

Public Policy Agenda Number 2 REVISED

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MEETING DATE: February 1, 2018

AGENDA ITEM: Update on 2018 State Legislative Session and Possible Consideration of a Recommendation that the Board take Action on State Legislation and Policy Issues that Could Affect CAP, including but not limited to SB 1039, SB 1507, SB 1508, SB 1509, SB 1516, SJR 1001, and SCR 1031.

RECOMMENDATION: See attached document and proposed staff recommendations

FINANCIAL IMPLICATIONS: None.

LINKAGE TO STRATEGIC PLAN, POLICY, STATUTE OR GUIDING PRINCIPLE:

CAWCD 2016 Board of Directors Strategic Plan

- Leadership & Public Trust: Relationships – Improve relationships with customers and stakeholders
- Leadership & Public Trust: CAP Board Leadership – Equip Board members to effectively represent CAP and its positions
- Water Supply: Optimize reliability and sustainability of CAP water supply

PREVIOUS BOARD ACTION/ACTIVITY:

November 2, 2017: Public Policy Committee previewed and discussed the draft proposed 2018 State Legislative Agenda.

December 7, 2017: Board adopted 2018 State Legislative Agenda.

ISSUE SUMMARY/DESCRIPTION:

This report describes CAP's state legislative agenda and provides an update on those issues. In addition, this update reports on and requests guidance on bills being considered by the State Legislature.

See attached documents and issue descriptions.

SUGGESTED MOTION:

I move that the Public Policy Committee recommend that the Board adopt a position on the following pending state legislation of interest to CAP: (staff recommendations in parentheses)

SB 1039 appropriation; Arizona water protection fund (SUPPORT)

SB 1507 water program amendments (MONITOR)

SB 1508 water; desalination action plan (SUPPORT)

SB 1509 water; interstate sales (MONITOR)

SB 1516 central Arizona project; sovereign immunity (MONITOR)

SJR 1001 Colorado basin project act; anniversary (SUPPORT)

SCR 1031 water management; sources; policies; support (SUPPORT)

Attachments.

State Legislative Issues Update

January 24, 2018

The 53rd State Legislature's Second Regular Session began on Monday, January 8, 2017. January 24 is the 17th day of the session. 861 bills, including memorials and resolutions, have been introduced. On January 12, Governor Doug Ducey released his proposed FY 2019 state budget.

As is customary each year, staff works with the respective water committees at the Legislature to schedule CAP presentations before each committee. On January 18, Public Policy Chairwoman Karen Cesare, along with Ted Cooke, made CAP's annual presentation to the Senate Natural Resources, Energy & Water Committee, which is chaired by Sen. Gail Griffin. The following week, on January 23, the presentation was likewise made to the House Energy, Environment and Natural Resources Committee chaired by Rep. Rusty Bowers.

At the time of this update, no legislation had been introduced that directly impacts CAP and its operations.

The following State Legislative Issues Update outlines the status of the Board-approved 2018 Legislative Agenda as well as other relevant state legislation and issues.

CAP Authorities

Monitor legislative and regulatory efforts that seek to diminish or otherwise modify CAP's contractual authorities.

Status as of January 24, 2018:

No legislation has been introduced regarding this legislative item.

Protect Lake Mead

Continue to support water conservation and similar efforts that protect the water elevation in Lake Mead and help to avoid Colorado River shortage, including implementation of the Lower Colorado River Basin Drought Contingency Plan, or DCP.

Support legislation as needed to implement multistate agreements relating to the Colorado River, including the DCP.

Continue to promote CAP's Protect Lake Mead campaign to raise awareness and support for cooperative efforts that are aimed at improving water elevations in the reservoir.

No update to report at this time.

State Legislative Issues Update

Arizona Water Resources

Continue to collaborate with various stakeholders on efforts to address in-state and interstate water resources.

Monitor legislative actions that directly impact CAP water supplies and operations.

Monitor legislative efforts that encourage in-state water conservation activities, including the use of residential rainwater harvesting systems.

No update to report at this time.

Multi-Species Conservation Program (MSCP) Funding

Support the Arizona Game and Fish Department's efforts to collect and maintain revenues sufficient to continue its annual contribution toward the costs of the MSCP.

Monitor legislative and executive proposals that impact dedicated annual state funding of the MSCP.

No update to report at this time.

Funding of State Water Agencies and Commissions

Support the efforts of the Arizona Department of Water Resources and the Arizona Water Protection Fund Commission to secure sufficient state General Fund appropriations in order to carry out statutory functions.

Monitor legislative actions that propose to use funds available to the Arizona Water Banking Commission for other purposes.

Status as of January 24, 2018:

Governor Doug Ducey released his proposed FY 2019 state budget on January 12. For the Arizona Department of Water Resources (ADWR), the Governor is proposing a total budget of \$26,604,400, which is the same level as FY 2018. More than \$15.7 million of this amount will come from the state General Fund. This level of funding is consistent with the agency's October budget request.

State Legislative Issues Update

As part of ADWR funding, the budget includes \$1,211,400 from the Arizona Water Banking Fund, which is the same amount that was transferred to the department from this fund for FY 2018. Similarly, the Arizona Water Banking Fund would also provide \$200,000 to the Arizona Navigable Streams Adjudication Commission (ANSAC) to pay for legal fees associated with the Commission's work. In total, the budget proposes to transfer \$1,411,400 from the Water Banking Fund in FY 2019, which is \$200,000 less than this year because the requirement to fund the CAWCD special audit is no longer included in the FY 2019 proposal.

Colorado River litigation: The Executive's budget renames the "Lower Colorado River Litigation Expenses" line item in ADWR's budget to "Colorado River Legal Expenses" so that, according to the Governor, these appropriated monies can be used for any litigation involving the Colorado River. The budget provides the following explanation for the change: "*The change will allow the Department to use the special line item appropriation for any legal expenses relating to protecting Arizona's interests regarding the Colorado River, instead of being limited to litigation expenses that exclusively relate to one case between the Navajo Nation and the U.S. Department of the Interior.*"

Arizona Water Protection Fund: The Executive's budget continues the \$250,000 General Fund appropriation to the Arizona Water Protection Fund in FY 2019.

Sen. Gail Griffin again has introduced her annual bill (S.B. 1039) to appropriate state General Fund monies to the Arizona Water Protection Fund.

S.B. 1039 (appropriation; Arizona water protection fund) would appropriate \$1,000,000 to the Fund in FY 2019. The bill was heard in the Senate Natural Resources, Energy & Water Committee on January 22, and passed unanimously, 7-0.

CAP's adopted 2018 state legislative agenda includes support for sufficient state General Fund appropriations in order for the Arizona Water Protection Fund Commission to carry out statutory functions.

CAP Recommended Position: SUPPORT.

Central Arizona Groundwater Replenishment District (CAGRDR)

Monitor any proposed CAGRDR-related legislation to ensure its operations are not adversely impacted.

State Legislative Issues Update

Promote awareness of CAGRD's statutory functions, operations, and funding to inform lawmakers of its critical contribution to Arizona's water management and economic development.

Status as of January 24, 2017:

On January 16, CAP's Board Secretary and CAGRD & Underground Storage Committee Chairwoman, Sharon Megdal, provided an educational background of the CAGRD and its operations to the House Energy, Environment and Natural Resources Committee. Secretary Megdal was followed by Spencer Kamps, who highlighted the recent CAGRD economic impact study conducted by Elliott D. Pollack & Company and stressed the importance of the CAGRD to development and economic growth in the three counties.

If you have any questions or would like more information regarding any of the issues contained in this report, please contact CAP Strategic Initiatives & Public Policy, 623-869-2150.

Public Policy Agenda Number 2 Attachment 2

PREFILED DEC 19 2017

REFERENCE TITLE: appropriation; Arizona water protection fund

State of Arizona
Senate
Fifty-third Legislature
Second Regular Session
2018

SB 1039

Introduced by
Senator Griffin

AN ACT

APPROPRIATING MONIES TO THE ARIZONA WATER PROTECTION FUND.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Appropriation; Arizona water protection fund

3 The sum of \$1,000,000 is appropriated from the state general fund in
4 fiscal year 2018-2019 to the Arizona water protection fund established by
5 section 45-2111, Arizona Revised Statutes.

REFERENCE TITLE: water program amendments

State of Arizona
Senate
Fifty-third Legislature
Second Regular Session
2018

SB 1507

Introduced by
Senator Griffin

AN ACT

AMENDING SECTIONS 11-823, 37-1002, 37-1011, 37-1012, 37-1013, 37-1014, 37-1036, 37-1054, 37-1302 AND 45-101, ARIZONA REVISED STATUTES; AMENDING TITLE 45, CHAPTER 1, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 45-118; AMENDING SECTIONS 45-292 AND 45-462, ARIZONA REVISED STATUTES; AMENDING TITLE 45, CHAPTER 2, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 45-465.04; AMENDING SECTIONS 45-561, 45-563, 45-563.02 AND 45-568, ARIZONA REVISED STATUTES; AMENDING TITLE 45, CHAPTER 2, ARTICLE 9, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 45-568.03, 45-568.04 AND 45-568.05; AMENDING SECTIONS 45-574, 45-575, 45-2103, 45-2106, 45-2113 AND 48-3702, ARIZONA REVISED STATUTES; AMENDING TITLE 48, CHAPTER 22, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 48-3713.04; APPROPRIATING MONIES; RELATING TO WATER PROGRAMS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 11-823, Arizona Revised Statutes, is amended to
3 read:

4 11-823. Water supply; adequacy; exemptions

5 A. To protect the public health and safety, the general regulations
6 adopted by the board pursuant to section 11-821, subsection B, if approved
7 by unanimous vote of the board of supervisors, may provide that, except as
8 provided in subsection C and subsection D, paragraph 1 of this section,
9 the board shall not approve a final plat for a subdivision composed of
10 subdivided lands, as defined in section 32-2101, located outside of an
11 active management area, as defined in section 45-402, unless one of the
12 following applies:

13 1. The director of water resources has determined that there is an
14 adequate water supply for the subdivision pursuant to section 45-108 and
15 the subdivider has included the report with the plat.

16 2. The subdivider has obtained a written commitment of water
17 service for the subdivision from a city, town or private water company
18 designated as having an adequate water supply by the director of water
19 resources pursuant to section 45-108.

20 B. If the board unanimously adopts the provision authorized by
21 subsection A of this section:

22 1. The board may include in the general regulations an exemption
23 from the provision for a subdivision that the director of water resources
24 has determined will have an inadequate water supply because the water
25 supply will be transported to the subdivision by motor vehicle or train if
26 all of the following apply:

27 (a) The board determines that there is no feasible alternative
28 water supply for the subdivision and that the transportation of water to
29 the subdivision will not constitute a significant risk to the health and
30 safety of the residents of the subdivision.

31 (b) If the water to be transported to the subdivision will be
32 withdrawn or diverted in the service area of a municipal provider as
33 defined in section 45-561, the municipal provider has consented to the
34 withdrawal or diversion.

35 (c) If the water to be transported is groundwater, the
36 transportation complies with the provisions governing the transportation
37 of groundwater in title 45, chapter 2, article 8.

38 (d) The transportation of water to the subdivision meets any
39 additional conditions imposed by the county.

40 2. The board shall promptly give written notice of the adoption of
41 the provision to the director of water resources, the director of
42 environmental quality and the state real estate commissioner. The notice
43 shall include a certified copy of the provision and any exemptions adopted
44 pursuant to paragraph 1 of this subsection. Water providers may be

1 eligible to receive monies in a water supply development fund, as
2 otherwise provided by law.

3 3. EXCEPT AS PROVIDED IN PARAGRAPH 4 OF THIS SUBSECTION, the board
4 shall not rescind the provision or amend it in a manner that is
5 inconsistent with subsection A of this section. If the board amends the
6 provision, it shall give written notice of the amendment to the director
7 of water resources, the director of environmental quality and the state
8 real estate commissioner. The board may rescind an exemption adopted
9 pursuant to paragraph 1 of this subsection. If the board rescinds the
10 exemption, it shall give written notice of the rescission to the director
11 of water resources, the director of environmental quality and the state
12 real estate commissioner, and the board shall not readopt the exemption
13 for at least five years after the rescission becomes effective.

14 4. FOR A COUNTY THAT IS NOT IN AN ACTIVE MANAGEMENT AREA, THE BOARD
15 SHALL REVIEW THE PROVISION AND AFTER REVIEW MAY BY UNANIMOUS VOTE READOPT
16 THE PROVISION NOT MORE THAN FIVE YEARS AFTER THE EFFECTIVE DATE OF THIS
17 AMENDMENT TO THIS SECTION AND AT LEAST EVERY TEN YEARS THEREAFTER, BUT NOT
18 MORE FREQUENTLY THAN EVERY FIVE YEARS THEREAFTER. THE BOARD SHALL GIVE
19 WRITTEN NOTICE OF ANY VOTE NOT TO READOPT THE PROVISION TO THE DIRECTOR OF
20 WATER RESOURCES, THE DIRECTOR OF ENVIRONMENTAL QUALITY AND THE STATE REAL
21 ESTATE COMMISSIONER AND THE VOTE NOT TO READOPT THE PROVISION IS
22 EFFECTIVE, THE PROVISION HAS NO FURTHER FORCE AND SUBSECTION A OF THIS
23 SECTION DOES NOT APPLY IF ALL OF THE FOLLOWING APPLY AT THE TIME OF THE
24 VOTE:

25 (a) THE COUNTY OR THE LARGEST CITY IN THE COUNTY IS PARTICIPATING
26 IN A PROGRAM TO RECHARGE OR SUPPLEMENT THE AQUIFER UNDERLYING THE COUNTY.

27 (b) THE COUNTY OR THE LARGEST CITY IN THE COUNTY HAS ADOPTED A PLAN
28 FOR THE REUSE OF RECLAIMED WATER. FOR THE PURPOSES OF THIS SUBDIVISION,
29 "RECLAIMED WATER" HAS THE SAME MEANING PRESCRIBED IN SECTION 49-201.

30 (c) THE COUNTY OR THE LARGEST CITY IN THE COUNTY HAS ADOPTED A
31 RESIDENTIAL AND NONRESIDENTIAL WATER CONSERVATION PROGRAM FOR INTERIOR AND
32 EXTERIOR WATER USE.

33 (d) IF THE LARGEST CITY IN THE COUNTY IS A COMMUNITY WATER SYSTEM
34 AS DEFINED IN SECTION 45-341, THE CITY IS IN COMPLIANCE WITH ALL
35 APPLICABLE PLANNING AND REPORTING REQUIREMENTS UNDER TITLE 45, CHAPTER 1,
36 ARTICLE 14.

37 (e) THE COUNTY OR THE LARGEST CITY IN THE COUNTY HAS ADOPTED AN
38 ORDINANCE ALLOWING ONLY THE USE OF XERISCAPE OR OTHER DROUGHT TOLERANT OR
39 LOW-WATER USE VEGETATION FOR LANDSCAPING WITHIN ANY PUBLICLY OWNED
40 RIGHT-OF-WAY OF A HIGHWAY, STREET, ROAD, SIDEWALK, CURB OR SHOULDER OR ANY
41 MEDIAN OF A HIGHWAY, STREET OR ROAD WITHIN THE COUNTY OR THE CITY, AS
42 APPLICABLE, AFTER THE EFFECTIVE DATE OF THAT LANDSCAPE ORDINANCE.

43 (f) THE COUNTY OR THE LARGEST CITY IN THE COUNTY IS FUNDING A
44 PROGRAM TO PROVIDE REBATES FOR REPLACING LOW-EFFICIENCY PLUMBING FIXTURES

1 IN RESIDENTIAL AND NONRESIDENTIAL STRUCTURES WITHIN THE COUNTY OR CITY
2 WITH HIGH EFFICIENCY PLUMBING FIXTURES.

3 (g) IF THE LARGEST CITY IN THE COUNTY IS A WATER PROVIDER, THE CITY
4 IS LIMITING THE AMOUNT OF LOST AND UNACCOUNTED FOR WATER IN ITS WATER
5 DISTRIBUTION SYSTEM TO NOT MORE THAN TEN PERCENT OF THE TOTAL QUANTITY OF
6 WATER THAT ENTERS THE DISTRIBUTION SYSTEM.

7 (h) THE COUNTY OR THE LARGEST CITY IN THE COUNTY IS FUNDING A
8 PUBLIC EDUCATION PROGRAM RELATED TO WATER CONSERVATION AND HAS IDENTIFIED
9 AND IMPLEMENTED OTHER PROGRAMS TO REDUCE WATER USE WITHIN THE COUNTY OR
10 CITY, AS APPLICABLE.

11 ~~4.~~ 5. If the board approves a subdivision plat pursuant to
12 subsection A, paragraph 1 or 2 of this section, the board shall note on
13 the face of the plat that the director of water resources has reported
14 that the subdivision has an adequate water supply or that the subdivider
15 has obtained a commitment of water service for the proposed subdivision
16 from a city, town or private water company designated as having an
17 adequate water supply pursuant to section 45-108.

18 ~~5.~~ 6. If the board approves a subdivision plat pursuant to an
19 exemption authorized by paragraph 1 of this subsection or granted by the
20 director of water resources pursuant to section 45-108.02 or 45-108.03:

21 (a) The board shall give written notice of the approval to the
22 director of water resources and the director of environmental quality.

23 (b) The board shall include on the face of the plat a statement
24 that the director of water resources has determined that the water supply
25 for the subdivision is inadequate and a statement describing the exemption
26 under which the plat was approved, including a statement that the board or
27 the director of water resources, whichever applies, has determined that
28 the specific conditions of the exemption were met. If the director of
29 water resources subsequently informs the board that the subdivision is
30 being served by a water provider that has been designated by the director
31 as having an adequate water supply pursuant to section 45-108, the board
32 shall record in the county recorder's office a statement disclosing that
33 fact.

34 C. Subsection A of this section does not apply to:

35 1. A proposed subdivision that the director of water resources has
36 determined will have an inadequate water supply pursuant to section 45-108
37 if the director grants an exemption for the subdivision pursuant to
38 section 45-108.02 and the exemption has not expired or the director grants
39 an exemption pursuant to section 45-108.03.

40 2. A proposed subdivision that received final plat approval from
41 the county before the requirement for an adequate water supply became
42 effective in the county if the plat has not been materially changed since
43 it received the final plat approval. If changes were made to the plat
44 after the plat received the final plat approval, the director of water
45 resources shall determine whether the changes are material pursuant to the

1 rules adopted by the director to implement section 45-108. If the county
2 approves a plat pursuant to this paragraph and the director of water
3 resources has determined that there is an inadequate water supply for the
4 subdivision pursuant to section 45-108, the county shall note this on the
5 face of the plat.

6 D. If the subdivision is composed of subdivided lands as defined in
7 section 32-2101 outside of an active management area and the board has not
8 adopted a provision pursuant to subsection A of this section:

9 1. If the director of water resources has determined that there is
10 an adequate water supply for the subdivision pursuant to section 45-108 or
11 if the subdivider has obtained a written commitment of water service for
12 the subdivision from a city, town or private water company designated as
13 having an adequate water supply by the director of water resources
14 pursuant to section 45-108, the board shall note this on the face of the
15 plat if the plat is approved.

16 2. If the director of water resources has determined that there is
17 an inadequate water supply for the subdivision pursuant to section 45-108,
18 the board shall note this on the face of the plat if the plat is approved.

19 Sec. 2. Section 37-1002, Arizona Revised Statutes, is amended to
20 read:

21 37-1002. Definitions

22 In this chapter, unless the context otherwise requires:

23 ~~1. "Agency of the state" includes the government of the state and~~
24 ~~any subdivision, agency or instrumentality, corporate or otherwise, of the~~
25 ~~state government.~~

26 ~~2.~~ 1. "Agricultural lands" means irrigated ~~farm lands~~ FARMLANDS or
27 dry ~~farm lands~~ FARMLANDS THAT ARE devoted to the purpose of agriculture.

28 ~~3.~~ 2. "Commissioner" or "state natural resource conservation
29 commissioner" means the state ~~land commissioner~~ FORESTER.

30 ~~4.~~ 3. "Department" means the ~~state land department~~ ARIZONA
31 DEPARTMENT OF FORESTRY AND FIRE MANAGEMENT.

32 ~~5.~~ 4. "District" means a natural resource conservation district
33 THAT IS organized in accordance with ~~the provisions of~~ this chapter.

34 ~~6.~~ 5. "District cooperater" means any person who has entered into
35 a cooperative agreement with a natural resource conservation district for
36 the purpose of protecting, conserving and practicing wise use of the
37 natural resources under ~~his~~ THAT PERSON'S control.

38 ~~7.~~ 6. "Due notice" means notice THAT IS published at least twice
39 with an interval of at least six days between the two publication dates,
40 in a newspaper of general circulation within the area affected, or if
41 there is no newspaper of general circulation within the area affected, in
42 a newspaper of general circulation in the county in which the area is
43 located.

1 ~~8.~~ 7. "Government" or "governmental" includes the government of
2 ~~the~~ THIS state, the government of the United States, and any subdivision,
3 agency or instrumentality, corporate or otherwise, of either of them.

4 ~~9.~~ 8. "Irrigation district" means an irrigation district, drainage
5 district, water conservation district, ~~OR~~ agricultural improvement
6 district, ~~and, in addition thereto,~~ includes any district, political
7 subdivision, government agency, canal company, association, corporation or
8 instrumentality of ~~the~~ THIS state, having territorial boundaries and
9 created or organized for the purpose of furnishing irrigation water for
10 lands in ~~the~~ THIS state.

11 ~~10.~~ 9. "Landowner" or "owner of land" means any person, firm or
12 corporation, including ~~the~~ THIS state, holding title to any land lying
13 within a district organized or proposed to be organized under ~~the~~
14 ~~provisions of~~ this chapter, and includes a buyer on contract who is the
15 occupant of land. For the purposes of this chapter, a holder of a
16 certificate of purchase or lease from the state shall be considered
17 the ~~"landowner"~~ or ~~"owner of land"~~.

18 ~~11.~~ 10. "Nominating petition" means a petition to nominate
19 candidates for the office of supervisor.

20 ~~12.~~ 11. "Petition" means a petition for the creation or for the
21 dissolution of a district.

22 ~~13.~~ 12. "Qualified elector" means a person who is a district
23 cooperator and a qualified elector of ~~the~~ THIS state.

24 ~~14.~~ 13. "~~Range lands~~ RANGELAND" means lands other than agricultural
25 lands ~~and~~ THAT ARE devoted principally to the purpose of grazing
26 livestock.

27 ~~15.~~ 14. "Supervisor" means a member of the governing body of a
28 district, elected or appointed in accordance with ~~the provisions of~~ this
29 chapter.

30 ~~16.~~ 15. "United States" or "agencies of the United States" includes
31 the United States, the United States department of agriculture and any
32 other agency or instrumentality, corporate or otherwise, of the United
33 States.

34 Sec. 3. Section 37-1011, Arizona Revised Statutes, is amended to
35 read:

36 37-1011. Division of natural resource conservation

37 For the purpose of administering this chapter, ~~there shall be a~~
38 ~~division of the state land department which shall be known as~~ the division
39 of natural resource conservation IS ESTABLISHED IN THE ARIZONA DEPARTMENT
40 OF FORESTRY AND FIRE MANAGEMENT under the authority and direction of the
41 state natural resource conservation commissioner.

1 Sec. 4. Section 37-1012, Arizona Revised Statutes, is amended to
2 read:

3 37-1012. State natural resource conservation commissioner

4 A. The state ~~land commissioner shall be~~ FORESTER IS THE state
5 natural resource conservation commissioner. ~~He~~ AND shall serve as such
6 without additional compensation.

7 B. The commissioner may appoint an administrative officer of the
8 division of natural resource conservation, a secretary and ~~such~~ other
9 assistants as may be required, assign their duties, define their powers
10 and determine the amount of bond required of any assistant entrusted with
11 funds or property. The compensation of all ~~such~~ assistants shall be as
12 determined pursuant to section 38-611.

13 C. The commissioner shall adopt a seal, which shall be judicially
14 noticed, and shall hold ~~such~~ public hearings, provide for the keeping of a
15 record of all proceedings and annual records of district operations,
16 ~~promulgate such~~ ADOPT orders, ~~AND~~ rules ~~and regulations~~ and perform such
17 other acts as are necessary to carry out ~~the provisions of~~ this chapter.

18 Sec. 5. Section 37-1013, Arizona Revised Statutes, is amended to
19 read:

20 37-1013. Powers and duties of commissioner

21 A. The state natural resource conservation commissioner shall:

22 1. Offer appropriate assistance to the supervisors of districts in
23 carrying out their powers and programs.

24 2. Keep the supervisors of each district informed of the activities
25 and experiences of other districts, ~~and~~ facilitate cooperation and
26 interchange of advice and experience between districts.

27 3. Coordinate the programs of the several districts insofar as
28 possible by advice and consultation.

29 4. Require the supervisors of each district to file with the
30 commissioner annually any audits and the records of the operations of the
31 district for the preceding year in the form and detail as the commissioner
32 prescribes.

33 5. Secure the cooperation and assistance of the United States, its
34 agencies and agencies of this state, in the work of districts as local
35 units of state government with special expertise concerning land, soil,
36 water and natural resources management within the boundaries of the
37 district, as the commissioner deems for the best interest of the state.

38 6. Disseminate information throughout the state concerning the
39 activities and program of districts.

40 7. Provide staff support to the Arizona water protection fund
41 commission established by title 45, chapter 12 and provide administrative
42 assistance to natural resource conservation districts for compliance with
43 the duties for districts pursuant to title 45, chapter 12.

1 8. PUBLICLY RECOGNIZE WATER CONSERVATION MEASURES OR WATER
2 CONSERVATION PROJECTS IN THIS STATE, INCLUDING WATERSHED IMPROVEMENT OR
3 PROTECTION PROGRAMS.

4 9. PROMOTE TO THE PUBLIC THIS STATE'S WATER-RELATED ADVANCEMENTS
5 AND THEIR EFFECT ON WATERSHEDS, FOREST HEALTH, MULTIPLE USES AND
6 STORMWATER RUNOFF PROTECTION PROGRAMS.

7 B. The commissioner may remove a district supervisor from office if
8 the commissioner determines, after reasonable notice and an impartial
9 hearing, that the supervisor is guilty of misfeasance, malfeasance or
10 nonfeasance in office. For the purposes of this subsection, "nonfeasance"
11 includes the failure to attend three consecutive meetings of district
12 supervisors without reasonable excuse.

13 Sec. 6. Section 37-1014, Arizona Revised Statutes, is amended to
14 read:

15 37-1014. State financial assistance; application; criteria

16 A. The commissioner shall include in the annual ~~state-land~~
17 department budget request a sum of not more than forty thousand dollars
18 for each district and sixty thousand dollars for each education center for
19 distribution by the commissioner to those natural resource conservation
20 districts that have applied for, have met the criteria for and have been
21 approved for receiving state financial assistance, as provided in this
22 section.

23 B. Any district or education center desiring to receive state
24 financial assistance for the next ensuing fiscal year shall apply to the
25 commissioner not later than June 20, on a form supplied by the division of
26 natural resource conservation. Each application shall include:

27 1. The number of acres of land lying within the district.

28 2. The extent of conservation programs or education center programs
29 proposed to be undertaken during the fiscal year for which the financial
30 assistance is being requested.

31 3. Any audits that are requested by the commissioner.

32 C. On receipt of the application, the commissioner shall determine
33 whether ~~or not~~ such ~~funds~~ MONIES for the district or education center will
34 be included in the budget request for the ~~state-land~~ department and shall
35 promptly notify the district OR EDUCATION CENTER of that determination.

36 Sec. 7. Section 37-1036, Arizona Revised Statutes, is amended to
37 read:

38 37-1036. Proceedings to organize district; certificate of
39 organization

40 A. A district shall be organized and shall be a body corporate ~~upon~~
41 ON taking the following steps:

42 1. The supervisors elected as provided in section 37-1035 shall
43 present to the secretary of state an application, signed and acknowledged
44 by each supervisor, setting forth:

1 (a) That a petition for the creation of the district was approved
2 by the commissioner pursuant to ~~the provisions of~~ this chapter.

3 (b) The name and official residence of each supervisor, ~~and~~ a
4 certified copy of their notification of election.

5 (c) The name proposed for the district.

6 (d) The location of the proposed office of the supervisors of the
7 district.

8 2. The application shall be accompanied by a certificate of the
9 commissioner ~~which shall set~~ SETTING forth:

10 (a) The boundaries of the district as determined by ~~him~~ THE
11 COMMISSIONER.

12 (b) That a petition was filed, notice WAS issued and a hearing WAS
13 held as prescribed by law.

14 (c) That for a district to function in the proposed territory was
15 determined by the commissioner to be in the public interest.

16 (d) That notice was given and a referendum on the question of the
17 creation of the district and an election of supervisors were held.

18 (e) That the results of the referendum showed not less than
19 sixty-five ~~per cent~~ PERCENT of the votes cast, representing not less than
20 fifty ~~per cent~~ PERCENT of the owners of land, to be in favor of the
21 creation of the district.

22 (f) That the supervisors signing the application are the duly
23 elected supervisors of the district.

24 3. The secretary of state shall examine the application and
25 statement and, if ~~he~~ THE SECRETARY OF STATE finds that the name proposed
26 for the district is not identical with or so similar to that of any other
27 district as to lead to confusion, ~~he~~ THE SECRETARY OF STATE shall record
28 them. If the name proposed is identical with or so similar to another
29 district as to lead to confusion, ~~he~~ THE SECRETARY OF STATE shall certify
30 that fact to the commissioner, who shall submit another name. ~~Upon~~ ON
31 receipt of a new name, free from defects, the secretary of state shall
32 record the application and statement.

33 B. The secretary of state shall issue to the supervisors a
34 certificate, under the seal of the state, certifying the organization of
35 the district, ~~and~~ SHALL record the certificate with the application and
36 statement. The district ~~shall include~~ INCLUDES the territory as
37 determined by the commissioner, ~~but it shall~~ DOES not include any area
38 within the boundaries of another district, ~~nor shall it~~ AND DOES NOT
39 include any area, land or property of or lands held under certificate of
40 purchase or lease from ~~the~~ THIS state by any person or persons, ~~which~~ IF
41 THE area, land, property or leaseholds lie within the geographical limits
42 of such A district but the owners or holders of certificates of purchase
43 or lessees of which do not desire to ~~come within~~ JOIN the district.

44 C. In any action or proceeding involving the validity or
45 enforcement of, or relating to, any contract, proceeding or action of the

1 district, the district ~~shall be~~ IS deemed to ~~have been~~ BE established in
 2 accordance with ~~the provisions of~~ this chapter ~~upon~~ ON proof of the
 3 issuance of the certificate of organization by the secretary of state. A
 4 copy of the certificate certified by the secretary of state ~~shall be~~ IS
 5 admissible in evidence in any action or proceeding, ~~and shall be~~ IS proof
 6 of the filing and contents thereof. In like manner, any district
 7 combined, ~~and consolidated with an adjacent district or districts,~~ and
 8 reorganized and renamed ~~prior to the date of this section shall be~~ BEFORE
 9 JUNE 20, 1968 IS deemed to ~~have been~~ BE established ~~upon~~ ON proof of
 10 certifications and official maps filed with the secretary of state by the
 11 division of natural resource conservation of the ~~state land~~ department.

12 D. The commissioner shall appoint two supervisors from a panel of
 13 candidates compiled by the elected supervisors and presented by the
 14 temporary chairman of the elected supervisors. Candidates for the office
 15 of appointed supervisors shall be qualified electors of the state.
 16 Appointed supervisors shall continue to serve until May 31 of the next
 17 even-numbered year or until their successors are otherwise appointed.

18 Sec. 8. Section 37-1054, Arizona Revised Statutes, is amended to
 19 read:

20 37-1054. Powers of district

21 A. This state recognizes the special expertise of the districts in
 22 the fields of land, soil, water and natural resources management within
 23 the boundaries of the district. A district is empowered to:

24 1. Conduct surveys, investigations and research relating to the
 25 character of the soil, soil erosion prevention within a farm or ranch,
 26 methods of cultivation, farm and range practices, seeding, eradication of
 27 noxious growths and any other measures that will aid farm and range
 28 operations, disseminate information pertaining thereto, and carry on
 29 research programs with or without the cooperation of this state or its
 30 agencies or the United States or its agencies.

31 2. Conduct demonstration projects within the district on lands
 32 owned or controlled by the state or any of its agencies with the consent
 33 and cooperation of the agency having jurisdiction of the land, and on any
 34 other lands within the district on obtaining the consent of the landowner
 35 or the necessary rights or interests in the land, in order to demonstrate
 36 by example the means, methods and measures by which water, soil and soil
 37 resources may be conserved and soil erosion and soil washing may be
 38 prevented and controlled.

39 3. Cooperate and enter into agreements with a landowner, an
 40 operator or any agency or subdivision of the state or federal government
 41 to carry on programs of watershed improvement, soil erosion prevention,
 42 methods of cultivation, cropping practices, land leveling and improvement
 43 on agricultural lands, and programs limited to methods of proper range
 44 use, reseeding and the eradication of noxious growth on grazing lands, all

1 within the limits of an individual farm or ranch and subject to the
2 conditions the supervisors deem necessary.

3 4. Acquire, by purchase, exchange, lease or otherwise, any
4 property, real or personal, or rights or interest in any property,
5 maintain, administer and improve any properties acquired, receive income
6 from any property or right or interest in property and expend it in
7 carrying out the purposes of this chapter, and sell, lease or otherwise
8 dispose of any property or interest in property in furtherance of the
9 purposes of this chapter.

10 5. Make available, on the terms it prescribes to landowners within
11 the district, agricultural and engineering machinery and equipment,
12 fertilizer, seed and other material or equipment as will assist the
13 landowners to carry on operations on their lands for the purposes and
14 programs authorized by this chapter.

15 6. Develop, publish and bring to the attention of landowners within
16 the district comprehensive plans for the conservation of soil and water
17 resources within the district that specify in such detail as may be
18 feasible the acts, procedures, performances and avoidances necessary or
19 desirable for the effectuation of the plans.

20 7. Apply for, receive and spend monies from the Arizona water
21 protection fund pursuant to title 45, chapter 12 to be used in individual
22 districts or in cooperation with other districts, persons, cities, towns,
23 counties, special districts and Indian communities for projects consistent
24 with title 45, chapter 12.

25 8. Employ agents, engineers, attorneys or other employees not
26 readily available from existing state agencies.

27 9. Sue and be sued in the name of the district, have a seal, which
28 shall be judicially noticed, have perpetual succession unless terminated
29 as provided in this chapter, make and execute contracts and other
30 instruments necessary or convenient to the exercise of its powers and
31 make, amend and repeal rules not inconsistent with this chapter to carry
32 into effect its purposes and powers.

33 10. Accept donations, gifts and contributions in money, services,
34 materials or otherwise, and use or expend them in carrying on its
35 operations.

36 11. Organize and establish an education center to increase the
37 knowledge of natural resources in this state through the following
38 methods:

39 (a) Offering technical guidance and training to agricultural
40 producers.

41 (b) Publishing scholarly materials.

42 (c) Providing educational and training opportunities, both inside
43 and outside of the district.

44 (d) Conducting or sponsoring scientific studies that affect natural
45 resources in this state.

1 B. A provision of law with respect to the acquisition, operation or
2 disposition of property by other public bodies shall not be applicable to
3 a district organized under this chapter unless specifically stated
4 therein.

5 C. After the formation of any district under this chapter, all
6 participation thereunder shall be voluntary, notwithstanding any provision
7 of this chapter to the contrary.

8 D. A district may send to the Arizona water protection fund
9 commission established by title 45, chapter 12 written recommendations for
10 geographic areas to be emphasized, issues of concern and measures to
11 implement title 45, chapter 12. A district that sends written
12 recommendations to the commission shall request information from at least
13 the following:

14 1. The director of the department of water resources, THE STATE
15 FORESTER and the state land commissioner.

16 2. The federal and state fish, wildlife, recreation and natural
17 resource agencies.

18 3. County and municipal entities.

19 4. The public.

20 E. The district shall develop procedures to ensure adequate
21 participation in the public involvement process prescribed by subsection D
22 of this section.

23 Sec. 9. Section 37-1302, Arizona Revised Statutes, is amended to
24 read:

25 37-1302. Powers and duties of state forester; rules;
26 legislative presentation; acceptance of federal
27 law

28 A. The state forester is designated as the agent of ~~the~~ THIS state
29 ~~of Arizona~~ and shall administer this chapter. The state forester shall:

30 1. Exercise and perform all powers and duties vested in or imposed
31 on the Arizona department of forestry and fire management.

32 2. Adopt rules necessary to discharge the powers and duties of the
33 Arizona department of forestry and fire management, including rules that
34 create efficiencies, protect the public health and safety and prescribe
35 budgetary obligations.

36 3. Subject to title 41, chapter 4, article 4, appoint an assistant
37 director to the office of the state fire marshal, a state fire training
38 officer and a state fire resource coordinator, all of whom serve at the
39 pleasure of the state forester.

40 4. Subject to title 41, chapter 4, article 4, employ, determine the
41 terms and conditions of employment of and prescribe the duties and powers
42 of administrative, professional, technical, secretarial, clerical and
43 other persons as may be necessary in the performance of the Arizona
44 department of forestry and fire management's duties. The compensation of
45 department employees shall be as determined pursuant to section 38-611.

1 5. Contract for the services of outside advisors, consultants and
2 aides as may be reasonably necessary.

3 6. Perform all management and administrative functions assigned or
4 delegated to this state by the United States relating to forestry and
5 financial assistance and grants relating to forestry.

6 7. Identify sources of information relating to forest management,
7 including wildfire prevention, mitigation, suppression and recovery and
8 administrative and judicial appeals and litigation with respect to timber
9 sales and forest thinning projects in this state, and develop procedures
10 for compiling and distributing that information.

11 8. Take necessary action to maximize state fire assistance grants,
12 including establishing timelines for using grant monies and reallocating
13 lapsed grant monies to other projects.

14 9. Conduct education and outreach in forest communities by
15 explaining the wildfire threat to private property caused by the lack of
16 timber harvesting, forest thinning, land management and watershed
17 protection and enhancement.

18 10. Monitor and conduct forestry projects and wildfire prevention,
19 mitigation and suppression activities.

20 11. Assist in the development of the forestry products industry in
21 this state.

22 12. Intervene on behalf of this state and its citizens in
23 administrative and judicial appeals and litigation that challenge
24 governmental efforts supported by the state forester if the state forester
25 determines that intervention is in the best interests of this state.

26 13. Annually develop and implement a comprehensive statewide
27 wildfire response plan for the deployment of state, county, municipal,
28 fire district, volunteer fire association and private fire service
29 provider contract resources to wildfire suppression activities. The
30 statewide wildfire response plan shall take into account anticipated fire
31 conditions and fire severity and may include repositioning resources as
32 necessary. The state forester shall consult with federal land management
33 firefighting agencies, state and county emergency agencies, municipal fire
34 departments, fire districts, statewide fire district and statewide fire
35 chiefs associations, volunteer fire departments and private fire
36 contractors in the development of the comprehensive statewide wildfire
37 response plan, the implementation of standards for training and
38 certification for all classes of wildland fire and hazard personnel and
39 the implementation of standards for wildland fire apparatus and equipment
40 that are deployed under cooperative agreements with the state forester.

41 14. Provide necessary oversight to ensure standardized training and
42 certification for all classifications of firefighters to be deployed to
43 any incident.

1 15. Develop recommendations for minimum standards for safeguarding
2 life and property from wildland fires and fire hazards, preventing
3 wildland fires and alleviating fire hazards.

4 16. Develop recommendations for minimum standards for the storage,
5 sale, distribution and use of dangerous chemicals, combustibles, flammable
6 liquids, explosives and radioactive materials in wildland-urban interface
7 areas.

8 17. Consult with the department of public safety, the department of
9 emergency and military affairs and local governments regarding the
10 establishment of fire evacuation routes and community alert systems.

11 18. Make recommendations for minimum standards for the creation of
12 defensible spaces in and around wildland-urban interface areas as
13 authorized by existing county and municipal laws and ordinances.

14 19. SERVE AS THE STATE NATURAL RESOURCE CONSERVATION COMMISSIONER
15 PURSUANT TO SECTION 37-1012.

16 B. During the first regular session of each legislature, the state
17 forester shall present information to the legislative committees with
18 jurisdiction over forestry issues. The state forester shall collaborate
19 with, and invite the participation of, relevant state, federal and local
20 governmental officers and agencies. A written report is not required, but
21 the presentation shall include information concerning:

22 1. Forestry management, including the current conditions of the
23 forests in this state on federal, state and private property as affected
24 by federal, state and local public policies, climatic conditions, wildfire
25 hazards, pest infestations, overgrowth and overgrowth control policies and
26 methods and the effects of current federal policy on forest management and
27 impacts on forest land management.

28 2. The wildland-urban interface, including the effects of county
29 and municipal zoning policies and wildfire hazards on public and private
30 property.

31 3. Wildfire emergency management and all hazard response issues,
32 including:

33 (a) Intergovernmental and interagency primacy, cooperation,
34 coordination, roles and training of federal, state and local forestry,
35 firefighting and law enforcement agencies.

36 (b) Channels and methods of communicating emergency information to
37 the public.

38 (c) The roles of governmental and nongovernmental disaster relief
39 agencies and organizations.

40 (d) The level of federal, state and local emergency funding.

41 C. The state forester may:

42 1. Furnish technical advice to the people of this state on forestry
43 and land management matters.

1 2. Do all other acts necessary to take advantage of and carry out
2 the provisions of the act of Congress described in subsection D of this
3 section.

4 D. This state accepts the provisions of the cooperative forestry
5 assistance act of 1978 (P.L. 95-313; 92 Stat. 365; 16 United States Code
6 chapter 41) providing for federal forestry assistance programs to states.

7 Sec. 10. Section 45-101, Arizona Revised Statutes, is amended to
8 read:

9 45-101. Definitions

10 In this title, unless the context otherwise requires:

11 1. "Appropriator" means the person or persons initiating or
12 perfecting the right to use appropriable water based on state law, or the
13 person's successor or successors in interest.

14 2. "Department" means the department of water resources.

15 3. "Director" means the director of water resources, who is also
16 the director of the department.

17 4. "Effluent" **OR, FOR THE PURPOSES OF DEPARTMENTAL INFORMATIONAL**
18 **MATERIALS ONLY, "RECYCLED WATER"** means water that has been collected in a
19 sanitary sewer for subsequent treatment in a facility that is regulated
20 pursuant to title 49, chapter 2. Such water remains effluent until it
21 acquires the characteristics of groundwater or surface water.

22 5. "Groundwater" means water under the surface of the earth
23 regardless of the geologic structure in which it is standing or
24 moving. Groundwater does not include water flowing in underground streams
25 with ascertainable beds and banks.

26 6. "Interstate stream" means any stream constituting or flowing
27 along the exterior boundaries of this state, and any tributary originating
28 in another state or foreign country and flowing into or through this
29 state.

30 7. "Riparian area" means a geographically delineated area with
31 distinct resource values, ~~that~~ that is characterized by deep-rooted plant
32 species that depend on having roots in the water table or its capillary
33 zone and that occurs within or adjacent to a natural perennial or
34 intermittent stream channel or within or adjacent to a lake, pond or marsh
35 bed maintained primarily by natural water sources. Riparian area does not
36 include areas in or adjacent to ephemeral stream channels, artificially
37 created stockponds, man-made storage reservoirs constructed primarily for
38 conservation or regulatory storage, municipal and industrial ponds or
39 man-made water transportation, distribution, off-stream storage and
40 collection systems.

41 8. "Sanitary sewer" means any pipe or other enclosed conduit that
42 carries, among other substances, any water-carried wastes from the human
43 body from residences, commercial buildings, industrial plants or
44 institutions.

1 9. "Surface water" means the waters of all sources, flowing in
2 streams, canyons, ravines or other natural channels, or in definite
3 underground channels, whether perennial or intermittent, floodwater,
4 wastewater or surplus water, and of lakes, ponds and springs on the
5 surface. For the purposes of administering this title, surface water is
6 deemed to include central Arizona project water.

7 Sec. 11. Title 45, chapter 1, article 1, Arizona Revised Statutes,
8 is amended by adding section 45-118, to read:

9 45-118. Desalination action plan; report; definition

10 A. THE DIRECTOR SHALL PREPARE A DESALINATION ACTION PLAN THAT
11 INCLUDES ALL THE FOLLOWING:

12 1. AN IDENTIFICATION OF AREAS WITHIN THIS STATE WHERE BRACKISH
13 GROUNDWATER EXISTS IN SIGNIFICANT AMOUNTS.

14 2. AN ESTIMATE OF THE COST TO TREAT AND DELIVER THE BRACKISH
15 GROUNDWATER FOR AN ECONOMICALLY VIABLE USE.

16 3. AN IDENTIFICATION OF AREAS OF THIS STATE THAT WOULD BENEFIT FROM
17 THE USE OF THE TREATED BRACKISH GROUNDWATER.

18 4. AN IDENTIFICATION OF POTENTIAL FUNDING SOURCES FOR THE TREATMENT
19 AND DELIVERY OF THE BRACKISH GROUNDWATER.

20 5. AN EVALUATION OF THE FEASIBILITY AND COST OF DISPOSAL OF THE
21 BRINE PRODUCT THAT RESULTS FROM TREATING BRACKISH GROUNDWATER.

22 B. A DESALINATION ACTION PLAN MAY ALSO IDENTIFY AND EVALUATE
23 POTENTIAL BINATIONAL AGREEMENTS OR PROJECTS RELATED TO THE TREATMENT OF
24 BRACKISH GROUNDWATER OR SEA WATER USING THE CRITERIA PRESCRIBED IN
25 SUBSECTION A OF THIS SECTION.

26 C. THE DIRECTOR SHALL SUBMIT THE INITIAL DESALINATION ACTION PLAN
27 ON OR BEFORE SEPTEMBER 30, 2019 TO THE GOVERNOR, THE PRESIDENT OF THE
28 SENATE, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, THE MEMBERS OF THE
29 SENATE NATURAL RESOURCES, ENERGY AND WATER COMMITTEE, OR ITS SUCCESSOR
30 COMMITTEE, AND THE MEMBERS OF THE HOUSE OF REPRESENTATIVES ENERGY,
31 ENVIRONMENT AND NATURAL RESOURCES COMMITTEE, OR ITS SUCCESSOR COMMITTEE,
32 AND SHALL PROVIDE A COPY OF THE REPORT TO THE SECRETARY OF STATE. THE
33 DIRECTOR SHALL SUBMIT SUBSEQUENT REPORTS ON THE DESALINATION ACTION PLAN
34 AND ITS RESULTS BY DECEMBER 31 EVERY TWO YEARS THERE-AFTER.

35 D. FOR THE PURPOSES OF THIS SECTION, "BRACKISH GROUNDWATER" MEANS
36 GROUNDWATER THAT DUE TO ITS SALINITY REQUIRES TREATMENT FOR AN
37 ECONOMICALLY VIABLE USE.

38 Sec. 12. Section 45-292, Arizona Revised Statutes, is amended to
39 read:

40 45-292. Approval required to transport water out of state;
41 application; fee; criteria; hearing

42 A. A person may withdraw, or divert, and transport water from this
43 state for a reasonable and beneficial use in another state if approved by
44 the director pursuant to this article AND ON APPROVAL OF THE LEGISLATURE
45 AS PRESCRIBED BY THIS SECTION. A person shall not transport water from

1 this state WHETHER SURFACE WATER, GROUNDWATER, COLORADO RIVER WATER OR
2 OTHER WATER unless approved by the director AND THE LEGISLATURE, but this
3 article does not apply to or prohibit transporting water from this state
4 as required by interstate compact, federal law or international treaty.

5 B. An application to transport water from this state for use in
6 another state shall be filed with the director, including a fee
7 established by the director by rule. In establishing a fee by rule, the
8 director may consider factors including the amount of time likely to be
9 expended in processing the application, the amount of preexisting
10 hydrological information available, if any, and the complexity of the
11 application. The application shall include:

12 1. The name and address of the applicant's statutory agent in this
13 state for service of process and other legal notices.

14 2. The legal basis for acquiring the water to be transported.

15 3. The purpose for which the water will be used.

16 4. The annual amount of water in acre-feet for which the
17 application is made.

18 5. The proposed duration of the permit, not to exceed fifty years
19 with an option to renew.

20 6. Studies satisfactory to the director of the probable hydrologic
21 impact on the area from which the water is proposed to be transported.

22 7. Any other information ~~which~~ THAT the director may require.

23 C. The director shall approve or reject the application. If the
24 director approves the application, the director may prescribe terms and
25 conditions for the approval. In determining whether to approve the
26 application the director shall consider:

27 1. Whether the proposed action would be consistent with
28 conservation of water, including any applicable management goals and
29 plans.

30 2. Potential harm to the public welfare of the citizens of this
31 state.

32 3. The supply of water to this state and current and future water
33 demands in this state in general and the proposed source area in
34 particular.

35 4. The feasibility of intrastate transportation of the water that
36 is the subject of the application to alleviate water shortages in this
37 state.

38 5. The availability of alternative sources of water in the other
39 state.

40 6. The demands placed on the applicant's supply in the other state.

41 7. Whether the proposed action is prohibited or affected by other
42 law, including sections 45-165 and 45-172 and chapter 2 of this title.

43 D. IF THE DIRECTOR APPROVES THE APPLICATION, THE DIRECTOR SHALL
44 NOTIFY THE LEGISLATURE OF THE DIRECTOR'S APPROVAL. THE LEGISLATURE SHALL
45 CONSIDER THE PROPOSED ACTION AND MAY APPROVE THE PROPOSED ACTION BY

1 LEGISLATIVE ENACTMENT, APPROVED BY THE GOVERNOR. IF THE LEGISLATURE FAILS
2 TO PASS A LEGISLATIVE ENACTMENT OR THE LEGISLATIVE ENACTMENT IS NOT
3 APPROVED BY THE GOVERNOR, THE APPLICATION IS DENIED AND SHALL NOT PROCEED.

4 ~~E.~~ E. This article does not authorize and the director shall not
5 approve transporting from this state water allocated to this state by
6 federal law or interstate compact.

7 ~~F.~~ F. An administrative hearing shall be held on the application,
8 and the director shall give notice of the hearing by publication once a
9 week for three consecutive weeks in a newspaper of general circulation in
10 the county or counties from which the applicant proposes to transport the
11 water. The hearing shall be conducted in the area from which water is
12 proposed to be transported. Any interested person, including the
13 department, may appear and give oral or written testimony on all issues
14 involved.

15 ~~F.~~ G. Section 45-114, subsections A and B govern administrative
16 proceedings, rehearing or review and judicial review of final decisions of
17 the director under this section.

18 ~~G.~~ H. The director shall deposit, pursuant to sections 35-146 and
19 35-147, all fees received under this section in the water resources fund
20 established by section 45-117.

21 Sec. 13. Section 45-462, Arizona Revised Statutes, is amended to
22 read:

23 45-462. Grandfathered groundwater rights; persons included;
24 certificate of exemption amount is legal use;
25 extinguishment

26 A. In an active management area, a person who was legally
27 withdrawing and using groundwater as of the date of the designation of the
28 active management area or who owns land legally entitled to be irrigated
29 with groundwater as determined pursuant to this article has the right to
30 withdraw or receive and use groundwater as determined by the director
31 pursuant to this article.

32 B. For purposes of determining grandfathered rights pursuant to
33 this article, a groundwater use shall not be determined to be illegal
34 merely because the groundwater legally withdrawn is or has been
35 transported.

36 C. The amount of groundwater use described by an ~~applicaton~~
37 APPLICATION for a certificate of exemption is recognized as a legal use
38 for purposes of determining grandfathered rights pursuant to section
39 45-464, subject to any modification as a result of a finding on appeal of
40 a factual mistake by the state land department or Arizona water commission
41 in computing the amount of the authorized withdrawal.

42 D. The right to withdraw or receive and use groundwater pursuant to
43 this article is a grandfathered right. There are three categories of
44 grandfathered rights as follows:

1 1. Non-irrigation grandfathered rights associated with retired
2 irrigated land as determined pursuant to sections 45-463, 45-469 and
3 45-472.

4 2. Non-irrigation grandfathered rights not associated with retired
5 irrigated land as determined pursuant to section 45-464.

6 3. Irrigation grandfathered rights as determined pursuant to
7 section 45-465.

8 E. NOTWITHSTANDING ANY OTHER STATUTE OR RULE, IN THE PINAL ACTIVE
9 MANAGEMENT AREA:

10 1. NOT LATER THAN JANUARY 1, 2019, THE DIRECTOR OF WATER RESOURCES
11 SHALL ADOPT RULES TO CALCULATE EXTINGUISHMENT CREDITS IN THE PINAL ACTIVE
12 MANAGEMENT AREA CONSISTENT WITH THIS SECTION. FOR THIS PURPOSE, THE
13 DIRECTOR IS EXEMPT FROM THE RULE MAKING REQUIRMENTS OF TITLE 41,
14 CHAPTER 6, EXCEPT THAT THE DIRECTOR SHALL FILE A NOTICE OF EXEMPT RULE
15 MAKING WITH THE SECRETARY OF STATE WHO SHALL PUBLISH THE RULES IN THE
16 ARIZONA ADMINISTRATIVE REGISTER AND THE ARIZONA ADMINISTRATIVE CODE. THE
17 RULES SHALL HAVE AN IMMEDIATE EFFECTIVE DATE.

18 2. THE DIRECTOR SHALL RECALCULATE THE AMOUNT OF GROUNDWATER
19 AVAILABLE FOR USE IN THE ACTIVE MANAGEMENT AREA FOR PURPOSES OF
20 DETERMINING AN ASSURED WATER SUPPLY AFTER REVIEWING AND ELIMINATING THOSE
21 PROPOSED USES THAT ARE NO LONGER ECONOMICALLY PRACTICABLE FOR ACTUAL
22 DEVELOPMENT AND FUTURE USE.

23 Sec. 14. Title 45, chapter 2, article 5, Arizona Revised Statutes,
24 is amended by adding section 45-465.04, to read:

25 45-465.04. Use of groundwater to water plants in containers
26 as non-irrigation use; right to use groundwater
27 withdrawn pursuant to irrigation grandfathered
28 right to water plants in containers; definition

29 A. THE USE OF GROUNDWATER TO WATER PLANTS IN CONTAINERS ON OR ABOVE
30 THE SURFACE OF THE GROUND IS A NON-IRRIGATION USE.

31 B. NOTWITHSTANDING SUBSECTION A OF THIS SECTION, IN AN INITIAL
32 ACTIVE MANAGEMENT AREA, A PERSON WHO HOLDS A CERTIFICATE OF IRRIGATION
33 GRANDFATHERED RIGHT MAY WITHDRAW GROUNDWATER PURSUANT TO THE RIGHT AND USE
34 THE GROUNDWATER TO WATER PLANTS IN CONTAINERS ON OR ABOVE THE SURFACE OF
35 THE CERTIFICATED ACRES IF THE PLANTS ARE GROWN FOR SALE OR HUMAN
36 CONSUMPTION, PLANT RESEARCH OR PLANT BREEDING, OR FOR USE AS FEED FOR
37 LIVESTOCK, RANGE LIVESTOCK OR POULTRY, AS THOSE TERMS ARE DEFINED IN
38 SECTION 3-1201.

39 C. A PERSON WHO HOLDS A CERTIFICATE OF IRRIGATION GRANDFATHERED
40 RIGHT SHALL SEPARATELY MEASURE WITH A MEASURING DEVICE APPROVED BY THE
41 DIRECTOR PURSUANT TO SECTION 45-604 ANY GROUNDWATER USED FOR WATERING
42 PLANTS IN CONTAINERS ON OR ABOVE THE SURFACE OF THE CERTIFICATED ACRES AND
43 ANY GROUNDWATER USED FOR AN IRRIGATION USE ON THE CERTIFICATED ACRES.

44 D. EXCEPT AS PROVIDED IN SECTION 45-563.02, IF A PERSON USES
45 GROUNDWATER TO WATER PLANTS IN CONTAINERS PURSUANT TO SUBSECTION B OF THIS

1 SECTION, THE TOTAL AMOUNT OF WATER USED BY THE PERSON FOR THAT PURPOSE AND
2 FOR ANY IRRIGATION USES ON THE CERTIFICATED ACRES MAY NOT EXCEED THE
3 AMOUNT ALLOWED BY THE IRRIGATION WATER DUTY FOR THE FARM.

4 E. THE DIRECTOR MAY NOT REGISTER CREDITS TO THE FLEXIBILITY ACCOUNT
5 ESTABLISHED PURSUANT TO SECTION 45-467 FOR A FARM IN ANY YEAR IN WHICH THE
6 PERSON WHO HOLDS THE CERTIFICATE OF IRRIGATION GRANDFATHERED RIGHT FOR THE
7 FARM USES GROUNDWATER TO WATER PLANTS IN CONTAINERS ON OR ABOVE THE
8 SURFACE OF THE CERTIFICATED ACRES PURSUANT TO SUBSECTION B OF THIS
9 SECTION.

10 F. ON REQUEST BY THE OWNER OF A CERTIFICATE OF IRRIGATION
11 GRANDFATHERED RIGHT, THE DIRECTOR SHALL SEPARATE THE CERTIFICATE INTO TWO
12 CERTIFICATES, WITH ONE CERTIFICATE FOR THOSE CERTIFICATED ACRES ON WHICH
13 PLANTS IN CONTAINERS ARE WATERED WITH GROUNDWATER PURSUANT TO SUBSECTION B
14 OF THIS SECTION AND ONE CERTIFICATE FOR THOSE CERTIFICATED ACRES ON WHICH
15 GROUNDWATER IS USED FOR AN IRRIGATION USE. IF THE DIRECTOR SEPARATES A
16 CERTIFICATE OF IRRIGATION GRANDFATHERED RIGHT INTO TWO CERTIFICATES
17 PURSUANT TO THIS SUBSECTION, THE CERTIFICATED ACRES ASSOCIATED WITH EACH
18 CERTIFICATE SHALL BE CONSIDERED A SEPARATE FARM FOR PURPOSES OF SUBSECTION
19 E OF THIS SECTION. THE DIRECTOR MAY NOT SEPARATE A CERTIFICATE OF
20 IRRIGATION GRANDFATHERED RIGHT INTO TWO CERTIFICATES PURSUANT TO THIS
21 SUBSECTION IF IT WOULD RESULT IN THE ISSUANCE OF A CERTIFICATE OF
22 IRRIGATION GRANDFATHERED RIGHT WITH LESS THAN TWO CERTIFICATED ACRES.

23 G. FOR THE PURPOSES OF THIS SECTION, "CERTIFICATED ACRES" MEANS THE ACRES
24 DESCRIBED ON THE CERTIFICATE OF IRRIGATION GRANDFATHERED RIGHT.

25 Sec. 15. Section 45-561, Arizona Revised Statutes, is amended to
26 read:

27 45-561. Definitions

28 In this article, unless the context otherwise requires:

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

32 2. "Augmentation" means to supplement the water supply of an active
33 management area and may include the importation of water into the active
34 management area, storage of water or storage of water pursuant to chapter
35 3.1 of this title.

36 3. "Incidental recharge" means the percolation of water to an
37 aquifer after the water has been withdrawn, diverted or received for
38 delivery by a municipal provider for use within its service area, except
39 water that is added to an aquifer pursuant to chapter 3.1 of this title.

40 4. "Incidental recharge factor" means the ratio of the amount of
41 incidental recharge attributable to a municipal provider during a calendar
42 year to the amount of water withdrawn, diverted or received for delivery
43 by the municipal provider for use within its service area during the
44 year. The amount of incidental recharge attributable to a municipal
45 provider during a calendar year is the amount of water that is

1 incidentally recharged during the year after it is withdrawn, diverted or
2 received for delivery by the municipal provider for use within its service
3 area.

4 5. "Industrial use" means a non-irrigation use of water not
5 supplied by a city, town or private water company, including animal
6 industry use and expanded animal industry use.

7 6. "Intermediate water duty" means an irrigation water duty, as
8 defined in section 45-402, ~~which~~ THAT is established by the director
9 during a management period to apply for a specific number of years during
10 the management period.

11 7. "Large untreated water provider" means a municipal provider that
12 as of January 1, 1990 was serving untreated water to at least five hundred
13 persons or supplying at least one hundred acre-feet of untreated water
14 during a calendar year.

15 8. "Management period" means a period of years prescribed by
16 sections 45-564, ~~through~~ 45-565, 45-565.01, 45-566, 45-566.01, 45-566.02,
17 45-567, 45-567.01, 45-567.02, 45-568 AND 45-568.03 during which a
18 prescribed management plan applies.

19 9. "Mined groundwater" means the amount of groundwater withdrawn or
20 received by a municipal provider from within an active management area
21 during a calendar year for use in its service area, minus both of the
22 following, as applicable:

23 (a) An amount of water computed by multiplying the amount of water
24 supplied by the municipal provider for use within its service area during
25 the calendar year by the incidental recharge factor established for the
26 municipal provider pursuant to this article.

27 (b) If the municipal provider is a city or town in the Tucson
28 active management area, the amount of groundwater withdrawn by the
29 municipal provider during the calendar year from land owned or leased by
30 the municipal provider to which a type 1 non-irrigation grandfathered
31 right under section 45-463, subsection A is appurtenant, up to the
32 following amount:

33 (i) If the municipal provider has made a request to the director as
34 described in section 45-463, subsection F, the amount of groundwater
35 computed by the director under section 45-463, subsection F, in
36 determining whether to designate or redesignate the municipal provider as
37 having an assured water supply, minus the amount of any groundwater
38 withdrawn by the municipal provider from the land during the period
39 beginning with January 1 of the year in which the request was made and
40 ending on December 31 of the year immediately preceding the calendar year
41 for which the calculation of mined groundwater is being made.

42 (ii) If the municipal provider has not made a request to the
43 director as described in section 45-463, subsection F, the amount of
44 groundwater that the director would have been required to include in
45 determining whether to designate or redesignate the municipal provider as

1 having an assured water supply, as computed under section 45-463,
2 subsection F, if the municipal provider had made a request to the director
3 as described in that subsection on January 1 of the calendar year for
4 which the calculation of mined groundwater is being made.

5 10. "Municipal provider" means a city, town, private water company
6 or irrigation district that supplies water for non-irrigation use.

7 11. "Municipal use" means all non-irrigation uses of water supplied
8 by a city, town, private water company or irrigation district, except for
9 uses of water, other than Colorado river water, released for beneficial
10 use from storage, diversion or distribution facilities to avoid spilling
11 that would otherwise occur due to uncontrolled surface water inflows that
12 exceed facility capacity.

13 12. "Safe-yield" means a groundwater management goal ~~which~~ THAT
14 attempts to achieve and thereafter maintain a long-term balance between
15 the annual amount of groundwater withdrawn in an active management area
16 and the annual amount of natural and artificial recharge in the active
17 management area.

18 13. "Small municipal provider" means a municipal provider that
19 supplies two hundred fifty acre-feet or less of water for non-irrigation
20 use during a calendar year. For THE purposes of this paragraph, the
21 amount of untreated water that is supplied by a large untreated water
22 provider during a year shall not be counted in determining whether the
23 municipal provider supplied two hundred fifty acre-feet or less of water
24 for non-irrigation use.

25 14. "Untreated water" means water that is not treated to improve
26 its quality and that is supplied by a municipal provider through a
27 distribution system other than a potable water distribution system.

28 Sec. 16. Section 45-563, Arizona Revised Statutes, is amended to
29 read:

30 45-563. Management plans in active management areas;
31 management periods; general provisions

32 A. The director shall develop a management plan for each initial
33 active management area for each of ~~five~~ SIX management periods pursuant to
34 the guidelines prescribed in sections 45-564, ~~through~~ 45-565, 45-565.01,
35 45-566, 45-566.01, 45-566.02, 45-567, 45-567.01, 45-567.02, 45-568,
36 45-568.01, 45-568.02, 45-468.03, 45-568.04 AND 45-568.05 and shall adopt
37 the plans only after public hearings held pursuant to sections 45-570 and
38 45-571. The plans shall include a continuing mandatory conservation
39 program for all persons withdrawing, distributing or receiving groundwater
40 designed to achieve reductions in withdrawals of groundwater.

41 B. The director shall develop a management plan for the Santa Cruz
42 active management area for the third, fourth, ~~and~~ fifth AND SIXTH
43 management periods pursuant to the guidelines prescribed in sections
44 45-566, 45-566.01, 45-567, 45-567.01, 45-568, ~~and~~ 45-568.01, 45-568.03,
45 45-568.04 AND 45-568.05 and shall adopt the plans only after public

1 hearings held pursuant to sections 45-570 and 45-571. The plans shall
2 include a continuing mandatory conservation program designed to achieve
3 the management goal of the active management area for all persons
4 withdrawing water, other than stored water, from a well and all persons
5 distributing or receiving water, other than stored water, from a
6 well. The plans shall also include criteria for the location of new wells
7 and replacement wells in new locations consistent with the management goal
8 of the active management area.

9 Sec. 17. Section 45-563.02, Arizona Revised Statutes, is amended to
10 read:

11 45-563.02. Exemption from irrigation water duties; small
12 irrigation grandfathered rights; criteria;
13 conservation requirement; exception

14 A. A person who is entitled to use groundwater pursuant to an
15 irrigation grandfathered right is exempt from any irrigation water duties
16 or intermediate water duties established for the farm to which the right
17 is appurtenant under sections 45-564, 45-565, 45-566, 45-567, ~~and~~ 45-568
18 ~~AND~~ 45-568.03 if both of the following apply:

- 19 1. There are ten or fewer irrigation acres in the farm.
- 20 2. The farm is not part of an integrated farming operation.

21 B. The director shall not establish irrigation water duties or
22 intermediate water duties under section 45-566, 45-567, ~~or~~ 45-568 ~~OR~~
23 45-568.03 for a farm to which both of the following apply:

- 24 1. There are ten or fewer irrigation acres in the farm.
- 25 2. The farm is not part of an integrated farming operation.

26 C. Except as provided in subsection D of this section, a person who
27 is exempt from the irrigation water duties established for a farm pursuant
28 to subsection A of this section or who owns or uses groundwater on a farm
29 for which irrigation water duties are prohibited in subsection B of this
30 section shall not allow any groundwater to flow off the surface of the
31 farm's irrigation acres unless the groundwater is used for a reasonable
32 and beneficial use approved in writing by the director.

33 D. A person who is required under subsection C of this section to
34 prevent groundwater from flowing off the surface of a farm's irrigation
35 acres may apply to the director for an exemption from the
36 requirement. The director may grant the exemption if the person
37 demonstrates to the satisfaction of the director that one of the following
38 applies:

- 39 1. Preventing groundwater from flowing off the surface of the
40 farm's irrigation acres would not be economically feasible.
- 41 2. Any groundwater that will flow off the surface of the farm's
42 irrigation acres will be used by a person with an exempt well in lieu of
43 groundwater that otherwise would have been withdrawn from that well.

1 Sec. 18. Section 45-568, Arizona Revised Statutes, is amended to
2 read:

3 45-568. Management plan for fifth management period;
4 guidelines

5 A. For the fifth management period, 2020 to 2025, the director
6 shall ~~promulgate~~ ADOPT a management plan for each initial active
7 management area not later than January 1, 2019 pursuant to the guidelines
8 prescribed in section 45-567, subsections A and B, except that:

9 1. The director shall establish the historic annual net natural
10 recharge for any groundwater replenishment district in the active
11 management area, computed by determining the net natural recharge, as
12 defined by section 48-4401, for the groundwater basin beneath the district
13 during calendar years 1988 through 2017 and dividing the result by thirty.

14 2. The director may adjust the highest twenty-five ~~per cent~~ PERCENT
15 of the irrigation water duties established within an area of similar
16 farming conditions pursuant to section 45-567 by reducing each water duty
17 in an amount up to five ~~per cent~~ PERCENT, except that in making the
18 adjustment, no water duty may be reduced to an amount less than the
19 greater of the following:

20 (a) The highest water duty within the lowest seventy-five ~~per cent~~
21 PERCENT of the water duties computed within the area of similar farming
22 conditions for the fifth management period.

23 (b) A water duty computed for the farm unit under this paragraph
24 using an irrigation efficiency of eighty ~~per cent~~ PERCENT.

25 3. A person who is entitled to use groundwater pursuant to an
26 irrigation grandfathered right may apply to the director at any time
27 during the management period for an exemption from the irrigation water
28 duties established pursuant to this section. The director shall grant the
29 exemption if the person demonstrates to the director's satisfaction that
30 granting the exemption is consistent with achieving the management goal of
31 the active management area and that one of the following applies:

32 (a) Withdrawal of groundwater pursuant to the irrigation
33 grandfathered right during the management period will intercept
34 groundwater that would otherwise flow out of and be lost to the active
35 management area in the next fifteen years without entering another active
36 management area.

37 (b) Withdrawal of groundwater pursuant to the irrigation
38 grandfathered right during the management period will prevent encroachment
39 of a rising depth to groundwater level that will cause waterlogging
40 problems within the next fifteen years.

41 B. Within thirty days after the management plan for the fifth
42 management period is adopted, the director shall give written notice in
43 the manner and to the persons prescribed in section 45-565, subsection B
44 and shall give written notice of the non-per capita conservation program
45 established pursuant to section 45-568.01 to all municipal providers. Two

1 years before the compliance date specified in the management plan for any
2 irrigation water duty, intermediate water duty, conservation requirement
3 or intermediate conservation requirement, the director shall give
4 additional written notice by first class mail to the last known addresses
5 of the persons prescribed in section 45-565, subsection B and this
6 subsection.

7 C. Except for a person who OBTAINS A VARIANCE UNDER SECTION 45-574
8 OR WHO is exempt from irrigation water duties under section 45-563.02,
9 subsection A, all persons notified pursuant to subsection B of this
10 section shall comply with the applicable irrigation water duty or
11 conservation requirements for the fifth management period not later than
12 January 1, 2025 and shall remain in compliance until ~~the legislature~~
13 ~~determines otherwise~~ THE APPLICABLE COMPLIANCE DATE ESTABLISHED IN THE
14 MANAGEMENT PLAN FOR THE SIXTH MANAGEMENT PERIOD. IF INTERMEDIATE WATER
15 DUTIES OR INTERMEDIATE CONSERVATION REQUIREMENTS HAVE BEEN ESTABLISHED, A
16 PERSON TO WHOM THOSE WATER DUTIES OR CONSERVATION REQUIREMENTS APPLY SHALL
17 COMPLY WITH THE INTERMEDIATE WATER DUTIES OR INTERMEDIATE CONSERVATION
18 REQUIREMENTS NOT LATER THAN THE COMPLIANCE DATE SPECIFIED IN THE
19 MANAGEMENT PLAN, UNLESS THE PERSON OBTAINS A VARIANCE PURSUANT TO SECTION
20 45-574 OR IS EXEMPT FROM INTERMEDIATE WATER DUTIES UNDER SECTION
21 45-563.02, SUBSECTION A. A PERSON WHO OBTAINS A VARIANCE UNDER SECTION
22 45-574 SHALL COMPLY WITH THE APPLICABLE IRRIGATION WATER DUTY OR
23 CONSERVATION REQUIREMENTS BY THE DATE SPECIFIED IN THE VARIANCE AND SHALL
24 REMAIN IN COMPLIANCE UNTIL THE SUBSEQUENT COMPLIANCE DATE FOR ANY
25 APPLICABLE IRRIGATION WATER DUTY OR CONSERVATION REQUIREMENTS ESTABLISHED
26 IN THE MANAGEMENT PLAN FOR THE FIFTH MANAGEMENT PERIOD.

27 Sec. 19. Title 45, chapter 2, article 9, Arizona Revised Statutes,
28 is amended by adding sections 45-568.03, 45-568.04 and 45-568.05, to read:

29 45-568.03. Management plan for sixth management period:
30 guidelines

31 A. FOR THE SIXTH MANAGEMENT PERIOD, 2025 TO 2035, THE DIRECTOR
32 SHALL ADOPT A MANAGEMENT PLAN FOR EACH INITIAL ACTIVE MANAGEMENT AREA NOT
33 LATER THAN JANUARY 1, 2023 PURSUANT TO THE GUIDELINES PRESCRIBED IN
34 SECTION 45-567, SUBSECTIONS A AND B AND SECTIONS 45-568.04 AND 45-568.05,
35 EXCEPT THAT:

36 1. THE DIRECTOR SHALL ESTABLISH THE HISTORIC ANNUAL NET NATURAL
37 RECHARGE FOR ANY GROUNDWATER REPLENISHMENT DISTRICT IN THE ACTIVE
38 MANAGEMENT AREA, COMPUTED BY DETERMINING THE NET NATURAL RECHARGE, AS
39 DEFINED BY SECTION 48-4401, FOR THE GROUNDWATER BASIN BENEATH THE DISTRICT
40 DURING THE MOST RECENT THIRTY-YEAR PERIOD OF RECORD AND DIVIDING THE
41 RESULT BY THIRTY.

42 2. THE DIRECTOR MAY ADJUST THE HIGHEST TWENTY-FIVE PERCENT OF THE
43 IRRIGATION WATER DUTIES ESTABLISHED WITHIN AN AREA OF SIMILAR FARMING
44 CONDITIONS PURSUANT TO SECTION 45-567 BY REDUCING EACH WATER DUTY IN AN

1 AMOUNT UP TO FIVE PERCENT, EXCEPT THAT IN MAKING THE ADJUSTMENT, NO WATER
2 DUTY MAY BE REDUCED TO AN AMOUNT LESS THAN THE GREATER OF THE FOLLOWING:

3 (a) THE HIGHEST WATER DUTY WITHIN THE LOWEST SEVENTY-FIVE PERCENT
4 OF THE WATER DUTIES COMPUTED WITHIN THE AREA OF SIMILAR FARMING CONDITIONS
5 FOR THE SIXTH MANAGEMENT PERIOD.

6 (b) A WATER DUTY COMPUTED FOR THE FARM UNIT UNDER THIS PARAGRAPH
7 USING AN IRRIGATION EFFICIENCY OF EIGHTY PERCENT.

8 3. A PERSON WHO IS ENTITLED TO USE GROUNDWATER PURSUANT TO AN
9 IRRIGATION GRANDFATHERED RIGHT MAY APPLY TO THE DIRECTOR AT ANY TIME
10 DURING THE MANAGEMENT PERIOD FOR AN EXEMPTION FROM THE IRRIGATION WATER
11 DUTIES ESTABLISHED PURSUANT TO THIS SECTION. THE DIRECTOR SHALL GRANT THE
12 EXEMPTION IF THE PERSON DEMONSTRATES TO THE DIRECTOR'S SATISFACTION THAT
13 GRANTING THE EXEMPTION IS CONSISTENT WITH ACHIEVING THE MANAGEMENT GOAL OF
14 THE ACTIVE MANAGEMENT AREA AND THAT ONE OF THE FOLLOWING APPLIES:

15 (a) WITHDRAWAL OF GROUNDWATER PURSUANT TO THE IRRIGATION
16 GRANDFATHERED RIGHT DURING THE MANAGEMENT PERIOD WILL INTERCEPT
17 GROUNDWATER THAT WOULD OTHERWISE FLOW OUT OF AND BE LOST TO THE ACTIVE
18 MANAGEMENT AREA IN THE NEXT FIFTEEN YEARS WITHOUT ENTERING ANOTHER ACTIVE
19 MANAGEMENT AREA.

20 (b) WITHDRAWAL OF GROUNDWATER PURSUANT TO THE IRRIGATION
21 GRANDFATHERED RIGHT DURING THE MANAGEMENT PERIOD WILL PREVENT ENCROACHMENT
22 OF A RISING DEPTH TO GROUNDWATER LEVEL THAT WILL CAUSE WATERLOGGING
23 PROBLEMS WITHIN THE NEXT FIFTEEN YEARS.

24 B. WITHIN THIRTY DAYS AFTER THE MANAGEMENT PLAN FOR THE SIXTH
25 MANAGEMENT PERIOD IS ADOPTED, THE DIRECTOR SHALL GIVE WRITTEN NOTICE IN
26 THE MANNER AND TO THE PERSONS PRESCRIBED IN SECTION 45-565, SUBSECTION B
27 AND SHALL GIVE WRITTEN NOTICE OF THE NON-PER CAPITA CONSERVATION PROGRAM
28 ESTABLISHED PURSUANT TO SECTION 45-568.04 TO ALL MUNICIPAL PROVIDERS. TWO
29 YEARS BEFORE THE COMPLIANCE DATE SPECIFIED IN THE MANAGEMENT PLAN FOR ANY
30 IRRIGATION WATER DUTY, INTERMEDIATE WATER DUTY, CONSERVATION REQUIREMENT
31 OR INTERMEDIATE CONSERVATION REQUIREMENT, THE DIRECTOR SHALL GIVE
32 ADDITIONAL WRITTEN NOTICE BY FIRST CLASS MAIL TO THE LAST KNOWN ADDRESSES
33 OF THE PERSONS PRESCRIBED IN SECTION 45-565, SUBSECTION B AND THIS
34 SUBSECTION.

35 C. EXCEPT FOR A PERSON WHO OBTAINS A VARIANCE UNDER SECTION 45-574
36 OR WHO IS EXEMPT FROM IRRIGATION WATER DUTIES UNDER SECTION 45-563.02,
37 SUBSECTION A, ALL PERSONS NOTIFIED PURSUANT TO SUBSECTION B OF THIS
38 SECTION SHALL COMPLY WITH THE APPLICABLE IRRIGATION WATER DUTY OR
39 CONSERVATION REQUIREMENTS FOR THE SIXTH MANAGEMENT PERIOD NOT LATER THAN
40 JANUARY 1, 2035 AND SHALL REMAIN IN COMPLIANCE UNTIL THE APPLICABLE
41 COMPLIANCE DATE ESTABLISHED IN THE MANAGEMENT PLAN FOR THE SEVENTH
42 MANAGEMENT PERIOD. IF INTERMEDIATE WATER DUTIES OR INTERMEDIATE
43 CONSERVATION REQUIREMENTS HAVE BEEN ESTABLISHED, A PERSON TO WHOM THOSE
44 WATER DUTIES OR CONSERVATION REQUIREMENTS APPLY SHALL COMPLY WITH THE
45 INTERMEDIATE WATER DUTIES OR INTERMEDIATE CONSERVATION REQUIREMENTS NOT

1 LATER THAN THE COMPLIANCE DATE SPECIFIED IN THE MANAGEMENT PLAN, UNLESS
2 THE PERSON OBTAINS A VARIANCE PURSUANT TO SECTION 45-574 OR IS EXEMPT FROM
3 INTERMEDIATE WATER DUTIES UNDER SECTION 45-563.02, SUBSECTION A. A PERSON
4 WHO OBTAINS A VARIANCE UNDER SECTION 45-574 SHALL COMPLY WITH THE
5 APPLICABLE IRRIGATION WATER DUTY OR CONSERVATION REQUIREMENTS BY THE DATE
6 SPECIFIED IN THE VARIANCE AND SHALL REMAIN IN COMPLIANCE UNTIL THE
7 SUBSEQUENT COMPLIANCE DATE FOR ANY APPLICABLE IRRIGATION WATER DUTY OR
8 CONSERVATION REQUIREMENTS ESTABLISHED IN THE MANAGEMENT PLAN FOR THE SIXTH
9 MANAGEMENT PERIOD OR UNTIL THE LEGISLATURE OTHERWISE PROVIDES.

10 45-568.04. Non-per capita conservation program for municipal
11 providers; sixth management period

12 A. IN ADDITION TO THE PROVISIONS OF THE MANAGEMENT PLAN FOR THE
13 SIXTH MANAGEMENT PERIOD PRESCRIBED BY SECTION 45-568.03, THE DIRECTOR
14 SHALL INCLUDE IN THE MANAGEMENT PLANS A NON-PER CAPITA CONSERVATION
15 PROGRAM FOR MUNICIPAL PROVIDERS. THE PROGRAM SHALL REQUIRE A MUNICIPAL
16 PROVIDER REGULATED UNDER THE PROGRAM TO IMPLEMENT ONE OR MORE WATER
17 CONSERVATION MEASURES IN ITS SERVICE AREA FROM THE LIST ADOPTED BY THE
18 DIRECTOR PURSUANT TO SUBSECTION B OF THIS SECTION, SUBJECT TO APPROVAL BY
19 THE DIRECTOR PURSUANT TO SUBSECTION F OR G OF THIS SECTION. THE PROGRAM
20 MAY PRESCRIBE THE NUMBER OF CONSERVATION MEASURES THAT A PROVIDER MUST
21 IMPLEMENT UNDER THIS SUBSECTION BASED ON THE NUMBER OF SERVICE CONNECTIONS
22 IN THE PROVIDER'S SERVICE AREA.

23 B. THE DIRECTOR SHALL INCLUDE IN THE NON-PER CAPITA CONSERVATION
24 PROGRAM A LIST AND DESCRIPTION OF CONSERVATION MEASURES THAT MUNICIPAL
25 PROVIDERS REGULATED UNDER THE PROGRAM MUST SELECT FROM TO COMPLY WITH THE
26 REQUIREMENTS ADOPTED PURSUANT TO SUBSECTION A OF THIS SECTION, WHICH MAY
27 INCLUDE THE CONSERVATION MEASURES DESCRIBED IN SECTION 45-567.01,
28 SUBSECTION A, PARAGRAPHS 1 AND 2.

29 C. IN ADDITION TO THE REQUIREMENTS PRESCRIBED IN SUBSECTION A OF
30 THIS SECTION, A MUNICIPAL PROVIDER REGULATED UNDER THE NON-PER CAPITA
31 CONSERVATION PROGRAM SHALL:

32 1. INCLUDE IN ITS ANNUAL REPORT FILED PURSUANT TO SECTION 45-632 A
33 COPY OF THE PROVIDER'S CURRENT WATER RATE STRUCTURE UNLESS NO CHANGES HAVE
34 BEEN MADE TO THE RATE STRUCTURE SINCE IT WAS LAST SUBMITTED TO THE
35 DIRECTOR. A MUNICIPAL PROVIDER REGULATED UNDER THE NON-PER CAPITA
36 CONSERVATION PROGRAM IS ENCOURAGED TO ADOPT A WATER RATE STRUCTURE THAT
37 PROMOTES EFFICIENT USE OF WATER, SUBJECT TO APPROVAL BY THE CORPORATION
38 COMMISSION IF THE PROVIDER IS A PUBLIC SERVICE CORPORATION.

39 2. FOR AT LEAST FIVE YEARS AFTER A YEAR IN WHICH THE MUNICIPAL
40 PROVIDER IS REGULATED UNDER THE NON-PER CAPITA CONSERVATION PROGRAM, KEEP
41 AND MAINTAIN ACCURATE RECORDS VERIFYING THAT THE MUNICIPAL PROVIDER
42 IMPLEMENTED THE CONSERVATION MEASURES REQUIRED BY THE NON-PER CAPITA
43 CONSERVATION PROGRAM DURING THAT YEAR.

44 D. THE DIRECTOR SHALL DESIGN THE NON-PER CAPITA CONSERVATION
45 PROGRAM TO ACHIEVE WATER USE EFFICIENCY IN THE SERVICE AREAS OF MUNICIPAL

1 PROVIDERS REGULATED UNDER THE PROGRAM EQUIVALENT TO THE WATER USE
2 EFFICIENCY ASSUMED BY THE DIRECTOR IN ESTABLISHING THE PER CAPITA
3 CONSERVATION REQUIREMENTS FOR THE MANAGEMENT PLAN PURSUANT TO SECTION
4 45-568.03.

5 E. EXCEPT AS PROVIDED IN SUBSECTIONS I, J AND K OF THIS SECTION, ON
6 OR BEFORE THE DATE SPECIFIED IN THE MANAGEMENT PLAN, A MUNICIPAL PROVIDER
7 NOTIFIED OF THE NON-PER CAPITA CONSERVATION PROGRAM PURSUANT TO SECTION
8 45-568.03, SUBSECTION B, SHALL SUBMIT TO THE DIRECTOR, ON A FORM
9 PRESCRIBED BY THE DIRECTOR, A PROVIDER PROFILE THAT CONTAINS THE FOLLOWING
10 INFORMATION:

11 1. A DESCRIPTION OF THE MUNICIPAL PROVIDER'S EXISTING SERVICE AREA
12 CHARACTERISTICS AND WATER USE PATTERNS.

13 2. A DESCRIPTION OF THE CONSERVATION MEASURES THE MUNICIPAL
14 PROVIDER IS CURRENTLY IMPLEMENTING AND ANY ADDITIONAL CONSERVATION
15 MEASURES THAT THE PROVIDER INTENDS TO IMPLEMENT TO COMPLY WITH THE NON-PER
16 CAPITA CONSERVATION PROGRAM.

17 3. AN EXPLANATION OF HOW EACH CONSERVATION MEASURE DESCRIBED IN THE
18 PROVIDER PROFILE IS RELEVANT TO THE MUNICIPAL PROVIDER'S EXISTING SERVICE
19 AREA CHARACTERISTICS OR WATER USE PATTERNS.

20 F. WITHIN NINETY DAYS AFTER RECEIVING A MUNICIPAL PROVIDER'S
21 PROVIDER PROFILE UNDER SUBSECTION E OF THIS SECTION, THE DIRECTOR SHALL
22 APPROVE OR DISAPPROVE THE PROVIDER PROFILE AND SEND WRITTEN NOTICE OF THE
23 DECISION TO THE MUNICIPAL PROVIDER. THE DIRECTOR SHALL APPROVE THE
24 PROVIDER PROFILE IF THE DIRECTOR DETERMINES THAT THE PROFILE CONTAINS
25 INFORMATION DEMONSTRATING THAT THE MUNICIPAL PROVIDER WILL IMPLEMENT AT
26 LEAST THE MINIMUM NUMBER OF CONSERVATION MEASURES REQUIRED BY THE NON-PER
27 CAPITA CONSERVATION PROGRAM AND THAT THE CONSERVATION MEASURES ARE
28 REASONABLY RELEVANT TO THE MUNICIPAL PROVIDER'S EXISTING SERVICE AREA
29 CHARACTERISTICS OR WATER USE PATTERNS. IF THE DIRECTOR DISAPPROVES THE
30 PROVIDER PROFILE, THE DIRECTOR SHALL INCLUDE WITH THE WRITTEN NOTICE OF
31 THE DECISION THE REASONS FOR THE DISAPPROVAL. A DECISION OF THE DIRECTOR
32 DISAPPROVING A PROVIDER PROFILE IS AN APPEALABLE AGENCY ACTION PURSUANT TO
33 TITLE 41, CHAPTER 6, ARTICLE 10. IF THE DIRECTOR FAILS TO SEND THE
34 MUNICIPAL PROVIDER WRITTEN NOTICE APPROVING OR DISAPPROVING THE PROVIDER
35 PROFILE WITHIN NINETY DAYS AFTER RECEIVING THE PROVIDER PROFILE, THE
36 PROVIDER PROFILE SHALL BE DEEMED APPROVED.

37 G. IF THE DIRECTOR DISAPPROVES A MUNICIPAL PROVIDER'S PROVIDER
38 PROFILE PURSUANT TO SUBSECTION F OF THIS SECTION, WITHIN NINETY DAYS AFTER
39 THE DATE OF THE DIRECTOR'S WRITTEN NOTICE DISAPPROVING THE PROVIDER
40 PROFILE, OR WITHIN NINETY DAYS AFTER THE DIRECTOR'S DECISION IS FINAL IF
41 THE MUNICIPAL PROVIDER FILES A TIMELY NOTICE OF APPEAL OF THE DECISION
42 PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 10, THE MUNICIPAL PROVIDER SHALL
43 REVISE THE PROVIDER PROFILE TO CORRECT THE DEFICIENCIES IDENTIFIED BY THE
44 DIRECTOR IN THE WRITTEN NOTICE AND SUBMIT THE REVISED PROVIDER PROFILE TO
45 THE DIRECTOR. WITHIN NINETY DAYS AFTER RECEIVING A MUNICIPAL PROVIDER'S

1 REVISED PROVIDER PROFILE PURSUANT TO THIS SUBSECTION, THE DIRECTOR SHALL
2 APPROVE OR DISAPPROVE THE REVISED PROVIDER PROFILE PURSUANT TO SUBSECTION
3 F OF THIS SECTION. IF THE DIRECTOR DISAPPROVES THE REVISED PROVIDER
4 PROFILE:

5 1. THE DECISION IS AN APPEALABLE AGENCY ACTION PURSUANT TO TITLE
6 41, CHAPTER 6, ARTICLE 10.

7 2. THE MUNICIPAL PROVIDER IS IN VIOLATION OF THIS SECTION BEGINNING
8 ON THE DATE THE DIRECTOR'S DECISION IS FINAL UNTIL THE MUNICIPAL PROVIDER
9 SUBMITS A PROVIDER PROFILE THAT IS APPROVED BY THE DIRECTOR, EXCEPT THAT
10 THE PROVIDER MAY NOT BE IN VIOLATION BEFORE THE COMPLIANCE DATE FOR THE
11 NON-PER CAPITA CONSERVATION PROGRAM SPECIFIED IN THE MANAGEMENT PLAN.

12 H. EXCEPT AS PROVIDED IN SUBSECTIONS I, J AND K OF THIS SECTION, A
13 MUNICIPAL PROVIDER NOTIFIED OF THE NON-PER CAPITA CONSERVATION PROGRAM
14 PURSUANT TO SECTION 45-568.03, SUBSECTION B OR SECTION 45-571.01,
15 SUBSECTION B SHALL BE REGULATED UNDER THE PROGRAM BEGINNING ON THE DATE
16 THE DIRECTOR APPROVES THE MUNICIPAL PROVIDER'S PROVIDER PROFILE PURSUANT
17 TO SUBSECTION F OR G OF THIS SECTION, BUT NOT EARLIER THAN THE COMPLIANCE
18 DATE SPECIFIED IN THE MANAGEMENT PLAN. A MUNICIPAL PROVIDER REGULATED
19 UNDER THE NON-PER CAPITA CONSERVATION PROGRAM SHALL COMPLY WITH THE
20 PROGRAM BEGINNING ON THE DATE THE PROVIDER IS FIRST REGULATED UNDER THE
21 PROGRAM.

22 I. A MUNICIPAL PROVIDER DESIGNATED AS HAVING AN ASSURED WATER
23 SUPPLY PURSUANT TO SECTION 45-576 MAY NOT BE REGULATED UNDER THE NON-PER
24 CAPITA CONSERVATION PROGRAM, BUT INSTEAD SHALL BE REGULATED UNDER THE PER
25 CAPITA CONSERVATION PROGRAM ESTABLISHED BY THE DIRECTOR IN THE APPLICABLE
26 MANAGEMENT PLAN, UNLESS BOTH OF THE FOLLOWING APPLY:

27 1. THE MUNICIPAL PROVIDER NOTIFIES THE DIRECTOR IN WRITING THAT IT
28 ELECTS TO BE REGULATED UNDER THE NON-PER CAPITA CONSERVATION PROGRAM AND
29 INCLUDES WITH THE NOTICE A PROVIDER PROFILE THAT CONTAINS THE INFORMATION
30 PRESCRIBED BY SUBSECTION E OF THIS SECTION.

31 2. THE DIRECTOR APPROVES THE MUNICIPAL PROVIDER'S PROVIDER PROFILE
32 PURSUANT TO SUBSECTION F OF THIS SECTION OR A REVISED PROVIDER PROFILE
33 PURSUANT TO SUBSECTION G OF THIS SECTION. THE MUNICIPAL PROVIDER SHALL BE
34 REGULATED UNDER THE NON-PER CAPITA CONSERVATION PROGRAM BEGINNING ON THE
35 DATE THE DIRECTOR APPROVES THE PROVIDER PROFILE OR A REVISED PROVIDER
36 PROFILE.

37 J. A LARGE UNTREATED WATER PROVIDER MAY NOT BE REGULATED UNDER THE
38 NON-PER CAPITA CONSERVATION PROGRAM WITH RESPECT TO ITS DELIVERIES OF
39 UNTREATED WATER. A LARGE UNTREATED WATER PROVIDER SHALL COMPLY WITH ANY
40 CONSERVATION OR RATE OF USE REQUIREMENTS ESTABLISHED FOR DELIVERIES OF
41 UNTREATED WATER BY LARGE UNTREATED WATER PROVIDERS IN THE APPLICABLE
42 MANAGEMENT PLAN WITH RESPECT TO ITS DELIVERIES OF UNTREATED WATER.

43 K. A SMALL MUNICIPAL PROVIDER MAY NOT BE REGULATED UNDER THE
44 NON-PER CAPITA CONSERVATION PROGRAM, BUT INSTEAD SHALL COMPLY WITH ANY

1 CONSERVATION REQUIREMENTS ESTABLISHED FOR SMALL MUNICIPAL PROVIDERS IN THE
2 APPLICABLE PLAN.

3 L. A MUNICIPAL PROVIDER THAT IS REGULATED UNDER THE NON-PER CAPITA
4 CONSERVATION PROGRAM ESTABLISHED IN A MANAGEMENT PLAN UNDER THIS SECTION
5 SHALL COMPLY WITH ANY INDIVIDUAL USER REQUIREMENTS PRESCRIBED IN THE
6 MANAGEMENT PLAN, EXCEPT AS PROVIDED IN SECTION 45-571.02.

7 M. A MUNICIPAL PROVIDER THAT IS REGULATED UNDER THE NON-PER CAPITA
8 CONSERVATION PROGRAM ESTABLISHED IN A MANAGEMENT PLAN UNDER THIS SECTION
9 IS EXEMPT FROM THE PER CAPITA CONSERVATION REQUIREMENTS PRESCRIBED IN THE
10 MANAGEMENT PLAN.

11 45-568.05. Alternative conservation programs for agriculture;
12 sixth management period

13 A. IN ADDITION TO THE PROVISIONS OF THE MANAGEMENT PLAN FOR THE
14 SIXTH MANAGEMENT PERIOD PRESCRIBED BY SECTION 45-568.03, THE DIRECTOR
15 SHALL INCLUDE IN THE MANAGEMENT PLAN THE HISTORIC CROPPING PROGRAM
16 PRESCRIBED BY THIS SECTION AS AN ALTERNATIVE AGRICULTURAL CONSERVATION
17 PROGRAM THAT ACHIEVES CONSERVATION EQUIVALENT TO THE AGRICULTURAL
18 CONSERVATION PROGRAM INCLUDED IN THE MANAGEMENT PLAN PURSUANT TO SECTION
19 45-568.03.

20 B. THE DIRECTOR SHALL ESTABLISH THE COMPONENTS OF THE HISTORIC
21 CROPPING PROGRAM IN THE MANAGEMENT PLAN FOR THE SIXTH MANAGEMENT PERIODS
22 TO ASSURE THAT CONSERVATION EQUIVALENT TO THAT REQUIRED BY THE
23 AGRICULTURAL CONSERVATION PROGRAM ESTABLISHED IN THE MANAGEMENT PLAN
24 PURSUANT TO SECTION 45-568.03 WILL BE ACHIEVED. IN ADDITION TO THE PROGRAM
25 COMPONENTS ESTABLISHED BY THE DIRECTOR, THE HISTORIC CROPPING PROGRAM
26 SHALL INCLUDE THE FOLLOWING PROVISIONS:

27 1. THE DIRECTOR SHALL CALCULATE THE MAXIMUM ANNUAL GROUNDWATER
28 ALLOTMENT AS PROVIDED IN SECTION 45-465.

29 2. THE DIRECTOR SHALL CALCULATE THE IRRIGATION WATER DUTY IN THE
30 SAME MANNER AS THAT REQUIRED BY SECTION 45-568.03, SUBSECTION A, USING AN
31 IRRIGATION EFFICIENCY OF SEVENTY-FIVE PERCENT. IN AREAS DEEMED BY THE
32 DIRECTOR TO HAVE LIMITING SOILS, THE DIRECTOR MAY USE AN IRRIGATION
33 EFFICIENCY OF SEVENTY PERCENT FOR THE WATER DUTY CALCULATION.

34 3. THE FLEXIBILITY ACCOUNT PROVISIONS OF SECTION 45-467 APPLY EXCEPT
35 AS OTHERWISE PROVIDED IN THIS SECTION.

36 4. THE DIRECTOR MAY NOT REGISTER CREDITS TO THE FLEXIBILITY ACCOUNT
37 ESTABLISHED UNDER SECTION 45-467 THAT CAUSE THE CREDIT BALANCE TO EXCEED
38 SEVENTY-FIVE PERCENT OF THE MAXIMUM ANNUAL GROUNDWATER ALLOTMENT
39 ESTABLISHED PURSUANT TO THIS SUBSECTION.

40 5. ONLY OWNERS OF AN IRRIGATION GRANDFATHERED RIGHT MAY APPLY FOR
41 PARTICIPATION IN THE HISTORIC CROPPING PROGRAM.

42 C. IN THE MANAGEMENT PLANS, THE DIRECTOR SHALL ESTABLISH CRITERIA
43 THAT THE APPLICANT SHALL SATISFY TO ENTER THE HISTORIC CROPPING PROGRAM TO
44 ASSURE THAT CONSERVATION EQUIVALENT TO THAT REQUIRED BY THE AGRICULTURAL
45 CONSERVATION PROGRAM ESTABLISHED IN THE MANAGEMENT PLAN PURSUANT TO

1 SECTION 45-568.03 WILL BE ACHIEVED. AN OWNER OF AN IRRIGATION
2 GRANDFATHERED RIGHT MAY APPLY TO PARTICIPATE IN THE HISTORIC CROPPING
3 PROGRAM BY FILING AN APPLICATION WITH THE DIRECTOR. THE DIRECTOR MAY NOT
4 APPROVE AN APPLICATION FOR THE HISTORIC CROPPING PROGRAM UNLESS THE
5 APPLICANT SATISFIES THE ENTRANCE CRITERIA ESTABLISHED BY THE DIRECTOR AND
6 THE FOLLOWING CONDITIONS ARE SATISFIED:

7 1. THE APPLICANT'S ACCUMULATION OF CREDITS IN THE APPLICANT'S
8 FLEXIBILITY ACCOUNT UNDER SECTION 45-467 IS EQUAL TO OR LESS THAN
9 SEVENTY-FIVE PERCENT OF THE FARM'S MAXIMUM ANNUAL GROUNDWATER ALLOTMENT
10 ESTABLISHED PURSUANT TO THE APPLICABLE MANAGEMENT PLAN UNDER SECTION
11 45-568.03, SUBSECTION A, SECTION 45-568.04, SUBSECTION A OR SECTION
12 45-568.05, SUBSECTION A. TO SATISFY THIS REQUIREMENT, THE APPLICANT MAY
13 EITHER SELL OR CONVEY ANY EXCESS CREDITS AS PROVIDED BY SECTION 45-467, OR
14 THE APPLICANT MAY RELINQUISH ANY EXCESS CREDITS.

15 2. THE APPLICANT'S ACCUMULATION OF DEBITS IN THE APPLICANT'S
16 FLEXIBILITY ACCOUNT UNDER SECTION 45-467 IS EQUAL TO OR LESS THAN
17 TWENTY-FIVE PERCENT OF THE FARM'S MAXIMUM ANNUAL GROUNDWATER ALLOTMENT
18 ESTABLISHED PURSUANT TO THE MANAGEMENT PLAN UNDER SECTION 45-568.03,
19 SUBSECTION A.

20 D. IN THE MANAGEMENT PLAN, THE DIRECTOR SHALL ESTABLISH PERFORMANCE
21 STANDARDS THAT THE OWNER OF AN IRRIGATION GRANDFATHERED RIGHT OR ANY
22 PERSON USING GROUNDWATER PURSUANT TO THAT RIGHT SHALL SATISFY WHILE
23 PARTICIPATING IN THE HISTORIC CROPPING PROGRAM TO ASSURE THAT CONSERVATION
24 EQUIVALENT TO THAT REQUIRED BY THE AGRICULTURAL CONSERVATION PROGRAM
25 INCLUDED IN THE MANAGEMENT PLAN PURSUANT TO SECTION 45-568.03, SUBSECTION
26 A WILL BE ACHIEVED. AFTER AN OWNER OF AN IRRIGATION GRANDFATHERED RIGHT
27 HAS BEEN APPROVED FOR PARTICIPATION IN THE HISTORIC CROPPING PROGRAM, THE
28 OWNER OF THAT RIGHT, AND ANY PERSON USING GROUNDWATER PURSUANT TO THAT
29 RIGHT, SHALL MEET BOTH OF THE FOLLOWING CONDITIONS:

30 1. COMPLY WITH THE PERFORMANCE STANDARDS ESTABLISHED BY THE
31 DIRECTOR.

32 2. NOT ACCUMULATE DEBITS TO THE FLEXIBILITY ACCOUNT ESTABLISHED
33 UNDER SECTION 45-467 THAT EXCEED TWENTY-FIVE PERCENT OF THE MAXIMUM ANNUAL
34 GROUNDWATER ALLOTMENT ESTABLISHED UNDER SUBSECTION B OF THIS SECTION. THE
35 OWNER OF THE IRRIGATION GRANDFATHERED RIGHT AND ANY PERSON ENTITLED TO USE
36 GROUNDWATER PURSUANT TO THAT RIGHT VIOLATE THIS SECTION IF THE DEBIT
37 BALANCE EXCEEDS THE AMOUNT STATED IN THIS PARAGRAPH.

38 E. NOTWITHSTANDING SECTION 45-467, AN OWNER OF AN IRRIGATION
39 GRANDFATHERED RIGHT, WHILE PARTICIPATING IN THE HISTORIC CROPPING PROGRAM,
40 MAY NOT CONVEY OR SELL FLEXIBILITY ACCOUNT CREDITS FROM, OR PURCHASE
41 FLEXIBILITY ACCOUNT CREDITS FOR, THE FLEXIBILITY ACCOUNT REGULATED BY THE
42 HISTORIC CROPPING PROGRAM.

43 F. THE DIRECTOR MAY INCLUDE IN THE ADOPTION OF, OR A MODIFICATION
44 TO, THE MANAGEMENT PLAN FOR THE SIXTH MANAGEMENT PERIOD ADDITIONAL
45 ALTERNATIVE AGRICULTURAL CONSERVATION PROGRAMS THAT THE DIRECTOR

1 DETERMINES ACHIEVE CONSERVATION THAT IS AT LEAST EQUIVALENT TO THAT
2 REQUIRED UNDER THE AGRICULTURAL CONSERVATION PROGRAM INCLUDED IN THE
3 MANAGEMENT PLAN PURSUANT TO SECTION 45-568.03, INCLUDING A CROPPED ACREAGE
4 PROGRAM IN WHICH THE MAXIMUM ANNUAL GROUNDWATER ALLOTMENT IS DETERMINED
5 BASED ON THE CROPS GROWN DURING THE CALENDAR YEAR IN WHICH THE IRRIGATION
6 EFFICIENCY IS APPLIED.

7 G. THE DIRECTOR SHALL INCLUDE IN THE ADOPTION OF THE MANAGEMENT
8 PLAN FOR THE SIXTH MANAGEMENT PERIOD A BEST MANAGEMENT PRACTICES PROGRAM
9 THAT REQUIRES THE OWNER OF AN IRRIGATION GRANDFATHERED RIGHT AND ANY
10 PERSON USING GROUNDWATER PURSUANT TO THE RIGHT TO IMPLEMENT SPECIFIC
11 AGRICULTURAL CONSERVATION PRACTICES FOR WATER USE ON THE LAND OR FARM UNIT
12 TO WHICH THE RIGHT IS APPURTENANT IN LIEU OF COMPLYING WITH AN IRRIGATION
13 WATER DUTY AND A MAXIMUM ANNUAL GROUNDWATER ALLOTMENT. THE PROGRAM SHALL
14 BE DESIGNED TO ACHIEVE CONSERVATION THAT IS AT LEAST EQUIVALENT TO THAT
15 REQUIRED BY THE AGRICULTURAL CONSERVATION PROGRAM INCLUDED IN THE
16 MANAGEMENT PLAN PURSUANT TO SECTION 45-568.03.

17 Sec. 20. Section 45-574, Arizona Revised Statutes, is amended to
18 read:

19 45-574. Variances; application; notice; hearing; issuance

20 A. A person who requires additional time to comply with an
21 irrigation water duty or conservation requirement established pursuant to
22 section 45-565, 45-566, 45-566.01, 45-567, 45-567.01, 45-568, ~~or~~
23 45-568.01, 45-568.03 OR 45-568.04 may apply to the director for a variance
24 from the water duty or requirement within ninety days from the date of
25 notice of the water duty or requirement. The application shall include the
26 following:

- 27 1. The name and mailing address of the applicant.
- 28 2. The name of the active management area in which the use is
29 located.
- 30 3. The amount of groundwater currently being withdrawn annually by
31 the person.
- 32 4. The irrigation water duty or conservation requirement from which
33 the variance is sought.
- 34 5. A general description of the economic circumstances preventing
35 timely compliance with the irrigation water duty or conservation
36 requirement and any information relevant to such circumstances.
- 37 6. The sworn statement that the information contained in the
38 application is true and correct to the best belief and knowledge of the
39 applicant.
- 40 7. Such other information as the director may require.

41 B. The director shall give written notice to the applicant of the
42 opportunity for an administrative hearing. An administrative hearing
43 shall be held before the director's decision on the application if the
44 director deems a hearing necessary or a hearing is requested by the
45 applicant.

1 C. The director may grant a variance ~~upon~~ ON a showing of
2 compelling economic circumstances. The variance shall specify:

3 1. The amount of groundwater ~~which~~ THAT may be withdrawn by the
4 person during the variance period, or a schedule of intermediate water
5 duties or conservation requirements to be reached at specified intervals
6 during the variance period.

7 2. The duration of the variance, which may not exceed five years
8 from the date of the director's final determination of the variance.

9 D. A party aggrieved by the director's decision may seek judicial
10 review of the final decision of the director as provided in section
11 45-114, subsection B in the superior court in the county in which the
12 irrigated land or non-irrigation use is located.

13 E. Section 45-114, subsections A and B govern administrative
14 proceedings, rehearing or review and judicial review of final decisions of
15 the director under this section. If an administrative hearing is held, it
16 shall be conducted in the active management area in which the use is
17 located.

18 Sec. 21. Section 45-575, Arizona Revised Statutes, is amended to
19 read:

20 45-575. Administrative review of irrigation water duty and
21 conservation requirements

22 A. Any aggrieved party may request an administrative review of an
23 irrigation water duty or conservation requirement established pursuant to
24 section 45-565, 45-566, 45-566.01, 45-567, 45-567.01, 45-568, ~~or~~
25 45-568.01, 45-568.03 OR 45-568.04. Except as provided in subsection B of
26 this section, the request must be made not later than ninety days from the
27 date of notice of such duty or requirement given thirty days after the
28 adoption of the management plan or if the notice was given pursuant to
29 section 45-566.01, subsection E or 45-571.02, subsection B, not later than
30 ninety days from the date of the notice.

31 B. An aggrieved person who claims that extraordinary circumstances
32 not in existence as of the date of notice that was given thirty days after
33 adoption of the management plan justify modification of an irrigation
34 water duty or conservation requirement established pursuant to section
35 45-565, 45-566, 45-566.01, 45-567, 45-567.01, 45-568, ~~or~~ 45-568.01,
36 45-568.03 OR 45-568.04 may request administrative review of the water duty
37 or conservation requirement more than ninety days from the date of notice
38 of the water duty or conservation requirement. The director may modify
39 the water duty or conservation requirement if the aggrieved person
40 demonstrates to the director by clear and convincing evidence that
41 extraordinary circumstances not in existence as of the date of the notice
42 that was given thirty days after adoption of the management plan make it
43 unreasonable to require compliance with a water duty or conservation
44 requirement.

1 C. The director shall give written notice to the aggrieved party
2 who is requesting an administrative review of the opportunity for an
3 administrative hearing. An administrative hearing shall be held before
4 the director's decision on the application if the director deems a hearing
5 necessary or a hearing is requested by the applicant.

6 D. A party aggrieved by the director's decision may seek judicial
7 review of the final decision of the director as provided in section
8 45-114, subsection B in the superior court in the county in which the
9 irrigated land or the non-irrigation use is located.

10 E. Section 45-114, subsections A and B govern administrative
11 proceedings, rehearing or review and judicial review of final decisions of
12 the director under this section. If an administrative hearing is held, it
13 shall be conducted in the active management area in which the use is
14 located.

15 Sec. 22. Section 45-2103, Arizona Revised Statutes, is amended to
16 read:

17 45-2103. Arizona water protection fund commission

18 A. The Arizona water protection fund commission is established and
19 consists of two ex officio members, two advisory members and nine
20 appointed members who are residents of this state, who have demonstrated
21 an interest in natural resources and who are appointed as follows:

22 1. One person who represents a multi-county water conservation
23 district established pursuant to title 48, chapter 22 and named by that
24 district's governing board.

25 2. One person who represents a state association of natural
26 resource conservation districts and who is appointed by the governor.

27 3. Four persons who represent natural resource conservation
28 districts established pursuant to title 37, chapter 6, and who represent
29 geographically diverse areas of this state, two of whom shall be appointed
30 by the president of the senate and two of whom are appointed by the
31 speaker of the house of representatives.

32 4. One member of the public who has at least a bachelor's degree in
33 hydrology, who represents a city that is served by the central Arizona
34 project and who is appointed by the governor.

35 5. One person who is knowledgeable in natural resource conservation
36 issues or in water resource issues related to riparian ecosystems, who
37 represents an agricultural improvement district established pursuant to
38 title 48, chapter 17 and who is appointed by the governor.

39 6. One person who represents an Indian tribe and who is appointed
40 by the chairman of the ~~intertribal~~ INTER TRIBAL council of Arizona.

41 7. As nonvoting ex officio members, the director of the department
42 of water resources, THE STATE FORESTER and the state land commissioner.

43 8. As nonvoting advisory members, one member of the house of
44 representatives who is appointed by the speaker of the house of
45 representatives and one member of the senate who is appointed by the

1 president of the senate. Advisory members may not be considered for
2 purposes of establishing a quorum.

3 B. Members of the commission appointed pursuant to subsection A,
4 paragraphs 1 through 6 of this section shall be appointed for staggered
5 terms of three years. A member may serve more than one term and may
6 continue to serve beyond the expiration of the term until a successor is
7 appointed and assumes office.

8 C. On request, members who are not ex officio members of the
9 commission are eligible to receive compensation pursuant to section
10 38-611, not to exceed three thousand dollars in any calendar year, and are
11 eligible for reimbursement for expenses pursuant to title 38, chapter 4,
12 article 2.

13 D. Members of the commission are immune from liability for any
14 action necessary to carry out the purposes of this chapter.

15 Sec. 23. Section 45-2106, Arizona Revised Statutes, is amended to
16 read:

17 45-2106. Public involvement

18 A. The commission is subject to ~~the provisions of~~ title 38, chapter
19 3, article 3.1 and title 39, chapter 1.

20 B. The commission shall develop and may amend the guidelines for
21 applicants required by section 45-2105 after reviewing the recommendations
22 submitted by the natural resource conservation districts developed
23 pursuant to section 37-1054, subsections D and E and the information
24 gathered during the public involvement process.

25 C. The commission shall gather information from the following:

26 1. The director of the department of water resources, ~~THE STATE~~
27 ~~FORESTER~~ and the state land commissioner.

28 2. The federal and state fish, wildlife, recreation and natural
29 resource agencies.

30 3. County and municipal entities.

31 4. The public.

32 D. The commission shall develop procedures to ~~assure~~ ~~ENSURE~~
33 adequate public participation. At a minimum, public participation
34 procedures shall prescribe public notice requirements including the
35 content and publication of the notice, provide an opportunity for public
36 hearings and specify the procedures governing the hearings and require the
37 public availability of relevant documents. Public hearings shall be held
38 at places and times ~~which~~ ~~THAT~~ afford a reasonable opportunity to persons
39 to participate.

40 E. The commission shall make available for viewing copies of the
41 recommendations and supporting documents submitted pursuant to this
42 section and may charge a reasonable fee for copying.

1 Sec. 24. Section 45-2113, Arizona Revised Statutes, is amended to
2 read:

3 45-2113. Fund grants; applications

4 A. The commission shall grant monies from the fund consistent with
5 the application guidelines developed pursuant to section 45-2105. The
6 commission shall establish a procedure by which monies may be granted
7 annually ~~which shall include~~ THAT INCLUDES a maximum of six months between
8 the receipt of the proposal by the commission and the disbursement of
9 monies. The commission shall give priority in funding to the following:

10 1. Projects for which matching monies or assets of comparable
11 value, including in-kind contributions, will be provided by other sources.

12 2. Projects that provide for the continued maintenance of the
13 portion of the river and stream and associated riparian habitat that are
14 enhanced by the project.

15 3. Projects that include ~~broad based~~ BROAD-BASED local involvement.

16 4. Projects that directly benefit perennial or intermittent rivers
17 or streams or that otherwise increase the supply of water.

18 B. The commission shall require as a condition of approval of any
19 proposal all of the following provisions:

20 1. Allowing access for inspection and evaluation of the project.

21 2. Controlling the expenditure of and accounting for any monies
22 granted by the commission

23 3. Requiring that those persons responsible for the project submit
24 all pertinent information and research gained from the project to the
25 commission.

26 4. Requiring that any person receiving a grant spend no more than
27 five percent of the grant on costs of administration.

28 C. The commission shall provide for public involvement regarding
29 the applications submitted to the commission, which shall include notice
30 to any person who requests notice of applications and which shall provide
31 a reasonable opportunity for comment on the application ~~which shall~~ THAT
32 IS not ~~be~~ less than forty-five days.

33 D. On receipt of an application the commission shall notify cities,
34 towns, counties, natural resource conservation districts, special
35 districts and Indian communities affected by the proposal and shall
36 provide a reasonable opportunity for comment on the application ~~which~~
37 ~~shall~~ THAT IS not ~~be~~ less than forty-five days.

38 E. Any person, state agency or political subdivision of this state
39 may submit a request for funding from the fund for purposes prescribed by
40 this section. A federal agency is not eligible for funding from the fund.
41 Requests for funding shall be made to the commission. Requests for
42 funding submitted to the commission may be accompanied by expressions of
43 support from affected cities, towns, counties, natural resource
44 conservation districts, special districts or Indian communities.

1 F. As a condition of approval by the commission, the applicant
2 shall commit to work jointly with the affected cities, towns, counties,
3 natural resource conservation districts, special districts and Indian
4 communities that have contacted the commission pursuant to subsection D of
5 this section on all aspects of the proposal's implementation and
6 monitoring, unless the jurisdiction chooses not to participate.

7 G. Monies in the fund may only be spent to finance programs located
8 in this state.

9 H. Monies in the fund may be spent for any of the following:

10 1. Granting monies to entities for the acquisition of central
11 Arizona project water or effluent that will protect or restore rivers or
12 streams consistent with state water law. ~~NO~~ AN entity may NOT exercise
13 the right of eminent domain to acquire water or water rights using monies
14 derived from this fund.

15 2. Granting monies to assist in developing, promoting and
16 implementing water conservation programs, ~~THAT ARE~~ THAT ARE directly related to
17 the purposes of this chapter, ~~outside of the active management areas.~~

18 3. Granting monies in support of research and data collection,
19 compilation and analysis THAT ARE directly related to the purposes of this
20 chapter, except that no more than five percent of the monies deposited in
21 the fund in any fiscal year may be spent for this purpose. Before the
22 approval of any such project, the commission shall consult with the
23 department of water resources, THE ARIZONA DEPARTMENT OF FORESTRY AND FIRE
24 MANAGEMENT and the state land department to determine whether any research
25 of a similar nature has been or is in the process of being performed and
26 is already available. The commission shall not approve a proposal if
27 either department determines that sufficient data exists and notifies the
28 commission in writing.

29 4. Granting monies for the development and implementation of
30 capital projects or specific measures consistent with the purposes of this
31 chapter.

32 I. Monies in the fund may not be spent for:

33 1. Any project that includes the planting of mesquite, tamarisk or
34 other nonnative high water usage trees that consume water to a degree that
35 is detrimental to water conservation efforts, but may be used for removal
36 of mesquite, tamarisk or other nonnative high water usage trees that
37 consume water to a degree that is detrimental to water conservation
38 efforts.

39 2. Any remedial action purposes undertaken pursuant to the
40 comprehensive environmental response, compensation, and liability act of
41 1980, as amended (P.L. 96-510; 94 Stat. 2767; 42 United States Code
42 section 9601) or title 49, chapter 2, article 5.

1 Sec. 25. Section 48-3702, Arizona Revised Statutes, is amended to
2 read:

3 48-3702. District as municipal corporation; immunity

4 A. A multi-county water conservation district is a tax-levying
5 public improvement district of the state and a municipal corporation to
6 the extent of the powers and privileges conferred by this chapter or
7 granted generally to municipal corporations by the constitution and
8 statutes of the state, including the immunities and exemptions provided by
9 article ~~18~~ XIII, section 7, of the Constitution of Arizona.

10 B. A MULTI-COUNTY WATER CONSERVATION DISTRICT SHALL NOT ASSERT THE
11 DEFENSE OF IMMUNITY UNDER THE ELEVENTH AMENDMENT OF THE UNITED STATES
12 CONSTITUTION IN LITIGATION BROUGHT BY A WATER USER TO ENFORCE THE TERMS OF
13 A CENTRAL ARIZONA PROJECT WATER DELIVERY CONTRACT OR SUBCONTRACT.

14 Sec. 26. Title 48, chapter 22, article 1, Arizona Revised Statutes,
15 is amended by adding section 48-3713.04, to read:

16 48-3713.04. District, department communication; interstate,
17 federal issues; notice

18 A. IF THE DISTRICT IS A PARTY TO DISCUSSIONS ON OR NEGOTIATIONS OF
19 INTERSTATE AGREEMENTS OR AGREEMENTS WITH THE UNITED STATES INVOLVING THE
20 USE, STORAGE OR CONSERVATION OF COLORADO RIVER WATER, THE DISTRICT SHALL
21 PROMPTLY INFORM THE DIRECTOR OF WATER RESOURCES.

22 B. IF THE DIRECTOR OF WATER RESOURCES IS A PARTY TO DISCUSSIONS ON
23 OR NEGOTIATIONS OF INTERSTATE AGREEMENTS OR AGREEMENTS WITH THE UNITED
24 STATES INVOLVING THE USE, STORAGE OR CONSERVATION OF COLORADO RIVER WATER,
25 THE DISTRICT SHALL PROMPTLY INFORM THE DIRECTOR OF WATER RESOURCES.

26 Sec. 27. Evaluation of conservation requirements and
27 irrigation water duties for fifth and sixth
28 management periods; advisory committee; report;
29 delayed repeal

30 A. The director of water resources shall evaluate the conservation
31 requirements and irrigation water duties required to be established in the
32 management plans for the fifth and sixth management periods pursuant to
33 section 45-568, Arizona Revised Statutes, as amended by this act, and
34 sections 45-568.03, 45-568.04 and 45-568.05, Arizona Revised Statutes, as
35 added by this act, to determine whether any changes to those conservation
36 requirements and irrigation water duties are appropriate to achieve
37 reasonable conservation in the active management areas.

38 B. The director shall establish one or more advisory committees for
39 each active management area to assist the director in the evaluation
40 required by subsection A of this section. The director may also contract
41 with an independent researcher to assist in the evaluation. The
42 evaluation shall include a review of the conservation requirements and
43 irrigation water duties established in the management plans for the fifth
44 management period for each active management area to determine whether
45 those conservation requirements should continue for the management plans

1 for the fifth and sixth management periods, or whether changes are
2 appropriate.

3 C. The director shall prepare a report of the director's findings
4 and recommendations and submit the report on or before December 31, 2030
5 to the governor, the president of the senate, the speaker of the house of
6 representatives, the members of the senate natural resources, energy and
7 water committee, or its successor committee, and the members of the house
8 of representatives energy, environment and natural resources committee, or
9 its successor committee. The report shall include any recommendations for
10 statutory changes.

11 D. This section is repealed from and after September 30, 2031.

12 Sec. 28. Conforming legislation

13 The legislative council staff shall prepare proposed legislation
14 conforming the Arizona Revised Statutes to the provisions of this act for
15 consideration in the fifty-fourth legislature, first regular session.

16 Sec. 29. Transfer; effect; succession; natural resource
17 conservation districts; Arizona department of
18 forestry and fire management

19 A. All matters, including contracts, orders and judicial or
20 quasi-judicial actions, whether completed or pending, of the state land
21 department relating to natural resource conservation districts are
22 transferred, on the date prescribed by section 30 of this act, and
23 maintain the same status with the Arizona department of forestry and fire
24 management.

25 B. Rules adopted by the state land department relating to natural
26 resource conservation districts are effective until superseded by rules
27 adopted by the Arizona department of forestry and fire management.

28 C. All personnel, property and records, all data and investigative
29 findings, all obligations and all appropriated monies remaining unspent
30 and unencumbered of the state land department relating to natural resource
31 conservation districts are transferred to the Arizona department of
32 forestry and fire management and may be used for the purposes of this act.

33 Sec. 30. Effective date

34 Sections 37-1002, 37-1011, 37-1012, 37-1013, 37-1014, 37-1036,
35 37-1054, 37-1302, 45-2103, 45-2106 and 45-2113, Arizona Revised Statutes,
36 as amended by this act, are effective from and after _____, 2019.

REFERENCE TITLE: water; desalination action plan

State of Arizona
Senate
Fifty-third Legislature
Second Regular Session
2018

SB 1508

Introduced by
Senator Griffin

AN ACT

AMENDING TITLE 45, CHAPTER 1, ARTICLE 1, ARIZONA REVISED STATUTES, BY
ADDING SECTION 45-118; RELATING TO THE DEPARTMENT OF WATER RESOURCES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 45, chapter 1, article 1, Arizona Revised
3 Statutes, is amended by adding section 45-118, to read:

4 45-118. Desalination action plan; report; definition

5 A. THE DIRECTOR SHALL PREPARE A DESALINATION ACTION PLAN THAT
6 INCLUDES ALL THE FOLLOWING:

7 1. AN IDENTIFICATION OF AREAS WITHIN THIS STATE WHERE BRACKISH
8 GROUNDWATER EXISTS IN SIGNIFICANT AMOUNTS.

9 2. AN ESTIMATE OF THE COST TO TREAT AND DELIVER THE BRACKISH
10 GROUNDWATER FOR AN ECONOMICALLY VIABLE USE.

11 3. AN IDENTIFICATION OF AREAS OF THIS STATE THAT WOULD BENEFIT FROM
12 THE USE OF THE TREATED BRACKISH GROUNDWATER.

13 4. AN IDENTIFICATION OF POTENTIAL FUNDING SOURCES FOR THE TREATMENT
14 AND DELIVERY OF THE BRACKISH GROUNDWATER.

15 5. AN EVALUATION OF THE FEASIBILITY AND COST OF DISPOSAL OF THE
16 BRINE PRODUCT THAT RESULTS FROM TREATING BRACKISH GROUNDWATER.

17 B. A DESALINATION ACTION PLAN MAY ALSO IDENTIFY AND EVALUATE
18 POTENTIAL BINATIONAL AGREEMENTS OR PROJECTS RELATED TO THE TREATMENT OF
19 BRACKISH GROUNDWATER OR SEA WATER USING THE CRITERIA PRESCRIBED IN
20 SUBSECTION A OF THIS SECTION.

21 C. THE DIRECTOR SHALL SUBMIT THE INITIAL DESALINATION ACTION PLAN
22 ON OR BEFORE SEPTEMBER 30, 2019 TO THE GOVERNOR, THE PRESIDENT OF THE
23 SENATE, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, THE MEMBERS OF THE
24 SENATE NATURAL RESOURCES, ENERGY AND WATER COMMITTEE, OR ITS SUCCESSOR
25 COMMITTEE, AND THE MEMBERS OF THE HOUSE OF REPRESENTATIVES ENERGY,
26 ENVIRONMENT AND NATURAL RESOURCES COMMITTEE, OR ITS SUCCESSOR COMMITTEE,
27 AND SHALL PROVIDE A COPY OF THE REPORT TO THE SECRETARY OF STATE. THE
28 DIRECTOR SHALL SUBMIT SUBSEQUENT REPORTS ON THE DESALINATION ACTION PLAN
29 AND ITS RESULTS BY DECEMBER 31 EVERY TWO YEARS THERE-AFTER.

30 D. FOR THE PURPOSES OF THIS SECTION, "BRACKISH GROUNDWATER" MEANS
31 GROUNDWATER THAT DUE TO ITS SALINITY REQUIRES TREATMENT FOR AN
32 ECONOMICALLY VIABLE USE.

REFERENCE TITLE: water; interstate sales

State of Arizona
Senate
Fifty-third Legislature
Second Regular Session
2018

SB 1509

Introduced by
Senator Griffin

AN ACT

AMENDING SECTION 45-292, ARIZONA REVISED STATUTES; RELATING TO WATERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 45-292, Arizona Revised Statutes, is amended to
3 read:

4 45-292. Approval required to transport water out of state:
5 application; fee; criteria; hearing

6 A. A person may withdraw, or divert, and transport water from this
7 state for a reasonable and beneficial use in another state if approved by
8 the director pursuant to this article **AND ON APPROVAL OF THE LEGISLATURE**
9 **AS PRESCRIBED BY THIS SECTION**. A person shall not transport water from
10 this state **WHETHER SURFACE WATER, GROUNDWATER, COLORADO RIVER WATER OR**
11 **OTHER WATER** unless approved by the director **AND THE LEGISLATURE**, but this
12 article does not apply to or prohibit transporting water from this state
13 as required by interstate compact, federal law or international treaty.

14 B. An application to transport water from this state for use in
15 another state shall be filed with the director, including a fee
16 established by the director by rule. In establishing a fee by rule, the
17 director may consider factors including the amount of time likely to be
18 expended in processing the application, the amount of preexisting
19 hydrological information available, if any, and the complexity of the
20 application. The application shall include:

- 21 1. The name and address of the applicant's statutory agent in this
22 state for service of process and other legal notices.
- 23 2. The legal basis for acquiring the water to be transported.
- 24 3. The purpose for which the water will be used.
- 25 4. The annual amount of water in acre-feet for which the
26 application is made.
- 27 5. The proposed duration of the permit, not to exceed fifty years
28 with an option to renew.
- 29 6. Studies satisfactory to the director of the probable hydrologic
30 impact on the area from which the water is proposed to be transported.
- 31 7. Any other information ~~which~~ **THAT** the director may require.

32 C. The director shall approve or reject the application. If the
33 director approves the application, the director may prescribe terms and
34 conditions for the approval. In determining whether to approve the
35 application the director shall consider:

- 36 1. Whether the proposed action would be consistent with
37 conservation of water, including any applicable management goals and
38 plans.
- 39 2. Potential harm to the public welfare of the citizens of this
40 state.
- 41 3. The supply of water to this state and current and future water
42 demands in this state in general and the proposed source area in
43 particular.

1 4. The feasibility of intrastate transportation of the water that
2 is the subject of the application to alleviate water shortages in this
3 state.

4 5. The availability of alternative sources of water in the other
5 state.

6 6. The demands placed on the applicant's supply in the other state.

7 7. Whether the proposed action is prohibited or affected by other
8 law, including sections 45-165 and 45-172 and chapter 2 of this title.

9 D. IF THE DIRECTOR APPROVES THE APPLICATION, THE DIRECTOR SHALL
10 NOTIFY THE LEGISLATURE OF THE DIRECTOR'S APPROVAL. THE LEGISLATURE SHALL
11 CONSIDER THE PROPOSED ACTION AND MAY APPROVE THE PROPOSED ACTION BY
12 LEGISLATIVE ENACTMENT, APPROVED BY THE GOVERNOR. IF THE LEGISLATURE FAILS
13 TO PASS A LEGISLATIVE ENACTMENT OR THE LEGISLATIVE ENACTMENT IS NOT
14 APPROVED BY THE GOVERNOR, THE APPLICATION IS DENIED AND SHALL NOT PROCEED.

15 ~~D.~~ E. This article does not authorize and the director shall not
16 approve transporting from this state water allocated to this state by
17 federal law or interstate compact.

18 ~~E.~~ F. An administrative hearing shall be held on the application,
19 and the director shall give notice of the hearing by publication once a
20 week for three consecutive weeks in a newspaper of general circulation in
21 the county or counties from which the applicant proposes to transport the
22 water. The hearing shall be conducted in the area from which water is
23 proposed to be transported. Any interested person, including the
24 department, may appear and give oral or written testimony on all issues
25 involved.

26 ~~F.~~ G. Section 45-114, subsections A and B govern administrative
27 proceedings, rehearing or review and judicial review of final decisions of
28 the director under this section.

29 ~~G.~~ H. The director shall deposit, pursuant to sections 35-146 and
30 35-147, all fees received under this section in the water resources fund
31 established by section 45-117.

REFERENCE TITLE: central Arizona project; sovereign immunity

State of Arizona
Senate
Fifty-third Legislature
Second Regular Session
2018

SB 1516

Introduced by
Senator Griffin

AN ACT

AMENDING SECTION 48-3702, ARIZONA REVISED STATUTES; RELATING TO
MULTI-COUNTY WATER CONSERVATION DISTRICTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 48-3702, Arizona Revised Statutes, is amended to
3 read:

4 48-3702. District as municipal corporation; immunity

5 A. A multi-county water conservation district is a tax-levying
6 public improvement district of the state and a municipal corporation to
7 the extent of the powers and privileges conferred by this chapter or
8 granted generally to municipal corporations by the constitution and
9 statutes of the state, including the immunities and exemptions provided by
10 article ~~13~~ XIII, section 7, of the Constitution of Arizona.

11 B. A MULTI-COUNTY WATER CONSERVATION DISTRICT SHALL NOT ASSERT THE
12 DEFENSE OF IMMUNITY UNDER THE ELEVENTH AMENDMENT OF THE UNITED STATES
13 CONSTITUTION IN LITIGATION BROUGHT BY A WATER USER TO ENFORCE THE TERMS OF
14 A CENTRAL ARIZONA PROJECT WATER DELIVERY CONTRACT OR SUBCONTRACT.

REFERENCE TITLE: water management; sources; policies; support

State of Arizona
Senate
Fifty-third Legislature
Second Regular Session
2018

SCR 1031

Introduced by
Senator Griffin

A CONCURRENT RESOLUTION

SUPPORTING EFFORTS TO IDENTIFY AND DEVELOP POLICIES TO SECURE ADDITIONAL
SOURCES OF WATER FOR THE STATE OF ARIZONA.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Whereas, Arizona has long been at the forefront among Western states
2 in developing and implementing pioneering, well-reasoned water management
3 policies; and

4 Whereas, through the foresight of many exemplary leaders, Arizona
5 has enacted numerous programs and supported many projects, either through
6 legislation or otherwise, that are designed to ensure the maximum use of
7 existing water supplies and creative responses to address long-term water
8 issues in this state, including:

- 9 1. The enactment of the 1980 Groundwater Management Act.
- 10 2. The creation of the Central Arizona Project.
- 11 3. The establishment of the Arizona Water Banking Authority and the
12 Groundwater Replenishment Authority.
- 13 4. Numerous water conservation policies and projects throughout
14 this state.
- 15 5. The completion of the New Waddell Dam and increased capacity of
16 Roosevelt Dam.
- 17 6. The enactment of numerous water settlement agreements and water
18 recharge projects and programs.
- 19 7. Public education programs on how to conserve water.

20 Whereas, Arizona's future economic well-being and stability and
21 opportunity for growth are dependent on the successful and thoughtful
22 development of policies regarding long-term storage and management of
23 water resources.

24 Therefore

25 Be it resolved by the Senate of the State of Arizona, the House of
26 Representatives concurring:

27 That the Members of the Legislature support ongoing efforts to
28 identify and develop policies to secure additional sources of water for
29 the State of Arizona.

REFERENCE TITLE: Colorado basin project act; anniversary

State of Arizona
Senate
Fifty-third Legislature
Second Regular Session
2018

SJR 1001

Introduced by
Senator Griffin

A JOINT RESOLUTION

RECOGNIZING THE FIFTIETH ANNIVERSARY OF THE COLORADO RIVER BASIN PROJECT
ACT AND ITS IMPACTS ON THE STATE OF ARIZONA.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Whereas, 2018 is the fiftieth anniversary of the signing of the
2 Colorado river basin project act; and

3 Whereas, the Colorado river basin project act contained many
4 provisions that have had a significant effect on Arizona, including the
5 construction of the central Arizona project; and

6 Whereas, the significant effects of the Colorado river basin project
7 act have included ensuring water supplies for farming and ranching in this
8 state; and

9 Whereas, other significant effects have included increased water
10 supplies for household use and for commerce and industry, thus ensuring
11 the ongoing economic vitality of this state; and

12 Whereas, these increased water supplies have also benefitted other
13 water users throughout this state including tribal nations; and

14 Whereas, the Colorado river basin project act also provided
15 significant flood control improvements, improvements to water quality and
16 improved conditions for fish and wildlife in this State and increased
17 opportunities for recreation; and


18 Whereas, the Colorado river basin project act also provided for the
19 establishment of the Navajo generating station as a source of electric
20 power in this state; and

21 Whereas, the Colorado river basin project act was the result of many
22 years of cooperative effort by leaders from across this state.

23 Therefore

24 Be it resolved by the Legislature of the State of Arizona:

25 That the members of the Legislature and the Governor of the State of
26 Arizona recognize that continued cooperation with respect to this state's
27 water future is essential to ensuring that the economy and the people of
28 this state continue to prosper.



State Legislative Update



**Public Policy Committee
February 1, 2018**

**Jeff Gray
Legislative Affairs Manager**



Legislative Update

- The 53rd State Legislature's Second Regular Session began on January 8.
- As of January 24, 861 bills have been introduced. Bill introduction deadline:
 - Senate: January 29
 - House: February 5
- Last day to hear bills in the house of origin is February 16.
- The Governor released his proposed FY 2018 budget on January 12.



CAP Legislative Presentations

- Karen Cesare and Ted Cooke made CAP's annual presentation before the House and Senate water committees.
 - Senate Natural Resources, Energy and Water Committee: January 18.
 - House Energy, Environment and Natural Resources (EENR) Committee: January 23.
- Presentation included background on CAP and review of timely water issues.
- Secretary Megdal also made a presentation on the CAGR to the House EENR committee on January 16.



Funding of State Water Agencies and Commissions

- ▶ Support the efforts of the Arizona Department of Water Resources and the Arizona Water Protection Fund Commission to secure sufficient state General Fund appropriations in order to carry out statutory functions.
- ▶ Monitor legislative actions that propose to use funds available to the Arizona Water Banking Commission for other purposes.

- The Governor's proposed FY2019 budget authorizes a \$26,604,400 total budget for ADWR, which is the same level as FY 2018.
 - \$15.7 million of this amount will come from the state General Fund.
 - ADWR is authorized to have 150 FTEs, but currently has 135.
- The Governor's budget would expand ADWR's use of its annual, Colorado River litigation line item appropriation to *any* legal expenses relating to the Colorado River, rather limiting its expenditure to the lawsuit between the Navajo Nation and Interior.



Arizona Water Banking Fund

- As in recent years, the budget proposes to move \$1,211,400 from the Arizona Water Banking Fund to support ADWR funding.
- The budget also proposes \$200,000 from the fund to pay for the Arizona Navigable Streams Adjudication Commission's (ANSAC) legal fees.
- Total Water Bank transfer of \$1,411,400 is \$200,000 less than FY 2018. This difference reflects the cost to conduct the CAWCD special audit, which is not included in the Governor's FY 2019 budget.



Arizona Water Protection Fund

- The Governor's budget includes a \$250,000 appropriation for the Arizona Water Protection Fund in FY 2019, which is the same as this year's appropriation.
- Sen. Gail Griffin introduced S.B. 1039, a bill that would appropriate \$1,000,000 to the Fund.
- S.B. 1039 passed the Senate Natural Resources, Energy and Water Committee on January 22 by a 7-0 vote.
- **Recommended Position on S.B. 1039:**
SUPPORT



UPDATE: Recently Introduced Water Legislation

- On January 29, Sen. Griffin introduced 12 water-related bills.
- S.B. 1507 is an omnibus bill that incorporates the provisions of nine other bills (S.B. 1508 through S.B. 1516) that she also has sponsored.
- Sen. Griffin also introduced two resolutions expressing support for Arizona water management and cooperation and recognizing the anniversary of the Colorado River Basin Project Act signing.
- Staff is proposing preliminary recommendations on bills that appear to have a direct impact CAP, but continues to review and analyze all of the bills introduced by Sen. Griffin on Monday.



S.B. 1507 water program amendments

- S.B. 1507 contains provisions relating to all of the following:
 - CAWCD notification to the ADWR Director regarding discussions/negotiations with the U.S.
 - CAWCD sovereign immunity protection in lawsuits involving a CAP contractor or subcontractor. (S.B. 1516)
 - Legislature and Governor approval of out-of-state water transportation. (S.B. 1509)
 - Requirement of ADWR Director to develop a Desalination Action Plan. (S.B. 1508)
 - Addition of a sixth management period in the state's Groundwater Code. (S.B. 1512)
 - Changes to address Pinal AMA groundwater issues. (S.B. 1511)
 - Adequate Water Supply changes for counties outside of the CAP service area. (S.B. 1515)
 - Modification of statutory definition of "effluent." (S.B. 1513)
 - Transfer of NRCD administration to the State Forester. (S.B. 1514)
 - Use of groundwater for containerized plants as a non-irrigation use. (S.B. 1510)

- **Recommended Position on S.B. 1507: MONITOR**



CAWCD Notification of Interstate Discussions in S.B. 1507

- CAWCD would be required to promptly notify the ADWR Director if CAWCD is party to discussions or negotiations with the U.S. involving agreements related to Colorado River water use, storage or conservation (Subsection A).

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14     Sec. 26. Title 48, chapter 22, article 1, Arizona Revised Statutes,  
15 is amended by adding section 48-3713.04, to read:  
16     48-3713.04. District, department communication; interstate,  
17 federal issues; notice  
18     A. IF THE DISTRICT IS A PARTY TO DISCUSSIONS ON OR NEGOTIATIONS OF  
19 INTERSTATE AGREEMENTS OR AGREEMENTS WITH THE UNITED STATES INVOLVING THE  
20 USE, STORAGE OR CONSERVATION OF COLORADO RIVER WATER, THE DISTRICT SHALL  
21 PROMPTLY INFORM THE DIRECTOR OF WATER RESOURCES.  
22     B. IF THE DIRECTOR OF WATER RESOURCES IS A PARTY TO DISCUSSIONS ON  
23 OR NEGOTIATIONS OF INTERSTATE AGREEMENTS OR AGREEMENTS WITH THE UNITED  
24 STATES INVOLVING THE USE, STORAGE OR CONSERVATION OF COLORADO RIVER WATER,  
25 THE DISTRICT SHALL PROMPTLY INFORM THE DIRECTOR OF WATER RESOURCES.
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- The provisions appears to have a reciprocal requirement for notification, but there is an apparent error in the language (Subsection B).
- Unlike other provisions in S.B. 1507, these notification requirements do not appear in a stand-alone bill.



S.B. 1508 water; desalination action plan

- S.B. 1508 requires the ADWR Director to draft a Desalination Action Plan for the state by September 30, 2019.
- The director must identify areas of brackish groundwater in the state and evaluate costs, including those related to brine disposal.
- Identification and evaluation of binational agreements or projects are included as part of the review.
- **Recommended Position on S.B. 1508:**
SUPPORT



S.B. 1509 water; interstate sales

- S.B. 1509 requires that any application that ADWR initially approves to transport water out of state must be approved by the Legislature through enactment and signed by Governor.
- The bill also specifies that the water for transportation out of state includes surface water, groundwater, *Colorado River water* or other water.
- **Recommended Position on S.B. 1509: MONITOR**



S.B. 1516 central Arizona project; sovereign immunity

- S.B. 1516 stipulates that CAWCD cannot assert sovereign immunity protection in lawsuits brought by a CAP contractor or subcontractor.

4 48-3702. District as municipal corporation; immunity
5 A. A multi-county water conservation district is a tax-levying
6 public improvement district of the state and a municipal corporation to
7 the extent of the powers and privileges conferred by this chapter or
8 granted generally to municipal corporations by the constitution and
9 statutes of the state, including the immunities and exemptions provided by
10 article ~~XIII~~ XIII, section 7, of the Constitution of Arizona.
11 B. A MULTI-COUNTY WATER CONSERVATION DISTRICT SHALL NOT ASSERT THE
12 DEFENSE OF IMMUNITY UNDER THE ELEVENTH AMENDMENT OF THE UNITED STATES
13 CONSTITUTION IN LITIGATION BROUGHT BY A WATER USER TO ENFORCE THE TERMS OF
14 A CENTRAL ARIZONA PROJECT WATER DELIVERY CONTRACT OR SUBCONTRACT.

- Proposed language is similar to the Board approved Talking Points and the Board adopted Sovereign Immunity Resolution adopted last summer.
- **Recommended Position on S.B. 1516: MONITOR**



S.C.R. 1031 water management; sources; policies; support

- S.C.R 1031 recognizes some of Arizona's achievements in water management, including enactment of the 1980 Groundwater Code and construction of the CAP.
- The resolution expresses the Legislature's support for "ongoing efforts to identify and develop policies to secure additional sources of water for the State of Arizona."
- S.C.R. 1031 would require passage by both houses, but signature of the Governor is not required.
- **Recommended Position on S.C.R. 1031: SUPPORT**



S.J.R. 1001 Colorado basin project act; anniversary

- S.C.R 1031 recognizes the 50th anniversary of the Colorado River Basin Project Act and lists some of its beneficial impacts, including the construction of CAP.
- The resolution expresses the sentiment that "continued cooperation with respect to this state's water future is essential to ensuring that the economy and the people of this state continue to prosper."
- Joint resolutions are processed through both houses and are signed by the Governor.
- **Recommended Position on S.J.R. 1001: SUPPORT**





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