

# ARIZONA REVISED STATUTES

## Title 45 - Waters

### Chapter 3.1 – Underground Water Storage, Savings and Replenishment

#### Article 1 - General Provisions

##### 45-801.01. Declaration of policy

The public policy of this state and the general purposes of this chapter are to:

1. Protect the general economy and welfare of this state by encouraging the use of renewable water supplies, particularly this state's entitlement to Colorado river water, instead of groundwater through a flexible and effective regulatory program for the underground storage, savings and replenishment of water.
2. Allow for the efficient and cost-effective management of water supplies by allowing the use of storage facilities for filtration and distribution of surface water instead of constructing surface water treatment plants and pipeline distribution systems.

##### 45-802.01. Definitions

(L19, Ch. 1, sec. 10. Eff. 1/1/25)

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

1. "Aquifer" means a geologic formation that contains sufficient saturated material to be capable of storing water and transmitting water in usable quantities to a well.
2. "Area of impact" means, as projected on the land surface, the area where the stored water has migrated or is located.
3. "CERCLA" means the comprehensive environmental response, compensation, and liability act of 1980, as amended (P.L. 96-510; 94 Stat. 2767; 42 United States Code sections 9601 through 9657), commonly known as "superfund".
4. "Constructed underground storage facility" means a facility that meets the requirements of section 45-811.01 and that is designed and constructed to store water underground pursuant to permits issued under this chapter.
5. "District" means a groundwater replenishment district established under title 48, chapter 27.
6. "District member" means a member of the groundwater replenishment district as provided by title 48, chapter 27.
7. "Electrical district" means a corporate body established pursuant to title 48, chapter 12.
8. "Existing effluent managed underground storage facility" means a managed underground storage facility that meets one of the following conditions:
  - (a) The facility is operated pursuant to a storage facility permit that the director issued before January 1, 2019 and that authorizes the storage of effluent at the facility.
  - (b) The facility is operated pursuant to a renewed or modified storage facility permit that the director issued after January 1, 2019 if the facility qualified as an existing effluent managed underground storage facility under subdivision (a), (c) or (d) of this paragraph at any time before the renewal or modification.
  - (c) The facility is operated pursuant to a permit that the director issued after January 1, 2019 and that authorizes the storage of effluent at a location where the permit holder was authorized to store effluent pursuant to a storage facility permit that the director issued before January 1, 2019.
  - (d) The facility is operated pursuant to a permit that the director issued after January 1, 2019 and that authorizes the storage of effluent at the facility, and the application to operate the facility was on file with the director as of January 1, 2019.
9. "Groundwater savings facility" means a facility that meets the requirements of section 45-812.01 in an active management area or an irrigation non-expansion area at which groundwater withdrawals are eliminated or reduced by recipients who use in lieu water on a gallon-for-gallon substitute basis for

groundwater that otherwise would have been pumped from within that active management area or irrigation non-expansion area.

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

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

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

13. "Managed underground storage facility" means a facility that meets the requirements of section 45-811.01 and that is designed and managed to utilize the natural channel of a stream to store water underground pursuant to permits issued under this chapter through artificial and controlled releases of water other than surface water naturally present in the stream. Surface water flowing in its natural channel is not a managed underground storage facility.

14. "Master replenishment account" means an account established pursuant to section 45-858.01 for a groundwater replenishment district.

15. "Recipient" means a person who receives in lieu water for use at a groundwater savings facility.

16. "Recoverable amount" means the amount of water, as determined by the director, that will reach the aquifer through water storage.

17. "Replenishment" means the storage of water or use of long-term storage credits by a groundwater replenishment district to fulfill its duties under title 48, chapter 27, article 3, by a multi-county water conservation district to fulfill its duties under title 48, chapter 22, article 4 or by an active management area water district to fulfill its duties under title 48, chapter 28, article 7.

18. "Reserve target" has the same meaning prescribed in section 48-3701.

19. "Storage facility" means a groundwater savings facility or an underground storage facility.

20. "Stored water" means water that has been stored or saved underground pursuant to a storage permit issued under this chapter.

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

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

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

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

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

recovery by the storer on an annual basis pursuant to section 45-851.01. In calculating the amount of deficit groundwater withdrawn by the storer from the active management area, the director, at the request of the storer, shall exclude any groundwater withdrawn, treated and delivered for direct use as part of a remedial action undertaken pursuant to CERCLA or title 49, chapter 2, article 5. For the purposes of this subdivision, "municipal provider" has the same meaning prescribed in section 45-561 and "deficit groundwater" means that amount of groundwater withdrawn within an active management area for delivery and use within a service area by a municipal provider in excess of the amount of groundwater that may be withdrawn by the municipal provider consistent with the achievement of the active management area's management goals as prescribed by rules adopted by the director pursuant to section 45-576.

(c) Except as provided in subdivision (d), if the storer is not a municipal provider, the amount of central Arizona project water stored in an active management area that exceeds the amount of groundwater withdrawn during the calendar year by the storer in that active management area. If the storer withdrew groundwater in an active management area during a calendar year in which the storer stored central Arizona project water underground in that active management area pursuant to the storage permit, the amount of central Arizona project water stored underground during that year equal to the amount of groundwater withdrawn from the active management area shall not be credited to the storer's long-term storage account but may be considered as being available for recovery by the storer on an annual basis under section 45-851.01. For the purposes of this subdivision, "municipal provider" has the same meaning prescribed in section 45-561. In calculating the amount of groundwater withdrawn by the storer from the active management area, the director, at the request of the storer, shall exclude:

(i) The amount of any groundwater withdrawn, treated and delivered for direct use as part of a remedial action undertaken pursuant to CERCLA or title 49, chapter 2, article 5.

(ii) The amount of groundwater withdrawn by the storer during the year for mineral extraction or metallurgical processing if the storer was engaged in mineral extraction and metallurgical processing within an initial active management area on or before January 1, 2011.

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

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

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

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

(f) Effluent.

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

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

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

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

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

#### 45-802.01. Definitions

(L19, Ch. 1, sec. 9. Eff. until 1/1/25)

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

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

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

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

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

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

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

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

8. "Existing effluent managed underground storage facility" means a managed underground storage facility that meets one of the following conditions:

(a) The facility is operated pursuant to a storage facility permit that the director issued before January 1, 2019 and that authorizes the storage of effluent at the facility.

(b) The facility is operated pursuant to a renewed or modified storage facility permit that the director issued after January 1, 2019 if the facility qualified as an existing effluent managed underground storage facility under subdivision (a), (c) or (d) of this paragraph at any time before the renewal or modification.

(c) The facility is operated pursuant to a permit that the director issued after January 1, 2019 and that authorizes the storage of effluent at a location where the permit holder was authorized to store effluent pursuant to a storage facility permit that the director issued before January 1, 2019.

(d) The facility is operated pursuant to a permit that the director issued after January 1, 2019 and that authorizes the storage of effluent at the facility, and the application to operate the facility was on file with the director as of January 1, 2019.

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

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

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13. "Managed underground storage facility" means a facility that meets the requirements of section 45-811.01 and that is designed and managed to utilize the natural channel of a stream to store water underground pursuant to permits issued under this chapter through artificial and controlled releases of

water other than surface water naturally present in the stream. Surface water flowing in its natural channel is not a managed underground storage facility.

14. "Master replenishment account" means an account established pursuant to section 45-858.01 for a groundwater replenishment district.

15. "Recipient" means a person who receives in lieu water for use at a groundwater savings facility.

16. "Recoverable amount" means the amount of water, as determined by the director, that will reach the aquifer through water storage.

17. "Replenishment" means the storage of water or use of long-term storage credits by a groundwater replenishment district to fulfill its duties under title 48, chapter 27, article 3, by a multi-county water conservation district to fulfill its duties under title 48, chapter 22, article 4 or by an active management area water district to fulfill its duties under title 48, chapter 28, article 7.

18. "Reserve target" has the same meaning prescribed in section 48-3701.

19. "Storage facility" means a groundwater savings facility or an underground storage facility.

20. "Stored water" means water that has been stored or saved underground pursuant to a storage permit issued under this chapter.

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

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

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

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

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

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

groundwater in an active management area during a calendar year in which the storer stored central Arizona project water underground in that active management area pursuant to the storage permit, the amount of central Arizona project water stored underground during that year equal to the amount of groundwater withdrawn from the active management area shall not be credited to the storer's long-term storage account but may be considered as being available for recovery by the storer on an annual basis under section 45-851.01. For the purposes of this subdivision, "municipal provider" has the same meaning prescribed in section 45-561. In calculating the amount of groundwater withdrawn by the storer from the active management area, the director, at the request of the storer, shall exclude:

(i) The amount of groundwater withdrawn, treated and delivered for direct use as part of a remedial action undertaken pursuant to CERCLA or title 49, chapter 2, article 5.

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

(iii) The amount of groundwater withdrawn by the storer during the year for mineral extraction or metallurgical processing if the storer was engaged in mineral extraction and metallurgical processing within an initial active management area on or before January 1, 2011.

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

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

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

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

(f) Effluent.

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

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

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

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

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

45-803.01. [Effect on vested water rights; effect in other proceedings](#)

A. This chapter shall not be construed to affect vested water rights.

B. Any determination made by the director for purposes of this chapter regarding the validity, invalidity, nature, legal character, extent or relative priority of a water right or source of water is not binding for any other purpose, and shall not create a presumption of the validity, invalidity, nature, legal character, extent or relative priority of a water right or water source in any other administrative proceeding or any judicial proceeding.

## Article 2 - Storage Facility Permits

### 45-811.01. Underground storage facility permit

A. A person may apply to the director for a constructed underground storage facility permit or a managed underground storage facility permit and may operate an underground storage facility only pursuant to a permit.

B. A person applying to the director for a managed underground storage facility permit may request to have the facility designated as a facility that could add value to a national park, national monument or state park if that park or monument includes any portion of a natural channel of a stream or adjacent floodplain that would benefit from the facility.

C. The director may issue a permit to operate an underground storage facility if the director determines that all of the following apply:

1. The applicant has the technical and financial capability to construct and operate the facility.

2. Storage of the maximum amount of water that could be in storage at any one time at the facility is hydrologically feasible.

3. Storage at the facility will not cause unreasonable harm to land or other water users within the maximum area of impact of the maximum amount of water that could be in storage at any one time at the underground storage facility over the duration of the permit.

4. The applicant has agreed in writing to obtain any required floodplain use permit from the county flood control district before beginning any construction activities.

5. The director of environmental quality has determined that the facility is not in a location that will promote either the migration of a contaminant plume or the migration of a poor quality groundwater area so as to cause unreasonable harm or is not in a location that will result in pollutants being leached to the groundwater table so as to cause unreasonable harm, if the proposed water storage at the underground storage facility is exempt from the requirement for an aquifer protection permit under section 49-250, subsection B, paragraph 12, 13 or 24. For any facility exempt under section 49-250, subsection B, paragraph 24, the director of water resources, after consultation with the director of the department of environmental quality, may include in the permit any requirements, including operation, maintenance, monitoring, record keeping, reporting, contingency plan or remedial action requirements, as the director of water resources deems necessary.

D. The director may designate a managed underground storage facility as one that could add value to a national park, national monument or state park if the director finds that all of the following apply:

1. The applicant has agreed in writing to maintain a quantified, minimum base flow and annual discharge to the stream for the duration of the permit.

2. The project will benefit the groundwater basin as a whole.

### 45-812.01. Groundwater savings facility permit

A. A person may apply to the director for a groundwater savings facility permit and may operate a groundwater savings facility only pursuant to a permit.

B. The director may issue a permit to operate a groundwater savings facility if the director determines that all of the following apply:

1. Operation of the facility will cause the direct reduction or elimination of groundwater withdrawals in an active management area or an irrigation non-expansion area by means of delivery of water other than groundwater pumped from within that active management area or irrigation non-expansion area that the recipient will use in lieu of groundwater that the recipient would otherwise have used.

2. The applicant will deliver water other than groundwater pumped from within the active management area or irrigation non-expansion area in which the groundwater savings facility is located to an identified groundwater user who will use and agrees in writing to use the water delivered to the facility on a gallon-for-gallon substitute basis directly in lieu of groundwater that otherwise would have been pumped from within the active management area or irrigation non-expansion area.

3. The in lieu water is the only reasonably available source of water for the recipient other than groundwater pumped from within the same active management area or irrigation non-expansion area in which the groundwater savings facility is located.

4. The water delivered as in lieu water would not have been a reasonable alternative source of water for the recipient except through the operation of the groundwater savings facility.

5. The water delivered to the recipient as in lieu water was not delivered before October 1, 1990.

6. The applicant has submitted a plan satisfactory to the director that describes how the applicant will prove the quantity of groundwater saved at the facility each year and what evidence will be submitted with the applicant's annual report as required by section 45-875.01 to prove the groundwater savings. The plan may rely on the following factors:

(a) The recipient's cost of pumping groundwater relative to the cost of in lieu water and alternative sources of water available to the recipient.

(b) The historic quantity of groundwater pumped by the recipient at the location of the intended use of the in lieu water.

(c) The recipient's anticipated demand for groundwater and anticipated total demand for water, including groundwater.

(d) The recipient's legal right to withdraw or use groundwater pursuant to chapter 2 of this title.

(e) The amount of central Arizona project water for which the recipient anticipates accepting delivery.

(f) The historic amount of power used to pump groundwater at the groundwater savings facility compared to the power used during a year in which the recipient received in lieu water.

(g) The factors that prevent the recipient from using the water delivered as in lieu water without the operation of the groundwater savings facility.

(h) Any other criteria the director may deem to be relevant.

#### 45-813.01. Land use ordinances

If any storage facility is to be located within a city or town, the director may consider for purposes of issuing the storage facility permit any land use ordinance provision addressing public health and safety and the aesthetics otherwise governing the use of land where that facility is to be located.

#### 45-814.01. Contents of storage facility permit

A. A storage facility project permit shall include the following information:

1. The name and mailing address of the person to whom the permit is issued.

2. The name of the active management area, irrigation non-expansion area, groundwater basin or groundwater sub-basin, as applicable, in which the facility will be located.

3. The design capacity of the facility and the plan of operation of the facility.

4. The maximum annual amount of water that may be stored at the facility.

5. Any monitoring required under subsection F of this section.

6. Any conditions consistent with this chapter.

7. The duration of the permit.

8. Any other information as determined by the director.

B. If the storage facility will be a groundwater savings facility, the permit shall include the following information in addition to the information required by subsection A of this section:

1. The plan by which the applicant will prove the quantity of groundwater saved at the storage facility each year.

2. The name of the recipient and the location and registration number of the well or wells from which groundwater withdrawals will be curtailed.

C. If the storage facility will be a managed underground storage facility and will be designated as a facility that could add value to a national park, national monument or state park, the permit shall include the following information in addition to the information required by subsection A of this section:



1. The quantified, minimum base flow and annual discharge to the stream that the applicant has agreed to maintain.

2. The annual quantity of water eligible for long-term storage credits for the facility and the annual quantity of water projected to be consumptively used by the enhancement of the national park, national monument or state park.

3. A description of the national park, national monument or state park that would benefit from the project.

D. The director may issue a storage facility permit for a period of not more than fifty years, except that on request of the holder of the permit the director may renew the permit if the director determines that the requirements of section 45-811.01, subsections C and D and section 45-812.01, subsection B apply, if those requirements applied at the time of issuance. In making this determination, the director shall not consider land uses and water uses in the area of impact of the water stored at the storage facility that were not in existence when the permit was issued.

E. The holder of a storage facility permit may apply to the director for approval to convey the permit to another person. The director may approve the conveyance if the director determines that the person to whom the permit is to be conveyed and the storage facility will continue to meet the applicable requirements of sections 45-811.01 and 45-812.01.

F. The director may require the holder of a storage facility permit to monitor the operation of the facility and the impact of water storage at the facility on land and other water users within the area of impact of water stored at the storage facility. In determining any monitoring requirements, the director of water resources shall cooperate with the department of environmental quality and, to the extent possible, shall coordinate monitoring requirements with those required by the department of environmental quality.

G. The director, on the director's initiative or on request of the holder of the storage facility permit, may modify the conditions of the storage facility permit. In determining whether modifications are necessary, the director shall not consider land uses and water uses in the area of impact of the water stored at the storage facility that were not in existence when the permit was issued.

H. Nothing in this article shall be construed as modifying or infringing on any existing water rights or private property rights nor shall anything in this article prevent any person or entity, whether governmental or private, from undertaking any flood control projects, including removal of vegetation within the channel of the stream or on the adjacent floodplain or diverting the permitted flow from the natural stream channel at the end of the permitted period.

#### 45-815.01. Facilities not qualifying as storage facilities

The following shall not be permitted as underground storage facilities:

1. A body of water, as defined by section 45-131, unless it has been designed, constructed or altered so that water storage is a principal purpose of the body of water.

2. Aqueducts, irrigation canals and other man-made water conveyance systems.

3. Water that incidentally recharges an aquifer during the course of its use for agricultural, municipal, mining or industrial purposes.

### Chapter 3.1 – Underground Water Storage, Savings and Replenishment

#### Article 3.1 – Indian Water Rights Settlements

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

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

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

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

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

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

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

1. A written notice of the party's intent to begin the delivery of central Arizona project water that is available to the Indian community to the holder of grandfathered groundwater rights in an active management area.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## Article 3 - Water Storage Permits and Recovery Well Permits

### 45-831.01. [Water storage permits](#)

A. A person may apply to the director for a water storage permit and may store water at a storage facility only pursuant to a water storage permit.

B. The director may issue a water storage permit to store water at a storage facility if the director determines that all of the following apply:

1. The applicant has a right to use the proposed source of water. Any determination made by the director for purposes of this subsection regarding the validity, nature, extent or relative priority of a water right claimed by the applicant or another person is not binding in any other administration proceeding or in any judicial proceeding.

2. The applicant has applied for any water quality permit required by the department of environmental quality under title 49, chapter 2, article 3 and by federal law.

3. The water storage will occur at a permitted storage facility.

C. In addition to the requirements of subsection B of this section, if the applicant has applied for a water storage permit to store water at a groundwater savings facility, the director shall not issue the water storage permit unless the applicant has agreed in writing to comply with the plan by which the quantity of groundwater saved at the facility will be proved each year.

D. If the director issues a water storage permit, the director may make, if possible, the following determinations:

1. Whether the water to be stored is water that cannot reasonably be used directly by the applicant and otherwise meets the requirements of section 45-852.01 for long-term storage credits.

2. If use of the water to be stored is appurtenant to a particular location, and if so, where the water may be legally used after recovery. Any determination made by the director for purposes of this subsection regarding the validity, nature, extent or relative priority of a water right claimed by the applicant or another person is not binding in any other administrative proceeding or in any judicial proceeding.

E. The director may issue a water storage permit for a period of not more than fifty years, except that:

1. On request of the holder of the permit, the director may renew the permit if the director determines that the requirements of subsection B of this section apply and, if the requirement of subsection C of this section applied at the time of issuance, that the requirement of subsection C of this section applies at the time of renewal.

2. Subject to the provisions of this chapter, the holder of long-term storage credits earned pursuant to the permit may recover the water over a period longer than the duration of the permit.

F. The holder of a water storage permit may apply to the director for approval to convey the permit to another person. The director may approve the conveyance if the director determines that the person to whom the permit is to be conveyed and the water storage will continue to meet the applicable requirements of this section. If long-term storage credits accrued pursuant to the water storage permit are being assigned pursuant to section 45-854.01 with the water storage permit, the director shall be given notice of the impending assignment of long-term storage credits at the time the holder of the water storage permit applies to convey the permit.

G. A person who holds a water storage permit may apply to the director on a form approved by the director for a modification of that water storage permit. The director may modify the permit within twenty days of receiving the application without complying with section 45-871.01 if all of the following apply:

1. The holder of the storage facility permit with which the water storage permit is affiliated has consented to the modification.

2. The modification to the water storage permit does not require a modification of the affiliated water storage facility permit.

3. The only modification requested is to add an amount of Colorado river water as a type of water to be stored under the water storage permit.

4. Water storage of Colorado river water has previously been permitted at the affiliated storage facility.

5. The person requesting the modification has the right to use the Colorado river water.

H. A water storage permit shall include the following information:

1. The name and mailing address of the person to whom the permit is issued.

2. The storage facility where the water storage will occur and the name of the active management area, irrigation non-expansion area, groundwater basin or groundwater sub-basin, as applicable, in which that facility is located.

3. The maximum annual amount of water that may be stored.

4. If the applicable finding of subsection D of this section has been made, whether the water to be stored is water that cannot reasonably be used directly by the applicant.

5. If the applicable finding of subsection D of this section has been made, any restrictions on where the water to be stored may legally be used.

6. Other conditions consistent with this chapter.

7. The duration of the permit.

I. If the water storage will occur at a groundwater savings facility, the water storage permit shall include, in addition to the information required by subsection H of this section, the requirements of the plan by which the quantity of groundwater saved at the storage facility will be proved each year.

J. If the director of the department of water resources decides to issue a water storage permit and the applicant has not received a water quality permit required by the department of environmental quality under title 49, chapter 2, article 3 and by federal law, the director of the department of water resources shall make receipt of the water quality permit a condition of the water storage permit and the holder of the water storage permit shall not store water until receiving the water quality permit.

#### 45-832.01. Use of stored water

A. Water that has been stored pursuant to a water storage permit may be used or exchanged only in the manner in which it was permissible to use or exchange the water before it was stored.

B. Water that has been stored pursuant to a water storage permit may be used only in the location in which it was permissible to use the water before it was stored.

C. Water that has been stored pursuant to a water storage permit may be used for replenishment purposes only in the active management area in which the water is stored, unless the water is recovered and transported to another active management area.

D. Stored water may be used only as follows:

1. The water may be recovered by the storer and used on an annual basis in accordance with section 45-851.01.

2. The water may be credited to the storer's long-term storage account, if the water meets the requirements of section 45-852.01, and the long-term storage credits may be used in accordance with the provisions of this chapter.

3. A district that is storing water may have the stored water credited to its master replenishment account, if the water would meet the requirements of long-term storage credits as prescribed by section 45-852.01.

4. A conservation district that is storing water may have the stored water credited to its conservation district account, if the water would meet the requirements of long-term storage credits as prescribed by section 45-852.01.

5. A water district that is storing water may have the stored water credited to its water district account, if the water would meet the requirements of long-term storage credits as prescribed by section 45-852.01.

#### 45-833.01. Designation of nonrecoverable water

A. At the request of the applicant, the director may designate a water storage permit as storing nonrecoverable water. If the water storage occurs within an active management area, the water storage permit may be designated in this manner only if the storage is consistent with the active management area's augmentation program.

B. Water stored pursuant to a water storage permit that has been designated as storing nonrecoverable water may not be recovered on an annual basis, may not be credited to a long-term storage account and may not be used for replenishment purposes.

#### 45-834.01. Recovery of stored water; recovery well permit; emergency temporary recovery well permit; well construction

A. A person who holds long-term storage credits or who may recover water on an annual basis may recover the water stored pursuant to a water storage permit only:

1. If the person seeking to recover stored water has applied for and received a recovery well permit under this article.

2. For water stored within an active management area, if one of the following applies:

(a) The proposed recovery well is located within the area of impact of the stored water, as determined by the director, and either the person recovering the water is the storer or the stored water to be recovered is Colorado river water. If the stored water to be recovered is effluent that is stored in a managed underground storage facility and if the proposed recovery well is not an already constructed well owned by the person recovering the water and is located within the exterior boundaries of the service area of a city, town, private water company or irrigation district, that city, town, private water company or irrigation district must be notified by the person recovering the stored water and must have the right to offer to recover the water stored on behalf of that person. If the city, town, private water company or irrigation district offers to recover the water on behalf of the person seeking recovery and the water that is offered for recovery is of comparable quality to the water that the person could recover, the person seeking to recover the water shall consider accepting the best offer from the city, town, private water company or irrigation district overlying the area of impact that has offered to recover the stored water.

(b) The proposed recovery well is located outside the area of impact of the stored water, as determined by the director, and all of the following apply:

(i) The proposed recovery well is located within the same active management area as storage.

(ii) The director determines that recovery at the proposed location is consistent with the management plan and achievement of the management goal for the active management area.

(iii) If the proposed recovery well is located within the exterior boundaries of the service area of a city, town, private water company or irrigation district, that city, town, private water company or irrigation district is the person seeking to recover the water or has consented to the location of the recovery well.

(iv) If the proposed recovery well is located outside, but within three miles of, the exterior boundaries of the service area of a city, town, private water company or irrigation district, the closest city, town, private water company or irrigation district has consented to the location of the recovery well.

(c) The proposed recovery well is located within the area of impact of the stored water, as determined by the director, the person recovering the water is not the storer, the stored water to be recovered is not Colorado river water and all of the conditions prescribed by subdivision (b), items (i) through (iv) of this paragraph are met.

3. For water stored outside of an active management area, if recovery will occur within the same irrigation non-expansion area, groundwater basin or groundwater sub-basin, as applicable, in which the water was stored.

B. Before recovering from any well water stored pursuant to a water storage permit, a person shall apply for and receive a recovery well permit from the director. The director shall issue the recovery well permit if the director determines that:

1. If the application is for a new well, as defined in section 45-591, or except as provided in paragraphs 2 and 3 of this subsection for an existing well, as defined in section 45-591, the proposed recovery of stored water will not unreasonably increase damage to surrounding land or other water users from the concentration of wells. The director shall make this determination pursuant to rules adopted by the director.

2. If the applicant is a city, town, private water company or irrigation district in an active management area and the application is for an existing well within the service area of the city, town, private water company or irrigation district, the applicant has a right to use the existing well.

3. If the applicant is a conservation district and the application is for an existing well within the conservation district and within the groundwater basin or sub-basin in which the stored water is located, the applicant has a right to use the existing well.

C. A city, town, private water company or irrigation district in an active management area may apply with a single application to the director to have all existing wells, as defined in section 45-591, that the applicant has the right to use within its service area listed as recovery wells on the recovery well permit, if those wells otherwise meet the requirements of this section.

D. If the applicant is a conservation district, the director may issue an emergency temporary recovery well permit without complying with section 45-871.01, subsection F if the director determines that all of the following apply:

1. The conservation district cannot reasonably continue to supply central Arizona project water directly to a city, town, private water company or irrigation district due to an unplanned failure of a portion of the central Arizona project delivery system.

2. The emergency temporary recovery well permit is necessary to allow the conservation district to provide immediate delivery of replacement water to the city, town, private water company or irrigation district.

3. The application is for an existing well as defined in section 45-591 that is within the groundwater basin or groundwater sub-basin in which the stored water is located, is within the conservation district and is within the service area of the city, town, private water company or irrigation district.

E. An emergency temporary recovery well permit issued pursuant to subsection D of this section may be issued for a period of up to ninety days and may be extended for additional ninety day periods if the director determines that the conditions prescribed in subsection D of this section continue to apply.

F. If the application for a recovery well permit is approved, the director shall issue a permit and the applicant may proceed to construct or use the well. If the application is rejected, the applicant shall not proceed to construct or use the well. A new well shall be completed within one year of receipt of the permit, unless the director in granting the permit approves a longer period to complete the well. If the well is not completed within one year or the longer period approved by the director, the applicant shall file a new application before proceeding with construction.

G. A recovery well permit shall include the following information:

1. The name and mailing address of the person to whom the permit is issued.
2. The legal description of the location of the existing well or proposed new well from which stored water may be recovered pursuant to the permit.
3. The purpose for which the stored water will be recovered.
4. The depth and diameter of the existing well or proposed new well from which stored water may be recovered pursuant to the permit.
5. The legal description of the land on which the stored water will be used.
6. The maximum pumping capacity of the existing well or proposed new well.
7. If the permit is for a proposed new well, the latest date for completing the proposed new well.
8. Any other information as the director may determine.

#### 45-835.01. Simultaneous applications

A person may apply to the director for a storage facility permit, a water storage permit to store water at the storage facility and a recovery well permit to recover the water stored at the storage facility at the same time and the director shall process the applications for the permits simultaneously.

#### 45-836.01. Effect of storage facilities, water storage and recovery on service areas

A. In an active management area, if a city, town or private water company operates a constructed underground storage facility and stores water at a constructed underground storage facility pursuant to a permit issued under this chapter, any portion of the area of impact of the stored water that is located within the exterior boundaries of the service area of the city, town or private water company but is not part of the service area of any other city, town, private water company or irrigation district is deemed to be part of the service area of the city, town or private water company.

B. In an active management area, if a city, town, private water company or irrigation district operates a storage facility or stores water outside its service area or recovers stored water outside its service area pursuant to a permit issued under this chapter, the area of land that contains the storage facility, the recovery facilities or a system for the transportation of water is not part of the service area of the city, town, private water company or irrigation district.

## Article 4 – Accounting

#### 45-851.01. Recovery of stored water on an annual basis

A. Except as provided in subsections B, E and F of this section, a storer may recover the recoverable amount of water stored after January 1 of a calendar year on or before December 31 of the same calendar year.

B. If water is stored pursuant to a water storage permit and its use is based on a decreed or appropriative water right, the approximate recoverable amount of water stored in a month shall be recovered on or before the last day of the following month or within the same calendar year, whichever is earlier, unless the water is credited to a long-term storage account as prescribed by section 45-852.01.

C. Water stored after January 1 of a calendar year and not recovered on or before December 31 of the same calendar year may be credited to the storer's long-term storage account to the extent that the stored water is eligible for long-term storage credits as prescribed by section 45-852.01.

D. Water that is stored after January 1 of a calendar year, that is not recovered on or before December 31 of the same calendar year and that is not eligible to be credited to the storer's long-term storage account may not be recovered at any other time.

E. If the water stored was effluent stored at a managed underground storage facility that has not been designated as a facility that could add value to a national park, national monument or state park and subsection F of this section does not apply, the storer may recover during a year only fifty percent of the recoverable amount of water stored between January 1 and December 31 of that year. If the storer recovers during the year less than fifty percent of the recoverable amount of the water stored during that year, the difference between fifty percent of the recoverable amount and the amount of stored water recovered during the year may be credited to the storer's long-term storage account to the extent that the stored water is eligible for long-term storage credits as prescribed by section 45-852.01.

F. If the water stored was effluent stored at a managed underground storage facility that qualifies as an existing effluent managed underground storage facility and that has not been designated as a facility that could add value to a national park, national monument or state park, the storer may recover during a year only ninety-five percent of the recoverable amount of the water stored between January 1 and December 31 of that year. If the storer recovers during the year less than ninety-five percent of the recoverable amount of the water stored during that year, the difference between ninety-five percent of the recoverable amount and the amount of stored water recovered during the year may be credited to the storer's long-term storage account to the extent that the stored water is eligible for long-term storage credits as prescribed by section 45-852.01.

#### 45-852.01. Long-term storage accounts

A. The director shall establish one long-term storage account for each person holding long-term storage credits. The director shall establish subaccounts within the long-term storage account according to each active management area, irrigation non-expansion area, groundwater basin or groundwater subbasin in which the person's stored water is located. The long-term storage account shall be further subdivided by type of water, if the person holds long-term storage credits for more than one type of water.

B. Water stored pursuant to a water storage permit at a storage facility may be credited to a long-term storage account if the director determines that all of the following apply:

1. Either:

(a) The water that was stored was water that cannot reasonably be used directly.

(b) The water was stored in a groundwater savings facility located in an active management area that does not have a management goal of achieving or maintaining a safe yield condition, the water was stored between January 1, 2020 and December 31, 2026 and the director determines that the storage assists in implementing within this state a drought contingency plan for the lower basin of the Colorado River. The total maximum amount that may qualify under this subdivision is fifteen thousand acre-feet per year.

2. If the stored water was stored at a storage facility within an active management area, either:

(a) The water would not have been naturally recharged within the active management area.

(b) If the water was stored at a managed underground storage facility that has been designated as a facility that could add value to a national park, national monument or state park and the water stored is effluent, the water stored is water that could have been used or disposed of by the storer by means other than discharging the effluent into the stream.

3. The stored water was not recovered on an annual basis pursuant to section 45-851.01.

C. The director shall credit ninety-five percent of the recoverable amount of stored water that meets the requirements of subsection B of this section to the storer's long-term storage account, except that:

1. If the water was stored at a managed underground storage facility that does not qualify as an existing effluent managed underground storage facility and that had not been designated at the time of storage as a facility that could add value to a national park, national monument or state park and the water

stored is effluent, the director shall credit to the storer's long-term storage account fifty percent of the recoverable amount of water that meets the requirements of subsection B of this section. For storage of effluent in a managed underground storage facility that is located in a recreational corridor channelization district established pursuant to title 48, chapter 35, the director may increase the storage credits earned from fifty percent to ninety-five percent if both of the following apply:

(a) The effluent was not discharged into the stream where the facility is located before the permit application for that facility was filed.

(b) The director determines that the storage of effluent in the facility will provide a greater benefit to aquifer conditions in the active management area or, if outside an active management area, to the groundwater basin than would accrue to the active management area or groundwater basin if the effluent is used or disposed of in another manner.

2. If the water was stored at a groundwater savings facility and the storer has not met the burden of proving that one hundred percent of the in lieu water was used on a gallon-for-gallon substitute basis for groundwater, the director shall credit to the storer's long-term storage account only the percentage of the in lieu water that meets the requirements of subsection B of this section and that was proven to the director's satisfaction as being used on a gallon-for-gallon substitute basis for groundwater.

3. The director shall credit to the storer's long-term storage account ninety percent of the recoverable amount of the water that meets the requirements of subsection B of this section if all of the following apply:

(a) The stored water was central Arizona project water that qualifies as water that cannot reasonably be used directly due solely to the exclusion of groundwater withdrawn by the storer for mineral extraction or metallurgical processing under section 45-802.01, paragraph 23, subdivision (c).

(b) The storer was engaged in mineral extraction and metallurgical processing within an initial active management area on or before January 1, 2011.

(c) All exterior boundaries of the storage facility that is used to store the stored water are more than twenty miles from a well owned by the storer on January 1, 2012 and that well is not an exempt well and any one or more of the following apply:

(i) The well is an existing well as defined in section 45-591, paragraph 1.

(ii) The department has issued a permit for the well under section 45-599, subsection C.

(iii) The well was drilled pursuant to a mineral extraction and metallurgical processing permit issued by the department under section 45-514.

4. Except as otherwise provided in paragraph 2 of this subsection, the director shall credit to the storer's long-term storage account or conservation district account one hundred percent of the recoverable amount of water that meets the requirements of subsection B of this section if any of the following applies:

(a) The water stored was effluent that was stored at a constructed underground storage facility, a groundwater savings facility or a managed underground storage facility that was designated at the time of storage as a facility that could add value to a national park, national monument or state park.

(b) The water was stored in an active management area and the stored water is water from outside the active management area that would not have reached the active management area without the efforts of the holder of the long-term storage credits.

(c) The water was stored outside an active management area and the stored water is water from outside the groundwater basin in which the water was stored that would not have reached the groundwater basin without the efforts of the holder of the long-term storage credits.

(d) The water was stored for purposes of establishing and maintaining a replenishment reserve pursuant to section 48-3772, subsection E.

(e) The water was stored for replenishment purposes pursuant to section 48-3771 and credited directly to a conservation district account pursuant to section 45-859.01, subsection E.

D. The director shall credit a person's long-term storage account by the amount of long-term storage credits assigned to that person by another holder of long-term storage credits pursuant to section 45-854.01.

E. The director shall debit the appropriate subaccount of a person's long-term storage account:

1. One hundred percent of the amount of stored water that the holder of the long-term storage credits has recovered during the calendar year pursuant to the permit.

2. The amount of long-term storage credits that the person has assigned to another person or transferred to a master replenishment account, conservation district account or water district account.



3. If the water was stored in an active management area, the amount of water during the calendar year that migrates to a location outside the active management area or to a location within the active management area where it cannot be beneficially used within a reasonable period of time by persons other than the storer with rights to withdraw and use groundwater.

4. If the water was stored outside of an active management area, the amount of water during the calendar year that migrates to a location outside the groundwater basin in which the storage facility is located or to a location in the groundwater basin where it cannot be beneficially used within a reasonable period of time by persons other than the storer with rights to withdraw and use groundwater.

5. The amount of long-term storage credits that the storer, pursuant to section 45-853.01, subsection B, has applied to offset groundwater withdrawn or used in excess of the storer's per capita municipal conservation requirements under the second management plan.

6. The amount of long-term storage credits that are held by the Arizona water banking authority and that the authority has chosen to extinguish.

F. To the extent the total amount of water withdrawn by a person from wells designated as recovery wells pursuant to section 45-834.01 during a calendar year exceeds the amount of stored water recovered by the person on an annual basis pursuant to section 45-851.01 and the amount of long-term storage credits recovered by the person, the excess amount of water recovered shall be considered groundwater withdrawn pursuant to chapter 2 of this title.

#### 45-853.01. Restricted uses of long-term storage credits

A. If the director has included an amount of long-term storage credits under section 45-855.01:

1. In determining whether to issue a certificate of assured water supply to the holder of the long-term storage credits, that amount of long-term storage credits shall be recovered only for a use that, as determined by the director, supplies water to the subdivision to which the certificate of assured water supply applies.

2. In designating or redesignating a city, town or private water company as having an assured water supply, that amount of long-term storage credits shall be recovered only for a use that, as determined by the director, supplies water to that city, town or private water company.

3. In determining whether to issue a report of adequate water supply for a subdivision to the holder of long-term storage credits, that amount of long-term storage credits shall be recovered only for a use that, as determined by the director, supplies water to the subdivision to which the report of adequate water supply applies.

4. In designating a city, town or private water company as having an adequate water supply, that amount of long-term storage credits shall be recovered only for a use that, as determined by the director, supplies water to that city, town or private water company.

B. The storer of long-term storage credits may apply those long-term storage credits to offset any amount of groundwater that the storer withdraws or uses before 2000 in excess of the storer's per capita municipal conservation requirement in violation of the second management plan if the storer proves to the satisfaction of the director that the following conditions are met:

1. The storer stored the water at a storage facility that is located in the same active management area as the storer's service area.

2. The long-term storage credits used to offset the storer's per capita municipal conservation requirements violation were earned before 2000.

3. The water stored was effluent or central Arizona project water.

C. Long-term storage credits may not be used to demonstrate an assured water supply or an adequate water supply if the long-term storage credits were accrued by storing effluent at a managed underground storage facility that has not been designated as a facility that could add value to a national park, national monument or state park and any of the following applies:

1. The managed underground storage facility does not qualify as an existing effluent managed underground storage facility.

2. The managed underground storage facility qualifies as an existing effluent managed underground storage facility and the long-term storage credits were accrued before January 31, 2019.

#### 45-854.01. Assignability of long-term storage credits

A. Except as provided in section 45-855.01, subsection C, the holder of long-term storage credits may assign by grant, gift, sale, lease or exchange all or part of the holder's long-term storage credits.

B. Except as provided in subsection C of this section, an assignment of long-term storage credits from one person to another is valid on receipt by the director of notification of the assignment in writing on a form that is provided by the director and that has been signed by both the assignor and assignee.

C. The director may reject and invalidate any assignment of long-term storage credits in which the stored water would not have met the requirements for long-term storage credits as prescribed by section 45-852.01 if the assignee had stored the water.

**45-855.01. Effect of long-term storage credits on assured water supply and adequate water supply**

A. In an active management area, except as provided in section 45-853.01, subsection C, and on the request of a person who holds long-term storage credits, the director shall include the amount of long-term storage credits requested by the person in determining whether to issue a certificate of assured water supply to the person pursuant to section 45-576, or if the person is a city, town or private water company, whether to designate or redesignate the city, town or private water company as having an assured water supply. This subsection shall not be construed to prohibit or require the director to include projected additions to a long-term storage account in determining whether to issue a certificate of assured water supply to the person, or if the person is a city, town or private water company, whether to designate or redesignate the city, town or private water company as having an assured water supply.

B. Outside an active management area, except as provided in section 45-853.01, subsection C and on the request of a person who holds long-term storage credits, the director shall include the amount of long-term storage credits requested by the person in determining whether to issue a report of adequate water supply pursuant to section 45-108 for a subdivision to the person, or if the person is a city, town or private water company, whether to designate the city, town or private water company as having an adequate water supply. This subsection shall not be construed to prohibit or require the director to include projected additions to a long-term storage account in determining whether to issue a report of adequate water supply for a subdivision to the person, or if the person who holds the long-term storage account is a city, town or private water company, whether to designate the city, town or private water company as having an adequate water supply.

C. Long-term storage credits included by the director in making the determinations and designations in subsections A and B of this section are not assignable by the person holding the credits, unless the director has determined that the credits will continue to be used for the subdivision for which the certificate of assured water supply or certificate of adequate water supply has been issued or for the service area that has been designated as having an assured water supply or an adequate water supply.

**45-856.01. Protection of the stored water**

A. Except as provided in subsection B or E of this section, in an active management area the director shall not issue any of the following permits, certificates or designations unless the applicant demonstrates that the application for the permit, certificate or designation would have satisfied the requirements for issuance of the permit, certificate or designation if water stored pursuant to this chapter did not exist:

1. An application for a groundwater withdrawal permit under chapter 2, article 7 of this title, if a proposed point of withdrawal for the permit is located within the area of impact of the stored water.

2. An application for designation of a city, town or private water company as having an assured water supply under section 45-576, if any portion of the city, town or private water company that is proposed to be designated is located within the area of impact of the stored water.

3. An application for a certificate of assured water supply under section 45-577, if a proposed point of withdrawal for a proposed source of water is located within the area of impact of the stored water.

4. An application for a permit to construct a new well or a replacement well under section 45-599, if the proposed well is located within the area of impact of the stored water.

B. Subsection A, paragraphs 2 and 3 of this section do not apply to the holder of long-term storage credits who, pursuant to section 45-855.01, has requested that the director include stored water in determining whether to issue a certificate of assured water supply or designate or redesignate a city, town or private water company as having an assured water supply.

C. Except as provided in subsection D or E of this section, outside an active management area the director shall not issue any of the following decisions of adequate water supply under section 45-108 unless the applicant demonstrates that the application would have satisfied the requirements for issuance of the decision if the stored water did not exist:

1. A decision stating that an adequate water supply exists for a subdivision, if a proposed point of withdrawal for a proposed source of water is located within the area of impact of the stored water.

2. A decision designating a city, town or private water company as having an adequate water supply, if any portion of the city, town or private water company that is proposed to be designated is located within the area of impact of the stored water.

D. Subsection C of this section does not apply to the holder of long-term storage credits who has requested pursuant to section 45-855.01 that the director include stored water in determining whether to issue a decision stating that an adequate water supply exists for a subdivision or designating a city, town or private water company as having an adequate water supply.

E. Subsections A and C of this section do not apply if the director determines that the water stored pursuant to this chapter will not be recovered from within the area of impact of the stored water.

**45-857.01. Groundwater replenishment district incidental replenishment factor; definitions**

A. With respect to a groundwater replenishment district and not later than the first day of each reporting year, the director shall determine the incidental replenishment factor for the reporting year and shall report that ratio to the groundwater replenishment district.

B. For purposes of this section:

1. "Incidental replenishment" means water that percolates to an aquifer after being used for municipal purposes in the groundwater replenishment district, except for water that is added to an aquifer pursuant to this chapter.

2. "Incidental replenishment factor" means the ratio of the amount of incidental replenishment in the groundwater replenishment district that the director estimates will occur in the reporting year to the amount of water that the director estimates will be used in the district by the district members in the reporting year.

**45-858.01. Master replenishment account; debits and credits**

A. The director shall establish a long-term storage account and a master replenishment account for each groundwater replenishment district.

B. The director shall compute the master replenishment account debit for a reporting year for the district as follows:

1. For each district member, compute the replenishment obligations as prescribed by section 48-4463.

2. Add the amounts computed under paragraph 1 of this subsection for all district members.

C. For each reporting year, the amount computed under subsection B of this section for the district shall be debited from the district's master replenishment account.

D. On application by a district to the director, credits in the district's long-term storage account, including credits that are registered for water stored pursuant to article 6 of this chapter and for which a district has assumed responsibility pursuant to section 45-896.01, shall be transferred and credited to the district's master replenishment account.

E. For each reporting year, the director shall credit the district's master replenishment account by the amount of water stored by the district during the reporting year, if the district has requested the director to credit the stored water directly to its master replenishment account and the stored water would otherwise be eligible for credits in a long-term storage account.

F. Credits in a master replenishment account may not be assigned or transferred out of the master replenishment account.

G. If the director, either through an audit of the records of the district or a district member pursuant to section 45-880.01 or otherwise, establishes a misstatement or error regarding information relevant to the determination of master replenishment account debits or credits, the director may adjust accordingly the credits or debits for the appropriate year.

**45-859.01. Conservation district account; replenishment reserve subaccount; debits and credits**

A. The director shall establish a long-term storage account and a conservation district account for each active management area in which a member land or member service area is or may be located. The director shall establish a replenishment reserve subaccount within the long-term storage account for each active management area in which a member land or member service area is or may be located.

B. For each reporting year, the groundwater replenishment obligation as defined in section 48-3701 for each active management area shall be debited from the conservation district account for that active management area.

C. For each reporting year, the contract replenishment obligation as defined in section 48-3701 for each active management area shall be debited from the conservation district account for that active management area.

D. On application by a conservation district to the director, credits in the conservation district's long-term storage account for an active management area, including credits earned through the use of excess capacity of each project permitted under article 6 of this chapter, shall be transferred and credited to its conservation district account for the same active management area.

E. After January 1, 2030 or earlier, on approval of the director of water resources pursuant to subsection K of this section, on application by a conservation district to the director, credits in the conservation district's replenishment reserve subaccount for an active management area shall be transferred and credited to its conservation district account for the same active management area, except that any such transfer that would cause the balance in the replenishment reserve subaccount for an active management area to fall below twenty-five per cent of the reserve target for that active management area shall be subject to the approval of the director.

F. Except as provided in subsection E of this section, credits in a replenishment reserve subaccount may be assigned or transferred out of the replenishment reserve subaccount only on application by the conservation district to the director and only if the director determines that the assignment or transfer is warranted due to a reduction in the reserve target as defined in section 48-3701. If credits in a replenishment reserve subaccount are assigned or transferred to any account other than a conservation district account, then five per cent of the assigned or transferred credits shall be permanently extinguished.

G. For each reporting year, the director shall credit the conservation district's conservation district account by the amount of water stored by the conservation district during the reporting year, if the conservation district has requested the director to credit the stored water directly to its conservation district account and the stored water would otherwise be eligible for credits in a long-term storage account.

H. For each reporting year, the director shall credit the conservation district's replenishment reserve subaccount for each active management area by the amount of long-term storage credits developed by the conservation district in that active management area during the reporting year for that purpose.

I. By October 31 of each year, the director shall determine whether the conservation district has completed the groundwater replenishment obligation for each active management area as prescribed by section 48-3771.

J. Credits in a conservation district account may not be assigned or transferred out of the conservation district account.

K. A conservation district may apply to the director to transfer credits in the conservation district's replenishment reserve subaccount for an active management area to its conservation district account for the same active management area earlier than January 1, 2030. The application shall specify the reason for the request, state the amount of credits sought to be transferred and include a plan for replacing the credits in the replenishment reserve subaccount. The director shall approve the application if the director determines that both of the following apply:

1. The conservation district has demonstrated good cause for the transfer.
2. The conservation district's plan for replacing the transferred credits is adequate.

**45-860.01. [Water district account; debits and credits](#)**

A. The director shall establish a long-term storage account and a water district account for the active management area in which a water district member land or water district member service area is or may be located.

B. For each reporting year, the water district groundwater replenishment obligation, as defined in section 48-4801, shall be debited from the water district account.

C. For each reporting year, the contract replenishment obligation, as defined in section 48-4801, shall be debited from the water district account.

D. On application by a water district to the director, credits in the water district's long-term storage account for an active management area, including credits earned from a state demonstration project permitted pursuant to article 6 of this chapter, shall be transferred and credited to the water district's water district account for the same active management area.

E. For each reporting year, the director shall credit the water district's water district account by the amount of water stored by the water district during the reporting year, if the water district has requested the director to credit the stored water directly to its water district account and the stored water would otherwise be eligible for credits in a long-term storage account.

F. By October 31 of each year, the director shall determine whether the water district has completed the water district groundwater replenishment obligation for the active management area as prescribed by section 48-4972.

G. Credits in a water district account may not be assigned or transferred out of the water district account.

## Article 5 - Permit Application Procedures, Financial Provisions and Enforcement

### 45-871.01. Permit application; fee; notice of application; objections; hearing; appeal

A. The director shall prescribe and furnish application forms for the permits prescribed by articles 2 and 3 of this chapter. The application forms shall require the applicant to submit the information needed by the director to determine whether the permit may be issued. The director shall establish and collect a reasonable fee from the applicant to cover the cost of administrative services and other expenses associated with evaluating and issuing each permit. The director shall deposit, pursuant to sections 35-146 and 35-147, all fees received under this subsection in the water resources fund established by section 45-117.

B. On receipt of an application for a permit pursuant to this chapter, the director shall endorse on the application the date of its receipt and shall keep a record of the application. Within fifteen days after receipt of an application for an underground storage facility permit, the director shall post notice of the application on the department's website until the director issues a decision on the application. The notice shall state the name of the applicant, the location of the proposed underground storage facility, the date the application was filed and the application number. The notice required by this subsection is in addition to the notice requirement in subsection D of this section. The director shall conduct a review of the application within one hundred days of receipt of the application. If the director determines in the review that the application is incomplete or incorrect, the director shall notify the applicant and the review period is extended by fifteen days. The application is incomplete or incorrect until the applicant files the information requested in the application. The director may conduct independent investigations as necessary to determine whether the application should be approved or rejected.

C. If the application is for water storage at an underground storage facility that is exempt from the requirement for an aquifer protection permit under section 49-250, subsection B, paragraph 12, 13 or 24, the director of water resources shall consult with the director of environmental quality and shall develop a coordinated and unified permit review process, that conforms to the time schedule prescribed by this section, to determine whether the permit application is correct and whether the development of a plan of action for monitoring and data analysis shall be required.

D. Except as provided in subsection E of this section, if the application is determined to be complete and correct and the application is for a storage facility permit or a water storage permit, the director, within fifteen days of that determination or a longer period if requested by the applicant, shall give notice of the application once each week for two consecutive weeks in a newspaper of general circulation in the county or counties in which persons reside who could reasonably be expected to be affected by the water storage. The director shall also give notice by first class mail to each city, town, private water company, conservation district, irrigation district and electrical district that serves land within the area of impact of the stored water. The notice shall state that persons who may be adversely affected by the water storage may file written objections to the issuance of the permit with the director for fifteen days after the last publication of notice. An objection shall state the name and mailing address of the objector, shall be signed by the objector

or the objector's agent or attorney and shall clearly set forth the reasons why the permit should not be issued. The grounds for objection are limited to whether the application meets the criteria for issuing the permit being requested as prescribed by articles 2 and 3 of this chapter.

E. If the application is determined to be complete and correct and the application is for a water storage permit to store Colorado river water at a storage facility where storage of Colorado river water has previously been permitted, the director may issue the permit within twenty days of that determination if all of the following apply:

1. The holder of the storage facility permit with which the water storage permit will be affiliated has consented to the water storage.
2. The water storage permit will not require a modification of an affiliated water storage facility permit.
3. Colorado river water will be the only type of water stored under the water storage permit.
4. The applicant has the right to use the Colorado river water.

F. Except as provided in section 45-834.01, subsection D, if the application is determined to be complete and correct and the application is for a recovery well permit, the director, within fifteen days of the determination or a longer period if requested by the applicant, shall give notice of the application once each week for two consecutive weeks in a newspaper of general circulation in the county in which the applicant proposes to recover stored water. If the application is for a well located inside of or within three miles of the exterior boundaries of the service area of a city, town, private water company or irrigation district, the applicant shall give notice of the application by first class mail to each city, town, private water company or irrigation district within that distance. The applicant shall file proof of the notice with the director. The notice shall state that persons who may be adversely affected by the recovery well may file written objections to the issuance of the permit with the director for fifteen days after the last publication of notice. An objection shall state the name and mailing address of the objector, shall be signed by the objector or the objector's agent or attorney and shall clearly set forth reasons why the permit should not be issued. The grounds for objection are limited to whether the application meets the criteria for issuing a recovery well permit as set forth in section 45-834.01, subsection B. For the purposes of this subsection, if the proposed recovery well is located within three miles outside of the exterior boundaries of the service area of a city, town, private water company or irrigation district, a city, town, private water company or irrigation district within that distance shall be considered a person who may be adversely affected by the recovery well.

G. In appropriate cases, including cases in which a proper objection to the permit application has been filed, an administrative hearing may be held before the director's decision on the application if the director deems a hearing necessary. At least thirty days before the hearing, the director shall notify the applicant and any person who filed a proper objection to the issuance of the permit. The hearing shall be scheduled for at least sixty days but not more than ninety days after the expiration of the time in which to file objections.

H. If a hearing is not held, the director shall issue a decision and order within six months of the date notice of the application is first given pursuant to subsection D or F of this section, or within ninety days in the case of an application under article 6 of this chapter. The director shall record and endorse the approval or rejection of the application on the application. If the permit is denied, the director shall return a copy of the application to the applicant specifically stating the reasons for denial.

I. The applicant or any person who filed a proper objection to the application may seek judicial review of the final decision of the director as provided in section 45-114, subsection B in superior court as provided in section 45-405.

J. Section 45-114, subsections A and B govern administrative proceedings, rehearings or review and judicial review of final decisions of the director under this section. If an administrative hearing is held, it shall be conducted in the active management area in which the storage or recovery is located.

K. On receipt of an application for a permit pursuant to this section, the director shall provide written notice of the proposed permit to the city, town or county that has land use jurisdiction over the site that is the subject of the permit. The notice shall be given at the same time and in the same manner as the notices prescribed by subsections D and F of this section in order to provide the city, town or county with the opportunity to comment on the proposed facility's or well's compliance with site planning and operational requirements of the city, town or county. This subsection shall not be construed to limit the exclusive authority of the director to determine the issuance of the permit or the site of the facility or well or to reduce

the authority of the city, town or county to enforce its applicable ordinances governing site planning and operational requirements.

**45-872.01. Water measuring devices**

A person who stores water at an underground storage facility, who delivers in lieu water to a recipient at a groundwater savings facility or who recovers stored water pursuant to a recovery well permit shall use a water measuring device approved by the director and shall comply with the rules setting forth the requirements and specifications for water measuring devices adopted pursuant to section 45-604.

**45-873.01. In lieu water reporting requirements; withdrawal fees**

The in lieu water that is delivered pursuant to a groundwater savings facility permit and a water storage permit issued under this chapter is deemed to be groundwater for all purposes of chapter 2 of this title as if the recipient of the in lieu water had withdrawn it from a well. The recipient is responsible for all records, reports and fees required by chapter 2 of this title relating to the in lieu water received.

**45-874.01. Long-term storage credit recovery fee; amount; notice; payment; penalty**

A. The director shall levy and collect a long-term storage credit recovery fee from each person who recovers long-term storage credits pursuant to a recovery well permit issued under section 45-834.01. The amount of the long-term storage credit recovery fee is equal to the amount of the groundwater withdrawal fee levied for administration and enforcement of chapter 2 of this title pursuant to section 45-611, subsection A, paragraph 1.

B. Not later than October 1 of each year the director shall file in the department an order setting the long-term storage credit recovery fee for the following calendar year.

C. Within thirty days after the director sets the long-term storage credit recovery fee for the following calendar year, the director shall give written notice of the fee to all holders of recovery well permits issued under this chapter.

D. A person shall pay the long-term storage credit recovery fee to the department at the time the person holding a recovery well permit files an annual report pursuant to section 45-875.01. If a person who is required to pay a long-term storage credit recovery fee fails to pay the fee when due, the director may assess and collect a penalty of ten per cent of the unpaid fee, without compounding, for each month or portion of a month that the fee is delinquent. The total penalty assessed under this subsection shall not exceed sixty per cent of the unpaid fee.

E. The director shall deposit, pursuant to sections 35-146 and 35-147, all monies collected pursuant to subsection A of this section in the water resources fund established by section 45-117 and all monies collected pursuant to subsection D of this section in the state general fund.

**45-875.01. Annual reports; penalty**

A. Each person who holds a storage facility permit shall file an annual report with the director that includes the following information:

1. The total quantity of water stored at the facility during the year.
2. The name, address and water storage permit number of each person storing water at the storage facility during the year.
3. Such other information as the director may reasonably require.

B. Each person who holds a water storage permit shall file an annual report with the director that includes the following information:

1. The quantity of water from each source stored under the permit during the year.
2. The quantity of stored water recovered on an annual basis.
3. The quantity of stored water to be credited to a long-term storage account.
4. Other information as the director may reasonably require.

C. In addition to the requirements of subsections A and B of this section, each person who holds a groundwater savings facility permit or who holds a water storage permit for water storage at a groundwater savings facility shall include with the annual report all evidence required to be submitted by that person pursuant to the plan by which the quantity of groundwater saved at the storage facility will be proved.

D. Each person who holds a recovery well permit shall file an annual report with the director that includes the following information:

1. The registration number and location of each well used to recover stored water.
2. The quantity of fuel or electricity consumed by the pump for each well during the year.
3. The total quantity and source of stored water recovered by each well during the year.
4. The quantity and source of stored water recovered on an annual basis during the year.
5. The quantity and source of stored water recovered from a long-term storage account during the year.

6. Other information as the director may reasonably require.

E. The annual reports shall be maintained on a calendar year basis and shall be filed with the director no later than March 31 of each year for the preceding calendar year. If a person who is required to file an annual report under this section fails to file a report when due, the director may assess and collect a penalty of twenty-five dollars for each month or portion of a month that the annual report is delinquent. The total penalty assessed under this subsection shall not exceed one hundred fifty dollars. The director shall deposit, pursuant to sections 35-146 and 35-147, all penalties collected under this subsection in the state general fund.

45-876.01. Annual report; groundwater replenishment district and replenishment district members; penalties

A. Each groundwater replenishment district shall file an annual report with the director that includes:

1. The total amount of water that was stored by the district during the reporting year pursuant to each water storage permit issued to it under this chapter.

2. The amount of water stored by the district during the reporting year to be credited to the master replenishment account.

3. The amount of water stored by the district during the reporting year to be credited to the district's long-term storage account.

4. The amount of long-term storage credits the district has transferred and credited to its master replenishment account during the reporting year.

5. If the reporting year was a drought year, as defined in section 48-4401, for any district member:

(a) The amount of any debit that was registered to the district's drought relief account for the reporting year, as provided in section 48-4467.

(b) Each district member's share of the debit.

(c) The ending balance of the account.

(d) The historic annual per acre surface water deliveries, as defined in section 48-4401, for the reporting year of each irrigation district and water users' association that delivered surface water for non-irrigation use on land in the district during the reporting year.

6. Each district member's replenishment obligation determined pursuant to section 48-4463.

7. Other information as the director may require.

B. The annual report shall be maintained on a calendar year basis and shall be filed no later than May 15 of each year for the preceding year, which is the reporting year.

C. In addition to the annual report required by this section and section 45-632, each groundwater replenishment district member shall file an annual report with the director that includes the information prescribed by section 48-4463, subsection A. The annual report required by this subsection shall be maintained on a calendar year basis and shall be filed with the director no later than March 31 of each year for the preceding calendar year which is the reporting year.

D. The director may assess and collect a penalty of up to one thousand dollars for each day that a report is delinquent for a groundwater replenishment district or one of its members that is required to file an annual report and that fails to file the report when due. The director shall deposit, pursuant to sections 35-146 and 35-147, all penalties collected pursuant to this section in the state general fund.



45-877.01. Annual reports by conservation districts; penalties

A. Each conservation district shall file an annual report with the director that includes for each active management area in which a member land or member service area is or may be located:

1. The total amount of water that was stored by the conservation district during the reporting year pursuant to each water storage permit issued to it under this chapter.

2. The amount of water stored by the conservation district during the reporting year to be credited to the conservation district's conservation district account.

3. The amount of water stored by the conservation district during the reporting year to be credited to the conservation district's long-term storage account.

4. The amount of water stored by the conservation district during the reporting year to be credited to the conservation district's replenishment reserve subaccount.

5. The amount of long-term storage credits the conservation district has transferred and credited to its conservation district account during the reporting year.

6. The groundwater replenishment obligation as defined in section 48-3701 for the reporting year.

7. The contract replenishment obligation as defined in section 48-3701 for the reporting year.

8. The information required under section 48-3775.

9. Other information as the director may require.

B. The annual report required under subsection A of this section shall be maintained on a calendar year basis and shall be filed with the director no later than August 31 of each year for the preceding calendar year, which is the reporting year.

C. If the conservation district fails to file the report when due, the director may assess and collect a penalty of up to one hundred dollars for each day the annual report is delinquent. The director shall deposit, pursuant to sections 35-146 and 35-147, all penalties collected pursuant to this subsection in the state general fund.

D. If a municipal provider as defined in section 48-3701 does not timely file the annual report required by section 48-3775, the director may assess and collect a penalty of up to one thousand dollars for each day the annual report is delinquent. The director shall deposit, pursuant to sections 35-146 and 35-147, all penalties collected pursuant to this subsection in the state general fund.

45-878.01. Annual reports by water districts; penalties

A. Each water district shall file an annual report with the director that includes for the active management area in which a water district member land or water district member service area is or may be located:

1. The total amount of water that was stored by the water district during the reporting year pursuant to each water storage permit issued to it under this chapter.

2. The amount of water stored by the water district during the reporting year to be credited to the water district's water district account.

3. The amount of water stored by the water district during the reporting year to be credited to the water district's long-term storage account.

4. The amount of long-term storage credits the water district has transferred and credited to its water district account during the reporting year.

5. The water district groundwater replenishment obligation as defined in section 48-4801 for the reporting year.

6. The contract replenishment obligation as defined in section 48-4801 for the reporting year.

7. The information required under section 48-4976.

8. Other information as the director may require.

B. The annual report required under subsection A of this section shall be maintained on a calendar year basis and shall be filed with the director no later than August 31 of each year for the preceding calendar year, which is the reporting year.

C. If the water district fails to file the report when due, the director may assess and collect a penalty of up to one hundred dollars for each day the annual report is delinquent. The director shall deposit,

pursuant to sections 35-146 and 35-147, all penalties collected pursuant to this subsection in the state general fund.

D. If a municipal provider as defined in section 48-3701 does not timely file the annual report required by section 48-4876, the director may assess and collect a penalty of up to one thousand dollars for each day the annual report is delinquent. The director shall deposit, pursuant to sections 35-146 and 35-147, all penalties collected pursuant to this subsection in the state general fund.

**45-879.01. Annual reports certification; records**

A. Each annual report required by this article shall contain either a sworn statement or a certification under penalty of perjury that the information contained in the report is true and correct according to the best belief and knowledge of the person filing the report.

B. Each person who is required to file an annual report under this article shall maintain current, accurate records of the information required to be included in the annual report.

C. The records and reports required to be kept and filed under this article shall be in a form prescribed by the director. The director shall prepare blank forms and furnish them on request. Failure to receive or obtain the forms does not relieve any person from the obligation to keep required records or make any required report.

**45-880.01. Inspections, investigations and audits**

A. The director or the director's authorized representative may enter at reasonable times on private or public property where any facilities used for the purposes of water storage, stored water recovery or stored water use are located and the owner, manager or occupant of the property shall permit such entry to:

1. Inspect any facility that is used for the purposes of water storage, stored water recovery or stored water use and that is subject to this chapter.

2. Obtain factual data or access to records required to be kept by this article.

3. Ascertain compliance with this chapter.

B. Inspections and investigations under this section shall be on reasonable notice to the owner, manager or occupant of the property unless reasonable grounds exist to believe that this notice would frustrate the enforcement of this chapter or if entry is sought for the sole purpose of inspecting water measuring devices required pursuant to section 45-872.01. The director shall adopt rules for conducting inspections, examining records and obtaining warrants pursuant to this section. The director may, and if required by law, shall, apply for and obtain warrants for entry and inspection to carry out the administrative and enforcement purposes of this chapter.

C. The director may require a person who is required to keep records under this article to appear, at reasonable times and on reasonable notice, at the director's office and produce the records and information that are specified in the notice to determine whether the records and annual reports required by this article are complete, true and correct.

D. The director shall provide a written report of each inspection, investigation and audit under this section to the person who is subject to such action.

**45-881.01. Cease and desist order; temporary cease and desist order; hearing; injunctive relief**

A. Except as provided by subsection B of this section, if the director has reason to believe that a person is violating or has violated a provision of this chapter or a permit, rule or order issued or adopted pursuant to this chapter, the director may give the person written notice that the person may appear and show cause at an administrative hearing at least thirty days from the date of service of the notice why the person should not be ordered to cease and desist from the violation. The notice shall inform the person of the date, time and place of the hearing and the consequences of failure to appear.

B. If the director finds that a person is constructing a storage facility or storing water in violation of this chapter, the director may issue a temporary order for the person to cease and desist the construction or storage pending final action by the director pursuant to subsection C of this section. The order shall include written notice to the person of the date, time and place where the person may appear at an administrative hearing before the department to show cause why the temporary order should be vacated. The hearing shall be held within fifteen days of the date of the order unless the person consents to a longer period.

C. The decision and order of the director under subsections A and B of this section may be in a form that the director determines to be reasonable and appropriate and may include a determination of violation, a cease and desist order, the recommendation of a civil penalty and an order directing that positive steps be taken to abate or ameliorate any harm or damage arising from the violation. The person affected may seek judicial review of the final decision of the director as provided in section 45-114, subsection B in the superior court in the county in which the violation is alleged to have occurred.

D. If the person continues the violation after the director has issued a final decision and order pursuant to subsection C of this section or a temporary order pursuant to subsection B of this section, the director may apply for a temporary restraining order or preliminary or permanent injunction from the superior court pursuant to the rules of civil procedure. Filing for injunctive relief does not preclude other forms of relief or enforcement against the violator.

E. Section 45-114, subsections A and B govern administrative proceedings, rehearing or review and judicial review of final decisions of the director under this section.

#### 45-882.01. Violation; civil penalties

A. A person who is determined pursuant to section 45-881.01 to be in violation of this chapter or a permit, rule or order issued or adopted pursuant to this chapter may be assessed a civil penalty in an amount not exceeding:

1. One hundred dollars per day of violation that is not directly related to illegal storage, recovery or use of stored water.

2. Ten thousand dollars per day of violation that is directly related to illegal storage, recovery or use of stored water.

B. An action to recover penalties under this section shall be brought by the director in the superior court in the county in which the violation occurred.

C. In determining the amount of the penalty, the court shall consider the degree of harm to the public, whether the violation was knowing or wilful, the past conduct of the defendant, whether the defendant should have been on notice of the violation, whether the defendant has taken steps to cease, remove or mitigate the violation and any other relevant information.

D. The director shall deposit, pursuant to sections 35-146 and 35-147, all civil penalties assessed under this section in the state general fund.

## Article 6 - State Demonstration Projects

#### 45-891.01. Purposes

It is declared that the public policy of this state and the general purposes of this article are:

1. To protect the general economy and welfare of this state and its citizens by wise resource management of the water of the central Arizona project.

2. To store for future needs or use for replenishment purposes the central Arizona project water not now utilized by central Arizona project subcontractors.

3. To provide an additional source of water for times of serious water shortage due to a substantial reduction in the supply of central Arizona project water available for delivery to central Arizona project subcontractors or a prolonged interruption of deliveries of central Arizona project water.

#### 45-892.01. Definitions

In this article, unless the context otherwise requires:

1. "Excess central Arizona project water" means central Arizona project water that in any year would otherwise not be delivered to central Arizona project subcontractors or their designees.

2. "Project permits" means permits obtained under articles 2 and 3 of this chapter for the purposes of operating a state demonstration project.

3. "State demonstration project" means a project for the storage of excess central Arizona project water at an underground storage facility pursuant to permits issued under this chapter and in accordance with this article.

**45-893.01. Application for project permits; application requirement; permit specifications**

A. A conservation district may apply to the director pursuant to articles 2 and 3 of this chapter for project permits for one or more state demonstration projects to be funded by account A of the state water storage fund established by section 45-897.01 and one or more projects to be funded by account B of the fund. Each project shall be located in either of the following:

1. A county for the benefit of which the account that funds the project was established.

2. A county that is adjacent to the county for the benefit of which the account that funds the project was established if both of the following apply:

(a) The project is within the same active management area as the county for which the account that funds the project was established.

(b) Water stored at the project will provide hydrologic benefit to the county for which the account was established.

B. In addition to the information required by articles 2 and 3 of this chapter, the conservation district's permit application shall contain plans for the state demonstration project and projections of the capital, operation and maintenance costs of the project, exclusive of water recovery costs. The plans and projections shall contain information adequate to permit the director to determine whether sufficient monies will be available from the state water storage fund to cover the projected costs of the proposed state demonstration project, considering all other obligations of the fund.

C. If the director approves the conservation district's project permit applications, the director shall specify in the permit or in a written memorandum of understanding between the director, the conservation district and the state treasurer the conditions under which and the timing pursuant to which monies shall be disbursed by the state treasurer to the conservation district from the state water storage fund. The permit or the memorandum of understanding:

1. Shall provide for the advancement to the conservation district of the capital, operation and maintenance costs of the project, exclusive of water recovery costs, and the advancement of additional necessary monies to the conservation district, if the monies initially advanced are insufficient to cover those costs.

2. Shall provide for the continuing disbursement from the fund of monies for the purchase of excess central Arizona project water.

3. May provide for the use of monies in the fund to cover the conservation district's costs of recovering, transporting and delivering the stored water and the costs of dismantling the project.

D. If the director approves the conservation district's application for the project permits, the conservation district may contract for excess central Arizona project water for storage in the state demonstration project and may enter into agreements with the director for the disposition of such water as provided in section 45-895.01.

**45-894.01. Use for replenishment purposes**

A. After the qualification of any real property as member land pursuant to section 48-3774 or the qualification of any service area as a member service area pursuant to section 48-3780, a conservation district may use the facilities and excess storage capacity of any state demonstration project located in the active management area in which the member land or a member service area is located for replenishment purposes. The groundwater replenished by the conservation district using the facilities and excess storage capacity of a state demonstration project shall not be water stored in the state demonstration project.

B. A conservation district may operate and maintain a state demonstration project and may simultaneously store water for other purposes, including replenishment, at the same storage facility.

**45-895.01. Storage of water; availability and disposition of stored water**

A. Water that is stored in a state demonstration project, that is purchased with monies from the state water storage fund established by section 45-897.01 and that is eligible for credits in a long-term storage account pursuant to section 45-852.01 shall be credited to a state demonstration subaccount of the conservation district's long-term storage account. The credits in this subaccount shall be used only for municipal and industrial purposes and shall be used only in the county for the benefit of which the state demonstration project was constructed by the conservation district.

B. Water stored in a state demonstration subaccount shall be available for disposition by the director during any time when the director determines either of the following applies:

1. The amount of central Arizona project water available for delivery to central Arizona project municipal and industrial subcontractors is insufficient to meet the contractual entitlements of the subcontractors.

2. There is a significant interruption of the conservation district's ability to make deliveries of central Arizona project water in the county for the benefit of which the state demonstration project was constructed.

C. The director may dispose of water stored pursuant to this article only when one of the conditions described in subsection B of this section exists. The director may dispose of the water to a person, including a person who is not an existing central Arizona project municipal and industrial subcontractor, who has filed a request for the water. In disposing of the water, the director shall take into account the reasonable water needs of persons who have filed requests for the water and the applicable provisions of the state water plan, if any, in effect at the time of the request. The director shall require as a condition of the disposition of water that:

1. The person who receives the water shall pay the conservation district's costs, if any, of recovering, transporting and delivering the water to the person, but the person is not required to pay any other costs of construction, operation or maintenance of the state demonstration project. If monies from the state water storage fund established by section 45-897.01 are used to cover the conservation district's cost of recovering, transporting or delivering the water stored, the person who receives the water shall reimburse the fund for those costs.

2. The person who receives the water shall agree to be bound by the relevant terms and conditions of any applicable contract between the conservation district and the United States.

3. The water disposed of to a person pursuant to this section shall be used only by the person for municipal and industrial purposes in the county for the benefit of which the state demonstration project was constructed.

#### 45-896.01. Assumption of responsibility for stored water

A. Notwithstanding section 45-895.01, if a groundwater replenishment district is established pursuant to title 48, chapter 27 on or before July 1, 1996 in the Phoenix active management area:

1. The multi-county water conservation district and the groundwater replenishment district shall share equally any water that is stored in a state demonstration project in that active management area. The shares shall be calculated after the director has determined the amount of stored water to be reserved pursuant to paragraph 2 of this subsection.

2. The director shall determine the quantity of any water that is stored for the benefit of municipal and industrial users that are not member lands or member service areas of the multi-county water conservation district and that are located in Maricopa county and the right to use that amount of water is reserved to those municipal and industrial users. Those municipal and industrial users may recover and use the water as otherwise provided by statute or rule but shall apply to the multi-county water conservation district for the use of the water.

3. On or before December 31, 1996, unexpended and unencumbered monies, liabilities, facilities and equipment of a state demonstration project shall be transferred to the multi-county water conservation district and the groundwater replenishment district in equal shares.

B. Notwithstanding section 45-895.01, if a permanent active management area water district is established pursuant to title 48, chapter 28 on or before July 1, 1996 in the Tucson active management area:

1. The multi-county water conservation district and the active management area water district shall share equally any water that is stored in a state demonstration project located in that active management area. The shares shall be calculated after the director has determined the amount of stored water to be reserved pursuant to paragraph 2 of this subsection.

2. The director shall determine the quantity of any water that is stored for the benefit of municipal and industrial users that are not member lands or member service areas of the multi-county water conservation district and that are located in Pima county and the right to use that amount of water is reserved to those municipal and industrial users. Those municipal and industrial users may recover and use the water as otherwise provided by statute or rule but shall apply to the multi-county water conservation district for the use of the water.

3. On or before December 31, 1996, unexpended and unencumbered monies, liabilities, facilities and equipment of a state demonstration project shall be transferred to the multi-county water conservation district and the active management area water district in equal shares.

C. Notwithstanding section 45-895.01 and only to the extent that subsection A or B of this section does not apply:

1. Not later than December 31, 1996, facilities, equipment and liabilities of a state demonstration project located in a multi-county water conservation district shall be transferred to the multi-county water conservation district.

2. The multi-county water conservation district shall use the monies in the state water storage fund established by section 45-897.01 to expediently store water and construct underground storage facilities until that fund is exhausted.

3. On July 1, 1996 the multi-county water conservation district shall assume responsibility for water that is stored by that date in a state demonstration project located in the district. The water shall be used for the benefit of member lands or member service areas of the multi-county water conservation district that are located in the active management area in which the water was originally stored.

4. Periodically after July 1, 1996, until the state water storage fund is exhausted, the director shall determine the quantity of water that has been stored with the use of monies from the state water storage fund for the benefit of municipal and industrial users that are located in Maricopa or Pima county but that are not member lands or member service areas of the multi-county water conservation district. The director shall transfer those quantities of long-term storage credits to the Arizona water banking authority. The Arizona water banking authority shall use the long-term storage credits transferred pursuant to this paragraph in accordance with section 45-2457, subsection B, paragraph 7.

5. Long-term storage credits that are earned after July 1, 1996 with the use of monies in the state water storage fund established by section 45-897.01 and that are not transferred to the Arizona water banking authority pursuant to paragraph 4 of this subsection shall be transferred to the multi-county water conservation district and shall be used for the benefit of member lands or member service areas of the multi-county water conservation district.

#### **45-897.01. [State water storage fund; disbursement of monies](#)**

A. A state water storage fund is established to be administered by the director as provided in this article. The fund shall be divided into two accounts, one account for the benefit of counties having a population of more than five hundred thousand persons but less than one million five hundred thousand persons and one account for the benefit of counties having a population of one million five hundred thousand persons or more, according to the most recent United States decennial census. The accounts shall be referred to respectively as account A and account B. The fund and the accounts within the fund consist of monies appropriated by the legislature and taxes levied by a conservation district pursuant to section 48-3715.02. Monies appropriated by the legislature shall be credited to the separate accounts as provided by the legislature. Taxes levied by the conservation district shall be credited to the separate accounts as provided in section 48-3715.02. Monies in the fund are exempt from lapsing under section 35-190. Interest earned on monies in the fund shall be credited to the fund and to the separate accounts in proportion to the balance of each account.

B. The fund shall be used to pay the capital, operation, maintenance and other costs, including the costs of excess central Arizona project water, of state demonstration projects constructed by the conservation district pursuant to this article. Monies shall be distributed from the fund to the conservation district on the direction of the director, in the manner provided for in section 45-893.01.

#### **45-898.01. [Indemnification and insurance](#)**

For purposes of this article only, when proposing, obtaining permits for, acquiring property for or constructing, operating, maintaining, terminating or dismantling a state demonstration project, a conservation district is an agent of the state, and the state shall indemnify and insure against all liability for acts or omissions of any nature under section 41-621, subsection A, paragraph 3. The state shall be named as an additional insured on any contracts entered into under this article between the conservation district and outside consultants or contractors, and the conservation district shall consult with the department of administration as to appropriate insurance to be specified in any contracts.

