1719; 10 United States Code section 2701).
3. The proposed well is located within one-half mile of either of the following remedial action sites:
(a) A remedial action undertaken pursuant to title 49, chapter 1, article 5.
(b) A remedial action undertaken pursuant to the resource conservation and recovery act of 1976 (P.L. 94-580; 90 Stat. 2795; 42 United States Code sections 6901 through 6992).
4. The proposed well is located within five hundred feet of the site of a corrective action undertaken pursuant to title 49, chapter 6.

K. Subsections I and J of this section do not apply to the deepening of a well or to the drilling of a replacement well in approximately the same location.

L. A notice of intention to drill filed under this section shall be accompanied by a filing fee of one hundred fifty dollars, except that a notice filed for a proposed well that will not be located within an active management area or an irrigation nonexpansion area, that will be used solely for domestic purposes as defined in section 45-454 and that will have a pump with a maximum capacity of not more than thirty-five gallons per minute shall be accompanied by a filing fee of one hundred dollars. The director shall deposit, pursuant to sections 35-146 and 35-147, all fees collected pursuant to this subsection in the well administration and enforcement fund established by section 45-606.

Sec. 14. Section 49-104, Arizona Revised Statutes, is amended to read:

49-104. Powers and duties of the department and director

A. The department shall:

1. Formulate policies, plans and programs to implement this title to protect the environment.

2. Stimulate and encourage all local, state, regional and federal governmental agencies and all private persons and enterprises that have similar and related objectives and purposes, cooperate with those agencies, persons and enterprises and correlate department plans, programs and operations with those of the agencies, persons and enterprises.

3. Conduct research on its own initiative or at the request of the governor, the legislature or state or local agencies pertaining to any department objectives.

4. Provide information and advice on request of any local, state or federal agencies and private persons and business enterprises on matters within the scope of the department.

5. Consult with and make recommendations to the governor and the legislature on all matters concerning department objectives.

6. Promote and coordinate the management of air resources to assure their protection, enhancement and balanced utilization consistent with the environmental policy of this state.

7. Promote and coordinate the protection and enhancement of the quality of water resources consistent with the environmental policy of this state.

8. Encourage industrial, commercial, residential and community development that maximizes environmental benefits and minimizes the effects of less desirable environmental conditions.

9. Assure the preservation and enhancement of natural beauty and man-made scenic qualities.

10. Provide for the prevention and abatement of all water and air pollution including that related to particulates, gases, dust, vapors, noise, radiation, odor, nutrients and heated liquids in accordance with article 3 of this chapter and chapters 2 and 3 of this title.
11. Promote and recommend methods for the recovery, recycling and reuse or, if recycling is not possible, the disposal of solid wastes consistent with sound health, scenic and environmental quality policies.
12. Prevent pollution through the regulation of the storage, handling and transportation of solids, liquids and gases that may cause or contribute to pollution.
13. Promote the restoration and reclamation of degraded or despoiled areas and natural resources.
14. Assist the department of health services in recruiting and training state, local and district health department personnel.
15. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.
16. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.
17. UNLESS SPECIFICALLY AUTHORIZED BY THE LEGISLATURE, ENSURE THAT STATE LAWS, RULES, STANDARDS, PERMITS, VARIANCES AND ORDERS ARE ADOPTED AND CONSTRUED TO BE CONSISTENT WITH AND NO MORE STRINGENT THAN THE CORRESPONDING FEDERAL LAW THAT ADDRESSES THE SAME SUBJECT MATTER. THIS PROVISION SHALL NOT BE CONSTRUED TO ADVERSELY AFFECT STANDARDS ADOPTED BY AN INDIAN TRIBE UNDER FEDERAL LAW.

B. The department, through the director, shall:
1. Contract for the services of outside advisers, consultants and aides reasonably necessary or desirable to enable the department to adequately perform its duties.
2. Contract and incur obligations reasonably necessary or desirable within the general scope of department activities and operations to enable the department to adequately perform its duties.
3. Utilize any medium of communication, publication and exhibition when disseminating information, advertising and publicity in any field of its purposes, objectives or duties.

4. Adopt procedural rules that are necessary to implement the authority granted under this title, but that are not inconsistent with other provisions of this title.
5. Contract with other agencies, including laboratories, in furthering any department program.
6. Use monies, facilities or services to provide matching contributions under federal or other programs that further the objectives and programs of the department.
7. Accept gifts, grants, matching monies or direct payments from public or private agencies or private persons and enterprises for department services and publications and to conduct programs that are consistent with the general purposes and objectives of this chapter. Monies received pursuant to this paragraph shall be deposited in the department fund corresponding to the service, publication or program provided.
8. Provide for the examination of any premises if the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed on the premises. The director shall give the owner or operator the opportunity for its representative to accompany the director on an examination of those premises. Within forty-five days after the date of the examination, the department shall provide to the owner or operator a copy of any report produced as a result of any examination of the premises.
9. Supervise sanitary engineering facilities and projects in this state, authority for which is vested in the department, and own or lease land on which sanitary engineering facilities are located, and operate the facilities, if the director determines that owning, leasing or operating is necessary for the public health, safety or welfare.
10. Adopt and enforce rules relating to approving design documents for constructing, improving and operating sanitary engineering and other facilities for disposing of solid, liquid or gaseous deleterious matter.
11. Define and prescribe reasonably necessary rules regarding the water supply, sewage disposal and garbage collection and disposal for subdivisions. The rules shall:
(a) Provide for minimum sanitary facilities to be installed in the subdivision and may require that water systems plan for future needs and be of adequate size and capacity to deliver specified minimum quantities of drinking water and to treat all sewage.
(b) Provide that the design documents showing or describing the water supply, sewage disposal and garbage collection facilities be submitted with a fee to the department for review and that no lots in any subdivision be offered for sale before compliance with the standards and rules has been demonstrated by approval of the design documents by the department.
12. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious conditions at such places. The rules shall prescribe minimum standards for the design of and for sanitary

conditions at any public or semipublic swimming pool or bathing place and provide for abatement as public nuisances of premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of health services and shall be consistent with the rules adopted by the director of the department of health services pursuant to section 36-136, subsection H, paragraph 10.

13. Prescribe reasonable rules regarding sewage collection, treatment, disposal and reclamation systems to prevent the transmission of sewage borne or insect borne diseases. The rules shall:

(a) Prescribe minimum standards for the design of sewage collection systems and treatment, disposal and reclamation systems and for operating the systems.

(b) Provide for inspecting the premises, systems and installations and for abating as a public nuisance any collection system, process, treatment plant, disposal system or reclamation system that does not comply with the minimum standards.

(c) Require that design documents for all sewage collection systems, sewage collection system extensions, treatment plants, processes, devices, equipment, disposal systems, on-site wastewater treatment facilities and reclamation systems be submitted with a fee for review to the department and may require that the design documents anticipate and provide for future sewage treatment needs.

(d) Require that construction, reconstruction, installation or initiation of any sewage collection system, sewage collection system extension, treatment plant, process, device, equipment, disposal system, on-site wastewater treatment facility or reclamation system conform with applicable requirements.

14. Prescribe reasonably necessary rules regarding excreta storage, handling, treatment, transportation and disposal. The rules shall:

(a) Prescribe minimum standards for human excreta storage, handling, treatment, transportation and disposal and shall provide for inspection of premises, processes and vehicles and for abating as public nuisances any premises, processes or vehicles that do not comply with the minimum standards.

(b) Provide that vehicles transporting human excreta from privies, septic tanks, cesspools and other treatment processes shall be licensed by the department subject to compliance with the rules.

15. Perform the responsibilities of implementing and maintaining a data automation management system to support the reporting requirements of title III of the superfund amendments and reauthorization act of 1986 (P.L. 99-499) and title 26, chapter 2, article 3.

16. Approve remediation levels pursuant to article 4 of this chapter.

C. The department may:

1. Charge fees to cover the costs of all permits and inspections it performs to ~~insure~~ ENSURE compliance with rules adopted under section 49-203, subsection A, paragraph 6, except that state agencies are exempt from paying the fees. Monies collected pursuant to this subsection shall be deposited in the water quality fee fund established by section 49-210.

2. CONTRACT WITH PRIVATE CONSULTANTS FOR THE PURPOSES OF ASSISTING THE DEPARTMENT IN REVIEWING APPLICATIONS FOR LICENSES, PERMITS OR OTHER AUTHORIZATIONS TO DETERMINE WHETHER AN APPLICANT MEETS THE CRITERIA FOR ISSUANCE OF THE LICENSE, PERMIT OR OTHER AUTHORIZATION. IF THE DEPARTMENT CONTRACTS WITH A CONSULTANT UNDER THIS PARAGRAPH, AN APPLICANT MAY REQUEST THAT THE DEPARTMENT EXPEDITE THE APPLICATION REVIEW BY REQUESTING THAT THE DEPARTMENT USE THE SERVICES OF THE CONSULTANT AND BY AGREEING TO PAY THE DEPARTMENT THE COSTS OF THE CONSULTANT'S SERVICES. NOTWITHSTANDING ANY OTHER LAW, MONIES PAID BY APPLICANTS FOR EXPEDITED REVIEWS PURSUANT TO THIS PARAGRAPH ARE APPROPRIATED TO THE DEPARTMENT FOR USE IN PAYING CONSULTANTS FOR SERVICES.

D. The director may:

1. If ~~he~~ THE DIRECTOR has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed, inspect any person or property in transit through this state and any vehicle in which the person or property is being transported and detain or disinfect the person, property or vehicle as reasonably necessary to protect the environment if a violation exists.

2. Authorize in writing any qualified officer or employee in the department to perform any act that the director is authorized or required to do by law.

Sec. 15. Section 49-109, Arizona Revised Statutes, is amended to read:

49-109. Certificate of disclosure of violations; remedies

A. The following persons shall file a certificate of disclosure with the department as prescribed by this section:

1. A person who is engaged in an activity subject to regulation under this title and who has been convicted of a felony involving laws related to solid waste, special waste, hazardous waste, water quality or air quality in any state or federal jurisdiction or for a violation of 42 United States Code section 9603 within the five year period immediately preceding execution of the certificate.

2. EXCEPT IN PROCEEDINGS IN WHICH THE DEPARTMENT, OR THIS STATE ON BEHALF OF THE DEPARTMENT, IS OR WAS A PARTY, a person who is engaged in an activity subject to regulation under this title and who is or has been subject in any civil proceeding to an injunction, decree, judgment or permanent order of any state or federal court within the five year period immediately preceding the execution of the certificate that involved a violation of laws of that jurisdiction relating to solid waste, special waste, hazardous waste, used oil or used oil fuel, petroleum, water quality or air quality, except for a misdemeanor violation of section 49-550, or a violation of 42 United States Code section 9603.

B. The certificate of disclosure prescribed by subsection A of this section shall contain the following:
1. Identification of that person, including without limitation present full name, all prior names or aliases, including full birth name, present house address and all prior addresses for the immediately preceding five year period, date and location of birth and social security number.
2. The nature and description of each conviction or judicial action, the date and location, the court and public agency involved~~,~~ and the file or cause number of the case.
3. A written declaration that each signer swears to its contents under penalty of perjury.

C. The certificate of disclosure submitted on behalf of a corporation shall be executed by any two executive officers or directors of that corporation.

D. For purposes of subsection A of this section, "person" means a natural person, any public or private corporation, its officers, directors, trustees, incorporators and persons controlling or holding over ten per cent of the issued and outstanding common shares or ten per cent of any other proprietary, beneficial or membership interest in the corporation, a partnership, including all general partners and limited partners controlling a ten per cent or more beneficial interest in the partnership, association or society of persons, the federal government and any of its departments or agencies, this state and any of its agencies, departments, political subdivisions, counties, towns or municipal corporations.

E. Initial certificates shall be delivered to the department within ninety days after the person first becomes subject to the disclosure requirements of this section. Certificates shall be filed annually thereafter within ninety days after the close of that person's fiscal year as reported on the initial certificate.

F. By December 1 of each year, the department shall provide the attorney general with a list of all persons who were convicted of the crimes or who are the subject of the judicial actions described in subsection A of this section, as indicated from the certificates of disclosure filed during the preceding year.

G. In lieu of the certificate of disclosure prescribed by this section, a corporation may submit to the director copies of annual reports filed with the securities and exchange commission pursuant to section 13 or 15(d) of the securities exchange act of 1934 (15 United States Code section 78), commonly known as a "10-K form", within ninety days of filing the annual report. The initial submission to the director shall include 10-K forms for the preceding five years.

H. A person who contributes information for a certificate of disclosure and who makes an untrue statement of material fact concerning the requirements of subsection B of this section or withholds any material fact concerning the requirements of subsection B of this section or a person who is obligated to file a certificate of disclosure and who fails to file the certificate is subject to the remedies prescribed in section 49-110.

Sec. 16. Section 49-241, Arizona Revised Statutes, is amended to read:

49-241. Permit required to discharge

A. Unless otherwise provided by this article, any person who discharges or who owns or operates a facility that discharges shall obtain an aquifer protection permit from the director.

B. Unless exempted under section 49-250, or unless the director determines that the facility will be designed, constructed and operated so that there will be no migration of pollutants directly to the aquifer or to the vadose zone, the following are considered to be discharging facilities and shall be operated pursuant to either an individual permit or a general permit, including agricultural general permits, under this article:

1. Surface impoundments, including holding, storage settling, treatment or disposal pits, ponds and lagoons.
2. Solid waste disposal facilities except for mining overburden and wall rock that has not been and will not be subject to mine leaching operations.
3. Injection wells.
4. Land treatment facilities.
5. Facilities ~~which~~ THAT add a pollutant to a salt dome formation, salt bed formation, dry well or underground cave or mine.
6. Mine tailings piles and ponds.

7. Mine leaching operations.

8. Underground water storage facilities.

~~9. Point source discharges to navigable waters.~~

~~10.~~ 9. Sewage treatment facilities, including on-site wastewater treatment facilities.

~~11.~~ 10. Wetlands designed and constructed to treat municipal and domestic wastewater for underground storage.

C. The director shall provide public notice and an opportunity for public comment on any request for a determination from the director under subsection B of this section that there will be no migration of pollutants from a facility. A public hearing may be held at the discretion of the director if sufficient public comment warrants a hearing. The director may inspect and may require reasonable conditions and appropriate monitoring and reporting requirements for a facility managing pollutants that are determined not to migrate under subsection B of this section. The director may identify types of facilities, available technologies and technical criteria for facilities that will qualify for such a determination. The director's determination may be revoked on evidence that pollutants have migrated from the facility. The director may impose a review fee for a determination under subsection B of this section. Any issuance, denial or revocation of a determination may be appealed pursuant to section 49-323.

D. The director shall publish a list of the names and locations of existing facilities that are required to obtain an aquifer protection permit. The director may revise the list as needed. Any revised list shall contain deadlines for the submittal of applications for aquifer protection permits, based on the degree of risk to the public health and welfare and the environment and based on a work plan of the director designed to process all applications for an aquifer protection permit no later than January 1, 2004 for nonmining facilities and no later than January 1, 2006 for mining facilities.

E. The director shall annually make the fee schedule for aquifer protection permit applications available to the public on request and on the department's ~~web site~~ WEBSITE, and a list of the names and locations of the facilities that have filed applications for aquifer protection permits, with a description of the status of each application, shall be available to the public on request.

F. The director shall prescribe the procedures for aquifer protection permit applications and fee collection under this section. The director shall deposit, pursuant to sections 35-146 and 35-147, all monies collected under this section in the water quality fee fund established by section

49-210 and may authorize expenditures from the fund, subject to legislative appropriation, to pay reasonable and necessary costs of processing and issuing permits and administering the registration program.

Sec. 17. Section 49-243, Arizona Revised Statutes, is amended to read:

49-243. Information and criteria for issuing individual permit; definition

A. The director shall consider, and the applicant for an individual permit may be required to furnish with the application, the following information:

1. The design of the discharge facility. When formal as-built submittals are unavailable, the applicant shall provide sufficient documentation to allow evaluation of those elements of the facility affecting discharge pursuant to the demonstration required in subsection B, paragraph 1 of this section.

2. A description of how the facility will be operated.

3. Existing and proposed pollutant control measures.

4. A hydrogeologic study defining and characterizing the discharge impact area, including the vadose zone.

5. The use of water from aquifers in the discharge impact area.

6. The existing quality of the water in the aquifers in the discharge impact area.

7. The characteristics of the pollutants discharged by the facility.

8. Closure strategy.

9. Any other relevant federal or state permits issued to the applicant.

10. Any other relevant information the director may require.

B. The director shall issue a permit to a person for a facility other than water storage at a storage facility pursuant to title 45, chapter 3.1 if the person demonstrates that either paragraphs 1 and 2 or paragraphs 1 and 3 of this subsection will be met:

1. That the facility will be so designed, constructed and operated as to ensure the greatest degree of discharge reduction achievable through application of the best available demonstrated control technology, processes, operating methods or other alternatives, including, where practicable, a technology permitting no discharge of pollutants. In determining best available demonstrated control technology, processes, operating methods or other alternatives, the director shall take into account any treatment process contributing to the discharge, site specific hydrologic and geologic characteristics and other environmental factors, the opportunity for water conservation or augmentation and economic impacts of the use of alternative technologies, processes or operating methods on an industry-wide basis. A

discharge reduction to an aquifer achievable solely by means of site specific characteristics does not, in itself, constitute compliance with this paragraph. The requirements of this paragraph for wetlands designed and constructed to treat municipal and domestic wastewater for underground storage pursuant to section 49-241, subsection B~~, paragraph 11~~ may be met by including seepage through the bottom of the facility if it is demonstrated that site characteristics can act to achieve performance levels established as the best available demonstrated control technology by the director. In addition, the director shall consider the following factors for existing facilities:

(a) Toxicity, concentrations and quantities of discharge likely to reach an aquifer from various types of control technologies.

(b) The total costs of the application of the technology in relation to the discharge reduction to be achieved from such application.

(c) The age of equipment and facilities involved.

(d) The industrial and control process employed.

(e) The engineering aspects of the application of various types of control techniques.

(f) Process changes.

(g) Non-water quality environmental impacts.

(h) The extent to which water available for beneficial uses will be conserved by a particular type of control technology.

2. That pollutants discharged will in no event cause or contribute to a violation of aquifer water quality standards at the applicable point of compliance for the facility.

3. That no pollutants discharged will further degrade at the applicable point of compliance the quality of any aquifer that at the time of the issuance of the permit violates the aquifer quality standard for that pollutant.

C. An applicant shall satisfy the requirements of subsection B, paragraph 1 of this section either by making a demonstration that the facility will meet the criteria of that paragraph or by agreeing to utilize the appropriate presumptive controls adopted by the director pursuant to section 49-243.01, subsection A.

D. In assessing technology, processes, operating methods and other alternatives for THE purposes of this section, "practicable" means able to be reasonably done from the standpoint of technical practicality and, except for pollutants addressed in subsection I of this section, economically achievable on an industry-wide basis.

E. The determination of economic impact on an industry-wide basis for purposes of subsection B, paragraph 1 of this section shall take into account differences in industry sectors, the type and size of the operation and the reasonableness of applying controls in an arid or semiarid setting.

F. Control measures designed to further reduce discharge may not be required if the director determines that site specific conditions, in conjunction with technology, processes, operating methods or other alternatives are sufficient to meet the requirements of subsection B, paragraph 1 of this section.

G. A discharging facility at an open pit mining operation shall be deemed to satisfy the requirements of subsection B, paragraph 1 of this section if the director determines that both of the following conditions are satisfied:
1. The mine pit creates a passive containment that is sufficient to capture the pollutants discharged and that is hydrologically isolated to the extent that it does not allow pollutant migration from the capture zone. For THE purposes of this paragraph, "passive containment" means natural or engineered topographical, geological or hydrological control measures that can operate without continuous maintenance. Monitoring and inspections to confirm performance of the passive containment do not constitute maintenance.
2. The discharging facility employs additional processes, operating methods or other alternatives to minimize discharge.

H. The director shall issue a permit to a person for water storage at a storage facility proposed under title 45, chapter 3.1 if the person demonstrates that the facility will be so designed, constructed and operated as to ensure that the project will not cause or contribute to the violation of any standard adopted pursuant to section 49-223 at the applicable point of compliance for the facility.

I. With respect to the following pollutants, the permit applicant for a new facility must meet the criteria of subsection B, paragraph 1 of this section to limit discharges to the maximum extent practicable regardless of cost:
1. Any organic substance listed by the secretary of the department of health and human services pursuant to 42 United States Code section 241 (b)(4), as known to be carcinogens or reasonably anticipated to be carcinogens.

2. Any organic substance listed in 40 Code of Federal Regulations section 261.33(e), regardless of whether the substance is a waste subject to regulation under the resource conservation recovery act (P.L. 94-580; 90 Stat. 2795).
3. Any organic toxic pollutant that the director lists by rule after determining that minute amounts of that pollutant in drinking water will present a substantial short-term or long-term human health threat.

J. The director ~~may~~, by rule, MAY prescribe requirements for issuing a single permit applicable to all similar facilities under common ownership and located in a contiguous geographic area in lieu of an individual permit for each facility.

K. The director shall consider and may prescribe in the permit the following terms and conditions as necessary to ensure compliance with this article:
1. Monitoring requirements.
2. Record keeping and reporting requirements.
3. Contingency plan requirements.
4. Discharge limitations.
5. Compliance schedule requirements.
6. Closure requirements and, for a facility that cannot achieve clean closure, postclosure monitoring and maintenance requirements.
7. Alert levels ~~which~~ THAT, when exceeded, may require adjustments of permit conditions or appropriate actions as are required by the contingency plans.
8. Such other terms and conditions as the director deems necessary to ensure compliance with this article.

L. The director may include in an aquifer protection permit for an existing facility the requirement that the owner or operator of the facility undertake a remedial action, as defined in section 49-281, to prevent, minimize or mitigate damage to the public health or welfare or to the waters of the state resulting from a discharge that occurred before August 13, 1986, if the following conditions are met:
1. The selection of remedial action, including the level and extent of cleanup, was determined according to the criteria in section 49-282.06~~,~~ and the rules adopted pursuant to that section.
2. The pollutant that was discharged constituted a hazardous substance.

M. The director may include in an aquifer protection permit as a condition the mitigation measures described in an order issued under section 49-286.

N. The director may deny a permit for a facility if ~~he~~ THE DIRECTOR determines that the applicant is incapable of fully carrying out the terms and conditions of the permit, including any conditions that require monitoring or installing and maintaining discharge control measures. The director may require the applicant to furnish information, such as past performance, including compliance with or violations of similar laws or rules, and technical and financial competence, relevant to its capability to comply with the permit terms and conditions. For the purposes of evaluating an applicant's financial competence for closure, the director may consider a closure strategy and cost estimate rather than a detailed closure plan. A demonstration of financial responsibility made for a facility as prescribed by section 49-770 shall suffice, in whole or in part, for any demonstration of financial responsibility prescribed by this section. A demonstration of financial assurance or competence required under this section or section 49-770 for a facility shall not be required ~~prior to~~ BEFORE completion of construction but shall be required before the department issues approval to operate. Financial information required to be supplied under this subsection is confidential.

O. The director shall require an applicant for an individual permit to submit evidence that the discharging facility complies with applicable municipal or county zoning ordinances and regulations. The director shall not issue the permit unless it appears from the evidence submitted by the applicant that the facility complies with the applicable zoning ordinances and regulations.

P. The director may issue a single area-wide permit applicable to facilities under common ownership and located in a contiguous geographic area in lieu of an individual permit for each facility. In issuing an area-wide permit, the demonstration required under subsection B, paragraphs 2 and 3 of this section may be considered collectively for all facilities included in the permit. The director may evaluate discharge reduction collectively for existing facilities in the pollutant management area by considering any one or all of the factors set forth in subsection B, paragraph 1~~, subdivisions (a) through (h)~~ of this section. The director may consolidate those permit conditions listed in subsection K of this section that have general applicability to the facilities included in the area-wide permit. An area-wide permit shall specify all of the following:
1. A description of the pollutant management area and point or points of compliance.

2. Those facilities that have been evaluated individually for meeting the criteria in subsection B, paragraph 1 of this section and THAT are included in the area-wide permit.
3. For multiple facilities within the pollutant management area that are substantially similar in nature and, considered alone, would have a small discharge impact area compared to other facilities in the area, narrative permit conditions may be used to define the best available demonstrated control technology, processes, operating methods or other alternatives consistent with subsection B, paragraph 1 of this section replacing the need for an individual technical review.
4. A compliance schedule for submittal and evaluation of information regarding design and discharge for existing facilities within the pollutant management area that, because of the small size, quantity or quality of discharge, or physical location with regard to the point or points of compliance, the director has determined that review for the purposes of subsection B, paragraph 1 of this section shall be conducted in the future. In determining the requirements and length of a compliance schedule for an area-wide permit, the director shall consider the character and impact of the discharge, the nature of the activities necessary to prepare appropriate technical submittals, the number of persons potentially affected by the discharge, the current state of treatment technology, and the age of the facility.

Q. The director may expedite processing of an aquifer protection permit application by a permit applicant who proposes a new facility to discharge liquids that do not contain any pollutant in a concentration that exceeds a numeric aquifer water quality standard. The director shall not require the applicant to complete a hydrogeologic study in order to obtain the permit unless the permit applicant is relying on site specific characteristics to meet the requirements of subsection B, paragraph 1 of this section or unless the study is necessary to demonstrate compliance with narrative aquifer water quality standards. Applications made pursuant to this subsection shall have precedence and be considered by the department before all other aquifer protection permit applications.

Sec. 18. Section 49-245.01, Arizona Revised Statutes, is amended to read:
49-245.01. Storm water general permit
A. A general permit is issued for facilities used solely for the management of storm water and that are regulated by the clean water act, including catchments, impoundments and sumps, provided the following conditions are met:
1. The owner or operator of the facility has obtained a national pollutant discharge elimination system permit issued pursuant to the clean water act for any storm water discharges at the

facility, or that the facility has applied, and not been denied coverage, for this type of permit for any storm water discharges at the facility.
2. The owner or operator notifies the director that the facility has met the requirements of paragraph 1 of this subsection.
3. The owner or operator of the facility has in place any required storm water pollution prevention plan.

B. If the director determines that discharges of storm water from a facility or facilities covered by this general permit are causing a violation of aquifer water quality standards AT THE APPLICABLE POINT OF COMPLIANCE the director may revoke the general permit of the facility or facilities or may require that an individual permit be obtained pursuant to section 49-243. If the director determines that discharges of storm water from a facility or facilities covered by this general permit ~~may~~, with reasonable probability, MAY cause a violation of aquifer water quality standards AT THE APPLICABLE POINT OF COMPLIANCE, the director may require a facility or facilities covered by the general permit to obtain an individual permit pursuant to section 49-243.

Sec. 19. Title 49, chapter 2, article 5, Arizona Revised Statutes, is amended by adding section 49-290.02, to read:
49-290.02. Applicability of Arizona department of water resources requirements; metal mining facilities
A. A METAL MINING FACILITY CONDUCTING MITIGATION ACTIVITIES PURSUANT TO AN ORDER ISSUED BY THE DIRECTOR OF ENVIRONMENTAL QUALITY PURSUANT TO SECTION 49-286 SHALL OBTAIN AND COMPLY WITH APPLICABLE PERMITS, APPROVALS OR OTHER AUTHORIZATIONS REQUIRED BY THE DEPARTMENT OF WATER RESOURCES. ON CONSULTATION WITH THE DIRECTOR OF ENVIRONMENTAL QUALITY, THE DIRECTOR OF WATER RESOURCES MAY WAIVE ITS APPLICABLE PERMITS, APPROVALS OR AUTHORIZATIONS IF THE DIRECTOR OF WATER RESOURCES DETERMINES THAT THE PERMIT, APPROVAL OR OTHER AUTHORIZATION UNREASONABLY LIMITS THE COMPLETION OF MITIGATION ACTIVITIES UNDERTAKEN BY A METAL MINING FACILITY PURSUANT TO AN ORDER ISSUED PURSUANT TO SECTION 49-286 AND IF THE WAIVER DOES NOT CONFLICT WITH THE STATUTORY INTENT OF THE PERMIT, APPROVAL OR OTHER AUTHORIZATION. THE DEPARTMENT OF WATER RESOURCES SHALL EXPEDITE THE PROCESSING AND ISSUANCE OF PERMITS, APPROVALS OR AUTHORIZATIONS TO FACILITATE THE PROMPT CONDUCT OF APPROVED MITIGATION ACTIVITIES UNDERTAKEN BY A METAL MINING FACILITY PURSUANT TO AN ORDER ISSUED PURSUANT TO SECTION 49-286. IF THE

DEPARTMENT OF WATER RESOURCES FAILS TO ISSUE OR DENY A PERMIT WITHIN ONE HUNDRED TWENTY DAYS OF THE DATE OF RECEIPT OF A COMPLETE APPLICATION FOR A PERMIT, APPROVAL OR AUTHORIZATION REQUIRED FOR COMPLETION OF THE MITIGATION ACTIVITIES APPROVED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY PURSUANT TO AN ORDER ISSUED PURSUANT TO SECTION 49-286, THE DEPARTMENT OF ENVIRONMENTAL QUALITY MAY AUTHORIZE THE METAL MINING FACILITY CONDUCTING THE APPROVED MITIGATION ACTIVITIES TO PROCEED WITH THOSE ACTIVITIES AND THAT METAL MINING FACILITY SHALL NOT BE SUBJECT TO ANY PENALTIES FOR FAILURE TO OBTAIN THE PERMIT, APPROVAL OR AUTHORIZATION FROM THE DEPARTMENT OF WATER RESOURCES, BUT SHALL BE REQUIRED TO COMPLY WITH THE SUBSTANTIVE REQUIREMENTS OF SUCH PERMIT, APPROVAL OR AUTHORIZATION. THE DETERMINATION OF WHETHER AN APPLICATION FOR A PERMIT IS COMPLETE SHALL BE MADE BY THE DEPARTMENT OF WATER RESOURCES. A METAL MINING FACILITY CONDUCTING MITIGATION ACTIVITIES PURSUANT TO AN ORDER ISSUED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY PURSUANT TO SECTION 49-286 THAT USES GROUNDWATER WITHDRAWN IN AN ACTIVE MANAGEMENT AREA SHALL CONTINUE TO PAY ANY APPLICABLE GROUNDWATER WITHDRAWAL FEE FOR THE GROUNDWATER THE METAL MINING FACILITY WITHDREW AND USED OR RECEIVED AND USED.

B. THE DIRECTOR OF ENVIRONMENTAL QUALITY AND THE DIRECTOR OF WATER RESOURCES SHALL COORDINATE THEIR EFFORTS TO EXPEDITE MITIGATION ACTIVITIES UNDERTAKEN BY A METAL MINING FACILITY PURSUANT TO AN ORDER ISSUED PURSUANT TO SECTION 49-286, INCLUDING OBTAINING INFORMATION PERTINENT TO SITE INVESTIGATIONS, SITE MANAGEMENT AND BENEFICIAL USE OF WATER WITHDRAWN FOR MITIGATION PURPOSES.

C. WITH RESPECT TO MITIGATION ACTIVITIES UNDERTAKEN BY A METAL MINING FACILITY PURSUANT TO AN ORDER ISSUED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY PURSUANT TO SECTION 49-286, THE DIRECTOR OF WATER RESOURCES MAY WAIVE ANY REGULATORY REQUIREMENT ADOPTED PURSUANT TO TITLE 45 WITH RESPECT TO A SITE OR PORTION OF A SITE AS PART OF A MITIGATION ORDER ISSUED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY PURSUANT TO SECTION 49-286 FOR THAT SITE OR PORTION OF A SITE IF THE REGULATORY REQUIREMENT CONFLICTS WITH THE IMPLEMENTATION OF THE ORDERED MITIGATION ACTIVITIES, PROVIDED THAT THE WAIVER DOES NOT RESULT IN ADVERSE IMPACTS TO OTHER LAND AND WATER USERS. NO WAIVER MAY BE GRANTED UNDER THIS SUBSECTION IF IT IS PROHIBITED BY FEDERAL LAW OR IF THE WAIVER WOULD JEOPARDIZE THE CONTINUED DELEGATION TO THE STATE OF AUTHORITY TO IMPLEMENT A FEDERAL ENVIRONMENTAL PROGRAM.

Sec. 20. Purpose

Pursuant to section 41-2955, subsection E, Arizona Revised Statutes, the purpose of the mining advisory council is to review mining policy in this state and provide assistance to state agencies regarding rules affecting mining in this state.

APPROVED BY THE GOVERNOR MAY 11, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 12, 2010.

HB2661: Statewide Water Augmentation

HB2661, as amended in House Water and Energy, directs the Director of the Arizona Department of Water Resources to appoint a committee of up to fifteen people who are to identify the water needs for the various regions of the state. The membership of the committee is required to reflect a regional and geographic cross-section of the state. The commission will be co-chaired by the director and one of the members.

The commission shall:

1. Compile and consider the projected water needs of each county in the next 35, 50, and 100 years.

2. Indentify and quantify water supplies currently available in each county.

3. Indentify potential water supplies that could be used to meet demands in the next 25, 50, and 100 years.

4. Identify legal and technical issues associated with the use of those supplies.

5. Identify potential financing mechanisms to finance the acquisition of water supplies and the infrastructure needed to treat and deliver those supplies.

6. Make recommendations for additional studies and evaluation.

The bill directs ADWR, the Central Arizona Water Conservation District, the Arizona Water Banking Authority, and rural water study groups to provide technical support for the commission.

The commission is required to deliver a report of its findings, including suggestions for legislation, to the Governor and Legislature before October 1, 2011. The Commission is repealed on September 30, 2012.

(Final 5/13/2010)
Sponsor: Representative Tobin
Last Action: Signed by the Governor Laws 2010 Chapter 329

House Engrossed

State of Arizona
House of Representatives
Forty-ninth Legislature
Second Regular Session
2010

CHAPTER 329

HOUSE BILL 2661

AN ACT

ESTABLISHING THE WATER RESOURCES DEVELOPMENT COMMISSION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Water resources development commission; members; responsibilities; report; delayed repeal

A. The director of the department of water resources shall appoint a water resources development commission. The commission membership shall be made up of no more than fifteen members with knowledge about a variety of water resource and water management issues around the state and representing a regional and geographic cross-section of the state. The director or designee of the director shall act as chair of the commission. A co-chair shall be appointed by the director from the membership of the commission.

B. The commission shall:

1. Compile and consider the projected water needs of each county in the next twenty-five, fifty and one hundred years.

2. Identify and quantify the water supplies currently available in each county.

3. Identify potential water supplies that could be used to meet additional demands in the next twenty-five, fifty and one hundred years.

4. Identify any legal and technical issues associated with use of those supplies.

5. Identify potential mechanisms to finance the acquisition of water supplies and any infrastructure necessary to treat or deliver the water supplies.

6. Make recommendations regarding the need for further studies and evaluations.

C. The department of water resources, central Arizona water conservation district, Arizona water banking authority, and rural water study groups shall provide technical support for the commission.

D. The commission shall prepare a report of its findings and recommendations, including recommendations for suggested legislation, and submit it to the governor, the speaker of the house of representatives and the president of the senate, on or before October 1, 2011. The commission shall provide a copy of this report to the secretary of state.

E. This section is repealed from and after September 30, 2012.

APPROVED BY THE GOVERNOR MAY 11, 2010.
FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 12, 2010.

SB1141: CAGRD Revenue Bonding

SB1141 provides a mechanism by which the members of the Central Arizona Groundwater Replenishment District (CAGRD) can more predictably pay to acquire the water supplies they need to meet their legally required groundwater replenishment obligations. The measure also includes a firewall between CAGRD revenues for the acquisition of new supplies and CAWCD or CAGRD taxing authorities. As part of this structure, the bill specifies the calculation of the membership fees that will be used to repay the revenue bonds authorized by this bill. SB1141 also makes improvements to the process by which CAGRD's Plans of Operation are adopted and maintained. SB1141 additionally clarifies the process by which a member land joins the CAGRD. SB1141 supports AMWUA's Safe-Yield goal for Active Management Areas and will help ensure that the CAGRD's current obligations for replenishment can be achieved predictably and fairly for residents and businesses.

Governor Jan Brewer along with those from CAWCD, AMWUA, the City of Phoenix, State Legislators and staff, at the Ceremonial Signing of SB 1141.

Specific Provisions:

- Requires ADWR to include findings in its decision on whether the CAGRD's Plan of Operation is consistent with the AMAs' management goals.

- Requires ADWR to provide a summary in its decision of all written comments submitted and all the public comments made at the public hearing.

- Expands from six to eight years the time in which ADWR may find that the Plan of Operation has become inconsistent with the AMAs' management goals and to request a revised Plan.

- Shortens the time allowed for the CAGRD to submit a revised Plan to one year from two years, but allows ADWR to extend this time for good cause.

- Changes the expiration date for the Determination from January 1 to December 31 of the year following the year in which the CAGRD is required to submit its next Plan OR the date on which ADWR issues a decision that the next Plan is consistent with the AMAs' management goals.

- Authorizes the CAGRD to issue revenue bonds to acquire, lease, or exchange water or water rights for the purpose of meeting its groundwater replenishment obligations.

- Raises the district's existing bond debt limit to $500 million from $250 million.

- Prohibits the use of ad valorem taxes levied by the district to repay the bonds.

- Establishes prorated formulas for the calculation of membership dues to be used to repay debt incurred by the district to meet its replenishment obligations, with separate calculations for Member Lands (ML) and Member Service Areas (MSA).

    - Member Lands: Prorated among the Phoenix, Pinal, and Tucson AMAs based on current and projected replenishment obligation, then further prorated as a uniform fee per lot against all parcels.

    - Member Service Areas: Prorated among all MSAs, as a uniform per acre-foot fee levied against the dues volume.

- Provides a formula for a “make up” charge if a dues volume for one year is greater than the dues volume for the previous year.

- Requires that a Member Land’s (ML) declaration be approved by CAWCD before it is recorded.

- Requires CAWCD to be a party to a Member Land Agreement between a landowner and the municipal water provider for the property, under which the provider submits water delivery information to CAWCD annually for the purpose of calculating the replenishment assessment for each ML.

The bill was amended in Senate Natural Resources to prohibit the CAGRD from using proceeds from these newly authorized bonds to acquire groundwater from rural sources.

SB1141 was substituted in the House for the identical HB2448.

HB2083 Drought Emergency Groundwater Transfers was amended with trailer language that restricted the use of CAGRD bond proceeds from being used to acquire water supplies in McMullen Valley (Laws 2010 Chapter 252).

(Final 5/12/10)
Sponsor: Senator Nelson
Version: Signed by the Governor Laws 2010 Chapter 300

Senate Engrossed

State of Arizona
Senate
Forty-ninth
Legislature
Second Regular Session
2010

CHAPTER 300

SENATE BILL 1141

AN ACT

AMENDING SECTIONS 45-576.01, 45-576.03, 48-3712, 48-3713, 48-3751, 48-3762, 48-3772 AND 48-3774, ARIZONA REVISED STATUTES; AMENDING TITLE 48, CHAPTER 22, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 48-3779; AMENDING SECTION 48-3780.01, ARIZONA REVISED STATUTES; RELATING TO GROUNDWATER REPLENISHMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 45-576.01, Arizona Revised Statutes, is amended to read:

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.~~

2. THE DIRECTOR'S MOST RECENT DETERMINATION PURSUANT TO SECTION 45-576.03, SUBSECTION M, O OR R 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.

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.

Sec. 2. Section 45-576.03, Arizona Revised Statutes, is amended to read:

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, ~~the designation~~ EXCEPT AS PROVIDED IN SUBSECTION S OF THIS SECTION, THE 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 public hearing.~~

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 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 of~~ YEAR AFTER the date that the director notifies the conservation district of such a ~~determination~~ FINDING, 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.

Sec. 3. Section 48-3712, Arizona Revised Statutes, is amended to read:

48-3712. Powers and duties of the board

A. The board shall:

1. Manage and conduct the affairs and business of the district.

2. Make and execute all necessary contracts and other instruments which shall be signed by the president or, in the president's absence, by another member of the board designated for that purpose, and attested by the secretary.

3. Establish bylaws and rules for the governing of the board and for the functions of the district.

4. Perform all acts necessary to carry out the purposes of this chapter.

5. Except as provided in subsection C of this section and in sections 48-3713.03, 48-3715.01, 48-3715.03, 48-3715.05, 48-3772 and 48-3773, require that all funds received on behalf of the district shall be deposited, pursuant to sections 35-146 and 35-147, in a special fund established by the state to be expended at the direction of the board to effectuate the provisions and purposes of this chapter. On notice from the board, 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 fund.

6. Adopt an ordinance or ordinances to establish a revenue bonding program that pledges to bond repayment any monies received or to be received by the district from any source except ad valorem tax revenues~~, replenishment assessment revenues and replenishment tax generated under article 4 of this chapter~~.

7. Employ such agents, engineers, attorneys and employees not readily available from existing state agencies.

B. The board may:
1. Accept grants, gifts or donations of money or other property from any source which may be expended for any purpose consistent with the provisions of this chapter.
2. Establish a revolving fund for the purpose of defraying the costs and expenses of the district.

Sec. 4. Section 48-3713, Arizona Revised Statutes, is amended to read:
48-3713. Powers of district
A. The district, acting through its board, shall:
1. Enter into a contract or contracts with the secretary to accomplish the purposes of this chapter.
2. Provide for the repayment of construction costs, interest and annual operation, maintenance and replacement costs allocated to the district and payment of administrative costs and expenses of the district.
3. Levy an annual tax to defray district costs and expenses and to effect repayment of a portion of the district's obligation to the United States. Such tax levy shall not exceed ten cents per each one hundred dollars of assessed valuation of the taxable property within the district.
4. Establish and cause to be collected charges for water consistent with federal reclamation law and contracts entered into between the district and the secretary pursuant to this chapter.
5. Cooperate and contract with the secretary to carry out the provisions of the reclamation act of June 17, 1902 (32 Stat. 388), and acts amendatory thereof or supplementary thereto, including the Colorado river basin project act (82 Stat. 885).
6. Establish and maintain reserve accounts in amounts which may be required by any contract between the district and the secretary and in such additional amounts as may be deemed necessary to accomplish the purposes of this chapter.
7. Coordinate and cooperate with the Arizona water banking authority.

B. The district, acting through its board, may:
1. Contract with the United States to be the operating agent of the central Arizona project and to maintain all or portions of the project and subcontract with others for the operation or maintenance of portions of the project.
2. Acquire in any lawful manner real and personal property of every kind necessary or convenient for the uses and purposes of the district.

3. Acquire electricity or other forms of energy necessary for the operation of the central Arizona project. Effective retroactively to taxable years beginning from and after December 31, 1984, the acquisition of electricity or other forms of energy by the district for the purposes of pumping central Arizona project water shall not be subject to any state or municipal transaction privilege or use tax.

4. Contract for or perform feasibility studies of water storage, storage facilities and recovery wells.

5. Acquire, develop, construct, operate, maintain and acquire permits for water storage, storage facilities and recovery wells pursuant to title 45, chapter 3.1 using surplus central Arizona project water.

6. Enter into contracts to acquire, permit, develop, construct, operate and maintain water storage, storage facilities and recovery wells with any person pursuant to title 45, chapter 3.1. Such projects may utilize water, including central Arizona project water, which such persons have the right to store pursuant to title 45, chapter 3.1.

7. Plan, analyze, propose, apply for, construct, operate, maintain and dismantle state demonstration projects for water storage and recovery under title 45, chapter 3.1, article 6.

8. Acquire real property for state demonstration projects for water storage and recovery under title 45, chapter 3.1 by purchase, lease, donation, dedication, exchange or other lawful means in areas suitable for demonstration projects for water storage and recovery of state water in counties in which the district has water transportation facilities.

9. Advance monies necessary for the installation, construction, repair, maintenance or replacement of capital improvements related to any water storage, storage facilities and recovery wells or any other replenishment activities of the district undertaken pursuant to article 4 of this chapter. Monies advanced under this paragraph bear interest as determined by the board. Repayment of the advances shall be amortized over the useful life of the capital improvements, as determined by the board. Utilization of excess capacity in a state demonstration project for replenishment purposes pursuant to section 48-3772, subsection B, paragraph 8 does not constitute the advancement of monies under this paragraph. MONIES ADVANCED UNDER THIS PARAGRAPH SHALL NOT BE USED TO PAY THE PRINCIPAL OF, OR INTEREST OR PREMIUM ON, REVENUE BONDS ISSUED PURSUANT TO ARTICLE 3 OF THIS CHAPTER TO ACQUIRE, LEASE OR EXCHANGE WATER OR WATER RIGHTS AND DEVELOP INFRASTRUCTURE NECESSARY FOR THE DISTRICT TO PERFORM ITS REPLENISHMENT OBLIGATIONS.

10. Advance monies for the payment of the operation and administrative costs and expenses of the district relating to performance of the groundwater replenishment obligations under article

4 of this chapter, including replenishment reserve activities and reasonable reserves. Monies advanced under this paragraph shall bear interest as determined by the board. Repayment of the advances may be amortized over a reasonable period, as determined by the board. MONIES ADVANCED UNDER THIS PARAGRAPH SHALL NOT BE USED TO PAY THE PRINCIPAL OF, OR INTEREST OR PREMIUM ON, REVENUE BONDS ISSUED PURSUANT TO ARTICLE 3 OF THIS CHAPTER TO ACQUIRE, LEASE OR EXCHANGE WATER OR WATER RIGHTS AND DEVELOP INFRASTRUCTURE NECESSARY FOR THE DISTRICT TO PERFORM ITS REPLENISHMENT OBLIGATIONS.

11. Assign to the account of the district at fair value long-term storage credits, as defined in section 45-802.01, held by the district.

12. Provide technical and operational support to the Arizona water banking authority and shall be reimbursed by the Arizona water banking authority for providing that support.

13. Appoint certain employees of the district as peace officers only for purposes of providing law enforcement on property which is under the control of the district. The district shall not have any more than ten employees designated as peace officers at any one time.

14. Except for electric capacity and energy allocated to the Arizona power authority under the Hoover power plant act of 1984 (P.L. 98-381; 98 Stat. 1333), sell, resell, deliver or distribute electricity or other forms of energy acquired by the district for purposes of operating the central Arizona project but not needed by the district for such purposes, except that the district may not sell, resell, deliver or distribute electricity to a retail electric customer as defined in section 30-801.

C. The authority granted under title 45, chapter 3.1, article 6 does not authorize the district to withdraw and use groundwater that exists naturally in the basin in which the stored water is located. The authority provided in subsection B, paragraph 7 of this section is in addition to and distinct from any authority granted to the district by subsection B, paragraphs 5 and 6 of this section.

D. The functions of the district under subsection B, paragraph 5 of this section may be performed on behalf of the district by other persons under contract with the district.

E. The district may enter into and carry out subcontracts with water users for the delivery of water through the facilities of the central Arizona project. Such contracts as may be entered into between the district and the secretary and between the district and water users shall be subject to the provisions of the Colorado river basin project act (P.L. 90-537; 82 Stat. 885).

Before entering into such contracts the district shall determine that the proposed contract or proposed amendment, and all related exhibits and agreements, have been submitted to the director of water resources as required by section 45-107, subsection D.

F. The district may in conjunction with any other marketing entity or entities be a marketing entity under section 107 of the Hoover power plant act of 1984 (P.L. 98-381; 98 Stat. 1333) solely for the limited purposes of establishing and collecting the additional rate components authorized by that act and may enter into contracts for that purpose. This subsection does not limit the authority of the district under subsection B, paragraph 3 of this section and does not prohibit the United States western area power administration or the Arizona power authority from making incidental disposition of power acquired by the district for purposes of operating the central Arizona project but not needed by the district for such purposes.

G. Persons who are appointed as peace officers by the district pursuant to subsection B of this section shall provide law enforcement on the property which is under the control of the district. District peace officers shall not preempt the authority and jurisdiction of other police agencies of this state or its political subdivisions. A district peace officer shall notify appropriate agencies of this state and its political subdivisions after making a felony arrest or beginning a felony investigation within the jurisdiction of that agency. District peace officers shall have at least those qualifications prescribed by section 41-1822 and are not eligible to participate in the public safety personnel retirement system. The district is not eligible to receive funds from the peace officers' training fund specified in section 41-1825. The district shall reimburse the Arizona peace officer standards and training board for all training expenses incurred by the board for the district and all audit expenses incurred by the board in reviewing compliance by the district with peace officer standards and law enforcement standards established by the board.

Sec. 5. Section 48-3751, Arizona Revised Statutes, is amended to read:

48-3751. Ordinances; revenue bonds

A. An ordinance adopted pursuant to section 48-3712 shall set forth a plan for the district to borrow money and issue its negotiable revenue bonds. The ordinance may determine the maximum amount of bonds, the maximum rate of interest and the time of payment of the bonds.

B. The principal of and interest and premiums, if any, on bonds are payable solely from revenues of the district as may be pledged by the district including monies received from the sales of services or from contracts of every nature. ~~A bond shall not be issued and interest shall not be paid pursuant to this section if taxes or assessments on or against the real property or other property may be levied.~~ AD VALOREM PROPERTY TAXES SHALL NOT BE PLEDGED TO, LEVIED FOR OR USED TO PAY PRINCIPAL, INTEREST OR PREMIUMS ON ANY BONDS ISSUED UNDER THIS ARTICLE. Payment is not enforceable out of any monies other than the revenues pledged to the payment. No referendum or election is required for the issuance of bonds authorized in this article.

C. Bonds may bear interest at rates that may fluctuate below a maximum interest rate established in the ordinance. The board may designate a remarketing agent to set and reset interest rates in accordance with the ordinance or any authorizing resolution or trust indenture adopted or entered into by the district in accordance with the ordinance. The district may contract for and purchase credit enhancement in the form of letters of credit, surety bonds, bond insurance policies, bond purchase agreements and other contractual arrangements providing either credit for the bonds, liquidity to the bondholders or credit facilities obtained in lieu of reserves.

D. Subject to the limitations of this article, the district may do all things, enter into all contracts and dispose of bond proceeds in the manner deemed necessary by the board to effectuate the purpose for which the bonds are issued and secure payment of the principal and interest on the bonds.

Sec. 6. Section 48-3762, Arizona Revised Statutes, is amended to read:

48-3762. Limitation on amount, rates, fees and charges

A. The district shall not issue any bonds under ~~the provisions of~~ this article that will cause the aggregate principal amount of bonds issued and outstanding under this article to exceed ~~two hundred fifty~~ FIVE HUNDRED million dollars.

B. Bonds issued before September 21, 1991 are excluded for the purposes of determining the aggregate principal amount.

C. Notwithstanding any other law, the district may establish and collect a fee for water for bonding purposes in lieu of or in addition to any rate or charge made pursuant to law or by contract.

Sec. 7. Section 48-3772, Arizona Revised Statutes, is amended to read:

48-3772. Duties and powers of district regarding replenishment

A. The district shall:

1. Establish annually the costs and expenses to replenish groundwater pursuant to this article with respect to all parcels of member lands and all member service areas located in each active management area, including capital expenses, DEBT SERVICE EXPENSES, the operation, maintenance, replacement and administrative costs and expenses of the district, replenishment reserve costs and expenses as provided in subsection E of this section and reasonable reserves. Separate calculations of costs and expenses shall be made for each active management area in which member lands or member service areas are located and for each membership category. Costs and expenses attributed by the district to contract replenishment obligations shall not be included in these calculations.

2. Provide for the payment of all costs and expenses to replenish groundwater pursuant to this chapter and the payment of operation, maintenance, replacement and administrative costs and expenses AND DEBT SERVICE EXPENSES of the district.

3. Levy an annual replenishment assessment against each parcel of member land pursuant to section 48-3778 and an annual replenishment tax against each municipal provider that has a member service area pursuant to section 48-3781 to pay the district's costs and expenses as established pursuant to paragraph 1 of this subsection.

4. Levy a contract replenishment tax against municipal providers that are parties to contracts authorized under subsection B, paragraph 9 of this section to pay the district's costs and expenses to replenish groundwater based on contract replenishment obligations.

5. Establish and maintain reserve accounts in amounts as may be deemed necessary to perform the district's obligations under this article.

6. Fulfill all obligations under resolutions adopted pursuant to subsection B, paragraph 10 of this section.

7. Levy an activation fee as follows:

(a) For subdivisions within member lands and member service areas that are enrolled before May 6, 2004 and that had not been issued a public report before ~~the effective date of this amendment to this section~~ AUGUST 12, 2005, the district shall levy a one-time activation fee against each housing unit to be constructed within the subdivision.

(b) For subdivisions within member lands and member service areas that are enrolled on or after May 6, 2004, the district shall levy a one-time activation fee against each housing unit to be constructed within the subdivision.
(c) The activation fee shall be paid to the district before issuance of a public report for each real estate subdivision identified in subdivision (a) or (b) of this paragraph, as provided in section 45-576, subsection C.
(d) The activation fee shall be established annually by the district. Revenues from the activation fee together with revenues from other sources that are legally available to the district for those uses shall be used by the district to acquire, LEASE OR EXCHANGE WATER OR water rights and develop infrastructure necessary for the district to perform its replenishment obligations.
8. FOR ANY YEAR, SET ALL OF ITS RATES AND CHARGES ASSOCIATED WITH THE ACQUISITION, LEASE OR EXCHANGE OF WATER OR WATER RIGHTS AND DEVELOPMENT OF INFRASTRUCTURE NECESSARY FOR THE DISTRICT TO PERFORM ITS REPLENISHMENT OBLIGATIONS, OTHER THAN THE ANNUAL MEMBERSHIP DUES ESTABLISHED PURSUANT TO SECTION 48-3779, SO THAT THE TOTAL PROJECTED REVENUES FROM REVENUE SOURCES OTHER THAN THE ANNUAL MEMBERSHIP DUES, THAT ARE LEGALLY AVAILABLE TO THE DISTRICT IN THAT YEAR TO PAY COSTS ASSOCIATED WITH THE ACQUISITION, LEASE OR EXCHANGE OF WATER OR WATER RIGHTS AND DEVELOPMENT OF INFRASTRUCTURE NECESSARY FOR THE DISTRICT TO PERFORM ITS REPLENISHMENT OBLIGATIONS, SHALL BE AT LEAST THREE TIMES THE TOTAL PROJECTED REVENUES FROM THE ANNUAL MEMBERSHIP DUES IN THAT YEAR. FOR THE PURPOSES OF THIS PARAGRAPH, COSTS ASSOCIATED WITH THE ACQUISITION, LEASE OR EXCHANGE OF WATER OR WATER RIGHTS DO NOT INCLUDE THE ANNUAL COSTS ASSOCIATED WITH DELIVERY OF WATER FOR REPLENISHMENT PURPOSES.

B. The district may:
1. Acquire, develop, construct, operate, maintain, replace and acquire permits for water storage, storage facilities and recovery wells for replenishment purposes.
2. Acquire, transport, hold, exchange, own, lease, store or replenish water, except groundwater withdrawn from an active management area, subject to the provisions of title 45, for the benefit of member lands and member service areas.
3. Acquire, hold, exchange, own, lease, retire or dispose of water rights for the benefit of member lands and member service areas.
4. Require municipal providers to provide such information, in such form and within the time limits prescribed by the district, as may be necessary to carry out the purpose of this chapter.

5. Levy and collect assessments, fees, charges, taxes and other revenues as are provided in this chapter for the financing of replenishment activities.
6. Contract for or perform feasibility studies of water storage, storage facilities and recovery wells for replenishment purposes.
7. Acquire real and personal property for water storage, storage facilities and recovery wells for replenishment purposes by purchase, lease, donation, dedication, exchange or other lawful means.
8. Use any facilities and any excess storage capacity of any state demonstration projects undertaken pursuant to title 45, chapter 3.1 for water storage for replenishment purposes.
9. Subject to subsection G of this section, contract with any municipal provider having a member service area to replenish groundwater on behalf of the municipal provider and with respect to the member service area in an amount in excess of the sum of the service area replenishment obligations applicable to the member service area for all years in which the district has not completed the replenishment of the groundwater replenishment obligation for the member service area.
10. Adopt resolutions granting water availability status to a member service area of a city, town or private water company and committing to replenish a specified average annual volume of water in a location where the city, town or private water company may physically access the water for service to its customers, if all of the following apply:
(a) The district has reviewed its requirements for transportation of central Arizona project water, its contracts, subcontracts, letter agreements, excess water contracts, and other contractual obligations and its member service area and member land requirements and has determined that the district can meet those obligations and that capacity remains in the central Arizona project to meet the obligations undertaken through the resolution.
(b) The resolution acknowledges that the commitment to replenish the specified average annual volume of water in the location cited in the resolution shall be a permanent obligation of the district, unless one of the following applies:
(i) A permanent substitute supply of water is found for the city, town or private water company and the substitution is approved by the director of water resources, thus terminating the water availability status of the member service area.
(ii) The requirements of section 45-576.07, subsection A are not met, and thus the director of water resources does not issue an order granting or maintaining the city, town or private water company as having an assured water supply based in whole or in part on section 45-576.07. If no order is issued within two years of the district adopting the resolution, the resolution may be repealed, and the district shall be relieved of all obligations under the resolution.

(c) The average annual volume of water specified in the resolution, when added to the average annual volume of water specified in all other resolutions adopted pursuant to this paragraph, does not exceed twenty thousand acre-feet.
(d) The district has entered into an agreement with the city, town or private water company under which the city, town or private water company will hold for the district's future use, and provide to the district when needed, sufficient water to meet the obligations undertaken by the district through the resolution.
(e) The district determines that the obligations undertaken by the district through the resolution will not increase annual replenishment assessment rates or costs to central Arizona project contract and subcontract holders and its member service areas and member lands.
(f) The director of water resources has found, pursuant to section 45-576.07, subsection H, that the district has the capability to grant water availability status to member service areas.
11. Provide in resolutions adopted pursuant to paragraph 10 of this subsection that the district may fulfill its obligations under the resolution in any year by directly delivering to the city, town or private water company the water that otherwise would have been replenished pursuant to the resolution, if all of the following apply:
(a) The district has reviewed its requirements for transportation of central Arizona project water, its contracts, subcontracts, letter agreements, excess water contracts, and other contractual obligations, its member service area and member land requirements and has determined that the district can meet those obligations and that capacity remains in the central Arizona project to make direct deliveries pursuant to this paragraph.
(b) The district determines that the delivery will not increase annual replenishment assessment rates or costs to central Arizona project contract and subcontract holders, its member service area and member lands.
12. Enter into agreements with a city, town or private water company that will have water made available to it through a resolution adopted pursuant to paragraph 10 of this subsection and under which the city, town or private water company compensates the district for the costs and fair value of the water supply provided by the district.
13. ISSUE REVENUE BONDS PURSUANT TO ARTICLE 3 OF THIS CHAPTER TO FUND THE COSTS AND EXPENSES OF THE DISTRICT FOR THE ACQUISITION, LEASE OR EXCHANGE OF WATER OR WATER RIGHTS AND THE DEVELOPMENT OF INFRASTRUCTURE NECESSARY FOR THE DISTRICT TO PERFORM ITS REPLENISHMENT OBLIGATIONS SUBJECT TO THE FOLLOWING:
(a) THE PRINCIPAL OF, INTEREST AND PREMIUMS, IF ANY, ON REVENUE BONDS ISSUED PURSUANT TO ARTICLE 3 OF THIS CHAPTER TO ACQUIRE, LEASE OR EXCHANGE WATER OR WATER RIGHTS AND DEVELOP INFRASTRUCTURE NECESSARY FOR THE DISTRICT TO PERFORM

ITS REPLENISHMENT OBLIGATIONS ARE NOT PAYABLE FROM ANY REVENUES OF THE DISTRICT OTHER THAN REVENUES GENERATED OR COLLECTED PURSUANT TO THIS ARTICLE THAT ARE LEGALLY AVAILABLE TO THE DISTRICT FOR THOSE PURPOSES AND REVENUES FROM THE INVESTMENT OF THE PROCEEDS OF THE BONDS.

(b) THE DISTRICT MAY NOT USE THE PROCEEDS OF THE BONDS TO ACQUIRE OR LEASE:

(i) GROUNDWATER, AS DEFINED IN SECTION 45-101, EXCEPT AS EXPRESSLY AUTHORIZED IN SECTIONS 45-547, 45-552, 45-553 AND 45-554.

(ii) SURFACE WATER, AS DEFINED IN SECTION 45-101, THAT IS THE SUBJECT OF A GENERAL ADJUDICATION PURSUANT TO TITLE 45, CHAPTER 1, ARTICLE 9.

(c) NOTHING IN SUBDIVISION (b) OF THIS PARAGRAPH PROHIBITS THE DISTRICT FROM ACQUIRING OR LEASING CENTRAL ARIZONA PROJECT WATER.

14. EXCEPT AS PROVIDED IN SECTION 48-3780.01, SUBSECTION B, IN ADDITION TO ANY OTHER ASSESSMENTS, FEES, CHARGES OR TAXES LEVIED AND COLLECTED UNDER THIS CHAPTER, OR UNDER ANY DECLARATION, CONTRACT OR AGREEMENT ENTERED INTO UNDER THIS CHAPTER, CHARGE ANNUAL DUES FOR MEMBERSHIP PURSUANT TO SECTION 48-3779 AGAINST EACH PARCEL OF MEMBER LAND AND EACH MUNICIPAL PROVIDER THAT HAS A MEMBER SERVICE AREA.

C. The functions of the district under subsection B, paragraph 1 of this section may be performed on behalf of the district by other persons under contract with the district.

D. ~~For purposes of determining the annual costs and expenses of the district under subsection A, paragraph 1 of this section, the district shall amortize capital costs and expenses, including interest as determined by the district, over the useful life of the capital improvements, as determined by the district.~~ The capital costs of the facilities of any state demonstration projects used by the district pursuant to subsection B, paragraph 8 of this section shall not be included in the capital costs and expenses ~~amortized~~ ESTABLISHED by the district under ~~this~~ subsection A, PARAGRAPH 1 OF THIS SECTION.

E. The district shall establish and maintain a replenishment reserve as follows:

1. The district shall calculate a reserve target for each of the three active management areas within the district and shall identify the reserve target in the plan of operation prepared pursuant to section 45-576.02. The reserve target for each active management area shall be calculated as follows:

(a) Establish the projected one hundred year replenishment obligation for each active management area. For the purposes of this subdivision, each active management area's projected one hundred year replenishment obligation does not include replenishment obligations under resolutions adopted pursuant to subsection B, paragraph 10 of this section or replenishment obligations for category 2 member lands.

(b) Subtract from the active management area's projected one hundred year replenishment obligation the sum of the following volumes of water derived from sources identified in the plan as water that the district plans to use to meet its replenishment obligations for that active management area:

(i) The annual volume of each nondeclining, long-term municipal and industrial subcontract for central Arizona project water multiplied by one hundred.

(ii) The annual volume of water under leases or contracts that can be made physically and legally available to the district consistent with the rules adopted pursuant to section 45-576, subsection H, multiplied by the number of years, not to exceed one hundred, in which the water is to be made available to the district. The water need not be continuously available to be included in this item. A lease or contract shall not be considered under this item if the water to be made available under the lease or contract is for a term of less than twenty years.

(iii) The total volume of groundwater that the district plans to transport to the active management area during the next one hundred years as allowed by title 45, chapter 2, article 8.1.

(iv) The total volume of all sources of water not identified in items (i), (ii) or (iii) of this subdivision that will not be held by the district under a lease or contract. Volumes to be included under this item must be consistent with the rules adopted by the director pursuant to section 45-576, subsection H.

(c) Multiply the result from subdivision (b) of this paragraph by twenty per cent. The result is the reserve target for the active management area.

2. The reserve target for an active management area may be adjusted by the district, subject to the approval of the director of water resources, based on changes in either of the following:

(a) The active management area's projected one hundred year replenishment obligation.

(b) The volumes of water identified in the plan of operation prepared pursuant to section 45-576.02 as water that the district plans to use to meet its replenishment obligations for that active management area.

3. The district shall include a replenishment reserve charge in the annual replenishment assessment levied against all parcels of category 1 member land as provided in section 48-3774.01 and in the annual replenishment tax levied against all municipal providers that have

member service areas as provided in section 48-3780.01. The replenishment reserve charge for each active management area is established annually by the district based on the reserve target for that active management area.

4. The district shall levy a replenishment reserve fee against category 1 member lands pursuant to section 48-3774.01 and against member service areas pursuant to section 48-3780.01. For category 1 member lands the fee is equal to twice the applicable replenishment reserve charge multiplied by the total projected average annual replenishment obligation for the member lands as reported by the director of water resources pursuant to section 45-578, subsection F. For member service areas the fee is equal to twice the applicable replenishment reserve charge multiplied by the excess groundwater increment. With the approval of the district and the director of water resources, long-term storage credits as defined in section 45-802.01 may be assigned to the district's replenishment reserve subaccount in lieu of paying the replenishment reserve fee.

5. The district shall use replenishment reserve charges and replenishment reserve fees collected within each active management area together with all interest earned on the charges and fees to store water in that active management area in advance of groundwater replenishment obligations for the purpose of developing long-term storage credits as defined in section 45-802.01 that shall be credited to the replenishment reserve subaccount for that active management area as provided in section 45-859.01.

6. Beginning on January 1, 2030 or earlier, on approval of the director of water resources pursuant to section 45-859.01, subsection K, the district may transfer credits from a replenishment reserve subaccount to a conservation district account as provided in section 45-859.01 to satisfy its groundwater replenishment obligations.

7. If the district transfers credits from the replenishment reserve subaccount for an active management area pursuant to section 45-859.01, subsection E, the district shall include in the annual replenishment assessment levied against all parcels of category 1 member land in that active management area and, except as provided in section 48-3780.01, subsection B, in the annual replenishment tax levied against all municipal providers that have member service areas in that active management area a reserve replacement component to fund the replacement of the transferred credits. The district shall use all monies from the reserve replacement component collected within an active management area together with all interest earned on the monies to develop long-term storage credits as defined in section 45-802.01 within that active management area to be credited to the replenishment reserve subaccount for that active management area as provided in section 45-859.01.

8. For the purposes of establishing and maintaining the replenishment reserve, the district shall have access to excess central Arizona project water equivalent to but no more than the access the Arizona water banking authority has for the purposes specified in section 45-2401, subsection H, paragraph 2.

F. Groundwater replenished by the district pursuant to a contract to replenish groundwater under subsection B, paragraph 9 of this section shall not be credited to a replenishment reserve subaccount established under section 45-859.01.

G. The district shall not enter into a contract authorized under subsection B, paragraph 9 of this section unless the district has determined that the contract will not adversely affect the district's ability to fulfill its obligations under this chapter. For each contract entered into under subsection B, paragraph 9 of this section, the district shall perform its contract replenishment obligations in the active management area in which the service area of the municipal provider that is the party to the contract is located.

H. If the district replenishes groundwater on behalf of a municipal provider pursuant to a contract to replenish groundwater under subsection B, paragraph 9 of this section, the amount of groundwater so replenished shall be a replenishment credit to the municipal provider that may be applied by the municipal provider on notice to the district to reduce the service area replenishment obligations applicable to the municipal provider.

I. In the Phoenix active management area, the district, to the extent reasonably feasible, shall replenish groundwater in the east portion of the active management area and in the west portion of the active management area in the approximate proportion that the groundwater replenishment obligation attributable in a particular year to member lands and member service areas located in the east portion of the active management area bears to the groundwater replenishment obligation attributable in that year to member lands and member service areas located in the west portion of the active management area. For the purposes of this subsection, the boundary between the east Salt river valley subbasin and the west Salt river valley subbasin is the boundary between the east and west portions of the active management area.

J. The costs and expenses charged by the district to an active management area water district established under chapter 28 of this title for delivery of surplus central Arizona project water to such active management area water district for replenishment purposes shall not exceed the

costs and expenses for delivery of such water that are or would be included by the district in the costs and expenses of replenishment for member lands and member service areas within the active management area in which such active management area water district is situated.

Sec. 8. Section 48-3774, Arizona Revised Statutes, is amended to read:

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 THAT 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.

(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.

Sec. 9. Title 48, chapter 22, article 4, Arizona Revised Statutes, is amended by adding section 48-3779, to read:
48-3779. Annual membership dues
A. ON OR BEFORE THE THIRD MONDAY OF AUGUST OF EACH YEAR BEGINNING IN 2011, THE DISTRICT MAY CHARGE ANNUAL MEMBERSHIP DUES ON ALL PARCELS OF MEMBER LANDS AND ON ALL MUNICIPAL PROVIDERS HAVING A MEMBER SERVICE AREA.

B. THE ANNUAL MEMBERSHIP DUES SHALL BE ESTABLISHED ANNUALLY BY THE DISTRICT. THE DISTRICT SHALL USE REVENUES FROM THE ANNUAL MEMBERSHIP DUES, TOGETHER WITH REVENUES FROM OTHER REVENUE SOURCES THAT ARE LEGALLY AVAILABLE TO THE DISTRICT FOR THOSE USES, SOLELY TO PAY COSTS ASSOCIATED WITH THE ACQUISITION, LEASE OR EXCHANGE OF WATER OR WATER RIGHTS AND DEVELOPMENT OF INFRASTRUCTURE NECESSARY FOR THE DISTRICT TO PERFORM ITS REPLENISHMENT OBLIGATIONS, INCLUDING THE PAYMENT OF DEBT SERVICE EXPENSES, AND NECESSARY RESERVES AND COVERAGE REQUIREMENTS, ON BONDS ISSUED FOR REPLENISHMENT PURPOSES.

C. FOR ANY YEAR IN WHICH THE DISTRICT HAS, OR EXPECTS TO HAVE, ANY REVENUE BONDS OUTSTANDING THAT WERE ISSUED FOR REPLENISHMENT PURPOSES PURSUANT TO SECTION 48-3772, SUBSECTION B, PARAGRAPH 13, THE ANNUAL MEMBERSHIP DUES SHALL BE ESTABLISHED IN AN AMOUNT DETERMINED BY THE DISTRICT TO BE SUFFICIENT TO PROVIDE, WITH OTHER REVENUES LEGALLY AVAILABLE TO THE DISTRICT FOR THOSE PURPOSES, AND TAKING INTO ACCOUNT THE REQUIREMENTS OF SECTION 48-3772, SUBSECTION A, PARAGRAPH 8, FOR THE PAYMENT OF ALL DEBT SERVICE EXPENSES, INCLUDING NECESSARY RESERVES AND COVERAGE REQUIREMENTS WITH RESPECT TO THE BONDS.

D. WHEN THE DISTRICT HAS DETERMINED THE AMOUNT OF REVENUES TO BE RAISED THROUGH THE ANNUAL MEMBERSHIP DUES, THE DISTRICT SHALL ALLOCATE THE AMOUNT TO BE RAISED BETWEEN MEMBER LANDS AND MEMBER SERVICE AREAS PRORATED ON THE BASIS OF THE FOLLOWING TWO VOLUMES:

1. TOTAL CURRENT AND PROJECTED ANNUAL REPLENISHMENT OBLIGATION OF ALL MEMBER LANDS AS IDENTIFIED IN THE MOST RECENT PLAN OF OPERATION DETERMINED BY THE DIRECTOR OF WATER RESOURCES TO BE CONSISTENT WITH ACHIEVING THE MANAGEMENT GOAL FOR THE ACTIVE MANAGEMENT AREAS PURSUANT TO SECTION 45-576.03, SUBSECTION M, O OR R.

2. TOTAL PLANNED ANNUAL SERVICE AREA REPLENISHMENT OBLIGATIONS FOR ALL MEMBER SERVICE AREAS. THE PLANNED ANNUAL SERVICE AREA REPLENISHMENT OBLIGATION FOR A MEMBER SERVICE AREA IS THE LESSER OF:

(a) THE ANNUAL SERVICE AREA REPLENISHMENT OBLIGATION, AS DETERMINED BY THE DISTRICT, ASSOCIATED WITH THE CURRENT AND COMMITTED WATER DEMANDS PROJECTED WITHIN THE MEMBER SERVICE AREA AS OF DECEMBER 31 OF THE YEAR FOLLOWING THE YEAR IN WHICH THE DISTRICT IS REQUIRED TO SUBMIT ITS NEXT PLAN UNDER SECTION 45-576.02, SUBSECTION C.

(b) THE MAXIMUM AMOUNT OF EXCESS GROUNDWATER THAT MAY BE REPORTED TO THE DISTRICT AS DELIVERED BY THE MUNICIPAL PROVIDER WITHIN THE MEMBER SERVICE AREA IN ANY YEAR AS ESTABLISHED IN AN AGREEMENT EXECUTED BETWEEN THE MUNICIPAL PROVIDER AND THE DISTRICT.

E. THE TOTAL AMOUNT ALLOCATED TO MEMBER LANDS IN ANY YEAR, AS CALCULATED PURSUANT TO SUBSECTION D OF THIS SECTION, SHALL BE PRORATED AMONG THE PHOENIX, PINAL AND TUCSON ACTIVE MANAGEMENT AREAS BASED ON THE CURRENT AND PROJECTED

ANNUAL REPLENISHMENT OBLIGATION OF ALL MEMBER LANDS IN THAT ACTIVE MANAGEMENT AREA AS IDENTIFIED IN THE MOST RECENT PLAN OF OPERATION DETERMINED BY THE DIRECTOR OF WATER RESOURCES TO BE CONSISTENT WITH ACHIEVING THE MANAGEMENT GOAL FOR THE ACTIVE MANAGEMENT AREA PURSUANT TO SECTION 45-576.03, SUBSECTION M, O OR R. THE PRORATED AMOUNT WITHIN EACH ACTIVE MANAGEMENT AREA SHALL BE FURTHER PRORATED AMONG ALL PARCELS OF MEMBER LAND LOCATED WITHIN THAT ACTIVE MANAGEMENT AREA BASED ON A UNIFORM FEE PER LOT LEVIED AGAINST THE TOTAL NUMBER OF RESIDENTIAL, COMMERCIAL AND COMMON AREA LOTS INCLUDED, OR INTENDED TO BE INCLUDED, IN EACH PARCEL OF MEMBER LAND. THESE DUES ARE A LIEN ON EACH PARCEL OF MEMBER LAND AND SHALL BE CERTIFIED, COLLECTED AND ENFORCED WITH RESPECT TO MEMBER LAND IN THE SAME MANNER AS THE ANNUAL ASSESSMENT PURSUANT TO SECTION 48-3778. HOWEVER, ANY PARCEL OF MEMBER LAND THAT IS INCLUDED IN THE SERVICE AREA OF A MUNICIPAL PROVIDER THAT HAS BEEN DESIGNATED AS HAVING AN ASSURED WATER SUPPLY UNDER SECTION 45-576 IS NOT SUBJECT TO THE ANNUAL MEMBERSHIP DUES.

F. THE TOTAL AMOUNT ALLOCATED TO MEMBER SERVICE AREAS IN ANY YEAR, AS CALCULATED PURSUANT TO SUBSECTION D OF THIS SECTION, SHALL BE PRORATED AMONG ALL MEMBER SERVICE AREAS BASED ON A UNIFORM FEE PER ACRE-FOOT LEVIED AGAINST THE MEMBER SERVICE AREA'S DUES VOLUME. THE DUES VOLUME FOR A MEMBER SERVICE AREA IS THE GREATER OF:

1. THE PLANNED ANNUAL SERVICE AREA REPLENISHMENT OBLIGATION AS ESTABLISHED PURSUANT TO SUBSECTION D, PARAGRAPH 2 OF THIS SECTION FOR THE MEMBER SERVICE AREA.
2. FIVE PER CENT OF THE SERVICE AREA'S ANNUAL ESTIMATED WATER DEMAND TO BE SATISFIED WITH EXCESS GROUNDWATER AS IDENTIFIED IN THE SERVICE AREA'S MOST RECENT DESIGNATION ORDER ISSUED BY THE DIRECTOR OF WATER RESOURCES. IF THE SERVICE AREA'S MOST RECENT DESIGNATION ORDER ISSUED BY THE DIRECTOR OF WATER RESOURCES DOES NOT IDENTIFY THE ANNUAL ESTIMATED WATER DEMAND TO BE SATISFIED WITH EXCESS GROUNDWATER, THE SERVICE AREA'S ANNUAL ESTIMATED WATER DEMAND TO BE SATISFIED WITH EXCESS GROUNDWATER SHALL BE CALCULATED CONSISTENT WITH THE RULES ADOPTED BY THE DIRECTOR PURSUANT TO SECTION 45-576, SUBSECTION H.

G. EXCEPT IN THE FIRST FULL YEAR FOLLOWING THE YEAR IN WHICH THE DIRECTOR MAKES A DETERMINATION THAT THE DISTRICT'S MOST RECENT PLAN OF OPERATION IS CONSISTENT

WITH ACHIEVING THE MANAGEMENT GOALS OF THE ACTIVE MANAGEMENT AREAS PURSUANT TO SECTION 45-576.03, SUBSECTION M, FOR ANY YEAR IN WHICH THE DUES VOLUME FOR A MEMBER SERVICE AREA, AS DETERMINED PURSUANT TO SUBSECTION F OF THIS SECTION, EXCEEDS THE PREVIOUS YEAR'S DUES VOLUME FOR THE MEMBER SERVICE AREA, A MAKE-UP CHARGE SHALL BE ADDED TO THE ANNUAL MEMBERSHIP DUES ALLOCATED UNDER SUBSECTION F OF THIS SECTION TO THE MEMBER SERVICE AREA. THE MAKE-UP CHARGE SHALL BECOME PART OF THE MEMBER SERVICE AREA'S ANNUAL MEMBERSHIP DUES FOR THAT YEAR AND IS THE SUM OF:

1. THE DIFFERENCE BETWEEN THE CURRENT YEAR'S DUES VOLUME AND THE PREVIOUS YEAR'S DUES VOLUME, IN ACRE-FEET, MULTIPLIED BY THE SUM OF THE UNIFORM FEES PER ACRE-FOOT ESTABLISHED PURSUANT TO SUBSECTION F OF THIS SECTION FOR EACH YEAR SINCE THE LATER OF:

(a) THE FIRST FULL YEAR FOLLOWING THE YEAR OF THE DIRECTOR'S DETERMINATION THAT THE DISTRICT'S MOST RECENT PLAN OF OPERATION IS CONSISTENT WITH ACHIEVING THE MANAGEMENT GOALS OF THE ACTIVE MANAGEMENT AREAS PURSUANT TO SECTION 45-576.03, SUBSECTION M.

(b) THE YEAR IN WHICH THE SERVICE AREA QUALIFIED AS A MEMBER SERVICE AREA PURSUANT TO SECTION 48-3780.

2. INTEREST ON THE AMOUNT ESTABLISHED IN PARAGRAPH 1 OF THIS SUBSECTION CALCULATED AT AN INTEREST RATE DETERMINED BY THE DISTRICT.

3. THE AMOUNTS ESTABLISHED IN PARAGRAPHS 1 AND 2 OF THIS SUBSECTION MULTIPLIED BY TEN PER CENT.

H. THE ANNUAL MEMBERSHIP DUES BECOME AN OBLIGATION OF EACH MUNICIPAL PROVIDER THAT HAS A MEMBER SERVICE AREA AND SHALL BE STATED, COLLECTED AND ENFORCED WITH RESPECT TO THE MUNICIPAL PROVIDER IN THE SAME MANNER AS THE ANNUAL REPLENISHMENT TAX PURSUANT TO SECTIONS 48-3781 AND 48-3782.

I. ANNUAL MEMBERSHIP DUES COLLECTED BY THE DISTRICT SHALL BE DEPOSITED IN A SPECIAL FUND ESTABLISHED BY THE STATE TO BE SPENT BY THE DISTRICT ONLY FOR THE PURPOSES AUTHORIZED BY THIS ARTICLE, INCLUDING:

1. THE PAYMENT OF DEBT SERVICE EXPENSES AND FUNDING RESERVES FOR BONDS ISSUED FOR REPLENISHMENT PURPOSES.

2. THE PAYMENT OF THE COSTS OF ACQUIRING, LEASING OR EXCHANGING WATER OR WATER RIGHTS AND DEVELOPMENT OF INFRASTRUCTURE NECESSARY FOR THE DISTRICT TO PERFORM ITS REPLENISHMENT OBLIGATIONS.

J. AMOUNTS COLLECTED MAY BE TRANSFERRED TO A BANK OR TRUST COMPANY TO BE HELD IN TRUST AND SPENT WITH RESPECT TO BONDS ISSUED FOR REPLENISHMENT PURPOSES.

Sec. 10. Section 48-3780.01, Arizona Revised Statutes, is amended to read:

48-3780.01. Member service area; replenishment reserve

A. Except as provided in subsection B of this section, municipal providers with service areas that qualify under section 48-3780 shall pay to the district annual replenishment reserve charges and replenishment reserve fees as provided in section 48-3772, subsection E, and as follows:

1. A municipal provider with a member service area that qualified before January 1, 2004 shall pay annual replenishment reserve charges for twenty-five years beginning in 2004.

2. A municipal provider with a member service area that qualifies on or after January 1, 2004 shall:

(a) Pay annual replenishment reserve charges associated with each excess groundwater increment for twenty-three years beginning in the year after the excess groundwater increment is reported.

(b) Pay a replenishment reserve fee each year beginning in the year following qualification.

3. If the assured water supply designation of a municipal provider with a member service area is modified in a manner that increases the district's projected annual replenishment obligation as reported by the director of water resources pursuant to section 45-576, subsection F, the municipal provider shall:

(a) Pay annual replenishment reserve charges associated with each excess groundwater increment for twenty-three years beginning in the year after the excess groundwater increment is reported. Such charges are in addition to any replenishment reserve charges due under paragraphs 1 and 2.

(b) Pay a replenishment reserve fee each year beginning in the year following modification.

B. The district shall not levy ANNUAL MEMBERSHIP DUES, replenishment reserve fees, replenishment reserve charges or a reserve replacement component associated with replenishment activities performed under a resolution adopted pursuant to section 48-3772, subsection B, paragraph 10.

C. The district shall not use credits from a replenishment reserve subaccount established under section 45-859.01 to satisfy its replenishment obligations under a resolution adopted pursuant to section 48-3772, subsection B, paragraph 10.

APPROVED BY THE GOVERNOR MAY 10, 2010.
FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 10, 2010.

SB1356: Water Bank

SB1356 affirms the Arizona Water Banking Authority's existing powers to acquire and store excess Central Arizona Project water for the following purposes:

- Indian Firming Obligations
- Replenishment under the Gila River Indian Water Settlement Agreement
- Storing Municipal & Industrial Water for Shortages
- Interstate Water Banking Agreement

Reiterates the definition of "Excess CAP Water" as CAP project water in any year that cannot otherwise be used, resold or exchanged pursuant to long-term contracts or subcontracts.

Arizona Water Banking Authority Background

The Arizona Water Banking Authority (AWBA; Water Bank) was established in 1996 to increase utilization of the state's Colorado River entitlement and develop long-term storage credits for the state. AWBA stores or "banks" unused Colorado River water to be used in times of shortage to firm (or secure) water supplies for Arizona. These water supplies help to benefit municipal and industrial users and communities along the Colorado River, fulfill the water management objectives of the state, store water for use as part of water rights settlement agreements among Indian communities, and assist Nevada and California through interstate water banking. Through these mechanisms, the AWBA aids in ensuring long-term water supplies for Arizona.

Each year, the AWBA pays the delivery and storage costs to bring Colorado River water into central and southern Arizona through the Central Arizona Project canal. The water is stored underground in existing aquifers (direct recharge) or is used by irrigation districts in lieu of pumping groundwater (indirect or in-lieu recharge). For each acre-foot stored, the AWBA accrues credit that can be redeemed in the future when Arizona's communities or neighboring states need this backup water supply.

(Final 5/3/2010)
Sponsor: Senator Pierce
Last Action: Signed by the Governor Laws 2010 Chapter 168

Source: http://www.azwaterbank.gov/awba/

Senate Engrossed

State of Arizona
Senate
Forty-ninth
Legislature
Second Regular Session
2010

CHAPTER 168

SENATE BILL 1356

AN ACT

AMENDING SECTIONS 45-2402 AND 45-2427, ARIZONA REVISED STATUTES; RELATING TO THE ARIZONA WATER BANKING AUTHORITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 45-2402, Arizona Revised Statutes, is amended to read:

45-2402. Definitions

Unless the context otherwise requires, the terms defined in sections 45-101, 45-402 and 45-802.01 have the same meaning in this chapter and for purposes of this chapter:

1. "Authority" means the Arizona water banking authority.

2. "Banking fund" means the Arizona water banking fund.

3. "Central Arizona water conservation district" or "CAWCD" means the multi-county water conservation district established under title 48, chapter 22.

4. "Commission" means the Arizona water banking authority commission.

5. "Decree" means the decree entered by the United States supreme court in Arizona v. California, 376 U.S. 340 (1964).

6. "EXCESS CENTRAL ARIZONA PROJECT WATER" MEANS CENTRAL ARIZONA PROJECT WATER THAT IN ANY YEAR WOULD OTHERWISE NOT BE USED, RESOLD OR EXCHANGED PURSUANT TO LONG-TERM CONTRACTS AND SUBCONTRACTS FOR CENTRAL ARIZONA PROJECT WATER.

~~6.~~ 7. "Indian firming" means measures taken to ensure that central Arizona project non-Indian agricultural priority water that is made available to Indian tribes pursuant to Public Law 108-

451 may be delivered during water shortages in the same manner that water with a municipal and industrial priority in the central Arizona project system is delivered during water shortages.

~~7.~~ 8. "Water banking services" means services provided by the authority to persons and Indian communities in this state to facilitate for those persons and Indian communities storage of water and stored water lending arrangements. Water banking services include the direct delivery of water to Indian communities in this state in replacement of or supplemental to the accrual of long-term storage credits pursuant to article 5 of this chapter. Water banking services include only arrangements by which water will be made available for use in this state. Water banking services do not include interstate water banking undertaken by the authority pursuant to article 4 of this chapter. Water banking services may include:

(a) Storage of water.

(b) Obtaining water storage permits.

(c) Accruing, exchanging and assigning long-term storage credits.

(d) Lending and obtaining repayment of long-term storage credits.

~~8.~~ 9. "Water banking services agreement" means an agreement entered into between the authority and a person or Indian community in this state under which the authority will provide water banking services to that person or Indian community.

Sec. 2. Section 45-2427, Arizona Revised Statutes, is amended to read:

45-2427. Limitation on powers

A. This chapter does not authorize the authority to exercise any right of eminent domain.

B. EXCEPT AS PROVIDED IN SUBSECTION E OF THIS SECTION:

1. The authority shall not store Colorado river water that would otherwise have been used in this state pursuant to a contract entered into pursuant to section 48-3703, paragraph 2, a section 5 contract under the Boulder Canyon project act (P.L. 108-6; 43 United States Code section 617) with a priority that is equal to or higher than a contract entered into pursuant to section 48-3703, paragraph 2 or any other section 5 contract under the Boulder Canyon project act entered into before ~~the effective date of this amendment to this section~~ SEPTEMBER 18, 2003.

2. The authority shall not store for interstate water banking purposes Colorado river water that would otherwise have been used in this state.

C. The authority shall not enter into contracts with agencies in California and Nevada for the storage of water on their behalf until both of the following occur:

1. Regulations are in effect, promulgated by the secretary of the interior of the United States, that facilitate and allow the contractual distribution of unused entitlement under article II(b)(6) of the decree.
2. The director finds that the rules promulgated by the secretary of the interior adequately protect this state's rights to Colorado river water, as those rights are defined by the decree.

D. The authority shall not enter into water banking services agreements that will provide water for use outside this state. The authority may cancel any water banking services agreement without penalty or further obligation if after entering into a water banking services agreement, the authority finds that the agreement will provide water for use outside of this state. Notice of this subsection shall be included in every water banking services agreement entered into by the authority. The cancellation under this subsection shall be effective when written notice from the authority is received by all other parties to the water banking services agreement.

E. THE AUTHORITY MAY OBTAIN AND STORE OR REPLENISH, AS APPLICABLE, ANY OF THE FOLLOWING EXCESS CENTRAL ARIZONA PROJECT WATER SUPPLIES AS DESIGNATED BY CAWCD:
1. ANY EXCESS CENTRAL ARIZONA PROJECT WATER MADE AVAILABLE BY CAWCD IN A YEAR EXCLUSIVELY FOR THE AUTHORITY. THE AUTHORITY SHALL USE ANY EXCESS CENTRAL ARIZONA PROJECT WATER OBTAINED PURSUANT TO THIS PARAGRAPH IN A MANNER CONSISTENT WITH ARTICLES 3 AND 5 OF THIS CHAPTER OR CHAPTER 15, ARTICLE 3 OF THIS TITLE, INCLUDING MEETING INDIAN FIRMING OBLIGATIONS, REPLENISHING WATER UNDER THE GILA RIVER INDIAN WATER SETTLEMENT PROGRAM AND STORING WATER FOR MUNICIPAL AND INDUSTRIAL PURPOSES IN TIMES OF SHORTAGE.
2. ANY EXCESS CENTRAL ARIZONA PROJECT WATER MADE AVAILABLE BY CAWCD IN A YEAR FOR THE PURPOSE OF STORING WATER TO MEET A CONTRACTUAL OBLIGATION OF THE AUTHORITY UNDER AN INTERSTATE WATER BANKING AGREEMENT ENTERED INTO PURSUANT TO ARTICLE 4 OF THIS CHAPTER IF THE EXCESS CENTRAL ARIZONA PROJECT WATER RESULTED FROM THE ACQUISITION OF ADDITIONAL COLORADO RIVER WATER BY CAWCD USING MONIES CONTRIBUTED BY THE AUTHORITY.

Sec. 3. Emergency
This act is an emergency measure that is necessary to preserve the public peace, health or safety and is operative immediately as provided by law.

APPROVED BY THE GOVERNOR APRIL 26, 2010.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 27, 2010.

SB1445: Groundwater Transfers; Big Chino Sub-basin

SB1445 allows a city or town to transport 8,068 acre-feet of water from the Big Chino Sub-basin, plus an increment over 231 acre-feet, for compliance with an Indian Water Settlement. The transfer is conditional on the relinquishment of a CAP allocation and the entering into of a federally approved settlement with an Indian tribe.

This bill is a component of the settlement of disputes among Prescott, Prescott Valley, and the Salt River Project (SRP).

See also HB2561.

(Final 5/3/2010)
Sponsor: Senator Steve Pierce
Last Action: Signed by the Governor Laws 2010 Chapter 171

Senate Engrossed

State of Arizona
Senate
Forty-ninth
Legislature
Second Regular Session
2010

CHAPTER 171

SENATE BILL 1445

AN ACT

AMENDING SECTIONS 45-543, 45-555, 45-557 AND 45-559, ARIZONA REVISED STATUTES; RELATING TO THE GROUNDWATER CODE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 45-543, Arizona Revised Statutes, is amended to read:

45-543. Transportation between sub-basins or away from an active management area; damages; non-irrigation grandfathered right not associated with retired irrigated land; service area withdrawals; permit; exempt well

A. Groundwater may be transported between sub-basins of an active management area or away from an active management area, subject to payment of damages, if the groundwater is withdrawn:

1. Pursuant to a type 2 non-irrigation grandfathered right, except that groundwater withdrawn pursuant to a type 2 non-irrigation grandfathered right may not be transported away from the Pinal active management area to another initial active management area for the purpose of demonstrating and providing an assured water supply.

2. By a city, town or private water company within its service area and transported within its service area, except that groundwater withdrawn by a city, town or private water company within its service area may not be transported away from the Pinal active management area.

3. By an irrigation district within its service area and transported within its service area.

4. Pursuant to a groundwater withdrawal permit.
5. From an exempt well.

B. Groundwater ~~which~~ THAT is withdrawn by a city, town or private water company within its service area may be transported pursuant to a delivery contract authorized by section 45-492, subsection C between sub-basins of an active management area and shall be subject to payment of damages unless the groundwater is withdrawn pursuant to a type 1 non-irrigation grandfathered right.

C. GROUNDWATER THAT IS WITHDRAWN AND TRANSPORTED TO AN ACTIVE MANAGEMENT AREA PURSUANT TO ARTICLE 8.1 OF THIS CHAPTER MAY BE TRANSPORTED BETWEEN SUB-BASINS OF THE ACTIVE MANAGEMENT AREA WITHOUT PAYMENT OF DAMAGES.

Sec. 2. Section 45-555, Arizona Revised Statutes, is amended to read:

45-555. Transportation of groundwater withdrawn in Big Chino sub-basin of the Verde River groundwater basin to initial active management area; exception

A. A city or town that owns land consisting of historically irrigated acres in the Big Chino sub-basin of the Verde River groundwater basin, as designated by order of the director dated June 21, 1984, or a city or town with the consent of the landowner, may withdraw from the land for transportation to an adjacent initial active management area an amount of groundwater determined pursuant to this section. The amount of groundwater that may be withdrawn from the land pursuant to this section shall not exceed:

1. In any year two times the annual transportation allotment for the land determined pursuant to subsection B ~~of this section~~.
2. For any period of ten consecutive years computed in continuing progressive series beginning in the year transportation of groundwater from the land begins, ten times the annual transportation allotment for the land.

B. The director shall determine the annual transportation allotment as follows:

1. Determine each farm or portion of a farm owned or leased by the city or town in the sub-basin.
2. For each such farm or portion of a farm, determine the historically irrigated acres retired from irrigation. Multiply the sum of those historically irrigated acres by three acre-feet per acre.

C. In making the determination required by subsection B ~~of this section~~, the director shall rely only on credible documentary evidence submitted by the city or town or otherwise obtained by the department.

D. For THE purposes of ~~this section~~ SUBSECTIONS A, B AND C:

1. "Documentary evidence" means correspondence, contracts, other agreements, aerial photography, affidavits, receipts or official records.

2. "Farm" means an area of land in the sub-basin that is or was served by a common irrigation water distribution system.

3. "Historically irrigated acres" means acres of land overlying an aquifer that were irrigated with groundwater at any time between January 1, 1975 and January 1, 1990.

E. ~~This article does not apply to the withdrawal and transportation of up to fourteen thousand acre-feet per year of groundwater by the city of Prescott, or the United States in cooperation with the city of Prescott,~~ A CITY OR TOWN IN THE PRESCOTT ACTIVE MANAGEMENT AREA MAY WITHDRAW AND TRANSPORT EIGHT THOUSAND SIXTY-EIGHT ACRE-FEET PER YEAR OF GROUNDWATER from the Big Chino sub-basin of the Verde River groundwater basin ~~if the groundwater is withdrawn and transported either~~ TO THE PRESCOTT ACTIVE MANAGEMENT AREA IF THE CITY OR TOWN DOES BOTH OF THE FOLLOWING:

1. ~~In exchange for or replacement or substitution of supplies~~ RELINQUISHES A SUPPLY of water from the central Arizona project allocated to ~~Indian tribes, cities, towns or private water companies in the Prescott active management area or in the Verde River groundwater basin~~ THE CITY OR TOWN.

2. ~~For the purpose of directly or indirectly facilitating the~~ ENTERS INTO A FEDERALLY-APPROVED settlement of the water rights claims of ~~the Yavapai-Prescott~~ AN Indian tribe ~~and the Camp Verde Yavapai-Apache Indian community~~ IN THE PRESCOTT ACTIVE MANAGEMENT AREA.

F. NOTWITHSTANDING THE VOLUME LIMITATION IN SUBSECTION E, IN ANY YEAR IN WHICH A CITY OR TOWN THAT QUALIFIES UNDER SUBSECTION E DELIVERS MORE THAN TWO HUNDRED THIRTY-ONE ACRE-FEET OF WATER TO AN INDIAN TRIBE FOR USE ON ITS RESERVATION IN THE PRESCOTT ACTIVE MANAGEMENT AREA PURSUANT TO A FEDERALLY-APPROVED INDIAN WATER RIGHTS SETTLEMENT, THE CITY OR TOWN MAY WITHDRAW AND TRANSPORT ADDITIONAL GROUNDWATER FROM THE BIG CHINO SUB-BASIN TO THE PRESCOTT ACTIVE MANAGEMENT AREA IN AN AMOUNT EQUAL TO THE AMOUNT BY WHICH THOSE DELIVERIES EXCEED TWO HUNDRED THIRTY-ONE ACRE-FEET.

G. GROUNDWATER THAT IS WITHDRAWN AND TRANSPORTED PURSUANT TO SUBSECTIONS E AND F MAY BE DELIVERED TO AND USED BY ANY CITY, TOWN OR INDIAN TRIBE IN THE PRESCOTT ACTIVE MANAGEMENT AREA WITHOUT REGARD TO WHETHER THAT ENTITY WITHDRAWS AND TRANSPORTS THE WATER.

Sec. 3. Section 45-557, Arizona Revised Statutes, is amended to read:

45-557. Requirements for transporting groundwater to an initial active management area; exception

A. Except as provided in ~~subsection~~ SUBSECTIONS B AND C of this section:

1. The director shall not consider groundwater that is being or will be withdrawn in a groundwater basin or sub-basin pursuant to this article or the Pinal active management area and transported to an initial active management area for purposes of determining or providing an assured water supply pursuant to section 45-576 if the groundwater is being or will be used by a city, town or private water company that was offered but did not sign a central Arizona project water delivery subcontract.

2. A city, town or private water company that has signed a central Arizona project water delivery subcontract may not use groundwater withdrawn in a groundwater basin or sub-basin pursuant to this article or the Pinal active management area and transported to an initial active management area until it has both:

(a) Demonstrated that it has the physical capacity, including the water treatment plant and delivery system, to accept delivery of ninety-five per cent of its central Arizona project water entitlement under its central Arizona project water delivery subcontract.

(b) Accepted delivery of or exchanged eighty per cent or more of the central Arizona project water available to it under its central Arizona project water delivery subcontract in at least one of the three years immediately preceding the year it intends to begin using groundwater transported away from a groundwater basin or sub-basin pursuant to this article or the Pinal active management area.

B. Subsection A of this section does not apply to groundwater withdrawn in the Big Chino sub-basin of the Verde river groundwater basin and transported to an adjoining initial active management area pursuant to section 45-555.

C. GROUNDWATER TRANSPORTED TO AN ADJOINING INITIAL ACTIVE MANAGEMENT AREA PURSUANT TO SECTION 45-555, SUBSECTIONS E AND F SHALL BE DEEMED TO BE LEGALLY AVAILABLE UNDER THE RULES ADOPTED PURSUANT TO SECTION 45-576.

Sec. 4. Section 45-559, Arizona Revised Statutes, is amended to read:

45-559. Well spacing requirements for withdrawing groundwater for transportation to an active management area

Except as provided in section 45-554, subsection A AND EXCEPT FOR GROUNDWATER WITHDRAWN AND TRANSPORTED PURSUANT TO SECTION 45-555, SUBSECTIONS E AND F, a person may not use a well constructed after ~~the effective date of this section~~ SEPTEMBER 21, 1991 for THE purpose of withdrawing groundwater for transportation to an active management area pursuant to article 8.1 of this chapter unless the person wishing to use the well for that purpose applies to the director for approval and the director approves the application. The director shall approve the application if the director determines that the withdrawals for that purpose will not unreasonably increase damage to surrounding land or other water users from the concentration of wells. In making this determination, the director shall follow the criteria for proposed withdrawals in the rules adopted pursuant to section 45-598, subsection A.

APPROVED BY THE GOVERNOR APRIL 26, 2010.
FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 27, 2010.

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Bills Substituted with Identical Bills and Enacted

Bill Title Disposition

HB2561: Groundwater Transfers Big Chino Sub-Basin. Substituted in the House by identical SB1445 and transmitted to the Governor. The Governor signed SB1445 Laws 2010 Chapter 171.

HB2448 CAGRD Revenue Bonds; Sustainability Policies. Substituted in the House by identical SB1141 and transmitted to the Governor. The Governor signed SB1141 Laws 2010 Chapter 300.

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WATER BILLS NOT ENACTED

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HB2180 Aquifer Protection Permits; Natural Gas

HB2180 would exempt Class II injection wells, if used for natural gas storage projects and if regulated by the Safe Water Drinking Act and 40 Code of Federal Regulations Part 144, from ADEQ's requirements for Aquifer Protection Permits.

Injection wells are classified by federal regulations and are used to discharge liquid byproducts in deep, underground porous rock. Class II wells inject fluids associated with oil and natural gas production.

As part of the natural gas storage process, salt basins are injected with water in order to make brine. The brine is then removed and injected into a reservoir that is already unsuitable for drinking water. The removal of the brine creates a cavern in which pressurized natural gas can be stored.

Through its Underground Injection Control (UIC) program, the U.S. Environmental Protection Agency (EPA) has primacy over Arizona with regard to regulation of injection wells. Wells must comply with both the Federal Safe Drinking Water Act (SDWA) and Title 40 Code of Federal Regulations (CFR) part 144. The SDWA, passed by Congress in 1974, authorizes the EPA to set health standards pertaining to natural and man-made water contaminants, and 40 CFR Part 144 outlines UIC requirements for injection wells.

Arizona law designates all aquifers for drinking water protected use. (A.R.S. § 49-224) An APP issued by the Arizona Department of Environmental Quality is required for a facility that releases pollutants directly into an aquifer, onto the land surface, or in between an aquifer and the land. Currently, injection wells are considered a polluting facility, as are ten other facility types. There are currently 24 exemptions to the APP requirement in statute.

(Final 5/3/2010)
Sponsor: Representative Seel
Last Action: Referred to House Water and Energy

HB2290: Waste Tires in Abandoned Mines

HB2290 would permit waste tires to be used as fill material for an abandoned mine. This authority would expire on December 31, 2015. The bill also provides conforming language to add use in an abandoned mine to the list of permissible methods of waste tire disposal. The language also adds tire-filled abandoned mines to the definition of a "solid waste facility."

Finally as session law, HB2290 creates a demonstration project for the use of waste tires in abandoned mines. The demonstration project would direct the State Mine Inspector to select up to three abandoned mines in locations throughout Arizona in which to use tires as fill. The Mine Inspector shall convene an abandoned mine reclamation working group consisting of:

- State Fire Marshall
- ADEQ Director
- ADWR Director
- Director of Mines and Mineral Resources
- A representative from a county waste tire collection facility
- At the Inspector's Discretion, one or more representatives of the mining industry

The working group is charged with the evaluation of the use of tires as fill for mines and is charged with determining the public safety and water quality consequences of the underground presence of waste tires.

The bill establishes an Abandoned Mines Demonstration Project Trust Fund. HB2290 enables the lesser of 2% or $100,000 to be transferred from the Waste Tire fund to the Abandoned Mine Safety Fund. At the end of the demonstration project monies in the fund transfer to the Abandoned Mine Safety Fund. The session law section is repealed on December 31, 2015.

AMWUA maintains strong concerns about the placement of pollutants and contaminants in close proximity to water sources that may be used for drinking water or other human consumption. This concern is not mitigated by the study commission, which is charged with evaluating the impacts for less than five years. The degradation of the tires and subsequent contamination of water supplies may continue well beyond that period.

(Final 5/3/2010)

Sponsor: Representative Jones
Last Action: HELD in Senate Natural Resources

HB2573: Cities; Water Softeners; Salts

HB2573 would permit cities and towns to regulate the use, installation, and disposal of water softening devices that discharge sodium into a water or wastewater system.

Cities and towns already have powers to regulate for public health and safety, including by charter; this would include water-softening devices.

(Final 5/3/2010)
Sponsor: Representative Mason
Last Action: 2/11 FAILED House Water and Energy 4-4

HB2778: HOAs; Rainwater Harvesting

HB2778 would preempt a condominium association or homeowners' association from prohibiting the installation and use of rainwater harvesting systems that are intended to act as water savings devices. The bill would allow the association to adopt reasonable rules regulating the devices for the following reasons:

- Aesthetics
- Dimensions and Placement
- External Appearance
- Definition of Rainwater Harvesting

The rules may not prevent the installation and use of the rainwater device, nor may the rules impair the operation of the system. The rules also may not restrict the use of the device or adversely affect the efficiency of the device.

The bill would preempt association documents to require the court to award reasonable attorneys fees and court costs for a challenged association rule.

The bill would define rainwater-harvesting systems to include active and passive systems. An active system is one that collects and stores water in a cistern, tank or barrel and requires the use of a valve or timer to access the stored water. A passive system is one that collects runoff from surfaces – such as rooftops and driveways – or direct rainfall, or uses concave earthworks or rain gardens. Passive systems do not require a valve or timer to access the water.

(Final 5/3/2010)
Sponsor: Representative Young Wright
Last Action: Referred to House Government

HB2781: Well Ownership

For any new transfer of ownership of a registered well, pursuant to ARS 45-593, HB2781 would require the new owner of the registered well to record a document with the County Recorder that includes the registration number of the well and any other information required by the ADWR Director. The document would also be required to contain the information that was required to be submitted to the Director, when the well was registered.

This includes:

- Legal description of the land on which the well is located
- Name and mailing address of the owner of the land
- Depth, diameter, and type of casing of the well
- Legal description of the land on which the groundwater is to be used
- The well's maximum pumping capacity
- Any other information required by the Director

The bill also requires that if an AMA is projected to fail to meet its 2025 safe-yield goal, the Groundwater Users' Advisory Council is required to present a plan to the Legislature that will bring the AMA into compliance by 2025. This plan is to include proposed amendments to the groundwater code (Title 45, Chapter 2).

AMWUA supports safe-yield goals for AMAs and feels that legislative proposals to weaken safe-yield goals may not be the appropriate way to address projected non-compliance of an AMA.

HWE Amendment

The HWE amendment removed the provisions relating to the Groundwater Users Advisory Council and replaced it with a provision that directs ADWR to prepare a report on the conditions existing in an AMA that are contributing to the AMA's projection to fail to meet its 2025 goals. This amendment removes AMWUA's concerns.

(Final 5/3/2010)
Sponsor: Representative Young Wright
Last Action: 3/8 House Rules OK

SB1223: Underground Storage; Preexisting Use

SB1223 would prohibit a recharge facility or the use of a watercourse to "interfere" with a land use.

Measures similar to this bill have been introduced and discussed in the past as a result of disputes among recharge and underground storage facilities and sand and gravel extraction operations.

This issue has been litigated extensively over the past decade or more, with the water uses prevailing. Sand and gravel operators have further appealed the most recent case to the United States Supreme Court. (South West Sand & Gravel v. Central Arizona Project; 09-904; 1 CA-CV 07 -0435)

AMWUA opposes this legislation because it would adversely affect the ability of water providers to recharge and store water for future drought conditions and to recharge water to meet safe-yield goals in AMAs. The bill would adversely affect existing investments in water recharge facilities throughout Maricopa County and would effectively prohibit the use of rivers to transport water for recharge, which is often a cost-effective approach.

(Final 5/3/2010)
Sponsor: Senator Allen
Last Action: HELD in Senate Natural Resources

SB1241: Water Recharge; Direct Use S/E Town of Superior Expenditure Limit.

SB1241 was amended with a strike everything amendment that removed all of the provision relating to water budding (see companion bill HB2289) and replaced it with language that reduced the penalties for the Town of Superior's violation of its expenditure limit.

(Final 5/3/2010)
Sponsor: Senator S Allen
Last Action: HELD in House Environment

SB1316: Underground Storage; Preexisting Use

SB1316 would prohibit a recharge facility or the use of a watercourse to "interfere" with a land use.

Measures similar to this bill have been introduced and discussed in the past as a result of disputes among recharge and underground storage facilities and sand and gravel extraction operations.

This issue has been litigated extensively over the past decade or more, with the water uses prevailing. Sand and gravel operators have further appealed the most recent case to the United States Supreme Court (South West Sand & Gravel v. Central Arizona Project; 09-904; 1 CA-CV 07 -0435).

AMWUA opposes this legislation because it would adversely impact the ability of water providers to recharge and store water for future drought conditions and to recharge water to meet safe-yield goals in AMAs. The bill would adversely affect existing investments in water recharge facilities throughout Maricopa County and would effectively prohibit the use of rivers to transport water for recharge, which is often a cost-effective approach.

(Final 5/3/2010)
Sponsor: Senator Allen
Last Action: HELD in Senate Natural Resources

SB1379: County Water Authority

SB1379 would have amended ARS 45-2201 to remove from the definition of “Industrial water” the qualifier that such water is non-agricultural water “not supplied by a city, town or private water company.”

(FINAL 5/5/2010)
Sponsor: Senator Gould
Last Action: HELD in Senate Natural Resources

SB1400: Irrigation Grandfathered Rights; Dust Control

SB1400 grants to a person in an active management area who holds a certificate of irrigation grandfathered right the right to use groundwater in excess of the limits prescribed by the groundwater code. This excess groundwater withdrawal is to be used to comply with dust control requirements.

The bill proposes that the amount of water withdrawn be limited to that which is needed to comply with the code and that the excess withdrawal is not permitted to supplement the irrigation demands of the farm.

This bill violates the fundamental principles of the AMA safe-yield goals established though the 1980 Groundwater Management Act.

Issues:
AMWUA objects to the establishment of a "right" to withdraw groundwater in excess of the safe-yield limits established for the AMA. The ability for irrigation districts to use groundwater to comply with dust control requirements would be better addressed within the context of their existing water duties and should maintain compliance with the successful groundwater management principles that have been established for thirty years.

It has not been demonstrated that a broad exemption to the groundwater use limitations is necessary. Flex credit surpluses for the Phoenix, Tucson, and Pinal AMAs suggest that agricultural uses in the AMAs have ample capacity to meet their dust control obligations. The latest available flex credit balances from ADWR (2008) report more than 5 million acre-feet of credits in the Pinal AMA, more than 5 million acre-feet in the Phoenix AMA, and more than 1.5 million acre-feet in the Tucson AMA. The available flex credits in all the AMAs would be enough to fully irrigate (@4 af/ac) more than 2.9 million acres of farmland for a year – that's more than three times the total statewide number of acres irrigated in 2007. This bill language does not reflect best farm management practices regarding irrigation scheduling within existing water allotments.

Though the language states that the excess withdrawal may only be used for dust control, the bill provides no verification and no enforcement mechanism for a violation. Similarly, though the introduced version of the bill states that the withdrawal may not supplement the irrigation demands of the farm, the bill provides no enforcement or verification. This provision seems intuitively at odds with the proposed language, as the excess withdrawal, by its very nature, supplements the farm's demand. By effectively removing dust control from the established

groundwater limits, the available water to meet the irrigation demand is increased – the dust control exemption clearly supplements the supply available to meet the irrigation demands of the farm.

(Final 5/5/2010)
Sponsor: Senator C Gray
Last Action: HELD in Senate Finance

SCR1046: Intrastate Waters

SCR1046 is a constitutional referendum that would prohibit any foreign or domestic government, other than the State of Arizona, from claiming any jurisdiction or regulatory authority over any non-navigable waters within the boundaries of Arizona.

It would also define "navigable waters" as those on which "routine interstate commerce can float on their surface."

The bill is an attempt to remove in-state streams from the jurisdiction of the Federal Clean Water Act and particularly as an attempt to preempt Congressional efforts to change the definition of navigable streams. In the past few years, bills have been introduced in Congress to do so.

SCR1046 is problematic because it is vague and, if implemented, may have jeopardized the state's delegated authority over water quality programs – in effect causing the US Environmental Protection Agency to withdraw ADEQ's primacy and to take over permitting.

Questions were raised as to whether "domestic governments" also included Indian tribes and municipalities, each of whom may have rights, jurisdictions or authority over ground or surface waters.

A House Water & Energy amendment removed the definition of navigable waters.

(Final 5/5/2010)
Sponsor: Senator C Gray
Last Action: from House Rules

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Water-Related Technical Corrections and Striker Vehicles

Bill Title - Disposition

HB2171: Water Exchanges; Technical Correction - HELD in House Water & Energy

HB2255: Technical Correction; AMAs (NOW: RV; Landlords)
- Stricken. Signed by the Governor.

HB2582: Technical Correction; Dry Wells - Introduced

HB2583 Technical Correction; Water Quality - Introduced

HB2584 Technical Correction; Water Quality Fund - Introduced

HB2585 Technical Correction; Underground Storage; Closure - Introduced

HB2723 AMWA Water Districts; Conflicting Versions (NOW: Unrestrained Minors in Vehicles)
- Stricken. Passed the Senate, but was not voted on after House Concurred.

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REGULATORY BILLS ENACTED

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HB2218: Irrigation Districts; Contracts

HB2218 increases the value threshold for a no-bid contract that can be issued by an irrigation district. The current limit is $10,000. The bill increases this limit to $30,000 and allows an annual inflator based on the consumer price index. The bill also removes the State Certification Board as one of the entities that must approve the contract.

(Final 5/5/2010)
Sponsor: Representative Jim Weiers
Last Action: Signed by the Governor Laws 2010 Chapter 47

HB2257: Municipal Taxation & Fees; Notice

HB2257 requires cities and counties to provide 60-day notice before levying or assessing a new or increased fee on a business.

(Final 5/13/2010)
Sponsor: Representative Antenori
Last Action: Signed by the Governor Laws 2010 Chapter 316

HB2260: Regulatory Rulemaking

HB2260 would require all proposals for new or amended state agency rules to require the use of a general permit, rather than a specific permit, except under specific conditions. These exempted conditions include:

- Federal law prohibits the use of a General Permit
- State Statute specifically authorizes a Specific Permit
- A General Permit is not technically feasible
- A General Permit would result in additional regulatory requirements or costs on the applicant

The bill defines "general permit" as a "regulatory permit, license or agency authorization that is for facilities, activities or practices in a class that are substantially similar in nature and that is issued or granted by an agency to a qualified applicant to conduct identified operations or activities if the applicant meets the applicable requirements of the general permit, that requires less information than an individual or traditional permit, license or authorization and that does not require a public hearing."

The agency would retain the authority to revoke the authority to operate under a general permit and require a specific "traditional" permit if the permit holder is in substantial non-compliance.

HB2260 requires the Secretary of State, by 2014, to create and maintain a searchable website with all state agency rules; by 2015 to create a searchable database of county codes, ordinances and business license requirements; and by 2016 to create a searchable database of all city codes, ordinances, and business license requirements. Each city and county is required to supply the information to the Secretary of State in a format prescribed by the Secretary of State.

HB2260 requires OSPB to prepare the economic impact statement for the Governor's Regulatory Review Council (GRRC) if the Legislature appropriates funds for that purpose.
The bill adds to the conditions for GRRC approval of a proposed rule the requirement that an agency demonstrate that it has selected the least burdensome alternative to achieve the regulatory objective. HB2260 prohibits the GRRC from approving a rule that is more stringent

than a corresponding federal law unless there is statutory authority to exceed the requirements of the federal law.

The bill defines "probable costs" for the purposes of the GRRC economic impact study to include the number of new employees the agency will need to enforce the new rule. The bill also requires that the alternatives discussion include the "monetizing" of costs and benefits for each option and the rationale for not adopting the other available alternatives.
The bill requires that the cost benefit analysis of a proposed rule consider only costs and benefits incurred in the State of Arizona. The bill also requires the agency to consider competitiveness analyses submitted by third parties.

HB2260 allows a person to request that the GRRC include an obsolete rule in an agency's 5-year rule review.

The bill allows a person to challenge a rule within two years of its adoption on the grounds that the agency did not select the alternative that imposes the least cost.

HB2260 also creates a "Commission on Privatization." The commission consists of members appointed by the Governor, the Board of Regents, the Speaker, and the President. The commission is required to meet quarterly. The commission is to consider allegations of violations of ARS Title 41 Chapter 25 Article 1 relating to government competition with private enterprise. The bill requires a state agency, university or community college to respond to allegations within 45 days. The commission may evaluate opportunities to contract with private enterprise.

HB2260 also amends Title 49 with respect to air quality regulations by changing the definition of "modification" to specify how an increase in "potential to emit" is calculated and further defines "potential to emit."

HB2260 allows a person to petition the ADEQ Director to make a determination that a class of activities is subject to general permits.

The bill also extends the legislative moratorium on rulemaking.

(Final 5/7/2010)
Sponsor: Representative Tobin
Last Action: Signed by the Governor Laws 2010 Chapter 287

HB2282: Government Expenditures Database

HB2282 requires counties, cities, and towns with populations greater than 2,500, as well as community college districts, and school districts with more than 600 pupils, to establish an Internet website that is available to the public at no cost. This website will contain a database of all revenues and expenditures greater than $5,000 and, to the extent practicable, will match the extensive requirements of the database required of the Department of Administration (DOA). Data must be updated at least every 3 months and the data shall be available on the website for at least three fiscal years.

The bill requires the Department of Administration to establish a web portal that links to the jurisdictions for each resident of the state – to be displayed at the query of an individual. This link is to include the governing board members' contact information, the contact for the administrative head of the local government, election cycle information and information about taxes and fees controlled by the local government.

The bill requires each local government to report to the Department of Administration all expenditures for communications that promote an individual public official and that include the official's name or physical likeness. The department is required to maintain a searchable database of those expenditures.

The bill requires each local government to report to the Department of Revenue all incurred debt. The Department is required to maintain a searchable Internet database of this information.

The bill also contains an intent clause that states that the Legislature desires local governments to provide "crosslinks" between expenditures listed on the database and the contracts under which those expenditures occur.

The bill adds to the DOA database requirements, to which local governments must conform, the inclusion of links to contracts that relate to expenditures.

(Final 5/6/2010)
Sponsor: Representative Montenegro
Last Action: Signed by the Governor Laws 2010 Chapter 288

HB2450: Water & Wastewater Charges

HB2450 would prohibit a city or town from collecting unpaid water or wastewater bills, except from those persons with whom the city directly contracted, for the provision of those services. The city or town would additionally be prohibited from refusing service, except to that person who had not paid the charge, within the service area for unpaid water or wastewater charges.

AMWUA opposes HB2450 because it would require ratepayers to absorb additional new debts from customers who have failed to pay for their services. This language would transfer all unpaid bills from the current growing number of unpaid bills from the property onto the base of customers.

The bill was amended to apply only to owner-occupied residential and residential rental units of fewer than four units.

(Final 5/13/2010)
Sponsor: Representative Antenori
Last Action: Signed by the Governor Laws 2010 Chapter 320

HB2478: S/E Development Fees Moratorium

HB2478, as amended, continues by one year (to 2012) the moratorium on development fee increases that can be adopted by cities. The bill also defines the "date of imposition" of the fees for the purpose of the moratorium.

The bill amends Laws 2009, 3rd Special Session, Chapter 7, Section 41.

(Final 5/6/2010)
Sponsor: Representative Konopnicki
Last Action: Signed by the Governor Laws 2010 Chapter 153

HB2586: S/E Agency Fees Rules

HB2586 amends the FY2011 Environment BRB to provide a 30-day public comment period before an agency is authorized to implement the temporary fee increases authorized in the BRB. The bill also specifies that these fees must be assessed in a non-discriminatory manner among fee payers.

The bill also establishes a 10-member fee commission appointed by the Governor (4), the Speaker (3), and the President (3). The commission is required to have bi-partisan membership.

The commission shall:

1. Review existing state agency fee authority
2. Review state agency fiscal needs and appropriate fee levels
3. Study the equality of the impact of state agency fees on business and industry in this state
4. Make recommendations on an appropriate legal procedure to raise or lower existing state agency fees.

(Final 5/12/10)
Sponsor: Representative Biggs
Last Action: Signed by the Governor Laws 2010 Chapter 290

HB2653: IGAs; Separate Legal Entity

HB2653 enables two or more public entities (cities, towns, counties, and specified Title 48 Special Districts – including irrigation districts) to enter into an intergovernmental agreement for the purpose of creating a separate legal entity.

The Board of Directors of the newly formed entity would consist of elected members of the forming governments or their designees.

The entity would:

- Have all the powers common to the forming agencies
- Be able to sue or be sued
- Issue revenue bonds
- Engage in electrical generation, but not transmission
- Not be considered a public power entity for the purposes of Title 30
- Empowered to contract, employ staff, and build facilities

Any bonds issued by the separate entity would be required to be approved by the State Certification Board.

The separate entity would not be permitted to exercise powers of eminent domain in the acquisition of existing facilities of a political subdivision or a public service corporation.

(Final 5/13/2010)
Sponsor: Representative Pratt
Last Action: Signed by the Governor Laws 2010 Chapter 328

HB2676: Energy Parks (NOW: University Athletic Facilities)

HB2676 as introduced would have established an authority to create energy parks for the purpose of encouraging the development of energy transmission and generation facilities. The introduced version provided for the duties of a board of directors and an executive director. The measure would have created a special class of property for tax assessment purposes and specified the powers of the authority.

The bill was stricken with language relating to special districts that can be created for the purpose of improving and constructing university athletic facilities.

(Final 5/6/2010)
Sponsor: Representative Nichols
Last Action: Signed by the Governor Laws 2010 Chapter 140

HB2767: Water Quality Fees

HB2767 would enable the Director of the Department of Environmental Quality to set various water quality program fees by rule, rather than the current statutory maximums. These include the Aquifer Protection Permit program, Arizona Pollutant Discharge Elimination System program, and dry well registration.

The bill would expand the department's authority to charge fees for any permit or inspection it performs to ensure compliance with its rules. Current statute allows fees for permits and inspections only, as specified by law, or for a permit program for direct reuse of reclaimed water [49-203(A)6]. Additionally, the bill expands the authority to charge fees relating to the revocation, denial, and issuance of AZPDES permits.

The bill would require the ADEQ director to deposit fees directly into the Water Quality Fee fund, rather than depositing the fees with the State Treasurer.

The bill would add to the authorized uses of Water Quality Fee funds the issuance of AZDPES permits. Current statutes allow the WQF to be used for Aquifer Protection Permits, Dry Well registration, technical review, and inspections.

The bill would add recharge facilities to the list of entities required to obtain and register an aquifer protection permit and pay the annual fee. For a site with multiple APPs, the owner would be required to pay the fee for the permit with the highest discharge rate, plus one-half the amount for each of the other permits on the site. Current statute requires the payment to be the highest discharge permit rate, plus the lesser of the discharge rates or $1,000 for the other permits on that site.

HB2767 would establish a 16-member committee charged with providing assistance to the Director of Environmental Quality (ADEQ) in the setting of fees for water quality programs. The committee would consist of the ADEQ director and fifteen members appointed by the director, pursuant to the following membership guidelines:

- 2 members representing the Mining Industry
- 1 member representing the Agricultural Industry
- 2 members representing the Homebuilding Industry
- 2 members representing Cities and Towns
- 2 members representing Wastewater Utilities
- 2 members representing Power Generating Utilities

- 2 members representing the Manufacturing Industry
- 2 members representing regulated wastewater operators

The members would be appointed to 5-year terms and would be eligible to serve up to two terms. Members would not be eligible for compensation.

The bill would require ADEQ to cooperate with and provide technical assistance to the committee. ADEQ must also provide staff support and meeting space accommodations to the committee.

The bill requires the director to call a meeting of the committee before modifying any fee relating to water quality programs. The committee is directed to periodically examine and propose modifications to water quality fees.

The bill would repeal Laws 1991, Chapter 280 Section 5, relating to the director's ability to set APP fees to recover direct costs. This repeal appears to be necessary for compliance with the proposed language relating to APP fees.

As session law, the bill would permit the existing fee maximum structures to remain in place until December 31, 2010, for APP applications (49-241.02), APP annual registrations (49-242), and dry well registration (49-332).

Though these fees could be amended via the new process, the existing **maximum** fee structure that is carried as default, via the session law provisions, is as follows:

<u>APP Applications</u>

- Individual or Area-wide APP $100,000
- Complex Modification to Individual or Area-wide APP $100,000
- Clean Closure without APP $35,000
- Standard Modification to Individual or Area-wide APP $15,000

<u>APP Annual registrations (wastewater treatment, injection wells, dry wells, recharge facility [proposed], surface impoundments)</u>
Annual fee based on gallons of influent or discharge per day:

- 3,000 – 9,999 = $25
- 10,000 – 99,999 = $100
- 100,000 – 999,999 = $1,000
- 1,000,000 – 9,999,999 = $5,000
- 10 million or more = $85,000

If a single site has more than one permit, the fee is equal to the largest single permit based on gallons, plus 50% of the charge for each additional permit on the site. For example, if a site had two permits at 11,000 gallons each and one permit at 11 million gallons, the annual registration would be $85,100 ($85,000+ [50% x $100 = $50] + [50% x $100 = $50]).

Dry well registration would remain at $10 for this interim period.

The final version of the bill gives the director the opportunity to set the fees by rule once and requires the director to seek legislative authority for future increases. The final version also requires that the fee revenues be "held in trust" and not be subject to legislative sweeps.

(Final 5/12/2010)
Sponsor: Representative Jones
Last Action: Signed by the Governor Laws 2010 Chapter 265

SB1194: APA Bonding

SB1194 removes the requirement for the Arizona Power Authority to get approval from the State Certification Board prior to issuing revenue bonds. The bill also repeals sections of APA's bond authority in Title 30 (similar authority is contained in Title 48).

The bill adds the Governor as a member ex-officio of the State Certification Board. The bill also specifies that the Board meets at the call of the chair or upon written request of at least three of its members. SB1194 grants the Board the authority to promulgate rules and prohibits the Board from charging fees, other than for printing or publication.

The bill also specifies provisions relating to the Board's findings on applications.

The bill contained an emergency clause.

(Final 5/6/2010)
Sponsor: Senator Pierce
Last Action: Signed by the Governor Laws 2010 Chapter 165

SB1276: Water Monitoring Assistance Program

SB1276 would continue the statutory authorization for ADEQ's Water Monitoring Assistance Program an additional ten years to 2020.

The MAP program serves all public water systems (except those owned by the State or Federal governments) that serve fewer than 10,000 customers. The MAP charges annual fees that enable the State to contract for testing of the water system. The base fee is $250.00 and there is a $2.57 charge per connection.

According to ADEQ, the MAP tests for regulated volatile organic chemicals, regulated synthetic organic chemicals, and regulated inorganic chemicals. The MAP also tests for asbestos, radionuclides, nitrite, nitrate, sulfate (in the past), and nickel.

Other testing, for bacteria and other contaminants, is the responsibility of the water system.

(Final 5/12/2010)
Sponsor: Senator Nelson
Last Action: Signed by the Governor Laws 2010 Chapter 277

SB1277: Maximum Daily Load

SB1277 would continue the statutory authorization for ADEQ's Maximum Daily Load (MDL) Program an additional ten years to 2020.

The MDL program helps impaired streams and lakes meet water quality standards for their intended uses. It applies to waters listed on the state's impaired waters list according to Section 303(d) of the Clean Water Act.

ADEQ submits a list of waters and the schedule to establish Total MDL every two years. US EPA reviews and approves the list.

(Final 5/12/10)
Sponsor: Senator Nelson
Last Action: Signed by the Governor Laws 2010 Chapter 278

SB1359: ADWR

The draft bill language for the ADWR Fees proposal (Bill 1 of 2) makes numerous changes to ADWR fee structures. The draft language would create a Water Resources Fund (WRF), which would consist of monies appropriated to or collected by the department, gifts, grants, and interest earnings. The fund would be continuously appropriated and exempt from lapsing.

The bill language would direct fee collections that are now subject to the General Fund or other funds to the newly created WRF. The proposed language would also enable funds remaining in various internal ADWR accounts to revert to the WRF at the end of the fiscal year – such as the Production & Copying fund and the Publication & Mailing fund.

The bill's final version would retain the Assured & Adequate Water Supply Administration Fund and the Well Administration Fund.

The bill was amended in the House to provide that fee revenues that are deposited into the WRF are to be "held in trust" and not subject to legislative sweeps.

The introduced version of the bill removed the statutory caps from various ADWR permitting fees and replaced those caps with a rulemaking provision. These caps were reinstated in the final version.

(Final 5/12/2010)
Sponsor: Senator Pierce
Last Action: Signed by the Governor Laws 2010 Chapter 282

SB1398: Federal Regulation; Local Coordination

Under SB1398, if a city's laws, ordinances, plans or policies are less restrictive than those of the federal government, the city would be required to demand that the federal government "coordinate" with the city before the federal government implements, enforces or expands the federal plan, regulation or policy within the city limits. The city may vote to decline to demand coordination.

If the federal government fails to coordinate with the city, the city is required to hold a hearing and vote on whether to engage in litigation to force the federal government to coordinate.

A person may petition the city to demand federal coordination. The city has 60 days to comply. If the city does not, and the person suffers injury as a result of the failure to coordinate, the person may file a special action seeking relief. The demand to the city must specify the law, regulation, plan or policy on which the federal government did not coordinate.

SB1398 defines coordination as "the legal right and power of the city or town to demand coordination between the federal and city or town laws, regulation, regulations, plans and policies if the city or town law, regulation, plan or policy is less restrictive than the federal law, regulation, plan or policy."

SB1398 defines less restrictive as "a city or town law, regulation, plan or policy imposes or would impose less of a burden on the exercise of rights, privileges or immunities enjoyed by individuals, organizations and businesses within the city's or town's jurisdictional boundaries." The bill provides identical requirement for counties and special taxing districts.

Issues:

The bill's language is excessively broad. It includes local plans and policies that may not be legally binding documents. It would require the city or town and its component agencies to review every federal law, code, rule, and guidance and determine its applicability and impact relative to every local policy, even if the federal issue is outside the jurisdiction of the city. The bill would potentially require the city to intervene in issues on which it has no policy or may be prohibited from having a policy by statute, as a non-policy would arguably constitute a "less restrictive policy" than that proposed or implemented by the federal government. This would create significant costs and bureaucratic growth at the local level to ensure compliance.

If this language were enacted, it is foreseeable that a city could become so burdened by compliance with hearings on whether to engage in litigation and responses to special actions,

that it may be unable to respond to the daily operations and needs of its citizens. This problem is exacerbated by the possibility that much of this activity could be unrelated to any direct operation of the city.

The definition of "coordination" is problematic, as well, because it is circular. It defines "coordination" as the "legal right and power… to demand coordination." The language does not specify an outcome or a description of what successful coordination would be.

NRIPD Amendment

Senate NRIPD amendment removed rights of action and clarified the definition of coordination.

(Final 5/7/2010)
Sponsor: Senator S Allen
Last Action: Signed by the Governor Laws 2010 Chapter 189

SB1408: Agriculture Best Management; Dust Control

SB1408 changes the definition of "agricultural general permit" with respect to PM10 reduction to mean agricultural best management practices that reduce PM10 emissions from irrigation district activities relating to unpaved or maintenance roads, canals and unpaved utility access roads. These activities must occur in a PM10 nonattainment area designated after June 1, 2009.

(Final 5/7/2009)
Sponsor: Senator Melvin
Last Action: Signed by the Governor Laws 2010 Chapter 82

REGULATORY BILLS NOT ENACTED

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HB2249: Municipal Development Fees; Refunds

HB2249 would require a municipality to refund to the payor (homebuilder) all development fees that were collected, if a facility for which the fee is collected is not completed within seven (7) years of the first fee being collected. The requirement would not apply to fees assessed for water, wastewater or sewer systems.

HB2249 creates a disconcerting precedent for refunds of impact fees. While the homebuilder pays the initial fee at the issuance of building permit, or up to 15 days after closing by development agreement, the cost of the fee is passed on to the buyer. The builder is reimbursed for the impact fee. This language would create a situation, though it is unlikely facilities would not be built, where the builder is doubly reimbursed by the municipality for a fee for which the builder (payor) has already been compensated. This is troubling in terms of fairness and equity, in addition to the administrative challenges posed for the municipalities in tracking and refunding to ephemeral LLCs and partnerships that built the home and were already reimbursed by the buyer.

This language also creates a troubling opening under which future impact fees for longer term projects – such as water and wastewater plants – may be subject to this refunding.
Title 9 authorizes cities and towns to assess development fees, more commonly known as "impact fees," in order to pay for the infrastructure costs generated by expanding development. By law, a city or town must conduct a rigorous study and infrastructure improvements plan (IIP) that identifies the categories of improvements that must be made. The municipality is required to explain the relationship between the fee that is to be assessed and the infrastructure improvements plan.

Current law also requires the IIP to be released to the public at least 90 days prior to the adoption of the fee and at least 30 days prior to the required public hearing on the plan. The fees are also not effective for an additional 75 days following the adoption of the fee.
The amount of an impact fee must bear a reasonable relationship to the burden imposed on the municipality for new infrastructure that is necessary for the new development.

House Floor Amendment

Adopted House floor amendment changed the recipient of a refund from the "payor" to the "current owner of the property."

(Final 5/7/2010)

Sponsor: Representative Biggs
Last Action: HELD in Senate Government

HB2259: Development Fees; Proportional Share

HB2259 would require that development fees not exceed the "proportionate share" of the costs incurred by the city or town in providing infrastructure to new development. This requires that the infrastructure must be at the same level of service as in other parts of the city or, if the infrastructure will result in an increased level of service to existing residents, the costs of the new infrastructure must be divided proportionately between the development and the existing residents.

The bill would also require that all monies to be paid for infrastructure by existing residents must be spent before any impact fee revenues collected for that infrastructure is spent.
HB2259 would additionally require that the required infrastructure improvement plan (IIP) for the fees must identify the amount and sources of all revenues from existing residents that would be contributed to the infrastructure costs. It would also require the plan to identify the sources and amounts of revenue from existing residents that would be used to service bonds used to pay for the infrastructure.

The additional regulations proposed in HB2259 makes compliance with already cumbersome state regulations even more costly for cities and their taxpayers, without substantive benefit to the general public.

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The amount of an impact fee must bear a reasonable relationship to the burden imposed on the municipality for new infrastructure that is necessary for the new development.

(Final 5/7/2010)
Sponsor: Representative Biggs
Last Action: Retained on House COW calendar.

HB2407: Municipal Sales Tax; Utilities

HB2407 would prohibit a city, town or special taxing district from levying a transaction privilege, sale, use, franchise or other similar tax or fee on gross proceeds of sales or gross income derived from the provision, transmission or delivery of electricity, gas or water to customers outside the corporate boundaries of the city, town or taxing jurisdiction.

The bill also prohibits the city or town from increasing its rate of taxation on any business classification or other class of tax payers unless the nominal rate increase applies equally to all class of taxpayers subject to the tax.

Would require any increase proposed by a city to be approved by the Arizona Corporation Commission before it can take effect and this measure preempts the Model City Tax Code.

(Final 5/5/2010)
Sponsor: Representative Antenori
Last Action: Retained on House COW

HB2458: Home Sales; Water Supply Disclosure

HB2458 would require a subdivider, outside an Active Management Area (AMA), to record with the County Recorder a document that contains a statement of water adequacy or inadequacy (as determined by ARS 45-108). This document would then be recorded with the plat for the subdivision.

The bill would allow, if the supply were subsequently determined to be adequate, the owner of a lot in the subdivision to get a notice of adequacy from ADWR in a format that is recordable. The owner would then be required to record that notice with the County Recorder.

A subdivider that is required to provide the recorded disclosure of Water Adequacy pursuant to ARS 33-406 is exempt from the proposed requirements. ARS 33-406 requires disclosure certain lots with inadequate water supply that the water to serve that lot or subdivision must be hauled by train or motor vehicle.

(Final 5/3/2010)
Sponsor: Representative Ableser
Last Action: Referred to House Water & Energy and House Commerce

HB2574: Renewable Energy Districts

HB2574 would enable property owners to petition a city or a county for the formation of an improvement district that would be used to finance equipment for energy efficiency, renewable energy, water conservation, rainwater harvesting, combined heat/power systems, and gray water. The bill would allow these improvements to be made by the district on both public and private property.

The petition would require the signatures of all property owners within the district who are subject to the district's annual assessment. After receiving the petition and verifying the ownership of the parcels, the governing body of the city may then adopt a resolution of intention to order the improvements and may immediately adopt a resolution ordering the improvements.

The bill contains provisions and procedures for a member parcel to object to the annual assessment and requires the governing body to hear and decide on any such objections. The annual assessment is to be divided among the properties based on the benefit received by each property.

HB2574 also prohibits the district from distributing or transmitting power, except under certain conditions, for net metering.

The bill also contains a legislative intent clause that specifies that the improvements made by a district serve a public purpose, even if those improvements are made on private property, and are expressly declared to be in the public interest. This language is included in order to prevent the district from being subject to challenges under the State Constitution's gift clause, which prohibits public dollars from being spent for private purposes without a benefit to the State or a political subdivision thereof.

HB2574, as introduced, prohibits the county from forming a district within the boundaries of an incorporated city or town without approval by the city. The language leaves some ambiguity about the definition of municipality for the purposes of forming a district. While it appears that the bill's intent is to give only the governing body of an incorporated city or town the authority to create a district within a city's limits, the language does not clearly provide this limitation – as the word municipality may have broader definitions elsewhere in statute. AMWUA would also like to see clarification about the creation of water-related improvement districts that are within a city water service area, but outside of the city limits. The bill was amended to clarify

that the governing body of an incorporated city or town is the entity that may create the district within city limits.

(Final 5/3/2010)
Sponsor: Representative Mason
Last Action: HELD in Senate Finance

HB2597: Tax Credits; Exemptions; Sunset

HB2597 requires all future statutes that provide a tax credit or exemption to have a 7-year sunset. The bill inserts a 7-year sunset in numerous tax credits, including agricultural water conservation systems, solar hot water stub outs, and pollution control.

(Final 5/6/2010)
Sponsor: Representative Chabin
Last Action: 2/22 FAILED House Ways & Means 4-4

HB2744: Bottled Water Surcharge

HB2744 would establish a surcharge for bottled water sold to retail customers in Arizona. The surcharge would be paid at the same time as the Transaction Privilege, Use, and Severance Tax aka: TPT and would be levied at the following rates:

- 5 cents per bottle sold individually, regardless of bottle size
- 5% of the retail price for a multiple bottle package
- 5 cents per gallon for water dispensed into a customer's bottle or delivered to a customer

The bill would exclude bottles sold on the premises for consumption at restaurants or facilities operating under a restaurant classification for TPT purposes.

The proposed bill applies to bottles that are five gallons or fewer. HB2744 would define bottled water as water that is noncarbonated, unflavored, and unfortified potable drinking water offered for sale at retail establishments in bottles or dispensed into a customer's bottle or delivered to the customer in bottles. The definition includes products labeled "spring water," "purified water" and "distilled water."

The bill specifies that revenue collected through this surcharge is to be distributed as follows:

- the first $25 million to ADWR
- the next $10 million to ADEQ Water Quality Programs
- the remainder to cities, towns, and counties based on the revenue TPT sharing formula (42-5029 Subsection D, paragraphs 1, 2 and 3)

The distribution levels are subject to annual adjustment according to the GDP price deflator, as defined in ARS 41-563.

Because the bill would raise revenues, it requires a two-thirds vote for approval, or three-fourths vote to override a veto (Proposition 108).

HWE Amendment

HWE Amendment changed the distribution revenues to 60% to ADWR and 40% to ADEQ Recycling.

(Final 5/3/2010)

Sponsor: Representative Mason
Last Action: 2/25 FAILED House Water and Energy 4-4

HCR2015: Navajo Generating Station

A CONCURRENT resolution supporting Navajo generating station emissions standards that balance clean air needs with state and tribal water, employment and economic needs.

Whereas, the United States Environmental Protection Agency (EPA) is considering imposing stringent new emission controls on the Navajo Generating Station (NGS) that could have serious consequences for the citizens and Indian tribes of this state; and

Whereas, the NGS is a critical source of employment and revenue for members of the Navajo Nation and, through the Kayenta coal mine that supplies coal for NGS, for members of the Hopi Tribe, as well; and

Whereas, as essentially the sole source of power for the Central Arizona Project (CAP), the NGS is critical to CAP operations in pumping diverted water from the Colorado River and Lake Havasu to municipal, rural and tribal users in Arizona; and

Whereas, power from NGS that is not needed for CAP pumping is sold to help repay the costs of constructing CAP and to fund the costs of Indian water rights settlements in Arizona; and

Whereas, coal mining operations contribute $30 million in annual state and federal taxes, employ more than 400 Arizonans, mostly members of the Navajo Nation and Hopi Tribe, and contribute $92 million each year in wages, benefits, royalties, business transactions, and scholarships; and

Whereas, implementation of the EPA's new emissions standards could result in greatly increased costs for CAP water customers due to installation of expensive emissions control technology; and

Whereas, the enormous costs to implement new emissions controls and the uncertainty of future regulation could cause NGS participants to close the plant, resulting in a loss of jobs and revenue that would devastate the Navajo and Hopi tribal communities; and

Whereas, in determining emissions control levels for NGS, the EPA should consider not only visibility improvement in the immediate area but also the importance of NGS to the cost-effective delivery of essential water in this state and to the economic well-being of the Navajo Nation and Hopi Tribes.

Therefore, Be it resolved by the House of Representatives of the State of Arizona, the Senate concurring:
That the Members of the Legislature support emissions standards for the Navajo Generating Station that balance the need for clean air with state and tribal water, economic, and employment needs.

(Final 5/6/2010)
Sponsor: Representative Tobin
Last Action: HELD in House Environment

HCR2033: Development Fees; Authority

HCR2033 would refer to the next general election a constitutional amendment that would give local governments the exclusive jurisdiction over the imposition and use of development fees.

(5/6/2010 Final)
Sponsor: Representative Chad Campbell
Last Action: HELD in House Government

SB1092: IGAs; Separate Legal Entities

SB1092 enables two or more public entities (cities, towns, counties, and specified Title 48 Special Districts – including irrigation districts) to enter into an intergovernmental agreement for the purpose of creating a separate legal entity.

The board of directors of the newly formed entity would consist of elected members of the forming governments or their designees.

The entity would:

- Have all the powers common to the forming agencies
- Be able to sue or be sued
- Issue revenue bonds
- Engage in electrical generation, but not transmission
- Not be considered a public power entity for the purposes of Title 30
- Be empowered to contract, employ staff and build facilities

Any bonds issued by the separate entity would be required to be approved by the State Certification Board.

The separate entity would not be permitted to exercise powers of eminent domain in the acquisition of existing facilities of a political subdivision or a public service corporation.

See also HB2653 IGAs Separate Legal Entities.

(Final 5/3/2010)
Sponsor: Senator Paton
Last Action: Referred to Senate Finance

SB1126: Intrastate Nuclear Fuel

In SB1126, the Legislature declares that Nuclear reactor fuel (uranium) that is mined, milled, converted, processed or enriched within the boundaries of Arizona using equipment manufactured in Arizona is not entered into interstate commerce and is not subject to regulation by the United States. The language also asserts that under certain conditions the equipment and basic materials used to produce the nuclear fuel are outside of the jurisdiction of Congress to regulate.

The bill declares that the act of production of nuclear reactor fuel in Arizona is not subject to federal law, licensing, certification, registration or qualification.

The bill also contains numerous findings related to the 9th and 10th Amendments to the US Constitution and the powers of the states.

AMWUA is very concerned with the impacts of the bill on water quality and safety in Arizona. If this language were enacted without adequate new regulatory controls on the state level, the bill would jeopardize the health and safety of Arizona's residents and may permanently contaminate and render useless many of the Arizona's most important water supplies.

(Final 5/3/2010)
Sponsor: Senator Melvin
Last Action: HELD in Senate Commerce

SB1198: Line Extensions

SB1198, as amended, would prohibit a public service corporation from charging a customer for the first 500 feet of an electric line extension. The bill would also require the public service corporation to establish a per foot rate for line extensions greater than 500 feet.

The bill makes other changes relating to line extensions and public service corporation's policies on line extensions and master planned communities.

(Final 5/7/2010)
Sponsor: Senator S. Allen
Last Action: HELD in Senate Rules

SB1235: Hazardous Substances; Insurance

SB1235 would require that any person who is required to file a risk management plan pursuant to Section 112(R) of the Clean Air Act to purchase general liability insurance against the risk of emitting a hazardous material.

Section 112(R)(7)(B)(ii) requires the owner of a facility where a hazardous substance, as described by section 112, is present in more than a threshold quantity (established by the EPA director by Rule; 2500 lbs for chlorine – which is used for water treatment facilities) to file and implement a Risk Management Plan that includes prevention and emergency response elements.

Section 112(R) also states "Nothing in this section shall be interpreted, construed, implied or applied to create any liability or basis for suit for compensation for bodily injury or any other injury or property damages to any person which may result from accidental releases of such substances."

Municipal Government Water providers, such as AMWUA's members, are either self-insured or fully-insured and SB1235 would create a new and duplicative cost for our customers.

(Final 5/3/2010)
Sponsor: Senator Burton Cahill
Last Action: Referred to Senate Finance

SB1264: Comprehensive Reporting of Government

SB1264 requires all governmental and quasi-governmental agencies – state, cities, counties, school districts, and special districts – to provide a searchable database of information related to each expenditure made by the jurisdiction and to each receipt of revenue to that jurisdiction. The bill requires each jurisdiction to establish benchmarks for each of its programs and specify the elements of those benchmarks.

SB1264 requires schools to post the raw scores of standardized tests on its website. The bill also requires each jurisdiction to report to the Department of Revenue all of the jurisdiction's debt. It further requires the reporting of crime statistics and the county attorney to report on the prosecutions he or she has referred to trial.

The bill authorized any citizen of the state to sue to enforce any provision of the bill.

(Final 5/7/2010)
Sponsor: Senator Paton
Last Action: HELD in Senate Rules

SB1296: Energy and Water Savings Accounts

SB1296 sets conditions for a new type of performance contract that could be entered into by a city and a qualified vendor or utility for the purpose of achieving water or energy savings and cost savings in existing publicly owned and operated facilities. These savings would be achieved by installing equipment or developing a training program.

The vendor and the city are required to compute the cost savings (annual and monthly) over the life cycle of the improvement and include these figures in the contract. The contract would also include the schedule of monthly payments to be made by the city to the vendor and these payments are required to result in lower costs.

The city is required to report to the Arizona Department of Commerce:

1. Name of the Project
2. Name of the Vendor
3. Total Cost of the Project
4. Expected Energy and Cost Savings

SB1296 would enable incorporated cities and towns, counties and school districts to enter into and create accounts to service energy and water savings performance contracts. The city would be permitted to deposit money from the vendor, American Recovery and Reinvestment Act (ARRA) monies or Clean Renewable Energy Bonds proceeds into the account and use those monies to repay the outstanding balance for the improvements.

The vendor (for a project valued at more than $500,000) is required to give a written guarantee of savings. For the first three years of the contract, the vendor is required to report on measurement and verification of performance. Through the life of the contract, the vendor is required to annually reimburse the city for any shortfall in guaranteed savings.

This mechanism is not valid for the construction of new buildings and requires the baseline for savings to be established using data from the year prior to the execution of the contract.

SB1296 defines numerous projects that count as an “energy cost savings program” which would be eligible for a performance contract. The bill also defines “life cycle costs” as the sum of present values of costs pursuant to federal regulations, as found in the US Department of Energy’s “Guidance on Life Cycle Cost Analysis.”

AMWUA will monitor this bill for future amendments and would encourage some clarifications in the draft to ensure applicability to water-related projects, as many of the definitions are seemingly applicable only to energy elements.

(Final 5/3/2010)
Sponsor: Senator Waring
Last Action: Referred to Senate Natural Resources and Senate Government

SB1335: S/E Fee Principles

The strike everything amendment to SB1335 established guidelines for the adoption of fees by the legislature and by department directors.

- Prohibited the comingling of fee revenues with other revenues
- Prohibited the use of emergency rulemaking for the setting of fees, unless specifically authorized by statute
- Required rules for categorical fees to have fee maximums
- Required that fees set to recover costs are allowed only to recover direct costs
- Caused each fee to expire after 12 months
- Required personnel funded by fee revenues to be exempt from the state personnel system

(Final 5/7/2010)
Sponsor: Senator Verschoor
Last Action: HELD prior to Senate COW

SB1348: Regulatory Reform

SB1348 would have made numerous changes to the rulemaking process. The bill would have established a commission on privatization and would have extended the session law moratorium on rulemaking.

Many of the provisions of SB1348 were incorporated into HB2260.

(Final 5/6/2010)
Sponsor: Senator Burns
Last Action: HELD in House Commerce

SB1355: Water Assessments

SB1355 would enable the Arizona Department of Water Resources (ADWR) to charge water-use assessments on three categories of water users. These include Municipal, Industrial, and Agricultural users.

The assessment on Municipal Delivery Systems would be set by rule by the ADWR director and would be charged on a per gallon basis. The assessment would be collected by the Arizona Department of Revenue. Water delivered for resale would be exempt.

The assessment on Agriculture would be set by rule by the ADWR director and would be charged based on the number of acres irrigated in the prior year. The owner or operator of the irrigated land, greater than ten acres, is required to report to ADWR the number of acres irrigated in the year prior by March 31 of each year and include the payment of the assessment. A person who files the report late is subject to a $25.00 civil penalty for each month that the report is late, up to $150.00. The civil penalty is to be deposited in the General Fund.

The assessment on Industrial would be set by rule by the ADWR director and would be charged based on a per gallon basis. Any industrial user greater than ten acres would be required to file a report stating the number of gallons withdrawn, diverted or received for that property and include the payment with the report. The report is due March 31 of each year. A person who files the report late is subject to a $25.00 civil penalty for each month that the report is late, up to $150.00. The civil penalty is to be deposited in the General Fund.

These assessments would be deposited in a newly created Water Resources Fund that would be administered by ADWR.

The bill would prohibit ADWR from issuing a permit of any kind to a person who is not in compliance with the assessment (has not paid on time).

SB1355 provides for a $1,000.00 per day civil penalty for a person who fails or refuses to pay the assessment and authorizes ADWR to recover those penalties via the superior court. Any such civil penalties shall be deposited in the General Fund.

Provides definitions for Municipal Delivery System, Agricultural Irrigated Acreage, Industrial Water, Irrigated, Domestic Purposes, and Stock Watering.

(Final 5/3/2010)

Sponsor: Senator Steve Pierce
Last Action: HELD in Senate Natural Resources

SB1414: Multi-County Conservation District; Energy

SB1414 clarifies the Central Arizona Water Conservation District's (CAWCD) authority to acquire energy for its operations. The bill specifies that CAWCD can acquire power, generation and transmission resources for any of the purposes and uses of the district. Current statute specifies that only that district can acquire "electricity or other forms of energy necessary for the operation of the Central Arizona Project."

Current statute prohibits the CAWCD from providing electricity to retail customers. The CAWCD "may not sell, resell, deliver or distribute electricity to a retail electric customer, as defined in section 30-801." [ARS 48-3713(B)14]

In addition to its responsibility to manage the Central Arizona Project (CAP), the CAWCD is responsible for the groundwater replenishment obligations of the Central Arizona Groundwater Replenishment District (CAGRD).

(Final 5/5/2010)
Sponsor: Senator Nelson
Last Action: HELD in Senate Natural Resources

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Arizona Department of Water Resources FY2011 Budget

During the 2010 Legislative Session, numerous departments were moved, partially or wholly, off of General Fund support and on to a fee-based budget – what some called "self-funding." ADWR was one of these agencies. This move to greater reliance on fees comes as fee funds and other special accounts throughout the State continue to be raided by the Legislature for use on General Fund priorities.

The adopted FY11 budget reduced ADWR's General Fund support to $7 million and authorized ADWR to increase its existing fees to levels that would temporarily enable them to collect up to $5.7 million in fees.

In anticipation of these reductions, ADWR introduced three measures to enhance the department's revenues: a surcharge on bottled water (HB2744), a water tax (SB1355), and a fee recapture mechanism (SB1359). Of these, only the fee recapture mechanism moved forward.

Concurrent to the legislative process, the department engaged in a stakeholder process to develop a rules package that would update the fee levels that are already authorized in statute. This package included converting some fees to an hourly charge and raising some of the flat rate charges for other permits and fees. ADWR, as of this writing, intended to use this package for both its temporary and permanent fee authority. The package, despite the larger temporary authority, is estimated to raise $2 million to $3 million.

As a result of the General Fund reductions, ADWR began reducing its workforce and restructuring its department – with the expectation its budget would be roughly $9 million – down from $16.8 million the previous year. At the beginning of FY11 ADWR expects to have 98 FTEs, which is down from more than 200 FTEs at the end of FY09.

ADWR Budget FY11

FTE positions 207.2

Total appropriation – Arizona Department of Water Resources $7,360,300

- Operating Lump Sum Appropriation $2,259,100
- Adjudication Support $1,256,200
- Assured and Adequate Water Supply Administration $1,839,100

Rural Water Studies $1,173,700
Conservation and Drought Program $409,900
Automated Groundwater Monitoring $422,300

Fund sources:

State General Fund $7,083,300
Assured and Adequate Water Supply Administration Fund $277,000

Monies in the Assured and Adequate Water Supply Administration line item shall only be used for the exclusive purposes prescribed in sections 12 45-108 and 45-576 through 45-579, Arizona Revised Statutes. The Arizona Department of Water Resources shall not transfer any funds into or out of the Assured and Adequate Water Supply Administration line item. It is the intent of the Legislature that monies in the Rural Water Studies line item will only be spent to assess local water use needs and to develop plans for sustainable future water supplies in rural areas outside the state's AMAs and not be made available for other department operating expenditures. Monies in the Adjudication Support line item shall only be used for the exclusive purposes prescribed in Section 45-256 and Section 45-257, Subsection B, Paragraph 4, Arizona Revised Statutes. The Arizona Department of Water Resources shall not transfer any funds into or out of the Adjudication Support line item.

Fund Sweeps

Reduces the Water Bank Fund by $301,000 (FRAT)
Reduces the Water Protection Fund by $41,000 (FRAT)
Reduces the Water Quality Fund by $88,000 (FRAT)
Reduces the Indirect Cost Recovery Fund by $357,000 (FRAT)
Reduces the Well Administration Fund by $123,000 (FRAT)
Transfers $198,000 FY10 and $154,000 FY11 from the Water Bank Fund to the General Fund
Transfers $5 million from Arizona Water Banking Fund (AWBF) Interstate Banking to the General Fund for FY10
Transfers $28,000 FY10 from Flood Warning System to the General Fund

Contingency Cuts

If Proposition 100 (Temporary Sales Tax – May 2010) fails, ADWR will have its General Fund appropriation reduced by an additional $322,000.

Fees

In addition to the funding support above, HB2007 Environment BRB authorizes up to $5.6 million in fee revenue. This will be addressed by the ADWR Fee Rules package, which is expected to generate $2-$3 million. Fees fall into two categories: Flat Rate and Hourly. The Hourly rate for permitting is proposed to be $118 per hour. The proposed fee schedule and methodology follow.

ADWR FEE PROPOSALS
MARCH 2010

ADWR used the methodology developed by ADEQ in its proposed fee analysis. That methodology is calculated based on the permitting work of a full-time employee (FTE) and makes the following assumptions:

HOURS
Assumes an FTE works 2080 hours annually.

NON-PROGRAM HOURS include:

- hours related to employee SVHL (sick, vacation, holiday), calculated at the maximum available of 296 hours;
- hours related to training, meetings and minor tasks estimated at 331 hours;
- hours lost due to employee turnover – use a relatively low rate of 5% - 104 hours.
- TOTAL NON-PROGRAM HOURS estimated at 731 hours annually.

PROGRAM HOURS include both review hours of specific applications and making decisions thereon, and those not related to review hours of a specific application. Some of the PROGRAM HOURS are therefore not billable.

- TOTAL PROGRAM HOURS = 2080 – 731 = 1349 hours
- Non-billable PROGRAM HOURS includes customer service time, inter-division and inter-agency coordination, permit administration, program development (rules and policies) and travel. Estimate this at 440 hours annually.
- BILLABLE PROGRAM HOURS = 1349 – 440 = 909 hours

COSTS
Salaries + employee related expenses (ERE) related to BILLABLE PROGRAM HOURS performed by an FTE.

- Use ERE benefits rate of 40%.
- NON-PROGRAM HOURS in support of BILLABLE PROGRAM HOURS are included in costs. Estimated at 493 hours.
- Program staff includes Engineers, Hydrologists, and the WRS Series at an average hour rate of $24.68.

  Cost = (909 + 493 hours) $24.68/hour 1.4 = $48,442

- Management/ Supervisory hours in support of the FTE's work are included in costs. Estimated at 200 hours. Includes working A/Ds, Managers, and Legal at an average hourly rate of $40.00.
  Cost = (200 hours) $40.00/hour 1.4 = $11,200

- Administration Support hours in support of the FTE's work are included in costs. Estimated at 200 hours. Includes Water Resource Technicians and Administrative Assistants at an average hourly rate of $17.94.
  Cost = (200 hours) $17.94/hour 1.4 = $5,023

Add Indirect expenses (56.35% of personal services and ERE by federal formula) for rent, utilities, etc. estimated at $36,464.

Add Other Expenses such as travel, equipment, operating expenses (supplies, etc.) and professional services estimated at $6,250.

Total Costs Related to Permit Process for 1 FTE= $107,379

HOURLY RATE
Divide the total costs related to the permitting work of a FTE ($107,379) by BILLABLE PROGRAM HOURS (909) provides the Hourly Rate for Permit Processing ($118).

(Source: ADWR, http://www.azwater.gov/AzDWR/IT/FeesStakeholderWorkingGroup/)

Fees Rules Packages

ADWR: http://www.azwater.gov/AzDWR/IT/documents/Final%20Fee%20Rules.pdf

ADEQ: Notice of Public Information, Arizona Administrative Register, Vol. 16, Issue 19, May 7, 2010. http://www.azsos.gov/public_services/Register/2010/19/pubinfo.pdf

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AMWUA 2010 Resolutions

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Resolution 2010.A: THE 1980 GROUNDWATER MANAGEMENT ACT AND SAFE-YIELD

RESOLUTION

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE ARIZONA MUNICIPALWATER USERS ASSOCIATION REGARDING THE 1980 GROUNDWATER MANAGEMENT ACT AND SAFE-YIELD

WHEREAS, the Cities of Avondale, Chandler, Glendale, Goodyear, Mesa, Peoria, Phoenix Scottsdale, Tempe and the Town of Gilbert are members of the Arizona Municipal Water Users Association, a voluntary, non-profit corporation established by cities in the urban area of Maricopa County for the development of an urban water policy; and

WHEREAS, the 1980 Groundwater Management Act established the goal of safe-yield---a long-term balance between the amount of groundwater withdrawn and the amount replenished---for the Phoenix, Tucson, and Prescott Active Management Areas; and

WHEREAS, safe-yield will not be achieved so long as groundwater mining continues in the Phoenix, Tucson, and Prescott Active Management Areas.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Arizona Municipal Water Users Association that the Arizona State Legislature require that those who propose changes to the 1980 Groundwater Management Act must assure that:

1. The proposed legislation will not result in increased groundwater mining.
2. The proposed legislation will not impede efforts to achieve safe-yield.

BE IT FURTHER RESOLVED by the Board of Directors of the Arizona Municipal Water Users Association that the Association urges the Arizona State Legislature to resist any efforts to repeal, directly or indirectly, the safe-yield management goal.

DATED THIS 21ST DAY OF JANUARY, 2010

Mayor W. J. "Jim" Lane, President
Arizona Municipal Water Users Association

ATTEST:

Steven L. Olson, Executive Director
Arizona Municipal Water Users Association

Resolution 2010.B: THE 1980 GROUNDWATER MANAGEMENT ACT AND RURAL ARIZONA

RESOLUTION

A RESOLUTION OF THE BOARD OF DIRECTORSOF THE ARIZONA MUNICIPAL WATER USERS ASSOCIATION REGARDING THE 1980 GROUNDWATER MANAGEMENT ACT AND RURAL ARIZONA

WHEREAS, the Cities of Avondale, Chandler, Glendale, Goodyear, Mesa, Peoria, Phoenix, Scottsdale, Tempe and the Town of Gilbert are members of the Arizona Municipal Water Users Association, a voluntary, non-profit corporation established by cities in the urban area of Maricopa County for the development of an urban water policy; and

WHEREAS, the 1980 Groundwater Management Act (GMA) established Active Management Areas, including the Phoenix Active Management Area, within which the GMA places limits on rights to withdraw groundwater, regulates the drilling of new wells, requires the metering of wells, the reporting of water use, the conservation of water, and prohibits new subdivisions for which there is not a 100-year assured water supply; and

WHEREAS, most provisions of the 1980 Groundwater Management Act do not apply outside of Active Management Areas; meaning, that in rural Arizona there are no restrictions on the drilling of new wells, no limitations on new uses of groundwater, and, absent action by the county board of supervisors, or city or town, lots in subdivisions may be sold even if there is not a 100-year adequate water supply; and

WHEREAS, the decision to subject only urban Arizona to mandatory water management requirements was based in part on the assumptions that rural Arizona did not have any serious water supply problems and would not experience any significant growth pressures, which assumptions have proven invalid***;*** and

WHEREAS, the impacts of the 1980 Groundwater Management Act's water management provisions have proven significant and beneficial for municipal providers within Active Management Areas, not the least of which is a drought insurance program; and

WHEREAS, rural Arizona may benefit from some of the water management concepts in the 1980 Groundwater Management Act so long as such water management concepts are adopted in a manner that reflects the varied local conditions in rural Arizona.

WHEREAS, the Arizona Legislature has taken initial steps toward improving water management in rural Arizona, current statutes fall short of providing a consistent, comprehensive approach to water management in rural Arizona.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Arizona Municipal Water Users Association that the Association urges the Arizona State Legislature to provide rural Arizona, with

the water management tools that can help rural Arizona to ensure its future prosperity by passing legislation to:

1. Prohibit the Arizona Department of Real Estate from issuing a public report to allow the sale of subdivided land, including dry-lot subdivisions, unless the Arizona Department of Water Resources has determined that there is an adequate water supply available to support the proposed subdivision.
   An "adequate water supply" means:

   a. Sufficient groundwater, surface water, or effluent of adequate quality will be legally and continuously available to satisfy the water needs of the proposed, new residential use for at least 100 years; and

   b. The financial capability has been demonstrated to construct the water facilities necessary to make the supply of water available for the proposed, new residential use, including a delivery system and any storage facilities or treatment works.

2. A private well to serve a new residential use may not be drilled without demonstrating an adequate water supply to the Arizona Department of Water Resources.

3. The Arizona Department of Water Resources must be given the authority to enforce water conservation requirements for all water users.

4. All wells must be metered or use an Arizona Department of Water Resources-approved measuring device with the amount of water withdrawn annually reported to the Arizona Department of Water Resources.

DATED THIS 21ST DAY OF JANUARY, 2010

Mayor W. J. "Jim" Lane, President
Arizona Municipal Water Users Association

ATTEST:

Steven L. Olson, Executive Director
Arizona Municipal Water Users Association

Resolution 2010.C: FUNDING RURAL WATER RESOURCE DEVELOPMENT: CONDITIONS ANTECEDENT AND FUNDING PRINCIPLES

RESOLUTION

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE ARIZONA MUNICIPAL WATER USERS ASSOCIATION REGARDING FUNDING RURAL WATER RESOURCE DEVELOPMENT: CONDITIONS ANTECEDENT AND FUNDING PRINCIPLES

WHEREAS, the Cities of Avondale, Chandler, Glendale, Goodyear, Mesa, Peoria, Phoenix, Scottsdale, Tempe and the Town of Gilbert are members of the Arizona Municipal Water Users Association, a voluntary, non-profit corporation established by cities in the urban area of Maricopa County for the development of an urban water policy; and

WHEREAS, in many areas of rural Arizona the absence of a financial plan to plan for and to acquire the water resources and construct the water and wastewater infrastructure (herein after referred to as water resource development) necessary to meet the needs of the current and future population presents, perhaps, the most significant obstacle to the future economic vitality of rural Arizona; and

WHEREAS, when coupled with the lack of technical assistance, inadequate hydrogeologic data, and limited information about the amount and patterns of water use, the problem is only compounded; and

WHEREAS, the Arizona Legislature has taken initial steps toward improving water management in rural Arizona, current statutes fall short of providing a consistent, comprehensive approach to water management in rural Arizona.

WHEREAS, conditions antecedent must be met before the member cities and town of the Arizona Municipal Water Users Association will join with the rest of the Arizona water community to consider how to equitably fund the water resource development in rural Arizona that will be necessary to support the needs of current and future residents.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Arizona Municipal Water Users Association that the Association urges the Arizona State Legislature to establish in statute the following conditions antecedent:

1. Prohibit the Arizona Department of Real Estate from issuing a public report to allow the sale of subdivided land, including dry-lot subdivisions, unless the Arizona Department of Water Resources has determined that there is an adequate water supply available to support the proposed subdivision.
   An “adequate water supply” means:

a. Sufficient groundwater, surface water, or effluent of adequate quality will be legally and continuously available to satisfy the water needs of the proposed, new residential use for at least 100 years; and

b. The financial capability has been demonstrated to construct the water facilities necessary to make the supply of water available for the proposed, new residential use, including a delivery system and any storage facilities or treatment works.

2. The Arizona Department of Water Resources is given the authority to enforce conservation requirements for all water users.

3. All wells must be metered or use an Arizona Department of Water Resources-approved measuring device with the amount of water withdrawn annually reported to the Arizona Department of Water Resources.

BE IT FURTHER RESOLVED that assuming the conditions antecedent are met and that the Arizona State Legislature establishes a funding program for rural water resource development, the Board of Directors of the Arizona Municipal Water Users Association urges that the funding program incorporates the following funding principles:

1. The costs of funding rural water resource development should not be the responsibility of the state or water users or taxpayers that are residents of Maricopa, Pinal, and Pima Counties.

2. New growth should pay for itself.

3. The ability of local and county governments to levy impact fees for water resource development should not be pre-empted.

DATED THIS 21ST DAY OF JANUARY, 2010

Mayor W. J. "Jim" Lane, President
Arizona Municipal Water Users Association

ATTEST:

Steven L. Olson, Executive Director
Arizona Municipal Water Users Association

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City of Avondale

Chandler · Arizona

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ARIZONA

GLENDALE AZ

Goodyear ARIZONA

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CITY OF PEORIA

City of Phoenix

CITY OF SCOTTSDALE
ARIZONA

CITY OF TEMPE
ARIZONA