

CENTRAL ARIZONA PROJECT Board of Directors March 4, 2021 - 10:00 AM

Virtual Meeting The public may view the meeting at www.cap-az.com/board/meetings

New materials added to agenda item 5. Updated materials added to agenda item 12.

FINAL AGENDA

Times shown are approximate. Some items may take more or less time than scheduled, or the President may grant requests to hear items in an order other than shown.

- 1. Pledge of Allegiance, Moment of Silence and Safety Minute Cesare (10:00)
- 2. Recognition of Employees Celebrating Service Anniversaries: John Harrison, Jesus Lucero 25 Years; Robert Ring 30 Years (10:05)
- 3. Consideration of Action to Approve Items on the Consent Agenda** (10:15)
 - a. Minutes of the February 4, 2021 Regular Meeting Arboleda
 - b. Design-Build Contract for Programmable Logic Controllers at Waddell Pumping Plant -Francom
 - c. Equipment Purchase Contract for Medium Voltage Non-Segregated Bus Replacement at Waddell Pumping Plant Francom
 - d. Contract for Motor Rotor Pole Refurbishment at Mark Wilmer Pumping Plant Rettinger
 - e. Adoption of Certificate of Incumbency Hall
 - f. Adoption of Officers/Agents to Deposit, Transfer and Withdraw Monies in the Local Government Investment Pool Hall
 - g. Adoption of Resolution to Borrow and Grant Collateral Hall
- 4. Consideration of Action to Approve Items Removed from the Consent Agenda
- 5. Presentation on Arizona's Open Meeting Law (*Public Trust, Partnerships and Leadership*^) Danee Garone, Arizona Ombudsman Citizens' Aide (10:20)
- 6. Reports of Committees and Possible Consideration of Committee Recommendations (11:05)
 - a. Public Policy Committee Graff
 - i. Possible Consideration of Action on Policy Issues that Could Impact CAP, Including but not Limited to HB2691, HB2702, and HB2804
 - b. Finance, Audit and Power Committee Taylor
 - c. CAGRD and Underground Storage Committee Arboleda
- 7. Report on CAP Asset Management and Infrastructure Health (*Project Reliability*^) Rettinger (11:25)
- 8. Report on Recovery Planning and Implementation (Water Supply^A) Seasholes/Lohse (11:45)
- 9. Recess (12:15)
- 10. Report on System Use Agreement Activities (Water Supply^) Seasholes (12:35)
 - a. Discussion on Water Quality Guidance Document
- 11. Report on Colorado River Conditions (Water Supply^) Mahmoud (12:55)
- 12. Report on Water Operations (*Project Reliability*^A) Crandall (1:05)

- 13. Report on Preparation for Possibility of Tier One Shortage in 2022 (Water Supply^) Dent/Seasholes (1:20)
- 14. Report on Legal Matters (Public Trust, Partnerships and Leadership^) Johnson (1:50)
- 15. Directors' Report on Current Events (2:00)
- 16. Future Agenda Items (2:15)
- 17. President's Report on Current Events Goddard (2:20)
- 18. General Manager's Report on Current Events Cooke (2:30)
- 19. Public Comment (2:40)
- 20. Consideration of Action to go into Executive Session of the Board for the following purposes: (The discussions and minutes of the executive session shall be kept confidential. The executive session of the Board is not open to the public.)***
 - a. Pursuant to A.R.S. §38-341.03.A.3, to obtain legal advice from the District's attorneys regarding the District's spending authority; and
 - b. Pursuant to A.R.S. §38-431.03.A.3 to obtain legal advice from the District's attorneys on any matter listed on the agenda
- 21. Reconvene in Open Session (3:45)
- 22. Consideration of Action Regarding Items Discussed in Executive Session
- 23. Adjourn

In accordance with the Americans with Disabilities Act (ADA), if you need reasonable accommodations due to a disability, please contact the CAP office at (623.869.2333) or TDD (623.869.2183) at least seventy-two (72) hours in advance of the meeting.

^{**} Items listed in the Consent Agenda may be acted on by the Board without discussion. Any item listed on the Consent Agenda may be removed from the Consent Agenda and acted on separately by the Board.

^{***} The Executive Session is expected to last approximately one hour and will not be open to the public.

[^] Linkage to CAWCD Board of Directors Strategic Plan.



CENTRAL ARIZONA WATER CONSERVATION DISTRICT Regular Meeting of the Board of Directors February 4, 2021

The regular meeting of the Central Arizona Project ("CAWCD" or "CAP") Board of Directors was called to order by President Lisa A. Atkins on February 4, 2021, at 10:00 a.m. The meeting was held virtually and broadcast for the public via livestream.

Board Members present were: President Lisa A. Atkins, Maricopa County; Vice President Terry Goddard, Maricopa County; Secretary Heather A. Macre, Maricopa County; Alexandra Arboleda, Maricopa County; Jennifer Brown, Maricopa County; Karen Cesare, Pima County; Benjamin W. Graff, Maricopa County; Jim Holway, Maricopa County; Pat Jacobs, Pima County; Mark Lewis, Maricopa County; Jennifer Martin, Maricopa County; Stephen Miller, Pinal County; Marie Pearthree, Pima County; April Pinger-Tornquist, Maricopa County; Mark Taylor, Pima County.

Staff members present were Ted Cooke, General Manager; Robert Moody, Assistant General Manager; Jay Johnson, General Counsel; Bridget Schwartz-Manock, Director of Public Affairs; Patrick Dent, Director of Water Policy; Darrin Francom, Director of Operations, Power and Engineering; Laura Grignano, Manager, CAGRD; Doug Dunlap, Manager, Finance and Accounting; Chuck Cullom, Manager, Colorado River Programs; Jeff Gray, Manager, Legislative Affairs; Ken Seasholes, Manager, Resource Planning and Analysis; Megan Casey, Public Affairs Management Analyst; and Jennifer Miller, Board Support Specialist.

Bridget Schwartz-Manock, Director of Public Affairs, performed a roll call and confirmed a quorum was present. President Atkins reviewed the details of the virtual meetings, noting that she and a small number of staff were at CAP Headquarters, the rest of the Board Members and staff were on WebEx, and the meeting was livestreamed for the public.

PLEDGE OF ALLEGIANCE, MOMENT OF SILENCE AND SAFETY MINUTE - JACOBS Board Member Jacobs led the Board Members and public in reciting the Pledge of Allegiance and observing a moment of silence, and gave a safety minute on World Cancer Day.

2. CONSIDERATION OF ACTION TO APPROVE ITEMS ON THE CONSENT AGENDA**

On a motion (Secretary Macre) and a second (Board Member Miller), approved the minutes of the January 7, 2021 regular meeting; approved the minutes of the January 21, 2021 Nominating Committee meeting; approved the award of a construction contract to SDB Construction Services in the amount of \$3,426,928 plus an additional \$342,693 (10%) for contingencies (totaling \$3,769,621), for construction of the HVAC Replacement Project at Mark Wilmer Pumping Plant, and authorized the General Manager, or his designee, to execute the contract and administer the contingency; and approved the letter agreement between CAWCD and Salt River Project that defines the cost sharing for the Salt River to CAP Interconnect Facility Feasibility Study and authorized the General Manager, or his designee, to execute an agreement up to \$464,111. Motion passed.

CAWCD Board Meeting February 4, 2021 Page 2

Voting yes: Lisa A. Atkins, Terry Goddard, Heather A. Macre, Alexandra Arboleda,

Jennifer Brown, Karen Cesare, Benjamin W. Graff, Jim Holway, Pat Jacobs, Mark Lewis, Jennifer Martin, Stephen Miller, Marie Pearthree, April Pinger-

Tornquist, Mark Taylor

3. <u>CONSIDERATION OF ACTION TO APPROVE ITEMS REMOVED FROM THE CONSENT AGENDA</u>

None.

4. <u>REPORTS OF COMMITTEES AND POSSIBLE CONSIDERATION OF COMMITTEE</u> <u>RECOMMENDATIONS</u>

4.a. PUBLIC POLICY COMMITTEE - CESARE

Board Member Cesare gave a report on the February 4, 2021 Public Policy Committee meeting, including a federal update on recent staff appointments, infrastructure efforts and pending legislation. She also gave a state update on the state budget and pending legislation of interest to CAP.

4.a.i. CONSIDERATION OF ACTION ON STATE ISSUES THAT COULD IMPACT CAP, INCLUDING BUT NOT LIMITED TO HB2035, HB2041/SB1446, HB2336/SB1274/HB2678, HB2074/SB1147, AND HCM2003 - GRAY

On a motion (Board Member Cesare) and a second (Board Member Brown), adopted a position on the following pending state legislation of interest to CAP: HB2035 (SUPPORT); HB2041/SB1446 (SUPPORT); HB2336/SB1274/HB2678 (MONITOR); HB2074/SB1147 (SUPPORT); and HCM2003 (SUPPORT). Motion passed.

Voting yes: Lisa A. Atkins, Terry Goddard, Heather A. Macre, Alexandra Arboleda,

Jennifer Brown, Karen Cesare, Benjamin W. Graff, Jim Holway, Pat Jacobs, Mark Lewis, Jennifer Martin, Stephen Miller, Marie Pearthree, April Pinger-

Tornquist, Mark Taylor

4.b. FINANCE, AUDIT AND POWER COMMITTEE - GODDARD

Vice President Goddard gave a report on the January 21, 2021 FAP Committee meeting, noting updates on internal and external audit activities.

4.c. CAGRD AND UNDERGROUND STORAGE COMMITTEE - MACRE

Secretary Macre reported the CAGRD Committee did not meet in January, and reviewed the tentative agenda items planned for the February meeting. President Atkins thanked Secretary Macre for serving as interim Secretary.

5. GENERAL MANAGER'S REPORT ON CURRENT EVENTS - COOKE

General Manager Ted Cooke reviewed the items that will be on next month's consent agenda, including a design-build contract for programmable logic controllers and a contract for bus equipment and services at Waddell Pumping Plant, a contract for motor rotor pole refurbishment at Mark Wilmer Pumping Plant, and financial documents to update Board Officer and staff changes. He also provided several other updates, including Non-Indian Agriculture (NIA) reallocation, the water quality standards document, the passing of Kevin Kelley from the Imperial

CAWCD Board Meeting February 4, 2021 Page 3

Irrigation District, and the successful audit for CAP's participation in the Voluntary Protection Program. Mr. Cooke also recognized President Atkins for her contributions during her six years as President. President Atkins gave remarks in appreciation of the Board and staff.

6. REPORT ON CAP ASSET MANAGEMENT AND INFRASTRUCTURE HEALTH - CAPITAL PROJECTS - FRANCOM

Darrin Francom, Director of Operations, Power and Engineering, reported on the capital projects process from concept approval to project execution. He also reviewed the linkage to the Annual Operating Plan and the Strategic Asset Management Plan.

Mr. Francom answered questions from Board Members Taylor and Pearthree on capital projects. Board Member Arboleda expressed appreciation for the presentation, which she requested.

7. REPORT ON COLORADO RIVER CONDITIONS - CULLOM

Chuck Cullom, Colorado River Programs Manager, gave an update on the status of the reservoirs in the Colorado River System, snow accumulation in the region, pool elevations for Lakes Mead and Powell, the probability of system conditions, and recent storms in California. Mr. Cullom answered questions from Board Members Taylor and Jacobs on pool elevations and shortage impacts.

8. REPORT ON RECONSULTATION ACTIVITIES - DENT

8.a. BUREAU OF RECLAMATION 7.D REPORT

Patrick Dent, Director of Water Policy, reviewed key takeaways and public comments from the 7.D Report.

8.b. <u>JANUARY 26, 2021 ARIZONA RECONSULTATION COMMITTEE MODELING AND ANALYSIS WORKGROUP MEETING</u>

Mr. Dent reported on the topics discussed and the next steps for the Workgroup.

9. REPORT PREPARATION FOR POSSIBILITY OF TIER ONE SHORTAGE IN 2022 - DENT

Mr. Cooke noted this will be a new standing agenda item to provide information on shortage preparations. Mr. Dent reviewed the objectives and schedule for the 2021 shortage preparation activities. He also reviewed the relevant components of the Arizona Drought Contingency Plan, including mitigation commitments, agreements and resources. Board Member Jacobs expressed appreciation for the shortage preparation.

10. REPORT ON LEGAL MATTERS - JOHNSON

None.

The Board recessed at 11:54 a.m. and reconvened at 12:05 p.m.

Ms. Schwartz-Manock performed a roll call and confirmed a quorum was present.

11. NOMINATIONS AND ELECTION OF OFFICERS AND EXECUTIVE COMMITTEE MEMBERS

President Atkins expressed appreciation for the opportunity to serve as President for the last six years. She reviewed the Board officer and Executive Committee positions in the Board Bylaws and noted the election would be conducted by ballot using weighted voting.

11.a. REPORT OF NOMINATING COMMITTEE - BROWN

Board Member Brown reported the Nominating Committee elected to advance all interested candidates to the full Board for consideration, as well as nominated Board Member Martin for the Executive Committee, if she agrees to serve.

For the office of President: Karen Cesare and Terry Goddard

For the office of Vice President: Mark Taylor For the office of Secretary: Alexandra Arboleda

For the Executive Committee: Stephen Miller and Jennifer Martin

11.b. ACCEPTANCE OF NOMINATIONS FROM THE FLOOR - ATKINS

President Atkins asked for nominations from the floor for each position individually. Board Member Martin accepted the nomination from the Committee. No nominations from the floor were made.

11.c. <u>CONSIDERATION OF ACTION TO ELECT OFFICERS AND EXECUTIVE COMMITTEE</u> MEMBERS - ATKINS

On a weighted ballot vote of 7.14 to 6.66, Board Member Terry Goddard was elected **President.** Secretary Macre, Bridget Schwartz-Manock and Megan Casey served as tellers, and the ballot was conducted via email.

By acclamation, Board Member Mark Taylor was elected Vice President, Board Member Alexandra Arboleda was elected Secretary, and Board Members Stephen Miller and Jennifer Martin were elected to the Executive Committee. Board Member Lisa Atkins was placed on the Executive Committee as Immediate Past President.

President Atkins presented the final results of the election and noted that the new officers take office at the adjournment of the meeting.

President Terry Goddard
Vice President Mark Taylor
Secretary Alexandra Arboleda
Executive Committee Members
Board Officers
Lisa Atkins
Jennifer Martin

Stephen Miller

New officers Goddard, Taylor and Arboleda expressed appreciation to the Board for their election.

12. APPOINTMENT OF BOARD MEMBERS TO CAP COMMITTEES AND AS REPRESENTATIVES TO THE ARIZONA WATER BANKING AUTHORITY COMMISSION AND THE ARIZONA WATER PROTECTION FUND COMMISSION - INCOMING BOARD PRESIDENT

Agenda item was held. President Atkins announced that current Committee members will remain in place until appointments are made on or before March 4.

13. <u>DIRECTORS' REPORT ON CURRENT EVENTS</u>

Vice President Goddard, Secretary Macre and Board Members Arboleda, Brown, Cesare, Graff, Holway, Jacobs, Lewis, Miller, Pearthree, Pinger-Tornquist and Taylor shared updates on recent CAP activities and expressed appreciation for President Atkins' service.

14. FUTURE AGENDA ITEMS

Board Member Jacobs requested information on Assured Water Supply designations. Board Member Holway requested information on the Pinal Stakeholder Group, water quality and water transfers. Vice President Goddard requested an item on the Navajo Generating Station region.

15. PRESIDENT'S REPORT ON CURRENT EVENTS - ATKINS

President Atkins noted the final Strategic Plan document has been published and posted to the website. She presented a gift to Board Member Brown to celebrate her new baby, and reviewed the schedule of upcoming meetings.

16. PUBLIC COMMENT

None.

17. CONSIDERATION OF ACTION TO GO INTO EXECUTIVE SESSION OF THE BOARD FOR THE FOLLOWING PURPOSES: PURSUANT TO A.R.S. §38-431.03.A.3 TO OBTAIN LEGAL ADVICE FROM THE DISTRICT'S ATTORNEYS ON ANY MATTER LISTED ON THE AGENDA

No executive session was held.

18. <u>RECONVENE IN OPEN SESSION</u>

None.

19. CONSIDERATION OF ACTION REGARDING ITEMS DISCUSSED IN EXECUTIVE SESSION None.

20. ADJOURN

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Alexandra M. Arboleda
Board Secretary

ACTION BRIEF BOARD OF DIRECTORS



Agenda Number 3.b

CONTACT: Darrin Francom

623-869-2276 623-869-2223

dfrancom@cap-az.com rjohnson@cap-az.com

MEETING DATE: Thursday, March 4, 2021

AGENDA ITEM: Design-Build Contract for Programmable Logic Controllers at Waddell Pumping Plant

- Francom

RECOMMENDATION: Staff recommends the Board of Directors award a design Contract to Quantum

Integrated Solutions, Inc. for the Programmable Logic Controller Replacement project at the Waddell Pumping Plant and authorize the General Manager, or his designee, to execute an agreement up to \$377,650 plus an additional \$37,765 (10%) for

Ryan Johnson

contingencies (totaling \$415,415).

FISCAL IMPLICATIONS: No

Impact on Budget:

The scope of this contract will provide engineering and design services for upgrades to six Programmable Logic Controllers (PLCs) units, to allow continued operation of the Waddell Pump/Generating Plant. This design phase will begin in the second quarter of 2021 with completion by the end of 2021. Timing for subsequent phases of the project will be determined by the Project Steering Committee and coordinated with operational requirements and COVID restrictions.

The contract award amount is in-line with the estimated budget for the overall capital project. The Project Steering Committee will continue to manage the project work and expenses within the current approved budget.

Additional spending authority requested: None required.

Impact on Reserves:

No impact on Strategic Reserves.

Impact on Rates:

No impact on water rates.

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

2022 CAWCD Board Strategic Plan

Project Reliability: Providing reliable and cost-effective operations, maintenance, and replacement of CAP's infrastructure and technology assets

ARS Title 34-603 Procurement of professional services and construction-manager-at-risk, design-build, and job-order-contracting construction services

PREVIOUS BOARD ACTION/ACTIVITY:

November 2019 Board approved the CAP 2020-2021 Biennial Budget

June 2020

Board approved Design-Build Contract for Programmable Logic Controller Replacement at

Waddell Pumping Plant

ISSUE SUMMARY/DESCRIPTION:

Waddell Pump/Generating Plant has been operating with 13 Allen-Bradley PLC-5 controllers since original construction in 1993. The Programmable Logic Controllers are industrial digital computers adapted to control and operate the plant. The PLC components including Central Processing Units, input/output cards, and network interfaces have reached the end of their product life cycle and are no longer available. Eventually, technical support will be unavailable for the hardware components and the RSLogix 5 programming software. Due to this, many companies and utilities have migrated or are in the process of migrating, to the newest generation of PLCs.

Waddell Pump/Generating plant cannot be operated without functioning PLCs. Depending on the specific component, a failure in the current PLC system could result in the inability to operate some or all of the plant. The longer CAP waits to upgrade the system, the higher the risk for disruption to plant operations.

CAP has standardized on the Rockwell ControlLogix System platform at all plants, checks structures, and turnouts and has already installed some ControlLogix systems at Waddell. For this reason, CAP Engineering has pursued a qualified Design-Build Contractor to design and replace the remaining PLCs that need to be converted to the ControlLogix system.

Phase 1 of the project included design and construction of one pump and one pump-generator unit, however due to COVID restrictions/safeguards at Waddell, the construction portion was removed from the contract and will be combined with the subsequent phases of construction.

Design-Build is the delivery method utilized for this entire program, however due to COVID restrictions, safeguards, protocols, and coordination with plant staff at Waddell, phases or portions of the project are being released in a tightly controlled fashion. This phase of contract will only include the design of six pump and pump-generator PLCs. Subsequent phasing will be implemented within the over-arching design-build contract to complete the design, programming, and construction of the Water and Switchyard PLCs, and the pump and pump-generator PLCs.

Quantum Integrated Solutions, Inc. was selected pursuant to the competitive principles described in Title 34-603 of the Arizona Revised Statutes for Design-Build delivery method. Staff evaluated and negotiated the cost of this contract, verified alignment with similar projects and industry rates, and is confident that pricing is fair and reasonable.

SUGGESTED MOTION:

I move that the Board of Directors approve the contract award for design services to Quantum Integrated Solutions, Inc. in the amount of \$377,650 plus an additional \$37,765 (10%) for contingencies (totaling \$415,415), for the Programmable Logic Controller Replacement project at the Waddell Pumping Plant, and authorize the General Manager, or his designee, to execute the contract and administer the contingency.

ATTACHMENTS:

None

ACTION BRIEF BOARD OF DIRECTORS



Agenda Number 3.c

CONTACT: Darrin Francom

623-869-2276 623-869-2223

dfrancom@cap-az.com rjohnson@cap-az.com

MEETING DATE: Thursday, March 4, 2021

AGENDA ITEM: Equipment Purchase Contract for Medium Voltage Non-Segregated Bus

Replacement at Waddell Pumping Plant - Francom

RECOMMENDATION: Staff recommends the Board of Directors award an equipment purchase and field

services contract to Technibus, Inc. for the equipment purchase of medium voltage non-segregated bus for Waddell Pump-Generating Plant and authorize the General

Ryan Johnson

Manager, or his designee, to execute an agreement up to \$837,330 plus an

additional \$83,733 (10%) for contingencies (totaling \$921,063).

FISCAL IMPLICATIONS: No

Impact on Budget:

Purchasing the replacement bus equipment and field services in this contract will commence in the second quarter of 2021 and complete in the fourth quarter of 2021.

This contract cost is in-line with the estimates utilized to create the 2021 Capital Budget. The Project Steering Committee manages project work and expenses within the overall approved capital budget.

Additional spending authority requested: None required.

Impact on Reserves:

No impact on Strategic Reserves.

Impact on Rates:

No impact on Water Rates.

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

2022 CAWCD Board Strategic Plan

Project Reliability: Providing reliable and cost-effective operations, maintenance, and replacement of CAP's infrastructure and technology assets

PREVIOUS BOARD ACTION/ACTIVITY:

November 2019 Board approved the CAP 2020-2021 Biennial Budget

ISSUE SUMMARY/DESCRIPTION:

Non-segregated bus refers to an assembly of electrical conductors with associated connections, joints, and insulating supports confined within a metal enclosure. In this instance, the non-segregated bus carries a significant electrical current, from the switchyard, required to operate the pump and pump-generator units at Waddell.

The purchase of the replacement bus at the Waddell Pump-Generating Plant will improve the reliability reliability of the plant's electrical service. The existing non-segregated bus components at Waddell have reached the end of their useful life and are temporarily protected from the elements by tarp material wrapped around the existing bus enclosure to prevent moisture and debris intrusion that can cause electrical faults. The new bus will provide a reliable means to convey the power from the switchyard into the plant. The installation of the replacement bus will be executed by a Job Order Contractor (JOC) under a separate contract. Field services and commissioning will be provided by the equipment vendor, Technibus, during the construction by the JOC beginning in summer of 2021 and is expected to be completed in fall 2021.

Technibus was selected pursuant to the competitive principles defined within CAP's Purchasing Policy.

A Request for Proposal (RFP) was issued in December 2020 and proposals were received from five (5) companies, Technibus, The Calvert Company, Eaton, Powell Electrical Systems, and Switchgear Solutions. A team of five CAP employees evaluated the proposals and scored them individually, per published proposal criteria.

After thorough evaluation, the evaluation committee determined that Technibus demonstrated the qualifications best suited for successfully meeting the needs and requirements of this Cost proposals were evaluated and scored separately from qualifications in order to eliminate bias, and Technibus also presented the lowest proposal for the bus equipment and services solicited.

SUGGESTED MOTION:

I move that the Board of Directors approve the award of a purchase contract to Technibus, Inc. for \$837,330 plus an additional \$83,733(10%) for contingencies (totaling \$921,063) for the equipment purchase and field services for the replacement of the non-segregated bus at the Waddell Pump-Generating Plant, and authorize the General Manager, or his designee, to execute the contract and administer the contingency.

ATTACHMENTS:

None

ACTION BRIEF BOARD OF DIRECTORS



Agenda Number 3.d

CONTACT: Philip Rettinger Steven Romero 623-869-2398 623-869-2870

MEETING DATE: Thursday, March 4, 2021

AGENDA ITEM: Contract for Motor Rotor Pole Refurbishment at Mark Wilmer Pumping Plant -

Rettinger

RECOMMENDATION: Staff recommends that the Board approve the award of a purchasing contract to ABB

Inc. for refurbishment services of 14 rotor poles for a single unit at Mark Wilmer Pumping Plant; and authorize the General Manager, or his designee, to execute an agreement of \$578,889 plus an additional \$115,778 (20%) for contingencies (totaling

\$694,667).

FISCAL IMPLICATIONS: Yes

Impact on Budget:

Staff will be requesting funds in the 2022-2023 Operating Budget for Mark Wilmer Pumping Plant to refurbish the existing 14 rotor poles and belly wedges for one unit each year.

The costs of executing this contract will occur in 2022 across 2nd and 3rd quarters. A contract award at this time ensures that material lead times are coordinated so that rotor poles can be refurbished, and reinstalled successfully during the 2022 scheduled outage period for Mark Wilmer Pumping Plant.

<u>Additional spending authority requested</u>: Staff will be seeking approval in the 2022-2023 Operating Budget for Mark Wilmer Pumping Plant.

Impact on Reserves:

None

Impact on Rates:

None

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

2022 CAWCD Board Strategic Plan

Project Reliability: Providing reliable and cost-effective operations, maintenance, and replacement of CAP's infrastructure and technology assets

CAWCD Purchasing Policy

PREVIOUS BOARD ACTION/ACTIVITY:

November 2, 2019 CAP Board Approved the CAP 2020-2021 Biennial Budget

November 5, 2020 CAP Board Approve Contract for Rotor Pole Refurbishment, Mark Wilmer Pumping Plant

ISSUE SUMMARY/DESCRIPTION:

This contract is for the refurbishment of 14 rotor poles for one 60,000 horse power motor at the Mark Wilmer Pumping Plant. This purchase also includes the manufacture of associated items and installation/consulting services needed to bring this motor up to modern motor standards.

ABB Inc. was awarded the contract to repair the Unit 6 motor in 2019 due to a catastrophic failure of the motor. The work performed by ABB was performed in a professional manner and in accordance with the provisions of the contract. Their work to restack the motor's stator core and refurbish the rotor poles on Unit 6 has resulted in a new condition which has been successfully operating since April 2020.

Staff recommends that the standardization of the design and manufacture of parts for all motors at Mark Wilmer Pumping Plant be of the same design as the Unit 6 motor. The same design will allow CAP to more easily diagnose and perform required repairs and to inventory critical spare parts for ongoing reliability. The design is proprietary to ABB and has been performing very well operationally, therefore CAP desires to continue acquisition of these large motor components with ABB.

Staff has performed an evaluation of the proposed costs, scope of services, and materials and believes the price is fair, reasonable, and consistent with similar work.

SUGGESTED MOTION:

I move that the Board of Directors approve the Award of a Purchasing Contract to ABB Inc. for the refurbishment of 14 rotor poles, associated parts and services for the Mark Wilmer Pumping Plant in the amount of \$578,889 plus \$115,778 (20%) for contingencies (totaling \$694,667), and authorize the General Manager, or his designee, to execute the agreement.

ATTACHMENTS:

None

ACTION BRIEF BOARD OF DIRECTORS



Agenda Number 3.e

CONTACT: Doug Dunlap

623-869-2360

ddunlap@cap-az.com

MEETING DATE: Thursday, March 4, 2021

AGENDA ITEM: Adoption of Certificate of Incumbency - Hall

RECOMMENDATION: Staff recommends that the Board approve the Certificate of Incumbency with

Specimen Signatures.

FISCAL IMPLICATIONS: No

Impact on Budget:

N/A

Additional spending authority requested:

Impact on Reserves:

N/A

Impact on Rates:

N/A

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

2022 CAWCD Board Strategic Plan

Finance: Maintaining long-term financial strength to achieve CAP's goals and being prepared to address opportunities or challenges

PREVIOUS BOARD ACTION/ACTIVITY:

March 7, 2019 Board approved update to Adoption of Certificate of Incumbency

ISSUE SUMMARY/DESCRIPTION:

Certain financial documents require signatures of individuals listed on the form to authorize specific financial transactions.

SUGGESTED MOTION:

I move that the Board approve the attached Certificate of Incumbency with Specimen Signatures.

ATTACHMENTS:

Certificate of Incumbency Form 2021

CERTIFICATE OF INCUMBENCY

WITH

SPECIMEN SIGNATURES

I, Alexandra M. Arboleda, Secretary of the Board of Central Arizona Water Conservation District (the "District"), DO HEREBY CERTIFY that the following persons have been duly elected or appointed to the titles opposite their respective names and that the signatures set opposite their respective names are their genuine signatures:

<u>NAME</u>	<u>TITLE</u>	<u>SIGNATURE</u>
Terry Goddard	President/BOD	
Mark F. Taylor	Vice-President/BOD	
Alexandra M. Arboleda	Secretary/BOD	
Theodore C. Cooke	General Manager	
Christopher H. Hall	Finance & Administration Director	
Douglas A. Dunlap	Finance & Accounting Manager	
IN WITNESS WHEREOF, I have hereu	nto set my hand this 4 th day of Ma	rch, 2021.
Alexandra M. Arboleda, Secretary/B	OD	
I, the undersigned, President of HEREBY CERTIFY that Alexandra Arb office of Secretary of said District an	· · · · · · · · · · · · · · · · · · ·	fied for and does this day hold the
IN WITNESS WHEREOF, I have he	ereunto set my hand this 4 th day of	March, 2021.
Terry Goddard, President/BOD		
Subscribed and sworn before me thi	s 4 th day of March, 2021.	

ACTION BRIEF BOARD OF DIRECTORS



Agenda Number 3.f

CONTACT: Doug Dunlap

623-869-2360

ddunlap@cap-az.com

MEETING DATE: Thursday, March 4, 2021

AGENDA ITEM: Adoption of Officers/Agents to Deposit, Transfer and Withdraw Monies in the Local

Government Investment Pool - Hall

RECOMMENDATION: Staff recommends that the Board approve the Resolution Authorizing Adoption of

Officers/Agents to Deposit, Transfer and Withdraw Monies in the Local Government

Investment Pool.

FISCAL IMPLICATIONS: No

Impact on Budget:

N/A

Additional spending authority requested:

Impact on Reserves:

N/A

Impact on Rates:

N/A

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

2022 CAWCD Board Strategic Plan

Finance: Maintaining long-term financial strength to achieve CAP's goals and being prepared to address opportunities or challenges

PREVIOUS BOARD ACTION/ACTIVITY:

March 7, 2019 Board approved update to Adoption of Officers/Agents to Deposit, Transfer and Withdraw

Monies in the Local Government Investment Pool

ISSUE SUMMARY/DESCRIPTION:

All deposits, transfers and withdrawals in the Local Government Investment Pool (LGIP) operated by the State Treasurer require Board passed and adopted authorized officers/agents. With personnel changes, the specimen signature forms need to be updated. This update requires collection of new specimen signatures and the execution of the resolution (attached) by the Board Secretary. Authorized staff includes the General Manager, the Director of Finance and Administration, the Finance and Accounting Manager and Financial Planning and Analysis Analysts administering the cash management responsibilities.

SUGGESTED MOTION:

I move that the Board approve the Resolution Authorizing Adoption of Officers/Agents to deposit, transfer and withdraw monies in the Local Government Investment Pool.

ATTACHMENTS:

1. Resolution

RESOLUTION AUTHORIZING OFFICERS/AGENTS TO DEPOSIT, TRANSFER AND WITHDRAW MONIES IN THE LOCAL GOVERNMENT INVESTMENT POOL

WHEREAS, Central Arizona Water Conservation District has resolved to participate in the Local Government Investment Pool (LGIP) operated by the State Treasurer of Arizona;

NOW THEREFORE LET IT BE RESOLVED that the following officers/agents be authorized to order the deposit, transfer and withdrawal of monies in the LGIP.

Theodore C. Cooke	General Manager	
Name	Title	Signature
Christophor H. Hall	Director, Finance & Administration	
Christopher H. Hall Name	Title	Cianatura
Name	riue	Signature
Douglas A. Dunlap	Manager, Finance & Accounting	
Name	Title	Signature
Name	Tiue	Signature
Dana Sedig	Supervisor, Financial Operations	I
Name	Title	Signature
Name	Tiue	Signature
Jack Ozomaro	Financial Analyst	
Name	Title	Signature
		G
Christopher Boser	Financial Analyst	
Name	Title	Signature
Herbert D. Lopez	Financial Analyst	
Name .	Title	Signature
		•

Passed and adopted by the Central Arizona Water Conservation Board of Directors, State of Arizona, on this 4th day of March, 2021.

Alexandra M. Arboleda	_
Secretary	

ACTION BRIEF BOARD OF DIRECTORS



Agenda Number 3.g

CONTACT: Doug Dunlap

623-869-2360

ddunlap@cap-az.com

MEETING DATE: Thursday, March 4, 2021

AGENDA ITEM: Adoption of Resolution to Borrow and Grant Collateral - Hall

RECOMMENDATION: Staff recommends that the Board renew the Resolution with the updated signatures.

FISCAL IMPLICATIONS: No

Impact on Budget:

N/A

Additional spending authority requested:

Impact on Reserves:

N/A

Impact on Rates:

N/A

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

2022 CAWCD Board Strategic Plan

Finance: Maintaining long-term financial strength to achieve CAP's goals and being prepared to address opportunities or challenges

PREVIOUS BOARD ACTION/ACTIVITY:

March 7, 2019 Board approved update of Resolution to Borrow and Grant Collateral

ISSUE SUMMARY/DESCRIPTION:

Certain of the Captive's reinsurers require standby letters of credit from CAWCD. Currently there are two letters of credit issued by Bank of America for the CAWCD Insurance Company (Captive). One is for \$400,000 issued to the Old Republic Insurance Company and the other is \$264,000 issued to the Industrial Commission of Arizona. The Captive pays all fees and no collateral has been granted by CAWCD.

SUGGESTED MOTION:

I move that the Board adopt the attached Resolution to Borrow and Grant Collateral and approve authority to identified staff.

ATTACHMENTS:

Resolution to Borrow and Grant Collateral Form 2021

RESOLUTION TO BORROW/GRANT COLLATERAL

Municipal Corporation:

Central Arizona Water

Conservation District

23636 N. 7th Street

Phoenix, AZ 85024

Ender:

Bank of America, N. A.

CCS-Commercial Banking

TX1-609-06-01

201 E. Washington Street

201 E. Washington Street Phoenix, AZ 85004

I. THE UNDERSIGNED, DO HEREBY CERTIFY THAT:

The Central Arizona Water Conservation District (CAWCD) is a municipal corporation duly organized, validly existing, and in good standing under the laws of the State of Arizona. CAWCD is duly authorized to transact business in all states in which the failure to so qualify would have a material adverse effect on its business or financial condition. CAWCD has the full power and authority to own or control its properties and to transact the business in which it is presently engaged or presently proposes to engage. CAWCD maintains its Principal Office at 23636 North Seventh Street, Phoenix, Arizona 85024. Unless CAWCD has designated otherwise in writing, the Principal Office is the office at which CAWCD keeps its books and records. CAWCD will notify Lender prior to any change in CAWCD's name. CAWCD shall do all things necessary to preserve and to keep in full force and effect its existence, rights and privileges, and shall comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental or quasi-governmental authority or court applicable to CAWCD and the its business activities.

RESOLUTIONS ADOPTED. At a meeting of the Board of Directors of CAWCD, duly called and held on March 4, 2021, at which a quorum was present and voting, the resolutions set forth in this Resolution were adopted.

AUTHORIZED PERSONS. The following named persons are authorized persons Central Arizona Water Conservation District:

<u>NAME</u>	<u>TITLE</u>	<u>AUTHORIZED</u>	ACTUAL SIGNATURE
Terry Goddard	President	Y	
Theodore C. Cooke	General Manager	Y	
Christopher H. Hall	Director Fin&Admin	Y	
Douglas A. Dunlap	Fin&Acctng Manager	Y	

ACTIONS AUTHORIZED. The authorized person listed above may enter into any agreements of any nature with Lender, and those agreements will bind CAWCD. Specifically, but without limitation, the authorized person is authorized, empowered, and directed to do the following for and on behalf of CAWCD.

Borrow Money. To borrow, as a cosigner or otherwise, from time to time from Lender, on such terms as may be agreed upon between CAWCD and Lender, such sum or sums of money as in his or her judgment should be borrowed, without limitation, and to obtain for the account of CAWCD commercial and standby letters of credit issued by Lender.

Execute Notes. To execute and deliver to Lender the promissory note or notes, or other evidence of CAWCD's credit accommodations, on Lender's forms, at such rates of interest and on such terms as may be agreed upon, evidencing the sums of money so borrowed or any of CAWCD's indebtedness to Lender, and also to execute and deliver to Lender one or more renewals, extensions, modifications, refinancing, consolidations, or substitutions for one or more of the notes, any portion of the notes, or any other evidence of credit accommodations.

Deposit Accounts. To open one or more depository accounts in CAWCD's name and sign and deliver all documents or items required to fulfill the conditions of all banking business, including without limitation the initiation of wire transfers, until authority is revoked by action of CAWCD or written notice to Lender.

Negotiate Items. To draw, endorse, and discount with Lender all drafts, promissory notes, or other evidences of indebtedness payable to or belonging to CAWCD or in which CAWCD may have an interest, and either to receive cash for the same or to cause such proceeds to be credited to CAWCD's account with Lender, or to cause such other disposition of the proceeds derived therefrom as he or she may deem advisable.

Further Acts. In the case of lines of credit, to designate additional or alternate individuals as being authorized to request advances under such lines, and in all cases, to do and perform such other acts and things, to pay any and all fees and costs, and to execute and deliver such other documents and agreements, as the officer may in his or her discretion deem reasonably necessary or proper in order to carry into effect the provisions of this Resolution.

ASSUMED BUSINESS NAMES. CAWCD has filed or recorded all documents or filings required by law relating to all assumed business names used by CAWCD. Excluding the name CAWCD, the following is a complete list of all assumed business names under which CAWCD does business: Central Arizona Project.

NOTICE TO LENDER. CAWCD will promptly notify the Lender in writing at Lender's address shown above (or such other addresses as Lender may designate from time to time) prior to any (A) change in CAWCD's name; (B) change in CAWCD's assumed business name(s); (C) change in the management of CAWCD; (D) change in the authorized signer(s); (E) change in CAWCD's principal office address; or (G) change in any other aspect of CAWCD that directly or indirectly relates to any agreements between CAWCD and Lender.

CERTIFICATION CONCERNING AUTHORIZED PERSONS AND RESOLUTIONS. The authorized person named above is duly elected, appointed, or employed by or for CAWCD, as the case may be, and occupies the position set opposite his or her respective name. This Resolution now stands of record on the books of CAWCD, is in full force and effect, and has not been modified or revoked in any manner whatsoever.

CONTINUING VALIDITY. Any and all acts authorized pursuant to this Resolution and performed prior to the passage of this Resolution are hereby ratified and approved. This Resolution shall be continuing, shall remain in full force and effect and Lender may rely on it until written notice of its revocation shall have been delivered to and received by Lender at Lender's address shown above (or such addresses as Lender may designate from time to time). Any such notice shall not affect any of CAWCD's agreements or commitments in effect at the time notice is given.

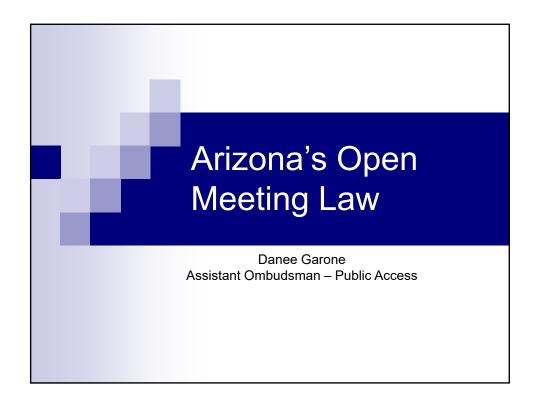
IN TESTIMONY WHEROF, I have hereunto set my hand, and attest that the signature set opposite the name listed above is his or her genuine signature.

I have read all the provisions of this Resolution, and I on behalf of CAWCD certify that all statements and representations made in this Resolution are true and correct. This Resolution to Borrow/Grant collateral is dated March 4, 2021.

Secretary

	_
Alexandra M. Arboleda	

CERTIFIED TO AND ATTESTED BY:



Role of the State Ombudsman

A.R.S. § 41-1376.01

- Investigate complaints relating to public access law.
- Train public officials and educate the public on the rights of the public under the public access laws.



What is the open meeting law?

Set of laws that were intended to:

- Maximize public access to the governmental process.
- Open deliberations and proceedings to the public.
- Prevent public bodies from making decisions in secret.
 - ☐ Found at A.R.S. §§ 38-431 through -431.09.

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Who Must comply?

- "Public Bodies" A.R.S. § 38-431(6)
 - □ All councils, boards, commissions of the state or political subdivisions
 - Multimember governing bodies of departments, agencies, institutions and instrumentalities of the state or political subdivisions
 - Includes corporations or other instrumentalities whose boards of directors are appointed or elected by state or political subdivision



The definition also includes...

Standing committees Special committees

Advisory committees Subcommittees

of or appointed by the public body

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Advisory committees and subcommittees are defined as...

- Any entity, however designated
- Officially established
 - □ on motion or order of the public body
 - □ **or** by presiding officer of the public body
- For purpose of <u>making a recommendation</u> concerning a decision to be made or a course of conduct to be taken by the public body



Enforcement Authority

- Arizona Attorney General's Open Meeting Law Enforcement Team (OMLET)
 - □ Investigate complaints
 - □ Enforcement authority
 - □ Arizona Agency Handbook, Chapter 7 (Revised 2013)
 - Available online: www.azag.gov
 - □ Only entity that can commence suit against individual for open meeting law violations.
- County Attorney's Office
- The Courts

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What Must a Public Body Do?

- Provide notice
- Have an agenda
- Meet in public
- Permit public to attend
 - □ Exception: authorized executive sessions
- Take all action in public
- Create/ prepare meeting minutes or a recording.



What is a Meeting?

- A.R.S. § 38-431(4)
- "Meeting" is a <u>gathering</u>, in person or through technological devices
- of a **quorum** of a public body
 - □ Discuss
 - □ Propose
 - □ Deliberate
 - □ Take legal action

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What is a meeting? (Cont'd)

- A.R.S. § 38-431(4)(b) Includes:
 - "(i) A one-way electronic communication by one member of a public body that is sent to a quorum of the members of a public body and that proposes legal action."
 - "(ii) An exchange of electronic communications among a quorum of the members of a public body that involves a discussion, deliberation or the taking of legal action by the public body concerning a matter likely to come before the public body for action."



Social Events & Seminars



- You might consider posting a "courtesy agenda" announcing event and explain that a quorum might be present
- Identify date, time, and purpose (location details will vary depending on event)
- State that no business of the public body will be discussed and no legal action will be proposed or taken
- Members must be scrupulous to avoid improper discussion

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The Agenda A.R.S. § 38-431.02(H)

- Must list the specific matters to be:
 - □discussed,
 - considered or
 - decided
- Must include information reasonably necessary to inform the public
- All discussion must be reasonably related to an adequately described agenda item.



Common Agenda Problems

- Using language a regular person would not understand
 - □ Legalese
 - ☐ Acronyms (without first spelling it out)
 - □ Agency slang
- Using general categories without details
 - ☐ "New Business"
 - □ "Old Business"
 - □ "Personnel"
 - □ "Reports"

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If it's not on the agenda...

- You cannot discuss it!
- New items must wait for a future meeting.





Public's Rights

- Attend
- Listen
- Tape record
- Videotape



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Public has NO Right to:

- Speak
- Disrupt



Practical Pointer:

□ make a good record of warnings



Calls to the Public

A.R.S. § 38-431.01(H)

- Optional (unless required by other laws)
- Time, manner, place restrictions
 - □ Can limit time (egg timer)
 - □ Ban Repetition
 - May require speakers on the same side with no new comments to select spokesperson
 - prohibit disruptive behavior

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Common Pitfall of Calls to the Public

- Discussing matters not listed on the agenda.
- If it's <u>not</u> an agenda item, public body's response is limited to:
 - □ Direct staff to study the matter
 - ☐ Ask that a matter be placed on a future agenda
 - □ Respond to criticism

Note: These three responses must take place at the **conclusion** of the call to the public!



Meeting Etiquette

- Asking for trouble:
 - □Passing notes, texting, e-mailing (even if it's about when to order lunch)
 - □Whispering to fellow board members
 - Quorum talking with individuals before the meeting officially starts or after the meeting officially ends.

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Executive Sessions

- Public excluded
- Only permitted for specific matters

 □ A.R.S. §§ 38-431.03(A)(1) through (7)
- Must include possibility of executive session in the meeting notice and agenda
- Must vote to enter executive session
- Discussion is confidential
- No action permitted!
- Must have minutes or recording



Who may attend executive sessions - A.R.S. § 38-431(2)

- Members of public body
- Persons subject to a personnel discussion
- Auditor general
- Individuals whose presence is reasonably necessary in order for the public body to carry out its executive session responsibilities
 - □ Clerk to take minutes/run tape
 - Attorney to give legal advice

Tip: Put on the record why individuals attending are reasonably necessary.

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Executive Session Pitfalls

- Inappropriate disclosure
 - □ What happens in executive session stays in executive session!
 - Chair must remind members about the confidentiality requirement every time.
 - A.R.S. § 38-431.03(C)
- Taking legal action.
 - □ All votes must take place in public!





Personnel Matters

- May discuss and consider employment, assignment, appointment, promotion, demotion, dismissal, salaries, discipline or resignation
- Of an officer, appointee, or employee of the Board
 - ☐ Must be able to identify a specific individual

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More considerations regarding Personnel Matters

- If the matter is noticed for a possible executive session, separate written notice to employee at least 24 hours before meeting.
- Employee may require meeting be held in public (does not include individual salary discussions).
- Employee does not have the right to attend executive session, but may. (Regardless, employee has access to portion of executive session meeting minutes.)



Common Questions

Q: May you conduct personnel evaluations in executive session?

A: Yes. See Ariz. Att'y Gen. Op. 196-012

Q: May a board interview applicants in executive session?

A: Yes, if position is one appointed by the board. See Ariz. Att'y Gen. Op. 183-050.

Note: Must vote for appointment in public session

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Confidential Information

- Discussion or consideration of records exempt by law from public inspection
- Can receive and discuss information and testimony that state or federal law requires to be maintained as confidential
- Discussion may occur in open session when confidential information is adequately safeguarded (i.e. use initial for medical patients)



Legal Advice



- Discussion or consultation for legal advice with attorneys for the public body
- Exchange of communication between lawyer and client
- Members may not discuss among themselves the merits or what action to take:
 - □ **Debate** over what action to take,
 - □ pros and cons, or
 - policy implications of competing alternative courses of action.

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Other Possible Reasons for Executive Session

- Discuss and consult with attorneys to consider litigation, contract negotiations, and settlement. Can instruct attorney regarding public body's position.
- Discussion or consultation with designated representatives regarding negotiation with employee organizations about salary. Can instruct representatives regarding public body's position.
- International, Interstate, and Tribal Negotiations.
- Discussion or consultations with designated representatives regarding negotiations for the purchase, sale, or lease of real property. Can instruct representatives about public body's position.



Two New Possible Reasons for Executive Session

- "Discussion or consideration of matters relating to school safety operations or school safety plans or programs."
- "Discussions or consultations with designated representatives of the public body in order to discuss security plans, procedures, assessments, measures or systems relating to, or having an impact on, the security or safety of buildings, facilities, operations, critical infrastructure information and information technology maintained by the public body. Records, documentation, notes, or other materials made by, or provided to, the representatives pursuant to this paragraph are confidential and exempt from public disclosure under this chapter and title 39, chapter 1."
- Both added by Legislature in 2020.

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Circumvention



- Cannot use any device to circumvent the law.
- "Splintering the quorum":
 - ☐ Serial communications (verbal, written, electronic, etc.)
 - Meeting with individual members and then reporting what others said with enough to constitute a quorum
 - □ Polling the members



Non-verbal Serial Communications

- <u>Letters</u> series of **letters** from one member to the next would violate OML
- <u>E-mail</u> occurring at different times will still constitute a "meeting" in violation of the OML
 - ☐ Simultaneity is not required for there to be a "meeting"

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Attorney General Opinion I05-004: E-mail

- Attorney General's website <u>www.azag.gov</u>
- Board members cannot use e-mail to circumvent the OML
- Cannot use e-mail among a quorum to:
 - □ Propose legal action
 - □ Discuss legal action
 - □ Deliberate on legal action
 - □ Take legal action



Electronic Communications

- Electronic communications are treated the same as any other form of communication between board members.
- Electronic communications exchanged among a quorum of the Board that involve discussion, deliberations, or taking legal action on matters that may come before the Board constitute a meeting and thus violate the open meeting law.

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For example:

- You have a 5 member board
- One member sends an e-mail to 2 members and there's a response shared among all 3
- You now have a discussion among three members = a quorum
- Violation



Staff E-mail

- Staff may send e-mail to board members.
- Passive receipt of information from staff, without more, does not violate the open meeting law. Example: board packets

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Prohibited 1-Way Communication

- A single board member may violate the OML if they propose legal action among a quorum outside a properly noticed meeting
- "Propose" means "to put forward for consideration, discussion, or adoption."
- It only takes 1 person to propose legal action
- CANNOT propose legal actions outside of a noticed meeting



Proposing an Agenda Item?

- Proposing an item for the agenda does not propose legal action
- "without more"
- Be cautious:
 - □ communicate the TOPIC only
 - □ NOT the legal action you want the board to take

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"Propose" – EXAMPLES in the Opinion

- "We should discuss safety at First and Main"
 - □ Does NOT propose legal action
- "We should install a crosswalk at First and Main"
 - □ Does propose legal action
 - ☐ It's more than a topic for the agenda because it urges or suggests an outcome



More Examples:

- "I think we should consider firing the City Manager at our next meeting."
- "I would like to discuss the City Manager's performance at our next meeting."

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Staff & Other Persons

- Cannot knowingly direct staff to communicate in violation of the open meeting law A.R.S. § 38-431.01(I)
- Sanctions may be imposed upon any person who knowingly aids, agrees to aid or attempts to aid another person in violating this article A.R.S. § 38-431.07(A).



Communications with the Public

Members may express opinions and discuss issues with the public at a venue other than a public meeting, personally, through the media or other public broadcast so long as it is not intended to circumvent the open meeting law

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What does that mean?

- Discussion or opinion must not be principally directed at or directly given to other board members
- There is no plan to engage in collective deliberation to take legal action.
- Review these resources:
 - □ A.R.S. § 38-431.09(B) added by 2008 Session Laws, Ch. 135, § 1 (effective 9/26/08)
 - ☐ Attorney General Opinion I07-013





- RESOLVE ALL DOUBTS IN FAVOR OF OPENNESS. A.R.S. § 38-431.09.
- Legal action taken during a meeting held in violation of any provision of the open meeting law may be null and void unless ratified.

What to do when you learn that a potential OML violation has occurred.

- If in the thick of things = Recess/Assess
- Can you resolve the issue and continue?
- Does the particular OML violation taint your whole meeting? Maybe not AG Opinion I08-001





After the meeting...



- Determine if you need to ratify any actions
- Provide refresher training to staff involved
- If you receive a complaint: Be candid; respond promptly
- Provide materials that help you: minutes, ratification materials, videotapes, etc.

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Penalties - A.R.S. § 38-431.07(A)

- Individual members who violate and any persons who aid, attempt, or agree to aid – must be "knowingly"
 - □ Civil penalty (paid by individual) up to \$500 second violation.
 - □ Up to \$2,500 penalty for third violation and on.
 - □ Such equitable relief as the court deems appropriate
 - □ Reasonable attorneys' fee
- Public body may not pay or reimburse for penalty imposed on individual
- Only AG can commence suit against individual.
- It person who is otherwise liable "objected to the action of the public body and the objection is noted on a public record, the court may choose not to impose a civil penalty on that person."



Penalties - A.R.S. § 38-431.07(A)

- If "knowingly" violated "with intent to deprive the public of information" –
 - □ Court may remove public officer from office and
 - □ Charge officer and any person that aided, agreed to aid, or attempted to aid, all the costs and attorney's fees

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Key Resources

- Ombudsman Publications https://www.azoca.gov/about/publications/
- Ombudsman website <u>www.azoca.gov</u>
- Department of Library, Archives, and Public Records https://www.azlibrary.gov/
- Case law
- Attorney General Opinions <u>www.azag.gov</u> or http://azmemory.lib.az.us/

ACTION BRIEF BOARD OF DIRECTORS



Agenda Number 6.a.i

CONTACT: Bridget Schwartz-Manock

Jeff Gray 623-869-2425

623-869-2150

jgray@cap-az.com

MEETING DATE: Thursday, March 4, 2021

AGENDA ITEM: Possible Consideration of Action on Policy Issues that Could Impact CAP, Including

but not Limited to HB2691, HB2702, and HB2804

RECOMMENDATION: See attached documents and proposed staff recommendations.

bschwartzmanock@cap-az.com

FISCAL IMPLICATIONS: No

Impact on Budget:

None

Additional spending authority requested: None

Impact on Reserves:

None

Impact on Rates:

None

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

2022 CAWCD Board Strategic Plan

Public Trust, Partnerships and Leadership: *Earning and preserving public trust, building and maintaining partnerships, and providing informed water management leadership*

PREVIOUS BOARD ACTION/ACTIVITY:

November 5, 2020 Public Policy Committee previewed and discussed the draft proposed 2021 State

Legislative Agenda

December 3, 2020 Board adopted 2021 State Legislative Agenda

ISSUE SUMMARY/DESCRIPTION:

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 Board adopt a position on the following pending state legislation of interest to CAP: (staff recommendations in parentheses)

- HB2691 (MONITOR)
- HB2702 (OPPOSE)
- HB2804 (reguest amendment and MONITOR)

ATTACHMENTS:

- 1. H.B. 2691
- 2. H.B. 2702
- 3. H.B. 2804

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COMMITTEE ON NATURAL RESOURCES, ENERGY & WATER HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2691 (Reference to printed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 49-175, Arizona Revised Statutes, is amended to read:

49-175. Work plans

- A. A work plan to address a release of a contaminant to the environment shall include the following:
- 1. A summary of existing information on site characterization, including references to known site characterization and assessment information and information regarding any remediation previously conducted at the site or portion of the site. The applicant shall provide copies of the referenced reports to the department.
- 2. If the site or portion of the site addressed in the application has not been characterized, a plan to conduct site characterization and a schedule for completion. The applicant shall provide a schedule for the submission of a work plan for remediation following approval of site characterization.
- 3. If site characterization is completed for the site or portion of the site addressed in the application, a plan for remediation which will comply with subsection B of this section and a schedule for completion as follows:
- (a) The work plan shall describe how the remediation will comply with subsection B of this section and how the completion of remediation will be verified. The applicant and the department may agree on interim performance goals. The interim performance goals shall be guidelines used

to determine the ongoing effectiveness of the remediation toward reaching the final remediation levels.

- (b) The work plan may provide for the remediation to be conducted in phases or tasks that, if agreed to by the applicant, provide for the department to review and approve a completed phase or task before initiation of the next phase or task of the work plan.
- 4. A schedule for submission of progress reports to the department. The progress reports shall be sufficient to allow the department to determine the effectiveness of the characterization if it has not been completed, followed by the remediation.
- 5. A proposal for community involvement as prescribed by section 49-176.
- 6. If known, a list of institutional or engineering controls necessary during remediation and after completion of the proposed remediation to control exposure to contaminants.
- 7. A proposal for monitoring of a site or portion of a site during the remediation and after the remediation if necessary to verify whether the approved remediation levels or controls have been attained and will be maintained.
- 8. A list of any permits or legal requirements known by the applicant to apply to the work to be performed or already performed by the applicant.
- 9. If requested by the department, information regarding the financial capability of the applicant to conduct the work identified in the application.
- B. Remediation levels or controls for remediation conducted pursuant to this article shall be established in accordance with rules adopted pursuant to section 49-282.06 unless one or more of the following applies APPLY:
- 1. The applicant demonstrates that remediation levels, institutional controls or engineering controls for remediation of contaminated soil comply with section 49-152 and the rules adopted pursuant to that section.

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- 2. The applicant demonstrates that remediation levels, institutional controls or engineering controls for remediation of landfills or other facilities that contain materials that are not subject to section 49-152 and the rules adopted pursuant to that section will result in a condition that does not exceed a cumulative excess lifetime cancer risk between 1 x 10-4 and 1 x 10-6, and a hazard index no greater than 1. The excess lifetime cancer risk shall be selected based on site-specific factors, including the presence of multiple contaminants, the existence of multiple pathways of exposure, the uncertainty of exposure and the sensitivity of the exposed population. Approval of the use of institutional or engineering controls shall require a demonstration that the controls will be maintained and that the requirements of section 49-158 have been met.
- 3. The applicant demonstrates that on achieving remediation levels or controls for a source or potential source of contamination to a mavigable water WOTUS, the source of contamination will not cause or contribute to an exceedance of surface water quality standards, or if a permit is required pursuant to 33 United States Code section 1342 for any discharge from the source, that any discharges from the source will comply with the permit. Approval of the use of institutional or engineering controls shall require a demonstration that the controls will be maintained and that the requirements of section 49-158 have been met.
- 4. The applicant demonstrates that, on achieving remediation levels or controls for a source of contamination to an aquifer, the source will not cause or contribute to an exceedance of aquifer water quality standards beyond the boundary of the facility where the source is located. Ιn determining whether remediation levels controls or satisfy requirement, the department shall consider a demonstration by the applicant that aquifer water quality standards are exceeded beyond the boundary of the facility due to naturally occurring contamination or from sources outside of the boundary. The applicant is not required to identify or evaluate other sources. Approval of the use of institutional

engineering controls shall require a demonstration that the controls will be maintained and that the requirements of section 49-158 have been met.

- C. The department, at its sole discretion, may waive any work plan requirement under this section that it determines to be unnecessary to make any of the determinations required under section 49-177. Decisions under this subsection are not subject to appeal or dispute resolution under section 49-185.
- Sec. 2. Section 49-201, Arizona Revised Statutes, is amended to read:

49-201. <u>Definitions</u>

In this chapter, unless the context otherwise requires:

- 1. "Administrator" means the administrator of the United States environmental protection agency.
- 2. "Aquifer" means a geologic unit that contains sufficient saturated permeable material to yield usable quantities of water to a well or spring.
- 3. "Best management practices" means those methods, measures or practices to prevent or reduce discharges and includes structural and nonstructural controls and operation and maintenance procedures. Best management practices may be applied before, during and after discharges to reduce or eliminate the introduction of pollutants into receiving waters. Economic, institutional and technical factors shall be considered in developing best management practices.
- 4. "CERCLA" means the comprehensive environmental response, compensation, and liability act of 1980, as amended (P.L. 96-510; 94 Stat. 2767; 42 United States Code sections 9601 through 9657), commonly known as "superfund".
- 5. "Clean closure" means implementation of all actions specified in an aquifer protection permit, if any, as closure requirements, as well as elimination, to the greatest degree practicable, of any reasonable probability of further discharge from the facility and of either exceeding aquifer water quality standards at the applicable point of compliance or,

- if an aquifer water quality standard is exceeded at the time the permit is issued, causing further degradation of the aquifer at the applicable point of compliance as provided in section 49-243, subsection B, paragraph 3. Clean closure also means postclosure monitoring and maintenance are unnecessary to meet the requirements in an aquifer protection permit.
- 6. "Clean water act" means the federal water pollution control act amendments of 1972 (P.L. 92-500; 86 Stat. 816; 33 United States Code sections 1251 through 1376), as amended.
 - 7. "Closed facility" means:
- (a) A facility that ceased operation before January 1, 1986, that is not, on August 13, 1986, engaged in the activity for which the facility was designed and that was previously operated and for which there is no intent to resume operation.
- (b) A facility that has been approved as a clean closure by the director.
- (c) A facility at which any postclosure monitoring and maintenance plan, notifications and approvals required in a permit have been completed.
- 8. "Concentrated animal feeding operation" means an animal feeding operation that meets the criteria prescribed in 40 Code of Federal Regulations part 122, appendix B for determining a concentrated animal feeding operation for purposes of 40 Code of Federal Regulations sections 122.23 and 122.24, appendix C.
 - 9. "Department" means the department of environmental quality.
- 10. "Direct reuse" means the beneficial use of reclaimed water for specific purposes authorized pursuant to section 49-203, subsection A, paragraph $\frac{6}{7}$.
- 11. "Director" means the director of environmental quality or the director's designee.
- 12. "Discharge" means the direct or indirect addition of any pollutant to the waters of the state from a facility. For purposes of the aquifer protection permit program prescribed by article 3 of this chapter, discharge means the addition of a pollutant from a facility either directly

to an aquifer or to the land surface or the vadose zone in such a manner that there is a reasonable probability that the pollutant will reach an aquifer.

- 13. "Discharge impact area" means the potential areal extent of pollutant migration, as projected on the land surface, as the result of a discharge from a facility.
- 14. "Discharge limitation" means any restriction, prohibition, limitation or criteria established by the director, through a rule, permit or order, on quantities, rates, concentrations, combinations, toxicity and characteristics of pollutants.
- 15. "EFFLUENT-DEPENDENT WATER" MEANS A SURFACE WATER OR PORTION OF A SURFACE WATER THAT CONSISTS OF A POINT SOURCE DISCHARGE WITHOUT WHICH THE SURFACE WATER WOULD BE EPHEMERAL. AN EFFLUENT-DEPENDENT WATER MAY BE PERENNIAL OR INTERMITTENT DEPENDING ON THE VOLUME AND FREQUENCY OF THE POINT SOURCE DISCHARGE OF TREATED WASTEWATER.
- 15. 16. "Environment" means navigable waters WOTUS, any other surface waters, groundwater, drinking water supply, land surface or subsurface strata or ambient air, within or bordering on this state.
- 17. "EPHEMERAL WATER" MEANS A SURFACE WATER OR PORTION OF SURFACE WATER THAT FLOWS OR POOLS ONLY IN DIRECT RESPONSE TO PRECIPITATION.
- 16. 18. "Existing facility" means a facility on which construction began before August 13, 1986 and which THAT is neither a new facility nor a closed facility. For the purposes of this definition, construction on a facility has begun if the facility owner or operator has either:
- (a) Begun, or caused to begin, as part of a continuous on-site construction program any placement, assembly or installation of a building, structure or equipment.
- (b) Entered a binding contractual obligation to purchase a building, structure or equipment which THAT is intended to be used in its operation within a reasonable time. Options to purchase or contracts which THAT can be terminated or modified without substantial loss, and contracts for

feasibility engineering and design studies, do not constitute a contractual obligation for purposes of this definition.

- 17. 19. "Facility" means any land, building, installation, structure, equipment, device, conveyance, area, source, activity or practice from which there is, or with reasonable probability may be, a discharge.
- 18. 20. "Gray water" means wastewater that has been collected separately from a sewage flow and that originates from a clothes washer or a bathroom tub, shower or sink but that does not include wastewater from a kitchen sink, dishwasher or toilet.
 - 19. 21. "Hazardous substance" means:
- (a) Any substance designated pursuant to sections 311(b)(2)(A) and 307(a) of the clean water act.
- (b) Any element, compound, mixture, solution or substance designated pursuant to section 102 of CERCLA.
- (c) Any hazardous waste having the characteristics identified under or listed pursuant to section 49-922.
- (d) Any hazardous air pollutant listed under section 112 of the federal clean air act (42 United States Code section 7412).
- (e) Any imminently hazardous chemical substance or mixture with respect to which the administrator has taken action pursuant to section 7 of the federal toxic substances control act (15 United States Code section 2606).
- (f) Any substance which THAT the director, by rule, either designates as a hazardous substance following the designation of the substance by the administrator under the authority described in subdivisions (a) through (e) of this paragraph or designates as a hazardous substance on the basis of a determination that such substance represents an imminent and substantial endangerment to public health.
- 20. 22. "Inert material" means broken concrete, asphaltic pavement, manufactured asbestos-containing products, brick, rock, gravel, sand and soil. Inert material also includes material that when subjected to a water

leach test that is designed to approximate natural infiltrating waters will not leach substances in concentrations that exceed numeric aquifer water quality standards established pursuant to section 49-223, including overburden and wall rock that is not acid generating, taking into consideration acid neutralization potential, and that has not and will not be subject to mine leaching operations.

- 23. "INTERMITTENT WATER" MEANS A SURFACE WATER OR PORTION OF SURFACE WATER THAT FLOWS CONTINUOUSLY DURING CERTAIN TIMES OF THE YEAR AND MORE THAN IN DIRECT RESPONSE TO PRECIPITATION, SUCH AS WHEN IT RECEIVES WATER FROM A SPRING, ELEVATED GROUNDWATER TABLE OR ANOTHER SURFACE SOURCE, SUCH AS MELTING SNOWPACK.
- 21. 24. "Major modification" means a physical change in an existing facility or a change in its method of operation that results in a significant increase or adverse alteration in the characteristics or volume of the pollutants discharged, or the addition of a process or major piece of production equipment, building or structure that is physically separated from the existing operation and that causes a discharge, provided that:
- (a) A modification to a groundwater protection permit facility as defined in section 49-241.01, subsection C that would qualify for an area-wide permit pursuant to section 49-243 consisting of an activity or structure listed in section 49-241, subsection B shall not constitute a major modification solely because of that listing.
- (b) For a groundwater protection permit facility as defined in section 49-241.01, subsection C, a physical expansion that is accomplished by lateral accretion or upward expansion within the pollutant management area of the existing facility or group of facilities shall not constitute a major modification if the accretion or expansion is accomplished through sound engineering practice in a manner compatible with existing facility design, taking into account safety, stability and risk of environmental release. For a facility described in section 49-241.01, subsection C, paragraph 1, expansion of a facility shall conform with the terms and conditions of the applicable permit. For a facility described in section

49-241.01, subsection C, paragraph 2, if the area of the contemplated expansion is not identified in the notice of disposal, the owner or operator of the facility shall submit to the director the information required by section 49-243, subsection A, paragraphs 1, 2, 3 and 7.

- 22. "Navigable waters" means the waters of the United States as defined by section 502(7) of the clean water act (33 United States Code section 1362(7)).
- 23. 25. "New facility" means a previously closed facility that resumes operation or a facility on which construction was begun after August 13, 1986 on a site at which no other facility is located or to totally replace the process or production equipment that causes the discharge from an existing facility. A major modification to an existing facility is deemed a new facility to the extent that the criteria in section 49-243, subsection B, paragraph 1 can be practicably applied to such modification. For the purposes of this definition, construction on a facility has begun if the facility owner or operator has either:
- (a) Begun, or caused to begin as part of a continuous on-site construction program, any placement, assembly or installation of a building, structure or equipment.
- (b) Entered a binding contractual obligation to purchase a building, structure or equipment which THAT is intended to be used in its operation within a reasonable time. Options to purchase or contracts which THAT can be terminated or modified without substantial loss, and contracts for feasibility engineering and design studies, do not constitute a contractual obligation for purposes of this definition.
- 24. 26. "Nonpoint source" means any conveyance which THAT is not a point source from which pollutants are or may be discharged to navigable waters WOTUS.
- 27. "NON-WOTUS PROTECTED SURFACE WATER" MEANS A PROTECTED SURFACE WATER THAT IS NOT A WOTUS.
- 28. "NON-WOTUS WATERS OF THE STATE" MEANS WATERS OF THE STATE THAT ARE NOT WOTUS.

- 25. 29. "On-site wastewater treatment facility" means a conventional septic tank system or alternative system that is installed at a site to treat and dispose of wastewater of predominantly human origin that is generated at that site.
- 30. "ORDINARY HIGH WATER MARK" MEANS THE LINE ON THE SHORE OF AN INTERMITTENT OR PERENNIAL PROTECTED SURFACE WATER ESTABLISHED BY THE FLUCTUATIONS OF WATER AND INDICATED BY PHYSICAL CHARACTERISTICS SUCH AS A CLEAR, NATURAL LINE IMPRESSED ON THE BANK, SHELVING, CHANGES IN THE CHARACTER OF SOIL, DESTRUCTION OF TERRESTRIAL VEGETATION, THE PRESENCE OF LITTER AND DEBRIS OR OTHER APPROPRIATE MEANS THAT CONSIDER THE CHARACTERISTICS OF THE CHANNEL, FLOODPLAIN AND RIPARIAN AREA.
- 31. "PERENNIAL WATER" MEANS A SURFACE WATER OR PORTION OF SURFACE WATER THAT FLOWS CONTINUOUSLY THROUGHOUT THE YEAR.
- 26. 32. "Permit" means a written authorization issued by the director or prescribed by this chapter or in a rule adopted under this chapter stating the conditions and restrictions governing a discharge or governing the construction, operation or modification of a facility. FOR THE PURPOSES OF REGULATING NON-WOTUS PROTECTED SURFACE WATERS, A PERMIT SHALL NOT INCLUDE PROVISIONS GOVERNING THE CONSTRUCTION, OPERATION OR MODIFICATION OF A FACILITY EXCEPT AS NECESSARY FOR THE PURPOSE OF ENSURING THAT A DISCHARGE MEETS WATER QUALITY-RELATED EFFLUENT LIMITATIONS OR TO REQUIRE BEST MANAGEMENT PRACTICES FOR THE PURPOSE OF ENSURING THAT A DISCHARGE MEETS WATER QUALITY STANDARDS.
- 27. 33. "Person" means an individual, employee, officer, managing body, trust, firm, joint stock company, consortium, public or private corporation, including a government corporation, partnership, association or state, a political subdivision of this state, a commission, the United States government or any federal facility, interstate body or other entity.
- 28. 34. "Point source" means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft

from which pollutants are or may be discharged to navigable waters WOTUS OR PROTECTED SURFACE WATER. Point source does not include return flows from irrigated agriculture.

- 29. 35. "Pollutant" means fluids, contaminants, toxic wastes, toxic pollutants, dredged spoil, solid waste, substances and chemicals, pesticides, herbicides, fertilizers and other agricultural chemicals, incinerator residue, sewage, garbage, sewage sludge, munitions, petroleum products, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and mining, industrial, municipal and agricultural wastes or any other liquid, solid, gaseous or hazardous substances.
- 30. 36. "Postclosure monitoring and maintenance" means those activities that are conducted after closure notification and that are necessary to:
- (a) Keep the facility in compliance with either the aquifer water quality standards at the applicable point of compliance or, for any aquifer water quality standard that is exceeded at the time the aquifer protection permit is issued, the requirement to prevent the facility from further degrading the aquifer at the applicable point of compliance as provided under section 49-243, subsection B, paragraph 3.
- (b) Verify that the actions or controls specified as closure requirements in an approved closure plan or strategy are routinely inspected and maintained.
- (c) Perform any remedial, mitigative or corrective actions or controls as specified in the aquifer protection permit or perform corrective action as necessary to comply with this paragraph and article 3 of this chapter.
 - (d) Meet property use restrictions.
- 31. 37. "Practicably" means able to be reasonably done from the standpoint of technical practicability and, except for pollutants addressed in section 49-243, subsection I, economically achievable on an industry-wide basis.

- 38. "PROTECTED SURFACE WATERS" MEANS WATERS OF THE STATE LISTED ON THE PROTECTED SURFACE WATERS LIST UNDER SECTION 49-221, SUBSECTION G AND ALL WOTUS.
 - 39. "PUBLIC WATERS" MEANS WATERS OF THE STATE OPEN TO OR MANAGED FOR USE BY MEMBERS OF THE GENERAL PUBLIC.
 - 40. "RECHARGE PROJECT" MEANS A FACILITY NECESSARY OR CONVENIENT TO OBTAIN, DIVERT, WITHDRAW, TRANSPORT, EXCHANGE, DELIVER, TREAT OR STORE WATER TO INFILTRATE OR REINTRODUCE THAT WATER INTO THE GROUND.
 - 32. 41. "Reclaimed water" means water that has been treated or processed by a wastewater treatment plant or an on-site wastewater treatment facility.
 - 33. 42. "Regulated agricultural activity" means the application of nitrogen fertilizer or a concentrated animal feeding operation.
 - 34. 43. "Safe drinking water act" means the federal safe drinking water act, as amended (P.L. 93-523; 88 Stat. 1660; 95-190; 91 Stat. 1393).
 - 35. 44. "Standards" means water quality standards, pretreatment standards and toxicity standards established pursuant to this chapter.
 - 36. 45. "Standards of performance" means performance standards, design standards, best management practices, technologically based standards and other standards, limitations or restrictions established by the director by rule or by permit condition.
 - 37. 46. "Tank" means a stationary device, including a sump, that is constructed of concrete, steel, plastic, fiberglass, or other non-earthen material that provides substantial structural support, and that is designed to contain an accumulation of solid, liquid or gaseous materials.
 - 38. 47. "Toxic pollutant" means a substance that will cause significant adverse reactions if ingested in drinking water. Significant adverse reactions are reactions that may indicate a tendency of a substance or mixture to cause long lasting or irreversible damage to human health.
 - 39. 48. "Trade secret" means information to which all of the following apply:

- (a) A person has taken reasonable measures to protect from disclosure and the person intends to continue to take such measures.
- (b) The information is not, and has not been, reasonably obtainable without the person's consent by other persons, other than governmental bodies, by use of legitimate means, other than discovery based on a showing of special need in a judicial or quasi-judicial proceeding.
- (c) No statute specifically requires disclosure of the information to the public.
- (d) The person has satisfactorily shown that disclosure of the information is likely to cause substantial harm to the business's competitive position.
- 40. "Vadose zone" means the zone between the ground surface and any aquifer.
- 41. 50. "Waters of the state" means all waters within the jurisdiction of this state including all perennial or intermittent streams, lakes, ponds, impounding reservoirs, marshes, watercourses, waterways, wells, aquifers, springs, irrigation systems, drainage systems and other bodies or accumulations of surface, underground, natural, artificial, public or private water situated wholly or partly in or bordering on the state.
- 42. 51. "Well" means a bored, drilled or driven shaft, pit or hole whose depth is greater than its largest surface dimension.
- 52. "WETLAND" MEANS, FOR THE PURPOSES OF NON-WOTUS PROTECTED SURFACE WATERS, AN AREA THAT IS INUNDATED OR SATURATED BY SURFACE OR GROUNDWATER AT A FREQUENCY AND DURATION SUFFICIENT TO SUPPORT, AND UNDER NORMAL CONDITIONS DOES SUPPORT, A PREVALENCE OF VEGETATION TYPICALLY ADAPTED FOR LIFE IN SATURATED SOIL CONDITIONS.
- 53. "WOTUS" MEANS WATERS OF THE STATE THAT ARE ALSO NAVIGABLE WATERS AS DEFINED BY SECTION 502(7) OF THE CLEAN WATER ACT.
- 54. "WOTUS PROTECTED SURFACE WATER" MEANS A PROTECTED SURFACE WATER THAT IS A WOTUS.

Sec. 3. Section 49-202, Arizona Revised Statutes, is amended to read:

49-202. <u>Designation of state agency</u>

- A. The department is designated as the agency for this state for all purposes of the clean water act, including section 505, the resource conservation and recovery act, including section 7002, and the safe drinking water act. The department may take all actions necessary to administer and enforce these acts as provided in this section, including entering into contracts, grants and agreements, the adoption, modification ADOPTING, MODIFYING or repeal of REPEALING rules, and initiating administrative and judicial actions to secure to this state the benefits, rights and remedies of such acts.
- B. The department shall process requests under section 401 of the clean water act for certification of permits required by section 404 of the clean water act in accordance with subsections C through H I of this section. Subsections C, and D, subsection E, paragraph 3, subsection F, paragraph 3 G and subsection H I of this section apply to the certification of nationwide or general permits issued under section 404 of the clean water act. If the department has denied or failed to act on certification of a nationwide permit or general permit, subsections C through H I of this section apply to the certification of applications for or notices of coverage under those permits.
- C. The department shall review the application for section 401 certification solely to determine whether the effect of the discharge will comply with the water quality standards for navigable waters WOTUS established by department rules adopted pursuant to section 49-221, subsection A, and section 49-222. The department's review shall extend only to activities conducted within the ordinary high watermark of navigable waters WOTUS. To the extent that any other standards are considered applicable pursuant to section 401(a)(1) of the clean water act, certification of these standards is waived.

D. The department may include only those conditions on certification under section 401 of the clean water act that are required to ensure compliance with the standards identified in subsection C of this section. The department may impose reporting and monitoring requirements as conditions of certification under section 401 of the clean water act only in accordance with department rules.

E. Until January 1, 1999:

- 1. The department may request supplemental information from the section 401 certification applicant if the information is necessary to make the certification determination pursuant to subsection C of this section. The department shall request this information in writing within thirty calendar days after receipt of the application for section 401 certification. The request shall specifically describe the information requested. Within fifteen calendar days after receipt of the applicant's written response to a request for supplemental information, the department shall either issue a written determination that the application is complete or request specific additional information. The applicant may deem any additional requests for supplemental information as a denial of certification for purposes of subsection H of this section. If the department fails to act within the time limits prescribed by this subsection, the application is deemed complete.
- 2. The department shall grant or deny section 401 certification and shall send a written notice of the department's decision to the applicant within thirty calendar days after receipt of a complete application for certification. Written notice of a denial of section 401 certification shall include a detailed description of the reasons for denial.
- 3. The department may waive its right to certification by giving written notice of that waiver to the applicant. The department's failure to grant or deny an application within the time limits prescribed by this section is deemed a waiver of certification pursuant to this subsection and section 401(a)(2) of the clean water act.

F. Beginning January 1, 1999:

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- 1. E. The department may request supplemental information from the section 401 certification applicant if the information is necessary to make certification determination pursuant to subsection C of this section. The department shall request this information in writing. The request shall specifically describe the information requested. After receipt of the applicant's written response to a request for supplemental information, the department shall either issue a written determination that the application is complete or request specific additional applicant additional requests information. The may deem any supplemental information as a denial of certification for THE purposes of subsection + I of this section. In all other instances, the application is complete on submission of the information requested by the department.
- 2. F. The department shall grant or deny section 401 certification and shall send a written notice of the department's decision to the applicant after receipt of a complete application for certification. Written notice of a denial of section 401 certification shall include a detailed description of the reasons for denial.
- 3. G. The department may waive its right to certification by giving written notice of that waiver to the applicant. The department's failure to act on an application is deemed a waiver pursuant to this subsection and section 401(a)(2) of the clean water act.
- 6. H. The department shall adopt rules specifying the information the department requires an applicant to submit under this section in order to make the determination required by subsections C and D of this section. Until these rules are adopted, the department shall require an applicant to submit only the following information for certification under this section:
 - 1. The name, address and telephone number of the applicant.
- 2. A description of the project to be certified, including an identification of the $\frac{1}{1}$ matters words in which the certified activities will occur.

- 3. The project location, including latitude, longitude and a legal description.
 - 4. A United States geological service topographic map or other contour map of the project area, if available.
 - 5. A map delineating the ordinary high watermark of navigable waters WOTUS affected by the activity to be certified.
 - 6. A description of any measures to be applied to the activities being certified in order to control the discharge of pollutants to navigable waters WOTUS from those activities.
 - 7. A description of the materials being discharged to or placed in $\frac{1}{1}$
 - 8. A copy of the application for a federal permit or license that is the subject of the requested certification.
 - H. I. Pursuant to title 41, chapter 6, article 10 an applicant for certification may appeal a denial of certification or any conditions imposed on certification. Any person who is or may be adversely affected by the denial of or imposition of conditions on the certification of a nationwide or general permit may appeal that decision pursuant to title 41, chapter 6, article 10.
 - I. J. Certification under section 401 of the clean water act is automatically granted for quarrying, crushing and screening of nonmetallic minerals in ephemeral waters if all of the following conditions are satisfied within the ordinary high watermark of jurisdictional waters:
 - 1. There is no disposal of construction and demolition wastes and contaminated wastewater.
 - 2. Water for dust suppression, if used, does not contain contaminants that could violate water quality standards.
 - 3. Pollution from the operation of equipment in the mining area is removed and properly disposed.
 - 4. Stockpiles of processed materials containing ten per cent PERCENT or more of particles of silt are placed or stabilized to minimize loss or erosion during flow events. As used in FOR THE PURPOSES OF this paragraph,

- "silt" means particles finer than 0.0625 millimeter diameter on a dry weight basis.
- 5. Measures are implemented to minimize upstream and downstream scour during flood events to protect the integrity of buried pipelines.
- 6. On completion of quarrying operations in an area, areas denuded of shrubs and woody vegetation are revegetated to the maximum extent practicable.
- $rac{J.}{L}$ K. For THE purposes of subsection $rac{L}{L}$ J of this section, "ephemeral waters" means waters of the state that have been designated as ephemeral in rules adopted by the department.
- K. L. Certification under section 401 of the clean water act is automatically granted for any license or permit required for:
- 1. Corrective actions taken pursuant to chapter 6, article 1 of this title in response to a release of a regulated substance as defined in section 49-1001 except for those off-site facilities that receive for treatment or disposal materials that are contaminated with a regulated substance and that are received as part of a corrective action.
- 2. Response or remedial actions undertaken pursuant to chapter 2, article 5 of this title or pursuant to CERCLA.
- 3. Corrective actions taken pursuant to chapter 5, article 1 of this title or the resource conservation AND recovery act of 1976, as amended (42 United States Code sections 6901 through 6992).
- 4. Other remedial actions that have been reviewed and approved by the appropriate government authority and taken pursuant to applicable federal or state laws.
- t. M. The department of environmental quality is designated as the state water pollution control agency for this state for all purposes of CERCLA, except that the department of water resources has joint authority with the department of environmental quality to conduct feasibility studies and remedial investigations relating to groundwater quality and may enter into contracts and cooperative agreements under section 104 of CERCLA for such studies and remedial investigations. The department of environmental

quality may take all action necessary or appropriate to secure to this state the benefits of the act, and all such action shall be taken at the direction of the director of environmental quality as his THE DIRECTOR'S duties are prescribed in this chapter.

M. N. The director and the department of environmental quality may enter into an interagency contract or agreement with the director of water resources under title 11, chapter 7, article 3 to implement the provisions of section 104 of CERCLA and to carry out the purposes of subsection \vdash M of this section.

Sec. 4. Section 49-202.01, Arizona Revised Statutes, is amended to read:

49-202.01. <u>Surface water quality general grazing permit; best</u> <u>management practices for grazing activities;</u> <u>definition</u>

- A. As part of the duties established pursuant to section 49-203, subsection A, paragraph $\frac{3}{2}$ 4, the director shall implement a surface water quality general grazing permit consisting of voluntary best management practices for grazing activities.
- B. The terms and conditions of the surface water quality general grazing permit shall be voluntary best management practices that have been determined by the committee to be the most practical and effective means of reducing or preventing the nonpoint source discharge of pollutants into mavigable waters WOTUS by grazing activities.
- C. In adopting voluntary grazing best management practices, the committee shall consider:
 - 1. The availability and effectiveness of alternative technologies.
- 2. The economic and social impacts of alternative technologies on grazing and associated industries.
 - 3. The institutional considerations of alternative technologies.
- 4. The potential nature and severity of discharges from grazing activities and their effect on navigable waters WOTUS.

- D. For the purposes of this section, "grazing activities" means the feeding of all classes of domestic ruminant and nonruminant animals on grasses, forbs and shrubs in Arizona watersheds.
- Sec. 5. Section 49-203, Arizona Revised Statutes, is amended to read:

49-203. Powers and duties of the director and department

- A. The director shall:
- 1. Adopt, by rule, water quality standards in the form and subject to the considerations prescribed by article 2 of this chapter.
- 2. Adopt, by rule, a permit program FOR WOTUS that is consistent with but no NOT more stringent than the requirements of the clean water act for the point source discharge of any pollutant or combination of pollutants into navigable waters WOTUS. The program and the rules shall be sufficient to enable this state to administer the permit program identified in section 402(b) of the clean water act, including the sewage sludge requirements of section 405 of the clean water act and as prescribed by article 3.1 of this chapter.
- 3. APPLY THE PROGRAM AND RULES AUTHORIZED UNDER PARAGRAPH 2 OF THIS SUBSECTION TO POINT SOURCE DISCHARGES TO NON-WOTUS PROTECTED SURFACE WATERS, CONSISTENT WITH SECTION 49-255.04, WHICH ESTABLISHES THE PROGRAM COMPONENTS AND RULES THAT DO NOT APPLY TO NON-WOTUS PROTECTED SURFACE WATERS. THE FOLLOWING ARE EXEMPT FROM THE NON-WOTUS PROTECTED SURFACE WATERS POINT SOURCE DISCHARGE PROGRAM:
- (a) DISCHARGES TO A NON-WOTUS PROTECTED SURFACE WATER INCIDENTAL TO A RECHARGE PROJECT.
- (b) ESTABLISHED OR ONGOING FARMING, RANCHING AND SILVICULTURE ACTIVITIES SUCH AS PLOWING, SEEDING, CULTIVATING, MINOR DRAINAGE OR HARVESTING FOR THE PRODUCTION OF FOOD, FIBER OR FOREST PRODUCTS OR UPLAND SOIL AND WATER CONSERVATION PRACTICES.
 - (c) MAINTENANCE BUT NOT CONSTRUCTION OF DRAINAGE DITCHES.
 - (d) CONSTRUCTION AND MAINTENANCE OF IRRIGATION DITCHES.
 - (e) MAINTENANCE OF STRUCTURES SUCH AS DAMS, DIKES AND LEVEES.

- 3. 4. Adopt, by rule, a program to control nonpoint source discharges of any pollutant or combination of pollutants into mavigable waters WOTUS.
- 4. 5. Adopt, by rule, an aquifer protection permit program to control discharges of any pollutant or combination of pollutants that are reaching or may with a reasonable probability reach an aquifer. The permit program shall be as prescribed by article 3 of this chapter.
- 5. 6. Adopt, by rule, the permit program for underground injection control described in the safe drinking water act.
- 6. 7. Adopt, by rule, technical standards for conveyances of reclaimed water and a permit program for the direct reuse of reclaimed water.
- 7. 8. Adopt, by rule or as permit conditions, discharge limitations, best management practice standards, new source performance standards, toxic and pretreatment standards and other standards and conditions as reasonable and necessary to carry out the permit programs and regulatory duties described in paragraphs 2 through 5 6 of this subsection.
- 8. 9. Assess and collect fees to revoke, issue, deny, modify or suspend permits issued pursuant to this chapter and to process permit applications. The director may also assess and collect costs reasonably necessary if the director must conduct sampling or monitoring relating to a facility because the owner or operator of the facility has refused or failed to do so on order by the director. The director shall set fees that are reasonably related to the department's costs of providing the service for which the fee is charged. Monies collected from aquifer protection permit fees and from Arizona pollutant discharge elimination system permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210. Monies from other permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund unless otherwise provided by law. Monies paid by an applicant for review by consultants for the department pursuant to

section 49-241.02, subsection D shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210. State agencies are exempt from all fees imposed pursuant to this chapter except for those fees associated with the dredge and fill permit program established pursuant to article 3.2 of this chapter. For services provided under the dredge and fill permit program, a state agency shall pay either:

- (a) The fees established by the department under the dredge and fill permit program.
- (b) The reasonable cost of services provided by the department pursuant to an interagency service agreement.
- 9. 10. Adopt, modify, repeal and enforce other rules that are reasonably necessary to carry out the director's functions under this chapter.
- 10. 11. Require monitoring at an appropriate point of compliance for any organic or inorganic pollutant listed under section 49-243, subsection I if the director has reason to suspect the presence of the pollutant in a discharge.
- 11. 12. Adopt rules establishing what constitutes a significant increase or adverse alteration in the characteristics or volume of pollutants discharged for purposes of determining what constitutes a major modification to an existing facility under the definition of new facility pursuant to section 49-201. Before the adoption of these rules, the director shall determine whether a change at a particular facility results in a significant increase or adverse alteration in the characteristics or volume of pollutants discharged on a case-by-case basis, taking into account site conditions and operational factors.
- 13. CONSIDER EVIDENCE GATHERED BY THE ARIZONA NAVIGABLE STREAM ADJUDICATION COMMISSION ESTABLISHED BY SECTION 37-1121 WHEN DECIDING WHETHER A PERMIT IS REQUIRED TO DISCHARGE PURSUANT TO ARTICLE 3.1 OF THIS CHAPTER.
 - B. The director may:

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- 1. On presentation of credentials, enter into, on or through any public or private property from which a discharge has occurred, is occurring or may occur or on which any disposal, land application of sludge or treatment regulated by this chapter has occurred, is occurring or may be occurring and any public or private property where records relating to a discharge or records that are otherwise required to be maintained as prescribed by this chapter are kept, as reasonably necessary to ensure compliance with this chapter. The director or a department employee may take samples, inspect and copy records required to be maintained pursuant to this chapter, inspect equipment, activities, facilities and monitoring equipment or methods of monitoring, take photographs and take other action reasonably necessary to determine the application of, or compliance with, this chapter. The owner or managing agent of the property shall be afforded the opportunity to accompany the director or department employee during inspections and investigations, but prior notice of entry to the owner or managing agent is not required if reasonable grounds exist to believe that notice would frustrate the enforcement of this chapter. If the director or department employee obtains any samples before leaving the premises, the director or department employee shall give the owner or managing agent a receipt describing the samples obtained and a portion of each sample equal in volume or weight to the portion retained. If an analysis is made of samples, or monitoring and testing are performed, a copy of the results shall be furnished promptly to the owner or managing agent.
- 2. Require any person who has discharged, is discharging or may discharge into the waters of the state under article 3, 3.1, or 3.2 or 3.3 of this chapter and any person who is subject to pretreatment standards and requirements or sewage sludge use or disposal requirements under article 3.1 of this chapter to collect samples, to establish and maintain records, including photographs, and to install, use and maintain sampling and monitoring equipment to determine the absence or presence and nature of the discharge or indirect discharge or sewage sludge use or disposal.

- 3. Administer state or federal grants, including grants to political subdivisions of this state, for the construction and installation of publicly and privately owned pollutant treatment works and pollutant control devices and establish grant application priorities.
- 4. Develop, implement and administer a water quality planning process, including a ranking system for applicant eligibility, wherein appropriated state monies and available federal monies are awarded to political subdivisions of this state to support or assist regional water quality planning programs and activities.
- 5. Enter into contracts and agreements with the federal government to implement federal environmental statutes and programs.
- 6. Enter into intergovernmental agreements pursuant to title 11, chapter 7, article 3 if the agreement is necessary to more effectively administer the powers and duties described in this chapter.
- 7. Participate in, conduct and contract for studies, investigations, research and demonstrations relating to the causes, minimization, prevention, correction, abatement, mitigation, elimination, control and remedy of discharges and collect and disseminate information relating to discharges.
- 8. File bonds or other security as required by a court in any enforcement actions under article 4 of this chapter.
- 9. Adopt by rule a permit program for the discharge of dredged or fill material into mavigable waters WOTUS for purposes of implementing the permit program established by 33 United States Code section 1344.
- C. Subject to section 38-503 and other applicable statutes and rules, the department may contract with a private consultant for the purposes of assisting TO ASSIST the department in reviewing aquifer protection permit applications and on-site wastewater treatment facilities to determine whether a facility meets the criteria and requirements of this chapter and the rules adopted by the director. Except as provided in section 49-241.02, subsection D, the department shall not use a private consultant if the fee charged for that service would be greater than the

fee the department would charge to provide that service. The department shall pay the consultant for the services rendered by the consultant from fees paid by the applicant or facility to the department pursuant to subsection A, paragraph $\frac{8}{9}$ of this section.

- D. The director shall integrate all of the programs authorized in this section and other programs affording water quality protection that are administered by the department for purposes of administration and enforcement and shall avoid duplication and dual permitting to the maximum extent practicable.
- Sec. 6. Section 49-210, Arizona Revised Statutes, is amended to read:

49-210. <u>Water quality fee fund; appropriation; exemption;</u> monies held in trust

- A. The water quality fee fund is established consisting of monies appropriated by the legislature and fees received pursuant to sections 49-104, 49-203, 49-241, 49-241.02, 49-242, 49-255.01, 49-332, 49-352, 49-353 and 49-361. The director shall administer the fund.
- B. Monies in the fund are subject to annual legislative appropriation to the department for water quality programs. Monies in the fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations.
- C. On notice from the director, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.
- D. Monies in the water quality fee fund shall be used for the following purposes:
- 1. The issuance of TO ISSUE aquifer protection permits pursuant to section 49-241.
- 2. The aquifer protection permit registration fee procedures pursuant to section 49-242.
 - 3. Dry well registration fee procedures pursuant to section 49-332.
 - 4. Technical review fee procedures pursuant to section 49-353.

- Inspection fee procedures pursuant to section 49-104, subsection C.
 - 6. The issuance of TO ISSUE permits under the Arizona pollutant discharge elimination system program pursuant to section 49-255.01.
 - 7. Operator certification pursuant to sections 49-352 and 49-361.
 - 8. Paying the cost of implementing section 49-203, subsection A, paragraph $\frac{6}{7}$ and section 49-221, subsection E.
 - 9. Water quality monitoring pursuant to section 49-225 and reporting of aguifer pollution information pursuant to section 49-249.
 - 10. Implementation TO IMPLEMENT and administration of ADMINISTER the underground injection control permit program established pursuant to article 3.3 of this chapter.
 - 11. Implementation TO IMPLEMENT and administration of ADMINISTER the dredge and fill permit program established pursuant to article 3.2 of this chapter, including review and analysis for issuing jurisdictional determinations.
 - E. Any fee, assessment or other levy that is authorized by law or administrative rule and that is collected and deposited in the water quality fee fund shall be held in trust. The monies in the fund may be used only for the purposes prescribed by statute and shall not be appropriated or transferred by the legislature to fund the general operations of this state or to otherwise meet the obligations of the general fund of this state. This subsection does not apply to any taxes or other levies that are imposed pursuant to title 42 or 43.
 - Sec. 7. Section 49-221, Arizona Revised Statutes, is amended to read:

49-221. <u>Water quality standards in general; protected surface</u> waters list

- A. The director shall:
- 1. Adopt, by rule, water quality standards for all navigable waters WOTUS and for all waters in all aquifers to preserve and protect the quality of those waters for all present and reasonably foreseeable future

USES. FOR NON-WOTUS PROTECTED SURFACE WATERS, THE DIRECTOR SHALL APPLY SURFACE WATER QUALITY STANDARDS ESTABLISHED AS OF JANUARY 1, 2021, UNTIL SPECIFICALLY CHANGED BY THE DIRECTOR PURSUANT TO PARAGRAPH 2 OF THIS SUBSECTION. RULES REGARDING THE FOLLOWING SHALL NOT BE ADOPTED OR APPLIED AS WATER QUALITY STANDARDS FOR NON-WOTUS PROTECTED SURFACE WATERS:

- (a) ANTIDEGRADATION.
- (b) ANTIDEGRADATION CRITERIA.
- (c) OUTSTANDING ARIZONA WATERS.
- 2. ADOPT, BY RULE, WATER QUALITY STANDARDS FOR NON-WOTUS PROTECTED SURFACE WATERS, BY DECEMBER 31, 2022, CONSISTENT WITH PARAGRAPH 1 OF THIS SUBSECTION AND AS DETERMINED NECESSARY IN THE RULEMAKING PROCESS. IN ADOPTING THOSE STANDARDS, THE DIRECTOR SHALL CONSIDER THE UNIQUE CHARACTERISTICS OF THIS STATE'S SURFACE WATERS AND THE ECONOMIC, SOCIAL AND ENVIRONMENTAL COSTS AND BENEFITS THAT WOULD RESULT FROM THE ADOPTION OF A WATER QUALITY STANDARD AT A PARTICULAR LEVEL OR FOR A PARTICULAR WATER CATEGORY.
- B. The director may adopt, by rule, water quality standards for waters of the state other than those described in subsection A of this section, including standards for the use of water pumped from an aquifer that does not meet the standards adopted pursuant to section 49-223, subsections A and B and that is put to a beneficial use other than drinking water. These standards may include standards for the use of water pumped as part of a remedial action. In adopting such standards, the director shall consider the economic, social and environmental costs and benefits that would result from the adoption of a water quality standard at a particular level or for a particular water category.
- C. In setting standards pursuant to subsection A or B of this section, the director shall consider, but not be limited to, the following:
 - 1. The protection of the public health and the environment.
- 2. The uses that have been made, are being made or with reasonable probability may be made of these waters.

- 3. The provisions and requirements of the clean water act and safe drinking water act and the regulations adopted pursuant to those acts.
- 4. The degree to which standards for one category of waters could cause violations of standards for other, hydrologically connected, water categories.
- 5. Guidelines, action levels or numerical criteria adopted or recommended by the United States environmental protection agency or any other federal agency.
- 6. Any unique physical, biological or chemical properties of the waters.
- D. Water quality standards shall be expressed in terms of the uses to be protected and, if adequate information exists to do so, numerical limitations or parameters, in addition to any narrative standards that the director deems appropriate.
- E. The director may adopt by rule water quality standards for the direct reuse of reclaimed water. In establishing these standards, the director shall consider the following:
 - 1. The protection of public health and the environment.
- 2. The uses that are being made or may be made of the reclaimed water.
- 3. The degree to which standards for the direct reuse of reclaimed water may cause violations of water quality standards for other hydrologically connected water categories.
- F. If the director proposes to adopt water quality standards for agricultural water, the director shall consult, cooperate, collaborate and, if necessary, enter into interagency agreements and memoranda of understanding with the Arizona department of agriculture relating to its administration, pursuant to title 3, chapter 3, article 4.1, of this state's authority relating to agricultural water under the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112, subpart E) and any other federal produce safety regulation, order or guideline or other requirement adopted pursuant to the

FDA food safety modernization act (P.L. 111-353; 21 United States Code sections 2201 through 2252). For the purposes of this subsection:

- 1. "Agricultural water":
- (a) Means water that is used in a covered activity on produce where water is intended to, or is likely to, contact produce or food contact surfaces.
 - (b) Includes all of the following:
- (i) Water used in growing activities, including irrigation water, water used for preparing crop sprays and water used for growing sprouts.
- (ii) Water used in harvesting, packing and holding activities, including water used for washing or cooling harvested produce and water used for preventing dehydration of produce.
- 2. "Covered activity" means growing, harvesting, packing or holding produce. Covered activity includes processing produce to the extent that the activity is within the meaning of farm as defined in section 3-525.
 - 3. "Harvesting" has the same meaning prescribed in section 3-525.
 - 4. "Holding" has the same meaning prescribed in section 3-525.
 - 5. "Packing" has the same meaning prescribed in section 3-525.
 - 6. "Produce" has the same meaning prescribed in section 3-525.
- G. THE DIRECTOR SHALL MAINTAIN AND PUBLISH A PROTECTED SURFACE WATERS LIST. THE DEPARTMENT SHALL PUBLISH THE INITIAL LIST ON THE DEPARTMENT'S WEBSITE AND IN THE ARIZONA ADMINISTRATIVE REGISTER WITHIN THIRTY DAYS AFTER THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION. NOT LATER THAN DECEMBER 31, 2022, THE DEPARTMENT SHALL ADOPT BY RULE THE PROTECTED SURFACE WATERS LIST, INCLUDING PROCEDURES FOR DETERMINING ECONOMIC, SOCIAL AND ENVIRONMENTAL COSTS AND BENEFITS. PUBLICATION OF THE LIST IN THE ARIZONA ADMINISTRATIVE REGISTER IS AN APPEALABLE AGENCY ACTION PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 10 AND MAY BE APPEALED BY ANY PARTY THAT PROVIDES EVIDENCE OF AN ACTUAL ADVERSE EFFECT THAT THE PARTY APPEALING THE DECISION WOULD SUFFER AS A RESULT OF THE DIRECTOR'S DECISION. ALL OF THE FOLLOWING APPLY TO THE PROTECTED SURFACE WATER LIST:
 - 1. THE PROTECTED SURFACE WATERS LIST SHALL INCLUDE:

(a) ALL WOTUS. 1

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- (b) ANY PERENNIAL, INTERMITTENT AND EPHEMERAL REACHES AND ANY IMPOUNDMENTS OF THE FOLLOWING RIVERS, NOT INCLUDING TRIBUTARIES OR REACHES 3 OF WATERS WHOLLY WITHIN TRIBAL JURISDICTION OR REACHES OF WATERS OUTSIDE OF THE UNITED STATES:
 - (i) THE BILL WILLIAMS RIVER, FROM THE CONFLUENCE OF THE BIG SANDY AND SANTA MARIA RIVERS AT 113°31'38.617"W, 34°18'22.373"N, TO ITS CONFLUENCE WITH THE COLORADO RIVER AT 114°8'9.854"W, 34°18'9.33"N.
 - (ii) THE COLORADO RIVER, FROM THE ARIZONA-UTAH BORDER AT 111°32'35.741"W, 36°58'51.698"N, TO THE ARIZONA-MEXICO BORDER AT 114° 43'12.564"W, 32°43'6.218"N.
 - (iii) THE GILA RIVER, FROM THE ARIZONA-NEW MEXICO BORDER AT 109°2'52.8"W, 32°41'11.2015"N, TO THE CONFLUENCE WITH THE COLORADO RIVER AT 114°33'28.145"W, 32°43'14.408"N.
 - (iv) THE LITTLE COLORADO RIVER, FROM THE CONFLUENCE OF THE EAST AND WEST FORKS OF THE LITTLE COLORADO RIVER AT 109°28'7.131"W, 33°59'39.852"N, ITS CONFLUENCE WITH THE COLORADO RIVER AT 111°49'4.693"W. 36°12'10.243"N.
 - (v) THE SALT RIVER. FROM THE CONFLUENCE OF THE BLACK AND WHITE RIVERS AT 110°13'39.5"W, 33°44'6.082"N, TO THE CONFLUENCE WITH THE GILA RIVER AT 112°18'5.704"W, 33°22'42.978"N.
 - (vi) THE SAN PEDRO RIVER, FROM THE ARIZONA-MEXICO BORDER AT 110°9'1.704"W, 31°20'2.387"N, TO THE CONFLUENCE WITH THE GILA RIVER AT 110°47'0.905"W, 32°59'5.671"N.
 - (vii) THE SANTA CRUZ RIVER, FROM ITS ORIGINS IN THE CANELO HILLS OF SOUTHEASTERN ARIZONA AT 110 °37'3.968"W, 31 °27'39.21"N, TO ITS CONFLUENCE WITH THE GILA RIVER AT 111 °33'26.02"W. 32 °41'39.058"N.
 - (viii) THE VERDE RIVER, FROM SULLIVAN LAKE AT 112°28'10.588"W, 34°52'11.136"N, TO ITS CONFLUENCE WITH THE SALT RIVER AT 111°39'48.32"W, 33°33'20.538"N.
- (c) ANY NON-WOTUS WATERS OF THE STATE THAT ARE ADDED UNDER 31 32 PARAGRAPHS 3 AND 4 OF THIS SUBSECTION.

- 2. NOTWITHSTANDING PARAGRAPH 1 OF THIS SUBSECTION, THE PROTECTED SURFACE WATERS LIST SHALL NOT CONTAIN ANY OF THE FOLLOWING NON-WOTUS WATERS:
 - (a) CANALS IN THE YUMA PROJECT AND DITCHES, CANALS, PIPES, IMPOUNDMENTS AND OTHER FACILITIES THAT ARE OPERATED BY DISTRICTS ORGANIZED UNDER TITLE 48, CHAPTERS 18, 19, 20, 21 AND 22 AND THAT ARE NOT USED TO DIRECTLY DELIVER WATER FOR HUMAN CONSUMPTION, EXCEPT WHEN ADDED PURSUANT TO PARAGRAPH 4 OF THIS SUBSECTION AND IN RESPONSE TO A WRITTEN REQUEST FROM THE OWNER AND OPERATOR OF THE DITCH OR CANAL UNTIL THE OWNER AND OPERATOR WITHDRAWS ITS REQUEST.
 - (b) IRRIGATED AREAS, INCLUDING FIELDS FLOODED FOR AGRICULTURAL PRODUCTION.
 - (c) ORNAMENTAL AND URBAN PONDS AND LAKES SUCH AS THOSE OWNED BY HOMEOWNERS' ASSOCIATIONS AND GOLF COURSES, EXCEPT WHEN ADDED PURSUANT TO PARAGRAPH 4 OF THIS SUBSECTION AND IN RESPONSE TO A WRITTEN REQUEST FROM THE OWNER OF THE ORNAMENTAL OR URBAN POND OR LAKE UNTIL THE OWNER WITHDRAWS ITS REQUEST.
 - (d) SWIMMING POOLS AND OTHER BODIES OF WATER THAT ARE REGULATED PURSUANT TO SECTION 49-104, SUBSECTION B.
 - (e) LIVESTOCK AND WILDLIFE WATER TANKS AND AQUACULTURE TANKS THAT ARE NOT CONSTRUCTED WITHIN A PROTECTED SURFACE WATER.
 - (f) STORMWATER CONTROL FEATURES.
 - (g) GROUNDWATER RECHARGE, WATER REUSE AND WASTEWATER RECYCLING STRUCTURES, INCLUDING UNDERGROUND STORAGE FACILITIES AND GROUNDWATER SAVINGS FACILITIES PERMITTED UNDER TITLE 45, CHAPTER 3.1 AND DETENTION AND INFILTRATION BASINS, EXCEPT WHEN ADDED PURSUANT TO PARAGRAPH 4 OF THIS SUBSECTION AND IN RESPONSE TO A WRITTEN REQUEST FROM THE OWNER OF THE GROUNDWATER RECHARGE, WATER REUSE OR WASTEWATER RECYCLING STRUCTURE UNTIL THE OWNER WITHDRAWS ITS REQUEST.
 - (h) WATER-FILLED DEPRESSIONS CREATED AS PART OF MINING OR CONSTRUCTION ACTIVITIES OR PITS EXCAVATED TO OBTAIN FILL, SAND OR GRAVEL.

- (i) ALL WASTE TREATMENT SYSTEMS COMPONENTS, INCLUDING CONSTRUCTED WETLANDS, LAGOONS AND TREATMENT PONDS, SUCH AS SETTLING OR COOLING PONDS, DESIGNED TO EITHER CONVEY OR RETAIN, CONCENTRATE, SETTLE, REDUCE OR REMOVE POLLUTANTS, EITHER ACTIVELY OR PASSIVELY, FROM WASTEWATER BEFORE DISCHARGE OR TO ELIMINATE DISCHARGE.
 - (j) GROUNDWATER.
- (k) EPHEMERAL WATERS EXCEPT FOR THOSE PRESCRIBED IN PARAGRAPH 1, SUBDIVISION (b) OF THIS SUBSECTION.
- (1) LAKES AND PONDS OWNED AND MANAGED BY THE UNITED STATES DEPARTMENT OF DEFENSE, EXCEPT WHEN ADDED PURSUANT TO PARAGRAPH 4 OF THIS SUBSECTION AND IN RESPONSE TO A WRITTEN REQUEST FROM THE UNITED STATES DEPARTMENT OF DEFENSE UNTIL IT WITHDRAWS ITS REQUEST.
- 3. UNLESS LISTED IN PARAGRAPH 2 OF THIS SUBSECTION, THE DIRECTOR SHALL ADD THE FOLLOWING NON-WOTUS SURFACE WATERS TO THE PROTECTED SURFACE WATERS LIST:
- (a) ALL LAKES, PONDS AND RESERVOIRS THAT ARE PUBLIC WATERS USED AS A DRINKING SOURCE, FOR RECREATIONAL OR COMMERCIAL FISH CONSUMPTION OR FOR WATER-BASED RECREATION SUCH AS SWIMMING, WADING AND BOATING AND OTHER TYPES OF RECREATION IN AND ON THE WATER.
- (b) PERENNIAL WATERS OR INTERMITTENT WATERS OF THE STATE THAT ARE USED AS A DRINKING WATER SOURCE, INCLUDING DITCHES AND CANALS.
- (c) PERENNIAL OR INTERMITTENT TRIBUTARIES TO THE BILL WILLIAMS RIVER, THE COLORADO RIVER, THE GILA RIVER, THE LITTLE COLORADO RIVER, THE SALT RIVER, THE SAN PEDRO RIVER, THE SANTA CRUZ RIVER AND THE VERDE RIVER.
- (d) PERENNIAL OR INTERMITTENT PUBLIC WATERS USED FOR RECREATIONAL OR COMMERCIAL FISH CONSUMPTION.
- (e) PERENNIAL OR INTERMITTENT PUBLIC WATERS USED FOR WATER-BASED RECREATION SUCH AS SWIMMING, WADING, BOATING AND OTHER TYPES OF RECREATION IN AND ON THE WATER.
- (f) PERENNIAL OR INTERMITTENT WETLANDS ADJACENT TO WATERS ON THE PROTECTED SURFACE WATERS LIST.

- (g) PERENNIAL OR INTERMITTENT WATERS OF THE STATE THAT CROSS INTO ANOTHER STATE, THE REPUBLIC OF MEXICO OR THE RESERVATION OF A FEDERALLY RECOGNIZED TRIBE.
 - 4. THE DIRECTOR MAY ADD ADDITIONAL NON-WOTUS SURFACE WATERS TO THE PROTECTED SURFACE WATERS LIST IF ALL OF THE FOLLOWING APPLY:
 - (a) THE WATER IS NOT REQUIRED TO BE LISTED UNDER PARAGRAPH 3 OF THIS SUBSECTION.
 - (b) THE WATER IS NOT EXCLUDED UNDER PARAGRAPH 2 OF THIS SUBSECTION.
 - (c) THE ECONOMIC, ENVIRONMENTAL AND SOCIAL BENEFITS OF ADDING THE WATER OUTWEIGH THE ECONOMIC, ENVIRONMENTAL AND SOCIAL COSTS OF EXCLUDING THE WATER FROM THE LIST.
 - 5. THE DIRECTOR SHALL REMOVE ANY ERRONEOUSLY LISTED, NON-WOTUS WATERS FROM THE PROTECTED SURFACE WATERS LIST WHEN THE WATER IS EXCLUDED UNDER PARAGRAPH 2 OF THIS SUBSECTION AND SHALL NOT REGULATE DISCHARGES TO THOSE WATERS IN THE INTERIM.
 - 6. THE DIRECTOR SHALL REMOVE NON-WOTUS WATERS FROM THE PROTECTED SURFACE WATERS LIST WHEN THE WATER IS NOT REQUIRED TO BE LISTED UNDER PARAGRAPH 3 OF THIS SUBSECTION AND THE ECONOMIC, ENVIRONMENTAL AND SOCIAL BENEFITS OF REMOVING THE WATER OUTWEIGH THE ECONOMIC, ENVIRONMENTAL AND SOCIAL COSTS OF RETAINING THE WATER ON THE LIST.
 - 7. THE DIRECTOR, ON AN EMERGENCY BASIS, MAY ADD A WATER TO THE PROTECTED SURFACE WATERS LIST IF THE DIRECTOR DISCOVERS AN IMMINENT AND SUBSTANTIAL DANGER TO PUBLIC HEALTH OR WELFARE OR THE ENVIRONMENT, IF THE WATER WOULD OTHERWISE QUALIFY TO BE ADDED UNDER PARAGRAPH 3 OF THIS SUBSECTION. NOTWITHSTANDING ANY OTHER LAW, THE EMERGENCY ADDITION SHALL TAKE EFFECT IMMEDIATELY ON THE DIRECTOR'S DETERMINATION THAT DESCRIBES THE IMMINENT AND SUBSTANTIAL DANGER IN WRITING. WITHIN THIRTY DAYS AFTER THE DIRECTOR'S DETERMINATION, THE DEPARTMENT SHALL PUBLISH A NOTICE OF THAT DETERMINATION IN THE ARIZONA ADMINISTRATIVE REGISTER AND ON THE DEPARTMENT'S WEBSITE. WATERS ADDED UNDER THIS SUBSECTION SHALL BE INCORPORATED INTO THE PROTECTED SURFACE WATERS LIST DURING THE NEXT RULEMAKING THAT FOLLOWS THE ADDITION.

Sec. 8. Section 49-222, Arizona Revised Statutes, is amended to read:

49-222. Water quality standards for WOTUS

- A. Standards for the quality of navigable waters WOTUS shall assure water quality, if attainable, which provides for protecting the public health and welfare, and shall enhance the quality of water taking into consideration its use and value for public water supplies, the propagation of fish and wildlife and recreational, agricultural, industrial and other purposes including navigation.
- B. Not later than January 1, 1990, The director shall adopt standards for the quality of all navigable waters which WOTUS THAT establish numeric limitations on the concentrations of each of the toxic pollutants listed by the administrator pursuant to section 307 of the clean water act (33 United States Code section 1317).
- C. In setting numeric standards for the quality of navigable waters WOTUS, the director may consider the effect of local water quality characteristics on the toxicity of specific pollutants and the varying sensitivities of local affected aquatic populations to such pollutants, and the extent to which the natural flow of the stream is intermittent or ephemeral, as a result of which the instream flow consists mostly of treated wastewater effluent, except that such standards shall not, in any event, be inconsistent with the clean water act. In applying such standards the director may establish appropriate mixing zones.
- Sec. 9. Section 49-225, Arizona Revised Statutes, is amended to read:

49-225. Water quality monitoring

A. The director of environmental quality, with the advice and cooperation of the Arizona department of agriculture and the director of water resources when appropriate, shall conduct ongoing monitoring of the waters of the state including the state's navigable waters WOTUS and aquifers to detect the presence of new and existing pollutants, determine compliance with applicable water quality standards, determine the

effectiveness of best management practices, agricultural best management practices and best available demonstrated control technologies, evaluate the effects of pollutants on public health or the environment and determine water quality trends.

- B. The director shall maintain a statewide database of groundwater and soils sampled for pollutants. All agencies shall submit to the director, in a timely manner, the results of any groundwater or soils sampling for pollutants and the results of any groundwater or soils sampling that detect any pollutants.
- C. The director shall establish minimum requirements and schedules for groundwater and soils sampling that will ensure precise and accurate results. The requirements shall be distributed to all agencies that conduct sampling. All sampling conducted shall meet the minimum requirements established pursuant to this subsection.
- Sec. 10. Section 49-231, Arizona Revised Statutes, is amended to read:

49-231. <u>Definitions</u>

In this article, unless the context otherwise requires:

- 1. "Impaired water" means a navigable PROTECTED SURFACE water for which credible scientific data exists that satisfies the requirements of section 49-232, and that, IN THE CASE OF WOTUS, demonstrates that the water should be identified pursuant to 33 United States Code section 1313(d) and the regulations implementing that statute.
- 2. "Surface water quality standard" means a standard adopted for a navigable PROTECTED SURFACE water pursuant to sections SECTION 49-221 and 49-222 and section 303(c) of the clean water act (33 United States Code section 1313(c)) AND, IN THE CASE OF WOTUS, PURSUANT TO SECTION 49-222.
- 3. "TMDL implementation plan" means a written strategy to implement a total maximum daily load that is developed for an impaired water. TMDL implementation plans may rely on any combination of the following components that the department determines will result in achieving and

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1 maintaining compliance with applicable surface water quality standards in 2 the most cost-effective and equitable manner:

- (a) Permit limitations.
- (b) Best management practices.
- (c) Education and outreach efforts.
- (d) Technical assistance.
- (e) Cooperative agreements, voluntary measures and incentive-based programs.
- (f) Load reductions resulting from other legally required programs or activities.
 - (g) Land management programs.
- (h) Pollution prevention planning, waste minimization or pollutant trading agreements.
 - (i) Other measures deemed appropriate by the department.
- 4. "Total maximum daily load" means an estimation of the total amount of a pollutant from all sources that may be added to a water while still allowing the water to achieve and maintain applicable surface water quality standards. Each total maximum daily load shall include allocations for sources that contribute the pollutant to the water. , as required by TOTAL MAXIMUM DAILY LOADS FOR WOTUS SHALL MEET THE REQUIREMENTS OF section 303(d) of the clean water act (33 United States Code section 1313(d)) and regulations implementing that statute to achieve applicable surface water quality standards. TOTAL MAXIMUM DAILY LOADS FOR NON-WOTUS PROTECTED SURFACE WATERS SHALL NOT BE SUBJECT TO REVIEW, APPROVAL OR ENFORCEMENT BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY.
- Sec. 11. Section 49-232, Arizona Revised Statutes, is amended to read:

49-232. <u>Lists of impaired waters: data requirements: rules</u>

A. At least once every five years, the department shall prepare a list of impaired waters for the purpose of complying WOTUS TO COMPLY with section 303(d) of the clean water act (33 United States Code section 1313(d)). The department shall provide public notice and allow for comment

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on a draft list of impaired waters WOTUS prior to its submission to the United States environmental protection agency. The department shall prepare written responses to comments received on the draft list. department shall publish the list of impaired waters WOTUS that it plans to submit initially to the regional administrator and a summary of the responses to comments on the draft list in the Arizona administrative register at least forty-five days before submission of the list to the regional administrator. Publication of the list in the Arizona administrative register is an appealable agency action pursuant to title 41, chapter 6, article 10 that may be appealed by any party that submitted written comments on the draft list. If the department receives a notice of appeal of a listing pursuant to section 41-1092, subsection B 41.1092.03 within forty-five days of AFTER the publication of the list in the Arizona administrative register, the department shall not include the challenged listing in its initial submission to the regional administrator. department may subsequently submit the challenged listing to the regional administrator if the listing is upheld in the director's final administrative decision pursuant to section 41-1092.08, or if the challenge to the listing is withdrawn prior to a final administrative decision.

B. ON OR BEFORE DECEMBER 31, 2022 AND AT LEAST ONCE EVERY FIVE YEARS THEREAFTER, THE DEPARTMENT SHALL PREPARE A LIST OF IMPAIRED NON-WOTUS PROTECTED SURFACE WATERS. THE DEPARTMENT SHALL PROVIDE PUBLIC NOTICE AND OPPORTUNITY TO COMMENT ON A DRAFT LIST OF IMPAIRED NON-WOTUS PROTECTED SURFACE WATERS PREPARED UNDER THIS SUBSECTION. THE DEPARTMENT SHALL PREPARE WRITTEN RESPONSES TO COMMENTS RECEIVED ON THE DRAFT LIST. THE DEPARTMENT SHALL PUBLISH THE LIST OF IMPAIRED NON-WOTUS PROTECTED SURFACE WATERS AND A SUMMARY OF THE RESPONSES TO COMMENTS ON THE DRAFT LIST IN THE ARIZONA ADMINISTRATIVE REGISTER. PUBLICATION OF THE LIST IN THE ARIZONA ADMINISTRATIVE REGISTER IS AN APPEALABLE AGENCY ACTION PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 10 AND MAY BE APPEALED BY ANY PARTY THAT SUBMITTED WRITTEN COMMENTS ON THE DRAFT LIST.

- 8. C. In determining whether a water is impaired, the department shall consider only reasonably current credible and scientifically defensible data that the department has collected or has received from another source. Results of water sampling or other assessments of water quality, including physical or biological health, shall be considered credible and scientifically defensible data only if the department has determined all of the following:
- 1. Appropriate quality assurance and quality control procedures were followed and documented in collecting and analyzing the data.
- 2. The samples or analyses are representative of water quality conditions at the time the data was collected.
- 3. The data consists of an adequate number of samples based on the nature of the water in question and the parameters being analyzed.
- 4. The method of sampling and analysis, including analytical, statistical and modeling methods, is generally accepted and validated in the scientific community as appropriate for use in assessing the condition of the water.
- C. D. The department shall adopt by rule the methodology to be used in identifying waters as impaired. The rules shall specify all of the following:
- 1. Minimum data requirements and quality assurance and quality control requirements that are consistent with subsection 8 C of this section and that must be satisfied in order for the data to serve as the basis for listing and delisting decisions.
- 2. Appropriate sampling, analytical and scientific techniques that may be used in assessing whether a water is impaired.
- 3. Any statistical or modeling techniques that the department uses to assess or interpret data.
- 4. Criteria for including and removing waters from the list of impaired waters, including any implementation procedures developed pursuant to subsection \digamma G of this section. The criteria for removing a water from

the list of impaired waters shall not be any more stringent than the criteria for adding a water to that list.

- D. E. In assessing whether a water is impaired, the department shall consider the data available in light of the nature of the water in question, including whether the water is an ephemeral water. A water in which pollutant loadings from naturally occurring conditions alone are sufficient to cause a violation of applicable surface water quality standards shall not be listed as impaired.
- E. F. If the department has adopted a numeric surface water quality standard for a pollutant and that standard is not being exceeded in a water, the department shall not list the water as impaired based on a conclusion that the pollutant causes a violation of a narrative or biological standard unless:
- 1. The department has determined that the numeric standard is insufficient to protect water quality.
- 2. The department has identified specific reasons that are appropriate for the water in question, that are based on generally accepted scientific principles and that support the department's determination.
- F. G. Before listing a navigable water as impaired based on a violation of a narrative or biological surface water quality standard and after providing an opportunity for public notice and comment, the department shall adopt implementation procedures that specifically identify the objective basis for determining that a violation of the narrative or biological criterion exists. A total maximum daily load designed to achieve compliance with a narrative or biological surface water quality standard shall not be adopted until the implementation procedure for the narrative or biological surface water quality standard has been adopted.
- 6. H. On request, the department shall make available to the public data used to support the listing of a water as impaired and may charge a reasonable fee to persons requesting the data.
- H. I. By January 1, 2002, the department shall review the list of waters identified as impaired as of January 1, 2000 to determine whether

the data that supports the listing of those waters complies with this section. If the data that supports a listing does not comply with this section, the listed water shall not be included on future lists submitted to the United States environmental protection agency pursuant to 33 United States Code section 1313(d) unless in the interim data that satisfies the requirements of this section has been collected or received by the department.

the list using the process described in section 49-232, subsection A OR B OF THIS SECTION outside of the normal listing cycle if it collects or receives credible and scientifically defensible data that satisfies the requirements of this section and that demonstrates that the current quality of the water is such that it should be removed from or added to the list. A listed water may no longer warrant classification as impaired or an unlisted water may be identified as impaired if the applicable surface water quality standards, implementation procedures or designated uses have changed or if there is a change in water quality.

K. THE DIRECTOR SHALL APPLY THE RULES ADOPTED PURSUANT TO SUBSECTION D OF THIS SECTION FOR IDENTIFICATION OF IMPAIRED WATERS TO NON-WOTUS PROTECTED SURFACE WATERS UNTIL SPECIFICALLY CHANGED BY RULE. THE DIRECTOR SHALL AMEND RULES TO UPDATE THE IMPAIRED WATERS IDENTIFICATION RULES WITHIN ONE YEAR AFTER ADOPTING SURFACE WATER QUALITY STANDARDS FOR NON-WOTUS PROTECTED SURFACE WATERS PURSUANT TO SECTION 49-221, SUBSECTION A, PARAGRAPH 2.

Sec. 12. Section 49-233, Arizona Revised Statutes, is amended to read:

49-233. <u>Priority ranking and schedule</u>

A. Each list developed by the department pursuant to section 49-232 shall contain a priority ranking of navigable waters WOTUS identified as impaired and for which total maximum daily loads are required pursuant to section 49-234 and a schedule for the development of all required total maximum daily loads.

- B. In the first list submitted to the United States environmental protection agency after the effective date of this article JULY 18, 2000, the schedule shall be sufficient to ensure that all required total maximum daily loads will be developed within fifteen years of AFTER the date the list is approved by the environmental protection agency. Total maximum daily loads that are required to be developed for mavigable waters WOTUS that are included for the first time on subsequent lists shall be developed within fifteen years of the initial inclusion of the water on the list.
- C. As part of the rule making RULEMAKING prescribed by section 49-232, subsection C D, the department shall identify the factors that it will use to prioritize navigable waters WOTUS that require development of total maximum daily loads. At a minimum and to the extent relevant data is available, the department shall consider the following factors in prioritizing navigable waters WOTUS for development of total maximum daily loads:
 - 1. The designated uses of the navigable water WOTUS.
- 2. The type and extent of risk from the impairment to human health or aquatic life.
 - 3. The degree of public interest and support, or its lack.
- 4. The nature of the navigable water WOTUS, including whether it is an ephemeral, intermittent or effluent-dependent water.
 - 5. The pollutants causing the impairment.
- 6. The severity, magnitude and duration of the violation of the applicable surface water quality standard.
- 7. The seasonal variation caused by natural events such as storms or weather patterns.
 - 8. Existing treatment levels and management practices.
- 9. The availability of effective and economically feasible treatment techniques, management practices or other pollutant loading reduction measures.
 - 10. The recreational and economic importance of the water.

- 1 11. The extent to which the impairment is caused by discharges or activities that have ceased.
 - 12. The extent to which natural sources contribute to the impairment.
 - 13. Whether the water is accorded special protection under federal or state water quality law.
 - 14. Whether action that is taken or that is likely to be taken under other programs, including voluntary programs, is likely to make significant progress toward achieving applicable standards even if a total maximum daily load is not developed.
 - 15. The time expected to be required to achieve compliance with applicable surface water quality standards.
 - 16. The availability of documented, effective analytical tools for developing a total maximum daily load for the water with reasonable accuracy.
 - 17. Department resources and programmatic needs.
 - Sec. 13. Section 49-234, Arizona Revised Statutes, is amended to read:

49-234. Total maximum daily loads; implementation plans

A. The department shall develop total maximum daily loads for those navigable—WOTUS listed as impaired pursuant to this article and for which total maximum daily loads are required to be adopted pursuant to 33 United States Code section 1313(d) and the regulations implementing that statute OR THAT THE DEPARTMENT OTHERWISE DETERMINES ARE REQUIRED TO RESTORE AN IMPAIRED WATER. The department may estimate total maximum daily loads for navigable WOTUS not listed as impaired pursuant to this article, for the purposes of developing TO DEVELOP information to satisfy the requirements of 33 United States Code section 1313(d)(3), only after it has developed total maximum daily loads for all navigable waters WOTUS identified as impaired pursuant to this article or if necessary to support permitting of new point source discharges.

- B. In developing total maximum daily loads, the department shall use only statistical and modeling techniques that are properly validated and broadly accepted by the scientific community. The modeling technique may vary based on the type of water and the quantity and quality of available data that meets the quality assurance and quality control requirements of section 49-232. The department may establish the statistical and modeling techniques in rules adopted pursuant to section 49-232, subsection \bigcirc D.
 - C. Each total maximum daily load shall:
- 1. Be based on data and methodologies that comply with section 49-232.
- 2. Be established at a level that will achieve and maintain compliance with applicable surface water quality standards.
- 3. Include a reasonable margin of safety that takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality. The margin of safety shall not be used as a substitute for adequate data when developing the total maximum daily load.
- 4. Account for seasonal variations that may include setting total maximum daily loads that apply on a seasonal basis.
 - D. For each impaired water. EITHER OF THE FOLLOWING APPLIES:
- 1. FOR EACH IMPAIRED WOTUS, the department shall prepare a draft estimate of the total amount of each pollutant that causes the impairment from all sources and that may be added to the navigable water WOTUS while still allowing the navigable water WOTUS to achieve and maintain applicable surface water quality standards. In addition, the department shall determine draft allocations among the contributing sources that are sufficient to achieve the total loadings. The department shall provide public notice and allow for comment on each draft estimate and draft allocation and shall prepare written responses to comments received on the draft estimates and draft allocations. The department shall publish the determinations of total pollutant loadings that will not result in impairment and the draft allocations among the contributing sources that are sufficient to achieve the total loading that it intends to submit

- initially to the regional administrator, along with a summary of the responses to comments on the estimated loadings and allocations, in the Arizona administrative register at least forty-five days before submission of the loadings and allocations to the regional administrator. Notwithstanding this subsection, draft allocations shall be submitted to the regional administrator only if that submission is required by the rules that implement 33 United States Code section 1313(d).
- 2. FOR NON-WOTUS IMPAIRED WATERS, THE DEPARTMENT MAY PREPARE A DRAFT ESTIMATE OF THE TOTAL AMOUNT OF EACH POLLUTANT THAT CAUSES THE IMPAIRMENT FROM ALL SOURCES AND THAT MAY BE ADDED TO THE WATER WHILE STILL ALLOWING THE WATER TO ACHIEVE AND MAINTAIN APPLICABLE SURFACE WATER QUALITY STANDARDS. IF THE DEPARTMENT CHOOSES TO PREPARE A DRAFT ESTIMATE FOR A NON-WOTUS IMPAIRED WATER, THE DEPARTMENT SHALL DO ALL OF THE FOLLOWING:
- (a) DETERMINE DRAFT ALLOCATIONS AMONG CONTRIBUTING SOURCES THAT ARE SUFFICIENT TO ACHIEVE TOTAL LOADINGS.
- (b) PROVIDE PUBLIC NOTICE AND ALLOW FOR COMMENT ON THE DRAFT ESTIMATES AND DRAFT ALLOCATIONS.
- (c) PREPARE WRITTEN RESPONSES TO COMMENTS RECEIVED ON THE DRAFT ESTIMATES AND DRAFT ALLOCATIONS.
- (d) PUBLISH THE DETERMINATIONS OF TOTAL POLLUTANT LOADINGS THAT WILL NOT RESULT IN IMPAIRMENT AND THE DRAFT ALLOCATIONS AMONG THE CONTRIBUTING SOURCES THAT ARE SUFFICIENT TO ACHIEVE THE TOTAL LOADING, ALONG WITH A SUMMARY OF THE RESPONSES TO COMMENTS ON THE ESTIMATED LOADINGS AND ALLOCATIONS. IN THE ARIZONA ADMINISTRATIVE REGISTER.
- E. Publication of the loadings and allocations in the Arizona administrative register is an appealable agency action pursuant to title 41, chapter 6, article 10 that may be appealed by any party that submitted written comments on the estimated loadings and allocations. IN THE CASE OF WOTUS, if the department receives a notice of appeal of a loading and allocation pursuant to section 41-1092.03 within forty-five days of AFTER the publication of the loading and allocations in the Arizona administrative register, the department shall not submit the challenged

loading and allocations to the regional administrator until either the challenge to the loading and allocation is withdrawn or the director has made a final administrative decision pursuant to section 41-1092.08.

- F. The department shall make reasonable and equitable allocations among sources when developing total maximum daily loads. At a minimum, the department shall consider the following factors in making allocations:
- 1. The environmental, economic and technological feasibility of achieving the allocation.
 - 2. The cost and benefit associated with achieving the allocation.
- 3. Any pollutant loading reductions that are reasonably expected to be achieved as a result of other legally required actions or voluntary measures.
- G. For each total maximum daily load, the department shall establish a TMDL implementation plan that explains how the allocations and any reductions in existing pollutant loadings will be achieved. Any reductions in loadings from nonpoint sources shall be achieved voluntarily. The department shall provide for public notice and comment on each TMDL implementation plan. Any sampling or monitoring components of a TMDL implementation plan shall comply with section 49-232.
- H. Each TMDL implementation plan shall provide the time frame in which compliance with applicable surface water quality standards is expected to be achieved. The plan may include a phased process with interim targets for load reductions. Longer time frames are appropriate in situations involving multiple dischargers, technical, legal or economic barriers to achieving necessary load reductions, scientific uncertainty regarding data quality or modeling, significant loading from natural sources or significant loading resulting from discharges or activities that have already ceased.
- I. For navigable IMPAIRED waters that are impaired due in part to historical factors that are difficult to address, including contaminated sediments, the department shall consider those historical factors in determining allocations for existing point source discharges of the

pollutant or pollutants that cause the impairment. In developing total maximum daily loads for those navigable waters, the department shall use a phased approach in which expected long-term loading reductions from the historical sources are considered in establishing short-term allocations for the point sources. While total maximum daily loads and TMDL implementation plans are being completed, any permits issued for the point sources are deemed consistent with this article if the permits require reasonable reductions in the discharges of the pollutants causing the impairment and are not required to include additional reductions if those reductions would not significantly contribute to attainment of surface water quality standards.

J. After a total maximum daily load and a TMDL implementation plan have been adopted for a navigable PROTECTED SURFACE water, the department shall review the status of the navigable PROTECTED SURFACE water at least once every five years to determine if compliance with applicable surface water quality standards has been achieved. If compliance with applicable surface water quality standards has not been achieved, the department shall evaluate whether modification of the total maximum daily load or TMDL implementation plan is required.

Sec. 14. Section 49-242, Arizona Revised Statutes, is amended to read:

49-242. <u>Procedural requirements for individual permits; annual</u> registration of permittees; fee

- A. The director shall prescribe by rule requirements for issuing, denying, suspending or modifying individual permits, including requirements for submitting notices, permit applications and any additional information necessary to determine whether an individual permit should be issued, and shall prescribe conditions and requirements for individual permits.
- B. Each owner of an injection well, a land treatment facility, a dry well, an on-site wastewater treatment facility with a capacity of more than three thousand gallons per day, a recharge facility or a facility that discharges to navigable PROTECTED SURFACE waters to whom an individual or

area-wide permit is issued shall register the permit with the director each year and pay an annual registration fee for each permit based on the total daily discharge of pollutants pursuant to subsection E of this section.

- C. Each owner of a surface impoundment, a facility that adds a pollutant to a salt dome formation, salt bed formation, underground cave or mine, a mine tailings pile or pond, a mine leaching operation, a sewage or sludge pond or a wastewater treatment facility to whom an individual or area-wide permit is issued shall register the permit with the director each year and pay an annual registration fee for each permit based on the total daily influent of pollutants pursuant to subsection E of this section.
- D. Pending the issuance of individual or area-wide aquifer protection permits, each owner of a facility that is prescribed in subsection B or C of this section that is operating on September 27, 1990 pursuant to the filing of a notice of disposal or a groundwater quality protection permit issued under title 36 shall register the notice of disposal or the permit with the director each year and shall pay an annual registration fee for each notice of disposal or permit based on the total daily influent or discharge of pollutants pursuant to subsection E of this section.
- E. Only for a one-time rule making ONETIME RULEMAKING after the effective date of this amendment to this section JULY 29, 2010, the director shall establish by rule an annual registration fee for facilities prescribed by subsections B, C and D of this section. The fee shall be measured in part by the amount of discharge or influent per day from the facility. After the one-time rule making ONETIME RULEMAKING, the director shall not increase those fees by rule without specific statutory authority for the increase.
- F. For a site with more than one permit subject to the requirements of this section, the owner or operator of the facility at that site shall pay the annual registration fee prescribed pursuant to subsection E of this section based on the permit that covers the greatest gallons of discharge

or influent per day plus one-half of the annual registration fee for gallons of discharge or influent for each additional permit.

- G. The director shall prescribe the procedures to register the notice of disposal or permit and collect the fee under this section. The director shall deposit, pursuant to sections 35-146 and 35-147, all monies collected under this section in the water quality fee fund established by section 49-210 and may authorize expenditures from the fund to pay the reasonable and necessary costs of administering the registration program.
- Sec. 15. Section 49-245.01, Arizona Revised Statutes, is amended to read:

49-245.01. Storm water general permit

- A. A general permit is issued for facilities used solely for the management of storm water and that are regulated by the clean water act OR ARTICLE 3.1 OF THIS CHAPTER, including catchments, impoundments and sumps, provided the following conditions are met:
- 1. The owner or operator of the facility has obtained a national pollutant discharge elimination system permit issued pursuant to the clean water act OR AN ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT UNDER ARTICLE 3.1 OF THIS CHAPTER for any storm water discharges at the facility, or that the facility has applied, and not been denied coverage, for this type of permit THESE TYPES OF PERMITS for any storm water discharges at the facility.
- 2. The owner or operator notifies the director that the facility has met the requirements of paragraph 1 of this subsection.
- 3. The owner or operator of the facility has in place any required storm water pollution prevention plan.
- B. If the director determines that discharges of storm water from a facility or facilities covered by this general permit are causing a violation of aquifer water quality standards at the applicable point of compliance, the director may revoke the general permit of the facility or facilities or may require that an individual permit be obtained pursuant to section 49-243. If the director determines that discharges of storm water

from a facility or facilities covered by this general permit, with reasonable probability, may cause a violation of aquifer water quality standards at the applicable point of compliance, the director may require a facility or facilities covered by the general permit to obtain an individual permit pursuant to section 49-243.

Sec. 16. Section 49-245.02, Arizona Revised Statutes, is amended to read:

49-245.02. <u>General permit for certain discharges associated</u> with man-made bodies of water

- A. A general permit is issued for the following discharges:
- 1. Disposal in vadose zone injection wells of storm water mixed with reclaimed wastewater or groundwater, or both, from man-made bodies of water associated with golf courses, parks and residential common areas, provided that:
- (a) The vadose zone injection wells are registered pursuant to section 49-332.
 - (b) The discharge occurs only in response to storm events.
- (c) With the exception of the aquifer water quality standard for microbiological contaminants, the reclaimed wastewater meets aquifer water quality standards before being placed into the body of water, as documented by a water quality analysis submitted with the vadose zone injection well registration. The owner or operator of the vadose zone injection wells shall demonstrate continued compliance with this subdivision by submitting to the department the results of any monitoring required as part of an aquifer protection permit or wastewater reuse permit for any facility providing reclaimed wastewater to the man-made body of water. For purposes of this general permit, monitoring shall be conducted at least semiannually. The monitoring results shall be submitted to the department semiannually beginning six months after registration made PURSUANT to subdivision (a) of this paragraph.
- (d) The vadose zone injection wells shall be located at least one hundred feet from any water supply well.

- (e) A vertical separation of forty feet shall be provided between the bottom of the vadose zone injection wells and the water table to allow the aquifer water quality standard for microbiological contaminants to be met in the uppermost aquifer.
- (f) The vadose zone injection wells are not used for any other purpose.
- 2. Subsurface discharges from man-made bodies of water associated with golf courses, parks and residential common areas, provided that:
- (a) The body of water contains only groundwater, storm water or reclaimed wastewater, or a combination thereof.
- (b) The reclaimed wastewater complies with the terms of a wastewater reuse permit before being placed into the body of water.
- (c) The body of water is lined and maintained to achieve a hydraulic conductivity of 10-7 cm/sec or less.
- 3. Point source discharges to waters of the United States PROTECTED SURFACE WATERS from man-made bodies of water associated with golf courses, parks and residential common areas that contain only groundwater, storm water or reclaimed wastewater, or a combination thereof, provided that:
- (a) The discharges are subject to a valid national pollutant discharge elimination system permit OR AN ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT UNDER ARTICLE 3.1 OF THIS CHAPTER.
 - (b) The discharges occur only in response to storm events.
- (c) With the exception of the aquifer water quality standard for microbiological contaminants, the reclaimed wastewater meets aquifer water quality standards before being placed into the body of water.
- B. If the director determines that discharges from a facility covered by this general permit are causing a violation of aquifer water quality standards, the director may revoke the general permit of the facility or may require that an individual permit be obtained pursuant to section 49-243. If the director determines that discharges from a facility covered by this general permit may cause, with reasonable probability, a

violation of aquifer water quality standards, the director may require the facility to obtain an individual permit pursuant to section 49-243

Sec. 17. Section 49-250, Arizona Revised Statutes, is amended to read:

49-250. Exemptions

- A. The director may, by rule, MAY exempt specifically described classes or categories of facilities from the aquifer protection permit requirements of this article on a finding either that there is no reasonable probability of degradation of the aquifer or that aquifer water quality will be maintained and protected because the discharges from the facilities are regulated under other federal or state programs that provide the same or greater aquifer water quality protection as provided by this article.
- B. The following are exempt from the aquifer protection permit requirement of this article:
 - 1. Household and domestic activities.
- 2. Household gardening, lawn watering, lawn care, landscape maintenance and related activities.
- 3. The noncommercial use of consumer products generally available to and used by the public.
 - 4. Ponds used for watering livestock and wildlife.
- 5. Mining overburden returned to the excavation site including any common material that has been excavated and removed from the excavation site and has not been subjected to any chemical or leaching agent or process of any kind.
- 6. Facilities used solely for surface transportation or storage of groundwater, surface water for beneficial use or reclaimed water that is regulated pursuant to section 49-203, subsection A, paragraph 6-7 for beneficial use.
 - 7. Discharge to a community sewer system.
- 8. Facilities that are required to obtain a permit for the direct reuse of reclaimed water.

- 9. Leachate resulting from the direct, natural infiltration of precipitation through undisturbed regolith or bedrock if pollutants are not added to the leachate as a result of any material or activity placed or conducted by man on the ground surface.
- 10. Surface impoundments used solely to contain storm runoff, except for surface impoundments regulated by the federal clean water act OR ARTICLE 3.1 OF THIS CHAPTER.
- 11. Closed facilities. However, if the facility ever resumes operation the facility shall obtain an aquifer protection permit and the facility shall be treated as a new facility for purposes of section 49-243.
- 12. Facilities for the storage of water pursuant to title 45, chapter 3.1 unless reclaimed water is added.
- 13. Facilities using central Arizona project water for underground storage and recovery projects under title 45, chapter 3.1, article 6.
- 14. Water storage at a groundwater saving facility that has been permitted under title 45, chapter 3.1.
- 15. Application of water from any source, including groundwater, surface water or wastewater, to grow agricultural crops or for landscaping purposes, except as provided in section 49-247.
- 16. Discharges to a facility that is exempt pursuant to paragraph 6 OF THIS SUBSECTION if those discharges are regulated pursuant to 33 United States Code section 1342 OR ARTICLE 3.1 OF THIS CHAPTER.
- 17. Solid waste and special waste facilities when IF rules addressing aquifer protection are adopted by the director pursuant to section 49-761 or 49-855 and those facilities obtain plan approval pursuant to those rules. This exemption shall only apply ONLY if the director determines that aquifer water quality standards will be maintained and protected because the discharges from those facilities are regulated under rules adopted pursuant to section 49-761 or 49-855 that provide aquifer water quality protection that is equal to or greater than aquifer water quality protection provided pursuant to this article.
 - 18. Facilities used in:

- (a) Corrective actions taken pursuant to chapter 6, article 1 of this title in response to a release of a regulated substance as defined in section 49-1001 except for those off-site facilities that receive for treatment or disposal materials that are contaminated with a regulated substance and that are received as part of a corrective action.
- (b) Response or remedial actions undertaken pursuant to article 5 of this chapter or pursuant to CERCLA.
- (c) Corrective actions taken pursuant to chapter 5, article 1 of this title or the resource conservation and recovery act of 1976, as amended (42 United States Code sections 6901 through 6992).
- (d) Other remedial actions that have been reviewed and approved by the appropriate governmental authority and taken pursuant to applicable federal or state laws.
- 19. Municipal solid waste landfills as defined in section 49-701 that have solid waste facility plan approval pursuant to section 49-762.
 - 20. Storage, treatment or disposal of inert material.
- 21. Structures that are designed and constructed not to discharge and that are built on an impermeable barrier that can be visually inspected for leakage.
- 22. Pipelines and tanks designed, constructed, operated and regularly maintained so as not to discharge.
- 23. Surface impoundments and dry wells that are used to contain storm water in combination with discharges from one or more of the following activities or sources:
 - (a) Firefighting system testing and maintenance.
 - (b) Potable water sources, including waterline flushings.
 - (c) Irrigation drainage and lawn watering.
 - (d) Routine external building wash down without detergents.
- (e) Pavement wash water where IF no spills or leaks of toxic or hazardous material have occurred unless all spilled material has first been removed and no detergents have been used.

- (f) Air conditioning, compressor and steam equipment condensate that has not contacted a hazardous or toxic material.
 - (g) Foundation or footing drains in which flows are not contaminated with process materials.
 - (h) Occupational safety and health administration or mining safety and health administration safety equipment.
 - 24. Industrial wastewater treatment facilities designed, constructed and operated as required by section 49-243, subsection B, paragraph 1 and using a treatment system approved by the director to treat wastewater to meet aquifer water quality standards prior to discharge, if that water is stored at a groundwater storage facility pursuant to title 45, chapter 3.1.
 - 25. Any point source discharge caused by a storm event and authorized in a permit issued pursuant to section 402 of the clean water act OR AN ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT UNDER ARTICLE 3.1 OF THIS CHAPTER.
 - 26. Except for class V wells, any underground injection well covered by a permit issued under article 3.3 of this chapter or under 42 United State STATES Code section 300h-1(c). This exemption does not apply until the date that the United States environmental protection agency approves the department's underground injection control permit program established pursuant to article 3.3 of this chapter.
 - Sec. 18. Section 49-255, Arizona Revised Statutes, is amended to read:

49-255. <u>Definitions</u>

In this article, unless the context otherwise requires:

- 1. "AZPDES" means the Arizona pollutant discharge elimination system program as adopted under section 402(b) of the clean water act FOR WOTUS AND UNDER SECTION 49-255.04 FOR NON-WOTUS PROTECTED SURFACE WATER.
 - 2. "Discharge":
- (a) Means any addition of any pollutant to navigable PROTECTED SURFACE waters from any point source.

- (b) DOES NOT INCLUDE THE ADDITION OF DREDGED MATERIAL OR FILL MATERIAL TO NON-WOTUS PROTECTED SURFACE WATERS.
 - 3. "Indirect discharge" means EITHER OF THE FOLLOWING:
- (a) The introduction of pollutants into a publicly owned treatment works from any nondomestic source that is regulated under section 307(b), (c) or (d) of the clean water act.
- (b) FOR A PUBLICLY OWNED TREATMENT WORKS THAT DISCHARGES TO NON-WOTUS PROTECTED SURFACE WATERS, THE INTRODUCTION OF POLLUTANTS FROM ANY NONDOMESTIC SOURCE THAT WOULD BE REGULATED UNDER SECTION 307(b), (c) OR (d) OF THE CLEAN WATER ACT IF THE PUBLICLY OWNED TREATMENT WORKS WERE TO DISCHARGE TO A WOTUS.
 - 4. "Industrial user" means a source of indirect discharge.
- 5. "Publicly owned treatment works" means a treatment works owned by this state or a municipality of this state as defined in section 502(4) of the clean water act OR THAT DISCHARGES TO A PROTECTED SURFACE WATER.
 - 6. "Sewage sludge":
- (a) Means solid, semisolid or liquid residue that is generated during the treatment of domestic sewage in a treatment works.
- (b) Includes domestic septage, scum or solids that are removed in primary, secondary or advanced wastewater treatment processes, and any material derived from sewage sludge.
- (c) Does not include ash that is generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings that are generated during preliminary treatment of domestic sewage in a treatment works.
- 7. "Treatment works" means any devices and systems that are used in the storage, treatment, recycling and reclamation of municipal sewage or industrial wastes of a liquid nature, the elements essential to providing a reliable recycled supply such as standby treatment units and clear well facilities, and any works that will be an integral part of the treatment process or that are used for residues resulting from that treatment. For the purposes of the programs required by sections 49-255.02 and 49-255.03,

treatment works include intercepting sewers, outfall sewers, sewage collection systems, pumping, power and other equipment and any appurtenances, extensions, improvements, remodeling, additions and alterations.

8. "Upset":

- (a) Means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit discharge limitations because of factors that are beyond the reasonable control of the permittee.
- (b) Does not include noncompliance to the extent that it is caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance or careless or improper operation.
- Sec. 19. Section 49-255.01, Arizona Revised Statutes, is amended to read:

49-255.01. Arizona pollutant discharge elimination system program: rules and standards: affirmative defense; fees; general permit; exemption from termination

- A. A person shall not discharge except under either of the following conditions:
- 1. In conformance with a permit that is issued or authorized under this article OR RULES AUTHORIZED UNDER SECTION 49-203, SUBSECTION A, PARAGRAPH 2.
- 2. Pursuant to a permit that is issued or authorized by the United States environmental protection agency until a permit that is issued or authorized under this article takes effect.
- B. The director shall adopt rules to establish an AZPDES permit program FOR DISCHARGES TO WOTUS consistent with the requirements of sections 402(b) and 402(p) of the clean water act. This program shall include requirements to ensure compliance with section 307 and requirements for the control of discharges consistent with sections 318 and 405(a) of

the clean water act. The director shall not adopt any requirement FOR WOTUS that is more stringent than or conflicts with any requirement of the clean water act. THE DIRECTOR SHALL NOT ADOPT ANY REQUIREMENT THAT CONFLICTS WITH ANY REQUIREMENT OF THE CLEAN WATER ACT. The director may adopt federal rules pursuant to section 41-1028 or may adopt rules to reflect local environmental conditions to the extent that the rules are consistent with and mo NOT more stringent than the clean water act and this article.

- C. The rules adopted by the director UNDER SUBSECTION B OF THIS SECTION shall provide for:
- 1. Issuing, authorizing, denying, modifying, suspending or revoking individual or general permits.
- 2. Establishment of permit conditions, discharge limitations and standards of performance as prescribed by section 49-203, subsection A, paragraph 7, 8 including case by case CASE-BY-CASE effluent limitations that are developed in a manner consistent with 40 Code of Federal Regulations section 125.3(c).
 - 3. Modifications and variances as allowed by the clean water act.
- 4. Other provisions necessary for maintaining state program authority under section 402(b) of the clean water act.
- D. This article does not affect the validity of any existing rules that are adopted by the director and that are equivalent to and consistent with the national pollutant discharge elimination system program authorized under section 402 of the clean water act until new rules for AZPDES discharges are adopted pursuant to this article.
- E. An upset constitutes an affirmative defense to any administrative, civil or criminal enforcement action brought for noncompliance with technology-based permit discharge limitations if the permittee complies with all of the following:
- 1. The permittee demonstrates through properly signed contemporaneous operating logs or other relevant evidence that:

- (a) An upset occurred and that the permittee can identify the specific cause of the upset.
- (b) The permitted facility was being properly operated at the time of the upset.
- (c) If the upset causes the discharge to exceed any discharge limitation in the permit, the permittee submitted notice to the department within twenty-four hours $\frac{\partial}{\partial t}$ AFTER the upset.
- (d) The permittee has taken appropriate remedial measures including all reasonable steps to minimize or prevent any discharge or sewage sludge use or disposal that is in violation of the permit and that has a reasonable likelihood of adversely affecting human health or the environment.
- 2. In any administrative, civil or criminal enforcement action, the permittee shall prove, by a preponderance of the evidence, the occurrence of an upset condition.
- F. Compliance with a permit issued pursuant to this article shall be deemed compliance with both of the following:
- 1. All requirements in this article or rules adopted pursuant to this article relating to state implementation of sections 301, 302, 306 and 307 of the clean water act, except for any standard that is imposed under section 307 of the clean water act for a toxic pollutant that is injurious to human health.
- 2. Limitations for pollutants in navigable waters WOTUS adopted pursuant to sections 49-221 and 49-222, if the discharge of the pollutant is specifically limited in a permit issued pursuant to this article or the pollutant was specifically identified as present or potentially present in facility discharges during the application process for the permit.
- G. Notwithstanding section 49-203, subsection D, permits that are issued under this article shall not be combined with permits issued under article 3 of this chapter.
- H. The decision of the director to issue or modify a permit takes effect on issuance if there were no changes requested in comments that were

submitted on the draft permit unless a later effective date is specified in the decision. In all other cases, the decision of the director to issue, deny, modify, suspend or revoke a permit takes effect thirty days after the decision is served on the permit applicant, unless either of the following applies:

- 1. Within the thirty day THIRTY-DAY period, an appeal is filed with the water quality appeals board pursuant to section 49-323.
 - 2. A later effective date is specified in the decision.
- I. In addition to other reservations of rights provided by this chapter. , nothing in This article shall DOES NOT impair or affect rights or the exercise of rights to water claimed, recognized, permitted, certificated, adjudicated or decreed pursuant to state or other law.
- J. Only for a one-time rule making ONETIME RULEMAKING after July 29, 2010, the director shall establish by rule fees, including maximum fees, for processing, issuing and denying an application for a permit pursuant to this section. After the one-time rule making ONETIME RULEMAKING, the director shall not increase those fees by rule without specific statutory authority for the increase. Monies collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.
- K. Any permit conditions concerning threatened or endangered species shall be limited to those required by the endangered species act.
- L. When developing a general permit for discharges of storm water from construction activity, the director shall provide for reduced control measures at sites that retain storm water in a manner that eliminates discharges from the site, except for the occurrence of an extreme event. Reduced control measures shall be available if all of the following conditions are met:
- 1. The nearest downstream receiving water is ephemeral and the construction site is a sufficient distance from a water warranting additional protection as described in the general permit.

- 2. The construction activity occurs on a site designed so that all storm water generated by disturbed areas of the site exclusive of public rights-of-way is directed to one or more retention basins that are designed to retain the runoff from an extreme event. For the purposes of this subsection, "extreme event" means a rainfall event that meets or exceeds the local one hundred-year, two-hour storm event as calculated by an Arizona registered professional engineer using industry practices.
- 3. The owner or operator complies with good housekeeping measures included in the general permit.
- 4. The owner or operator maintains the capacity of the retention basins.
- 5. Construction conforms to the standards prescribed by this section.
- M. If the director commences proceedings for the renewal of a general permit issued pursuant to this article, the existing general permit shall not expire and coverage may continue to be obtained by new dischargers until the proceedings have resulted in a final determination by the director. If the proceedings result in a decision not to renew the general permit, the existing general permit shall continue in effect until the last day for filing for review of the decision of the director not to renew the permit or until any later date that is fixed by court order.
 - N. This program is exempt from section 41-3102.
- Sec. 20. Section 49-255.02, Arizona Revised Statutes, is amended to read:

49-255.02. Pretreatment program; rules and standards

A. The director shall adopt rules to establish a pretreatment program that is consistent with the requirements of sections 307, 308 and 402 of the clean water act. The director shall not adopt any requirement that is more stringent than or conflicts with any requirements of the clean water act, EXCEPT THE DIRECTOR SHALL APPLY THE PRETREATMENT PROGRAM TO PUBLICLY OWNED TREATMENT WORKS THAT DISCHARGE TO A NON-WOTUS PROTECTED SURFACE WATER.

- B. The rules adopted by the director shall provide for all of the following:
- 1. Development or modification of local pretreatment programs by the owners of publicly owned treatment works that discharge or as otherwise required under the clean water act or this article to prevent the use or disposal of sewage sludge produced by a publicly owned treatment works in violation of section 405 of the clean water act or requirements established pursuant to section 49-255.03, subsection A.
- 2. Approval by the director of new or modified local pretreatment programs or site specific modifications to pretreatment standards.
 - 3. Oversight by the director of local program implementation.
- C. The rules adopted by the director shall provide for the department to ensure that any industrial user of any publicly owned treatment works will comply with the requirements of sections 307 and 308 of the clean water act.
- Sec. 21. Section 49-255.03, Arizona Revised Statutes, is amended to read:

49-255.03. Sewage sludge program; rules and requirements

- A. The director shall adopt rules to establish a sewage sludge program that is consistent with the requirements of sections 402 and 405 of the clean water act. EXCEPT AS OTHERWISE REQUIRED BY THIS ARTICLE, the director shall not adopt any requirement that is more stringent than or conflicts with any requirements of the clean water act. THE DIRECTOR SHALL NOT ADOPT ANY REQUIREMENT THAT CONFLICTS WITH ANY REQUIREMENT OF THE CLEAN WATER ACT.
- B. The rules adopted by the director shall provide for the regulation of all sewage sludge use or disposal practices used in this state.
- Sec. 22. Title 49, chapter 2, article 3.1, Arizona Revised Statutes, is amended by adding sections 49-255.04 and 49-255.05, to read:
- 31 49-255.04. <u>Special provisions for discharges to non-WOTUS</u>
 32 protected surface waters

- A. PERMITS AND CONDITIONS OF PERMITS FOR DISCHARGES TO NON-WOTUS PROTECTED SURFACE WATERS SHALL NOT IMPLEMENT ANY SECTIONS OF THE CLEAN WATER ACT, INCLUDING SECTIONS 301, 302, 306, 307, 308, 312, 318 AND 405, AND SHALL NOT BE SUBJECT TO REVIEW, APPROVAL OR ENFORCEMENT BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY.
- B. THE DIRECTOR SHALL APPLY THE RULES ESTABLISHED PURSUANT TO SECTIONS 49-255.01, 49-255.02 AND 49-255.03 TO NON-WOTUS PROTECTED SURFACE WATERS UNTIL THE DIRECTOR ADOPTS RULES FOR DISCHARGES TO NON-WOTUS PROTECTED SURFACE WATERS, EXCEPT THE DIRECTOR IS NOT REQUIRED TO FOLLOW ANY PROVISIONS RELATED TO UNITED STATES ENVIRONMENTAL PROTECTION AGENCY REVIEW, APPROVAL OR INVOLVEMENT IN PERMIT REVIEW OR APPROVAL. THE DIRECTOR SHALL NOT ADOPT OR APPLY RULES REGARDING THE FOLLOWING DISCHARGES TO NON-WOTUS PROTECTED SURFACE WATERS:
- 1. EXCEPT AS APPLIED TO DISCHARGES FROM PUBLICLY OWNED TREATMENT WORKS, REQUIREMENTS SPECIFIC TO NEW SOURCES OR NEW DISCHARGERS UNDER THE CLEAN WATER ACT.
- 2. EXCEPT AS APPLIED TO DISCHARGES FROM PUBLICLY OWNED TREATMENT WORKS, TECHNOLOGY-BASED EFFLUENT LIMITATIONS, STANDARDS OR CONTROLS, INCLUDING NEW SOURCE PERFORMANCE STANDARDS, UNDER SECTIONS 301(b), 304(b), AND 306 OF THE CLEAN WATER ACT.
- 3. REQUIREMENTS TO EXPRESS ALL PERMIT LIMITATIONS, STANDARDS OR PROHIBITIONS FOR A METAL SOLELY IN TERMS OF TOTAL RECOVERABLE METAL.
- 4. REQUIREMENTS FOR REVIEW AND APPROVAL OF PERMITS BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY BEFORE ISSUANCE.
- C. THE DIRECTOR SHALL ISSUE GENERAL PERMITS OR AUTHORIZE COVERAGE UNDER EXISTING GENERAL PERMITS, SUBJECT TO THE LIMITATIONS PRESCRIBED IN SUBSECTION B OF THIS SECTION AND SECTION 49-221, SUBSECTION A, PARAGRAPH 1 FOR POINT SOURCE DISCHARGES OF STORM WATER FROM INDUSTRIAL OR CONSTRUCTION ACTIVITY TO NON-WOTUS PROTECTED SURFACE WATERS. THE DIRECTOR SHALL USE A BEST MANAGEMENT PRACTICES APPROACH WHEN ISSUING AND IMPLEMENTING GENERAL PERMITS FOR STORM WATER DISCHARGES FROM INDUSTRIAL OR CONSTRUCTION ACTIVITY TO NON-WOTUS PROTECTED SURFACE WATERS AND MAY INCLUDE ANALYTICAL MONITORING

AND DISCHARGE LIMITS IF BEST MANAGEMENT PRACTICES CANNOT ACHIEVE APPLICABLE SURFACE WATER QUALITY STANDARDS. THE DIRECTOR MAY ISSUE AN INDIVIDUAL PERMIT FOR THOSE DISCHARGES ONLY IF THE DIRECTOR DETERMINES, USING REASONABLY CURRENT CREDIBLE AND SCIENTIFICALLY DEFENSIBLE DATA, THAT A PARTICULAR DISCHARGE IS A SIGNIFICANT CONTRIBUTOR OF POLLUTANTS TO A NON-WOTUS PROTECTED SURFACE WATER THAT CAUSES THE WATER TO EXCEED ONE OR MORE APPLICABLE WATER QUALITY STANDARDS. WHEN MAKING THIS DETERMINATION, THE DIRECTOR SHALL CONSIDER THE LOCATION OF THE DISCHARGE WITH RESPECT TO THE NON-WOTUS PROTECTED SURFACE WATER, THE SIZE OF THE DISCHARGE AND THE QUANTITY AND NATURE OF THE POLLUTANTS DISCHARGED. IF THE DIRECTOR DETERMINES THAT AN INDIVIDUAL PERMIT IS REQUIRED FOR A DISCHARGE OF STORM WATER FROM INDUSTRIAL OR CONSTRUCTION ACTIVITY TO A NON-WOTUS PROTECTED SURFACE WATER, THE DISCHARGER MUST BE NOTIFIED IN WRITING AND INFORMED OF THE REASONS FOR THE DETERMINATION AND THE RIGHT TO APPEAL THE INDIVIDUAL PERMIT DETERMINATION.

- D. THE DIRECTOR SHALL ISSUE GENERAL PERMITS OR AUTHORIZE COVERAGE UNDER EXISTING GENERAL PERMITS, SUBJECT TO THE LIMITATIONS IN SUBSECTION B OF THIS SECTION AND SECTION 49-221, SUBSECTION A, PARAGRAPH 1 FOR OTHER CATEGORIES OF POTENTIAL POINT SOURCE DISCHARGES, INCLUDING DE MINIMIS DISCHARGES, TO NON-WOTUS PROTECTED SURFACE WATERS THAT INVOLVE THE SAME OR SUBSTANTIALLY SIMILAR TYPES OF OPERATIONS, CONTAIN THE SAME OR SUBSTANTIALLY SIMILAR TYPES OF POLLUTANTS AND ARE MORE APPROPRIATELY CONTROLLED UNDER A GENERAL PERMIT THAN UNDER AN INDIVIDUAL PERMIT.
- E. THE DIRECTOR MAY ADOPT RULES FOR POINT SOURCE DISCHARGES TO NON-WOTUS PROTECTED SURFACE WATERS. THE RULES ADOPTED BY THE DIRECTOR UNDER THIS SUBSECTION SHALL NOT INCLUDE ANY REQUIREMENT THAT IS MORE STRINGENT THAN REQUIREMENTS OF THE CLEAN WATER ACT, SHALL PROVIDE FOR ISSUING, AUTHORIZING, DENYING, MODIFYING, SUSPENDING OR REVOKING INDIVIDUAL OR GENERAL PERMITS AND SHALL ESTABLISH PERMIT CONDITIONS TO CARRY OUT THE PERMIT PROGRAM ESTABLISHED BY THIS SECTION.
- F. THE DIRECTOR SHALL NOT CONSTRUE ANY RULE TO REQUIRE OVERSIGHT BY
 THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY OF PERMITS OR PORTIONS OF

- PERMITS FOR DISCHARGES TO NON-WOTUS PROTECTED SURFACE WATERS, AND A RULE

 SHALL NOT APPLY IF IT WOULD REQUIRE REVIEW, APPROVAL OR ENFORCEMENT BY THE

 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY OF DISCHARGES TO NON-WOTUS

 PROTECTED SURFACE WATERS.
 - G. IN PERMITS FOR DISCHARGES TO WOTUS AND NON-WOTUS PROTECTED SURFACE WATERS, THE DIRECTOR SHALL NOT IMPOSE DUPLICATIVE PERMIT REQUIREMENTS.
 - H. THE DIRECTOR SHALL NOT DELEGATE TO ANY CITY, TOWN OR COUNTY THE AUTHORITY TO REQUIRE PERMITS FOR POINT SOURCE DISCHARGES FROM CONSTRUCTION ACTIVITY TO NON-WOTUS PROTECTED SURFACE WATERS.

49-255.05. <u>Best management practices for activities within non-WOTUS</u>

- A. THE DIRECTOR SHALL ADOPT BY RULE BEST MANAGEMENT PRACTICES AND NOTIFICATION REQUIREMENTS TO ENSURE THAT THE ACTIVITIES PRESCRIBED IN THIS SECTION DO NOT VIOLATE APPLICABLE SURFACE WATER QUALITY STANDARDS. THE DIRECTOR MAY INCLUDE ONLY THOSE BEST MANAGEMENT PRACTICES THAT EXTEND TO:
- 1. ACTIVITIES CONDUCTED WITHIN THE ORDINARY HIGH WATERMARK OF PERENNIAL OR INTERMITTENT NON-WOTUS PROTECTED SURFACE WATERS.
- 2. ACTIVITIES CONDUCTED WITHIN THE BED AND BANKS OF WATERS THAT MATERIALLY IMPACT DOWNSTREAM NON-WOTUS PROTECTED SURFACE WATERS. THE DIRECTOR SHALL DETERMINE THROUGH RULEMAKING WHAT CONSTITUTES A MATERIAL IMPACT AND THAT RULEMAKING SHALL BE BASED ON FACTORS THAT INCLUDE DISTANCE AND TOPOGRAPHY.
 - 3. ACTIVITIES THAT ARE NOT ALREADY REGULATED UNDER THIS TITLE.
- B. THE DIRECTOR MAY NOT ADOPT BEST MANAGEMENT PRACTICES AND NOTIFICATION REQUIREMENTS FOR THE FOLLOWING:
- 1. DISCHARGES TO A NON-WOTUS PROTECTED SURFACE WATER INCIDENTAL TO A RECHARGE PROJECT.
- 2. ESTABLISHED OR ONGOING FARMING, RANCHING AND SILVICULTURE ACTIVITIES SUCH AS PLOWING, SEEDING, CULTIVATING, MINOR DRAINAGE OR HARVESTING FOR THE PRODUCTION OF FOOD, FIBER OR FOREST PRODUCTS OR UPLAND SOIL AND WATER CONSERVATION PRACTICES.

3. MAINTENANCE BUT NOT CONSTRUCTION OF DRAINAGE DITCHES. 1 2 4. CONSTRUCTION AND MAINTENANCE OF IRRIGATION DITCHES. 5. MAINTENANCE OF STRUCTURES SUCH AS DAMS. DIKES AND LEVEES. 3 4 Sec. 23. Section 49-256, Arizona Revised Statutes, is amended to 5 read: 49-256. Adoption and enactment of federal definitions 6 7 For the purposes of this article and for establishing primacy for 8 this state's dredge and fill permit program under 33 United States Code section 1344, the following definitions are adopted and enacted as follows: 9 10 1. "Compensatory mitigation" means the restoration (re-establishment 11 or rehabilitation), establishment (creation), enhancement, and/or in 12 certain circumstances preservation of aquatic resources for the purposes of 13 offsetting unavoidable adverse impacts which THAT remain after all 14 appropriate and practicable avoidance and minimization has been achieved. 15 2. "Dredged material" means material that is excavated or dredged from navigable waters WOTUS. 16 17 3. "Fill material" means: 18 (a) Except as specified in subdivision (c) of this definition, the term fill material means material placed in mavigable waters WOTUS where 19 20 the material has the effect of EITHER: 21 (i) Replacing any portion of a navigable water WOTUS with dry land. 22 : or 23 (ii) Changing the bottom elevation of any portion of a navigable 24 water WOTUS. 25 (b) Examples of such fill material include, but are not limited to: rock, sand, soil, clay, plastics, construction debris, wood chips, 26 27 overburden from mining or other excavation activities, and materials used 28 to create any structure or infrastructure in the navigable waters WOTUS. 29 (c) The term fill material does not include trash or garbage. 30 4. "General permit" means a permit authorizing a category of discharges of dredged or fill material under this article. General permits 31

are permits for categories of discharge which are similar in nature, will

cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment.

- 5. "In-lieu fee program" means a program involving the restoration, establishment, enhancement, and/or preservation of aquatic resources through funds paid to a governmental or non-profit natural resources management entity to satisfy compensatory mitigation requirements for dredge and fill permits issued pursuant to this article. Similar to but distinct from a mitigation bank, an in-lieu fee program sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the in-lieu program sponsor. The operation and use of an in-lieu fee program are governed by an in-lieu fee program instrument.
- 6. "Mitigation bank" means a site, or suite of sites, where resources (e.g., wetlands, streams, riparian areas) are restored, established, enhanced, and/or preserved for the purpose of providing compensatory mitigation for impacts authorized by dredge and fill permits issued pursuant to this article. In general, a mitigation bank sells compensatory mitigation credits to permittees whose obligation to provide compensatory mitigation is then transferred to the mitigation bank sponsor. The operation and use of a mitigation bank are governed by a mitigation banking instrument.
- 7. "Party affected by a jurisdictional determination" means a permit applicant, landowner, a lease, easement or option holder, or other individual who has an identifiable and substantial legal interest in the property (or a person acting with the approval of any of the foregoing) who has received an approved jurisdictional determination.
- 8. "Permittee-responsible mitigation" means an aquatic resource restoration, establishment, enhancement, and/or preservation activity undertaken by the permittee (or an authorized agent or contractor) to provide compensatory mitigation for which the permittee retains full responsibility.

- 9. "Practicable" means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.
- 10. "Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.
- Sec. 24. Section 49-256.01, Arizona Revised Statutes, is amended to read:

49-256.01. <u>Dredge and fill permit program; permits; rules;</u> prohibitions; exemptions; exceptions; notice

- A. For purposes of implementing TO IMPLEMENT the permit program established by 33 United States Code section 1344, the director may establish by rule a dredge and fill permit program that is consistent with and $\frac{1}{100}$ NOT more stringent than the clean water act dredge and fill program, including a permitting process.
- B. During any period in which the state has been granted authority to administer the permit program established by 33 United States Code section 1344, a person may not discharge dredged or fill material unless the discharge is exempt under 33 United States Code section 1344(f) or rules adopted pursuant to this article, except under either of the following conditions:
- 1. In conformance with a permit that is issued or authorized under this article.
- 2. Pursuant to a permit that is issued or authorized by the United States army corps of engineers until a permit that is issued or authorized under this article takes effect.
- C. Rules adopted by the director for the purposes of a permit program for dredge and fill shall:
- 1. Provide for issuing, authorizing, denying, modifying, suspending or revoking individual permits, general permits and emergency permits for

- the discharge of dredged or fill material into navigable waters WOTUS regulated by this state under the clean water act for purposes of implementing the permit program established by 33 United States Code section 1344.
 - 2. Establish permit conditions that ensure compliance with the applicable requirements of section 404 of the clean water act, including the guidelines issued under 33 United States Code section 1344(b)(1).
 - 3. Establish maintenance, monitoring, sampling, reporting, recordkeeping and any other permitting requirements as necessary to maintain primary enforcement responsibility or to determine compliance with this article.
 - 4. Establish the following in accordance with 33 United States Code section 1344:
 - (a) Circumstances and activities that do not require a dredge or fill permit.
 - (b) Activities that are exempt from the requirements of this article for any discharge or fill material that may result from those activities, and the conditions under which those activities are exempt.
 - (c) Circumstances under which a discharge of dredged or fill material shall not be permitted.
 - 5. Establish procedures for the director to make jurisdictional determinations that determine whether a wetland or waterbody is a navigable water WOTUS subject to regulatory jurisdiction under this article. Jurisdictional determinations:
 - (a) Shall be in writing and be identified as either preliminary or approved.
 - (b) Do not include determinations that a particular activity requires a permit under this article.
 - 6. Establish public notice and comment procedures as necessary to maintain primacy for the dredge and fill PERMIT program and as the director deems appropriate to inform the public.

- 7. Provide for any other provisions necessary to maintain state primary enforcement responsibility under 33 United States Code section 1344 and to implement the provisions of this article.
- D. Approved jurisdictional determinations are appealable agency actions as defined by section 41-1092 and may be appealed by a party affected by a jurisdictional determination. Preliminary jurisdictional determinations are not appealable agency actions and notwithstanding section 41-1092.03, the right to appeal an approved jurisdictional determination does not extend to adjacent landowners or to third parties that are not parties affected by a jurisdictional determination.
- E. On assuming authority to administer the permit program established by 33 United States Code section 1344, the department shall:
- 1. On request by a party affected by a jurisdictional determination, recognize and adopt any existing approved jurisdictional determinations that were originally issued by the United States army corps of engineers if the federal definition of navigable waters WOTUS that is applicable in this state has not changed since the issuance of the approved jurisdictional determinations.
- 2. On request by a party affected by a jurisdictional determination, renew approved jurisdictional determinations that were originally issued by the United States army corps of engineers on the same terms as the original unless:
- (a) Physical changes have occurred affecting the determination that are likely to alter the jurisdictional status.
- (b) The federal definition of navigable waters WOTUS that is applicable in this state has changed since the issuance of the approved jurisdictional determinations.
- (c) Additional field data show that the original determination was based on inaccurate data and the new data warrant a revision to the original determination.
- F. The program established pursuant to this article is exempt from section 41-3102.

Sec. 25. Section 49-256.02, Arizona Revised Statutes, is amended to read:

49-256.02. Compensatory mitigation

- A. As a part of the program established pursuant to section 49-256.01, and consistent with the guidelines established pursuant to 33 United States Code section 1344(b)(1), the director shall establish by rule standards and criteria for the use of all types of compensatory mitigation, including on-site and off-site permittee-responsible mitigation, mitigation banks and in-lieu fee mitigation to offset unavoidable impacts to navigable waters WOTUS authorized by permits issued under this article.
- B. Mitigation banks and in-lieu fee programs may be used to compensate for unavoidable impacts to navigable waters WOTUS that are authorized by general permits and individual permits, including after-the-fact permits, in accordance with rules established pursuant to this section. In addition to other potential injunctive relief or other relief requested under section 49-262, mitigation banks and in-lieu fee programs may be used to satisfy requirements arising from an enforcement action under this article.
- C. Rules established by the director pursuant to this section shall identify alternative compensatory mitigation options for a permit applicant if an approved mitigation bank or in-lieu fee program that is located in the same watershed as the permit applicant's proposed discharge rejects that permit applicant's participation in that mitigation bank or in-lieu fee program.
- Sec. 26. Section 49-261, Arizona Revised Statutes, is amended to read:

49-261. Compliance orders; appeal; enforcement

A. If the director determines that a person is in violation of a rule adopted or a condition of a permit issued pursuant to section 49-203, subsection A, paragraph 6-7, any provision of article 2, 3, 3.1, or 3.2 or 3.3 of this chapter, a rule adopted pursuant to article 2, 3, 3.1, or 3.2

- or 3.3 of this chapter, a discharge limitation or any other condition of a permit issued under article 2, 3, 3.1, or 3.2 or 3.3 of this chapter or is creating an imminent and substantial endangerment to the public health or environment, the director may issue an order requiring compliance within a reasonable time period.
- B. A compliance order shall state with reasonable specificity the nature of the violation, a time for compliance if applicable and the right to a hearing.
- C. A compliance order shall be transmitted to the alleged violator by certified mail, return receipt requested, or by personal service.
- D. A compliance order becomes final and enforceable in the superior court unless within thirty days after the receipt of the order the alleged violator requests a hearing before an administrative law judge. If a hearing is requested, the order does not become final until the administrative law judge has issued a final decision on the appeal. Appeals shall be conducted pursuant to section 49-321.
- E. At the request of the director the attorney general may commence an action in superior court to enforce orders issued under this section once an order becomes final.
- Sec. 27. Section 49-262, Arizona Revised Statutes, is amended to read:

49-262. <u>Injunctive relief: civil penalties: recovery of</u> litigation costs; affirmative defense

- A. Whether or not a person has requested a hearing, the director, through the attorney general, may request a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief necessary to protect the public health if the director has reason to believe either of the following:
 - 1. That a person is in violation of:
 - (a) Any provision of article 2, 3, 3.1, 3.2 or 3.3 of this chapter.
- (b) A rule adopted pursuant to section 49-203, subsection A, paragraph $\frac{6}{7}$.

- (c) A rule adopted pursuant to article 2, 3, 3.1, 3.2 or 3.3 of this chapter.
 - (d) A discharge limitation or any other condition of a permit issued under article 2, 3, 3.1, 3.2 or 3.3 of this chapter.
 - 2. That a person is creating an actual or potential endangerment to the public health or environment because of acts performed in violation of THAT VIOLATE this chapter.
 - B. Notwithstanding any other provision of this chapter, if the director, the county attorney or the attorney general has reason to believe that a person is creating an imminent and substantial endangerment to the public health or environment because of acts performed $\frac{1}{1}$ in violation of THAT VIOLATE article 2, 3, 3.1, 3.2 or 3.3 of this chapter or a rule adopted or a condition of a permit issued pursuant to section 49-203, subsection A, paragraph 2, $\frac{6}{1}$ 7 or $\frac{7}{1}$ 8, the county attorney or attorney general may request a temporary restraining order, a preliminary injunction, a permanent injunction or any other relief necessary to protect the public health.
 - C. A person who violates any provision of article 2, 3, 3.1 or 3.2 of this chapter or a rule, permit, discharge limitation or order issued or adopted pursuant to article 2, 3, 3.1 or 3.2 of this chapter is subject to a civil penalty of not more than \$25,000 per day per violation. A person who violates any rule adopted or a condition of a permit issued pursuant to section 49-203, subsection A, paragraph 6-7 is subject to a civil penalty of not more than \$5,000 per day per violation. A person who violates any rule adopted, permit condition or other provision of article 3.3 of this chapter is subject to a civil penalty of not more than \$5,000 per day per violation. The attorney general may, and at the request of the director shall, commence an action in superior court to recover civil penalties provided by this section.
 - D. The court, in issuing any final order in any civil action brought under this section, may award costs of litigation, including reasonable attorney and expert witness fees, to any substantially prevailing party if

the court determines such an award is appropriate. If a temporary restraining order is sought, the court may require the filing of a bond or equivalent security.

- E. All civil penalties except litigation costs obtained under this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.
- F. Except as applied to permits issued or authorized pursuant to article 3.1, 3.2 or 3.3 of this chapter, it is an affirmative defense to civil liability under this section and section 49-261 for causing or contributing to a violation of a water quality standard established pursuant to this chapter, or a violation of a permit condition prohibiting a violation of an aquifer water quality standard or limitation at the point of compliance or a surface water quality standard if the release that caused or contributed to the violation came from a facility owned or operated by a party that has either:
- 1. Undertaken a remedial or response action approved by the director or the administrator under this title or CERCLA in response to the release of a hazardous substance, pollutant or contaminant that caused or contributed to the violation of article 2 of this chapter and is in compliance with that remedial or response action.
- 2. Otherwise resolved its liability for the release of a hazardous substance that caused or contributed to the violation of article 2 of this chapter in whole or in part by the execution of a settlement agreement or consent decree with the director or administrator under this article, CERCLA or any other environmental law and is in compliance with that settlement agreement or consent decree.
- G. Subsection F of this section does not prevent the director from taking an appropriate enforcement action to address the release of a hazardous substance, pollutant or contaminant or the violation of a permit condition before or as an element of an approved remedial or response action, settlement agreement or consent decree.

- H. In determining the amount of a civil penalty for a violation under article 3, 3.1, 3.2 or 3.3 of this chapter, the court shall consider the following factors:
 - 1. The seriousness of the violation or violations.
 - 2. The economic benefit, if any, that results from the violation.
 - 3. Any history of similar violations.
 - 4. Any good faith efforts to comply with the applicable requirements.
 - 5. The economic impact of the penalty on the violator.
 - 6. The extent to which the violation was caused by a third party.
 - 7. Other matters as justice may require.
 - I. A single operational upset that leads to simultaneous violations of more than one pollutant limitation in a permit issued or authorized pursuant to section 49-255.01 constitutes a single violation for purposes of any penalty calculation.
 - J. If a permittee holds both a permit issued or authorized pursuant to article 3 of this chapter and a permit issued or authorized pursuant to article 3.1, 3.2 or 3.3 of this chapter and the permittee violates a similar provision in both permits simultaneously, the department shall not recover penalties for violations of both permits based on the same act or omission.
 - K. For a wastewater treatment facility or system that is regulated as a public service corporation by the corporation commission, the department may make a written request to the corporation commission to take necessary corrective actions within thirty calendar days after both of the following occur:
 - 1. The department does any one or more of the following:
 - (a) Determines that the wastewater treatment facility or system is out of compliance with an administrative order issued by the department for a violation of this chapter.
 - (b) Files a civil action against the owner or operator of the wastewater treatment facility or system for a violation of this chapter.

- (c) Determines that an emergency exists with respect to the wastewater treatment facility or system.
- 2. The department determines that the corporation commission taking necessary corrective actions would expedite the wastewater treatment facility's or system's return to compliance with this chapter.
- Sec. 28. Section 49-371, Arizona Revised Statutes, is amended to read:

49-371. Local stormwater quality programs; authority; limitations; fee; civil penalty; definition

- A. A county that is required by the clean water act to obtain coverage under a national or state pollutant discharge elimination system stormwater program OR A COUNTY THAT IS REQUIRED TO OBTAIN COVERAGE UNDER AN ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT PURSUANT TO ARTICLE 3.1 OF THIS CHAPTER may do all of the following:
- 1. Develop and implement stormwater pollution prevention plans and stormwater management programs as prescribed by the clean water act OR ARTICLE 3.1 OF THIS CHAPTER.
- 2. Adopt, amend, repeal and implement any ordinances, rules or regulations necessary to comply with the minimum requirements of the clean water act OR ARTICLE 3.1 OF THIS CHAPTER, including the imposition and collection of fees for issuing and administering permits, reviewing plans and conducting inspections. Any fees imposed pursuant to this section shall not exceed the reasonable costs of the county to issue and administer permits, review plans and conduct inspections. Fees collected pursuant to this section may not be used to fund stormwater infrastructure costs.
- 3. Adopt rules, regulations or ordinances regulating the use of lands or rights-of-way owned or leased by the county as may be necessary to implement and enforce its national or state pollutant discharge elimination system stormwater management program. Rules, regulations or ordinances adopted pursuant to this paragraph may include provisions for both of the following:

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- (a) Establishment ESTABLISHING and enforcement ENFORCING of a county permit program, including conditions for the review, issuance, revision, renewal, revocation, administration and enforcement of a permit.
- (b) Establishment ESTABLISHING of fees for the use of lands or rights-of-way and the discharge of stormwater or other waters onto or across those lands or rights-of-way pursuant to a permit.
- 4. Enforce the ordinances, rules or regulations adopted pursuant to this section consistent with section 49-372.
- 5. Seek a civil penalty of not more than two thousand five hundred dollars \$2,500 for each violation. Each day of a violation constitutes a separate offense.
- B. An ordinance, rule or regulation adopted pursuant to this section, or a stormwater management program developed and implemented by a county pursuant to this section, shall not be more stringent than or conflict with any requirement of the clean water act OR ARTICLE 3.1 OF THIS CHAPTER. A CITY, TOWN OR COUNTY MAY NOT REGULATE UNDER THIS SECTION ANY ACTIVITY THAT DOES NOT DISCHARGE TO A PROTECTED SURFACE WATER.
- C. A county that operates a regulated small municipal separate storm sewer system THAT DISCHARGES TO A PROTECTED SURFACE WATER shall conduct its pollutant discharge elimination system stormwater management program and shall limit the application of any ordinance, rule or regulation as follows:
- 1. In urbanized areas as described in 40 Code of Federal Regulations section 122.32 as necessary to meet the requirements of 40 Code of Federal Regulations section 122.34(b)(3). FOR SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS THAT DISCHARGE TO NON-WOTUS PROTECTED SURFACE WATERS, THE COUNTY SHALL APPLY THIS PARAGRAPH AS IF THE SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEM DISCHARGED TO A WOTUS PROTECTED SURFACE WATER.
- 2. As necessary to meet the requirements of public education and outreach, public involvement and participation as provided by the clean water act OR ARTICLE 3.1 OF THIS CHAPTER.

- D. For the purposes of this section and Except as required by the clean water act, a county may not require a permit from any person with a federal or state pollutant discharge elimination system permit regulating the same activity at the same location.
- E. For the purposes of this section and Except as required by 40 Code of Federal Regulations section 122.34, a county may not regulate any person or activity exempt under 33 United States Code section 1342(1), 40 Code of Federal Regulations section 122.3 or Arizona administrative code $\frac{18-9-A902(G)}{18-9-A902(G)}$ R18-9-A902(G).
- F. For the purposes of IF adopting an ordinance, rule or regulation pursuant to this section, a county shall use the definitions prescribed in section 49-255.
- G. Fees received by a county pursuant to an ordinance or rule adopted pursuant to this article shall be deposited with the county for use in administering the programs or plans developed and implemented pursuant to this section.
- H. Before adopting any ordinance, rule or regulation pursuant to this section, a county shall file with the secretary of state a written statement including a summary of the proposed rule, ordinance or other regulation. The summary shall provide the name of the person with the county to contact with questions or comments. The secretary of state shall publish the written statement in the next issue of the Arizona administrative register at no cost to the county. The county shall make the text of the rule, ordinance or other regulation available to the public at the same time it files the written summary of the rule, ordinance or other regulation with the secretary of state as provided in this subsection. The county shall also comply with the requirements of section 49-112, subsection D, paragraphs 2, 3 and 4.
- I. For the purposes of this article, "county" means a county that operates a regulated small municipal separate stormwater STORM SEWER system pursuant to 40 Code of Federal Regulations section 122.32. FOR SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS THAT DISCHARGE TO NON-WOTUS

PROTECTED SURFACE WATERS, THIS DEFINITION SHALL APPLY AS IF THE SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEM DISCHARGED TO A WOTUS PROTECTED SURFACE WATER.

Sec. 29. Section 49-391, Arizona Revised Statutes, is amended to read:

49-391. <u>Local enforcement of water pretreatment requirements</u>; civil penalties

- A. A city, town, county or sanitary district of this state may adopt, amend or repeal any ordinances necessary for implementing and enforcing the pretreatment requirements under the federal water pollution control act amendments of 1972 (P.L. 92-500; 86 Stat. 816; 33 United States Code sections 1251 through 1376), as amended, AND ARTICLE 3.1 OF THIS CHAPTER and enforce the ordinances by imposing and recovering a civil penalty of not more than twenty-five thousand dollars \$25,000 for each violation as prescribed by this section. For continuing violations, each day may constitute a separate offense.
- B. A city, town, county or sanitary district shall not receive civil penalties under this section if an interested person, the United States, this state, or another city, town, county or sanitary district has received civil penalties or is diligently prosecuting a civil penalty action in a court of the United States or this state, or in an administrative enforcement proceeding, with respect to the same allegations, standard, requirement, or order. This state, and any city, town, county or sanitary district of this state that is or may be affected by a civil, judicial or administrative action, may intervene as a matter of right in any pending civil, judicial or administrative action for purposes of obtaining injunctive or declaratory relief.
- C. The city, town, county or sanitary district may seek compliance with pretreatment ordinances and recovery of the civil penalties provided by this section either by an action in superior court or by a negotiated settlement agreement. Before a consent decree filed with superior court or a negotiated settlement becomes final, the city, town, county or sanitary

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district seeking compliance shall provide a period of thirty days for public comment. In determining the amount of a civil penalty the court and the city, town, county or sanitary district shall consider:

- 1. The seriousness of the violation.
- 2. The economic benefit, if any, resulting from the violation.
- 3. Any history of such violation.
- 4. Any good faith efforts to comply with the applicable requirements.
 - 5. The economic impact of the penalty on the violator.
 - 6. Such other factors as justice may require.
- D. In addition to the remedies provided in this section, enforcement of such ordinances may include injunctive or other equitable relief.
- E. All monies collected pursuant to an ordinance adopted under this section shall be deposited with the respective city, town, county or sanitary district.
- Sec. 30. Section 49-701, Arizona Revised Statutes, is amended to read:

49-701. Definitions

In this chapter, unless the context otherwise requires:

- 1. "Administratively complete plan" means an application for a solid waste facility plan approval that the department has determined contains each of the components required by statute or rule but that has not undergone technical review or public notice by the department.
- 2. "Administrator" means the administrator of the United States environmental protection agency.
 - 3. "Closed solid waste facility" means any of the following:
- (a) A solid waste facility that ceases storing, treating, processing or receiving for disposal solid waste before the effective date of design and operation rules for that type of facility adopted pursuant to section 49-761.
- (b) A public solid waste landfill that meets any of the following criteria:

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- 1 (i) Ceased receiving solid waste prior to July 1, 1983.
- 2 (ii) Ceased receiving solid waste and received at least two feet of cover material prior to January 1, 1986.
 - (iii) Received approval for closure from the department.
 - (c) A public composting plant or a public incinerating facility that closed in accordance with an approved plan.
 - 4. "Conditionally exempt small quantity generator waste" means hazardous waste in quantities as defined by rules adopted pursuant to section 49-922.
 - 5. "Construction debris" means solid waste derived from the construction, repair or remodeling of buildings or other structures.
 - 6. "County" means:
 - (a) The board of supervisors in the context of the exercise of powers or duties.
 - (b) The unincorporated areas in the context of area of jurisdiction.
 - 7. "Demolition debris" means solid waste derived from the demolition of buildings or other structures.
 - 8. "Discharge" has the same meaning prescribed in section 49-201.
 - 9. "Existing solid waste facility" means a solid waste facility that begins construction or is in operation on the effective date of the design and operation rules adopted by the director pursuant to section 49-761 for that type of solid waste facility.
 - 10. "Facility plan" means any design or operating plan for a solid waste facility or group of solid waste facilities.
 - 11. "40 C.F.R. part 257" means 40 Code of Federal Regulations part 257 in effect on May 1, 2004.
 - 12. "40 C.F.R. part 258" means 40 Code of Federal Regulations part 258 in effect on May 1, 2004.
 - 13. "Household hazardous waste" means solid waste as described in 40 Code of Federal Regulations section 261.4(b)(1) as incorporated by reference in the rules adopted pursuant to chapter 5 of this title.

- 14. "Household waste" means any solid waste including garbage, rubbish and sanitary waste from septic tanks that is generated from households including single and multiple family MULTIPLE-FAMILY residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day use recreation areas, not including construction debris, landscaping rubble or demolition debris.
 - 15. "Inert material":
 - (a) Means material that satisfies all of the following conditions:
 - (i) Is not flammable.
 - (ii) Will not decompose.
- (iii) Will not leach substances in concentrations that exceed applicable aquifer water quality standards prescribed by section 49-201, paragraph $\frac{20}{20}$ 22 when subjected to a water leach test that is designed to approximate natural infiltrating waters.
- (b) Includes concrete, asphaltic pavement, brick, rock, gravel, sand, soil and metal, if used as reinforcement in concrete, but does not include special waste, hazardous waste, glass or other metal.
 - 16. "Land disposal" means placement of solid waste in or on land.
- 17. "Landscaping rubble" means material that is derived from landscaping or reclamation activities and that may contain inert material and $n\sigma$ NOT more than ten per cent PERCENT by volume of vegetative waste.
- 18. "Management agency" means any person responsible for the day-to-day operation, maintenance and management of a particular public facility or group of public facilities.
- 19. "Medical waste" means any solid waste which THAT is generated in the diagnosis, treatment or immunization of a human being or animal or in any research relating to that diagnosis, treatment or immunization, or in the production or testing of biologicals, and includes discarded drugs but does not include hazardous waste as defined in section 49-921 other than conditionally exempt small quantity generator waste.

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- 20. "Municipal solid waste landfill" means any solid waste landfill that accepts household waste, household hazardous waste or conditionally exempt small quantity generator waste.
- 21. "New solid waste facility" means a solid waste facility that begins construction or operation after the effective date of design and operating rules that are adopted pursuant to section 49-761 for that type of solid waste facility.
- 22. "On site" means the same or geographically contiguous property that may be divided by public or private right-of-way if the entrance and exit between the properties are at a crossroads intersection and access is by crossing the right-of-way and not by traveling along the right-of-way. Noncontiguous properties that are owned by the same person and connected by a right-of-way that is controlled by that person and to which the public does not have access are deemed on site property. Noncontiguous properties that are owned or operated by the same person regardless of right-of-way control are also deemed on site property.
- 23. "Person" means any public or private corporation, company, partnership, firm, association or society of persons, the federal government and any of its departments or agencies, this state or any of its agencies, departments, political subdivisions, counties, towns or municipal corporations, as well as a natural person.
- 24. "Process" or "processing" means the reduction, separation, recovery, conversion or recycling of solid waste.
- 25. "Public solid waste facility" means a transfer facility and any site owned, operated or utilized by any person for the storage, processing, treatment or disposal of solid waste that is not generated on site.
- 26. "Recycling facility" means a solid waste facility that is owned, operated or used for the storage, treatment or processing of recyclable solid waste and that handles wastes that have a significant adverse effect on the environment.

- 27. "Salvaging" means the removal of solid waste from a solid waste facility with the permission and in accordance with rules or ordinances of the management agency for purposes of productive reuse.
- 28. "Scavenging" means the unauthorized removal of solid waste from a solid waste facility.
- 29. "Solid waste facility" means a transfer facility and any site owned, operated or utilized USED by any person for the storage, processing, treatment or disposal of solid waste, conditionally exempt small quantity generator waste or household hazardous waste but does not include the following:
- (a) A site at which less than one ton of solid waste that is not household waste, household hazardous waste, conditionally exempt small quantity generator waste, medical waste or special waste and that was generated on site is stored, processed, treated or disposed in compliance with section 49-762.07, subsection F.
- (b) A site at which solid waste that was generated on site is stored for ninety days or less.
- (c) A site at which nonputrescible solid waste that was generated on site in amounts of less than one thousand kilograms per month per type of nonputrescible solid waste is stored and contained for one hundred eighty days or less.
- (d) A site that stores, treats or processes paper, glass, wood, cardboard, household textiles, scrap metal, plastic, vegetative waste, aluminum, steel or other recyclable material and that is not a waste tire facility, a transfer facility or a recycling facility.
- (e) A site where sludge from a wastewater treatment facility is applied to the land as a fertilizer or beneficial soil amendment in accordance with sludge application requirements.
 - (f) A closed solid waste facility.

- (g) A solid waste landfill that is performing or has completed postclosure care before July 1, 1996 in accordance with an approved postclosure plan.
- (h) A closed solid waste landfill performing a onetime removal of solid waste from the closed solid waste landfill, if the operator provides a written notice that describes the removal project to the department within thirty days after completion of the removal project.
- (i) A site where solid waste generated in street sweeping activities is stored, processed or treated prior to disposal at a solid waste facility authorized under this chapter.
- (j) A site where solid waste generated at either a drinking water treatment facility or a wastewater treatment facility is stored, processed, or treated on site prior to disposal at a solid waste facility authorized under this chapter, and any discharge is regulated pursuant to chapter 2, article 3 of this title.
- (k) A closed solid waste landfill where development activities occur on the property or where excavation or removal of solid waste is performed for maintenance and repair provided the following conditions are met:
- (i) When the project is completed there will not be an increase in leachate that would result in a discharge.
- (ii) When the project is completed the concentration of methane gas will not exceed twenty-five per cent PERCENT of the lower explosive limit in on-site structures, or the concentration of methane gas will not exceed the lower explosive limit at the property line.
- (iii) Protection has been provided to prevent remaining waste from causing any vector, odor, litter or other environmental nuisance.
- (iv) The operator provides a notice to the department containing the information required by section 49-762.07, subsection A, paragraphs 1, 2 and 5 and a brief description of the project.

- (1) Agricultural on-site disposal as provided in section 49-766.
- (m) The use, storage, treatment or disposal of by-products of regulated agricultural activities as defined in section 49-201 and that are subject to best management practices pursuant to section 49-247 or by-products of livestock, range livestock and poultry as defined in section 3-1201, pesticide containers that are regulated pursuant to title 3, chapter 2, article 6 or other agricultural crop residues.
- (n) Household hazardous waste collection events held at a temporary site for not more than six days in any calendar quarter.
 - (o) Wastewater treatment facilities as defined in section 49-1201.
- (p) An on-site single family SINGLE-FAMILY household waste composting facility.
 - (q) A site at which five hundred or fewer waste tires are stored.
- (r) A site at which mining industry off-road waste tires are stored or are disposed of as prescribed by rules in effect on February 1, 1996, until the director by rule determines that on-site recycling methods exist that are technically feasible and economically practical.
- (s) A site at which underground piping, conduit, pipe covering or similar structures are abandoned in place in accordance with applicable state and federal laws.
- 30. "Solid waste landfill" means a facility, area of land or excavation in which solid wastes are placed for permanent disposal. Solid waste landfill does not include a land application unit, surface impoundment, injection well, compost pile or waste pile or an area containing ash from the on-site combustion of coal that does not contain household waste, household hazardous waste or conditionally exempt small quantity generator waste.
- 31. "Solid waste management" means the systematic administration of activities which THAT provide for the collection, source separation, storage, transportation, transfer, processing, treatment or disposal of solid waste in a manner that protects public health and safety and the environment and prevents and abates environmental nuisances.

- 32. "Solid waste management plan" means the plan which THAT is adopted pursuant to section 49-721 and which THAT provides guidelines for the collection, source separation, storage, transportation, processing, treatment, reclamation and disposal of solid waste in a manner that protects public health and safety and the environment and prevents and abates environmental nuisances.
 - 33. "Storage" means the holding of solid waste.
- 34. "Transfer facility" means a site that is owned, operated or used by any person for the rehandling or storage for ninety days or less of solid waste that was generated off site for the primary purpose of transporting that solid waste. Transfer facility includes those facilities that include significant solid waste transfer activities that warrant the facility's regulation as a transfer facility.
- 35. "Treatment" means any method, technique or process used to change the physical, chemical or biological character of solid waste so as to render that waste safer for transport, amenable for processing, amenable for storage or reduced in volume.
- 36. "Vegetative waste" means waste derived from plants, including tree limbs and branches, stumps, grass clippings and other waste plant material. Vegetative waste does not include processed lumber, paper, cardboard and other manufactured products that are derived from plant material.
- 37. "Waste pile" means any noncontainerized accumulation of solid, nonflowing waste that is used for treatment or storage.
- 38. "Waste tire" does not include tires used for agricultural purposes as bumpers on agricultural equipment or as ballast to maintain covers at an agricultural site, or any tire disposed of using any of the methods in section 44-1304, subsection D, paragraphs 1, 2, 3, 5 through 8 and 11 and means any of the following:
- (a) A tire that is no longer suitable for its original intended purpose because of wear, damage or defect.

- 1 (b) A tire that is removed from a motor vehicle and is retained for further use.
- 3 (c) A tire that has been chopped or shredded.
- 4 39. "Waste tire facility" means a solid waste facility at which five 5 thousand or more waste tires are stored outdoors on any day."
- 6 Amend title to conform

And, as so amended, it do pass

GAIL GRIFFIN CHAIRMAN

2691NATURAL RESOURCES ENERGY WATER 02/16/2021 02:11 PM H: ra

REFERENCE TITLE: federal government; land acquisition; consent

State of Arizona House of Representatives Fifty-fifth Legislature First Regular Session 2021

HB 2702

Introduced by Representative Finchem

AN ACT

AMENDING SECTION 37-620.02, ARIZONA REVISED STATUTES; AMENDING TITLE 37, CHAPTER 4, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 2; RELATING TO UNITED STATES LAND ACQUISITION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 37-620.02, Arizona Revised Statutes, is amended to read:

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37-620.02. State consent required; acquisition of private real property by the United States; joint resolution; exception
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- A. Pursuant to article I, section 8, clause 17, of the Constitution of the United States, the consent of this state may NOT be given to the acquisition, of SALE, GIFT OR GRANT OR ANY OTHER TRANSFER OF AN OWNERSHIP INTEREST IN any other privately owned real property within this state THAT IS NOT IN THE POSSESSION OF ANY FEDERAL AGENCY AS OF THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION by the United States only upon THAT WOULD REMOVE THE REAL PROPERTY FROM STATE, COUNTY AND MUNICIPAL PROPERTY TAX ROLLS WITHOUT THE EXPRESS, AFFIRMATIVE CONSENT OF THE LEGISLATURE AND THE GOVERNOR THROUGH the governor's signing OF a joint resolution adopted by AN AFFIRMATIVE VOTE OF A MAJORITY OF THE MEMBERS OF the legislature to that effect. The joint resolution shall recite the legal description of the land and the purposes to which the THIS state consents that the property may be used.
- B. THIS SECTION DOES NOT LIMIT THE RIGHTS OF ANY INDIAN TRIBE WITH RESPECT TO THE TRIBE'S INDIAN LANDS, RESERVATIONS AND LANDS ACQUIRED AS A SETTLEMENT OF A LAND CLAIM.

Sec. 2. Heading change

The chapter heading of title 37, chapter 4, Arizona Revised Statutes, is changed from "ACQUISITION OF PRIVATE REAL PROPERTY BY STATE OR POLITICAL SUBDIVISION" to "ACQUISITION OF PRIVATE REAL PROPERTY BY GOVERNMENT ENTITIES".

Sec. 3. Title 37, chapter 4, Arizona Revised Statutes, is amended by adding article 2, to read:

ARTICLE 2. ACQUISITION OF PRIVATE REAL PROPERTY BY FEDERAL GOVERNMENT

- A. ON THE OPENING OF ESCROW FOR THE SALE OF PRIVATE REAL PROPERTY TO THE FEDERAL GOVERNMENT OR A FEDERAL AGENCY, THE ESCROW AGENT SHALL DO BOTH OF THE FOLLOWING:
- 1. NOTIFY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE PRESIDENT OF THE SENATE THAT A CONTRACT FOR THE SALE OF PRIVATE REAL PROPERTY TO THE FEDERAL GOVERNMENT OR A FEDERAL AGENCY HAS BEEN PLACED IN ESCROW.
- 2. SUBMIT A REQUEST IN WRITING TO THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE PRESIDENT OF THE SENATE FOR APPROVAL OF THE SALE PURSUANT TO SECTION 37-620.02.

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- B. FOR A PRIVATE SALE OF PRIVATE REAL PROPERTY TO THE FEDERAL GOVERNMENT OR A FEDERAL AGENCY THAT IS NOT PROCESSED THROUGH ESCROW, THE PRIVATE REAL PROPERTY OWNER SHALL DO BOTH OF THE FOLLOWING:
- 1. NOTIFY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE PRESIDENT OF THE SENATE OF THE SALE OF PRIVATE REAL PROPERTY TO THE FEDERAL GOVERNMENT OR A FEDERAL AGENCY.
- 2. SUBMIT A REQUEST IN WRITING TO THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE PRESIDENT OF THE SENATE FOR APPROVAL OF THE SALE PURSUANT TO SECTION 37-620.02.
- C. ON RECEIPT OF THE REQUEST FOR APPROVAL PURSUANT TO SUBSECTION A OR B OF THIS SECTION, THE PRESIDENT OF THE SENATE AND SPEAKER OF THE HOUSE OF REPRESENTATIVES SHALL APPOINT A JOINT LEGISLATIVE COMMITTEE TO CONSIDER THE REQUEST FOR APPROVAL. IF THE COMMITTEE APPROVES THE REQUEST, THE LEGISLATURE SHALL PREPARE A JOINT RESOLUTION FOR THE LEGISLATURE TO APPROVE THE SALE PURSUANT TO SECTION 37-620.02. IF THE COMMITTEE DOES NOT APPROVE THE REQUEST, THIS STATE SHALL EXERCISE THE RIGHT OF FIRST REFUSAL TO PURCHASE THE PRIVATE REAL PROPERTY PURSUANT TO SECTION 37-822.
- D. ANY STATE AGENCY OR ANY OFFICER OR EMPLOYEE OF A STATE AGENCY THAT IS NOTIFIED OR LEARNS OF A NOTICE FROM THE UNITED STATES DEPARTMENT OF THE INTERIOR REGARDING AN EFFORT TO PLACE PRIVATE REAL PROPERTY LOCATED IN THIS STATE IN TRUST AS PART OF AN INDIAN TRIBE'S SETTLEMENT OF A LAND CLAIM SHALL IMMEDIATELY NOTIFY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES AND THE PRESIDENT OF THE SENATE SO THAT THE LEGISLATURE MAY DO ANY OF THE FOLLOWING, AS APPLICABLE:
 - 1. PROVIDE COMMENT.
 - 2. FILE AN ADMINISTRATIVE APPEAL.
 - 3. FILE AN ACTION IN THE APPROPRIATE COURT.
- E. A PERSON WHO VIOLATES SUBSECTION A OR B OF THIS SECTION IS SUBJECT TO A CIVIL PENALTY OF AT LEAST \$500 BUT NOT MORE THAN \$1,000.
- F. FOR THE PURPOSES OF THIS SECTION, "ESCROW" AND "ESCROW AGENT" HAVE THE SAME MEANINGS PRESCRIBED IN SECTION 6-801.

37-822. Right of first refusal

- A. NOTWITHSTANDING ANY OTHER LAW, THIS STATE HAS THE RIGHT OF FIRST REFUSAL TO PURCHASE PRIVATE REAL PROPERTY THAT THE FEDERAL GOVERNMENT IS CONTRACTING TO ACQUIRE THROUGH A SALE, GIFT OR GRANT OR ANY OTHER TRANSFER OF AN OWNERSHIP INTEREST.
- B. A PURCHASE OF PRIVATE REAL PROPERTY PURSUANT TO THIS SECTION SHALL OCCUR IN A TIMELY MANNER AND, IF POSSIBLE, THE PURCHASE PROCESS SHALL BE CONCLUDED WITHIN THE SAME TIME PERIOD IN WHICH THE ORIGINAL TRANSACTION WOULD HAVE CONCLUDED.

37-823. Applicability

THIS ARTICLE DOES NOT APPLY TO A TRUSTEE'S DEED OR MORTGAGE THAT IS INSURED OR HELD BY THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, THE UNITED STATES VETERANS AFFAIRS OR THE FEDERAL HOUSING ADMINISTRATION.

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Sec. 4. <u>Legislative findings</u>

The Legislature finds that:

- 1. At the granting of statehood, the new State of Arizona was granted the exclusive right to all lands not assigned under treaty to the Native American tribes.
- 2. Since the granting of statehood, numerous lands have been retained by the federal government by various means by way of congressional action, thus depriving the State of Arizona of a tax base, which, in comparison to other states, is critical to funding services such as education, public safety and infrastructure.
- 3. There are three primary legal theories available to Arizona to attempt to prove the claim of tax base in existing American jurisprudence, which are, "the equal sovereignty principle," "the equal footing doctrine" and "the compact theory." All three legal theories provide credible support to the claim of a primary interest in state private property tax base.
- 4. Arizona relies on approximately sixteen percent of its land area to fund the critical services of education, infrastructure, public safety and welfare programs, while other states enjoy nearly complete access to their lands to generate a survivable tax base.
- 5. The equal sovereignty principle was recently highlighted by the United States Supreme Court in Shelby County, Ala. v. Holder, 570 U.S. 529 (2013), which challenged the requirement of the Voting Rights Act of 1965 (P.L. 89-110, 79 Stat. 437) that certain states preclear their voting laws with the United States Department of Justice as a violation of the constitutional requirement that the states in our federal system be equal in sovereignty. The Court applied a heightened level of scrutiny to the preclearance requirements because they treated Alabama as unequal and ruled that the preclearance provisions unconstitutional under the equal sovereignty principle. For the reasons discussed in detail below, the Legislature finds that section 102(a)(1) of the federal land policy and management act of 1976 (P.L. 94-579; 90 Stat. 2743), which reversed almost two hundred years of federal public lands policy from one of disposal to one of near-permanent retention, treats Arizona as unequal in sovereignty as compared to the states with dominion over the land within their borders. This argument, if adopted by the Court, would most likely result in a declaration that the United States cannot forever retain the public lands within Arizona's borders, not an order transferring the public lands to the State of Arizona. should the Court be persuaded by this argument, a subsequent political solution negotiated by all stakeholders would most likely be required to resolve the issue. A possible outcome of that political process could be Arizona's ownership of those lands.

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- 6. The equal footing doctrine is based on the equal sovereignty It requires that states newly admitted to the Union receive all incidents of sovereignty enjoyed by the thirteen original states. The equal footing doctrine considers only sovereign and political rights of the newly admitted states, not economic or geographic differences. The original thirteen states stepped into the shoes of the Crown with regard to dominion over public lands within their borders. Similarly, Vermont, Kentucky, Tennessee, Maine, Texas and Hawaii all came into the Union with dominion over their public lands. Dominion over land has historically been viewed as a key incident of sovereignty, and denial of that dominion negatively impacts sovereignty in a variety of ways. Therefore, in order for Arizona to have been admitted as a co-equal sovereign with the states with dominion over public lands within their borders, Arizona also should have received on admission dominion over the land within its borders. A ruling by the United States Supreme Court based on the equal footing doctrine argument would logically result in the transfer of public lands to the State of Arizona.
- 7. The compact theory posits that the Arizona enabling act was an offer, and Arizona's acceptance of that offer created a solemn compact. Implicit in that compact was the duty of the United States to timely dispose of the public lands within Arizona's borders as it had done with states admitted before Arizona. There is historical support for the position that the United States promised to dispose of the public lands, maintained a policy requiring disposal of public lands and acted on that policy from 1784 through the date of Arizona's admission. There is historical evidence that Arizona and the United States both expected, at the time of Arizona's admission, that the public lands would be disposed of consistent with past practice. There is also historical evidence that the intent of the property clause of the Constitution of the United States was to dispose of public lands, not to forever retain them. Accordingly. an argument can be made that the United States undertook an obligation to dispose of the public lands within Arizona's borders.
- 8. Since the United States has not disposed of the public lands within Arizona, the state relies on less than sixteen percent of the land it has dominion over as tax base to generate tax revenue in order to pay for critical services. Arizona cannot continue to serve the interests of its citizens if the private property tax base is taken without careful contemplation of consequences of such transfers to a government unit, the United States, which does not pay tax, nor does it compensate for the value of the land it controls through payments in lieu of taxes.
- 9. Under article I, section 8, clause 17, Constitution of the United States, the legislature of each state has the sole authority to give its consent of all purchases of land, "to exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance

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of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings".

Sec. 5. Short title
This act may be cited as the "Tax Base Protection Act".
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- 5 -

REFERENCE TITLE: public meetings; executive sessions

State of Arizona House of Representatives Fifty-fifth Legislature First Regular Session 2021

HB 2804

Introduced by
Representatives Pingerelli: Biasiucci, Burges, Cobb, Finchem, Hoffman,
Parker, Payne, Roberts, Toma, Weninger

AN ACT

AMENDING SECTIONS 38-431.02 AND 38-431.03, ARIZONA REVISED STATUTES; RELATING TO PUBLIC MEETINGS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

- j -

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

Section 1. Section 38-431.02, Arizona Revised Statutes, is amended to read:

38-431.02. Notice of meetings

- A. Public notice of all meetings of public bodies shall be given as follows:
- 1. The public bodies of this state, including governing bodies of charter schools, shall:
- (a) Conspicuously post a statement on their website stating where all public notices of their meetings will be posted, including the physical and electronic locations, and shall give additional public notice as is reasonable and practicable as to all meetings.
- (b) Post all public meeting notices on their website and give additional public notice as is reasonable and practicable as to all meetings. A technological problem or failure that either prevents the posting of public notices on a website or that temporarily or permanently prevents the use of all or part of the website does not preclude the holding of the meeting for which the notice was posted if the public body complies with all other public notice requirements required by this section.
 - 2. The public bodies of the counties and school districts shall:
- (a) Conspicuously post a statement on their website stating where all public notices of their meetings will be posted, including the physical and electronic locations, and shall give additional public notice as is reasonable and practicable as to all meetings.
- (b) Post all public meeting notices on their website and give additional public notice as is reasonable and practicable as to all meetings. A technological problem or failure that either prevents the posting of public notices on a website or that temporarily or permanently prevents the use of all or part of the website does not preclude the holding of the meeting for which the notice was posted if the public body complies with all other public notice requirements required by this section.
 - 3. Special districts that are formed pursuant to title 48:
- (a) May conspicuously post a statement on their website stating where all public notices of their meetings will be posted, including the physical and electronic locations, and shall give additional public notice as is reasonable and practicable as to all meetings.
- (b) May post all public meeting notices on their website and shall give additional public notice as is reasonable and practicable as to all meetings. A technological problem or failure that either prevents the posting of public notices on a website or that temporarily or permanently prevents the use of all or part of the website does not preclude the holding of the meeting for which the notice was posted if the public body

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complies with all other public notice requirements required by this section.

- (c) If a statement or notice is not posted pursuant to subdivision (a) or (b) of this paragraph, shall file a statement with the clerk of the board of supervisors stating where all public notices of their meetings will be posted and shall give additional public notice as is reasonable and practicable as to all meetings.
 - 4. The public bodies of the cities and towns shall:
- (a) Conspicuously post a statement on their website or on a website of an association of cities and towns stating where all public notices of their meetings will be posted, including the physical and electronic locations, and shall give additional public notice as is reasonable and practicable as to all meetings.
- (b) Post all public meeting notices on their website or on a website of an association of cities and towns and give additional public notice as is reasonable and practicable as to all meetings. A technological problem or failure that either prevents the posting of public notices on a website or that temporarily or permanently prevents the use of all or part of the website does not preclude the holding of the meeting for which the notice was posted if the public body complies with all other public notice requirements required by this section.
- B. If an executive session is scheduled, a notice of the executive session shall state the provision of law authorizing the executive session AND, IN THE CASE OF LEGAL ADVICE, SHALL INCLUDE THE SPECIFIC PROVISION OF SECTION 38-431.03 TO WHICH THE LEGAL ADVICE PERTAINS, and the notice shall be provided to the:
 - 1. Members of the public body.
 - 2. General public.
- C. Except as provided in subsections D and E of this section, meetings shall not be held without at least twenty-four hours' notice to the members of the public body and to the general public. The twenty-four hour period includes Saturdays if the public has access to the physical posted location in addition to any website posting, but excludes Sundays and other holidays prescribed in section 1-301.
- D. In case of an actual emergency, a meeting, including an executive session, may be held on such notice as is appropriate to the circumstances. If this subsection is utilized USED for conduct of an emergency session or the consideration of an emergency measure at a previously scheduled meeting the public body must post a public notice within twenty-four hours declaring that an emergency session has been held and setting forth the information required in subsections H and I of this section.

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- E. A meeting may be recessed and resumed with less than twenty-four hours' notice if public notice of the initial session of the meeting is given as required in subsection A of this section, and if, before recessing, notice is publicly given as to the time and place of the resumption of the meeting or the method by which notice shall be publicly given.
- F. A public body that intends to meet for a specified calendar period, on a regular day, date or event during the calendar period, and at a regular place and time, may post public notice of the meetings at the beginning of the period. The notice shall specify the period for which notice is applicable.
- G. Notice required under this section shall include an agenda of the matters to be discussed or decided at the meeting or information on how the public may obtain a copy of such an agenda. The agenda must be available to the public at least twenty-four hours before the meeting, except in the case of an actual emergency under subsection D of this section. The twenty-four hour period includes Saturdays if the public has access to the physical posted location in addition to any website posting, but excludes Sundays and other holidays prescribed in section 1-301.
- H. Agendas required under this section shall list the specific matters to be discussed, considered or decided at the meeting. The public body may discuss, consider or make decisions only on matters listed on the agenda and other matters related thereto.
- I. Notwithstanding the other provisions of this section, notice of executive sessions shall be required to include only a general description of the matters to be considered. The agenda shall provide more than just a recital of the statutory provisions authorizing the executive session, but need not contain information that would defeat the purpose of the executive session, compromise the legitimate privacy interests of a public officer, appointee or employee or compromise the attorney-client privilege.
- J. Notwithstanding subsections H and I of this section, in the case of an actual emergency a matter may be discussed and considered and, at public meetings, decided, if the matter was not listed on the agenda and a statement setting forth the reasons necessitating the discussion, consideration or decision is placed in the minutes of the meeting and is publicly announced at the public meeting. In the case of an executive session, the reason for consideration of the emergency measure shall be announced publicly immediately before the executive session.
- K. Notwithstanding subsection H of this section, the chief administrator, presiding officer or a member of a public body may present a brief summary of current events without listing in the agenda the specific matters to be summarized, if:
 - 1. The summary is listed on the agenda.

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- 2. The public body does not propose, discuss, deliberate or take legal action at that meeting on any matter in the summary unless the specific matter is properly noticed for legal action.
- Sec. 2. Section 38-431.03, Arizona Revised Statutes, is amended to read:

38-431.03. Executive sessions; definitions

- A. On a public majority vote of the members constituting a quorum, a public body may hold an executive session but only for the following purposes:
- 1. Discussion or consideration of employment, assignment, appointment, promotion, demotion, dismissal, salaries, disciplining or resignation of a public officer, appointee or employee of any public body, except that, with the exception of salary discussions, an officer, appointee or employee may demand that the discussion or consideration occur at a public meeting. DISCUSSION OR CONSIDERATION OF THE GOALS AND OBJECTIVES ESTABLISHED BY THE PUBLIC BODY ON WHICH AN OFFICER, APPOINTEE OR EMPLOYEE OF THE PUBLIC BODY WILL BE EVALUATED MUST BE CONDUCTED IN A PUBLIC MEETING. The public body shall provide the officer, appointee or employee with written notice of the executive session as is appropriate but not less than twenty-four hours for the officer, appointee or employee to determine whether the discussion or consideration should occur at a public meeting.
- 2. Discussion or consideration of records exempt by law from public inspection, including the receipt and discussion of information or testimony that is specifically required to be maintained as confidential by state or federal law.
- 3. Discussion or consultation for legal advice with the attorney or attorneys of the public body SOLELY FOR THE PURPOSE OF ADVICE IN THE AREAS AS PRESCRIBED IN PARAGRAPHS 1, 2, 4, 5, 6, 7, 8 AND 9 OF THIS SUBSECTION.
- 4. Discussion or consultation with the attorneys of the public body in order to consider its position and instruct its attorneys regarding the public body's position regarding contracts that are the subject of negotiations, in pending or contemplated litigation or in settlement discussions conducted in order to avoid or resolve litigation.
- 5. Discussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations with employee organizations regarding the salaries, salary schedules or compensation paid in the form of fringe benefits of employees of the public body.
- 6. Discussion, consultation or consideration for international and interstate negotiations or for negotiations by a city or town, or its designated representatives, with members of a tribal council, or its designated representatives, of an Indian reservation located within or adjacent to the city or town.

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- 7. Discussions or consultations with designated representatives of the public body in order to consider its position and instruct its representatives regarding negotiations for the purchase, sale or lease of real property.
- 8. Discussion or consideration of matters relating to school safety operations or school safety plans or programs.
- 9. Discussions or consultations with designated representatives of the public body in order to discuss security plans, procedures, assessments, measures or systems relating to, or having an impact on, the security or safety of buildings, facilities, operations, critical infrastructure information and information technology maintained by the public body. Records, documentation, notes, or other materials made by, or provided to, the representatives pursuant to this paragraph are confidential and exempt from public disclosure under this chapter and title 39, chapter 1.
- B. Minutes of and discussions made at executive sessions shall be kept confidential except from:
 - 1. Members of the public body that met in executive session.
- 2. Officers, appointees or employees who were the subject of discussion or consideration pursuant to subsection A, paragraph ${\bf 1}$ of this section.
- 3. The auditor general on a request made in connection with an audit authorized as provided by law.
- 4. A county attorney or the attorney general when investigating alleged violations of this article.
- C. The public body shall instruct persons who are present at the executive session regarding the confidentiality requirements of this article.
- D. Legal action involving a final vote or decision shall not be taken at an executive session, except that the public body may instruct its attorneys or representatives as provided in subsection A, paragraphs 4, 5 and 7 of this section. A public vote shall be taken before any legal action binds the public body.
- E. Except as provided in section 38-431.02, subsections I and J, a public body shall not discuss any matter in an executive session that is not described in the notice of the executive session.
- F. Disclosure of executive session information pursuant to this section or section 38-431.06 does not constitute a waiver of any privilege, including the attorney-client privilege. Any person receiving executive session information pursuant to this section or section 38-431.06 shall not disclose that information except to the attorney general or county attorney, by agreement with the public body or to a court in camera for purposes of enforcing this article. Any court that

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reviews executive session information shall take appropriate action to protect privileged information.

- G. For the purposes of this section:
- 1. "Critical infrastructure" has the same meaning prescribed in section 41–1801.
- 2. "Information technology" has the same meaning prescribed in section 18–101.

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CAGRD & UNDERGROUND STORAGE COMMITTEE

REPORT



February 18, 2021 Meeting

Meeting was held remotely due to social distancing guidelines in place during COVID-19 pandemic. Board Members present were Chair Alexandra Arboleda, Jim Holway, Pat Jacobs Jennifer Martin, Stephen Miller.

Report on Status of 2021 Proposed Legislation with Potential Impacts on CAGRD

Jeff Gray, Legislative Affairs Manager, provided a brief description and status update on three bills being considered by the State Legislature: H.B. 2041/S.B. 1446, H.B. 2336/S.B. 1274/H.B. 2678 and S.B. 1386. At the time of the presentation, H.B. 2041 and H.B. 2336 had been signed by the Governor, with S.B. 1386 yet to be heard in committee.

Report on Public Processes that Could Impact CAGRD

Laura Grignano, CAGRD Manager, provided an overview and update of the efforts, work products and timeline of the Post-2025 AMAs Committee of the Governors Water Augmentation, Innovation and Conservation Council. Ms. Grignano provided detail on issue briefs and resulting public comment released by the Post-2025 AMAs Committee regarding the CAGRD and the Assured Water Supply program.

Andrew Craddock, Water Supply Program Analyst for CAGRD, provided an update on the efforts of the Pinal Stakeholder Group, tying in to bills previously described in Mr. Gray's update on legislation that may impact CAGRD. Mr. Craddock also described the activities of the stakeholder group on the interim Analysis of Assured Supply to Certificate of Assured Water Supply plan and groundwater modelling efforts in Pinal County.

Report on 2020 Member Land and Member Service Area Enrollment and Activation Activity through Q4

David Dunaway, Policy Analyst for CAGRD, provided a presentation on the number of lots that were enrolled and activated in 2020 along with a comparison to previous years.

Future Agenda Items

Chair Arboleda stated the March 18 CAGRD Committee meeting will contain agenda topics including reports on CAGRD finances, recovery planning and implementation and possible updates on legislative activity or other public processes if warranted. Committee member Jacobs requested a report on deenrollment activity and the number and location of activations in Active Management Areas. Committee member Holway requested a discussion on the Committee's role is in addressing some of the broader water management discussions currently taking place and how to weigh in on the development of State policies.



CAGRD & UNDERGROUND STORAGE COMMITTEE REPORT



Contact for more information:

Laura Grignano **CAGRD Manager** 623-869-2113 Igrignano@cap-az.com



INFORMATION BRIEF BOARD OF DIRECTORS



Agenda Number 7

CONTACT: Philip Rettinger

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MEETING DATE: Thursday, March 4, 2021

AGENDA ITEM: Report on CAP Asset Management and Infrastructure Health (*Project Reliability*^) -

Rettinger

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

2022 CAWCD Board Strategic Plan

Project Reliability: Providing reliable and cost-effective operations, maintenance, and replacement of CAP's infrastructure and technology assets

PREVIOUS BOARD ACTION/ACTIVITY:

March 2020, Presentations to the Board on Asset Management and Infrastructure Heath

January 2021, February 2021

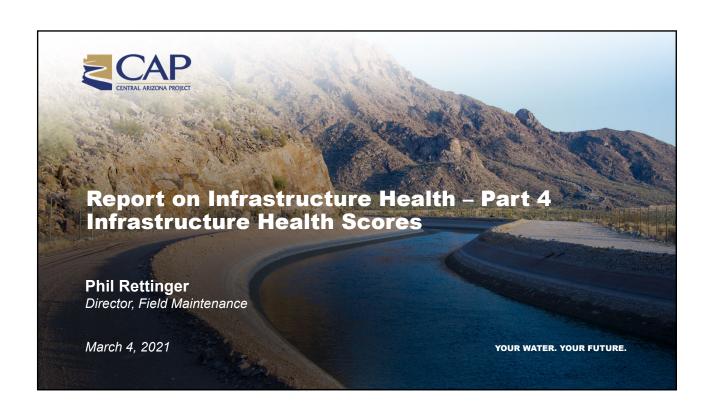
ISSUE SUMMARY/DESCRIPTION:

As part of CAP's Strategic Asset Management Plan, CAWCD has a structured approach for understanding asset health for major equipment classes. This approach utilizes a system of inspections and data gathering to establish the relative health of our fleet of assets. The understanding and standardization of the process is an important factor in informing proper decision making for corrective action for assets that are exhibiting signs of failure. Necessary overhauls, repairs, and replacements can be pre planned through budgeting and scheduling of necessary resources to correct failing conditions utilizing equipment condition assessments.

In general, the major equipment asset classes that are part of the program are in good condition and are being monitored through the equipment condition assessment process.

ATTACHMENTS:

1. Presentation



Infrastructure Health Report

Asset Management Program - (March 5, 2020)

Asset Reliability Process - (January 7)

Capital Replacement Process - (February 4)

Infrastructure Health Scores - (March 4)









Agenda

Inspection Process

Potential Failure Indicators

Equipment Health Scoring System

Review Major Asset Health Scores









3 INFRASTRUCTURE HEALTH SCORES

Inspection Process

Major frequency cycle - 5 year

Reoccurring schedule

Preventative maintenance – Corrective maintenance

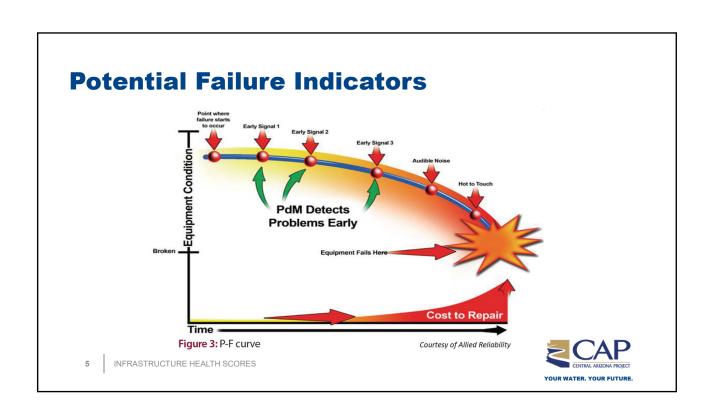
Functional testing of protective devices

Predictive testing and inspection for condition assessment

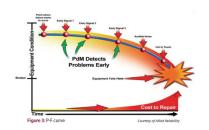
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CENTRAL ARIZONA PROJECT

YOUR WATER. YOUR FUTURE.



Potential Failure Indicators



Failures typically present early indicators

Based on industry standards and CAP experience

Focused on non intrusive methods and technologies

Assessment is a structured review of potential failure indicators

CAP
CENTRAL ARIZONA PROJECT
YOUR WATER, YOUR FUTURE.

Potential Failure Indicators (Electrical)

Insulation Resistance

Partial Discharge

Polarization Index

Dielectric absorption

Power Factor

Tip Up

Capacitance Change

Thermal Aging









CENTRAL ARIZONA PROJECT

INFRASTRUCTURE HEALTH SCORES

Potential Failure Indicators (Mechanical)

Vibration

Oil Analysis

Leakage - Ultrasonic Inspection

Protective Coating Loss

Metal Loss - Thickness Testing

Wear - Impeller, Shaft, Packing

Wear Ring Clearance









Asset Health Scoring System

POTENTIAL FAILURE INDICATOR

For failure indicators ...

- · Three condition levels
 - Normal = Score
 - o Caution = (>) Score
 - o Critical = (>>) Score
- May have a multiplier based on importance of failure indicator
 - Score = Score X Multiplier)

UNIT HEALTH SCORE

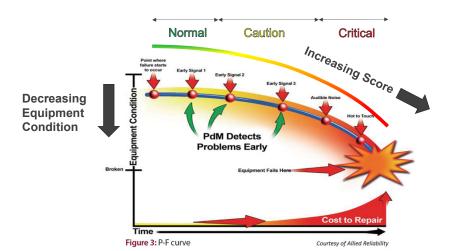
For unit health score ...

- · Total of all failure indicator scores
 - o Allows for a comparison across fleet of assets
 - o Informs prioritization through our risk register
 - o Informs maintenance activity overhaul, repairs, replacement
 - o Are we working on the right equipment at the right time? (Highest likelihood of failure)

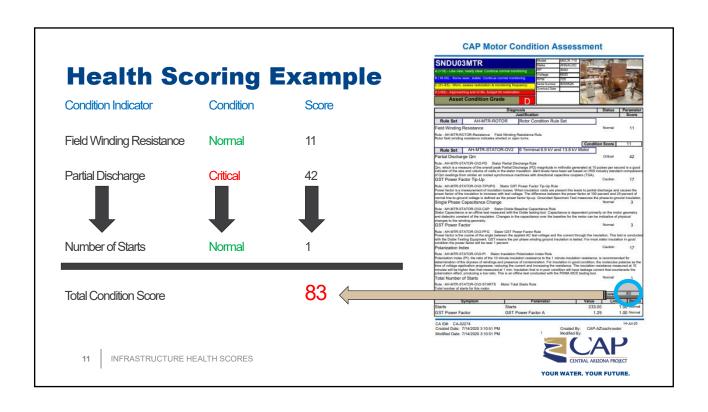


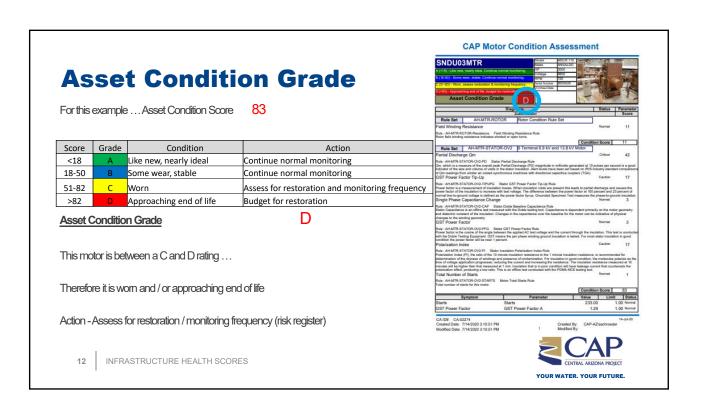
INFRASTRUCTURE HEALTH SCORES

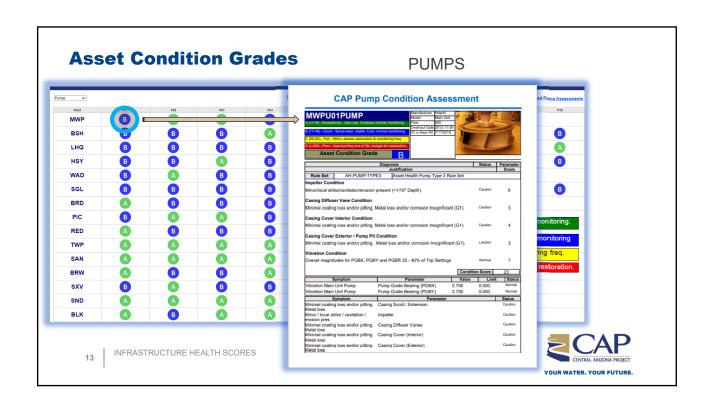
Asset Health Scoring System



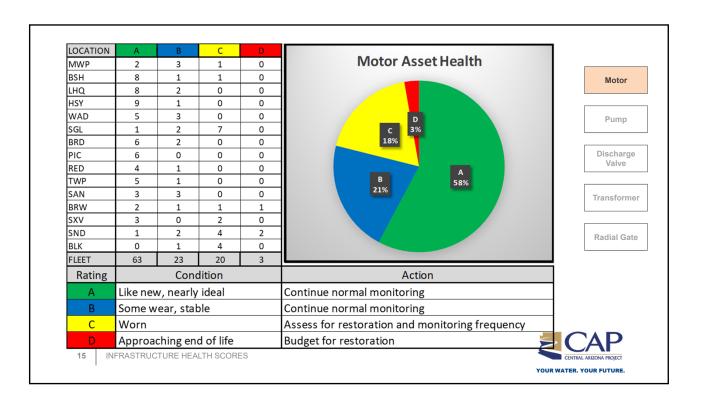


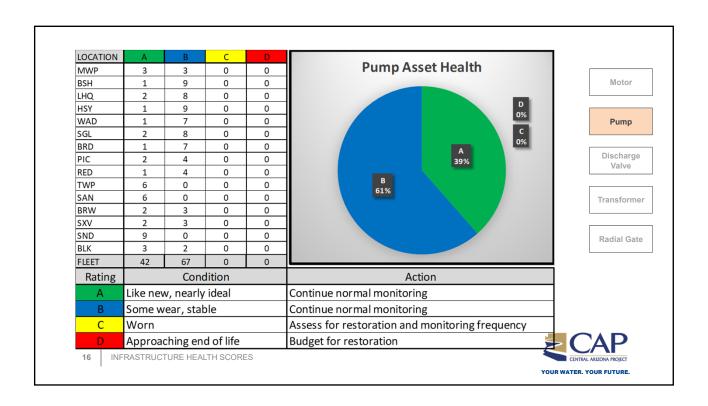


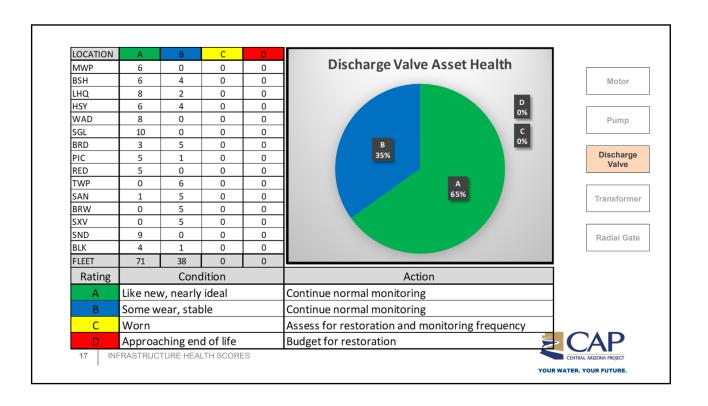


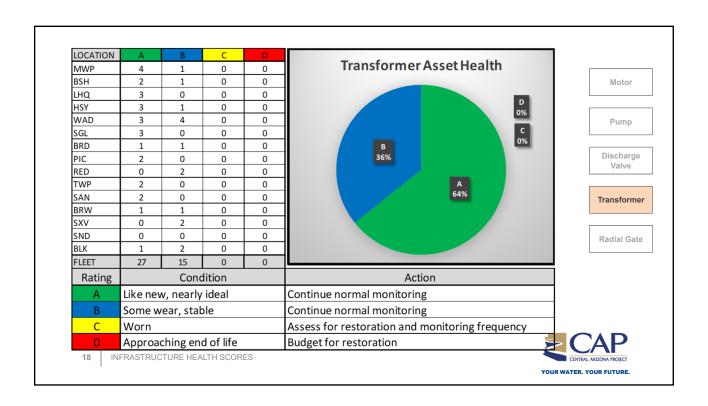


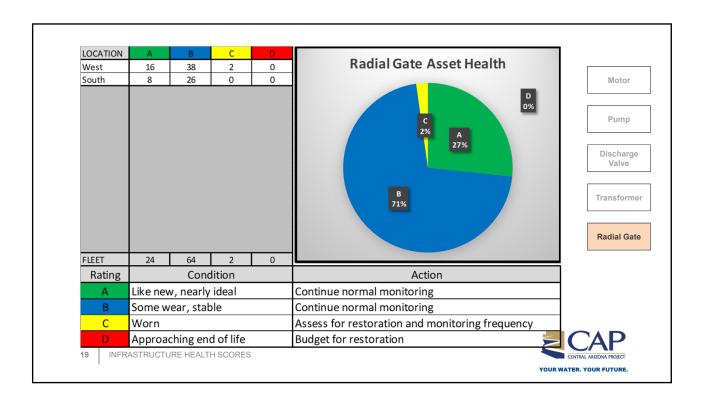












Final Thoughts

Major asset classes of equipment are in good condition

Not all asset classes are analyzed at this level

Condition assessment is an easy concept, but difficult to execute

- Failures can happen quickly and catastrophically "we don't catch them all"
 - o These types of failures are best handled by online monitoring or protective devices
- · Some failures do not present early failure indicators
- · Failure indicators can be difficult to detect and analyze
 - $_{\odot}\,$ Competent craft persons and reliability engineers are key to gathering and analyzing data
- · Scoring models are complex and developing

Questions?



INFORMATION BRIEF BOARD OF DIRECTORS



Agenda Number 8

CONTACT: Angie Lohse Ken Seasholes 623-869-2572 623-869-2476

alohse@cap-az.com kseasholes@cap-az.com

MEETING DATE: Thursday, March 4, 2021

AGENDA ITEM: Report on Recovery Planning and Implementation (Water Supply^) -

Seasholes/Lohse

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

2022 CAWCD Board Strategic Plan

Water Supply: Providing a reliable CAP water supply for the short- and long-term

PREVIOUS BOARD ACTION/ACTIVITY:

January 3, 2019 CAGRD & Underground Storage Committee - Update on Recovery Planning Advisory

Group

February 21, 2019 CAGRD & Underground Storage Committee - Report on Recovery Planning and

Recovery Implementation

May 16, 2019 CAGRD & Underground Storage Committee - Report on Recovery Planning and

Recovery Implementation

October 17, 2019 CAGRD & Underground Storage Committee - Report on Recovery Planning March 5, 2020 Report on Recovery Planning Activities, Agreements and Technical Studies

ISSUE SUMMARY/DESCRIPTION:

The Arizona Department of Water Resources (ADWR), the Arizona Water Banking Authority (AWBA) and CAP have continued to coordinate on the recovery of water stored by the AWBA, and are nearing completion of a multi-year effort to create greater planning and implementation clarity.

In 2018, the three agencies convened the Recovery Planning Advisory Group (RPAG), which is a broadly represented 14-member advisory group providing input as the three agencies update aspects of the 2014 Joint Recovery Plan (2014 Plan). RPAG met throughout 2018 and 2019 to discuss recovery planning and implementation topics. In September 2019, the three agencies began drafting the Update to the 2014 Plan. The Update does not replace the 2014 Plan, but is a stand-alone document that follows the same chapter structure as the 2014 Plan for consistency and understanding. Each chapter has been circulated to RPAG for review and comment.

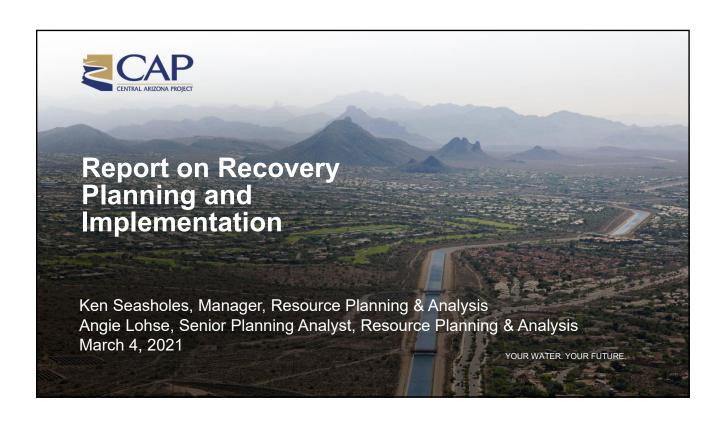
Changes resulting from the approval of the CAP System Use Agreement, along with the input received from RPAG, have had an impact on recovery planning and implementation, particularly how M&I subcontracts are expected to be firmed. The concept of "Independent Recovery," in which subcontractors would recover AWBA credits on their own or with a partner, has been a key change in how AWBA recovery was previously envisioned. The agencies also performed updated firming analysis that focused more specifically on the impacts to direct uses—treatment plants and annual storage and recovery—to estimate the need for recovery

wells and related infrastructure that must be available in the year that the impacts occur. Together, both of these concepts have the effect of reducing the anticipated reliance on CAP to perform recovery.

The Update to the 2014 Plan also includes a detailed implementation timeline tied to specific triggers, and considerations related to the cost of recovery. The final sections of the Update are under review by the RPAG members, with an expected public release in the second quarter of this year.

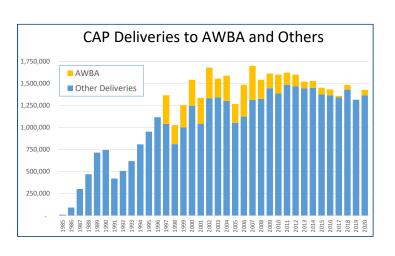
ATTACHMENTS:

1. Presentation



AWBA Context

- Established in 1996
- Five member Commission
 - · Chaired by ADWR Director
 - One seat reserved for CAWCD President or designee
- Three primary policy objectives
 - Put full AZ entitlement to use
 - · Facilitate interstate banking
 - Firm certain supplies impacted by shortage

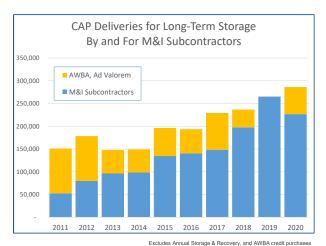


2 | REPORT ON RECOVERY PLANNING AND IMPLEMENTATION

KNOW YOUR WATER.

M&I Water Storage Trends

- AWBA's largest volume of credits is for firming CAP M&I subcontracts
 - Primary funding source is Water Storage Tax levied by CAWCD
- M&I subcontractors have been firming their own supplies as well



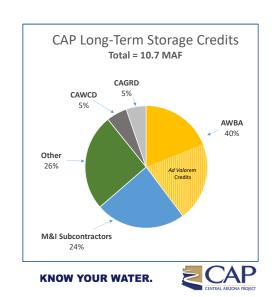
KNOW YOUR WATER.

ECAP CENTRAL ARIZONA PROJECT

3 | REPORT ON recovery planning and implementation

Institutional Adaptation

- As Excess CAP water has diminished, the AWBA's strategies and focus have shifted
 - Credit purchases
 - Additional options for the State's tribal firming obligation
 - e.g., GRIC "firming credits" and creation of ICS
 - Recovery of stored water



4 | REPORT ON recovery planning and implementation

Recovery Planning Advisory Group

- 14-member advisory group convened in 2018
 - Representatives agricultural, municipal, tribal, utilities and on-River
- Addresses recovery planning and implementation for AWBA firming
 - · Recovery modeling
 - Shortage impacts
 - · Implementation & Costs
- Objectives
 - · Greater planning clarity
 - · Gather stakeholder input



https://new.azwater.gov/rpag

5 | REPORT ON RECOVERY PLANNING AND IMPLEMENTATION

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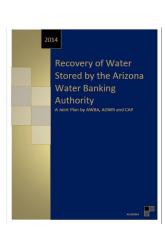
2021 Recovery Planning Update

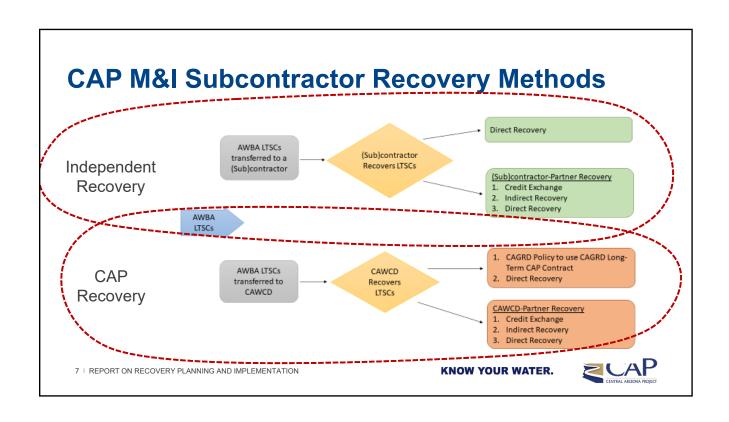
- Expands on 2014 Plan
- · Incorporates input from RPAG and stakeholders
- · Includes updated modeling
 - Includes analysis of DCP reductions
- Estimates recovery capacity required
 - CAP Recovery & Independent Recovery
- Identifies key decision points and actions
- Provides the framework for continued cooperation among ADWR, AWBA, CAP and stakeholders

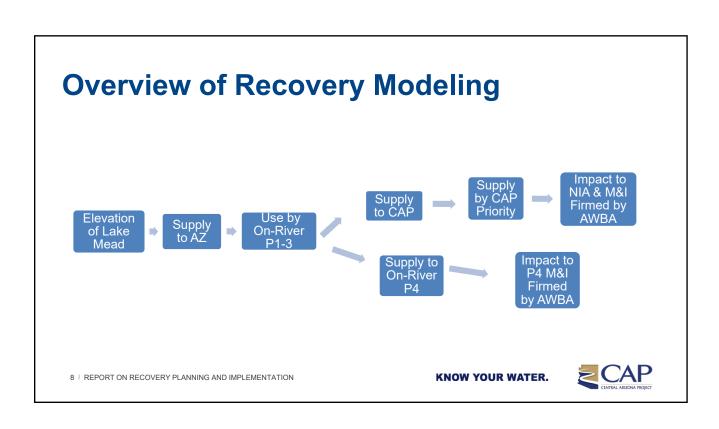
6 | REPORT ON RECOVERY PLANNING AND IMPLEMENTATION

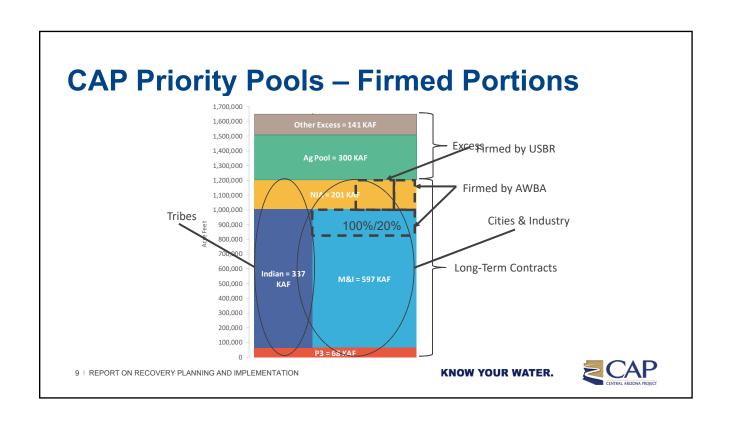
KNOW YOUR WATER.

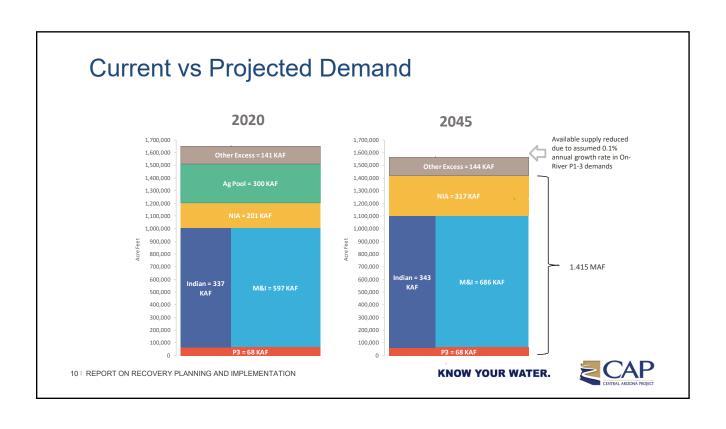


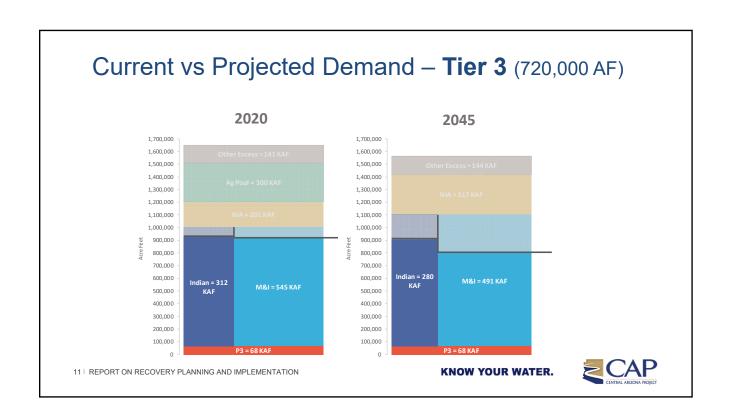


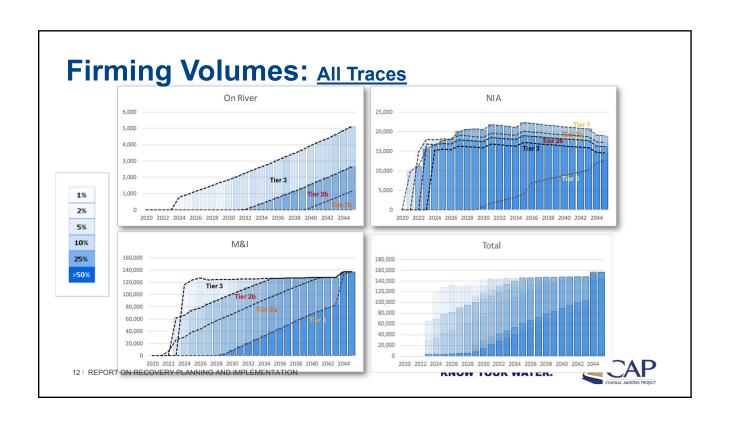


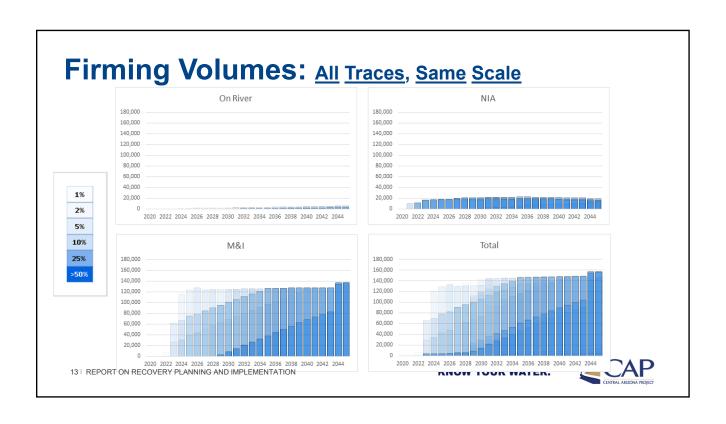


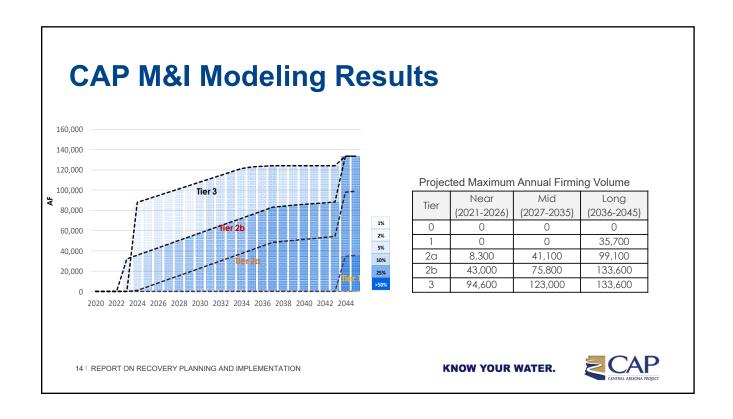






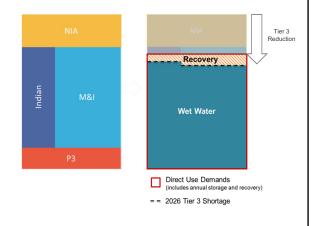






CAP M&I Recovery Capacity Analysis

- Analysis to estimate physical recovery well capacity
- What volume of a subcontractor's CAP supplies go toward direct use demands
- Worked collaboratively with impacted subcontractors to refine analysis assumptions



15 | REPORT ON RECOVERY PLANNING AND IMPLEMENTATION

16 | REPORT ON RECOVERY PLANNING AND IMPLEMENTATION



KNOW YOUR WATER.

Total AWBA Recovery Capacity Required 158,700 155,000 135,700 137,900 49,100 84,300 116,700 116,700 2026⁶ 2035⁶ 2045⁶ 2043⁶ Tier 3 Reduction - M&I Impacts (AFY) 27,000 51,100 71,000 68,000 AWBA M&I Recovery Capacity Needed⁴ 21,700 11,500 15,100 18,800 Capacity Met by CAP 15,500 36,000 52,200 46,300 Capacity Met by Independent Recovery⁵

Recovery Cost Considerations

- Each CAP recovery agreement has unique costs and terms
- Recovery costs are partly dependent on the volume of requested
 - Higher volumes = higher average costs
- The CAP Board established a Recovery Reserve in 2018 to support and track up-front work
 - · e.g., technical studies, borehole drilling, etc.
 - · Expenditures from that reserve will also factor into recovery costs
- For planning purposes, it is anticipated that CAP recovery costs will be comparable to CAP delivery rates

17 | REPORT ON RECOVERY PLANNING AND IMPLEMENTATION

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Implementation Timing & Triggers



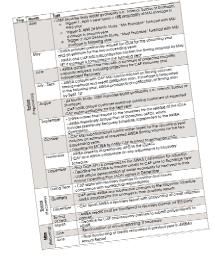
- Progressive levels of recovery implementation in the three years leading up to a shortage
- Proposed triggers for M&I firming
 - Trigger 1: The April 5-year table > 15% probability of M&I shortage in third year
 - o Trigger 2: The "Min Probable" forecast, April 24-Month Study M&I shortage in second year
 - o Trigger 3: The "Most Probable" forecast, April 24-Month Study M&I shortage in following year

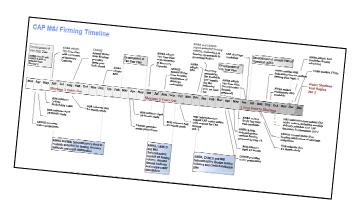
18 | REPORT ON RECOVERY PLANNING AND IMPLEMENTATION

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19 | REPORT ON SHORTAGE PREPARATIONS

KNOW YOUR WATER.



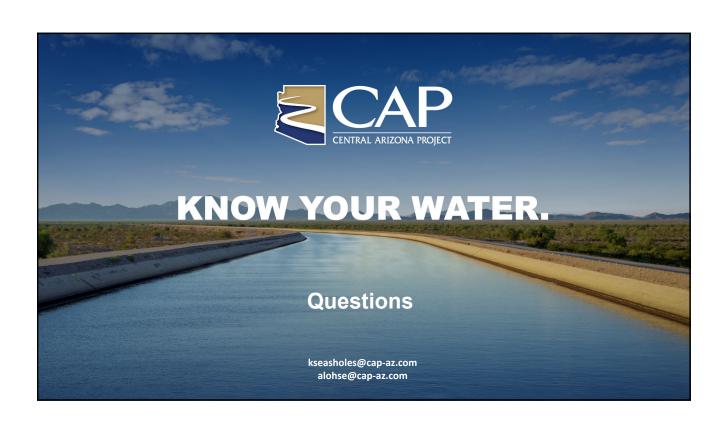
Section 8: Future Activities and Commitments

- ADWR, AWBA and CAP will continue to monitor factors influencing Colorado River Supply and update the Joint Recovery Model to analyze impacts on firming and recovery capacity
- CAP will continue to seek recovery partner agreements and perform technical studies for future project feasibility
- AWBA will continue to monitor credit balances and utilization rates
- RPAG will continue to meet regularly

20 | REPORT ON SHORTAGE PREPARATIONS

KNOW YOUR WATER.





INFORMATION BRIEF BOARD OF DIRECTORS



Agenda Number 10

CONTACT: Ken Seasholes Patrick Dent

623-869-2476 623-869-2581

kseasholes@cap-az.com pdent@cap-az.com

MEETING DATE: Thursday, March 4, 2021

AGENDA ITEM: Report on System Use Agreement Activities (Water Supply^) - Seasholes

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

2022 CAWCD Board Strategic Plan

Water Supply: Providing a reliable CAP water supply for the short- and long-term

Strategic Issue: Facilitate deliveries of non-Project water through the CAP system, pursuant to the System

Use Agreement

PREVIOUS BOARD ACTION/ACTIVITY:

June 7, 2018 CAWCD Board Meeting ("Approval of Consensus Proposal")

February 7, 2019 CAWCD Board Meeting ("Approval for Delivery and Introduction Standards for a

Broad Suite of Water Quality Constituents")

August 6, 2020 Report on Draft Water Quality Guidance Document Including Comments Received

September 3, 2020 Update on Water Quality Outreach and Technical Engagement

October 1, 2020 Update on System Use Agreement Activities

November 5, 2020 Update on Revised Draft Water Quality Guidance Document

ISSUE SUMMARY/DESCRIPTION:

CAP staff are engaged in several initiatives to ensure full implementation of provisions of the CAP System Use Agreement, and a few of those are at or approaching key milestones.

In January, a consulting team led by HDR, along with Dahl Consultants and Kiewit, submitted the final deliverable for the "Evaluate Operational Capability Project" that focused on improvements that could be made in the western portion of the CAP system (from Bouse Hills to Hassayampa Pumping Plant). Working closely with a large cross-functional team at CAP, the study evaluated capacity limitations and a range of opportunities to make system modifications. The study refined and expanded on previous work that has served as the basis for the concept of "System Improvement Projects" and "Operational Capability" that are tied to the issuance of CAWCD Wheeling Contracts. CAP Staff will incorporate that work as we identify and seek approval from Reclamation for definition and approval of Operational Capability in 2021. The study also included refined cost estimates that will assist in the determination of the System Improvement Fee assessed to wheeling parties.

With respect to specific wheeling projects, CAP Staff, along with staff from the Bureau of Reclamation, have had recent discussions with proponents of the Harquahala Valley Water Project (HVWP). Staff engagement has focused on understanding the scope and intent of the proposed multi-phase project as the HVWP partners prepare to formally engage the NEPA review process for the groundwater pumping project and

associated wheeling contracts for specifically identified parties. The HVWP project, like the smaller Scottsdale wheeling project, and a potential third Harquahala project, are primarily awaiting completion of the Uniform Water Quality Standards contained in the CAP Water Quality Guidance Document.

The 60-day comment period for the revised Guidance Document ended on January 24th, and written comments were received from three parties; the Ak-Chin Indian Community, the City of Chandler and the City of Scottsdale (attached). Staff have carefully reviewed and considered each of the comments, and incorporated those that provide clarity or are otherwise compatible with the rest of the document and the policy direction and intent from the Board. However, some of the comments, notably several from the Ak-Chin Indian Community, request changes to more fundamental aspects of the approach and standards that were part of the Consensus Proposal approved by the Board in 2018, and included in each of the draft documents and public briefings since then.

Prior to submission of the Ak-Chin Community's letter, staff and management from CAP and Reclamation met with representatives of the Community to listen, and share perspectives. Consistent with the Community's comment letter, the representatives raised technical concerns about two of the adopted standards, (for TDS and Chloride), advocated for enforceable Delivery Standards, and requested a broader evaluation of potential impacts from the standards. The Community also emphasized the unique provisions in the 1984 Ak-Chin Water Settlement Act, along with the trust responsibilities of the United States. In keeping with the latter, the Community requested formal Consultation on this matter, which has been scheduled for March 18th.

CAP Staff are sensitive to the issues raised by the Community, but believe that the Introduction Standards, along with the project-specific evaluation process, 5-year standards review requirement, and other monitoring and enforcement provisions provide an appropriately high level of protection for the Project Water supply, while allowing for the transportation of non-Project supplies. Accordingly, Staff have prepared a final draft Guidance Document that is suitable for discussion by the Board and subsequent consideration of action as part of the Board's two-step process. However, to accommodate the timing of the March 18th Consultation and any other discussions, Staff will make that final draft available for review and discussion at the April Board meeting, with consideration of action in May.

ATTACHMENTS:

- 1. Ak-Chin Indian Community Comments
- 2. City of Chandler Comments
- 3. Scottsdale Water Comments
- 4. USBR Response Letter to Ak-Chin

AK-CHIN INDIAN COMMUNITY

Community Government





January 22, 2021

Leslie A. Meyers, P.E. Area Manager, Phoenix Area Office Bureau of Reclamation 6150 W. Thunderbird Rd. Glendale, AZ 85306 Imeyers@usbr.gov

Theodore Cooke General Manager Central Arizona Water Conservation District P.O. Box 43020 Phoenix, AG 85080-3020 tcooke@cap-az.com

Dear Ms. Meyers and Mr. Cooke:

I write on behalf of the Ak-Chin Indian Community to offer the Community's views on the most recent revisions to the Draft Water Quality Guidance for the Introduction of Non-Project Water into the Central Arizona Project (the Draft Guidance). While the Community recognizes that the most recent draft has improved in some ways, including by partially addressing comments that the Community submitted in the prior draft, the Draft Guidance still suffers from fundamental flaws that render it inadequate to ensure that Ak-Chin receives the water that it is entitled to receive as a matter of law under its federal settlement act and its associated water delivery contract with the United States.

Before proceeding to reiterate the Community's concerns, I would like to acknowledge areas of improvement in the most recent Draft Guidance. In particular, the addition of § 3.4.1.6, which bars the introduction of effluent and other highly impaired water sources in the CAP System for a period of at least five years is a beneficial step in a positive direction, although the Community firmly believes that the introduction of effluent will remain as inappropriate five years hence as it does today. The Draft Guidance's clarification of the definition of the CAP System to clearly exclude facilities such as the Santa Rosa Canal is also helpful and appreciated.

Despite these helpful changes, the current Draft Guidance fails to address the most basic and fundamental concerns repeatedly raised by the Community. It fails to preserve the current, relatively high quality of water in the CAP System. It continues to lack necessary mechanisms providing for consultation of CAP users such as Ak-Chin, not to mention other tribes and stakeholders, who will be adversely affected by the inevitable water quality degradation resulting from increased wheeling of Non-Project Water. And most fundamentally, it fails to ensure—

indeed, it calls into grave doubt—the United States' ability to meet its statutory, contractual, and trust obligations to annually deliver to Ak-Chin "not less than seventy-five thousand acre-feet of surface water suitable for agricultural use," with that water consisting of 50,000 acre-feet (AF) of Colorado River water previously authorized for the Yuma-Mesa Division of the Gila River Project and the remainder consisting of CAP Water. 1984 Ak-Chin Water Rights Settlement Act, Pub. L. 98-350, 98 Stat. 2698, §§ 2(a) & (f)(1)-(2) (Oct. 19, 1984) (the 1984 Settlement Act).

Bluntly stated, the Community does not see how the United States will be able to meet its obligation to deliver surface water, the majority of it comprising main stem Colorado River water, suitable for agriculture to Ak-Chin if the Draft Guidance is adopted in its current form. Indeed, it does not appear that there is any intent to meet this obligation. The Draft Guidance acknowledges that the introduction of Non-Project Water "has the potential to alter, and possibly degrade, the water quality in the CAP System," § 3.4 (emphasis added), although even this acknowledgement shies away from the reality that degradation is essentially inevitable under the currently proposed standards. And § 2.1 notably deletes the word "high" from an earlier draft's statement recognizing the importance of "high quality" water in the CAP system, an apparent attempt to step back from the prior draft's appropriate acknowledgement of the current, not-to-be-maintained water quality.

In order to preserve the United States' ability to meet its obligations to Ak-Chin, the Draft Guidance needs to be fundamentally changed in two ways. First, it must include enforceable *delivery* standards, not just introduction standards.¹ While the Community does not question the value of introduction standards, the simple fact of the matter is that the United States' obligations—and the Community's needs—are based on the quality of water actually delivered to the Ak-Chin Reservation, and the Draft Guidance should be revised to acknowledge this reality by including enforceable delivery standards.

Second, the proposed salinity concentrations in the Draft Guidance must be lowered, regardless of how they are to be enforced. As the Community has repeatedly pointed out in prior comments, the delivery standards listed in Table A-1 of the Draft Guidance for chloride (170 mg/L) and TDS (747 mg/L) are simply too high to satisfy the United States obligation to deliver to Ak-Chin "surface water suitable for agricultural use." 1984 Settlement Act § 2(a). As an initial matter, these proposed standards are inconsistent with—and of notably poorer quality than—the existing quality of Colorado River or CAP water, raising serious doubts as to whether water with such characteristics can be properly characterized as the "surface water" that Ak-Chin is entitled to receive. According to the 2019 CAP Water Quality Report, TDS in the CAP System ranged from 500- 660 mg/L and averaged 585 mg/L with a 5-year average of 629 mg/L. Chloride ranged from 82-96 mg/L and averaged 87 mg/L with a 5-year average of 91 mg/L. At the Brady pumping plant, which is the closest measuring point to the Santa Rosa Canal, the maximum 2019 concentration for chloride was 96 mg/L and for TDS was 610 mg/L. Plainly, water with up to 170 mg/L of chloride and 747 mg/L of TDS is chemically inconsistent with the surface water that Ak-Chin is

¹ Moreover, as noted in the Community's prior comments, language in the Draft Guidance regarding the enforceability of even the introduction standards needs considerable tightening. As written, it focuses far too much on steps that will be taken to accommodate non-conforming proposed introductions of Non-Project Water, see § 3.4.5, noting, at worst, that pre-introduction treatment "may"—not shall—be required for non-compliant sources of Non-Project Water that cannot otherwise be accommodated. § 3.4.6.

statutorily and contractually entitled to receive. In fact, as compared to 2019 levels, water at these levels would result in the introduction of 10,000 tons of additional salt to the Ak-Chin Reservation each year.

Even if that were not the case, water with the salinity levels permitted under the Draft Guidance is significantly impaired for agricultural use. The proposed increases in salinity levels will negatively affect Ak-Chin's farming operations by impairing our ability to continue to grow potatoes and other salt sensitive crops. It will reduce crop yields, contribute to soil compaction, require increased irrigation to provide for salt leaching, and increase preexisting groundwater salinization problems, to say nothing of its adverse effects on non-agricultural uses.

While the United States' obligations to Ak-Chin, standing alone, are sufficient grounds for lowering the chloride and TDS delivery thresholds in the Draft Guidance, the Community also notes that the United States and other stakeholders have invested decades and hundreds of millions of dollars into efforts to combat high salinity levels in the Colorado River for the benefit of water users—efforts that have met with some success and directly contributed to the current, relatively high quality of CAP System water. The salinity levels proposed in the Draft Guidance would effectively undo much or all of that work. This willingness to cavalierly reverse decades of progress is baffling to the Community.

For all of the foregoing reasons, the Ak-Chin Indian Community hereby reiterates its urgent request that the Draft Guidance be revised to include enforceable delivery standards for TDS and chloride set no higher than 680 mg/L and 150 mg/L respectively. Further, the Community strongly encourages CAWCD to postpone any action by its Board of Directors to consider adoption of the Draft Guidance until a study can be conducted to fully evaluate the environmental and economic impacts that would result from this level of increased salinity in the CAP aqueduct, and the United States conducts tribal consultation. I appreciate your consideration of the Community's comments, and trust that the United States will take the necessary and appropriate steps to meet its moral and legal obligation to provide the Ak-Chin Reservation with water suitable to maintain the Community's millennia-long reliance on farming its land.

Sincerely,

Robert Miguel

Chairman

Ak-Chin Indian Community



January 22, 2021

Central Arizona Project 23636 N. 7th St. Phoenix, AZ 85024

Re:

Water Quality Guidance for the Introduction of Non-Project Water into the Central

Arizona Project

Dear CAWCD and Bureau of Reclamation Staff and Leadership,

The City of Chandler appreciates the opportunity to comment on the updated version of the Draft Water Quality Guidance Document for the Introduction of Non-Project Water into the Central Arizona Project. This updated version addresses the majority of the City's comments and concerns from the original draft. The City thanks CAP staff for discussing our perspective with us and integrating our previous comments.

The City would still encourage the formation of a Water Quality advisory group made up of CAP stakeholders to assist CAP and Reclamation on water quality issues with non-project water blending. This was not addressed in this new version. However, the City understands that CAP will be engaging stakeholders in water quality decision making processes, much like CAP currently does with roundtable discussions on rates. The City of Chandler looks forward to actively participate in these discussions to help ensure the quality of the water we treat for our customers.

The City thanks CAP, BOR, and stakeholders for the considerable effort put forth to draft this documentation. The process to get to this point was considerable for all parties, but we view it as a necessity as the water quality of the CAP canal is of the utmost importance.

Sincerely

John Knudson, P.E.

Chandler, Arizona 85244-4008

Mail Stop 905

PO Box 4008

Public Works & Utilities Director



Public Works & Utilities Department Utilities Administration

Telephone (480) 782-3800 Fax (480) 782-3805 www.chandleraz.gov

Phone: 480-312-5685 ScottsdaleAZ.gov/Water

January 22, 2021 Central Arizona Project 23636 N. 7th St. Phoenix AZ, 85024

Re: Updated Draft - Water Quality Guidance: For the Introduction of Non-Project Water into the Central Arizona Project

Dear CAWCD Staff and leadership,

Scottsdale Water would like to thank CAWCD staff and leadership for supporting this process and for continuing an open dialogue. The opportunity to give input and comments to this document will ultimately result in a better foundation for creative and viable options for new water supplies.

The comments we have to individual sections are detailed in the following pages, and although seem numerous in quantity, are a part of an effort to make this the best working document for all parties. While some of the comments and recommendations have to do with adjustments to verbiage others are for clarifications purposes. In addition to language modification we are asking for consideration of three compounds in Table A-1 and five in Table A-2. Those considerations and explanations can be found at the end of this document. We hope and ask that CAWCD consider our methodology and we are available for further discussion should that be warranted.

Again, we appreciate the time and resources all parties put into this process, and we are looking forward to the time when we are able to safely and appropriately wheel non-project water in the CAP canal.

Sincerely,

Brian K. Biesemeyer

Executive Director, Scottsdale Water



Section 2.3 Establishment of Water Quality Standards

Table A-2; The City recommends that at the end of the discussion about this table that a sentence be added that explains that the table is divided into "regulated" and "unregulated" substances. Since Section 4.3.2 separates the use of these two sections of Table A-2 for required monitoring, it would be helpful to have this pointed out in the description of the Table.

Clarify on how "rarely or never been found" constituents translate to "historical CAP values". This section seems contradictory in these two phrases.

Section 2.4 Environmental Reviews

Please confirm that the subject NEPA process and analysis is associated with the CAWCD programmatic NEPA for wheeling.

Section 3.4.1.1 Physical Sampling Procedure

The multiple sampling procedure options (*The Southwest Region of the United States Environmental Protection Agency (EPA Region 9) has provided acceptable sampling and handling techniques. Alternatively, the USGS National Field Manual for Collection of Water Quality Data details appropriate sampling and handling procedures for both surface water and groundwater sources.*) are not consistent with other sections of the water quality guidance document that also discuss sampling procedures. The other section is 4.2.1. ("These procedures should be consistent with EPA approved methods"). If it's EPA or USGS methods it should be stated so in both sections.

Section 3.4.1.2 Laboratory

".... If no ADHS approved methods exists, then an appropriate method, approved by the USEPA, shall be used".

The city recommends that the word "approved" be replaced with the word "developed". Using the word approved implies that the EPA is in some way recommending or using a specific method in a regulation. This may not be the case. EPA has an entire research laboratory section that develops methods for use, that may or may not eventually be cited or "approved" in a regulation.

Section 3.4.1.6 Other non-Project Water

In the absence of a definition for heavily or highly "impaired water sources" we recommend that the focus of this section be solely on effluent. Otherwise, this section conflicts with Section 3.4.6 Water Treatment Plan which clearly outlines that non-Project Water will require treatment that is acceptable.

Section 3.4.7 Modifications to non-project source supply

Please define "modified groundwater wells". To what extend does an existing well qualify as being modified? Existing wells routinely need updated parts, however, it's unclear as to the demarcation line between well



maintenance and modification, which leaves this up for interpretation adding to uncertainty with reporting and operations.

4.2.1 Physical Sampling Procedures

"A permanent water sampling station (e.g., raw water tap) will be constructed within the turn-in structure/pipeline that will allow for an accessible and consistent point of obtaining a representative grab sample for analysis by the Wheeling Entity."

We recommend the language be changed to: "A permanent water sampling station (e.g., raw water tap) will be constructed between the turn-in structure and the blending point at a location that is amenable to CAWCD and the Wheeling Entity. This point must be at a safe, accessible, and consistent point for obtaining a representative grab sample for analysis by the Wheeling Entity and agreed upon by both parties."

The multiple sampling procedure options (EPA, USGS) noted in previous section 3.4.1.1 are not consistent with section 4.2.1 (USGS method is missing).

Section 4.2.2 Laboratory

".... If no ADHS approved methods exists, then an appropriate method, approved by the USEPA, shall be used."

The city recommends that the word "approved" be replaced with the word "developed". Using the word approved implies that the EPA is in some way recommending or using a specific method in a regulation. This may not be the case. EPA has an entire research laboratory section that develops methods for use, that may or may not eventually be cited or "approved" in a regulation.

Section 4.3.2 Supply Classifications; Type A, Type B & Type C

There is a disconnect between the main paragraphs and the bulleted list below them. Clarification is needed as to what the requirements of the bulleted list is in reference to (i.e. the following must...).

Section 5.2.1 Water Quality Reporting

The City recommends that the requirement for notification of an exceedance of an Introduction Standard be reported within 48 *business* hours.

Section 5.2.3 Planned Operational Changes

We recommend that some kind of emergency clause be added to the 14-day requirement. Circumstances may arise, such as a well shut down, that is spontaneous and does not provide the opportunity to give a 14-day notice.

"CAWCD may require the Wheeling Entity to model potential impacts to water quality."



The City suggests adding language that includes an alternative to modeling and give the entity the option to be able to obtain physical samples or perform mass balance calculations in lieu of modeling to ensure compliance in the event of an operational change.

Section 5.2.4 Water Quality - Annual Report

The City recommends that "water quality data" being requested in the annual report be defined as a summary table and not laboratory reports. It is already stated in Section 5.2.2 that laboratory reports must be retained for five years so the raw data is available upon request.

Section 6.2.1 Exceedance of Introduction Standards - Proving Period

The City recommends that both time frames outlined in this section be changed to reflect business hours. Therefore, the wording would now say "10 <u>business</u> days" and "48 <u>business</u> hours".

Section 6.2.2 Exceedance of Introduction Standards - Compliance Monitoring

The City recommends that both time frames outlined in this section be changed to reflect business hours. Therefore, the wording would now say "10 *business* days" and "48 *business* hours".

Section 6.2.3 Exceedance of Introduction Standards

We recommend the following changes to wording in the first sentence. It is standard protocol for the City to take split samples when a regulatory entity takes a sample in our systems.

CAWCD and Reclamation may collect water samples at the Wheeling Entity's permanent water sampling station at an **arranged** time **to allow for split sampling**.

Section 6.2.4 Cessation after Tier 2 exceedance.

This section remains unclear. The City recommends language that is more concise and understandable. An example of what that could look like is the following:

"If a wheeling entity has a Tier 2 exceedance, the cessation of delivery will be required to occur. If at the time of the cessation (during that calendar year) more non-project water was introduced in the canal then has been delivered to the wheeling's take out delivery point, CAWCD will continue to satisfy the non-project delivery schedule for the volume that was received into the canal. The Wheeling Entity must consult with CAWCD to determine availability of water to be delivered".

7.1 Indemnification

We recommend that this section be removed entirely. This document is guidance and non-binding. Indemnification language is most appropriate in the Wheeling agreements.

Table A-1

We request that aluminum be changed to a combination standard with a standard for both dissolved and total aluminum. We recommend that the dissolved aluminum introductory standard be retained at the originally proposed 50 ppb and a new introductory standard for total aluminum be created at 200 ppb. Aluminum is currently regulated under a National Secondary Drinking Water Standard with a range of 50-200 ppb. Creating a combination standard that spans this range seems appropriate and not overly restrictive based on historical values in the canal and non-project water.

	CAP Introductory Std	Proposed Introductory Std
Aluminum, Dissolved	NA	50 ppb
Aluminum, Total	50 ppb	200 ppb

In addition, after discussions with our contract laboratory they have informed us that they cannot meet the MRLs for two of the substances in Table A-1. We request that MRLs for these substances be raised as follows:

使用的表现是由自己的意思	CAP MRL	Proposed MRL
Perchlorate	2.0 ppb	4.0 ppb
Radium, Combined	1.0 ppb	2.0 ppb

Table A-2

We request that the series of Nitrosamines, i.e., NDMA, NDEA, NDPA, and NPYR, have an MRL of 10 ppt. This level falls in line with the current range of laboratory capabilities for this series of non-regulated substances. In addition, after discussions with our contract laboratory, they have informed us that they cannot meet the MRLs for one of the substances in Table A-2. We request that MRLs for this substance be raised as follows:

	CAP MRL	Proposed MRL			
NDMA	2.0 ppt	10.0 ppt			
NDEA	2.0 ppt	10.0 ppt			
NDPA	2.0 ppt	10.0 ppt			
NPYR	2.0 ppt	10.0 ppt			
Monochloroacetic acid	0.001 ppb	0.002 ppb			



United States Department of the Interior

BUREAU OF RECLAMATION
Phoenix Area Office
6150 West Thunderbird Road
Glendale, AZ 85306-4001



VIA ELECTRONIC MAIL ONLY

Honorable Robert Miguel Chairman Ak-Chin Indian Community 42507 West Peters & Nall Road Maricopa, Arizona 85138

Dear Chairman Miguel:

Thank you for your letters dated January 22, 2021, and January 25, 2021, regarding the Bureau of Reclamation and the Central Arizona Water Conservation District's (CAWCD) Draft Water Quality Guidance for the Introduction of Non-Project Water into the Central Arizona Project (Draft Guidance).

In 1988, the United States and the CAWCD entered into the Contract between the United States and the Central Arizona Water Conservation District for Delivery of Water and Repayment of Costs of the Central Arizona Project (CAP Repayment Contract). Paragraphs 8.17 and 8.18 of that agreement specifically speak to the rights reserved by the United States to have water carried by the Central Arizona Project (CAP) and the wheeling of non-project water in the CAP system. The CAP Repayment Contract provides that the Contracting Officer must approve these agreements and in the case of non-project water, "consider, among other things, the impact that the wheeling of such non-project water will have on the quality of project water." While the CAP Repayment Contract would be the subject of later litigation, those provisions of the contract remain in effect today. As a part of the Arizona Water Settlements Act (AWSA), Pub. L. 108-451, Congress reiterated in section 103 that "in accordance with the CAP Master Repayment Contract, the CAP may be used to transport non-project water for: (1) domestic, municipal, fish and wildlife, and industrial purposes; and (2) any purpose authorized under the Colorado River Basin Project Act."

CAWCD and Reclamation entered into the Central Arizona Project System Use Agreement (System Use Agreement) in 2017, in part to establish standards for wheeling contracts for the transportation of non-project water in the CAP system. The System Use Agreement includes a provision in which the parties agreed to establish uniform water quality standards for non-project water introduced into the CAP system.

On July 12, 2017, Reclamation held a System Use Agreement Development of Water Quality Guidelines Workshop for any tribe receiving, or in settlement negotiations to receive, CAP

water. The workshop was to discuss the water quality guidance document and possible paths forward. Mr. Robert Palmquist attended on behalf of Ak-Chin Indian Community (Community). At that time the tribes declined to create their own CAP Water Quality Guidance Task Force and agreed to instead participate ad hoc on the CAP Water Quality Task Force and comment on the proposal created by that group. Reclamation also offered tribal consultation to any tribe interested in a follow-up discussion at the July 12, 2017 meeting, and at each follow-up meeting at the Inter-Tribal Council of Arizona, where Reclamation was asked to report on this topic. Until your most recent correspondence, the Community had not requested tribal consultation with Reclamation on this topic.

Reclamation has continually articulated its expectation that wheeling of water in the CAP will meet: Reclamation policy requirements; CAP authorized project purposes, to include wheeling non-project water; and, Reclamation's obligations to system users. Reclamation believes the Draft Guidance achieves those three goals as it allows for the wheeling of non-project water, sets a standard that is comparable to existing Arizona Water Quality Standards already in place by the Arizona Department of Environmental Quality for the lower main stem of the Colorado River below Parker Dam, and continues to require each proposal to wheel non-project water be independently reviewed by Reclamation to take into consideration the impact that wheeling of such non-project water will have on the quality of the project water.

Reclamation looks forward to formal Tribal Consultation with the Community scheduled on March 16, 2021, at 10:00 a.m. MST, via WebEx. Due to the on-going litigation regarding water quality in the Santa Rosa Canal, Reclamation may not be able to comment on specific issues regarding water quality in the Santa Rosa Canal. However, Reclamation does not believe this will preclude the parties from having a meaningful discussion on the Draft Guidance document. If you have any questions, please contact me via email at lmeyers@usbr.gov or by phone at (623) 773-6218.

Sincerely,

Leslie A. Meyers Area Manager

cc: Catherine Munson (<u>cmunson@kilpatricktownsend.com</u>) Katosha Nakai (<u>knakai@stricklandlaw.net</u>)

David Palumbo (dpalumbo@usbr.gov)

WYOMING UTAH **NEVADA** COLORADO **Lake Powell** 38%, 9.32 MAF **Mid-Elevation** Release 3.575' Lake Mead **Current Elevation** 3,573' 41%, 10.61 MAF Current Elevation 1,087' **Tier 1 Shortage ARIZONA** ALBUQUERQUE 1,075' LOWER CALIFORNIA **MEXICO ECAP**

Colorado River Water Supply Report

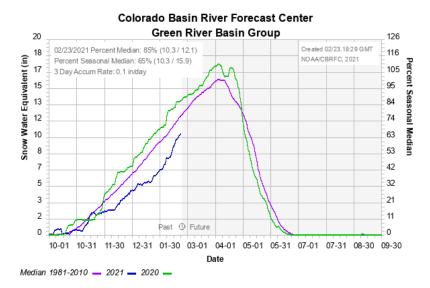
System Contents: 24.79 MAF

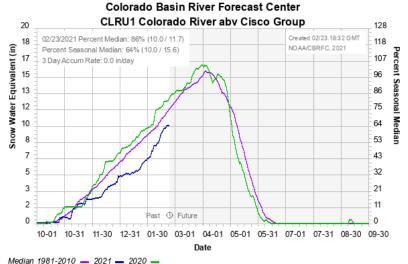
As of February 22, 2021

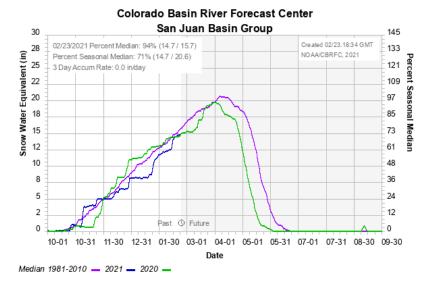
Reservoir Capacities (MAF)				
Reservoir	Current	Change*	Maximum	
Lake Mead	10.61	+ 0.14	25.90	
Lake Powell	9.32	- 0.41	24.30	
Flaming Gorge Reservoir	3.15	-0.01	3.75	
Fontenelle Reservoir	0.14	- 0.02	0.34	
Navajo Reservoir	1.05	- 0.01	1.70	
Blue Mesa Reservoir	0.40	0.00	0.83	
Morrow Point Reservoir	0.11	0.00	0.12	
Crystal Reservoir	0.02	0.00	0.03	

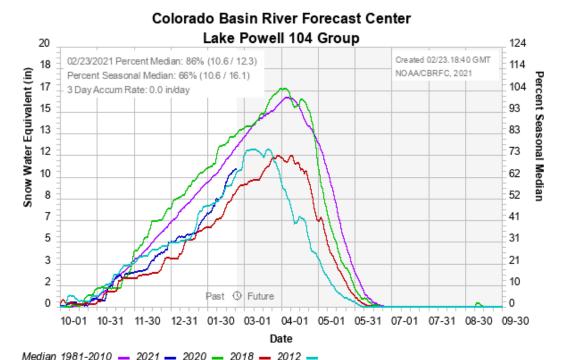
^{*} With respect to previous month's report











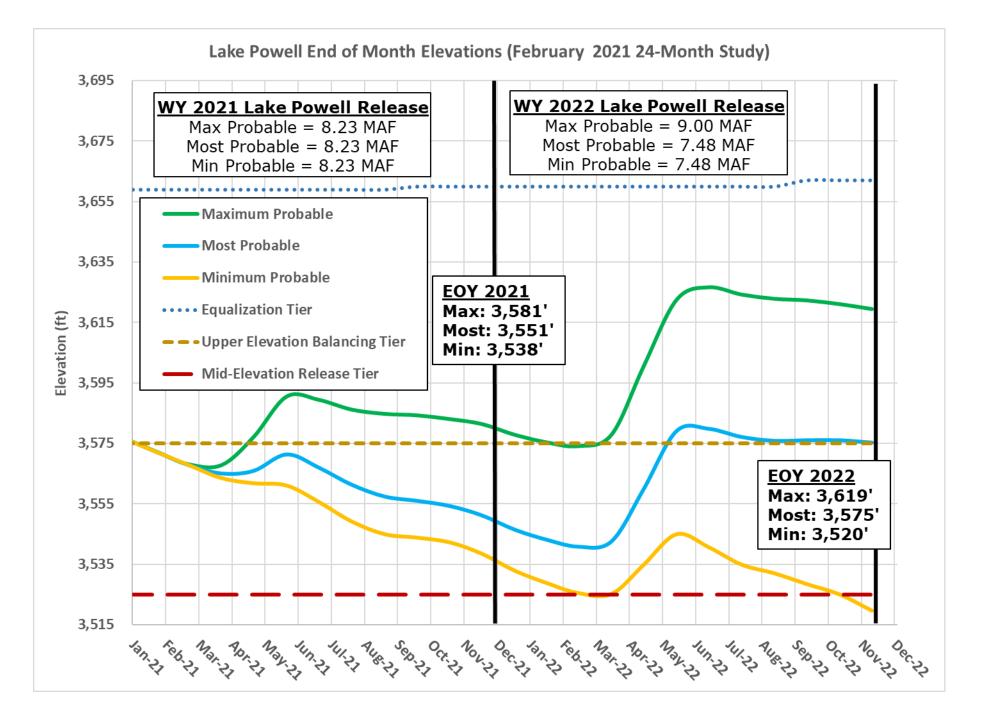
As of 2/23/2021, snow accumulation in the Green River Basin (which contributes ~33% of the flows into Lake Powell) is at 10.3 in. (blue line), which is 85% of the 30-year median for this date of 12.1 in. (purple line) and is approximately half of last year's SWE for this date (green line).

Snow accumulation in the Upper Colorado River Basin (contributes ~42%) to date is at 10.0 in., which is 86% of the 30-year median for this date of 11.7 in.

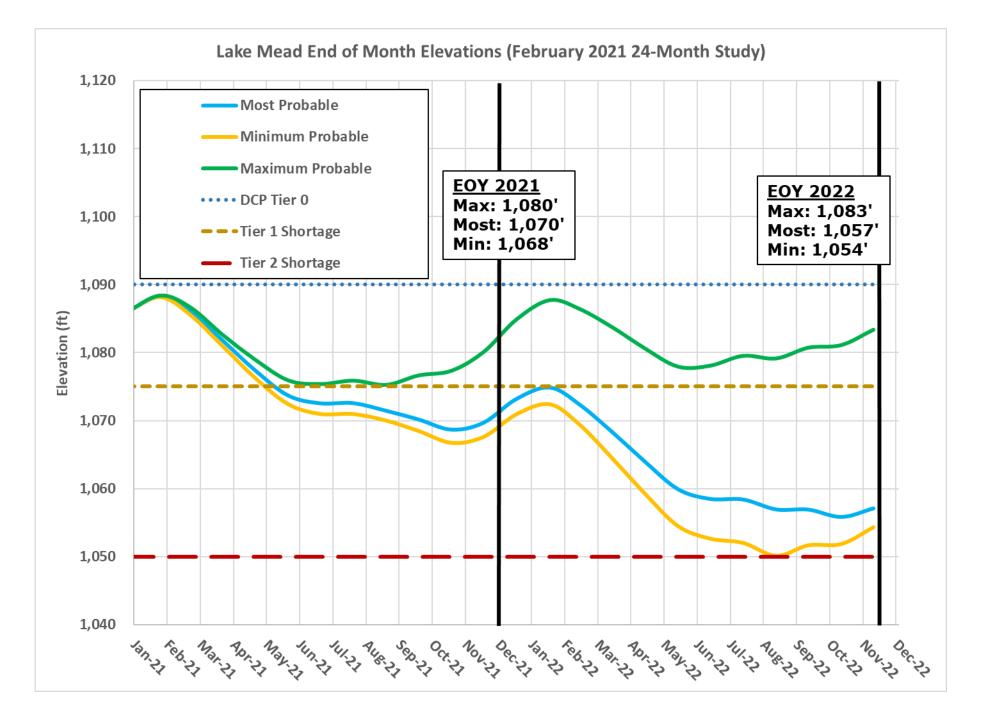
Snow accumulation in the San Juan River Basin (contributes $^{\sim}13\%$) to date is at 14.7 in., which is 94% of the 30-year median for this date of 15.7 in.

For the overall Colorado River Basin above Lake Powell, the snow accumulation to date is at 10.6 in., which is 86% of the 30-year median for this date of 12.3 in. The April – July inflow to Lake Powell in 2012 was 2.06 MAF, and in 2018, it was 2.60 MAF. The 2021 February forecast (made on 2/3/2021) was 3.30 MAF.











INFORMATION BRIEF BOARD OF DIRECTORS



Agenda Number 12

CONTACT: Don Crandall Darrin Francom 623-869-2457 623-869-2276

dcrandall@cap-az.com dfrancom@cap-az.com

MEETING DATE: Thursday, March 4, 2021

AGENDA ITEM: Report on Water Operations (*Project Reliability*^) - Crandall

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

2022 CAWCD Board Strategic Plan

Project Reliability: Providing reliable and cost-effective operations, maintenance, and replacement of CAP's

infrastructure and technology assets

Water Supply: Providing a reliable CAP water supply for the short- and long-term

PREVIOUS BOARD ACTION/ACTIVITY:

March 5, 2020 Report on Water Operations
June 4, 2020 Report on Water Operations
September 3, 2020 Report on Water Operations

January 7, 2021 Report on Water Operations and 2021 Annual Operating Plan

ISSUE SUMMARY/DESCRIPTION:

Update regarding CAP's 2020 Water Deliveries and an operations update on Colorado River diversions, deliveries, Lake Pleasant operations, and CAP recharge operations through February 15, 2020.

For 2020, the actual CAP Colorado River Diversion was 1,402,537 Acre-Feet. A final summary of the CAP delivery supply including Colorado River supply and forbearance activities, CAP system losses, Lake Pleasant supply, and other CAP system operations will be provided at the June Board Meeting after the final Colorado River Accounting and Water User Report is made available by Reclamation.

During 2020, additional Unexpected Supply was made available to fully satisfy the Agricultural Settlement Pool and remaining Other Excess was made available to the statutory firming pool for the AWBA, CAGRD Replenishment Reserve and Reclamation in accordance with the Board Policy for Distributing Excess Water and Turn-Back Water. The total Delivery Supply of 1,723,898 AF was used to deliver 1,090,656 AF to long term contracts, 255,415 AF of excess water to the Ag Settlement Pool, and 248,918 AF of other excess to meet required DCP Tier 0 contributions of 192,000 AF and for AWBA, CAGRD, and Reclamation Firming.

For 2020 CAP Delivered 1,424,400 Acre-Feet to CAP Contracts, Subcontracts and Other Excess water users. 2020 Customer Water scheduled, delivered and remaining deliveries is summarized below. A full report of CAP Water Deliveries can be found on CAP's website at https://www.cap-az.com/departments/water-operations/deliveries.

2020 CAP Schedule and Delivery Summary

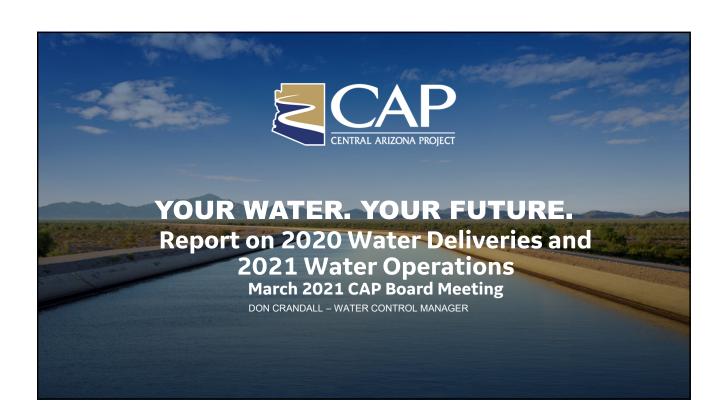
Summary	Total			
Contract Type	Schedule d	Delivered	Remaining	
Excess - Ag Pool	258,930	255,415	3,515	
Federal Off-Res	366,258	362,763	3,495	
Federal On-Res	123,600	119,686	3,914	
Excess - Other Excess	78,432	78,420	12	
M&I Subcontract	611,678	608,116	3,562	
Total	1,438,898	1,424,400	14,498	

Water diversions through February 15, 2021 are 187,594 Acre-Feet. Diversions are slightly lower than planned due to lower water deliveries, higher than planned Lake Pleasant Elevation and reduced diversions in February in response to higher than anticipated energy prices. Water deliveries are 82,317 Acre-Feet, slightly lower than planned, resulting in a higher than the planned Lake Pleasant Elevation at 1692.9 ft. CAP's recharge projects are scheduled near capacity for 2021 with the exception of Tonopah Desert Recharge Project, which is being evaluated for alternate maintenance plans or being returned to reserve status.

CAP operations will continue to make operational adjustments to the annual operating plan as real time operational changes are required.

ATTACHMENTS:

1. Presentation



Report on Water Operations

- 2020 CAP Water Delivery Summary
- Turn-back Water Summary
- 2021 Report on Water Operations
 - Colorado River Diversions
 - Customer Deliveries
 - Lake Pleasant Elevations
 - CAP Recharge Operations

2 | REPORT ON 2020 WATER DELIVERY AND WATER OPERATIONS



2020 CAP Delivery Summary 2020 Actual CAP Delivery Supply¹ 1,645,000 AF 1,723,898 AF 1,203,625 AF 1,090,565 AF **Long-term Contract** Long-term Contract Lake Mead Contribution² 93,000 AF 540,333 AF **CAP Excess Supply** 441,375 AF **Ag Settlement Pool** 249,375 AF 255,415 AF **Other Excess Supply** 192,000 AF 284,918 AF Lake Mead Contribution³ 192,000 AF 192,000 AF **CAGRD Replenishment Obligation** 0 AF 0 AF AWBA 0 AF 59,543 AF **CAGRD Replenishment Reserve** 12,182 AF **Bureau of Reclamation Firming** 6,695 AF O AF **Not Delivered**⁴ 0 AF 14,498 AF

Notes

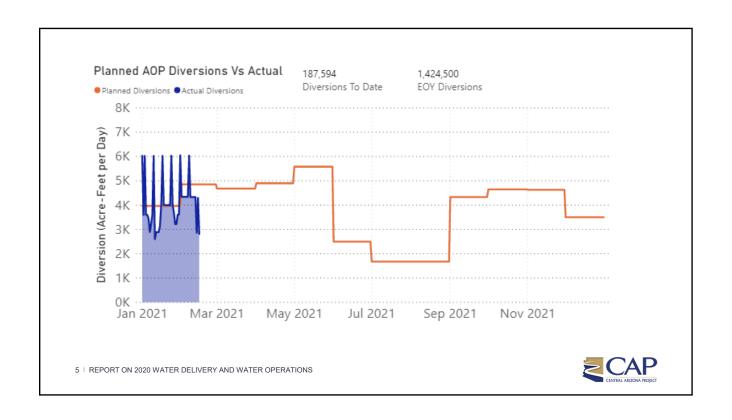
- Actual Delivery Supply includes additional 78,898 AF of Unexpected Available Supply.
- 2. Includes 93,000 AF GRIC ICS & FMYN Lake Mead Contributions.
 - 3 | REPORT ON 2020 WATER DELIVERY AND WATER OPERATIONS
- Required DCP Tier 0 Contribution includes AG forbearance 3 program, MWID
 conservation, and CAP excess water and reflects the first full year of DCP
 implementation of Lake Mead contributions and related actions.
- Includes water ordered but unsuccessfully remarketed or undelivered water orders at end of year.

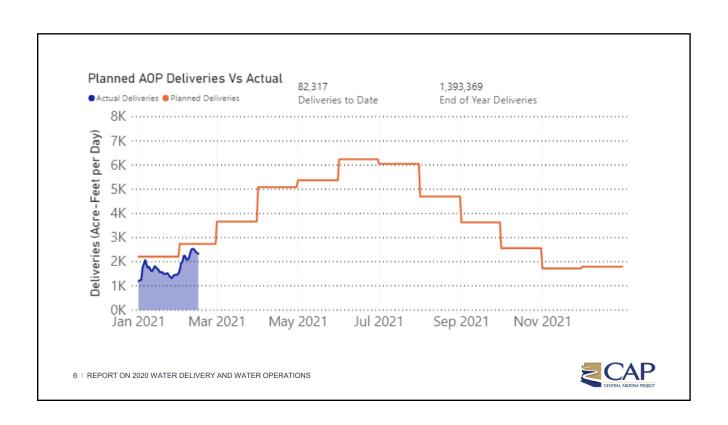
Turn-Back Water Summary

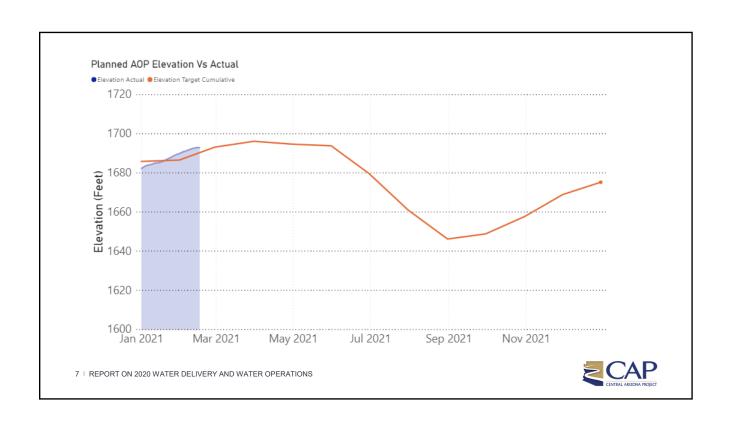
	2016	2017	2018	2019	2020
Successful Remarket	279	6,259	9,167	6,120	12,189
Un-Successful Remarket	6,187	-	-	5,313	-
Not Delivered	9,070	9,570	11,351	33,278	14,498
Total	15,536	15,829	20,581	44,711	26,587
% of Total Deliveries	1.1%	1.2%	1.4%	3.4%	1.9%

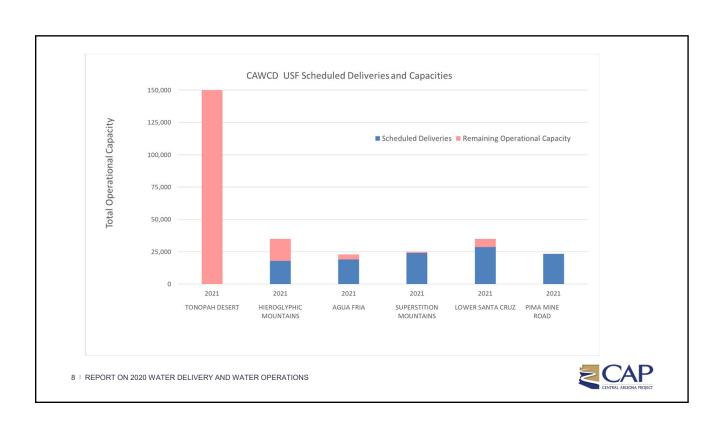
4 | REPORT ON 2020 WATER DELIVERY AND WATER OPERATIONS





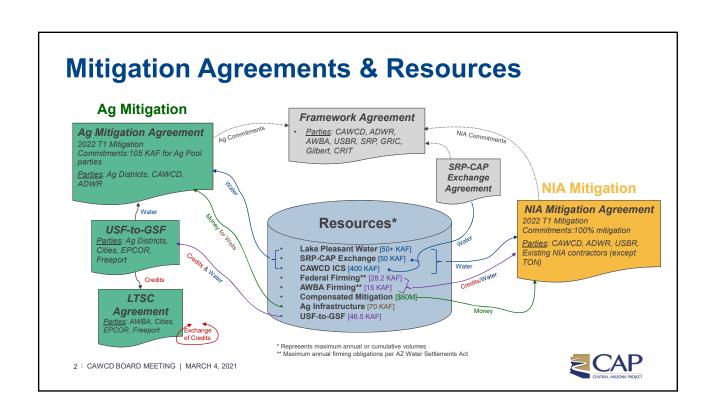




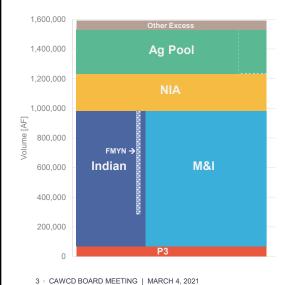








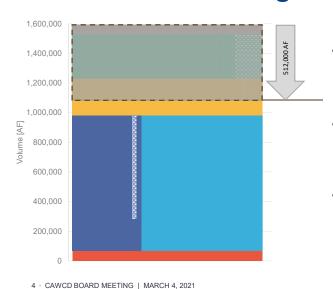
2022 - Normal Supply



- · Assumptions:
 - 1.595 MAF delivery supply
 - · Orders similar to 2021
 - Includes NIA Reallocation
- The block chart is a roll-up of individual orders
- Ongoing conservation
 - ~43,500 AF of Ag Pool Forbearance
 - 13,933 AF of FMYN system conservation

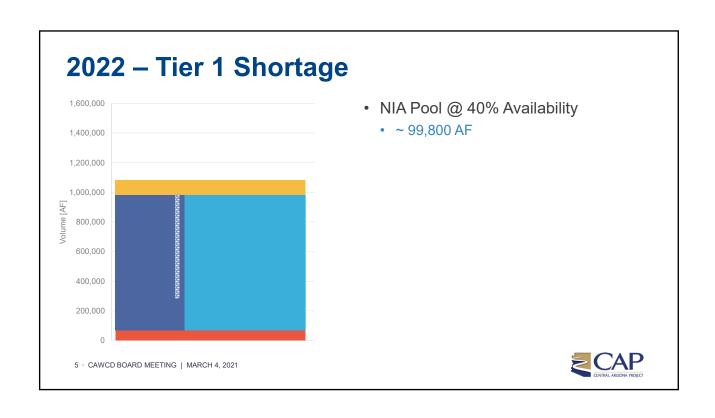


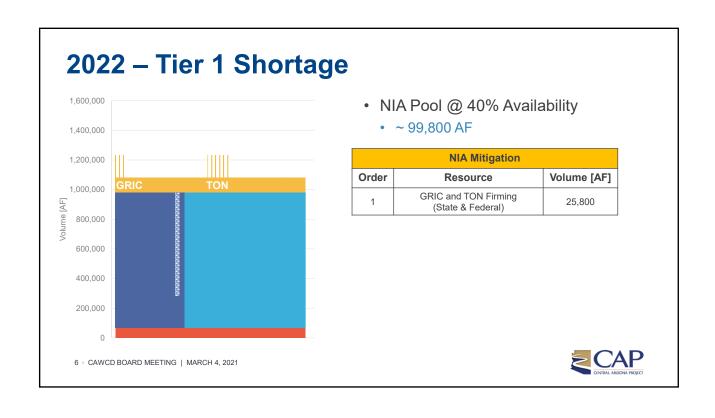
2022 - Tier 1 Shortage

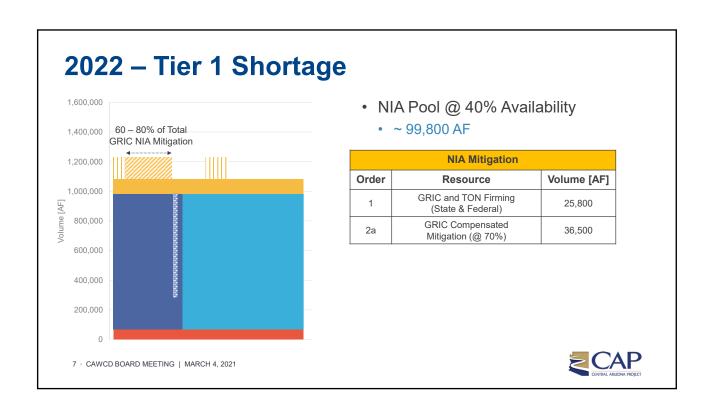


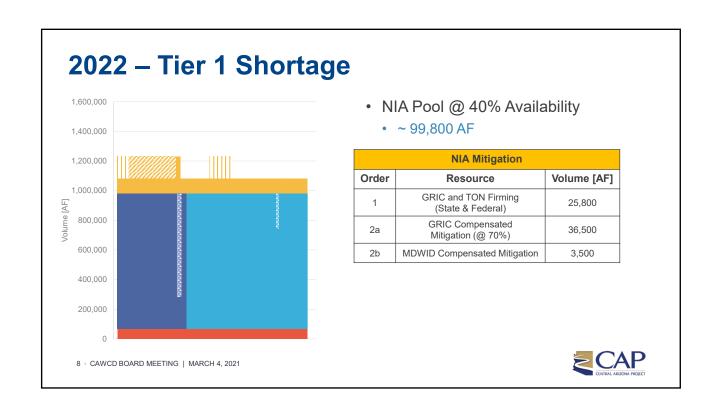
- 512,000 AF Reduction/Contribution
 - 320,000 AF per 2007 Guidelines
 - 192,000 AF per LBDCP
- · Pre-Mitigation Impacts
 - 100% Reduction to Ag Pool
 - ~60% Reduction to NIA Pool
- Mitigation Commitments
 - 100% mitigation for NIA pool
 - 105,000 AF of mitigation for Ag Pool parties

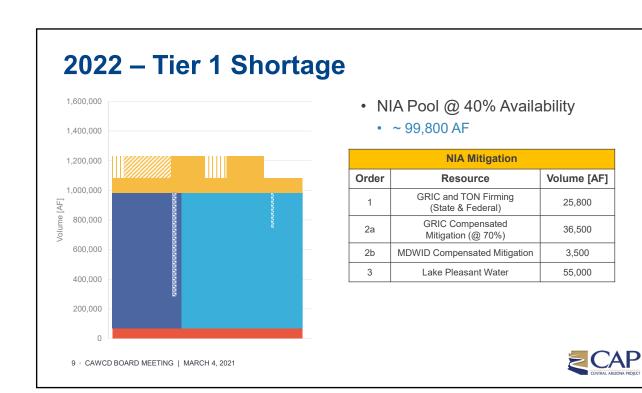


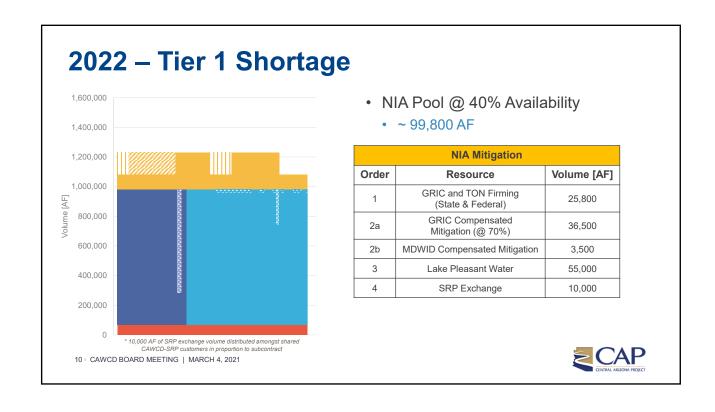




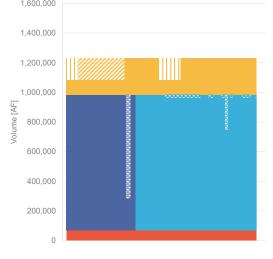












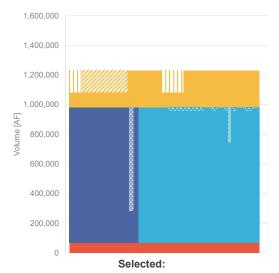
- NIA Pool @ 40% Availability
 - ~ 99,800 AF

NIA Mitigation			
Order	Resource	Volume [AF]	
1	GRIC and TON Firming (State & Federal)	25,800	
2a	GRIC Compensated Mitigation (@ 70%)	36,500	
2b	MDWID Compensated Mitigation	3,500	
3	Lake Pleasant Water	55,000	
4	SRP Exchange	10,000	
5	CAWCD ICS	17,100	





2022 - Tier 1 Shortage

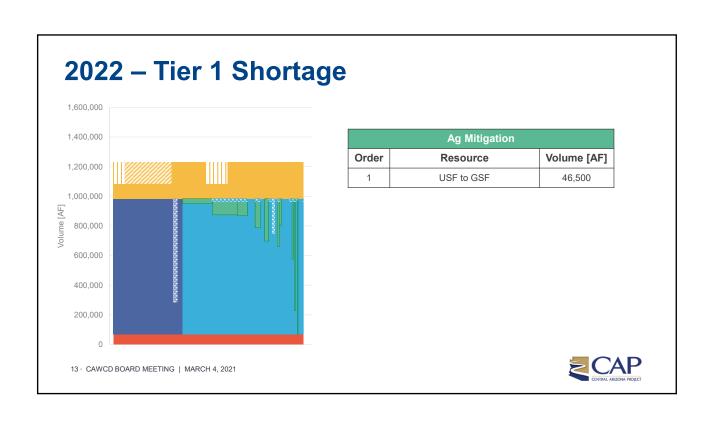


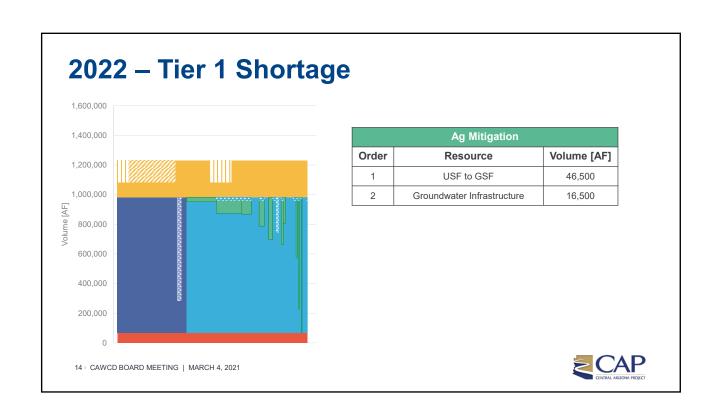
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 - ~ 99,800 AF

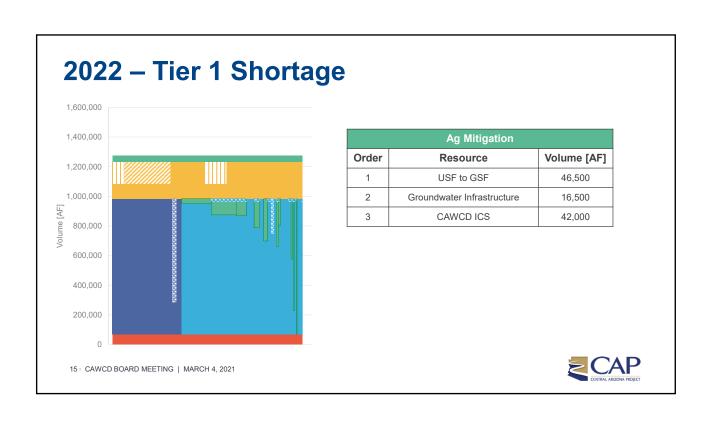
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2b	MDWID Compensated Mitigation	3,500		
3	Lake Pleasant Water	55,000		
4	SRP Exchange	10,000		
5	CAWCD ICS	17,100		
	Total:	147,900		

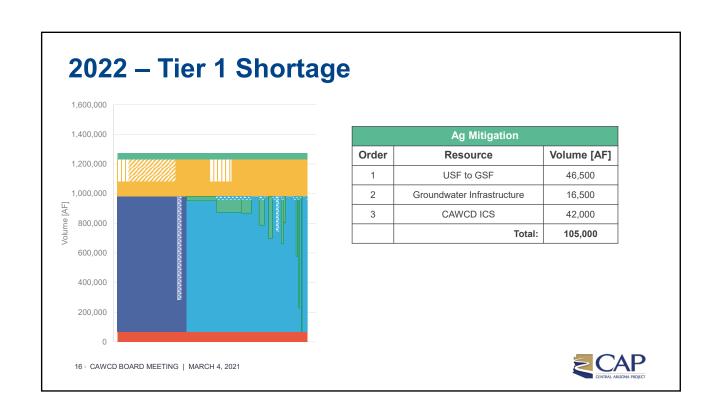
12 - CAWCD BOARD MEETING | MARCH 4, 2021

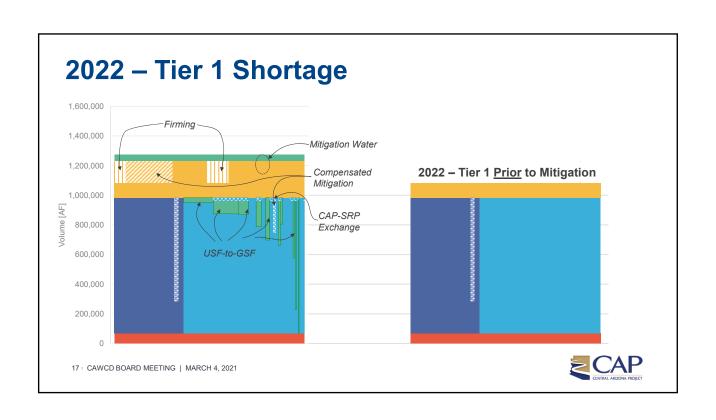


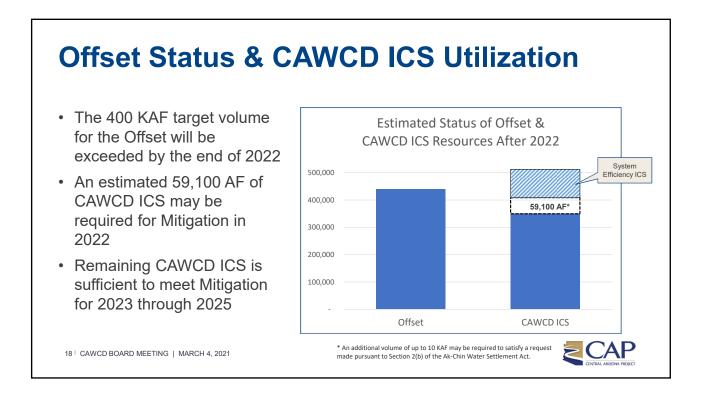












Additional Factors Affecting Mitigation

- · Status of NIA reallocation
- Quantity of Compensated Mitigation
- Initial delivery supply
- Changes in orders

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