

ARIZONA REVISED STATUTES

Title 45 - Waters

Chapter 2 – Groundwater Code

Article 1 – Administration

45-401. Declaration of policy

A. The legislature finds that the people of Arizona are dependent in whole or in part upon groundwater basins for their water supply and that in many basins and sub-basins withdrawal of groundwater is greatly in excess of the safe annual yield and that this is threatening to destroy the economy of certain areas of this state and is threatening to do substantial injury to the general economy and welfare of this state and its citizens. The legislature further finds that it is in the best interest of the general economy and welfare of this state and its citizens that the legislature evoke its police power to prescribe which uses of groundwater are most beneficial and economically effective.

B. It is therefore declared to be the public policy of this state that in the interest of protecting and stabilizing the general economy and welfare of this state and its citizens it is necessary to conserve, protect and allocate the use of groundwater resources of the state and to provide a framework for the comprehensive management and regulation of the withdrawal, transportation, use, conservation and conveyance of rights to use the groundwater in this state.

45-402. Definitions

In this chapter, unless the context otherwise requires:

1. "Accounting period" means the calendar year, except such other twelve-month period as may be otherwise agreed upon by the director and the owner of a farm or a district on behalf of its landowners.
2. "Active management area" means a geographical area which has been designated pursuant to article 2 of this chapter as requiring active management of groundwater or, in the case of the Santa Cruz active management area, active management of any water, other than stored water, withdrawn from a well.
3. "Animal industry use" means the production, growing and feeding of livestock, range livestock or poultry, as such terms are defined in section 3-1201. Animal industry use is included in the term and general treatment of industry in this chapter, unless specifically provided otherwise.
4. "City" or "town" means a city or town incorporated or chartered under the constitution and laws of this state.
5. "Conservation district" means a multi-county water conservation district established under title 48, chapter 22.
6. "Convey" means to transfer the ownership of a grandfathered right from one person to another.
7. "Date of the designation of the active management area" means:
 - (a) With respect to an initial active management area, June 12, 1980.
 - (b) With respect to a subsequent active management area, the date on which the director's order designating the active management area becomes effective as provided in section 45-414 or the date on which the final results of an election approving the establishment of the active management area pursuant to section 45-415 are certified by the board of supervisors of the county or counties in which the active management area is located.
8. "Exempt well" means a well having a pump with a maximum capacity of not more than thirty-five gallons per minute which is used to withdraw groundwater pursuant to section 45-454.
9. "Expanded animal industry use" means increased water use by an animal industrial enterprise on the land in use by the enterprise on June 12, 1980 or on immediately adjoining land, excluding irrigation uses.
10. "Farm" means an area of irrigated land which is under the same ownership, which is served by a water distribution system common to the irrigated land and to which can be applied common conservation, water measurement and water accounting procedures.
11. "Farm unit" means:
 - (a) With respect to areas outside an active management area and with respect to an active management area other than the Santa Cruz active management area, one or more farms which are irrigated

with groundwater and which are contiguous or in proximity to each other with similar soil conditions, crops and cropping patterns.

(b) With respect to the Santa Cruz active management area, one or more farms which are irrigated with water, other than stored water, withdrawn from a well and which are contiguous or in proximity to each other with similar soil conditions, crops and cropping patterns.

12. "Grandfathered right" means a right to withdraw and use groundwater pursuant to article 5 of this chapter based on the fact of lawful withdrawals and use of groundwater prior to the date of the designation of an active management area.

13. "Groundwater basin" means an area which, as nearly as known facts permit as determined by the director pursuant to this chapter, may be designated so as to enclose a relatively hydrologically distinct body or related bodies of groundwater, which shall be described horizontally by surface description.

14. "Groundwater replenishment district" or "replenishment district" means a district that is established pursuant to title 48, chapter 27.

15. "Groundwater withdrawal permit" means a permit issued by the director pursuant to article 7 of this chapter.

16. "Initial active management area" means the Phoenix, Prescott or Pinal active management area established by section 45-411, the Tucson active management area established by section 45-411 and modified by section 45-411.02 and the Santa Cruz active management area established by section 45-411.03.

17. "Integrated farming operation" means:

(a) With respect to land within an irrigation non-expansion area, more than ten acres of land that are contiguous or in close proximity, that may be irrigated pursuant to section 45-437, that are not under the same ownership and that are farmed as a single farming operation.

(b) With respect to land within an active management area, two or more farms that are contiguous or in close proximity, that collectively have more than ten irrigation acres and that are farmed as a single farming operation.

18. "Irrigate" means to apply water to two or more acres of land to produce plants or parts of plants for sale or human consumption, or for use as feed for livestock, range livestock or poultry, as such terms are defined in section 3-1201.

19. "Irrigation acre" means an acre of land, as determined in section 45-465, subsection B, to which an irrigation grandfathered right is appurtenant.

20. "Irrigation district" means a political subdivision, however designated, established pursuant to title 48, chapter 17 or 19.

21. "Irrigation grandfathered right" means a grandfathered right determined pursuant to section 45-465.

22. "Irrigation non-expansion area" means a geographical area which has been designated pursuant to article 3 of this chapter as having insufficient groundwater to provide a reasonably safe supply for the irrigation of the cultivated lands at the current rate of withdrawal.

23. "Irrigation use" means:

(a) With respect to areas outside an active management area and with respect to an active management area other than the Santa Cruz active management area, the use of groundwater on two or more acres of land to produce plants or parts of plants for sale or human consumption, or for use as feed for livestock, range livestock or poultry, as such terms are defined in section 3-1201.

(b) With respect to the Santa Cruz active management area, the use of water, other than stored water, withdrawn from a well on two or more acres of land to produce plants or parts of plants for sale or human consumption, or for use as feed for livestock, range livestock or poultry, as such terms are defined in section 3-1201.

24. "Irrigation water duty" or "water duty" means the amount of water in acre-feet per acre that is reasonable to apply to irrigated land in a farm unit during the accounting period, as determined by the director pursuant to sections 45-564 through 45-568 or as prescribed in section 45-483.

25. "Member land" means real property that qualifies as a member land of a conservation district as provided by title 48, chapter 22.

26. "Member service area" means the service area of a city, town or private water company that qualifies as a member service area of a conservation district as provided by title 48, chapter 22.

27. "Non-irrigation grandfathered right" means a grandfathered right determined pursuant to section 45-463, 45-464, 45-469 or 45-472.

28. "Non-irrigation use" means:

(a) With respect to areas outside an active management area and with respect to an active management area other than the Santa Cruz active management area, a use of groundwater other than an irrigation use.

(b) With respect to the Santa Cruz active management area, a use of water, other than stored water, withdrawn from a well, other than an irrigation use.

29. "Person" means an individual, public or private corporation, company, partnership, firm, association, society, estate or trust, any other private organization or enterprise, the United States, any state, territory or country or a governmental entity, political subdivision or municipal corporation organized under or subject to the constitution and laws of this state.

30. "Private water company" means:

(a) With respect to areas outside an active management area and with respect to an active management area other than the Santa Cruz active management area, any entity which distributes or sells groundwater, except a political subdivision or an entity which is established pursuant to title 48 and which is not regulated as a public service corporation by the Arizona corporation commission under a certificate of public convenience and necessity. A city or town is not a private water company.

(b) With respect to the Santa Cruz active management area, any entity which distributes or sells water, other than stored water, withdrawn from a well, except a political subdivision or an entity which is established pursuant to title 48 and which is not regulated as a public service corporation by the Arizona corporation commission under a certificate of public convenience and necessity. A city or town is not a private water company.

31. "Service area" means:

(a) With respect to a city or town, the area of land actually being served water, for a non-irrigation use, by the city or town plus:

(i) Additions to such area which contain an operating distribution system owned by the city or town primarily for the delivery of water for a non-irrigation use.

(ii) The service area of a city, town or private water company that obtains its water from the city pursuant to a contract entered into prior to the date of the designation of the active management area.

(b) With respect to a private water company, the area of land of the private water company actually being served water, for a non-irrigation use, by the private water company plus additions to such area which contain an operating distribution system owned by the private water company primarily for the delivery of water for a non-irrigation use.

32. "Service area of an irrigation district" means:

(a) With respect to an irrigation district which was engaged in the withdrawal, delivery and distribution of groundwater as of the date of the designation of the active management area, the area of land within the boundaries of the irrigation district actually being served water by the irrigation district at any time during the five years preceding the date of the designation of the active management area plus any areas as of the date of the designation of the active management area within the boundaries of the irrigation district which contain an operating system of canals, flumes, ditches and other works owned or operated by the irrigation district. The service area may be modified pursuant to section 45-494.01.

(b) With respect to an irrigation district which was not engaged in the withdrawal, delivery and distribution of groundwater as of the date of the designation of the active management area:

(i) The acres of member lands within the boundaries of the irrigation district which were legally irrigated at any time from January 1, 1975 through January 1, 1980 for initial active management areas or during the five years preceding the date of the designation of the active management area for subsequent active management areas.

(ii) Any areas as of the date of the designation of the active management area within the boundaries of the irrigation district which contain an operating system of canals, flumes, ditches and other works for the withdrawal, delivery and distribution of water.

33. "Stored water" means water that is stored underground for the purpose of recovery pursuant to a permit issued under chapter 3.1 of this title.

34. "Subbasin" means an area which, as nearly as known facts permit as determined by the director pursuant to this chapter, may be designated so as to enclose a relatively hydrologically distinct body of groundwater within a groundwater basin, which shall be described horizontally by surface description.

35. "Subsequent active management area" means an active management area established after June 12, 1980 pursuant to article 2 of this chapter.

36. "Subsidence" means the settling or lowering of the surface of land which results from the withdrawal of groundwater.

37. "Transportation" means the movement of groundwater from the point of withdrawal to the point of use.

38. "Type 1 non-irrigation grandfathered right" means a non-irrigation grandfathered right associated with retired irrigated land and determined pursuant to section 45-463, 45-469 or 45-472.

39. "Type 2 non-irrigation grandfathered right" means a non-irrigation grandfathered right not associated with retired irrigated land and determined pursuant to section 45-464.

40. "Water district" means an active management area water district that is established under title 48, chapter 28 and that has adopted an ordinance or resolution to undertake water district groundwater replenishment obligations as defined and used in title 48, chapter 28, article 7.

41. "Water district member land" means real property that qualifies as water district member land of a water district as provided by title 48, chapter 28.

42. "Water district member service area" means the service area of the city, town or private water company that qualifies as a water district member service area of a water district as provided by title 48, chapter 28.

43. "Well" means a man-made opening in the earth through which water may be withdrawn or obtained from beneath the surface of the earth except as provided in section 45-591.01.

45-403. Designation of groundwater basins and sub-basins; hearing

A. Within eighteen months of the effective date of this section, the director shall propose boundaries for all groundwater basins and sub-basins of groundwater basins in this state not included within initial active management areas established pursuant to section 45-411.

B. Within twenty-four months of the effective date of this section, the director shall hold public hearings to consider the final boundaries of groundwater basins and sub-basins in this state not included within initial active management areas established pursuant to section 45-411. The director shall give reasonable notice of the hearing appropriate to the circumstances which shall include the publication once each week for two consecutive weeks in a newspaper of general circulation in each county in which the proposed groundwater basin is located. Any notice shall contain the time and place of the hearing, the legal description and a map clearly identifying and describing all lands to be included in the proposed groundwater basin and any sub-basin and any other information the director deems necessary.

C. The hearings shall be held at the county seat of the county in which the major portion of the land in the proposed groundwater basin is located as soon as practicable but no less than thirty days and no more than sixty days after the first publication of the notice of the hearing. At the hearing, the director shall present the factual data in his possession in support of the proposed action. Any person may appear at the hearing, either in person or by representative, and submit oral or documentary evidence for or against the proposed action. In making his determination, the director shall give full consideration to public comment and to recommendations made by local political subdivisions.

45-404. Findings on hearing; maps; order for boundaries of groundwater basin; review and modification of boundaries

A. Within sixty days after the hearing, the director shall make and file in the director's office written findings with respect to matters considered during the hearing. For each groundwater basin, the director shall prepare and file in the director's office:

1. A map clearly identifying all lands included within the groundwater basin and its sub-basins.
2. Factual data justifying the boundaries of the groundwater basin and its sub-basins.
3. An order designating the boundaries of each groundwater basin and its sub-basins.

B. The findings and order shall be published in the manner and for the length of time prescribed for the publication of notice of the public hearing, and the order is effective when published for the final time. The materials required by subsection A of this section and a transcript of the hearing are public records of the department and shall be available for examination by the public during regular business hours. The findings and order of the director are subject to rehearing or review and to judicial review as provided in section 45-114, subsection C.

C. The director shall file a true copy of the map in the office of the county recorder of the county or counties in which the groundwater basin is located.

D. The director may, as conditions require and factual data justify, review and modify the boundaries of any groundwater basin or any sub-basin of a groundwater basin except for groundwater basins and sub-basins of a groundwater basin that are included within an initial active management area. The review and modification of boundaries of a groundwater basin or sub-basin included within a subsequent active management area or irrigation non-expansion area shall follow procedures set forth in sections 45-417 and 45-438. Any modification of boundaries designated pursuant to this article shall follow as closely as practicable the procedural requirements of section 45-403 and this section.

45-405. Judicial review of decisions of the director; assignment of actions for judicial review

A. This section and sections 45-406 and 45-407 govern all actions for judicial review of decisions of the director under this chapter, except those decisions made pursuant to section 45-476.01, subsection E. An action for judicial review under this chapter extends to all questions of law and fact presented by the record.

B. Administrative and public hearings shall be recorded manually or electronically. If the person seeks judicial review of a decision of the director, a transcript shall be made as provided by law.

C. Each action for judicial review under this chapter shall be assigned to a judge whom the chief justice of the supreme court has specifically designated, pursuant to section 45-406, to hear actions for judicial review under this chapter.

45-406. Designation of judges; publication of designated judges

A. The chief justice of the supreme court shall designate at least one judge, but not more than five judges, of the superior court to hear actions for judicial review under this chapter. The chief justice of the supreme court shall also specify the particular county or counties for which each designated judge will be available for assignment.

B. The supreme court shall publish in the rules of the supreme court the name of each designated judge and the county or counties in which each designated judge will be available for assignment.

C. The presiding judge for the county in which an action for judicial review has been filed under this chapter shall assign the action for judicial review to the appropriate judge designated by the chief justice of the supreme court and shall advise in writing the presiding judge and clerk of the superior court in the county in which the designated judge ordinarily sits about the assignment.

45-407. Stay of director's decision; precedence of actions for judicial review; review by the court of appeals

A. The decision of the director shall not be stayed pending an action for judicial review, except that the judge to whom the action for judicial review has been assigned may stay the decision of the director with or without bond upon a showing of good cause. In determining if good cause exists under the circumstances, the court may consider whether:

1. The public interest will be adversely affected by a stay.
2. The stay will harm others.
3. There is a high probability that the appellant will succeed on the merits.
4. The appellant will suffer irreparable harm before a decision on the merits can be rendered.

B. For the benefit of the people of this state, actions for judicial review under this chapter have precedence, in every court, over all other civil proceedings.

C. The final decision of the superior court is appealable in the same manner as in civil actions generally and shall be governed by the rules of appellate procedure.

Article 2 - Active Management Areas

45-411. Initial active management areas; maps

A. Four initial active management areas are established on the effective date of this section. The four initial active management areas are:

1. The Tucson active management area which includes the upper Santa Cruz and Avra valley sub-basins.
2. The Phoenix active management area which includes the east Salt river valley, west Salt river valley, Fountain Hills, Carefree, lake Pleasant, Rainbow valley and Hassayampa sub-basins.
3. The Prescott active management area which includes the Little Chino and upper Agua Fria sub-basins.

4. The Pinal active management area which includes the Maricopa-Stanfield, Eloy, Aguirre valley, Santa Rosa valley and Vekol valley sub-basins.

B. The boundaries of the initial active management areas established under subsection A of this section are shown on the maps filed in the office of the secretary of state on the effective date of this chapter.

C. A true copy of the maps identifying the initial active management areas established under subsection A of this section shall be on file in the department and shall be available for examination by the public during regular business hours. A true copy of the map of each initial active management area established under subsection A of this section shall also be filed in the office of the county recorder of the county or counties in which the active management area is located.

45-411.01. Exemptions from irrigation water duties, conservation requirements for distribution of groundwater and portions of groundwater withdrawal fee for portions of Phoenix active management area; fee; review

A. Each person who is entitled to use groundwater pursuant to an irrigation grandfathered right under article 5 of this chapter on irrigation acres located within the area delineated for exemption under subsection E of this section is exempt, beginning January 1, 1989 through December 31, 2024, from any irrigation water duties or intermediate water duties established or required to be established for those irrigation acres in the management plans for the first, second, third, fourth and fifth management periods for the Phoenix active management area adopted pursuant to article 9 of this chapter.

B. The Arlington canal company, the Buckeye water conservation and drainage district and the St. John's irrigation district, or their successors, are exempt, beginning January 1, 1989 through December 31, 2024, from any applicable conservation requirements for the distribution of groundwater established in the management plans for the first, second, third, fourth and fifth management periods for the Phoenix active management area adopted pursuant to article 9 of this chapter.

C. No groundwater withdrawal fee shall be levied or collected pursuant to section 45-611 and no water quality assurance fee shall be levied or collected pursuant to section 45-616 for:

1. Groundwater withdrawn during calendar years 1989 through 2024 for irrigation use on irrigation acres within the area exempted from irrigation water duties and intermediate water duties under subsection A of this section.

2. Groundwater withdrawn and used in the area delineated for exemption under subsection E of this section during calendar years 1999 through 2024 for a non-irrigation use pursuant to section 45-519, subsection B, if the user of the groundwater pays a fee of five hundred dollars to the director by March 31 of each year following a year in which the groundwater was used. The director shall deposit, pursuant to sections 35-146 and 35-147, the monies collected under this paragraph in the water quality assurance revolving fund established by section 49-282.

D. Except as provided in subsection G of this section, a water duty exemption fee of twenty-five cents per irrigation acre per year shall be paid to the department for each irrigation acre in the exempted area. The water duty exemption fee shall be paid to the department no later than March 31 of each year from 1990 through 2025 for the preceding year by each person who owns irrigation acres within the exempted area as of December 31 of the year preceding the date the payment is due except that, if the Arlington canal company, the Buckeye water conservation and drainage district or the St. John's irrigation district, or a successor, delivers water to the irrigation acres during the year preceding the date payment is due, the fee shall be paid by the company or district delivering water to the irrigation acres. If a person who is required to pay a fee pursuant to this subsection fails to pay the fee for the calendar year in question on or before March 31 of the following year, the director may assess and collect a penalty of ten percent 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 percent of the unpaid fee. The director shall deposit, pursuant to sections 35-146 and 35-147, all monies collected by the department under this subsection in the water resources fund established by section 45-117.

E. The boundaries of the exempted area under this section are delineated on a map of the Phoenix active management area filed in the office of the secretary of state on May 12, 1988. A true copy of the map filed in the office of the secretary of state shall be on file in the department and shall be available for examination by the public during regular business hours.

F. The director shall review the hydrologic conditions within the area delineated on the map filed in the office of the secretary of state pursuant to subsection E of this section. The director shall consult with representatives of the Arlington canal company, the Buckeye water conservation and drainage district and

the St. John's irrigation district, or their successors, and all cities and towns within the exempted area, on the scope of the review before beginning the review and on the status of the review periodically during the course of the review. The director shall submit a recommendation to the governor, the president of the senate and the speaker of the house of representatives no later than December 15, 2019 regarding extending the exemptions established in this section.

G. A person who owns an irrigation grandfathered right appurtenant to ten or fewer irrigation acres located in the exempt area is exempt from the payment of a water duty exemption fee for the acres prescribed by subsection D of this section unless the irrigation acres are part of an integrated farming operation. The exemption provided by this subsection does not apply to the Arlington canal company, the Buckeye water conservation and drainage district or the St. John's irrigation district, or any successor, in any year in which the company or district delivers water to the irrigation acres.

45-411.02. [Modification of boundaries of Tucson active management area; map](#)

A. Beginning July 1, 1994, the boundaries of the Tucson active management area are modified to exclude the portion of the upper Santa Cruz valley sub-basin included within the Santa Cruz active management area on that date. The modified boundaries of the Tucson active management area are shown on the map filed in the office of the secretary of state on June 10, 1994.

B. A true copy of the map identifying the modified boundaries of the Tucson active management area shall be on file in the department and shall be available for examination by the public during regular business hours. A true copy of the map shall also be filed in the office of the county recorder in the counties in which the active management area is located.

45-411.03. [Santa Cruz active management area; map](#)

A. Beginning July 1, 1994, the Santa Cruz active management area is established as an initial active management area which consists of a portion of the upper Santa Cruz valley sub-basin. The boundaries of the Santa Cruz active management area are shown on the map filed in the office of the secretary of state on June 10, 1994.

B. A true copy of the map identifying the boundaries of the Santa Cruz active management area shall be on file in the department and shall be available for examination by the public during regular business hours. A true copy of the map shall also be filed in the office of the county recorder in the counties in which the active management area is located.

45-411.04. [Declaration of policy and intent; Santa Cruz active management area](#)

A. The legislature finds that the hydrology and water resource management issues within the upper Santa Cruz river basin are unique due to the international nature of the river basin. The Tucson active management area includes areas beyond the one hundred kilometer border established by treaties and agreements between the United States and Mexico relating to environmental issues. It is the finding of the legislature that a new active management area is needed in the immediate vicinity of the United States/Mexico border for the upper Santa Cruz river basin in order to facilitate binational negotiations for coordinated management of the water resources of the Santa Cruz river. It is the further finding of the legislature that the proposed boundaries designated for the Santa Cruz active management area are based on hydrologic parameters, such that the portion of the Santa Cruz river in Arizona has similar hydrologic characteristics with that portion of the Santa Cruz river in the State of Sonora, Mexico.

B. The legislature also finds that the coordinated management of surface water rights and groundwater rights set forth in this enactment has been specifically designed to address the unique problems for water resource management that are described in subsection A of this section and that are posed by the hydrology of the upper Santa Cruz river. Coordinated management of surface water rights and groundwater rights is necessary in the area designated as the Santa Cruz active management area for public health, safety and welfare reasons.

C. It is the express intent of the legislature that the creation of the Santa Cruz active management area is not to affect the definition of, or rights to, the surface waters and the groundwaters within this state, or to establish any precedent that could be used in a court of law to define, limit, or extend the rights of this state or the United States of America over the surface waters and groundwaters found within this state or to define or limit the legal distinction between surface water and groundwater in this state.

D. The legislature finds that the varied water interests within the Santa Cruz active management area have sought the creation of this active management area to facilitate their own participation in the

coordinated management of the water resources within this active management area and participation in the negotiations for binational coordination of water resource planning for the upper Santa Cruz active management area. While the coordinated management can include all naturally occurring waters within the basin, it is not the intent of any party in the Santa Cruz active management area or this legislature to modify or amend in any way the fundamental laws and rights to surface water and groundwater pursuant to the laws of this state.

45-412. Subsequent active management areas; criteria; review of groundwater basins not subject to active management

A. The director may designate an area which is not included within an initial active management area, pursuant to section 45-411, as a subsequent active management area if the director determines that any of the following exists:

1. Active management practices are necessary to preserve the existing supply of groundwater for future needs.

2. Land subsidence or fissuring is endangering property or potential groundwater storage capacity.

3. Use of groundwater is resulting in actual or threatened water quality degradation.

B. An active management area designated pursuant to this section may include more than one groundwater basin but shall not be smaller than a groundwater basin or include only a portion of a groundwater basin, except for the regional aquifer systems of northern Arizona.

C. The director shall periodically review all areas which are not included within an active management area to determine whether such areas meet any of the criteria for active management areas as prescribed in this section.

45-413. Hearing on designation of subsequent active management areas and boundaries; notice; procedures

A. If the director proposes to designate a subsequent active management area pursuant to section 45-412, subsection A, the director shall hold a public hearing to consider:

1. Whether to issue an order declaring the area an active management area.

2. The boundaries and any sub-basins of the proposed active management area.

B. The director shall give reasonable notice of the hearing under the circumstances which shall include publication once each week for two consecutive weeks in a newspaper of general circulation in each county in which the proposed active management area is located. Any notice shall contain the time and place of the hearing, the legal description and a map clearly identifying and describing all lands to be included in the proposed active management area and any sub-basins and any other information the director deems necessary.

C. The hearing shall be held at a location within the proposed active management area as soon as practicable but no less than thirty days and no more than sixty days after the first publication of the notice of hearing. At the hearing, the director shall present the factual data in his possession in support of the proposed action. Any person may appear at the hearing, either in person or by representative, and submit oral or documentary evidence for or against the proposed action. In making his determination, the director shall give full consideration to public comment and to recommendations made by local political subdivisions.

45-414. Findings upon hearing; order for active management area; publication

A. Within thirty days after the hearing, the director shall make and file in the director's office written findings with respect to matters considered during the hearing. If the director decides to declare an area an active management area, the director shall make and file an order designating the active management area.

B. The findings and order shall be published in the manner and for the length of time prescribed for the publication of notice of the public hearing, and the order is effective when published for the final time. All factual data compiled by the director, a transcript of the hearing, a copy of the findings and a map identifying the lands included in the active management area are public records of the department and shall be available for examination by the public during regular business hours. The findings and order of the director are subject to rehearing or review and to judicial review as provided in section 45-114, subsection C.

C. The director shall file a true copy of the map in the office of the county recorder of the county or counties in which the active management area is located.

45-415. Local initiation for active management area; procedures

A. A groundwater basin which is not included within an initial active management area may be designated an active management area upon petition by ten per cent of the registered voters residing within the boundaries of the proposed active management area, as of the most recent report compiled by the county

recorder in compliance with section 16-168, subsection G, and a subsequent election held pursuant to the general election laws of this state. The form of the petition shall be the same as for initiative petitions, and the applicant for such petition shall comply with the provisions of section 19-111.

B. Upon application for a petition number with the clerk of the board of supervisors or county election officer, the director shall transmit a map of the groundwater basin to the county recorder of each county in which the proposed active management area is located. The map shall be on a scale adequate to show with substantial accuracy where the boundaries of the groundwater basin cross the boundaries of county voting precincts. The director shall also transmit to the county recorder all other factual data concerning the boundaries of the groundwater basin that may aid the county recorder in the determination of which registered voters of the county are residents of the groundwater basin.

C. Any registered voter of a county whose residency in the groundwater basin is in question shall be allowed to vote. The ballot shall be placed in a separate envelope, the outside of which shall contain the precinct name and number, the signature of the voter, the residence address of the voter, and the voter registration number of the voter, if available. The voter receipt card shall be attached to the envelope. The county recorder shall verify the ballot for proper residency of the voter before counting. Such verification shall be made within five business days following the election, and the voter receipt card shall be returned to the voter. Verified ballots shall be counted using the procedure outlined for counting early ballots. If residency in the groundwater basin is not verified, the ballot shall remain unopened and shall be destroyed.

D. Except as provided in subsection E of this section, all election expenses incurred pursuant to this section are the responsibility of the county involved.

E. If a groundwater basin is located in two or more counties, the following procedures apply:

1. The petition shall be filed with the clerk of the board of supervisors or county election officer of the county in which the plurality of the registered voters in the groundwater basin resides.

2. The number of registered voters required to sign the petition shall be ten per cent of the registered voters residing within the boundaries of the proposed active management area, as of the most recent report compiled by the county recorder in compliance with section 16-168, subsection G, within the county in which the plurality of the registered voters in the groundwater basin resides.

3. The election shall be called by the board of supervisors of the county in which the petition is filed, and the board shall immediately notify the board of supervisors of any other county included in the groundwater basin of the date of the election. The election shall be held not less than sixty days or more than ninety days from the date of the call. The board of supervisors so notified shall then call the election in that county for the same date and follow the procedures for conducting the general elections in this state.

4. All election expenses incurred pursuant to this subsection are the responsibilities of the counties involved on a proportional basis considering the number of registered voters of each county that are residents of the groundwater basin.

F. The ballot shall be worded, "Should the (insert name of basin) groundwater basin be designated an active management area?" followed by the words "yes" and "no". Opposite each such word there shall be a square in which the voter may make a cross indicating his preference.

45-416. Limitation on number of irrigated acres

A. If the director initiates the procedure for designating a subsequent active management area or the board of supervisors calls an election to establish an active management area, an irrigation user may irrigate within the proposed active management area only acres of land which were legally irrigated at any time during the five years preceding the date of the notice of the initiation of designation procedures or the call for the election.

B. The limitation on the acres which may be irrigated shall continue in effect until the director makes a final determination pursuant to section 45-414 or the final results of an election to establish an active management area pursuant to section 45-415 are certified by the board of supervisors of the county or counties in which the proposed subsequent active management area is located.

45-417. Review and modification of boundaries of subsequent active management area

A. The director may review and modify the boundaries of a subsequent active management area or any of its sub-basins as conditions require and factual data justify.

B. The director shall review the boundaries of a subsequent active management area or any of its sub-basins upon receipt of a petition signed by persons who together withdraw not less than one-fourth of the groundwater withdrawn in the active management area or by request of the groundwater users advisory council in the active management area.

C. Before modifying the boundaries of a subsequent active management area or any of its sub-basins the director shall give notice of and hold a hearing on the proposed modifications pursuant to the procedures prescribed by section 45-413. After the hearing, the director shall prepare written findings pursuant to section 45-414.

45-418. Area director; appointment; qualifications; compensation

A. The director shall appoint an area director for each active management area. For reasons of economy and efficiency in administration, one person may be the area director for more than one active management area. The area director shall serve at the pleasure of the director.

B. The area director is subject to title 41, chapter 4, article 4 and is entitled to receive compensation as determined pursuant to section 38-611.

45-419. Duties of area director

The area director shall:

1. Assist the director in the development of the management plan for the active management area and implement the plan under the director's supervision.

2. Have such other duties as the director may assign and shall be responsible to the director for the performance of such duties.

3. Furnish technical and clerical services and such other assistance to the groundwater users advisory council as is required, to the extent funds are made available for such assistance.

45-420. Groundwater users advisory councils; appointment; representation of water users; term; compensation

A. There shall be a groundwater users advisory council in each active management area consisting of five members. Members of the council shall be appointed by the governor to represent the users of groundwater in the active management area and on the basis of their knowledge of, interest in and experience with problems relating to the development, use and conservation of water.

B. The term of office of each member is six years. The terms of two members shall expire on the third Monday of January each even numbered year, except that each third even numbered year the term of one member shall expire.

C. Members of the council shall serve without compensation, except that each member shall be reimbursed for travel and subsistence while engaged in business of the council in the same manner as is provided by law for state officers.

45-421. Administrative duties of the groundwater users advisory councils

The groundwater users advisory council shall:

1. Advise the area director for the active management area, make recommendations on groundwater management programs and policies for the active management area and comment to the area director and to the director on draft management plans for the active management area before they are promulgated by the director.

2. Keep the minutes of its meetings and all records, reports and other information relative to its work and programs in permanent form indexed and systematically filed.

3. Elect from its members a chairman and vice-chairman for terms of two years expiring on the third Monday of January of each even numbered year.

4. Designate the person or persons who shall execute all documents and instruments on behalf of the council.

5. Manifest and record its actions by motion, resolution or other appropriate means.

6. Make a complete record of its proceedings which shall be open to public inspection during regular business hours in the branch office of the department in the active management area.

7. Provide comment to the Arizona water banking authority with regard to draft plans for additional storage facilities and draft plans of operation in accordance with sections 45-2453 and 45-2456.

Article 3 - Irrigation Non-Expansion Areas

45-431. Initial irrigation non-expansion areas

The Douglas critical groundwater area and the Joseph City critical groundwater area, delineated in the orders of the state land commissioner dated May 5, 1965 and December 16, 1974, respectively, are designated as initial irrigation non-expansion areas on the effective date of this chapter and are governed by the provisions of this article.

45-432. Subsequent irrigation non-expansion areas; designation; review

A. The director may designate an area which is not included within an active management area as a subsequent irrigation non-expansion area if the director determines that both of the following apply:

1. There is insufficient groundwater to provide a reasonably safe supply for irrigation of the cultivated lands in the area at the current rates of withdrawal.
2. The establishment of an active management area pursuant to section 45-412 is not necessary.

B. An irrigation non-expansion area established pursuant to this section may include more than one groundwater sub-basin but shall not be smaller than a groundwater sub-basin or include only a portion of a groundwater sub-basin.

45-433. Local initiation for designation; procedures

A. The designation of a subsequent irrigation non-expansion area may be initiated by the director or by petition to the director signed by either:

1. Not less than twenty-five irrigation users of groundwater, or one-fourth of the irrigation users of groundwater within the boundaries of the groundwater basin or sub-basin specified in the petition.

2. Ten per cent of the registered voters residing within the boundaries of the groundwater basin or sub-basin specified in the petition as of the most recent report compiled by the county recorder in compliance with section 16-168, subsection G. The form of the petition shall be the same as for an initiative petition and the applicant for such petition shall comply with the provisions of section 19-111. If a groundwater basin or sub-basin is located in two or more counties, the number of registered voters required to sign the petition shall be ten per cent of the registered voters residing within the boundaries of the groundwater basin or sub-basin, as of the most recent report compiled by the county recorder in compliance with section 16-168, subsection G, within the county in which the plurality of the registered voters in the groundwater basin or sub-basin resides.

B. Upon receipt of a petition pursuant to subsection A, paragraph 2 of this section, the director shall transmit the petition to the county recorder of each county in which the groundwater basin or sub-basin is located for verification of signatures. In addition, the director shall transmit a map of the groundwater basin or sub-basin to the county recorder of each such county included. The map shall be on a scale adequate to show with substantial accuracy where the boundaries of the groundwater basin or sub-basin cross the boundaries of county voting precincts. The director shall also transmit to the county recorder all other factual data concerning the boundaries of the groundwater basin or sub-basin that may aid the county recorder in the determination of which registered voters of the county are residents of the groundwater basin or sub-basin.

45-434. Limitation on number of irrigated acres

A. If procedures are initiated, whether by the director or by petition, for designating an irrigation non-expansion area, an irrigation user may irrigate within the proposed irrigation non-expansion area only acres of land which were irrigated at any time during the five years preceding the date of the notice of the initiation of designation procedures.

B. The limitation on the acres which may be irrigated shall continue in effect until the director makes a final determination pursuant to section 45-436.

45-435. Hearing on designation of subsequent irrigation non-expansion areas and boundaries; notice; procedures

A. If the director finds that an area which is not included within an active management area meets the criteria specified in section 45-432, or a petition is filed pursuant to section 45-433, the director shall hold a public hearing to consider:

1. Whether to issue an order declaring the area an irrigation non-expansion area.
2. The boundaries of the proposed irrigation non-expansion area.

B. The director shall give reasonable notice of the hearing under the circumstances which shall include the publication once each week for two consecutive weeks in a newspaper of general circulation in

each county in which the proposed irrigation non-expansion area is located. Any notice shall contain the time and place of the hearing, the legal description and a map clearly identifying and describing all lands to be included in the proposed irrigation non-expansion area and any other information the director deems necessary.

C. The hearing shall be held at a location in the county in which the major portion of the proposed irrigation non-expansion area is located no less than thirty days but no more than sixty days after the first publication of the notice of the hearing. At the hearing, the director shall present the factual data in his possession in support of or in opposition to the proposed action. Any person may appear at the hearing, either in person or by representative, and submit oral or documentary evidence for or against the proposed action. In making his determination, the director shall give full consideration to public comment and to recommendations made by local political subdivisions.

45-436. Findings upon hearing; order for irrigation non-expansion area; publication

A. Within thirty days after the hearing, the director shall make and file in the director's office written findings with respect to matters considered during the hearing. If the director decides to declare an area an irrigation non-expansion area, the director shall make and file an order designating the irrigation non-expansion area.

B. The findings and order shall be published in the manner and for the length of time prescribed for the publication of notice of the public hearing, and the order is effective when published for the final time. All factual data compiled by the director, a transcript of the hearing, a copy of the findings and a map identifying the lands included in the irrigation non-expansion area are public records of the department and shall be available for examination by the public during regular business hours. The findings and order of the director are subject to rehearing or review and to judicial review as provided in section 45-114, subsection C.

C. The director shall file a true copy of the map in the office of the county recorder of the county or counties in which the irrigation non-expansion area is located.

45-437. Irrigated acreage; water measuring device; annual report of groundwater pumping; penalty; transportation; exemption

A. In an initial irrigation non-expansion area established pursuant to section 45-431, except as provided in subsection E of this section, only acres of land which were legally irrigated at any time between January 1, 1975 and January 1, 1980 may be irrigated with groundwater, effluent, diffused water on the surface or surface water, except as provided in sections 45-172, 45-437.01, 45-437.02 and 45-437.03, and except that this does not prohibit irrigation with surface water used pursuant to decreed or appropriative rights established before June 12, 1980. Land which was not irrigated at any time from January 1, 1975 through January 1, 1980 is deemed to have been in irrigation if the director finds that substantial capital investment has been made in the twelve months before June 12, 1980 for the improvement of the land and on-site irrigation distribution facilities, including the drilling of wells, for an irrigation use. This subsection does not allow irrigation of land which could not have been legally irrigated under prior statutory law.

B. In a subsequent irrigation non-expansion area established pursuant to section 45-432, except as provided in subsection E of this section, only acres of land which were irrigated at any time during the five years preceding the date of the notice of the initiation of designation procedures may be irrigated with groundwater, effluent, diffused water on the surface or surface water, except as provided in sections 45-172, 45-437.01, 45-437.02 and 45-437.03, and except that this does not prohibit irrigation with surface water used pursuant to decreed or appropriative rights established before the date of the notice. Land which was not irrigated at any time during this five year period is deemed to have been in irrigation if the director finds that substantial capital investment has been made for the subjugation of such land for an irrigation use including on-site irrigation distribution facilities and a well or wells the drilling and construction of which were substantially commenced before the date of the notice of the initiation of designation procedures.

C. Except as provided in subsection F of this section, in an irrigation non-expansion area:

1. Each person withdrawing groundwater from a non-exempt well for an irrigation use and each person withdrawing more than ten acre-feet of groundwater per year from a non-exempt well for a non-irrigation use shall use a water measuring device approved by the director. Each person withdrawing groundwater from a non-exempt well shall file a report on a calendar year basis with the director on a form provided by the director no later than March 31 of the following year. In filing a report, each person withdrawing ten or fewer acre-feet of groundwater per year from a non-exempt well for a non-irrigation use shall estimate the quantity of groundwater withdrawn.

2. Transportations of groundwater are subject to the provisions of articles 8 and 8.1 of this chapter.

D. If a person, who is required under subsection C, paragraph 1 of this section to file an annual report for calendar year 1986 or any subsequent calendar year, fails to file a report for the calendar year in question on or before March 31 of the following year, 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.

E. In an irrigation non-expansion area, a correctional facility under the jurisdiction of the state department of corrections may irrigate with groundwater, effluent, diffused water on the surface or surface water up to a total of ten acres of land that otherwise may not be irrigated pursuant to subsection A or B of this section if the irrigation is for the purpose of producing plants or parts of plants for consumption by inmates at the correctional facility as part of a prisoner work program and if the correctional facility notifies the director of water resources in writing of the location of the acres of land to be irrigated prior to their irrigation. The actual number of acres of land that a correctional facility may irrigate pursuant to this subsection shall be calculated by subtracting the number of acres of land the correctional facility may already irrigate under subsection A or B of this section from ten.

F. A person who withdraws groundwater from a non-exempt well for an irrigation use is exempt from subsection C, paragraph 1 of this section for those withdrawals if both of the following apply:

1. Groundwater withdrawn from the well for an irrigation use is used only on land that is owned by a person who has the right under subsection A or B of this section to irrigate ten or fewer contiguous acres of land at the place of the use.

2. Groundwater withdrawn from the well is not used on land that is part of an integrated farming operation.

45-437.01. Substitution of irrigated acreage in an irrigation district; central Arizona project water

In an irrigation non-expansion area, a person who owns acres of land which may be irrigated pursuant to section 45-437 may apply to the director during the central Arizona project contracting period, but no later than January 1, 1995, to permanently retire all or a portion of such acres from irrigation and to irrigate conjunctively with central Arizona project water the same number of substitute acres. The director may approve the substitution of acres if the director determines that all of the following exist:

1. The acres to be retired from irrigation and the substitute acres are located outside of the exterior boundaries of the service area of a city, town or private water company and such acres are located within the same irrigation district and the same sub-basin.

2. Central Arizona project water available to the irrigation district within which the acres are located will be adequate to supply the substitute acres.

45-437.02. Flood damaged acres; substitution of acres; definitions

A. In an irrigation non-expansion area, a person who owns acres of land which may be irrigated pursuant to section 45-437 may permanently retire those acres from irrigation and substitute for those acres the same number of acres in the same irrigation non-expansion area if the owner demonstrates to the director's satisfaction that all of the following apply:

1. The legally irrigated acres were damaged by floodwaters after being irrigated.

2. It is not economically feasible to restore the flood damaged acres to irrigation use.

B. For purposes of this section:

1. "Floodwaters" means a temporary and erosive overflow of waters on lands not normally covered by water which occurred after January 1, 1975.

2. "Legally irrigated acres" means acres which may be irrigated pursuant to section 45-437.

45-437.03. Impediments to efficient irrigation; substitution of acres; definitions

A. In an irrigation non-expansion area, a person who owns acres of land which are contiguous and which may be irrigated pursuant to section 45-437 may apply to the director to permanently retire a portion of those acres from irrigation and substitute for the retired acres the same number of acres. The director may approve the substitution of acres if the owner demonstrates to the director's satisfaction that all of the following apply:

1. A limiting condition associated with the acres to be retired from irrigation substantially impedes the implementation of more efficient irrigation practices on the legally irrigated acres.

2. The substitution of acres will substantially reduce the limiting condition and will substantially facilitate the implementation of more efficient irrigation practices.

3. The substitute acres are within the same farm unit as the legally irrigated acres that will not be retired.

4. The substitution will not reduce the number of acres of land within the farm unit that are eligible to receive central Arizona project water.

5. If the acres to be retired are located within the exterior boundaries of an irrigation district, the substitute acres will be located within the exterior boundaries of the same irrigation district.

6. The area of land within the substitute acres that is physically capable of being irrigated at the time the application for substitution of acres is filed does not exceed the area of land within the acres to be retired that is physically capable of being irrigated at the time the application for substitution of acres is filed.

B. For purposes of this section:

1. "Legally irrigated acres" means acres of land which are contiguous and which may be irrigated pursuant to section 45-437.

2. "Limiting condition" means any condition that limits the achievement of more efficient irrigation on the legally irrigated acres, including irregularly shaped legally irrigated acres and poor quality soils.

45-438. Review and modification of boundaries of irrigation non-expansion areas

A. The director may review and modify the boundaries of an irrigation non-expansion area as conditions require and factual data justify.

B. The director shall review the boundaries of an irrigation non-expansion area upon receipt of a petition signed by persons who together withdraw not less than one-fourth of the groundwater withdrawn in the irrigation non-expansion area.

C. Before modifying the boundaries of an irrigation non-expansion area, the director shall give notice of and hold a hearing on the proposed modifications pursuant to the procedures prescribed by section 45-435. After the hearing, the director shall prepare written findings pursuant to section 45-436.

45-439. Conversion from irrigation non-expansion area to active management area; director; local initiation; procedures

A. The director may designate an irrigation non-expansion area as an active management area if the director determines that the irrigation non-expansion area meets any of the criteria for designating an active management area specified in section 45-412, subsection A.

B. Any action taken under this section is subject to the procedures for notice and hearing prescribed by sections 45-413 and 45-414.

C. An irrigation non-expansion area may be designated an active management area upon petition and election pursuant to section 45-415 by the registered voters residing in the groundwater basin which is or includes the irrigation non-expansion area.

45-440. Subsequent irrigation non-expansion area; limitation on use of groundwater

A. Except as provided in subsection B of this section, in a subsequent irrigation non-expansion area from which groundwater may be withdrawn and transported to an initial active management area pursuant to article 8.1 of this chapter, a person or entity may withdraw more than one hundred acre-feet of groundwater per year for commercial or industrial purposes other than irrigation or residential use only if the groundwater is withdrawn as follows:

1. From land that is eligible to be irrigated pursuant to section 45-437, subsection B.

2. From a depth to one thousand feet at the site or sites of the proposed withdrawals.

3. At a rate that when added to the existing rate of withdrawals in the area does not cause the groundwater table at the site or sites of the withdrawals to decline more than ten feet per year.

4. In an amount per acre of land from which withdrawals are made that does not exceed:

(a) Six acre-feet in any year.

(b) Thirty acre-feet for any period of ten consecutive years computed in continuing progressive series beginning in the year that withdrawals begin.

B. In a subsequent irrigation non-expansion area from which groundwater may be withdrawn and transported to an initial active management area pursuant to article 8.1 of this chapter, an electrical generating facility for which an application for a certificate of environmental compatibility was filed with the corporation commission pursuant to title 40, chapter 2, article 6.2 before January 1, 2000 may withdraw groundwater for electrical generation and related uses in an amount not to exceed sixty-two thousand five

hundred acre-feet per ten year period as determined using a ten year rolling average beginning on the date the facility first begins withdrawing groundwater.

C. This section shall not be construed to affect the rights of:

1. A political subdivision to transport groundwater withdrawn from an irrigation non-expansion area to an initial active management area pursuant to section 45-554.
2. Any person to store or recover water pursuant to chapter 3.1 of this title.

Article 4 - Groundwater Rights and Uses in General

45-451. Groundwater rights and uses in active management areas

A. In an active management area, a person may:

1. Withdraw and use groundwater only in accordance with the provisions of articles 5 through 12 of this chapter.
2. Store water in a storage facility, as defined in section 45-802.01, only in accordance with chapter 3.1 of this title.

B. This chapter shall not be construed to affect decreed and appropriative water rights. Nothing in this chapter shall be construed to affect the definition of surface water in section 45-101 and the definition of water subject to appropriation in section 45-141 or the provisions of article 9 of chapter 1 of this title.

C. Notwithstanding subsection B of this section, solely in the Santa Cruz active management area:

1. The withdrawal of water, other than stored water, from a well and the distribution and use of water, other than stored water, withdrawn from a well shall be subject to any applicable conservation requirements established by the director in the management plans for the active management area pursuant to article 9 of this chapter.
2. The withdrawal of water from a well shall be subject to any applicable well location requirements contained in article 10 of this chapter.

45-452. No new irrigated acreage in active management areas; central Arizona project water; exemption

A. In an initial active management area, except as provided in subsections B, H, I and J of this section and sections 45-172, 45-465.01 and 45-465.02, only acres of land which were legally irrigated at any time from January 1, 1975 through January 1, 1980, which are capable of being irrigated, which have not been retired from irrigation for a non-irrigation use pursuant to section 45-463 or 45-469 and for which the irrigation grandfathered right has not been conveyed for a non-irrigation use, may be irrigated with any groundwater, effluent, diffused water on the surface or surface water, except that this does not prohibit irrigation with surface water used pursuant to decreed or appropriative rights established before June 12, 1980. In an initial active management area, land which was not irrigated at any time from January 1, 1975 through January 1, 1980 is deemed to have been in irrigation if the director finds that either of the following applies:

1. In areas of an initial active management area not designated as critical groundwater areas under prior statutory law prior to the date of the designation of the active management area, land is deemed to have been in irrigation if substantial capital investment has been made for the subjugation of such land for an irrigation use including on-site irrigation distribution facilities and a well or wells the drilling and construction of which were substantially commenced prior to the date of the designation of the active management area.
2. In areas of an initial active management area which were designated as critical groundwater areas under prior statutory law, land is deemed to have been in irrigation if substantial capital investment has been made in the twelve months before June 12, 1980 for the improvement of the land and on-site irrigation distribution facilities, including the drilling of wells, for an irrigation use. This paragraph does not allow irrigation of land which could not have been legally irrigated under prior statutory law.

B. In an initial active management area, a person who owns acres of land which may be irrigated pursuant to subsection A of this section may apply to the director to permanently retire all or a portion of such acres from irrigation and to irrigate conjunctively with central Arizona project water the same number of substitute acres. The director may approve the substitution of acres if the director determines that all of the following exist:

1. The substitute acres were legally irrigated during the period of September 30, 1958 to September 30, 1968, or such other period as the United States secretary of the interior may designate.

2. The acres to be retired from irrigation and the substitute acres are located outside of the exterior boundaries of the service area of a city, town or private water company and such acres are located within the same irrigation district and the same sub-basin.

3. The substitution of acres is necessary to enable the irrigation district within which the acres are located to more efficiently deliver central Arizona project water.

4. Central Arizona project water available to the irrigation district within which the acres are located will be adequate to supply the substitute acres.

5. The substitution of acres will benefit the management of the active management area in which the acres are located.

C. Any acres permanently retired from irrigation pursuant to subsection B of this section relinquish their irrigation grandfathered rights, and such rights are deemed to be appurtenant to the substitute acres. Groundwater withdrawn or received for the irrigation of the substitute acres pursuant to an irrigation grandfathered right shall be reduced by the amount of central Arizona project water received for such acres.

D. The service area of the irrigation district in which the acres are located shall be modified to permanently delete the acres permanently retired from irrigation and include the substitute acres.

E. If a person retires land from irrigation pursuant to subsection B of this section, groundwater shall not be withdrawn from such retired land for any purpose unless pursuant to a groundwater withdrawal permit or unless withdrawn by a city, town or private water company within the service area of such city, town or private water company.

F. The director may reverse the substitution of irrigated acres as provided by subsections B through E of this section under the following conditions and procedures:

1. Title to the retired acres and substitute acres has reverted involuntarily, or voluntarily in lieu of foreclosure or forfeiture, to a previous owner or owners of the retired and substitute acres.

2. The current owner of the retired acres must apply to the director in writing stating:

(a) The history of the original substitution of acres under subsections B through E of this section.

(b) The circumstances regarding the reversion of title to the current owner or owners.

(c) Why reversal of the substitution of acres is necessary.

3. The director must find that reversing the substitution of acres:

(a) Will benefit the management of the active management area.

(b) Is necessary to prevent unreasonable hardship to the current owner of the retired acres.

(c) Will not cause unreasonable hardship to the current owner of the substitute acres, if owned separately from the retired acres.

4. If the director decides to reverse the substitution of acres:

(a) The originally retired irrigation acres regain their original irrigation grandfathered rights, but groundwater withdrawn or received for the irrigation of those acres pursuant to an irrigation grandfathered right shall be reduced by any amount of central Arizona project water received for such acres.

(b) The substitute acres relinquish all irrigation grandfathered rights that were transferred to them under the original substitution of acres.

(c) The service area of the irrigation district in which the acres are located shall be modified to delete the substitute acres and include the originally retired irrigation acres.

(d) Groundwater may not thereafter be withdrawn from the substitute acres for any purpose unless pursuant to a groundwater withdrawal permit or unless withdrawn by a city, town or private water company within its service area.

G. In a subsequent active management area, except as provided in subsections H, I and J of this section or section 45-172, only acres of land which were legally irrigated at any time during the five years preceding the date of the notice of the initiation of designation procedures or the call for the election, which are capable of being irrigated, which have not been retired from irrigation for a non-irrigation use pursuant to section 45-463 or 45-469 and for which the irrigation grandfathered right has not been conveyed for a non-irrigation use, may be irrigated with groundwater, effluent, diffused water on the surface or surface water, except that this does not prohibit irrigation with surface water used pursuant to decreed or appropriate rights established before the date of the notice or the call. In a subsequent active management area, land is deemed to have been in irrigation if the director finds that either of the following applies:

1. In areas of a subsequent active management area which were not irrigation non-expansion areas, land is deemed to have been in irrigation if substantial capital investment has been made for the subjugation of such land for an irrigation use including on-site irrigation distribution facilities and a well or wells the drilling and construction of which were substantially commenced before the date of the notice of the initiation of designation procedures or the call for the election.

2. In areas of a subsequent active management area which were irrigation non-expansion areas, land is deemed to have been in irrigation if the director finds that substantial capital investment has been made in the twelve months before the date of the notice of the initiation of designation procedures or the call for the election, for the improvement of the land and on-site irrigation distribution facilities, including the drilling of wells, for an irrigation use. This paragraph does not allow irrigation of land which could not have been legally irrigated under section 45-437.

H. In an active management area, a state university engaged in the teaching and study of and experimentation in the science of agriculture may irrigate not more than three hundred twenty acres of land for such purposes with not more than five acre-feet of groundwater per acre per year. Water produced from any well pursuant to this subsection shall not be leased, sold or transported off the irrigated land operated by the state university. The right to withdraw and use groundwater pursuant to this subsection does not require a withdrawal permit, is not a grandfathered right, shall not give rise to a grandfathered right and may not be conveyed to any other user.

I. In an active management area, a correctional facility under the jurisdiction of the state department of corrections may irrigate with groundwater, effluent, diffused water on the surface or surface water up to a total of ten acres of land that otherwise may not be irrigated pursuant to subsection A or G of this section if the irrigation is for the purpose of producing plants or parts of plants for consumption by inmates at the correctional facility as part of a prisoner work program and if the correctional facility notifies the director of water resources in writing of the location of the acres of land to be irrigated prior to their irrigation. The actual number of acres of land that a correctional facility may irrigate pursuant to this subsection shall be calculated by subtracting the number of acres of land the correctional facility may already irrigate under subsection A or G of this section from ten. The amount of water that a correctional facility may use during a year to irrigate acres of land pursuant to this subsection shall not exceed an amount calculated by multiplying the number of acres of land that are actually irrigated by the correctional facility during the year pursuant to this subsection, by four and one-half acre-feet of water. The right to withdraw and use groundwater pursuant to this subsection does not require an irrigation grandfathered right, is not a grandfathered right, shall not give rise to a grandfathered right, and may not be conveyed to any other user.

J. During the second management period, acres of land in an active management area which have been retired from irrigation for a non-irrigation use pursuant to section 45-463 or 45-469 or for which the irrigation grandfathered right has been conveyed for a non-irrigation use pursuant to section 45-472 may be irrigated with effluent, other than effluent recovered pursuant to a recovery well permit issued under chapter 3.1 of this title or effluent given or received pursuant to a water exchange under chapter 4 of this title, and shall retain its appurtenant type 1 non-irrigation grandfathered right where the following conditions are met:

1. The land to be irrigated lies within the boundaries of an incorporated city or town.
2. The governing body or manager of the city or town has consented in writing to the irrigation of the land with effluent.
3. The effluent proposed for irrigation of the land cannot be reasonably beneficially used otherwise.
4. The owner of the land gives written notice to the director of intention to irrigate the land with effluent and receives written approval from the director before commencing irrigation. The notice shall set forth the legal description of the land to be irrigated, the certificate number of the type 1 non-irrigation grandfathered right appurtenant to the land, the source of effluent and the reasons the effluent cannot be reasonably beneficially used otherwise, and shall be accompanied by a copy of the written consent of the city or town in which the land to be irrigated is located.

K. A person who may irrigate with effluent land to which a type 1 non-irrigation right is appurtenant under subsection J of this section may relinquish the right to irrigate all or a portion of the land by giving the director written notice that the person relinquishes the right. The notice shall include a legal description of the acres to be relinquished. The relinquishment is effective upon receipt of the notice by the director.

L. If a person who may irrigate with effluent land to which a type 1 non-irrigation grandfathered right is appurtenant under subsection J of this section conveys all or a portion of the land to a successor owner, the successor owner shall not irrigate the land prior to providing written notification to the director of

the successor owner's intention to irrigate the land and receiving approval from the director pursuant to subsection J of this section.

M. 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. If an administrative hearing is held, it shall be conducted in the active management area in which the use is located.

45-453. Groundwater rights and uses in areas outside active management areas; amounts; transportation; irrigation non-expansion areas

In areas outside of active management areas, a person may:

1. Withdraw and use groundwater for reasonable and beneficial use, except as provided in article 8.1 of this chapter.

2. Transport groundwater pursuant to articles 8 and 8.1 of this chapter.

3. Use groundwater for irrigation purposes within the exterior boundaries of an irrigation non-expansion area only pursuant to article 3 of this chapter.

45-454. Exemption of small non-irrigation wells; definitions

A. Withdrawals of groundwater for non-irrigation uses from wells having a pump with a maximum capacity of not more than thirty-five gallons per minute which were drilled before April 28, 1983 or which were drilled after April 28, 1983 pursuant to a notice of intention to drill which was on file with the department on such date are exempt from this chapter, except that:

1. Wells drilled before June 12, 1980 which are not abandoned or capped or wells which were not completed on June 12, 1980 but for which a notice of intention to drill was on file with the Arizona water commission on such date are subject to subsections J, K and L of this section and must be registered pursuant to section 45-593. If two or more wells in an active management area are exempt under this paragraph and are used to serve the same non-irrigation use at the same location, the aggregate quantity of groundwater withdrawn from the wells shall not exceed fifty-six acre-feet per year.

2. Wells drilled between June 12, 1980 and April 28, 1983, except as provided in paragraph 1 of this subsection, and wells drilled after April 28, 1983 pursuant to a notice of intention to drill which was on file with the department on April 28, 1983, are subject to subsections G, I, J and K of this section.

B. Withdrawals of groundwater for non-irrigation uses from wells having a pump with a maximum capacity of not more than thirty-five gallons per minute drilled on or after April 28, 1983, except wells drilled after April 28, 1983 pursuant to a notice of intention to drill which was on file with the department on such date, are exempt from this chapter, except that:

1. Such wells are subject to subsections G through K of this section.

2. In an active management area, other than a subsequent active management area designated for a portion of a groundwater basin in the regional aquifer systems of northern Arizona, withdrawals of groundwater from such wells for non-irrigation uses other than domestic purposes and stock watering shall not exceed ten acre-feet per year.

3. In a subsequent active management area that is designated for a portion of a groundwater basin in the regional aquifer systems of northern Arizona, groundwater withdrawn from such wells may be used only for domestic purposes and stock watering.

C. On or after January 1, 2006, an exempt well otherwise allowed by this section may not be drilled on land if any part of the land is within one hundred feet of the operating water distribution system of a municipal provider with an assured water supply designation within the boundaries of an active management area established on or before July 1, 1994, as shown on a digitized service area map provided to the director by the municipal provider and updated by the municipal provider as specified by the director.

D. On request from the owner of the land on which an exempt well is prohibited pursuant to subsection C of this section on a form prescribed by the director, the director shall issue an exemption from subsection C of this section if the landowner demonstrates to the satisfaction of the director that any of the following applies:

1. The landowner submitted a written request for service to the municipal provider that operates the distribution system and the municipal provider did not provide written verification to the landowner within thirty calendar days after receipt of the request that water service is available to the landowner after payment of any applicable fee to the municipal provider.

2. The total capital cost and fees for connecting to the operating water distribution system exceed the total capital cost and fees for drilling and fully equipping an exempt well.

3. If the applicant must obtain an easement across other land to connect to the water distribution system of the municipal provider, the applicant sent the owner of the land a request for the easement by certified mail, return receipt requested, and either the applicant did not receive a response to the request within thirty calendar days of mailing the request or the request was denied.

4. The landowner does not qualify for an exemption pursuant to paragraph 1, 2 or 3 of this subsection and the landowner provides written verification from the municipal provider that the landowner shall not receive or request water service from the municipal provider while the exempt well is operational. The exemption for that well is revoked if the landowner or any subsequent landowner receives water service from the municipal provider. In determining whether to approve or reject a permit application filed under section 45-599, the director shall not consider any impacts the proposed well may have on an exempt well drilled pursuant to this paragraph.

E. This section does not prohibit a property owner, after January 1, 2006, from drilling a replacement exempt well for a lawful exempt well if the replacement well does not increase the total number of operable exempt wells on the applicant's land.

F. A remediation well drilled for the purpose of remediating groundwater is exempt from this section if it meets one of the following:

1. The remediation well is for an approved department of environmental quality or United States environmental protection agency remediation program.

2. A registered geologist certifies that the remediation well is for the purpose of remediation.

G. A person shall file a notice of intention to drill with the director pursuant to section 45-596 before drilling an exempt well or causing an exempt well to be drilled.

H. The registered well owner shall file a completion report pursuant to section 45-600, subsection B.

I. In an active management area only one exempt well may be drilled or used to serve the same non-irrigation use at the same location, except that a person may drill or use a second exempt well to serve the same non-irrigation use at the same location if the director determines that all of the following apply:

1. Because of its location, the first exempt well is not capable of consistently producing more than three gallons per minute of groundwater when equipped with a pump with a maximum capacity of thirty-five gallons per minute.

2. The second exempt well is located on the same parcel of land as the first exempt well, the parcel of land is at least one acre in size, all groundwater withdrawn from both exempt wells is used on that parcel of land and there are no other exempt wells on that parcel of land.

3. Combined withdrawals from both wells do not exceed five acre-feet per year.

4. If the second exempt well is drilled after January 1, 2000, the county health authority for the county in which the well is located or any other local health authority that controls the installation of septic tanks or sewer systems in the county has approved the location of the well in writing after physically inspecting the well site.

5. Use of two wells for the same non-irrigation use at the same location is not contrary to the health and welfare of the public.

J. An exempt well is subject to sections 45-594 and 45-595.

K. Groundwater withdrawn from an exempt well may be transported only pursuant to articles 8 and 8.1 of this chapter.

L. A person who owns land from which exempt withdrawals were being made as of the date of the designation of the active management area is not eligible for a certificate of grandfathered right for a type 2 non-irrigation use for such withdrawals.

M. For the purposes of this section:

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

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

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

45-454.01. Exemption of superfund remedial action activities; use requirements; definition

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

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

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

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

B. New well construction and withdrawal, treatment and reinjection of groundwater into the aquifer that occur as part of a remedial action relating to metal mining activities or a mitigation order relating to metal mining activities and that are undertaken pursuant to title 49, chapter 2, article 5 for the purpose of preventing the migration of a hazardous or nonhazardous substance are exempt from this chapter, except that:

1. A well that is exempt under this subsection is subject to sections 45-594, 45-595, 45-596, 45-600 and 45-605, but authorization to drill is not required before drilling.

2. If the groundwater that is withdrawn is not reinjected into the aquifer, the groundwater shall be put to reasonable and beneficial use. If the groundwater is withdrawn within an active management area and is not reinjected into the aquifer, the groundwater shall be put to reasonable and beneficial use within the same active management area as follows:

(a) At the metal mining facility pursuant to a groundwater withdrawal permit issued under section 45-514 or a type 2 non-irrigation grandfathered right issued under section 45-464.

(b) At another location pursuant to a grandfathered right issued under article 5 of this chapter or a service area right under article 6 of this chapter.

3. A person who uses groundwater withdrawn in an active management area pursuant to this subsection shall pay the groundwater withdrawal fee for the groundwater the person withdrew or received. The groundwater use is subject to articles 8, 8.1, 9, 10, 11 and 12 of this chapter. A city, town, private water company or irrigation district that serves groundwater pursuant to article 6 of this chapter is deemed to have used the groundwater for the purposes of this paragraph.

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

45-455. Application to state lands

This chapter applies to all lands owned by the state of Arizona and any of its political subdivisions.

Article 5 - Grandfathered Groundwater Rights in Active Management Areas

45-461. Definitions

In this article, unless the context otherwise requires:

1. "Certificate of exemption" means a certificate which was issued by the state land department or Arizona water commission under prior statutory law for the purpose of describing specific uses and amounts of water which could not be enjoined if found to constitute the transfer or transportation of groundwater.

2. "Development plan" means a plan for the non-irrigation use of land in connection with which land has been or will be retired from irrigation for the bona fide purpose of conserving or using water for such non-irrigation use which would otherwise be used to irrigate the retired land.

3. "Owner" means:

(a) With respect to an irrigation grandfathered right or a type 1 non-irrigation grandfathered right, the owner of the land to which the right is appurtenant.

(b) With respect to a type 2 non-irrigation grandfathered right, the holder of the certificate of type 2 non-irrigation grandfathered right.

4. "Protected farmland" means land that has been designated by the director as protected farmland pursuant to section 45-483, subsection A and for which the designation has not been revoked by the director pursuant to section 45-483, subsection C.

5. "Same ownership" means ownership by the same person or entity or by successor persons or entities as a result of succession to heirs and personal representatives, corporate and partnership reorganizations, mergers, dissolutions, divestitures, partnerships, partitions, joint ventures, foreclosures, receivership or bankruptcy, purchase of capital stock, sale pursuant to United States Code, title 11, or similar succession, but not by outright sale to a bona fide purchaser for value where no portion of or beneficial interest in the successor in interest is retained by the original owner, its shareholders, partners, limited partners or beneficiaries.

6. "Water duty acres" means the acres of land in a farm, as determined pursuant to section 45-465, subsection B, which are used in calculating the maximum amount of groundwater which may be used pursuant to an irrigation grandfathered right.

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

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

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

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

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

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

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

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

45-463. Type 1 non-irrigation grandfathered right associated with retired irrigated land; appurtenancy; ownership

A. In an initial active management area, a person who owns land which was legally entitled to be irrigated with groundwater and who retired such land from irrigation after January 1, 1965 but prior to the date of the designation of the active management area in anticipation of a non-irrigation use has the right to withdraw from or receive for such land three acre-feet of groundwater per acre per year upon showing that:

1. The land has been held under the same ownership since it was retired.

2. A development plan for the proposed non-irrigation use existed at the time the land was retired.

B. In a subsequent active management area, a person who owns land which was legally entitled to be irrigated with groundwater and retires such land from irrigation prior to the date of the designation of the active management area in anticipation of a non-irrigation use has the right to withdraw from or receive for such land the lesser of three acre-feet of groundwater per acre per year or the average annual amount of groundwater which was used per acre during the five years preceding the time the land was retired upon showing that:

1. The land has been held under the same ownership since it was retired.

2. A development plan for the proposed non-irrigation use existed at the time the land was retired and is filed with the director within ninety days after the active management area is designated.

C. The development plan requirements of this section are deemed fulfilled if the land retired from irrigation has been described in an application for a certificate of exemption or if the land retired from irrigation is owned in conjunction with non-irrigation uses existing or for which substantial capital commitments have been incurred for the non-irrigation development of such land as of the date of the designation of the active management area.

D. The right to withdraw or receive groundwater pursuant to this section is a non-irrigation grandfathered right associated with retired irrigated land, or a type 1 non-irrigation grandfathered right.

E. A type 1 non-irrigation grandfathered right is appurtenant to the acre of retired irrigated land associated with the right, is owned by the owner of the land to which the right is appurtenant and may be leased with the land.

F. At the request of a city or town in the Tucson active management area that holds a type 1 non-irrigation grandfathered right under subsection A of this section, the director, in determining whether to designate or redesignate the city or town as having an assured water supply pursuant to section 45-576, shall include four and one-half acre-feet of groundwater for each acre of retired irrigated land to which the right is appurtenant, multiplied by the number of years between the year of retirement and the year of the request, minus the quantity of groundwater withdrawn from the land between June 12, 1980 and the year of the request, except that:

1. No groundwater may be included for any acre of retired irrigated land for any year after the land is developed for any municipal or industrial use.

2. The amount of groundwater that is included under this subsection shall not exceed four and one-half acre-feet for each acre of retired irrigated land to which the right is appurtenant multiplied by the number of years between the year of retirement and December 31, 2025 minus the quantity of groundwater withdrawn from the land between June 12, 1980 and December 31, 2025.

3. The net amount of groundwater included under this subsection shall not exceed two million acre-feet.

4. The city or town, before making the request of the director, shall extinguish any irrigation grandfathered rights or type 1 non-irrigation grandfathered rights held by the city or town and appurtenant to land acquired or contracted for by the city or town after June 12, 1980 in the same sub-basin.

G. In determining whether to designate a city or town as having an assured water supply pursuant to section 45-576, the director shall not consider the exercise of the right to withdraw groundwater under subsection F of this section to be the withdrawal of groundwater available from natural or artificial groundwater recharge.

45-464. Type 2 non-irrigation grandfathered right not associated with retired irrigated land: determination of amount; definition; ownership

A. In an active management area, a person who owns land from which groundwater was being legally withdrawn and used for a non-irrigation purpose as of the date of the designation of the active management area has the right to withdraw annually:

1. If the person holds a certificate of exemption, the greater of:

(a) The amount of groundwater established in proceedings on the application for certificate of exemption, subject to any modification as a result of a finding on appeal of a factual mistake by the state land department or Arizona water commission in computing the amount of the authorized withdrawal, less the amount of any right obtained by the person pursuant to section 45-463.

(b) The maximum amount of groundwater legally withdrawn from such land and used by the person in any one of the five years preceding the date of the designation of the active management area, less the amount of any right obtained by the person pursuant to section 45-463.

2. If the person does not hold a certificate of exemption, the maximum amount of groundwater legally withdrawn from such land and used by the person withdrawing the groundwater in any one of the five years preceding the date of the designation of the active management area, less the amount of any right obtained pursuant to section 45-463 by the person withdrawing groundwater from such land which has not been subtracted by the person withdrawing the groundwater in calculating the amount of another right pursuant to this section.

B. If the calculation in subsection A of this section results in an amount greater than zero, that amount is a grandfathered right in addition to any right obtained pursuant to section 45-463.

C. For the purposes of this section, "person" includes:

1. A city, town or private water company which owns land outside of the service area of such city, town or private water company from which groundwater was being legally withdrawn for a non-irrigation use as of the date of the designation of the active management area.

2. A city, town or private water company withdrawing groundwater from within its service area pursuant to a certificate of exemption.

3. Any other non-irrigation user.

D. If a person has been using groundwater for less than one year during the twelve months immediately preceding the date of the designation of the active management area, the amount of the grandfathered right pursuant to this section is the annual amount determined by the director to be reasonable for a full year to meet the requirements for a facility owned by such person in existence as of the date of the designation of the active management area.

E. If a person has received a certificate of environmental compatibility pursuant to title 40, chapter 2, article 6.2 for the construction of an electrical generating facility within a subsequent active management area for which expenditures or financial commitments for land acquisition, water development, materials, construction or engineering in excess of five hundred thousand dollars have been made before the date of the notice of the initiation of designation procedures or the call for the election for the area, the amount of the grandfathered right pursuant to this section is the annual amount determined by the director to be reasonable to meet the operational requirements for the facility for a full year.

F. The right to withdraw groundwater pursuant to this section is a non-irrigation grandfathered right not associated with retired irrigated land, or a type 2 non-irrigation grandfathered right.

G. A type 2 non-irrigation grandfathered right may be leased. Except as provided in subsection H of this section, the owner or lessee of a type 2 non-irrigation grandfathered right may withdraw groundwater pursuant to the right only from a location within the same active management area in which the certificate of grandfathered right is issued.

H. Beginning July 1, 1994, the holder of a type 2 non-irrigation grandfathered right issued in the Tucson active management area prior to July 1, 1994, may withdraw groundwater pursuant to the right only from a location within the same active management area in which the well or wells listed on the certificate of grandfathered right on July 1, 1994, are located. If no well is listed on the certificate of grandfathered right on July 1, 1994, the holder of the right may withdraw groundwater pursuant to the right only from a location within the same active management area in which the land from which the originating withdrawals were made is located. For purposes of this subsection, the term "originating withdrawals" means the withdrawals of groundwater on which the issuance of a type 2 non-irrigation grandfathered right was based.

I. If the user of a type 2 non-irrigation grandfathered right is different from the owner of the right, either the owner, or the user of the right on behalf of the owner, may apply for a certificate of grandfathered right pursuant to section 45-476.

45-465. Irrigation grandfathered right: determination of acres entitled to and amount; appurtenancy

A. In an active management area, a person who owns land which was legally irrigated in whole or in part with groundwater at any time during the five years preceding January 1, 1980 for initial active management areas or the date of the notice of the initiation of designation procedures or the call for the election for subsequent active management areas, which is capable of being irrigated and which has not been retired from irrigation for a non-irrigation use pursuant to section 45-463 or 45-469 has the right to use groundwater for the irrigation of such land as determined pursuant to subsections B and C of this section.

B. Except as provided in subsection C of this section, the director shall compute the maximum amount of groundwater which may be used pursuant to this section as follows:

1. Determine the farm units, as defined in section 45-402, within the active management area.
2. Determine the irrigation water duty, as defined in section 45-402, for each farm unit in an active management area, pursuant to sections 45-564 through 45-568.

3. Determine the water duty acres for each farm within the farm unit. The water duty acres are the highest number of acres in the farm, taking land rotation into account, which were legally irrigated during any one year in the five years preceding January 1, 1980 for initial active management areas or the date of the notice of the initiation of designation procedures or the call for the election for subsequent active management areas.

4. Determine the irrigation acres for each farm within the farm unit. The irrigation acres are the acres in the farm which were legally irrigated at any time during the five years preceding January 1, 1980 for initial active management areas or the date of the notice of the initiation of designation procedures or the call for the election for subsequent active management areas, which are capable of being irrigated and which have not been retired from irrigation for a non-irrigation use pursuant to section 45-463 or 45-469.

5. Multiply the water duty acres for each farm within the farm unit by the irrigation water duty for the farm unit and divide that amount by the number of irrigation acres in the farm. The result shall be the maximum amount of groundwater which may be used per year for the irrigation of each irrigation acre in the

farm. If the farm is located in an active management area other than the Santa Cruz active management area and is irrigated solely with groundwater, the amount of groundwater used by the farm for irrigation shall be accounted for pursuant to section 45-467, subsection C. If a farm is located in an active management area other than the Santa Cruz active management area and is irrigated with a combination of surface water and groundwater, the amount of groundwater used by the farm for irrigation shall be accounted for pursuant to section 45-467, subsection D. If a farm is located in the Santa Cruz active management area, the amount of water, other than stored water, withdrawn from a well and used by the farm for irrigation purposes shall be accounted for pursuant to section 45-467, subsection E or F.

C. A person who owns land described in subsection A of this section and whose water use on the land is regulated under a best management practices program that is adopted by the director pursuant to section 45-566.02, subsection F, section 45-567.02, subsection G or section 45-568.02, subsection G:

1. Has the right to use groundwater for an irrigation use on the irrigation acres within that land as those acres are determined pursuant to subsection B, paragraph 4 of this section.

2. Is exempt from the provisions of subsection B of this section with respect to that land.

D. The right to use groundwater pursuant to this section for the irrigation of an irrigation acre is an irrigation grandfathered right and is appurtenant to that acre. An irrigation grandfathered right is owned by the owner of the land to which it is appurtenant and may be leased for an irrigation use with the land to which it is appurtenant.

E. A person who owns or leases irrigation acres may use the total amount of groundwater allowed by the irrigation grandfathered right for such acres for the irrigation of all or a portion of such acres.

F. If the irrigation water duty for the farm unit in which an irrigation acre is located is reduced by the director pursuant to article 9 of this chapter, the amount of groundwater which may be used for the irrigation of such acre pursuant to the irrigation grandfathered right under subsection B of this section is reduced accordingly.

G. For purposes of this chapter, the amount of groundwater which may be used or is used is the amount of groundwater withdrawn by the groundwater user, measured at the point of withdrawal, and the amount of groundwater received by the groundwater user from an irrigation district or other source.

45-465.01. Flood damaged acres; substitution of acres; definition

A. A person who owns acres of land within an initial active management area which were legally irrigated at any time during the five years preceding January 1, 1980 and which have not been retired from irrigation for a non-irrigation use pursuant to section 45-463 or 45-469 may permanently retire such acres from irrigation and substitute for such acres the same number of acres within the same sub-basin or a contiguous sub-basin of the same initial active management area which were not legally irrigated at any time during the five years preceding January 1, 1980, and has the right to use groundwater for the irrigation of such substitute acres as determined pursuant to section 45-465 calculated on the basis of the acres which were legally irrigated, if the owner demonstrates to the satisfaction of the director that all the following apply:

1. The acres which were irrigated during the five years preceding January 1, 1980 were damaged by floodwaters after being irrigated.

2. It is not economically feasible to restore the flood damaged acres to irrigation use.

3. The owner has received a certificate of grandfathered right for an irrigation use for the flood damaged acres.

B. Any acres permanently retired from irrigation pursuant to this section relinquish their irrigation grandfathered rights and such rights are deemed to be appurtenant to the substitute acres.

C. For purposes of this section, "floodwaters" means a temporary and erosive overflow of waters on lands not normally covered by water which occurred after January 1, 1975.

45-465.02. Impediments to efficient irrigation; substitution of acres; definitions

A. A person who owns acres of land described on a certificate of irrigation grandfathered right which have not been retired from irrigation for a non-irrigation use under section 45-463 or 45-469 may apply to the director to permanently retire a portion of those acres from irrigation and substitute for those acres the same number of acres to which irrigation grandfathered rights are not appurtenant. The director may approve the substitution of acres if the owner demonstrates to the director's satisfaction that all of the following apply:

1. A limiting condition associated with the acres to be retired from irrigation substantially impedes the implementation of more efficient irrigation practices on the certificated acres.

2. The substitution of acres will substantially reduce the limiting condition and will substantially facilitate the implementation of more efficient irrigation practices.

3. The substitute acres are within the same farm unit as the certificated acres that will not be retired.

4. The substitution will not reduce the number of acres of land within the farm unit that are eligible to receive central Arizona project water.

5. If the acres to be retired are located within the exterior boundaries of an irrigation district, the substitute acres will be located within the exterior boundaries of the same irrigation district.

6. The area of land within the substitute acres that is physically capable of being irrigated at the time the application for substitution of acres is filed does not exceed the area of land within the acres to be retired that is physically capable of being irrigated at the time the application for substitution of acres is filed.

B. Any acres permanently retired from irrigation pursuant to this section relinquish their irrigation grandfathered rights and such rights are deemed to be appurtenant to the substitute acres. The owner or lessee of the substitute acres has the right to use groundwater to irrigate the substitute acres as determined under section 45-465 calculated on the basis of the acres permanently retired from irrigation.

C. If the director approves a substitution of acres under this section, the director may modify an irrigation water duty established for the farm unit in which the certificated acres are located to reflect the removal of the limiting condition that is associated with the retired irrigation acres. The modification may be made without complying with section 45-572. The director shall give written notice of the modification to the owner of the certificated acres within thirty days after the modification. An aggrieved person may request an administrative review pursuant to section 45-575 or a variance pursuant to section 45-574. Unless a variance is obtained under section 45-574, the owner of the certificated acres and the person using groundwater on the certificated acres shall comply with the modified irrigation water duty no later than the compliance date specified in the modification notice which may be less than two years after the date of the notice.

D. For purposes of this section:

1. "Certificated acres" means the acres described on the certificate of irrigation grandfathered right.

2. "Limiting condition" means any condition that limits the achievement of more efficient irrigation on the certificated acres, including irregularly shaped certificated acres and poor quality soils.

45-465.03. Right to use groundwater for domestic and stockwatering purposes incidental to irrigation grandfathered right; definitions

A. In an initial active management area, a person who holds a certificate of irrigation grandfathered right has the right to withdraw annually up to ten acre-feet of groundwater for domestic purposes or stockwatering from a well or wells the holder is using to withdraw groundwater for irrigation use on the certificated acres and use the groundwater pursuant to subsections B and C of this section if both of the following apply:

1. As of June 12, 1980 groundwater withdrawn from the well or wells was being used for domestic purposes or stockwatering.

2. No certificate of type 2 non-irrigation grandfathered right has been issued by the director based in whole or in part on the withdrawals for domestic purposes or stockwatering.

B. Groundwater withdrawn pursuant to this section may be used only:

1. On the same land on which groundwater withdrawn from the well or wells was being used for domestic purposes or stockwatering as of June 12, 1980.

2. For the same purpose for which groundwater withdrawn from the well or wells was being used as of June 12, 1980.

C. If groundwater withdrawn pursuant to this section is used for domestic purposes and stockwatering, the aggregate quantity of groundwater withdrawn for those purposes shall not exceed ten acre-feet per year.

D. For purposes of this section, a replacement well in the same location or a replacement well in a new location shall be considered to be the same well as the well being used as of June 12, 1980.

E. If the withdrawals for domestic purposes or stockwatering are separately measured with a water measuring device approved by the director pursuant to section 45-604, the withdrawals are exempt from the conservation requirements for non-irrigation uses established in the management plans adopted pursuant to article 9 of this chapter.

F. If the withdrawals for domestic purposes or stockwatering are not separately measured with a water measuring device approved by the director pursuant to section 45-604, the withdrawals shall be deemed to be withdrawals for irrigation use on the certificated acres for purposes of determining debits and credits to the flexibility account established pursuant to section 45-467 and for purposes of reporting the use to which the groundwater was applied in the annual reports required by section 45-632.

G. The right to withdraw and use groundwater pursuant to this section is an incident of an irrigation grandfathered right and may be leased or conveyed with the irrigation grandfathered right.

H. If an irrigation grandfathered right is retired or conveyed for a non-irrigation use, the right to withdraw and use groundwater pursuant to this section is extinguished.

I. For purposes of this section:

1. "Certificated acres" means the acres described on the certificate of irrigation grandfathered right.

2. "Domestic purposes" means uses related to the supply, service and activities of households and private residences. Domestic purposes does not include the application of water to produce plants or parts of plants for sale or human consumption, or for use as feed for livestock, range livestock or poultry, as such terms are defined in section 3-1201.

3. "Stockwatering" means watering livestock, range livestock or poultry, as such terms are defined in section 3-1201.

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

A. The use of groundwater to water plants in containers on or above the surface of the ground is a non-irrigation use in an active management area.

B. Notwithstanding subsection A of this section, in an initial active management area, a person who holds a certificate of irrigation grandfathered right may withdraw groundwater pursuant to the right and use the groundwater to water plants in containers on or above the surface of the certificated acres if the plants are grown for sale or human consumption or for use as feed for livestock, range livestock or poultry, as those terms are defined in section 3-1201.

C. A person who holds a certificate of irrigation grandfathered right shall separately measure with a measuring device approved by the director pursuant to section 45-604 any groundwater used for watering plants in containers on or above the surface of the certificated acres and any groundwater used for an irrigation use on the certificated acres.

D. Except as provided in section 45-563.02, if a person uses groundwater to water plants in containers pursuant to subsection B of this section, the total amount of water used by the person for that purpose and for any irrigation uses on the certificated acres may not exceed the amount allowed by the irrigation water duty for the farm.

E. The director may not register credits to the flexibility account established pursuant to section 45-467 for a farm in any year in which the person who holds the certificate of irrigation grandfathered right for the farm uses groundwater to water plants in containers on or above the surface of the certificated acres pursuant to subsection B of this section.

F. On request by the owner of a certificate of irrigation grandfathered right, the director shall separate the certificate into two certificates, with one certificate for those certificated acres on which plants in containers are watered with groundwater pursuant to subsection B of this section and one certificate for those certificated acres on which groundwater is used for an irrigation use. If the director separates a certificate of irrigation grandfathered right into two certificates pursuant to this subsection, the certificated acres associated with each certificate shall be considered a separate farm for purposes of subsection E of this section. The director may not separate a certificate of irrigation grandfathered right into two certificates pursuant to this subsection if it would result in the issuance of a certificate of irrigation grandfathered right with less than two certificated acres.

G. For the purposes of this section, "certificated acres" means the acres described on the certificate of irrigation grandfathered right.

45-466. Limitations on use of irrigation water duty; deliveries of water in excess of irrigation water duty

A. The irrigation water duty shall be used to determine the maximum amount of groundwater which may be used pursuant to section 45-465, subsection B and debits and credits to the flexibility account as set forth in section 45-467. Except as provided in subsection B of this section, the irrigation water duty shall not

be applied to diminish surface water delivered to lands pursuant to appropriate surface water rights or decreed surface water rights.

B. In the Santa Cruz active management area, the irrigation water duty shall be used to determine the maximum amount of water, other than stored water, withdrawn from a well which may be used to irrigate the irrigation acres in a farm.

45-467. Withdrawals in excess of irrigation grandfathered right; withdrawals less than irrigation grandfathered right; flexibility account; conveyances; variance; exemption

A. A person who is entitled to use groundwater pursuant to an irrigation grandfathered right may:

1. In an active management area other than the Santa Cruz active management area, use groundwater in excess of the amount allowed by the right in an amount determined pursuant to subsection I of this section.

2. In the Santa Cruz active management area, use water, other than stored water, withdrawn from a well in excess of the farm's current irrigation water duty multiplied by the farm's water duty acres in an amount determined pursuant to subsection J of this section.

3. Use less than the amount allowed by the right in one accounting period and use the remaining amount allowed by the right in a succeeding accounting period or periods.

B. The director shall establish rules for the maintenance of a flexibility account for each farm in an active management area.

C. If a farm located in an active management area other than the Santa Cruz active management area is irrigated solely with groundwater, the director shall:

1. Register a debit to the account in any accounting period in which the amount of groundwater used for the irrigation of the irrigation acres in the farm is greater than the current irrigation water duty for the farm multiplied by the water duty acres in the farm.

2. Register a credit to the account in any accounting period in which the amount of groundwater used for the irrigation of the irrigation acres in the farm is less than the current irrigation water duty for the farm multiplied by the water duty acres in the farm.

D. Except as provided in subsection G of this section, if a farm located in an active management area other than the Santa Cruz active management area is irrigated with a combination of surface water or effluent, or both, and groundwater, and uses of water by the farm from all sources for irrigation purposes, except for surface water, other than Colorado river water, released for beneficial use from storage, diversion or distribution facilities to avoid spilling that would otherwise occur due to uncontrolled surface water inflows that exceed facility capacity, in the accounting period:

1. Exceed the amount of the current irrigation water duty for the farm multiplied by the water duty acres in the farm, the amount of groundwater used up to the amount of the excess, less any effluent used, shall be registered as a debit to the account.

2. Are less than the amount of the current irrigation water duty for the farm multiplied by the water duty acres in the farm, the amount of water not used which would have been groundwater shall be registered as a credit to the account.

E. If a farm located in the Santa Cruz active management area is irrigated solely with water, other than stored water, withdrawn from a well, the director shall:

1. Register a debit to the account in any accounting period in which the amount of water, other than stored water, withdrawn from a well and used for the irrigation of the irrigation acres in the farm is greater than the current irrigation water duty for the farm multiplied by the water duty acres in the farm. The amount of the debit shall equal the amount of the excess.

2. Register a credit to the account in any accounting period in which the amount of water, other than stored water, withdrawn from a well and used for the irrigation of the irrigation acres in the farm is less than the current irrigation water duty for the farm multiplied by the water duty acres in the farm.

F. If a farm located in the Santa Cruz active management area is irrigated with a combination of surface water not withdrawn from a well and effluent, or both, and water, other than stored water, withdrawn from a well, and uses of water by the farm from all sources for irrigation purposes in the accounting period:

1. Exceed the amount of the current irrigation water duty for the farm multiplied by the water duty acres in the farm, the amount of water, other than stored water, withdrawn from a well and used on the farm

up to the amount of the excess, less any effluent used that does not qualify as stored water, shall be registered as a debit to the account.

2. Are less than the amount of the current irrigation water duty for the farm multiplied by the water duty acres in the farm, the amount of water not used which would have been water, other than stored water, withdrawn from a well shall be registered as a credit to the account.

G. Beginning January 1, 1995 through December 31, 1999, if a farm that qualifies under this subsection as determined pursuant to subsection H of this section is irrigated during an accounting period with a combination of surface water or effluent, or both, and groundwater, and uses of water by the farm from all sources for irrigation purposes, except for surface water, other than Colorado river water, released for beneficial use from storage, diversion or distribution facilities to avoid spilling that would otherwise occur due to uncontrolled surface water inflows that exceed facility capacity, in the accounting period:

1. Exceed the amount of the first intermediate irrigation water duty established for the farm pursuant to section 45-565 multiplied by the water duty acres in the farm, the amount of groundwater used up to the amount of the excess, less any effluent used, shall be registered as a debit to the account.

2. Are less than the amount of the current irrigation water duty for the farm multiplied by the water duty acres in the farm, the amount of water not used that would have been groundwater shall be registered as a credit to the account.

3. Exceed or equal the amount of the current irrigation water duty for the farm multiplied by the water duty acres in the farm but are less than or equal to the amount of the first intermediate irrigation water duty established for the farm pursuant to section 45-565 multiplied by the water duty acres in the farm, no credit or debit may be registered to the account.

H. A farm qualifies under subsection G of this section if it is located in an active management area other than the Santa Cruz active management area and either of the following applies:

1. The amount of groundwater used to irrigate the farm during the accounting period does not exceed an amount computed by multiplying the water duty acres in the farm by one and one-half acre-feet of water, except that an electrical district organized under title 48, chapter 12 or an irrigation district may apply to the director no later than March 31 of a year for an increase in that amount for that year for the farms located within the boundaries of the district that do not qualify under paragraph 2 of this subsection. The director shall grant the increase if the district demonstrates that it holds a contract for the purchase of hydroelectric power marketed by the western area power administration or the Arizona power authority and that the use of groundwater during that year by all of the farms within the boundaries of the district that do not qualify under paragraph 2 of this subsection in an amount that does not exceed one and one-half acre-feet of water multiplied by the total number of water duty acres of those farms would result in the district being unable to use its hydroelectric power capacity entitlement under the contract. If the director grants the increase, the director shall compute the maximum amount of groundwater that may be used by a farm within the district during the year in order to qualify under subsection G of this section as follows:

(a) Determine the total amount of groundwater that must be used during the year by all farms in the district that do not qualify under paragraph 2 of this subsection to enable the district to efficiently use its hydroelectric kilowatt demand allocation.

(b) Divide the amount determined in subdivision (a) of this paragraph by the total number of water duty acres of the farms in the district that do not qualify under paragraph 2 of this subsection.

(c) Multiply the farm's water duty acres by the quotient in subdivision (b) of this paragraph or two acre-feet of water, whichever is less.

2. The farm is irrigated with water supplied by an irrigation district that owns or leases and operates all of the wells used to withdraw groundwater for irrigation use within the district, and the total amount of groundwater supplied by the irrigation district for irrigation use during the year does not exceed an amount computed by multiplying the total number of water duty acres within the irrigation district by one and one-half acre-feet of water, except that the irrigation district or an electrical district organized under title 48, chapter 12 may apply to the director no later than March 31 of a year for an increase in that amount for that year for the farms located within the boundaries of the irrigation district. The director shall grant the increase if the irrigation district or electrical district demonstrates that it holds a contract for the purchase of hydroelectric power marketed by the western area power administration or the Arizona power authority and that the irrigation district or electrical district would be unable to use its hydroelectric power capacity entitlement under the contract if the total amount of groundwater supplied by the irrigation district for irrigation use during the year does not exceed an amount computed by multiplying the total number of water

duty acres within the irrigation district by one and one-half acre-feet of water. If the director grants the increase, the maximum amount of groundwater that may be supplied by the irrigation district for irrigation use during the year in order for the farms located within the boundaries of the irrigation district to qualify under subsection G of this section shall be the lesser of the following:

(a) The amount of groundwater that the director determines must be supplied by the irrigation district for irrigation use during the year to enable the irrigation district or electrical district to efficiently use its hydroelectric kilowatt demand allocation.

(b) An amount of groundwater computed by multiplying the total number of water duty acres within the irrigation district by two acre-feet of water.

I. The maximum excess amount of groundwater that may be used pursuant to this section is equal to fifty per cent of the current irrigation water duty for the farm multiplied by the water duty acres in the farm. An owner of an irrigation grandfathered right and the person using groundwater pursuant to the right violate this section if the flexibility account for the farm in which the irrigation acres to which the right is appurtenant are located is in arrears at any time in excess of this amount. Groundwater equal to the credit balance in the flexibility account may be used at any time.

J. In the Santa Cruz active management area, the maximum excess amount of water, other than stored water, withdrawn from a well that may be used pursuant to this section is equal to fifty per cent of the current irrigation water duty for the farm multiplied by the water duty acres in the farm. A person using water, other than stored water, withdrawn from a well for an irrigation use in the Santa Cruz active management area violates this section if the flexibility account for the farm is in arrears at any time in excess of this amount. Water, other than stored water, withdrawn from a well in an amount equal to the credit balance in the flexibility account may be used at any time, except that if the water is surface water, the amount that may be used shall not exceed the amount allowed by the decreed or appropriative surface water right.

K. If an irrigation grandfathered right is conveyed for an irrigation use pursuant to section 45-472, each acre conveyed shall carry with it a proportional share of any debits or credits in the flexibility account for the farm. If an irrigation grandfathered right is conveyed for a non-irrigation use pursuant to section 45-472, each acre conveyed shall carry with it a proportional share of any debits in the flexibility account for the farm.

L. A person in an active management area other than the Santa Cruz active management area who is using groundwater pursuant to an irrigation grandfathered right and who is operating under a variance to the irrigation water duty pursuant to section 45-574:

1. May accumulate a maximum debit in an amount equal to fifty per cent of the current irrigation water duty for the farm multiplied by the water duty acres in the farm.

2. Shall accumulate credits pursuant to subsection C or D of this section.

M. A person in the Santa Cruz active management area who is using water, other than stored water, withdrawn from a well for an irrigation use and who is operating under a variance to the irrigation water duty pursuant to section 45-574:

1. May accumulate a maximum debit in an amount equal to fifty per cent of the current irrigation water duty for the farm multiplied by the water duty acres in the farm.

2. Shall accumulate credits pursuant to subsection E or F of this section.

N. In an active management area other than the Santa Cruz active management area, a person using groundwater pursuant to an irrigation grandfathered right shall file a report with the director each year which shall include the amount of groundwater used pursuant to the irrigation grandfathered right and such other information as the director shall require. In the Santa Cruz active management area, a person using water, other than stored water, withdrawn from a well for irrigation use shall file a report with the director each year which shall include the amount of water used on the farm and such other information as the director shall require. The director may consolidate the reporting requirements of this section with the reporting requirements of section 45-632. A person using groundwater pursuant to an irrigation grandfathered right that is regulated under a best management practices program adopted by the director, pursuant to section 45-566.02, subsection F, section 45-567.02, subsection G or section 45-568.02, subsection F, is exempt from the reporting requirements of this subsection for groundwater used pursuant to the irrigation grandfathered right, except that the person shall file a report with the director each year that includes the information required by the best management practices program. A person using groundwater pursuant to an irrigation grandfathered right that is appurtenant to ten or fewer irrigation acres is exempt

from the reporting requirements of this subsection for groundwater used pursuant to the irrigation grandfathered right unless one of the following applies:

1. The land to which the irrigation grandfathered right is appurtenant is part of an integrated farming operation.

2. Groundwater is withdrawn from the land to which the irrigation grandfathered right is appurtenant and delivered for use pursuant to either a service area right pursuant to article 6 of this chapter or a grandfathered groundwater right other than an irrigation grandfathered right that is appurtenant to irrigation acres that are exempt from irrigation water duties pursuant to section 45-563.02.

3. Groundwater is withdrawn from land that is both owned by the owner of the irrigation grandfathered right and contiguous to the land to which the irrigation grandfathered right is appurtenant and delivered for use pursuant to either a service area right pursuant to article 6 of this chapter or a grandfathered groundwater right other than an irrigation grandfathered right that is appurtenant to irrigation acres that are exempt from irrigation water duties pursuant to section 45-563.02.

O. A person who owns an irrigation grandfathered right that is appurtenant to irrigation acres that were capable of being irrigated as of December 31 of the preceding calendar year and whose farm has registered a credit balance to its flexibility account may convey or sell all or a portion of the credit balance to any person, including the conveyer or seller of the credit balance, who owns another irrigation grandfathered right or who uses groundwater pursuant to another irrigation grandfathered right, except that:

1. A credit balance that is registered to the flexibility account of a farm located within an irrigation district may be transferred only to:

(a) The flexibility account of a farm that is located within the same irrigation district.

(b) The flexibility account of a farm that is located outside of that irrigation district if both farms are located in the same groundwater subbasin and the same active management area and if the farm to which the credits are conveyed is owned or leased by the owner or lessee of the farm from which the credits are conveyed.

2. A credit balance that is registered to the flexibility account of a farm that is not located within an irrigation district may be transferred only to:

(a) The flexibility account of a farm that is located within the same groundwater subbasin and the same active management area and that is not located within an irrigation district.

(b) The flexibility account of a farm that is located within the same groundwater subbasin and the same active management area and that is located within an irrigation district if the farm to which the credits are conveyed is owned or leased by the owner or lessee of the farm from which the credits are conveyed.

3. A credit registered to a flexibility account for a year may be conveyed or sold only during the second calendar year following the year for which the credit was registered.

4. A person who owns a farm that includes protected farmland may not sell or otherwise convey any credit registered to the farm's flexibility account.

P. A person who sells or conveys all or a portion of a credit balance pursuant to subsection O of this section, and the person to whom the credit balance is sold or conveyed, shall notify the director of the sale or conveyance within thirty days after the sale or conveyance on a form prescribed and furnished by the director.

Q. The director shall establish and collect a reasonable fee from the conveyee or purchaser of a credit balance pursuant to subsection O of this section to cover the cost of administrative services and other expenses associated with registering a deduction to the conveyer's or seller's flexibility account balance and an addition to the conveyee's or purchaser's flexibility account balance pursuant to subsection R of this section. The conveyee or purchaser shall pay the fee at the time the notice required pursuant to subsection P of this section is given to the director. 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.

R. A sale or conveyance of all or part of a credit balance under subsection O of this section is effective only if the director receives the notice required by subsection P of this section and the fee required by subsection Q of this section within thirty days after the sale or conveyance. After receiving the notice and the fee, the director shall register a deduction of the credit amount conveyed or sold from the conveyer's or seller's flexibility account balance and the corresponding addition to the conveyee's or purchaser's flexibility account balance. The deduction and addition to the flexibility account balances are effective as of the date of the sale or conveyance.

S. The director shall report to the president of the senate and the speaker of the house of representatives no later than June 30, 2002 on the effect of conveyances of flexibility account credit balances pursuant to subsection O, paragraph 2 of this section on the achievement of the management goal of each active management area as stated in section 45-562 and on the conservation program included in the management plan for each active management area as provided in section 45-565, and any recommended changes to subsection O, paragraph 2 of this section.

T. Except for subsection N of this section, this section does not apply to:

1. A farm if the person entitled to use groundwater on the farm is exempt from the irrigation water duties established for the farm as provided in section 45-563.02, subsection A or if the director may not establish irrigation water duties for the farm as provided in section 45-563.02, subsection B.

2. A farm if water use within the farm is regulated under a best management practices program adopted by the director pursuant to section 45-566.02, subsection F, section 45-567.02, subsection G or section 45-568.02, subsection F.

45-468. Accounting of water by persons delivering a combination of surface water and groundwater for irrigation uses

A. A person delivering a combination of surface water or effluent, or both, and groundwater for irrigation uses shall prior to the beginning of each accounting period estimate the amount of groundwater that will be withdrawn and delivered during the next accounting period and shall make such estimate available to the director. The estimate may be modified from time to time as conditions warrant.

B. Within ninety days following the end of each accounting period a person who delivers a combination of surface water or effluent, or both, and groundwater for uses by cities, towns, private water companies, industries, farms or other users shall provide the director with an accounting for water during the past accounting period which shows the following:

1. All surface water provided to each class of user and each farm.

2. All groundwater provided to each class of user and each farm.

3. All effluent provided to each class of user and each farm.

C. If a person delivers water to a user through a delivery system that commingles groundwater with surface water or effluent, or both, the amount of groundwater charged to the user pursuant to the accounting in subsection B shall be computed as follows:

1. Determine the total amount of water delivered to the user through the system during the accounting period.

2. Determine the amount of surface water and effluent that would have been delivered to the user through the system during the accounting period if no groundwater had been delivered through the system.

3. Subtract the amount determined pursuant to paragraph 2 from the amount determined pursuant to paragraph 1.

45-469. Right to retire irrigation grandfathered right for non-irrigation use; development plan approval; amendment of plan; approval of plan prior to retirement; amount withdrawn; service area determined; restoration of retired irrigation grandfathered right

A. Except as provided in section 45-480, subsection F and subsection P of this section, except as provided in subsection I of this section, a person who owns land that is legally entitled to be irrigated with groundwater pursuant to an irrigation grandfathered right and that is located within an active management area and outside of the exterior boundaries of the service area of a city, town or private water company has the right to retire such land from irrigation in anticipation of a future non-irrigation use and shall not forfeit or abandon the right to withdraw from or receive for such land the amount of groundwater calculated pursuant to subsection F of this section for a non-irrigation use if all of the following apply:

1. The land is held in the same ownership.

2. A development plan for the proposed non-irrigation use exists and is approved by the director within a reasonable time before or after the land is retired.

3. Either one of the following applies:

(a) The land has never been designated by the director as protected farmland pursuant to section 45-483, subsection A.

(b) The director designated the land as protected farmland pursuant to section 45-483, subsection A, the director subsequently revoked the designation pursuant to section 45-483, subsection C, paragraph 1 and the director determined at the time the designation was revoked that the conservation easement in the land was terminated because a partial or full condemnation of the land made farming impracticable.

B. Except as provided in subsection P of this section, the director shall approve the development plan required by subsection A of this section if it appears that the land:

1. Has been or will be retired for the bona fide purpose of conserving or using water for a non-irrigation use that would otherwise continue to be used for irrigation of such land.

2. Has not been sold or taken out of production primarily because it would have been uneconomical to continue to withdraw water for irrigation.

C. The director shall not investigate the legality, other than pursuant to this chapter, feasibility or other factors involved in the proposed development plan and shall not disapprove a development plan on such grounds.

D. A development plan may be amended and the director shall approve amendments if the criteria of this section are met.

E. A person proposing to retire irrigated land that is located inside or outside of an active management area may apply to the director for approval of a proposed development plan prior to the retirement of such land.

F. The amount of groundwater that may be withdrawn or received annually per acre pursuant to this section is the lesser of:

1. The current maximum amount of groundwater that may be used pursuant to the irrigation grandfathered right for the acre at the time it is retired, as calculated pursuant to section 45-465, subsection B.

2. Three acre-feet multiplied by the water duty acres in the farm in which the acre to which the right is appurtenant is located divided by the number of irrigation acres in the farm.

G. The right to withdraw or receive groundwater pursuant to this section is a non-irrigation grandfathered right associated with retired irrigated land, or a type 1 non-irrigation grandfathered right as described in section 45-463.

H. Whether the land to which an irrigation grandfathered right is appurtenant is within the exterior boundaries of the service area of a city, town or private water company shall be determined as of the date the development plan is filed with the director.

I. A city or town in an initial active management area that holds a certificate of irrigation grandfathered right for acres of land that were acquired before January 1, 1989 in another initial active management area, and a groundwater replenishment district established under title 48, chapter 27 that purchases any of that land from the city or town, has the right, subject to subsections J, K, L and M of this section, to retire the land in anticipation of a future non-irrigation use and withdraw from any location on the land groundwater for non-irrigation use on the land or for transportation to another initial active management area for the purpose of demonstrating and providing an assured water supply if all of the following apply:

1. Before January 1, 1989, the city or town filed with the director a development plan pursuant to this section for all or a portion of the land.

2. Any withdrawals pursuant to this subsection from a new well, as defined in section 45-591, will comply with the rules adopted pursuant to section 45-598, subsection A to prevent unreasonably increasing damage to surrounding land or other water users from the concentration of wells.

3. Any withdrawals for transportation to another initial active management area for the purpose of demonstrating and providing an assured water supply are made from a depth to one thousand two hundred feet at the site or sites of the withdrawals, except that the wells may be drilled to any depth.

J. The amount of groundwater that may be withdrawn and used annually pursuant to subsection I of this section shall be determined pursuant to subsection F of this section. The maximum amount of such groundwater that may be included by the director in determining whether to designate or redesignate the city or town as having an assured water supply pursuant to section 45-576 equals one hundred times the total amount that may be withdrawn annually from the land.

K. A city or town that is eligible for a type 1 non-irrigation grandfathered right under subsection I of this section may:

1. Before retiring the land under subsection I of this section, substitute for the acres of land described in subsection I of this section the same number of acres owned by the city or town to which irrigation grandfathered rights are appurtenant and located in the same subbasin as the acres described in subsection I of this section.

2. At any time, elect to convert a type 1 non-irrigation grandfathered right appurtenant to land in the same subbasin and acquired by the city or town before January 1, 1989 under subsection A of this section to a type 1 non-irrigation grandfathered right under subsection I of this section.

L. In determining whether to designate or redesignate the city or town as having an assured water supply pursuant to section 45-576, based in whole or in part on groundwater transported from the active management area under subsection I of this section, the director shall include the amount of groundwater that may be included under subsection J of this section and can be withdrawn from a depth to one thousand two hundred feet at the site or sites of the proposed withdrawals at a rate that, when added to the existing rate of withdrawals in the area, is not expected to cause the groundwater table at the site or sites of the proposed withdrawals to decline more than an average of ten feet per year during the one hundred year evaluation period.

M. In any designation or redesignation of an assured water supply pursuant to section 45-576, the projected use of the groundwater that is demonstrated to be available for assured water supply purposes under subsection L of this section is deemed to be consistent with achieving the management goal for the active management area. In any such designation or redesignation, the director shall determine whether the projected use is consistent with the management plan for the active management area by determining whether the projected use is consistent with the management plan of the active management area in which the city or town to be designated or redesignated is located.

N. Subsections A, B and H of this section do not apply to type 1 non-irrigation grandfathered rights acquired under subsection I of this section.

O. The director may restore retired irrigation grandfathered rights to land that was retired from irrigation under this section according to the following conditions and procedures:

1. Title to the retired land has reverted involuntarily, or voluntarily in lieu of foreclosure or forfeiture, from the person who retired it from irrigation, or a successor in title, to a previous owner.

2. The current owner of the retired land must apply to the director in writing stating:

(a) The history of the original retirement from irrigation under this section.

(b) The circumstances regarding the reversion of title to the current owner.

(c) Why restoring the irrigation grandfathered rights is necessary.

3. The director shall enter the application in the registry under section 45-479 and review the application. An administrative hearing shall be held in the active management area in which the use is located on whether to restore the irrigation grandfathered rights to the land.

4. The director must find that restoring the irrigation grandfathered rights:

(a) Will not adversely impact the management of the active management area.

(b) Is necessary to prevent unreasonable hardship to the current owner of the retired land.

5. If the director decides to restore the retired irrigation grandfathered rights to the land:

(a) The retired irrigation land regains its original irrigation grandfathered rights, with the debits and credits in its flexibility account at the time of retirement.

(b) The type 1 non-irrigation grandfathered right under this section is terminated.

(c) The development plan required by this section is terminated for purposes of this section.

P. Beginning January 1 of the calendar year following the year in which a groundwater replenishment district is required to submit its preliminary plan pursuant to section 45-576.02, subsection A, paragraph 1, the director shall withhold approval of a development plan that is submitted under this section by a person who seeks to obtain a non-irrigation grandfathered right associated with retired irrigated land located in the district unless at the time the plan is submitted:

1. The director has determined that the district's plan for operation is consistent with achieving the management goal, according to section 45-576.03, subsection E, and the designation has not expired.

2. The master replenishment account, as established in section 45-858.01, does not have a debit balance in an amount in excess of the amount allowed under section 45-576.01, subsection A, paragraph 3.

Q. 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.

45-470. Use of type 1 non-irrigation grandfathered right by original owner; definition

A. Except as provided in section 45-469, subsection I, or as provided in subsection B of this section, the original owner of a type 1 non-irrigation grandfathered right pursuant to section 45-463 or 45-469 may:

1. Use groundwater withdrawn pursuant to the right for any non-irrigation use:

(a) On the land to which the right is appurtenant.

(b) On any other land, subject to the provisions governing transportation of groundwater in articles 8 and 8.1 of this chapter, except that, if the land to which the right is appurtenant is included within the exterior boundaries of the service area of a city, town or private water company, use groundwater on other land only if the use on other land was commenced prior to the date of the designation of the active management area or is pursuant to a development plan filed with the director prior to the inclusion of the land within the exterior boundaries of the service area of the city, town or private water company.

2. Pursuant to section 45-473, convey retired irrigated land with the appurtenant type 1 non-irrigation grandfathered right. Any land not conveyed shall retain its appurtenant type 1 non-irrigation grandfathered right.

B. The original owner of a type 1 non-irrigation grandfathered right pursuant to section 45-463 or 45-469 shall not withdraw or use groundwater pursuant to the portion of the type 1 non-irrigation grandfathered right that is appurtenant to land which the original owner may irrigate with effluent under section 45-452, subsection J.

C. For the purposes of this section, "original owner" means:

1. The person who acquired and retired land from irrigation prior to the date of the designation of the active management area pursuant to section 45-463 and any person or entity that holds such land under the same ownership as defined by section 45-461.

2. The person who retires legally irrigated land after the date of the designation of the active management area pursuant to section 45-469 and any person or entity that holds such land under the same ownership as defined by section 45-461.

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

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

1. For the extraction or processing of minerals, the owner may use groundwater withdrawn pursuant to the right only for the purpose of mineral extraction or processing. For the purposes of this article, mineral extraction and processing use of groundwater means all withdrawals and uses of groundwater related to a mining operation including compliance with applicable environmental controls.

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

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

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

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

45-472. Conveyance of irrigation grandfathered right; within service area; outside service area; change to non-irrigation grandfathered right; forfeiture of right to convey to non-irrigation use; definition

A. The owner of an irrigation grandfathered right may convey the right only with the land to which the right is appurtenant.

B. If the land to which an irrigation grandfathered right is appurtenant is within the exterior boundaries of the service area of a city, town or private water company:

1. The irrigation grandfathered right may be conveyed only for an irrigation use, except for expanded animal industry use or as provided in paragraphs 2 and 3 of this subsection. If an irrigation grandfathered right is conveyed for an irrigation or expanded animal industry use, the full amount of the right is conveyed. The amount of groundwater conveyed pursuant to the right:

(a) For an irrigation use may be withdrawn from the land to which the right is appurtenant or any other land and may be used only on the land to which the right is appurtenant or on contiguous irrigation acres under common ownership within the service area of the city, town or private water company subject to the provisions of articles 8 and 8.1 of this chapter relating to transportation of groundwater. For purposes of this subdivision, irrigation acres that are separated by a road, highway, easement or right-of-way from the land to which the irrigation grandfathered right is appurtenant are deemed to be contiguous.

(b) For an expanded animal industry use may be withdrawn by the new owner of the right only from the land to which the right is appurtenant and used on that land or on any other land, subject to the provisions of articles 8 and 8.1 of this chapter relating to transportation of groundwater. If the groundwater was delivered by an irrigation district to the previous owner of the right, the irrigation district may continue to deliver groundwater to the new owner pursuant to the right. If any portion of the amount of groundwater conveyed is withdrawn by the new owner and used on other land, no additional groundwater may be withdrawn for use on the land to which the right is appurtenant.

2. The irrigation grandfathered right may be conveyed to an industry engaged in the generation of electrical energy for the purpose of electrical energy generation, except that, if the facility for the generation of electrical energy is not subject to title 40, chapter 2, article 6.2, the conveyance is subject to the approval of:

(a) The appropriate city or town, if the irrigation grandfathered right to be conveyed is appurtenant to land within the exterior boundaries of the service area of a city or town.

(b) The director, if the irrigation grandfathered right to be conveyed is appurtenant to land within the corporate limits of a city or town and within the exterior boundaries of the service area of a private water company.

3. If an irrigation grandfathered right is conveyed for a non-irrigation use pursuant to paragraph 2 of this subsection, the amount of the right that is conveyed is the lesser of:

(a) The current maximum amount of groundwater that may be used pursuant to the right, as calculated pursuant to section 45-465, subsection B.

(b) Three acre-feet per year multiplied by the number of water duty acres in the farm in which the acre to which the right is appurtenant is located divided by the number of irrigation acres in the farm.

4. The new owner of an irrigation grandfathered right conveyed pursuant to paragraph 2 of this subsection may withdraw the amount of groundwater conveyed pursuant to that right, as determined in paragraph 3 of this subsection, only from the land to which the right is appurtenant and use the groundwater on that land, but may not use the groundwater on other land, except that, if the groundwater was delivered by an irrigation district to the previous owner of the right, the irrigation district may continue to deliver groundwater to the new owner pursuant to the right for use on the land to which the right is appurtenant.

5. All withdrawal or use of groundwater pursuant to this subsection is subject to subsection H of this section.

C. If the land to which an irrigation grandfathered right is appurtenant is included within the exterior boundaries of the service area of a city, town or private water company subsequent to the date of the designation of an active management area, the owner of the right may, with the approval of the director and consistent with the provisions of this chapter, convey the grandfathered right for a non-irrigation use, other than an expanded animal industry use, on the land to which the right is appurtenant, upon a showing that adequate water service is unavailable at rates comparable to rates charged similar classes of water users within such service area. The amount of the right conveyed is determined pursuant to subsection B, paragraph 3 of this section. All withdrawal or use of groundwater pursuant to this subsection is subject to subsection H of this section.

D. If the land to which an irrigation grandfathered right is appurtenant is outside of the exterior boundaries of the service area of a city, town or private water company:

1. The irrigation grandfathered right may be conveyed for an irrigation use or a non-irrigation use. If an irrigation grandfathered right is conveyed for an irrigation or an expanded animal industry use, the full amount of the right is conveyed. If an irrigation grandfathered right is conveyed for a non-irrigation use, other than an expanded animal industry use, the amount of the right that is conveyed is the lesser of:

(a) The current maximum amount of groundwater that may be used pursuant to the right as calculated pursuant to section 45-465, subsection B.

(b) Three acre-feet per year multiplied by the number of water duty acres in the farm in which the acre to which the right is appurtenant is located and divided by the number of irrigation acres in the farm.

2. The amount of groundwater conveyed pursuant to the right for a non-irrigation use, as determined in paragraph 1 of this subsection, may be withdrawn by the new owner of the right only from the land to which the right is appurtenant and used on that land or on any other land, subject to section 45-473.01 and to the provisions of articles 8 and 8.1 of this chapter relating to transportation of groundwater, except that, if the groundwater was delivered by an irrigation district to the previous owner of the right, the irrigation district may continue to deliver groundwater to the new owner pursuant to the right. If any portion of the amount of groundwater conveyed is withdrawn by the new owner and used on other land, no additional groundwater may be withdrawn for use on the land to which the right is appurtenant, except that, if the new owner is an industry, it may withdraw a portion of the amount of groundwater conveyed for use on other land and withdraw the remainder of the amount of groundwater conveyed for municipal and industrial use on the land to which the right is appurtenant for purposes directly related to the industry's industrial operation.

3. The amount of groundwater conveyed pursuant to the right for an irrigation use, as determined in paragraph 1 of this subsection, may be withdrawn from the land to which the right is appurtenant or from any other land and may be used only on the land to which the right is appurtenant or on contiguous irrigation acres under common ownership, subject to the provisions of articles 8 and 8.1 of this chapter relating to transportation of groundwater. For purposes of this paragraph, irrigation acres that are separated by a road, highway, easement or right-of-way from the land to which the irrigation grandfathered right is appurtenant are deemed to be contiguous.

4. All withdrawal or use of groundwater pursuant to this subsection is subject to subsection H of this section.

E. If an irrigation grandfathered right is conveyed for a non-irrigation use, the new owner's right to withdraw or receive groundwater is a non-irrigation grandfathered right associated with retired irrigated land, or a type 1 non-irrigation grandfathered right. All subsequent conveyances of that right are governed by section 45-473.

F. The amount of a type 1 non-irrigation grandfathered right shall be determined at the time it is established and shall remain fixed at that amount.

G. An irrigation grandfathered right may not be conveyed for a non-irrigation use if one of the following applies:

1. The irrigation grandfathered right has not been retired in anticipation of a future non-irrigation use and has not been exercised for five consecutive years.

2. The land to which the irrigation grandfathered right is appurtenant was previously designated by the director as protected farmland pursuant to section 45-483, subsection A. This paragraph shall not apply to land that was designated by the director as protected farmland if the director revoked the designation pursuant to section 45-483, subsection C, paragraph 1 and the director determined at that time that the conservation easement in the land was terminated because a partial or full condemnation of the land made farming impracticable.

H. A person who owns a type 1 non-irrigation grandfathered right under this section shall not withdraw or use groundwater pursuant to the portion of the type 1 non-irrigation grandfathered right that is appurtenant to land that the owner may irrigate with effluent pursuant to section 45-452, subsection J.

I. For the purposes of this section, "land to which the right is appurtenant" means the acre or group of contiguous acres conveyed with an irrigation grandfathered right.

45-473. Conveyance of type 1 non-irrigation grandfathered right; use by new owner; appurtenancy; within service area; outside service area; definition

A. The owner of a type 1 non-irrigation grandfathered right may convey the right only for a non-irrigation use and only with the land to which it is appurtenant. For purposes of this section, a type 1 non-irrigation grandfathered right means a non-irrigation grandfathered right associated with retired irrigated land pursuant to section 45-463 or 45-469 or an irrigation grandfathered right which was conveyed for a non-irrigation use pursuant to section 45-472.

B. If a type 1 non-irrigation grandfathered right is conveyed, the full amount of the right is conveyed.

C. If the land to which a type 1 non-irrigation grandfathered right is appurtenant is within the exterior boundaries of the service area of a city, town or private water company, the amount of groundwater conveyed pursuant to the right may be withdrawn by the new owner of the right only from the land to which the right is appurtenant subject to subsection F of this section. The groundwater may be used on the land to which the right is appurtenant, but may not be used on other land unless the use on other land was commenced prior to the date of the designation of the active management area or was commenced by the original owner of the right pursuant to a development plan filed with the director prior to the inclusion of the land within the exterior boundaries of the service area of the city, town or private water company.

D. If the land to which the type 1 non-irrigation grandfathered right is appurtenant is outside of the exterior boundaries of the service area of a city, town or private water company, the amount of groundwater conveyed pursuant to the right may be withdrawn by the new owner of the right only from the land to which the right is appurtenant and used on that land or on any other land, subject to section 45-473.01 and to the provisions of articles 8 and 8.1 of this chapter relating to transportation of groundwater, and to subsection F of this section. If any portion of the amount of groundwater conveyed is withdrawn by the new owner and used on other land, no additional groundwater may be withdrawn for use on the land to which the right is appurtenant, except that, if the new owner is an industry, it may withdraw a portion of the amount of groundwater conveyed for use on other land and withdraw the remainder of the amount of groundwater conveyed for municipal and industrial use on the land to which the right is appurtenant for purposes directly related to the industry's industrial operation.

E. If groundwater was delivered by an irrigation district to the previous owner of a type 1 non-irrigation grandfathered right, the irrigation district may continue to deliver groundwater pursuant to the right to the new owner of the right.

F. The new owner of a type 1 non-irrigation grandfathered right pursuant to section 45-463 or 45-469 shall not withdraw or use groundwater pursuant to the portion of the type 1 non-irrigation grandfathered right that is appurtenant to land which the new owner may irrigate with effluent under section 45-452, subsection J.

G. For purposes of this section, "land to which the right is appurtenant" means the acre or group of contiguous acres conveyed with a type 1 non-irrigation grandfathered right.

[45-473.01. Conditions on using groundwater withdrawn pursuant to rights acquired under sections 45-472 and 45-473](#)

A person to whom an irrigation grandfathered right is conveyed for a non-irrigation use after the effective date of this section pursuant to section 45-472 or a person to whom a type 1 non-irrigation grandfathered right is conveyed after the effective date of this section pursuant to section 45-473 shall use the groundwater withdrawn pursuant to the right on the land to which the right is appurtenant or on any other land in the same active management area.

[45-474. Conveyance of type 2 non-irrigation grandfathered right; amount](#)

A. The owner of a type 2 non-irrigation grandfathered right may convey the right for any non-irrigation use, except that:

1. A type 2 non-irrigation grandfathered right that is used for purposes of mineral extraction or processing may be conveyed only for a mineral extraction or processing use.

2. A type 2 non-irrigation grandfathered right that is used for purposes of electrical energy generation may be conveyed only for an electrical energy generation use.

3. A type 2 non-irrigation grandfathered right in a subsequent active management area that is used for purposes of demonstrating and providing an assured water supply pursuant to section 45-576 in an initial active management area may be conveyed only for the same use and only with the approval of the director. The director shall not withhold approval of a conveyance under this paragraph if the right is no longer needed to provide the assured water supply that it was used to demonstrate.

B. A type 2 non-irrigation grandfathered right may not be conveyed for an irrigation use.

C. If a type 2 non-irrigation grandfathered right is conveyed, the full amount of the right is conveyed.

[45-475. Determination of exterior boundaries of service area for purposes of conveyances](#)

For purposes of conveyances of irrigation grandfathered rights and type 1 non-irrigation grandfathered rights, whether land to which the right is appurtenant is within the exterior boundaries of the service area of a city, town or private water company shall be determined as of the date of the closing of the

conveyance transaction according to the most current map of the service area of the city, town or private water company available for public inspection on that date as required by section 45-498:

1. In the city clerk's office for a city.
2. In the town clerk's office for a town.
3. In the appropriate county recorder's office for a private water company.

45-476. Application for certificate of grandfathered right

A. Except as provided in section 45-476.01, a person claiming the right to withdraw or receive and use groundwater pursuant to a grandfathered right shall file an application for a certificate of grandfathered right with the department not later than fifteen months after the date of the designation of the active management area on a form provided by the department.

B. The application for a certificate of grandfathered right not based upon prior proceedings on a certificate of exemption shall include the following:

1. The name and mailing address of the applicant.
2. The name of the active management area within which the withdrawal of groundwater pursuant to the claimed grandfathered right is being or has been made.

3. If the application is for a type 1 non-irrigation grandfathered right:

(a) The legal description and a map of the retired irrigated land in respect of which the right is claimed.

(b) The date when the irrigated land was retired.

(c) Such evidence as the director shall require that the retired irrigated land has been held under the same ownership since it was retired and that a development plan for the proposed non-irrigation use existed at the time the land was retired.

(d) If in a subsequent active management area, the amount of groundwater used per acre for the retired irrigated land each year during the five years preceding the time the land was retired.

(e) Whether the well from which the water will be withdrawn is located in a groundwater replenishment district.

4. If the application is for a type 2 non-irrigation grandfathered right:

(a) The maximum amount of groundwater legally withdrawn from land owned by the applicant and used in any one year during the five years preceding the date of the designation of the active management area.

(b) If the person withdrawing groundwater from the land owned by the applicant has made an application for a type 1 non-irrigation grandfathered right, a copy of the application.

5. If the application is for an irrigation grandfathered right:

(a) The legal description and a map of all land owned by the applicant which was legally irrigated at any time during the five years preceding January 1, 1980 for initial active management areas or the date of the designation of the active management area for subsequent active management areas and the highest number of acres legally irrigated with groundwater at one time in any one year during the five-year period.

(b) The type of crops grown on such land and the cropping patterns used during the five-year period.

(c) The irrigation methods and devices currently being used in the irrigation of such land.

6. The location of each well from which groundwater is being or has been withdrawn by the applicant to irrigate such land.

7. The sworn statement that the information contained in the application is true and correct to the best knowledge and belief of the applicant.

8. Any other information the director may require.

C. A person or his successor claiming the right to use groundwater pursuant to a grandfathered right, described in whole or in part by a certificate of exemption, shall file an application for a certificate of grandfathered right as provided in subsection D of this section and shall automatically be entitled to a certificate or certificates of grandfathered right for the portion of the grandfathered right claimed which is evidenced by the certificate of exemption or established by the proceedings on the certificate of exemption. Notice of the application is not required and hearings shall not be held. If the applicant claims grandfathered rights in addition to the amount of use described in the certificate of exemption, application for such additional amount shall be made pursuant to subsection B of this section, and such application is subject to the notice, objection and hearing provisions applicable to applications made pursuant to that subsection.

D. The application for a certificate of grandfathered right based upon prior proceedings upon an application for a certificate of exemption shall include the following:

1. The name and mailing address of the applicant.
2. The name of the active management area within which the withdrawal of groundwater pursuant to the claimed grandfathered right is being or has been made.
3. The total amount of groundwater to be withdrawn annually under the certificate of exemption.
4. The number of retired irrigated acres described in the application for a certificate of exemption.
5. Such evidence as the director shall require that the retired irrigated land has been held under the same ownership since it was retired.
6. The number of the certificate of exemption and a copy of the certificate of exemption.
7. The sworn statement that the information contained in the application is true and correct to the best knowledge and belief of the applicant.
8. Any other information the director may require.

45-476.01. Late applications for certificates of grandfathered rights; definition

A. A person who claims the right to withdraw or receive and use groundwater in an initial active management area pursuant to a grandfathered right and who failed to file an application on or before July 1, 1983 as required by law may file a late application for a certificate of grandfathered right pursuant to this section on a form provided by the department.

B. A late application for a certificate of grandfathered right shall include the information required in section 45-476. The fee for filing a late application is one hundred dollars. 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.

C. The director shall review each late application for a certificate of grandfathered right submitted pursuant to this section and may conduct such investigations as the director deems necessary to determine whether the information contained in the application is correct and sufficient to issue a certificate.

D. A person who files a late application for a certificate of grandfathered right pursuant to this section has the burden of establishing by clear and convincing evidence that the necessary statutory requirements for issuing the certificate of grandfathered right have been met.

E. The director's decision on a late application for a certificate of grandfathered right submitted pursuant to this section, is subject to administrative review. A person aggrieved by the director's decision is not entitled to an administrative hearing. A final decision of the director approving or denying the application is not subject to judicial review.

F. If the director, after reviewing a late application, determines that the statutory requirements for issuing the certificate of grandfathered right have been met, the director shall issue a certificate of grandfathered right to the applicant pursuant to section 45-481. A holder of a certificate of grandfathered right issued pursuant to this section has the same rights and duties as all other holders of certificates of grandfathered rights.

G. Notwithstanding section 41-1092.02, subsection D, this section is not subject to title 41, chapter 6, article 10.

H. For the purposes of this article, "late application for a certificate of grandfathered right" means an application that is filed after July 1, 1983 for a certificate of grandfathered right to withdraw or receive and use groundwater in an initial active management area.

45-477. Right to withdraw, receive or use groundwater in an initial active management area

A person shall not withdraw or receive and use groundwater in an initial active management area pursuant to a grandfathered right unless the certificate of grandfathered right has been issued or the application for the certificate of grandfathered right has been filed and is the subject of administrative or judicial review.

45-477.01. Waiver and relinquishment of grandfathered rights in a subsequent active management area

A person who claims the rights to withdraw or receive and use groundwater in a subsequent active management area pursuant to a grandfathered right but who fails to file an application for a certificate of grandfathered right as provided in this article is deemed to waive and relinquish any right to withdraw or receive and use groundwater pursuant to this article.

45-478. Notice of requirement to apply for certificate of grandfathered right

A. Within ninety days of the date of the designation of an active management area, the director shall give notice of the requirement to apply for a certificate of grandfathered right to the clerk of the board of supervisors of the county or counties in which the active management area is located and to the mayor of each city or town, to each private water company and to the presiding officer of each political subdivision established pursuant to title 48, chapter 17, 18, 19 or 20 located in the active management area.

B. The director shall mail by January 1, following the date of the designation of the active management area, a copy of a written notice of the requirement to apply for a certificate of grandfathered right to each owner of real property within the active management area listed on the tax rolls of the county, except owners of real property located in vacant subdivisions or located within the service areas of cities, towns and private water companies, along with a declaration that it is the duty of the recipient to forward the notice to the beneficial owner of the property. The notice shall include a statement that a person who fails to apply for a certificate of grandfathered right within an active management area waives and relinquishes any right to withdraw or receive and use groundwater pursuant to a grandfathered right.

C. The director shall also notify owners of real property located within service areas of cities, towns and private water companies and irrigation districts who utilize their own well, according to the registration of the well pursuant to article 10 of this chapter. The director may extend for a reasonable time the deadline for applications under this subsection.

D. The director may also give written notice in any other manner which will carry out the purposes of this section.

E. The provisions of this section shall not apply to the Santa Cruz active management area.

[45-479. Registry of applications; written objections; request for hearing](#)

A. The director shall establish a registry of all applications received for a certificate of grandfathered right or a restoration of a retired irrigation grandfathered right for each active management area. After the deadline for the filing of applications for a certificate of grandfathered right has passed, the director shall notify all applicants for a certificate of grandfathered right that the registry is available in the offices of the department for public inspection during regular business hours.

B. Within one hundred eighty days of the date of the notice required by subsection A of this section, any person residing in the active management area may file a written objection to any application for a certificate of grandfathered right and may request a hearing on the application. Objections may be made only on the basis that the information in the application is incorrect or is insufficient to issue a certificate.

C. This section does not apply to late applications for certificates of grandfathered rights filed pursuant to section 45-476.01.

[45-480. Review of applications; investigations; hearings; final determination; judicial review](#)

A. Except as provided in subsection F of this section, the director shall review each application for a certificate of grandfathered right or a restoration of a retired irrigation grandfathered right and may conduct such investigations as deemed necessary to determine whether the information contained in the application is correct and sufficient to issue a certificate or grant restoration. Except as provided in section 45-476, subsection C, in appropriate cases, including cases in which a written objection has been filed, an administrative hearing may be held before the director's decision on the application if the director deems a hearing necessary to determine whether the information contained in the application is correct and sufficient to issue a certificate or grant restoration. Thirty days prior to the date of the hearing, the director shall give notice of the hearing to the applicant and any person who has filed an objection to the application.

B. If the director determines that the information contained in the application is correct and is sufficient to issue a certificate of grandfathered right or restore a retired irrigation grandfathered right, the director shall issue a certificate of grandfathered right pursuant to section 45-481 or restore a retired irrigation grandfathered right to the applicant. If the director determines that the information contained in the application is incorrect or is insufficient to issue a certificate or grant restoration, the director may return the application specifically stating the reasons for its return. The applicant may reapply within thirty days of receipt of the returned application. A reapplication relates back to the filing of the original application but otherwise shall be treated as a new application.

C. If, before an administrative hearing, the director determines that the applicant is not entitled to a certificate of grandfathered right or a restoration of a retired irrigation grandfathered right or determines that the amount of a grandfathered right or a retired irrigation grandfathered right is less than that requested in the application, the director shall provide the applicant with notice and an opportunity for an administrative hearing.

D. The applicant or any person entering 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 the superior court in the county in which the irrigated land or the non-irrigation use is located.

E. This section does not apply to late applications for certificates of grandfathered rights filed pursuant to section 45-476.01.

F. Beginning January 1 of the calendar year following the year in which a groundwater replenishment district is required to submit its preliminary plan pursuant to section 45-576.02, subsection A, paragraph 1, the director shall withhold review of an application for a certificate for a type 1 non-irrigation grandfathered right appurtenant to land located in the district unless at the time the application is filed:

1. The director has determined that the district's plan for operation is consistent with achieving the management goal, according to section 45-576.03, subsection E, and the designation has not expired.

2. The master replenishment account, as established in section 45-858.01, does not have a debit balance in an amount in excess of the amount allowed under section 45-576.01, subsection A, paragraph 3.

G. 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. If an administrative hearing is held, it shall be conducted in the active management area in which the use is located.

45-481. Issuance of certificates; contents; recordation

A certificate of grandfathered right shall be issued in recordable form and shall contain:

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

2. The active management area in which the withdrawal of groundwater is being or will be made.

3. The type of grandfathered right represented by the certificate.

4. If the certificate is for a type 1 non-irrigation grandfathered right, the amount of the right and the legal description of the retired irrigated land to which the right is appurtenant.

5. If the certificate is for a type 2 non-irrigation grandfathered right, the amount of the right.

6. If the certificate is for an irrigation grandfathered right, the legal description of the irrigable land to which the right is appurtenant.

7. Where applicable, the location of each well from which groundwater is being withdrawn pursuant to the right at the time the certificate is issued.

8. Such other pertinent information as the director may determine.

45-482. Registry of certificates of grandfathered right; reporting; definition

A. The director shall establish and maintain a registry of certificates of grandfathered rights for each active management area. The registry shall include a copy of each certificate of grandfathered right in the active management area and such other pertinent information as the director determines is necessary.

B. Except as provided in subsection D of this section, a person to whom a certificate of grandfathered right is issued shall notify the director of a change in name or mailing address or a conveyance of the grandfathered right pursuant to sections 45-472 through 45-474. Except as provided in subsection D of this section, a person to whom a grandfathered right is conveyed shall notify the director of the conveyance and shall furnish information as required by the director to keep the registry current and accurate. The director shall have continuing jurisdiction and shall issue revised certificates as necessary.

C. The director may require holders of certificates of grandfathered rights to file additional information with the annual report required by section 45-632 as necessary to keep the registry current and accurate. For purposes of this article, "holder" means a person to whom a certificate of grandfathered right is issued or a person to whom a grandfathered right is conveyed.

D. A holder of a certificate of irrigation grandfathered right is exempt from a notification requirement in subsection B of this section for the irrigation grandfathered right if the irrigation grandfathered right was appurtenant to ten or fewer irrigation acres at the time of the event for which the notification is required unless one of the following applies:

1. The land to which the irrigation grandfathered right is appurtenant is part of an integrated farming operation.

2. Groundwater is withdrawn from the land to which the irrigation grandfathered right is appurtenant and delivered for use pursuant to either a service area right pursuant to article 6 of this chapter or a grandfathered groundwater right other than an irrigation grandfathered right that is appurtenant to irrigation acres that are exempt from irrigation water duties pursuant to section 45-563.02.

3. Groundwater is withdrawn from land that is both owned by the holder of the certificate of irrigation grandfathered right and contiguous to the land to which the irrigation grandfathered right is

appurtenant and delivered for use pursuant to either a service area right pursuant to article 6 of this chapter or a grandfathered groundwater right other than an irrigation grandfathered right that is appurtenant to irrigation acres that are exempt from irrigation water duties pursuant to section 45-563.02.

45-483. Designation of protected farmland; notice; revocation of designation; irrigation water duty; assured water supply credit for extinguishment of irrigation grandfathered right prohibited

A. A person who owns land within an active management area that is legally entitled to be irrigated with groundwater pursuant to an irrigation grandfathered right may apply to the director for designation of the land as protected farmland. On receipt of an application, the director shall grant the application and designate the land identified in the application as protected farmland if the director determines that the land is subject to a conservation easement that prohibits the development of the land for nonagricultural uses pursuant to the federal farmland protection program established by Public Law 104-127 (110 Stat. 888).

B. A person who owns land that has been designated by the director as protected farmland pursuant to subsection A of this section shall notify the director in writing if the conservation easement in the land terminates. The notice shall be given within thirty days after the termination of the easement and shall specify the reason for the termination.

C. After the director designates land as protected farmland pursuant to subsection A of this section, the director shall revoke the designation if either of the following applies:

1. The conservation easement in the land has terminated. If the director revokes a designation of protected farmland under this paragraph, the director shall determine at that time whether the conservation easement terminated because a partial or full condemnation of the land made farming impracticable. The director shall give written notice of the revocation and of the director's determination of whether the easement terminated because a partial or full condemnation of the land made farming impracticable to the owner at the owner's last address on file with the department.

2. The owner of the land has requested the director to revoke the designation and the conservation easement in the land has not terminated.

D. Notwithstanding any other law, if the director designates land as protected farmland pursuant to subsection A of this section, the irrigation water duty for the land shall be the irrigation water duty in effect for the land under the applicable management plan when the application for designation was filed, including any subsequent adjustments to that water duty as a result of an application for administrative review filed with the director pursuant to section 45-575, subsection A. If the director revokes the designation of protected farmland pursuant to subsection C of this section, the irrigation water duty for the land shall be the irrigation water duty established for the land in the applicable management plan pursuant to section 45-566, 45-567 or 45-568.

E. Notwithstanding any other law or rule, the director shall not establish or grant an assured water supply credit for the extinguishment of an irrigation grandfathered right under the rules adopted by the director pursuant to section 45-576, subsection H if the land to which the irrigation grandfathered right is appurtenant was previously designated by the director as protected farmland pursuant to subsection A of this section. This subsection shall not apply to land that was designated by the director as protected farmland if the director revoked the designation pursuant to subsection C, paragraph 1 of this section and the director determined at that time that the conservation easement in the land was terminated because a partial or full condemnation of the land made farming impracticable.

F. 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.

Article 6 - Groundwater Rights and Uses Within Service Areas

45-491. Scope of article

A. In an active management area, a city, town, private water company or irrigation district may withdraw groundwater only pursuant to this article, except as provided by a grandfathered right and except as otherwise provided in this section.

B. An irrigation district engaged in generating, transmitting and distributing electricity on June 12, 1980 may withdraw groundwater pursuant to a groundwater withdrawal permit issued under article 7 of this chapter.

C. A city, town or private water company may withdraw groundwater pursuant to a poor quality groundwater withdrawal permit issued under section 45-516.

D. An irrigation district or a private water company organized primarily for irrigation purposes may withdraw groundwater pursuant to a drainage water withdrawal permit issued under section 45-519.

E. A city, town, private water company or irrigation district may withdraw groundwater pursuant to a hydrologic testing permit issued under section 45-519.01.

F. A city, town, private water company or irrigation district may use the groundwater withdrawn pursuant to a groundwater withdrawal permit only for the specific purpose for which the permit is issued. Any withdrawals of groundwater by a city, town, private water company or irrigation district pursuant to a groundwater withdrawal permit issued under article 7 of this chapter shall not give rise to any other right to withdraw groundwater under this chapter.

45-492. Withdrawals by cities, towns and private water companies within service areas; contract to supply groundwater

A. Except as provided in subsection D of this section, in an active management area, a city, town or private water company shall have the right to withdraw and transport groundwater within its service area for the benefit of landowners and residents within its service area, and the landowners and residents are entitled to use the groundwater delivered, subject to:

1. Articles 8 and 8.1 of this chapter relating to transportation of groundwater.
2. Conservation requirements developed by the director pursuant to article 9 of this chapter.
3. Section 45-493, subsection D.

B. Claims of landowners to irrigation grandfathered rights or type 1 or 2 non-irrigation grandfathered rights shall be subject to article 5 of this chapter.

C. A city, town or private water company may contract to supply groundwater to a city, town or private water company in the same active management area if it is consistent with the management plan for the active management area and section 45-576 and is approved by the director.

D. In an active management area, a city, town or private water company whose service area has qualified as a member service area under title 48, chapter 22, or as a water district member service area under title 48, chapter 28, has the right to withdraw and transport groundwater within its service area for the benefit of landowners and residents within its service area, and the landowners and residents are entitled to use the groundwater delivered, subject to subsection A of this section and, to the extent the groundwater delivered is considered excess groundwater as defined and used in title 48, chapter 22 or 28, as applicable, subject to the payment by the city, town or private water company of the replenishment tax levied from time to time by a conservation district under title 48, chapter 22, or a water district under title 48, chapter 28, whichever is applicable. A city, town or private water company shall be deemed to have failed to pay the replenishment tax only if the conservation district or the water district provides notice to the department of a delinquency in the payment of the replenishment tax pursuant to section 48-3781, subsection G or section 48-4982, subsection G, as applicable.

45-493. Limitations on extensions of service areas; prohibition on formation of private water company for irrigation purpose; prohibition on service without payment of tax

A. In an active management area, the service area of a city, town or private water company may not be extended primarily for any of the following purposes:

1. Including a well field within the service area.
2. Furnishing disproportionately large amounts of water to an industrial or any other large water user unless it is consistent with the management plan for the active management area and is approved by the director.

3. Including irrigation acres within the exterior boundaries of the service area to extinguish the right to convey irrigation grandfathered rights to a non-irrigation use.

B. Within an active management area, a city, town or private water company may not extend its service area for the purpose of withdrawing and distributing groundwater for irrigation purposes.

C. Subsequent to the date of the designation of the active management area, a private water company may not be formed within an active management area to withdraw and distribute groundwater for irrigation purposes.

D. If a municipal provider whose service area has qualified as a member service area under title 48, chapter 22 terminates water service to any portion of the service area and fails to pay the replenishment tax levied by a conservation district under title 48, chapter 22 for that area, another municipal provider shall not commence service of groundwater under section 45-492, subsection A or D or section 45-494 to landowners and residents within that area without first making arrangements to pay all outstanding replenishment taxes to the conservation district. This subsection does not apply to the commencement of service of groundwater by an irrigation district to an industrial user under section 45-497. For the purposes of this subsection, "municipal provider" has the same meaning prescribed in section 45-561.

45-494. Withdrawals by irrigation districts in initial active management areas

In an initial active management area established pursuant to section 45-411:

1. An irrigation district existing and engaged in the withdrawal, delivery and distribution of groundwater as of January 1, 1977 shall have the right, subject to section 45-496 and section 45-493, subsection D:

(a) To withdraw and transport groundwater within its service area for the benefit of landowners within its service area, and the landowners are entitled to use the groundwater delivered, provided claims of landowners to irrigation grandfathered rights or type 1 or 2 non-irrigation grandfathered rights shall be subject to article 5 of this chapter.

(b) If legally withdrawing and transporting groundwater from outside its service area for use within its service area as of January 1, 1977, to continue to withdraw and transport the amount of groundwater legally being withdrawn as of January 1, 1977.

2. An irrigation district that was not engaged in the withdrawal, delivery and distribution of groundwater as of January 1, 1977 shall be limited to the right, subject to section 45-496, to:

(a) Contract for surface water from a multi-county water conservation district and deliver and distribute such water within its service area for irrigation purposes.

(b) If, as of January 1, 1983, the district had been recommended by the director to receive an allocation of municipal and industrial water from the central Arizona project, contract for surface water from a multi-county water conservation district and deliver such surface water to cities, towns or private water companies for municipal, industrial and domestic purposes, subject to the following conditions:

(i) The cities, towns and private water companies shall distribute the water within the boundaries of the district in effect as of the date of validation of the district's central Arizona project subcontract.

(ii) In contracting for the delivery of such surface water, the district shall offer the water, first, to cities and towns that distribute water to land within the boundaries of the district or to land adjacent or contiguous to the district and, second, if the cities or towns are unwilling or unable to take and distribute such surface water, to private water companies within the boundaries of the district that have not been recommended to receive or have not received an allocation of municipal and industrial water from the central Arizona project.

(iii) Notwithstanding article 5 of this chapter, the original owner and any new owner of a type 1 non-irrigation grandfathered right created pursuant to section 45-469 that is appurtenant to land in the district to which such surface water is distributed by a city, town or private water company may use groundwater withdrawn pursuant to that right only on the land to which the right is appurtenant.

(iv) The district may amend its contract, or execute a new contract, with the United States secretary of the interior and a multi-county water conservation district to provide for the conversion of irrigation water deliveries to municipal and industrial water deliveries as provided by law and pursuant to the secretary's regulations relating to conversion, but such amendment may be made or new contract executed only if the amount of municipal and industrial water for which the district would qualify by conversion of lands from

irrigation to non-irrigation uses exceeds the secretary's initial express allocation of municipal and industrial water to the district for the year 2034 and only to the extent of the excess.

(v) Such surface water shall not be distributed by any city, town or private water company to any land with respect to which an allocation of municipal and industrial water from the central Arizona project has been made or recommended for some person other than the district.

(c) Contract to purchase, deliver and distribute effluent within its service area for irrigation purposes.

(d) Withdraw, deliver and distribute within its service area the amount of groundwater allowed by the current irrigation water duty of each member farm multiplied by the water duty acres in that farm less any portion of such amount withdrawn by individual members.

(e) Continue but not expand any non-irrigation water service being lawfully provided as of the date of the designation of the active management area, except as provided in subdivision (b) of this paragraph and in section 45-497, subsection B.

45-494.01. Addition and exclusion of area by irrigation districts in initial active management areas

A. In an initial active management area, an irrigation district established pursuant to title 48, chapter 19 existing and engaged in the withdrawal, delivery and distribution of groundwater as of January 1, 1977 may add to the service area of the district acres of land which have irrigation grandfathered rights to replace other lands that have irrigation grandfathered rights of similar area for the purpose of maintaining the same acreage as of June 12, 1980, if both of the following apply:

1. The added and excluded acres are outside the exterior boundaries of the service area of an incorporated city or town.

2. The added and excluded acres are either within the franchised area of a private water company or are contiguous to the franchised area of a private water company designated as having an assured water supply pursuant to section 45-576, subsection D and the contiguous acres may, in the judgment of the director, be added without adversely affecting the assured water supply of the private water company.

B. No greater quantity of water may be transported annually to the added acres than the annual stored surface water allotment for that year. For purposes of this section, store surface water does not include central Arizona project allotment water. This section does not prohibit the transportation to the added acres of any quantity of floodwater or effluent available in addition to the stored surface water allotment.

45-495. Withdrawals and transportations by irrigation districts within subsequent active management areas

In a subsequent active management area established pursuant to section 45-412:

1. An irrigation district existing and engaged in the withdrawal, delivery and distribution of groundwater as of the date of the designation of the active management area shall have the right, subject to section 45-496:

(a) To withdraw and transport groundwater within its service area for the benefit of landowners within its service area, and the landowners are entitled to use the groundwater delivered, provided claims of landowners to irrigation grandfathered rights or type 1 or 2 non-irrigation grandfathered rights shall be subject to the provisions of article 5 of this chapter.

(b) If legally withdrawing and transporting groundwater from outside its service area for use within its service area as of the date of designation of the active management area, to continue to withdraw and transport the amount of groundwater legally being withdrawn as of the date of the designation of the active management area.

2. An irrigation district which was not engaged in the withdrawal, delivery and distribution of groundwater as of the date of the designation of the active management area shall be limited to the right, subject to section 45-496, to:

(a) Contract for surface water and deliver and distribute such water within its service area for irrigation purposes.

(b) Contract to purchase, deliver and distribute effluent within its service area for irrigation purposes.

(c) Withdraw, deliver and distribute within its service area the amount of groundwater allowed by the current irrigation water duty of each member farm multiplied by the water duty acres in that farm, less any portion of such amount withdrawn by individual members.

(d) Continue but not expand any non-irrigation water service being lawfully provided as of the date of the designation of the active management area, except as provided in section 45-497, subsection B.

45-496. Applicability of general transportation provisions and conservation requirements

Withdrawals and transportation of groundwater by an irrigation district pursuant to this article are subject to:

1. The provisions of articles 8 and 8.1 of this chapter relating to transportation of groundwater.
2. Conservation requirements developed by the director pursuant to article 9 of this chapter.

45-497. Withdrawal of groundwater by irrigation districts for municipal or industrial purposes

A. This article shall not be construed to enlarge the authority of an irrigation district to withdraw and distribute groundwater for municipal or industrial purposes.

B. An industrial user may not obtain groundwater delivery service from an irrigation district in excess of the amount it was entitled to receive on the date of the designation of the active management area unless the industrial user has acquired a grandfathered right or has obtained a general industrial use permit pursuant to section 45-515. An industrial user that has been issued a general industrial use permit pursuant to section 45-515 may, at any time, elect to receive groundwater from an irrigation district in the amount specified in the permit if:

1. The director approves the delivery of such groundwater.
2. The irrigation district agrees to deliver such groundwater.
3. The industrial use is located within the exterior boundaries of the service area of the irrigation district.

4. The terms of the permit are modified pursuant to section 45-525.

45-498. Maps of service areas

A. Each city, town, private water company and irrigation district in an active management area shall maintain a current map clearly delineating its service area and distribution system in the director's office and shall furnish such other related data as the director may require. In addition:

1. Each city and town shall maintain a current map of its service area and distribution system in its city or town clerk's office.
2. Each private water company and irrigation district shall maintain a current map of its service area and distribution system in its offices.

B. All maps required by this section shall be available for examination by the public at reasonable times.

Article 7 - Groundwater Withdrawal Permits

45-511. Definitions

In this article, unless the context otherwise requires:

1. "General industrial use" means a non-irrigation use of groundwater except those subject to permits issued pursuant to sections 45-513 and 45-514 and those for which a certificate of assured water supply is required pursuant to section 45-576. General industrial use includes animal industry use.

2. "Permit" means a permit to withdraw groundwater which is issued by the director pursuant to this article.

45-512. Categories of groundwater withdrawal permits

Except as provided in section 45-452, subsection H, section 45-513, subsection B and articles 5 and 6 of this chapter, a person may not withdraw groundwater from a nonexempt well in an active management area unless the person obtains a groundwater withdrawal permit from the director pursuant to this article. The categories of groundwater withdrawal permits are as follows:

1. Dewatering permits issued pursuant to section 45-513.
2. Mineral extraction and metallurgical processing permits issued pursuant to section 45-514.
3. General industrial use permits issued pursuant to section 45-515.
4. Poor quality groundwater permits issued pursuant to section 45-516.

5. Temporary permits issued pursuant to sections 45-517 and 45-518.
6. Drainage water permits issued pursuant to section 45-519.
7. Hydrologic testing permits issued pursuant to section 45-519.01.

45-513. Dewatering permit; definition; priorities for use of groundwater; conditions on director; duration of permit

A. Except as provided in subsection F of this section, a person who is engaged in or proposes to engage in the extraction and processing of minerals shall be issued a dewatering permit for the beneficial use of the land for mineral extraction, for metallurgical processing and for compliance with applicable environmental controls. For purposes of this section, "dewatering" means the withdrawal of groundwater from pits, from in, under and around ore bodies in proximity to pits and from underground workings. Dewatering does not include process water and tailing water recovered from or pumped from beneath tailing ponds.

B. A person who is engaged in or proposes to engage in the extraction and processing of minerals may recover from or pump from beneath tailing ponds process water and tailing water without obtaining a permit under this article, if that water is recycled into the extraction or metallurgical process or is withdrawn to comply with applicable environmental controls. Such a person may not drill or cause to be drilled a well for the purpose of pumping or recovering process water or tailing water from beneath tailing ponds for recycling into the extraction or metallurgical process without first filing a notice of intention to drill under section 45-596.

C. Groundwater withdrawn pursuant to a dewatering permit shall be used in the following order of priority:

1. To meet mineral extraction, metallurgical processing and environmental control requirements of the permittee.

2. To a city, town, private water company or farm and any other person whose respective ability to withdraw groundwater has been adversely affected by a dewatering permit. Such water shall be equitably allocated by the director without costs but subject to the conditions set forth in subsection D of this section among such persons adversely affected by such dewatering. A person who receives an allocation of water under this paragraph shall reduce his groundwater withdrawals by the amount of water he receives under this paragraph. A person receiving water under this paragraph does not thereby forfeit or abandon his right to withdraw groundwater.

3. For municipal, commercial, domestic and industrial needs of communities and residential areas directly related to the mineral extraction and metallurgical processing operation of the permittee.

4. To irrigate land owned or controlled by the permittee which is entitled to the use of groundwater for irrigation.

5. To the director for such distribution as will best achieve the goals and purposes of the management plan for the active management area.

6. For such other legal purpose as the permittee elects.

D. Groundwater made available to the director for distribution or allocation under this section is subject to the following conditions:

1. The permittee shall deliver the groundwater to the boundary of his property but shall not be obligated to deliver it further.

2. The permittee shall not be required to treat the chemical quality of the groundwater for distribution or allocation.

3. The permittee shall not be required to make the groundwater available if dewatering ceases, or if all or any portion of the groundwater is needed for a purpose having a higher priority as specified in subsection C of this section.

4. The person actually using the groundwater distributed or allocated by the director shall be responsible for paying any withdrawal fees required under section 45-611.

5. If the director sells water, proceeds shall be applied as follows:

- (a) To cover costs, if any, of the director in delivering water to other users.

- (b) To cover the permittee's cost in transporting water to the boundary of his property.

- (c) To the active management area for general purposes as determined by the director.

E. A permit issued pursuant to this section shall be granted for a period of up to fifty years, subject to renewal under the same criteria used in granting the original permit.

F. Beginning January 1 of the calendar year following the year in which a groundwater replenishment district is required to submit its preliminary plan pursuant to section 45-576.02, subsection A, paragraph 1, and except for an application to renew a dewatering permit, on receiving a permit application the director shall not issue a permit for a well in the district unless at the time the application for the permit is filed:

1. The director has determined that the district's plan for operation is consistent with achieving the management goal, according to section 45-576.03, subsection E, and the designation has not expired.

2. The master replenishment account, as established in section 45-858.01, does not have a debit balance in an amount in excess of the amount allowed under section 45-576.01, subsection A, paragraph 3.

45-514. Mineral extraction and metallurgical processing permit; conditions for issuance; duration of permit

A. Except as provided in subsection D of this section, a person who is engaged in or proposes to engage in the extraction and processing of minerals shall be issued a permit to withdraw groundwater in the required amount, if all of the following apply:

1. The amount of groundwater available for mineral extraction, metallurgical processing and compliance with applicable environmental controls under a dewatering permit is insufficient.

2. Uncommitted municipal and industrial central Arizona project water is not available at the point where the operator's wellhead or distribution system would otherwise be, at a cost which does not exceed the current municipal and industrial central Arizona project delivery rates.

3. Other surface water of adequate quality or effluent of adequate quality is not available at the point where the operator's wellhead or distribution system would otherwise be, at a cost, including treatment costs, which does not exceed by twenty-five percent the cost the operator would otherwise incur in withdrawing groundwater.

4. The applicant does not own or lease type 2 non-irrigation grandfathered rights originally based on withdrawals of groundwater for the extraction or processing of minerals that the applicant is not using or leasing and that can be used at the proposed location without imposing an unreasonable economic burden on the applicant.

B. A permit issued pursuant to this section shall be granted for a period of up to fifty years, subject to renewal under the same criteria used in granting the original permit.

C. If, during the duration of a mineral extraction and metallurgical processing permit, the director determines that uncommitted municipal and industrial central Arizona project water is available or surface water of adequate quality or effluent of adequate quality is available to the permittee at a cost comparable to groundwater, the director may require the permittee to use such water in lieu of groundwater.

D. Beginning January 1 of the calendar year following the year in which a groundwater replenishment district is required to submit its preliminary plan pursuant to section 45-576.02, subsection A, paragraph 1, and except for an application to renew a mineral extraction and metallurgical processing permit, on receiving a permit application the director shall not issue a permit for a well in the district unless at the time the application is filed:

1. The director has determined that the district's plan for operation is consistent with achieving the management goal, according to section 45-576.03, subsection E, and the designation has not expired.

2. The master replenishment account, as established in section 45-858.01, does not have a debit balance in an amount in excess of the amount allowed under section 45-576.01, subsection A, paragraph 3.

E. If, during the duration of a mineral extraction and metallurgical processing permit issued after the effective date of this amendment to this section, the permittee earns long-term storage credits under section 45-852.01, subsection B for the storage of central Arizona project water in the active management area in which the permittee has the right to withdraw groundwater pursuant to the permit, and the central Arizona project water qualified as water that cannot reasonably be used directly due solely to the exclusion of groundwater withdrawn by the permittee for mineral extraction or metallurgical processing pursuant to section 45-802.01, paragraph 23, subdivision (c), the director shall establish a separate subaccount for those credits pursuant to section 45-852.01, subsection A. After each calendar year in which the permit is in effect, the director shall debit the subaccount by the amount of groundwater pumped by the permittee in the active management area during that calendar year pursuant to the permit, not to exceed the amount of long-term storage credits in the subaccount. This subsection shall not apply to:

1. A mineral extraction and metallurgical processing permit issued on or before the effective date of this amendment to this section, including any renewal or modification of the permit.

2. A mineral extraction and metallurgical processing permit unless the permittee was engaged in mineral extraction and metallurgical processing within an initial active management area on or before January 1, 2011.

45-515. General industrial use permits; conditions for issuance; duration of permit

A. Except as provided in subsection D of this section, the director shall issue a permit to withdraw groundwater from a point outside of the exterior boundaries of the service area of a city, town or private water company for a general industrial use outside of the exterior boundaries of such service area if the director determines that all of the following apply:

1. Uncommitted municipal and industrial central Arizona project water is not available at the point where the operator's wellhead or distribution system would otherwise be, at a cost which does not exceed the current municipal and industrial central Arizona project rates.

2. Other surface water of adequate quality or effluent of adequate quality is not available at the point where the operator's wellhead or distribution system would otherwise be, at a cost, including treatment costs, which does not exceed by twenty-five per cent the cost the operator would otherwise incur in withdrawing groundwater.

3. Irrigation grandfathered rights appurtenant to acres of land in reasonable proximity to the intended general industrial use are not available for purchase at a reasonable price or cannot be acquired by eminent domain and the applicant does not own or lease grandfathered rights that the applicant is not using or leasing, that may be used for the intended general industrial use and that can be used for the intended general industrial use without imposing an unreasonable economic burden on the applicant.

4. The intended general industrial use, if located within three miles of the exterior boundaries of the service area of a city, town or private water company, has been denied service by the city, town or private water company at the customary rate in the customary manner. The requirement of this paragraph does not apply to an expanded animal industry use.

5. The management plan for the active management area can be adjusted to accommodate the intended general industrial use consistent with the achievement of the management goal for the active management area.

6. There is an assured water supply for the intended use at the intended point of withdrawal. The director may waive this requirement if the director is unable to determine if there is an assured water supply because of hydrogeologic conditions underlying the point of withdrawal. For purposes of this section, "assured water supply" means that sufficient groundwater of adequate quality will be available to the applicant to satisfy the projected general industrial use for the duration of the permit.

7. If a new well or replacement well at a new location is to be constructed, a permit for the well has been issued pursuant to section 45-599.

B. A permit issued pursuant to this section shall be granted for a period of up to fifty years, subject to renewal under the same criteria used in granting the original permit.

C. If, during the life of the permit, the director determines that uncommitted municipal and industrial central Arizona project water is available or other water or effluent of adequate quality is available at a cost comparable to groundwater, the director may require the permittee to use such water in lieu of groundwater.

D. Beginning January 1 of the calendar year following the year in which a groundwater replenishment district is required to submit its preliminary plan pursuant to section 45-576.02, subsection A, paragraph 1, and except for an application to renew a general industrial use permit, on receiving a permit application the director shall not issue a permit for a well in the district unless at the time the application is filed:

1. The director has determined that the district's plan for operation is consistent with achieving the management goal, according to section 45-576.03, subsection E, and the designation has not expired.

2. The master replenishment account, as established in section 45-676, does not have a debit balance in an amount in excess of the amount allowed under section 45-576.01, paragraph 3.

45-516. Poor quality groundwater withdrawal permit; conditions for issuance; duration of permit

A. The director may issue a permit to a non-irrigation user to withdraw poor quality groundwater if he determines that the groundwater to be withdrawn because of its quality has no other beneficial use at the present time and that the withdrawal of such groundwater is consistent with the management plan.

B. A permit issued pursuant to this section may be issued for a period of up to thirty-five years, subject to subsection C. The director shall determine the duration of the permit on the basis of the estimated life of the source of poor quality groundwater.

C. The director shall monitor withdrawals of groundwater pursuant to poor quality groundwater withdrawal permit and shall terminate the permit if the conditions specified in subsection A no longer apply.

45-517. Temporary permit for electrical energy generation; conditions for issuance

A. The director shall, upon an adequate showing that an emergency exists, issue a temporary permit to a person engaged in the generation of electrical energy to withdraw groundwater in excess of the amount of groundwater the person is legally entitled to withdraw under a grandfathered right or other groundwater withdrawal permit.

B. A person may withdraw groundwater in excess of the amount he is legally entitled to withdraw before a permit is issued pursuant to this section. Such person, as soon as reasonably practicable after such withdrawals of groundwater commence, shall submit evidence to the director that an emergency exists.

C. The director shall monitor withdrawals of groundwater pursuant to a temporary permit and shall terminate the permit when the emergency ends.

45-518. Temporary dewatering permit; extensions; emergency temporary dewatering permit; conditions for issuance

A. The director may issue a temporary permit to a person to withdraw groundwater for dewatering purposes if the director determines that:

1. Dewatering is necessary for the construction or the structural integrity of improvements on the land from which the groundwater is proposed to be withdrawn.

2. Dewatering is consistent within the management plan for the active management area.

3. The groundwater to be withdrawn pursuant to the permit will be used beneficially by a person who would otherwise be permitted to use groundwater under this title, including the applicant to the extent the applicant could otherwise withdraw and use groundwater under this title, unless the applicant demonstrates that it would be infeasible for any such person to put the groundwater to a beneficial use.

4. Dewatering will not harm any person permitted to withdraw or use groundwater under this title.

B. Subject to subsection C of this section, a permit issued pursuant to this section may be issued for a period of up to five years and may be extended for additional five year periods if the director determines that the conditions specified in subsection A of this section continue to apply.

C. The director shall monitor withdrawals of groundwater pursuant to a temporary dewatering permit or extension and shall terminate the permit if the conditions specified in subsection A or B of this section no longer apply.

D. During the period in which an application for a temporary dewatering permit is under consideration by the director pursuant to this article, the director may issue an emergency temporary dewatering permit to the applicant if the director determines that immediate dewatering is necessary for the construction or structural integrity of improvements on the land from which the groundwater is proposed to be withdrawn, that property damage or inordinate expense or delay would result if the applicant is not allowed to begin dewatering immediately and that dewatering will not harm any person permitted to withdraw or use groundwater under this title. The director may issue an emergency temporary dewatering permit without complying with section 45-523. The director shall monitor withdrawals of groundwater pursuant to the emergency temporary dewatering permit and shall terminate the permit if the conditions that gave rise to its issuance no longer apply or if a temporary dewatering permit is issued or denied.

45-519. Drainage water withdrawal permit; conditions for issuance

A. A person may apply for and the director may issue a drainage water withdrawal permit if the director determines that drainage of irrigated lands is necessary for a reasonable economic return from agricultural production in respect to those lands and the withdrawal of such groundwater is consistent with the management plan and achievement of the management goal for the active management area.

B. The holder of a permit issued under subsection A of this section may:

1. Use groundwater withdrawn pursuant to the permit for a non-irrigation use if the person holds a non-irrigation grandfathered right pursuant to article 5 of this chapter, a general industrial use permit pursuant to section 45-515 or a service area right pursuant to article 6 of this chapter.

2. Convey groundwater withdrawn pursuant to the permit to another person for a non-irrigation use if the person receiving the groundwater holds a non-irrigation grandfathered right pursuant to article 5 of

this chapter, a general industrial use permit pursuant to section 45-515 or a service area right pursuant to article 6 of this chapter.

C. When determining compliance with the applicable conservation requirements established pursuant to sections 45-565, 45-565.01, 45-566, 45-566.01, 45-567, 45-567.01, 45-568 and 45-568.01, the director shall account for groundwater withdrawn pursuant to a permit issued pursuant to subsection A of this section as surface water if the groundwater is withdrawn before January 1, 2025 from within the boundaries of the exempted area prescribed by section 45-411.01, subsection E and is used pursuant to subsection B of this section at a turf related facility or riparian habitat within the exempted area. The director shall cease accounting for the groundwater as surface water on expiration of the exemptions provided for in section 45-411.01 or on termination of the permit, whichever occurs first.

D. The director shall monitor withdrawals of groundwater pursuant to a drainage water withdrawal permit and shall terminate the permit if the conditions for issuance specified in subsection A of this section no longer apply. A permit issued pursuant to this section may be renewed subject to the same criteria used in granting the original permit.

45-519.01. Hydrologic testing permits; conditions for issuance

A. The director shall issue a permit to withdraw not more than three acre-feet of groundwater per year for the purpose of obtaining groundwater samples to test groundwater quality, if the testing is necessary to comply with applicable environmental controls. A hydrologic testing permit issued under this subsection may be issued for a period of up to ten years.

B. The director may issue a permit to withdraw groundwater for testing hydrologic characteristics and conditions, including groundwater quality, if the director determines that the testing is necessary. Except as provided in subsection D of this section:

1. The total amount of groundwater that may be withdrawn pursuant to a hydrologic testing permit issued under this subsection shall not exceed ten acre-feet.

2. The director shall not issue a hydrologic testing permit under this subsection for a period of more than ninety days.

C. Before issuing a hydrologic testing permit under subsection B of this section, the director may require the applicant to demonstrate that the groundwater withdrawn pursuant to the permit will be used beneficially by persons who would otherwise be permitted to use groundwater under this chapter, including the applicant to the extent the applicant could otherwise withdraw and use groundwater under this chapter.

D. The director may issue a hydrologic testing permit under subsection B of this section for more than ten acre-feet or for a period greater than ninety days, if the director determines that the testing circumstances justify an increase in the amount of groundwater that may be withdrawn or an increase in the duration of the permit and that withdrawals of groundwater pursuant to the permit will not unreasonably harm any person permitted to withdraw or use groundwater under this chapter.

E. The director may issue a permit to withdraw groundwater to test the hydrogeologic characteristics of a potential underground storage facility site under chapter 3.1 of this title, for a period of not more than two years, if the director determines that all of the following apply:

1. Testing is necessary.

2. The withdrawal and testing will not cause unreasonable harm to land or other water users.

3. The groundwater that is withdrawn pursuant to the permit will be added back to the same aquifer in approximately the same location from which the groundwater was withdrawn.

F. The director may issue a hydrologic testing permit without complying with section 45-523.

G. A permit issued under this section may be renewed subject to the same criteria used in granting the original permit.

H. Any withdrawals of groundwater authorized by this section shall be for hydrologic testing purposes only, shall not give rise to any other right to withdraw groundwater under this chapter and shall not be counted as groundwater that is subject to a conservation program in a management plan that is adopted pursuant to article 9 of this chapter.

45-520. Point of withdrawal; location of use; conveyance

A. A person who withdraws groundwater under a permit issued pursuant to this article may change his point or points of withdrawal only pursuant to sections 45-597 and 45-598 and may change his location of

use only with the approval of the director and by applying for a modification of the permit pursuant to section 45-527.

B. A permit issued pursuant to section 45-517, 45-518 or 45-519.01 may not be conveyed. All other permits issued pursuant to this article may be conveyed only for the same use, subject to the approval of the director.

45-521. Permit application form; filing; contents

Application for a permit to withdraw groundwater pursuant to this article shall be made on a form provided by the director which shall include the following information:

1. The name and mailing address of the applicant.
2. The name of the active management area and sub-basin, if any, in which the applicant proposes to withdraw groundwater.
3. The name and mailing address of the owner of the land from which the applicant proposes to withdraw groundwater.
4. The legal description of the land on which the applicant proposes to use groundwater and the name and mailing address of the owner of such land.
5. The category of permit for which application is made.
6. The specific purpose for which the groundwater will be withdrawn.
7. If for a permit other than a permit issued under section 45-519.01, subsection B, the annual amount of groundwater, in acre-feet, for which application is made.
8. If the applicant proposes to withdraw groundwater from an existing well or wells, the location of each such well and the depth and diameter of each well and such other information the director requires.
9. If the applicant proposes to withdraw groundwater from a new well or wells, the proposed location of each such well and the depth and diameter proposed for each well and such other information the director requires.
10. If application is made for a dewatering permit pursuant to section 45-513:
 - (a) The estimated amount of groundwater necessary to meet mineral extraction and metallurgical processing requirements of the applicant.
 - (b) The estimated amount of groundwater necessary for municipal and industrial needs of communities and residential areas directly related to the mineral extraction and metallurgical processing operation of the applicant.
 - (c) The legal description of the acres of land owned or controlled by the applicant entitled to the use of groundwater for irrigation.
11. If application is made for a mineral extraction and metallurgical processing permit pursuant to section 45-514:
 - (a) The amount of groundwater available to the applicant under a dewatering permit previously obtained by the applicant.
 - (b) The estimated cost the applicant would incur in withdrawing groundwater at a point where his wellhead or distribution system would otherwise be.
12. Whether the well from which the water will be withdrawn is in a groundwater replenishment district.
13. If application is made for a general industrial use permit pursuant to section 45-515:
 - (a) The estimated cost the applicant would incur in withdrawing groundwater at the point where his wellhead or distribution system would otherwise be.
 - (b) Proof of denial of service or inaction on a service request by a city, town or private water company if the location of the applicant's intended use is within three miles of the exterior boundaries of the service area of such city, town or private water company. Such evidence is not required for an expanded animal industry use.
 - (c) Studies satisfactory to the director of the probable hydrologic impact on the groundwater resources which the applicant proposes to use including evidence of the availability of an assured water supply for the intended use.
14. If application is made for a temporary dewatering permit pursuant to section 45-518, evidence demonstrating that a temporary dewatering permit is necessary for the construction or structural integrity of improvements on the land from which the groundwater is proposed to be withdrawn. If application is made for extension of a temporary dewatering permit, the application shall include evidence demonstrating that the criteria prescribed by section 45-518, subsection B exist. If application is made for an emergency

temporary dewatering permit, it must be accompanied by an application for a temporary dewatering permit and shall include evidence demonstrating that the criteria prescribed by section 45-518, subsection D exist.

15. If application is made for a drainage water permit pursuant to section 45-519:

(a) Evidence that drainage of irrigated lands is necessary for a reasonable economic return from agricultural production on such lands.

(b) The legal description of the acres of land entitled to the use of groundwater for irrigation.

(c) Evidence that the applicant owns or controls the irrigated land to be drained, if the applicant is other than a groundwater replenishment district.

16. If application is made for a hydrologic testing permit pursuant to section 45-519.01, subsection A:

(a) The purpose of the hydrologic testing.

(b) The proposed duration of the hydrologic testing.

17. If application is made for a hydrologic testing permit pursuant to section 45-519.01, subsection B:

(a) The purpose of the hydrologic testing.

(b) The proposed duration of the hydrologic testing.

(c) The total amount of groundwater, in acre-feet, for which application is made.

(d) If the total amount of groundwater for which application is made exceeds ten acre-feet or the proposed duration of the hydrologic testing exceeds ninety days, the testing circumstances that require such withdrawals or such a testing period.

18. A sworn statement that the information contained in the application is true and correct to the best belief and knowledge of the applicant.

19. Any other information which the director may require.

45-522. Correction of application

Upon receipt of an application, the director shall endorse on the application the date of its receipt and keep a record of the application. If the director determines the application is incorrect or incomplete, the director may request additional information from the applicant. The director may conduct independent investigations as may be necessary to determine whether the application should be approved or rejected.

45-523. Notice; objections; hearing

A. Except as provided in section 45-518, subsection D and section 45-519.01, subsection F, when the permit application is determined complete and correct, the director shall, within fifteen days of such determination, 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 the active management area in which the applicant proposes to withdraw groundwater is located.

B. Notice pursuant to subsection A of this section shall state that objections to the issuance of the permit may be filed, by persons residing in the active management area, in writing, with the director within fifteen days after the last publication of notice and that objections are limited to whether the permit application meets the criteria for issuance of a permit as set forth in this article. An objection shall state the name and mailing address of the objector, be signed by the objector, the objector's agent or the objector's attorney and clearly set forth reasons why the permit should not be issued.

C. In appropriate cases, including cases where a proper written 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. The director shall, thirty days prior to the date of the hearing, give notice to the applicant and to any person who filed a proper written objection to the issuance of the permit. The hearing shall be scheduled for not less than sixty days nor more than ninety days after the expiration of the time in which to file objections.

D. 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. If an administrative hearing is held, it shall be conducted in the active management area in which the use is located.

45-524. Approval or rejection of permit application

A. The approval or rejection of an application for a permit shall be endorsed on the application and dated. If the permit is denied, the director shall notify the applicant in writing specifically stating the reasons for denial.

B. A permit issued by the director shall contain 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 and sub-basin in which the groundwater may be withdrawn.

3. The category of permit issued.
4. The specific purpose for which the permit is issued.
5. The point or points of withdrawal of groundwater pursuant to the permit.
6. The legal description of the land on which the groundwater may be used.
7. If the permit is other than a permit issued under section 45-519.01, subsection B, the total annual amount of groundwater that may be withdrawn.
8. If the permit is issued under section 45-519.01, subsection B, the total amount of groundwater that may be withdrawn.
9. If the permit is issued under section 45-515 and the director has waived the requirement of section 45-515, subsection A, paragraph 6, a statement that the director was unable to determine if there is an assured water supply for the permitted use at the permitted point of withdrawal.
10. If groundwater is to be withdrawn from a new well or wells, the depth, diameter and general specifications for each such well.
11. The duration of the permit.
12. Conditions on the permit authorized by this chapter or rules adopted pursuant to this chapter and such other information as the director may determine.

45-525. Registry of permits; reporting

A. The director shall establish and maintain a registry of permits for each active management area. The registry shall include a copy of each permit in the active management area and such other pertinent information as the director determines is necessary.

B. A person to whom a permit is issued shall notify the director of a change in name or mailing address, a change in point of withdrawal or a conveyance of a permit pursuant to section 45-520. A person to whom a permit is conveyed shall notify the director of the conveyance and shall furnish information as required by the director to keep the registry current and accurate. The director shall have continuing jurisdiction and shall issue revised permits as necessary.

C. The director may require holders of permits to file additional information with the annual report required by section 45-632 as necessary to keep the registry current and accurate. For purposes of this article, "holder" means a person to whom a permit is issued or a person to whom a permit is conveyed.

45-526. Appeals

A person whose application is denied or a person who contested a permit by filing a proper objection pursuant to section 45-523 may seek judicial review of the decision in the superior court.

45-527. Modification of permit

A permittee may seek modification of an unexpired groundwater withdrawal permit and renewal of a permit within six months prior to the date of the expiration of the permit. All permit modifications or renewal applications shall be treated in the same manner as the initial permit application and are subject to the same criteria used in issuing the initial permit.

45-528. Revocation of permits

A. After an administrative hearing in the active management area in which the use is located, the director may permanently, or temporarily, in whole or in part, revoke a groundwater withdrawal permit for any of the following reasons:

1. For a material false statement in an application to initiate, modify or renew a permit, or for a material false statement in any report required to be filed by a person withdrawing or using groundwater pursuant to the provisions of this chapter.

2. For violation of the terms of the permit.

3. For failure to exercise a permit for five or more consecutive years.

B. The director may revoke a groundwater withdrawal permit with the written consent of the permittee and in such case a hearing is not required.

C. 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.

Article 8 - Transportation of Groundwater

45-541. Transportation within a sub-basin

A. Groundwater which is withdrawn pursuant to a grandfathered right or a groundwater withdrawal permit or from an exempt well may be transported without payment of damages within a sub-basin of an active management area, subject to the limitations on location of use in sections 45-472 and 45-473.

B. Groundwater which is withdrawn by a city, town or private water company within its service area may be transported without payment of damages within its service area within a sub-basin of an active management area.

C. Groundwater which is withdrawn by a city, town or private water company within its service area may be transported pursuant to a delivery contract authorized by section 45-492, subsection C, without payment of damages, within a sub-basin of an active management area.

D. Groundwater which is withdrawn by an irrigation district within its service area may be transported without payment of damages within its service area within a sub-basin of an active management area.

45-542. Transportation between sub-basins or away from an active management area; irrigation grandfathered right; type 1 non-irrigation grandfathered right

A. Groundwater which is withdrawn pursuant to an irrigation grandfathered right may be transported between sub-basins of an active management area or away from an active management area, subject to the limitations on location of use in section 45-472.

B. Groundwater which is withdrawn pursuant to a type 1 non-irrigation grandfathered right may be transported between sub-basins of an active management area or away from an active management area, subject to the limitations on location of use in section 45-473, except that groundwater withdrawn pursuant to a type 1 non-irrigation grandfathered right may be transported away from an initial active management area only pursuant to any of the following:

1. A type 1 non-irrigation grandfathered right acquired under section 45-463 and appurtenant to land in the Tucson active management area, if the groundwater is used for the extraction or processing of minerals in an adjacent active management area or groundwater basin.

2. Section 45-469, subsection I.

C. Transportations of groundwater pursuant to this section are not subject to payment of damages if the amount transported does not exceed three acre-feet per acre per year withdrawn from retired irrigated land. Transportations of groundwater pursuant to an irrigation grandfathered right in excess of three acre-feet per acre per year withdrawn from retired irrigated land are subject to payment of damages.

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

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

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

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

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

4. Pursuant to a groundwater withdrawal permit.

5. From an exempt well.

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

C. Groundwater that is withdrawn and transported to an active management area pursuant to article 8.1 of this chapter may be transported between sub-basins of the active management area without payment of damages.

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

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

1. Groundwater may be transported:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

demonstrates to the satisfaction of the director that an emergency condition exists that makes it necessary for the city or town to transport groundwater in excess of the amount allowed under this subdivision to provide adequate fire protection for the city or town. If the director approves an application filed under this subdivision, the director shall specify the amount of groundwater that the city or town may transport in excess of the amount allowed under this subdivision and may impose other conditions that the director deems appropriate.

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

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

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

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

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

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

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

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

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

9. A metal mining facility that is located in both the upper San Pedro and Douglas groundwater basins may transport groundwater between the two basins to the extent that the transportation is necessary to comply with an order issued by the director of environmental quality pursuant to title 49, chapter 2, article 5, including an order issued by the director of environmental quality pursuant to section 49-286. Before transporting groundwater pursuant to this paragraph, a metal mining facility shall give written notice to the director of water resources, which shall include a copy of the order requiring the remedial action or mitigation activities.

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

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

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

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

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

E. For the purposes of this section:

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

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

45-545. Damage rules applicable to all transportations of groundwater

A. In active management areas and in areas outside of active management areas, in any action to recover damages, neither injury to nor impairment of the water supply of any landowner shall be presumed from the fact of transportation.

B. In determining whether there has been injury and the extent of any injury, the court shall consider all acts of the person transporting groundwater toward the mitigation of injury including:

1. Retirement of land from irrigation.

2. Discontinuance of other preexisting uses of groundwater.

3. Water conservation techniques.

4. Procurement of additional sources of water which benefit the active management area, sub-basin or landowners within the active management area or sub-basin.

C. The court may award reasonable attorney fees, expert witness expenses and fees and court costs to the prevailing party.

45-546. Weed and dust control

A person shall maintain property that is owned or controlled by the person and from which groundwater is or will be transported pursuant to this article free of noxious weeds as defined in section 3-201, Russian thistles (salsola kali) and blowing dust that creates a threat to health or safety.

45-547. Transportation of groundwater withdrawn in the Yuma basin; permit

A. Groundwater may be withdrawn in the Yuma basin for direct or indirect transportation outside of the basin, including transportation to an initial active management area, only if a permit is obtained from the director pursuant to this section.

B. A person who has the legal right to divert and use Colorado river water may apply to the director for a permit to withdraw groundwater in the Yuma basin for direct or indirect transportation outside of the basin, including transportation to an initial active management area. The director may issue the permit if all of the following apply:

1. The water to be withdrawn was originally Colorado river water applied for irrigation purposes.

2. The water to be pumped is groundwater under Arizona law that is causing waterlogging to the detriment of agricultural operations or municipal infrastructure in the Yuma basin.

3. No person is currently pumping or will pump the water for use in the Yuma basin during the term of the permit.

4. Issuance of the permit will result in water being returned to the Colorado river that otherwise would not have returned.

5. Any irrigation district or water users' association in the Yuma basin that has a contractual right with the secretary of the interior for a return flow credit for the water returned to the river pursuant to the permit has waived that right.

6. The permittee will comply with all federal laws and treaties and state laws regarding returning the water to the Colorado river.

7. If the groundwater will be pumped from wells within the exterior boundaries of an irrigation district or water users' association, that irrigation district or water users' association has consented to the issuance of the permit.

8. If the groundwater will be pumped from wells within the city limits of a city or town that holds an entitlement to Colorado river water, that city or town has not objected to the issuance of the permit.

9. If the applicant is the United States or an agent or agency of the United States, the water transported pursuant to the permit will be used as replacement water for the specific purposes identified in section 45-107.01, paragraph 2.

C. An applicant for a permit issued under this section shall apply to the director in writing and shall submit all evidence necessary to establish that the requirements of subsection B of this section apply, including a hydrologic study. The director shall review the application and determine within one hundred days of receipt of the application whether it is administratively complete. The director shall complete the substantive review of the application and shall issue or deny the permit within nine months of determining the application to be administratively complete.

D. If the application is determined to be administratively complete, the director, within fifteen days of that determination, shall give notice of the application once each week for two consecutive weeks in a newspaper of general circulation in Yuma, La Paz and Mohave counties. The director shall also give first class mail notice of the application to each city, town, private water company, irrigation district, water users' association and electrical district within Yuma county and to any multicounty water conservation district as defined in section 48-3701. The notice shall state that persons adversely affected by the withdrawal of groundwater in the Yuma basin and the transportation of that water may file written objections to the issuance of the permit with the director within fifteen days after the last publication of the 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 as prescribed by subsection B of this section.

E. If the director deems a hearing necessary or if a proper objection to the permit application has been filed, an administrative hearing shall be held before the director's decision on the application. 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 ninety days but no more than one hundred twenty days after the expiration of the time in which to file objections. If an administrative hearing is held, it shall be held in the Yuma basin.

F. A permit under this section shall contain that information determined to be necessary by the director and may include any condition determined by the director to be consistent with this section or necessary to protect the interests of this state and the water users of the Yuma basin. The director may issue a permit under this section for a period of not more than ten years and, on the director's initiative or the request of a water user in the Yuma basin, may review the permit to ensure that the requirements of subsection B of this section continue to apply. If the requirements no longer apply, the director may revoke the permit. On the request of the permit holder, the director may renew the permit if the director determines that the requirements of subsection B of this section apply. The director shall monitor withdrawals of groundwater pursuant to permits issued under this section and shall terminate a permit if the static groundwater level at the location of waterlogging identified in the permit reaches a depth greater than twenty feet below land surface or the conditions specified in subsection B, paragraph 2 of this section for issuance of the permit no longer apply.

G. Issuance of a permit under this section to the United States, an agent or agency of the United States or any other person shall not preclude issuance of a permit to any other eligible applicant to transport water for use within this state.

H. Before October 1 of each year, each permit holder shall file a written statement of intent with the director stating the quantity of groundwater the permit holder intends to withdraw and transport pursuant to its permit during the next calendar year. A permit holder who fails to submit a written statement of intent on or before October 1 of any year shall not withdraw or transport any groundwater pursuant to its permit in the following calendar year. A permit holder who files a statement of intent shall not withdraw and transport an amount of groundwater greater than that reported on its statement of intent. If, based on the statements of intent, the director determines that there is insufficient groundwater available to allow withdrawal of the total amount reported in the statements of intent filed by all permit holders, the director, on or before December 1, shall send notice by first class mail to all permit holders who filed a statement of intent. The notice shall state that the director shall allocate the groundwater available to each permit holder, up to the amount reported in the statement of intent, according to each permit holder's priority to divert and use Colorado river water, except that the director may allocate the groundwater in accordance with a written agreement signed by all permit holders who filed a statement of intent.

Article 8.1 - Withdrawals of Groundwater for Transportation to Active Management Area

45-551. Application of article; limitation on transportation to active management areas; definition

A. This article applies only to withdrawals of groundwater for transportation to active management areas.

B. Unless specifically authorized by this chapter, groundwater that is withdrawn in a groundwater basin or sub-basin outside of an initial active management area may not be transported directly or indirectly to an initial active management area.

C. Any transportation of groundwater that is authorized by this article is subject to payment of damages pursuant to section 45-545.

D. For purposes of this article, "transported indirectly" means through exchange, indirect recharge or any other method of providing water through reciprocity.

45-552. Transportation of groundwater withdrawn in McMullen valley basin to an active management area; definitions

A. A city that purchased land before January 1, 1988 in the McMullen valley groundwater basin or a person who purchased land before January 1, 1988 that was in that basin and that was in the same county as an adjacent initial active management area, either directly or in exchange for central Arizona project water allocated for agricultural purposes, may transport groundwater from that land to an adjacent initial active management area for use by any city, town, private water company or groundwater replenishment district. A city, town, private water company or groundwater replenishment district that purchases any land in the McMullen valley groundwater basin from that city or land that was in that basin and that was in the same county as an adjacent initial active management area from that person, either directly or in exchange for central Arizona project water allocated for agricultural purposes, may transport groundwater from that land to the adjacent initial active management area only for use by a city, town, private water company or groundwater replenishment district or the Arizona water banking authority pursuant to section 45-2491. The amount of groundwater that may be transported away from the basin shall be determined pursuant to subsection B of this section but shall not exceed:

1. In any year, two times the annual transportation allotment for the land determined pursuant to subsection B of this section.

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

3. Six million acre-feet in total.

B. The director shall determine the annual transportation allotment for land that is subject to this section as follows:

1. Determine each farm or portion of a farm on that land.

2. For each such farm or portion of a farm, determine the historically irrigated acres.

3. Multiply the sum of those historically irrigated acres for all such farms or portions of farms by three acre-feet per acre.

C. In an initial active management area, for purposes of determining whether to issue a certificate of assured water supply or to designate or redesignate a city, town or private water company as having an assured water supply, pursuant to section 45-576, based in whole or in part on groundwater transported from the groundwater basin under this section, the director shall consider only the amount of groundwater that can be withdrawn in the groundwater basin from a depth to one thousand two hundred feet at the site or sites of the proposed withdrawals at a rate that, when added to the existing rates of withdrawal in the area, is not expected to cause the groundwater table at the site or sites to decline more than an average of ten feet per year during the one hundred year evaluation period and does not exceed forty per cent of the groundwater that can be withdrawn in the groundwater basin, less the sum of the following amounts of groundwater in the groundwater basin:

1. The total amount on which the director has already based certificates or designations of assured water supply in an initial active management area.

2. The total amount transported to an initial active management area for other purposes.

D. For the purposes of this section:

1. Land that is owned by a city, town, private water company or groundwater replenishment district includes land that is owned indirectly through a nonprofit corporation or other entity that is owned or controlled by the city, town, private water company or groundwater replenishment district.

2. "Historically irrigated acres" means land overlying an aquifer that was irrigated with groundwater from that aquifer before January 1, 1988.

3. "Person" means person as defined in section 45-402 and a person who purchased land before January 1, 1988 includes any successor in interest of that person if the successor acquires an interest in the land by means of either of the following:

(a) Inheritance, devise or intrafamily gift or conveyance directly or in trust.

(b) The reorganization of a closely held corporation, a partnership or a limited liability company that is and remains owned by or controlled by or for the benefit of individuals related to that person.

45-553. Transportation of groundwater withdrawn in Butler Valley groundwater basin to an initial active management area

A. Groundwater may be withdrawn from land owned by this state or by a political subdivision of this state in the Butler Valley groundwater basin for transportation to an initial active management area.

B. Title to land in the Butler Valley groundwater basin that is owned by this state or a political subdivision of this state and from which groundwater is withdrawn for transportation to an initial active management area may be sold, exchanged or otherwise conveyed only to this state or to another political subdivision of this state.

45-554. Transportation of groundwater withdrawn in Harquahala irrigation non-expansion area to an initial active management area

A. A groundwater replenishment district established under title 48, chapter 27 may lease from an irrigation district located entirely within the Harquahala irrigation non-expansion area the use of one or more of the wells in the irrigation district to withdraw the groundwater that can be withdrawn from a depth to one thousand feet, at a rate that, when added to the existing rates of withdrawal in the area, does not cause the groundwater table at the site or sites to decline more than ten feet per year, for transportation to an initial active management area. The lease payments shall be made to the members of the irrigation district on a pro rata basis, per acre of land that is eligible to be irrigated under section 45-437, subsection B, minus the irrigation district's administrative costs. Wells leased under this subsection are exempt from well spacing requirements under section 45-559.

B. This state or a political subdivision of this state that owns land eligible to be irrigated under section 45-437, subsection B in the Harquahala irrigation non-expansion area may withdraw groundwater from the land for transportation to an initial active management area for its own use or use by the Arizona water banking authority pursuant to section 45-2491 only:

1. If the groundwater is withdrawn:

(a) From a depth to one thousand feet at the site or sites of the proposed withdrawals.

(b) At a rate that, when added to the existing rate of withdrawals in the area, does not cause the groundwater table at the site or sites of the withdrawals to decline more than an average of ten feet per year during the one hundred year evaluation period.

2. In an amount either:

(a) Per acre of the eligible land, not to exceed:

(i) Six acre-feet in any year.

(ii) Thirty acre-feet for any period of ten consecutive years computed in continuing progressive series beginning in the year transportation of groundwater from the land begins.

(b) Established by the director, but only if the director determines that withdrawals in an amount greater than that permitted by subdivision (a) of this paragraph will not unreasonably increase damage to residents of surrounding land and other water users in the irrigation non-expansion area, or that one or more of the entities withdrawing the groundwater will mitigate the damage to the residents and other water users.

C. If this state or one or more political subdivisions of this state own eighty per cent or more of the land that is eligible to be irrigated under section 45-437, subsection B in the irrigation non-expansion area, each of the entities may withdraw groundwater from the eligible land it owns for transportation to an initial active management area:

1. From a depth to one thousand feet at the site or sites of withdrawals.

2. From a depth between one thousand and one thousand two hundred feet at the site or sites of the withdrawals only if the director determines either that the withdrawals will not unreasonably increase

damage to residents of surrounding land or that one or more of the entities withdrawing the groundwater will mitigate the damage to the residents.

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

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

1. In any year two times the annual transportation allotment for the land determined pursuant to subsection B.

2. For any period of ten consecutive years computed in continuing progressive series beginning in the year transportation of groundwater from the land begins, ten times the annual transportation allotment for the land.

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

1. Determine each farm or portion of a farm owned or leased by the city or town in the sub-basin.

2. For each such farm or portion of a farm, determine the historically irrigated acres retired from irrigation. Multiply the sum of those historically irrigated acres by three acre-feet per acre.

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

D. For the purposes of subsections A, B and C:

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

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

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

E. A city or town in the Prescott active management area may withdraw and transport eight thousand sixty-eight acre-feet per year of groundwater from the Big Chino sub-basin of the Verde River groundwater basin to the Prescott active management area if the city or town does both of the following:

1. Relinquishes a supply of water from the central Arizona project allocated to the city or town.

2. Enters into a federally-approved settlement of the water rights claims of an Indian tribe in the Prescott active management area.

F. Notwithstanding the volume limitation in subsection E, in any year in which a city or town that qualifies under subsection E delivers more than two hundred thirty-one acre-feet of water to an Indian tribe for use on its reservation in the Prescott active management area pursuant to a federally-approved Indian water rights settlement, the city or town may withdraw and transport additional groundwater from the Big Chino sub-basin to the Prescott active management area in an amount equal to the amount by which those deliveries exceed two hundred thirty-one acre-feet.

G. Groundwater that is withdrawn and transported pursuant to subsections E and F may be delivered to and used by any city, town or Indian tribe in the Prescott active management area without regard to whether that entity withdraws and transports the water.

45-556. Transportation fee; annual adjustment; credits; enforcement

A. Except as provided in subsection B of this section, a person who directly or indirectly transports groundwater, withdrawn in a groundwater basin or sub-basin as provided by this article or in the Pinal active management area, away from the county in which it was withdrawn to an initial active management area shall pay annually to the county a groundwater transportation fee determined by the director for each acre-foot of groundwater transported directly or indirectly away from the county, less any amount of central Arizona project water actually used on the property from which the groundwater is transported.

B. A person is not required to pay a transportation fee under this section for stored water withdrawn pursuant to recovery well permits issued by the director pursuant to this title.

C. Except as provided in subsection D of this section the director shall set the fee as follows for the cumulative amount of groundwater transported away from the county, less any amount of central Arizona project water actually used on the property from which the groundwater is transported:

<u>Net Groundwater Transported</u>	<u>Fee Per Acre-Foot</u>
0 - 1,000,000 acre-feet	\$ 3.00
1,000,001 - 2,000,000 acre-feet	\$ 5.00
2,000,001 - 3,000,000 acre-feet	\$ 7.50
3,000,001 - 4,000,000 acre-feet	\$10.00
4,000,001 - 5,000,000 acre-feet	\$15.00
Over 5,000,000 acre-feet	\$30.00

D. The director shall annually adjust the dollar amount of the fee according to the annual changes in the GDP price deflator, as defined in section 41-563, using the 1993 calendar year as the base year. The director shall immediately notify all concerned parties of the fee adjustments under this subsection.

E. Credits are allowed against the fees imposed by this section as described and in the amounts provided under this subsection. If the amount of the credit exceeds the amount of the fee imposed for any year, the unused portion of the credit may be carried forward and applied to subsequent years' fees until the amount of the credit is exhausted. The allowable credits are as follows:

1. The amount of any increase in property tax revenues, including contributions in lieu of property taxes under title 9, chapter 4, article 3, derived from remote municipal property, as defined in section 42-15251, from which the groundwater is withdrawn. The credit shall account for increased revenues due to improvements to the property and increased revenues due to higher property tax valuations and assessment ratios resulting from changes in use of the property. The credit shall not account for increased revenues due to normal market or economic factors. The amount of the credit for any year is the sum of the amounts computed under subdivisions (a) and (b) as follows:

(a) Delete from consideration under this subdivision any property with respect to which an amount is computed under subdivision (b). Subtract the amount of property tax or in lieu revenues that would have been derived from the remaining property during the immediately preceding tax year if the use of and improvements to the property had remained unchanged since the date the city or town acquired the property from the amount of property tax or in lieu revenues actually derived from that property during the immediately preceding tax year. If a city or town conveys all or part of its interest in remote municipal property to another political subdivision, the political subdivision succeeds to the credit allowed under this section. The amount of credit computed under this subdivision shall be computed each year, beginning in the year groundwater is first transported, and, if not used to offset the fee under this section, shall be cumulated from year to year.

(b) This subdivision applies with respect to any portion of the remote municipal property that, before January 1, 1992, was classified at that time as class four property for purposes of property taxation under title 42 but was developed or improved at any time after December 31, 1991 and is not currently classified as class two property. Subtract the amount of property tax or in lieu revenues that would have been derived from that developed or improved portion of the remote municipal property during the immediately preceding tax year if the use of and improvements to the property had remained unchanged since the date the city or town acquired the property from the amount of property tax or in lieu revenues actually derived from that portion of the property during the immediately preceding tax year. If a city or town conveys all or part of its interest in remote municipal property to another political subdivision, the political subdivision succeeds to the credit allowed under this section. The amount of credit computed under this subdivision shall be computed each year, beginning in the year that the property is developed or improved and reclassified for tax purposes, and, if not used to offset the fee under this section, shall be cumulated from year to year.

2. An amount equal to the market value of land donated to the county if the county agrees in writing to prohibit or limit the withdrawal of groundwater from the land. The amount of the credit shall account for the reduced value of the land due to the groundwater withdrawal limitations.

3. An amount agreed to by intergovernmental agreement between the county in which the groundwater is withdrawn and the city, town or other person transporting the groundwater.

F. The board of supervisors of a county to which fees are due and payable under this section may request the county attorney to commence and prosecute any action or proceeding to enforce the collection of the fees.

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

A. Except as provided in subsections B and C of this section:

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

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

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

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

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

C. Groundwater transported to an adjoining initial active management area pursuant to section 45-555, subsections E and F shall be deemed to be legally available under the rules adopted pursuant to section 45-576.

45-558. Weeds and dust

A person shall maintain property owned by the person and from which groundwater is or will be transported pursuant to this article free of noxious weeds as defined in section 3-201, Russian thistles (salsola kali) and blowing dust that creates a threat to health or safety.

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

Except as provided in section 45-554, subsection A and except for groundwater withdrawn and transported pursuant to section 45-555, subsections E and F, a person may not use a well constructed after September 21, 1991 for the purpose of withdrawing groundwater for transportation to an active management area pursuant to article 8.1 of this chapter unless the person wishing to use the well for that purpose applies to the director for approval and the director approves the application. The director shall approve the application if the director determines that the withdrawals for that purpose will not unreasonably increase damage to surrounding land or other water users from the concentration of wells. In making this determination, the director shall follow the criteria for proposed withdrawals in the rules adopted pursuant to section 45-598, subsection A.

Article 9 – Management

45-561. Definitions

In this article, unless the context otherwise requires:

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

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

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

4. "Incidental recharge factor" means the ratio of the amount of incidental recharge attributable to a municipal provider during a calendar year to the amount of water withdrawn, diverted or received for delivery by the municipal provider for use within its service area during the year. The amount of incidental recharge attributable to a municipal provider during a calendar year is the amount of water that is incidentally recharged during the year after it is withdrawn, diverted or received for delivery by the municipal provider for use within its service area.

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

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

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

8. "Management period" means a period of years prescribed by sections 45-564 through 45-568 during which a prescribed management plan applies.

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

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

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

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

(ii) If the municipal provider has not made a request to the director as described in section 45-463, subsection F, the amount of groundwater that the director would have been required to include in determining whether to designate or redesignate the municipal provider as having an assured water supply, as computed under section 45-463, subsection F, if the municipal provider had made a request to the director as described in that subsection on January 1 of the calendar year for which the calculation of mined groundwater is being made.

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

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

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

13. "Small municipal provider" means a municipal provider that supplies two hundred fifty acre-feet or less of water for non-irrigation use during a calendar year. For purposes of this paragraph, the amount of

untreated water that is supplied by a large untreated water provider during a year shall not be counted in determining whether the municipal provider supplied two hundred fifty acre-feet or less of water for non-irrigation use.

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

45-562. Management goals for active management areas

A. The management goal of the Tucson, Phoenix and Prescott active management areas is safe-yield by January 1, 2025, or such earlier date as may be determined by the director.

B. The management goal of the Pinal active management area is to allow development of non-irrigation uses as provided in this chapter and to preserve existing agricultural economies in the active management area for as long as feasible, consistent with the necessity to preserve future water supplies for non-irrigation uses.

C. The management goal of the Santa Cruz active management area is to maintain a safe-yield condition in the active management area and to prevent local water tables from experiencing long-term declines.

D. Except as otherwise provided for the Santa Cruz active management area, all initial active management areas are subject to all provisions of this chapter.

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

A. The director shall develop a management plan for each initial active management area for each of five management periods pursuant to the guidelines prescribed in sections 45-564 through 45-568 and shall adopt the plans only after public hearings held pursuant to sections 45-570 and 45-571. The plans shall include a continuing mandatory conservation program for all persons withdrawing, distributing or receiving groundwater designed to achieve reductions in withdrawals of groundwater.

B. The director shall develop a management plan for the Santa Cruz active management area for the third, fourth and fifth management periods pursuant to the guidelines prescribed in sections 45-566, 45-566.01, 45-567, 45-567.01, 45-568 and 45-568.01 and shall adopt the plans only after public hearings held pursuant to sections 45-570 and 45-571. The plans shall include a continuing mandatory conservation program designed to achieve the management goal of the active management area for all persons withdrawing water, other than stored water, from a well and all persons distributing or receiving water, other than stored water, from a well. The plans shall also include criteria for the location of new wells and replacement wells in new locations consistent with the management goal of the active management area.

45-563.01. Water conservation report; per capita use; non-per capita conservation programs

At least once every three years the director shall issue a report containing:

1. The per capita water use in the service area of each municipal provider in each active management area.

2. A brief description and evaluation of the efforts to promote water conservation by each municipal provider that is subject to a non-per capita conservation program established under this article.

3. Any other information the director deems appropriate to allow the public to assess and compare the water conservation efforts of municipal providers in each active management area.

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

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

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

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

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

C. Except as provided in subsection D of this section, a person who is exempt from the irrigation water duties established for a farm pursuant to subsection A of this section or who owns or uses groundwater

on a farm for which irrigation water duties are prohibited in subsection B of this section shall not allow any groundwater to flow off the surface of the farm's irrigation acres unless the groundwater is used for a reasonable and beneficial use approved in writing by the director.

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

1. Preventing groundwater from flowing off the surface of the farm's irrigation acres would not be economically feasible.

2. Any groundwater that will flow off the surface of the farm's irrigation acres will be used by a person with an exempt well in lieu of groundwater that otherwise would have been withdrawn from that well.

45-564. Management plan for first management period; guidelines

A. For the first management period, 1980 to 1990, the director shall promulgate management plans for the Phoenix, Tucson and Prescott active management areas not later than January 1, 1983 and for the Pinal active management area not later than July 1, 1985. In each plan, the director shall establish:

1. An irrigation water duty for each farm unit in the active management area. The irrigation water duty shall be calculated as the quantity of water reasonably required to irrigate the crops historically grown in a farm unit and shall assume conservation methods being used in the state which would be reasonable for the farm unit including lined ditches, pump-back systems, land leveling and efficient application practices, but not including a change from flood irrigation to drip irrigation or sprinkler irrigation.

2. A conservation program for all non-irrigation uses of groundwater. For municipal uses, the program shall require reasonable reductions in per capita use and such other conservation measures as may be appropriate for individual users. For industrial uses including industrial uses within the exterior boundaries of the service area of a city, town, private water company or irrigation district, the program shall require use of the latest commercially available conservation technology consistent with reasonable economic return.

3. Economically reasonable conservation requirements for the distribution of groundwater by cities, towns, private water companies and irrigation districts within their service areas.

B. Within thirty days after the management plan for the first management period is adopted, the director shall give written notice of:

1. The irrigation water duty for the farm unit to each person in the farm unit who is entitled to withdraw or receive groundwater pursuant to an irrigation grandfathered right and to each person distributing groundwater pursuant to an irrigation grandfathered right.

2. The municipal conservation requirements included in the management plan for reductions in per capita use and for the use of appropriate conservation measures by individual users to each person who is entitled to withdraw or distribute groundwater for municipal use in the active management area.

3. The industrial conservation requirements included in the management plan for each person who is entitled to withdraw or receive groundwater for an industrial use in the active management area.

4. The conservation requirements included in the management plan for the distribution of groundwater by cities, towns, private water companies and irrigation districts within their service areas to each city, town, private water company and irrigation district in the active management area.

C. Except as provided in section 45-411.01, subsections A and B and except for a person who obtains a variance under section 45-574, and except as provided in subsection D of this section, all persons notified pursuant to subsection B of this section shall comply with the applicable irrigation water duty or conservation requirements within two years from the date of the notice and shall remain in compliance until the compliance date for any applicable irrigation water duty or conservation requirements established in the management plan for the second management period. A person who obtains a variance under section 45-574 shall comply with the applicable irrigation water duty or conservation requirements by the date specified in the variance and shall remain in compliance until the compliance date for any applicable irrigation water duty or conservation requirements established in the management plan for the second management period.

D. A municipal provider which distributes groundwater to an individual user for which an intermediate municipal conservation requirement has been established pursuant to section 45-565, subsection D is not responsible or accountable pursuant to the first management plan for a failure by the

individual user to comply with the intermediate conservation requirement occurring on or after the compliance date for the intermediate conservation requirement.

E. In addition to the provisions of the management plan for the first management period prescribed by subsection A of this section, the director may include a program for the augmentation of the water supply of the Tucson active management area including incentives for artificial groundwater recharge.

[45-565. Management plan for second management period; guidelines](#)

A. For the second management period, 1990 to 2000, the director shall promulgate a management plan for each initial active management area not later than January 1, 1988. In each plan the director shall:

1. Except as provided in section 45-411.01, subsection A, establish a new irrigation water duty for each farm unit to be reached by the end of the second management period and may establish one or more intermediate water duties to be reached at specified intervals during the second management period. Except as provided in subsection G of this section, the irrigation water duty and any intermediate water duties shall be calculated as the quantity of water reasonably required to irrigate the crops historically grown in the farm unit and shall assume the maximum conservation consistent with prudent long-term farm management practices within areas of similar farming conditions, considering the time required to amortize conservation investments and financing costs.

2. Establish additional conservation requirements for all non-irrigation uses of groundwater to be achieved by the end of the second management period and may establish intermediate conservation requirements to be achieved at specified intervals during the second management period. For municipal uses, except as provided in section 45-565.01 and paragraphs 3 and 4 of this subsection, the program shall require additional reasonable reductions in per capita use to those required in the first management period and use of such other conservation measures as may be appropriate for individual users. For industrial uses including industrial uses within the exterior boundaries of the service area of a city, town, private water company or irrigation district, the program shall require the use of or establish conservation requirements based on the use of the latest commercially available conservation technology consistent with reasonable economic return.

3. Establish conservation or rate of use requirements for deliveries of untreated water by large untreated water providers based on the use of the latest commercially available conservation technology consistent with reasonable economic return.

4. Establish reasonable conservation requirements for small municipal providers.

5. Except as provided in section 45-411.01, subsection B, establish additional economically reasonable conservation requirements for the distribution of groundwater by cities, towns, private water companies and irrigation districts within their service areas.

6. Include a program for augmentation of the water supply of the active management area including incentives for artificial groundwater recharge.

7. In cooperation with the department of environmental quality, include an assessment of groundwater quality in the active management area and any proposed program for groundwater quality protection. Any such program shall be submitted to the legislature for any necessary enabling legislation or coordination with existing programs of the department of environmental quality.

B. Within thirty days after the management plan for the second management period is adopted, the director shall give written notice of:

1. The irrigation water duties and conservation requirements in the manner and to the persons prescribed in section 45-564, subsection B, except that the director shall give written notice of any municipal conservation requirement which is substantially identical to an industrial conservation requirement only to the individual users to which the municipal conservation requirement applies, and which have been identified as such by the municipal provider on a form provided by the department and received by the director no later than ninety days before the adoption of the management plan. If the municipal conservation requirement for the use of appropriate conservation measures by individual users is not substantially identical to an industrial conservation requirement, or if the director has not been notified of an individual user by a municipal provider, the director shall give written notice of a municipal conservation requirement to either the individual user or a municipal provider that directly serves the individual user.

2. The conservation requirements for small municipal providers to each small municipal provider in the active management area.

C. Two years before the compliance date specified in the management plan for any irrigation water duty, intermediate water duty, conservation requirement or intermediate conservation requirement, the

director shall give additional written notice by first class mail to the last known addresses of the persons prescribed in subsection B of this section, except as provided in subsection D of this section.

D. If the director establishes in the management plan an intermediate municipal conservation requirement that subjects an individual user to a water allotment or application rate identical to the annual water allotment or application rate computed for the individual user under a conservation requirement for the use of appropriate conservation measures adopted in the management plan for the first management period, the compliance date for the intermediate conservation requirement may be two years or less from the date of adoption of the management plan for the second management period and no additional written notice to the individual user is required.

E. Except for a person who obtains a variance under section 45-574 or who is exempt from irrigation water duties under section 45-563.02, subsection A, all persons notified pursuant to subsection B of this section shall comply with the applicable irrigation water duty or conservation requirements for the second management period not later than January 1, 2000 and shall remain in compliance until the compliance date for any applicable irrigation water duty or conservation requirements established in the management plan for the third management period. If intermediate water duties or intermediate conservation requirements have been established, a person to whom those water duties or conservation requirements apply shall comply with the intermediate water duties or conservation requirements not later than the compliance date specified in the management plan, unless the person obtains a variance pursuant to section 45-574 or is exempt from intermediate water duties pursuant to section 45-563.02, subsection A. A person who obtains a variance under section 45-574 shall comply with the applicable irrigation water duty or conservation requirements by the date specified in the variance and shall remain in compliance until the subsequent compliance date for any applicable irrigation water duty or conservation requirements established in the management plan for the second management period or, if that management plan does not establish any applicable subsequent compliance date, until the applicable compliance date established in the management plan for the third management period.

F. In addition to the provisions of the management plan for the second management period prescribed by subsection A of this section, the director shall:

1. Include a program for conservation assistance to water users within the active management area.
2. Establish the historic annual net natural recharge for any groundwater replenishment district in the active management area, computed by determining the net natural recharge, as defined by section 48-4401, for the groundwater basin beneath the district during calendar years 1961 through 1990 and dividing the result by thirty.

G. A person who is entitled to use groundwater pursuant to an irrigation grandfathered right may apply to the director at any time during the management period for an exemption from the irrigation water duties established under subsection A, paragraph 1 of this section. The director shall grant the exemption if the person demonstrates to the director's satisfaction that granting the exemption is consistent with achieving the management goal of the active management area and that one of the following applies:

1. Withdrawal of groundwater pursuant to the irrigation grandfathered right during the management period will intercept groundwater that would otherwise flow out of and be lost to the active management area within the next fifteen years without entering another active management area.
2. Withdrawal of groundwater pursuant to the irrigation grandfathered right during the management period will prevent encroachment of a rising depth to groundwater level that will cause waterlogging problems within the next fifteen years.

45-565.01. Non-per capita conservation program for municipal providers: second management period

A. In addition to the provisions of the management plan for the second management period prescribed by section 45-565, subsection A, not later than January 1, 1995 the director shall include in the management plan a non-per capita conservation program for municipal providers that requires a municipal provider approved for the program to implement specific conservation programs within its service area, including all of the following:

1. Residential and nonresidential conservation programs for interior and exterior water use.
2. A public education program relating to water conservation.
3. A program to meter all service area connections, except connections to fire services, dwelling units in multifamily residential structures, mobile homes in mobile home parks with master meters and construction users.

B. In a non-per capita conservation program established under this section, the director shall establish a standard incidental recharge factor for all municipal providers that apply for the program, except for municipal providers that are members of a groundwater replenishment district established under title 48, chapter 27. A municipal provider that applies for the non-per capita conservation program may request in its application that the director establish an incidental recharge factor for the municipal provider that is different than the standard incidental recharge factor established in the program. The director may establish a different incidental recharge factor for the municipal provider if the municipal provider demonstrates to the satisfaction of the director that the ratio of the average annual amount of incidental recharge expected to be attributable to the municipal provider during the management period to the average annual amount of water expected to be withdrawn, diverted or received for delivery by the municipal provider for use within its service area during the management period is different than the standard incidental recharge factor.

C. A municipal provider may apply for a non-per capita conservation program established under this section if any of the following applies:

1. The municipal provider is a member of a groundwater replenishment district established under title 48, chapter 27.

2. The service area of the municipal provider has qualified as a member service area under title 48, chapter 22, or as a water district member service area under title 48, chapter 28, and the conditions established under section 45-576.01, subsection B, paragraphs 2 and 3 are met by the conservation district or the water district, as applicable, for the active management area in which the service area is located.

3. The municipal provider has developed a plan to both:

(a) Reduce the proportion of mined groundwater supplied by it for use within its service area such that the result computed by dividing the volume of mined groundwater supplied by the provider for use within its service area in a year by the volume of all water supplied by the provider for use within its service area in that year does not exceed:

(i) Fourteen-fifteenths for 1996.

(ii) Thirteen-fifteenths for 1997.

(iii) Four-fifths for 1998.

(iv) Eleven-fifteenths for 1999.

(v) Two-thirds for 2000.

(vi) Three-fifths for 2001.

(vii) Eight-fifteenths for 2002.

(viii) Seven-fifteenths for 2003.

(ix) Two-fifths for 2004.

(x) One-third for 2005.

(xi) Four-fifteenths for 2006.

(xii) One-fifth for 2007.

(xiii) Two-fifteenths for 2008.

(xiv) One-fifteenth for 2009.

(b) Deliver no mined groundwater for use within its service area after January 1, 2010.

4. The municipal provider is designated as having an assured water supply under rules adopted by the director pursuant to section 45-576.

5. The municipal provider has applied to the director to be designated as having an assured water supply under rules adopted by the director pursuant to section 45-576 and the director has not yet granted or denied the application.

6. The municipal provider is a city or town that is deemed to have an assured water supply under section 45-576, subsection E and both of the following apply:

(a) The municipal provider has not applied to the director to be designated as having an assured water supply under rules adopted by the director pursuant to section 45-576.

(b) The municipal provider can demonstrate that if it was applying to the director to be designated as having an assured water supply under rules adopted by the director pursuant to section 45-576, its projected groundwater use would be found to be consistent with achieving the management goal of the active management area under the criteria contained in those rules.

D. The director shall prescribe and furnish an application form for a non-per capita conservation program established under this section that includes the following:

1. If the municipal provider requests an incidental recharge factor different than the standard incidental recharge factor established by the director pursuant to subsection B of this section:

(a) A copy of a hydrological study that demonstrates the amount of water withdrawn, diverted or received for delivery by the municipal provider for use within its service area during each of the preceding five years and the amount of incidental recharge that was attributable to the municipal provider during each of those years.

(b) A copy of a hydrological study that projects the average annual amount of water that will be withdrawn, diverted or received for delivery by the municipal provider for use within its service area during the management period and the average annual amount of incidental recharge that will be attributable to the municipal provider during the management period.

2. If the municipal provider is applying for the program under subsection C, paragraph 3 of this section, a copy of the plan described in that paragraph.

3. If the municipal provider is applying for the program under subsection C, paragraph 6 of this section, information demonstrating that if the municipal provider was applying to the director to be designated as having an assured water supply under rules adopted by the director pursuant to section 45-576, the municipal provider's projected groundwater use would be found to be consistent with achieving the management goal of the active management area under the criteria contained in those rules.

4. A description of the conservation programs currently being implemented by the municipal provider, and any conservation programs that the municipal provider intends to implement if it is approved for the non-per capita conservation program, including a time schedule for implementing the programs.

5. Any other information that the director may require.

E. The director shall approve a municipal provider's application for a non-per capita conservation program established under this section only if the following conditions are satisfied:

1. The municipal provider agrees in writing to implement specific conservation programs that will result in achieving water use efficiency in the municipal provider's service area equivalent to the water use efficiency that was assumed by the director in establishing the municipal provider's per capita conservation requirements pursuant to section 45-565, subsection A, paragraph 2, including the programs described in subsection A of this section.

2. If the municipal provider is applying for the program under subsection C, paragraph 3 of this section, the municipal provider has demonstrated to the satisfaction of the director that it will reduce the proportion of mined groundwater supplied by it for use within its service area to the proportions described in subsection C, paragraph 3, subdivision (a) of this section, and that it will not deliver mined groundwater for use within its service area after January 1, 2010.

3. If the municipal provider is applying for the program under subsection C, paragraph 5 of this section, the director has made a preliminary determination that the municipal provider's projected groundwater use is consistent with achieving the management goal of the active management area under the criteria contained in rules adopted by the director pursuant to section 45-576. A preliminary determination for purposes of this paragraph is not binding on the director at the time the director determines whether to designate the municipal provider as having an assured water supply.

4. If the municipal provider is applying for the program under subsection C, paragraph 6 of this section, the director has made a preliminary determination that if the municipal provider was applying to the director to be designated as having an assured water supply under rules adopted by the director pursuant to section 45-576, the municipal provider's projected groundwater use would be found to be consistent with achieving the management goal of the active management area under those rules. A preliminary determination of the director for purposes of this paragraph is not binding on the director at the time the director determines whether to designate the municipal provider as having an assured water supply.

F. A municipal provider that is approved for a non-per capita conservation program established under this section shall comply with any individual user requirements prescribed pursuant to section 45-565, subsection A, paragraph 2, except as provided in section 45-571.02.

G. The director shall include in a non-per capita conservation program established under this section:

1. A requirement that a municipal provider that applied for the program under subsection C, paragraph 3 of this section shall reduce the proportion of mined groundwater supplied by it for use within its service area to the proportions described in subsection C, paragraph 3, subdivision (a) of this section. The director may excuse a municipal provider's failure to comply with the requirement during any year if the

municipal provider demonstrates to the satisfaction of the director that the municipal provider's failure to comply with the requirement was due to drought conditions or the failure of a surface water distribution system.

2. A requirement that a municipal provider that applied for the program under subsection C, paragraph 4 or 5 of this section shall not supply groundwater for use within its service area in an amount that exceeds that amount of groundwater that the municipal provider may supply for use within its service area consistent with rules adopted by the director pursuant to section 45-576. For purposes of this requirement, if a municipal provider has applied to the director to be designated as having an assured water supply under rules adopted by the director pursuant to section 45-576 and the application is not approved, the amount of groundwater that the municipal provider may supply for use within its service area consistent with the rules is the amount of groundwater that the director determines the municipal provider would have been allowed to supply consistent with the rules if the application had been granted.

H. A municipal provider that applies for a non-per capita conservation program under this section shall comply with the per capita conservation requirements established under section 45-565, subsection A, paragraph 2 until the director approves the application. If the municipal provider's application for the non-per capita conservation program is approved by the director, the provider is exempt from the per capita conservation requirements prescribed under section 45-565, subsection A, paragraph 2.

45-566. Management plan for third management period; guidelines

A. For the third management period, 2000 to 2010, the director shall promulgate a management plan for each initial active management area not later than January 1, 1998. The director:

1. Except as provided in section 45-411.01, subsection A and section 45-563.02, subsection B, shall establish in each plan a new irrigation water duty for each farm unit to be reached by the end of the third management period and may establish one or more intermediate water duties to be reached at specified intervals during the third management period. Except as provided in subsection D of this section, the irrigation water duty or intermediate water duties for the third management period shall be calculated as the quantity of water reasonably required to irrigate the crops historically grown in the farm unit and shall be computed by dividing the total irrigation requirement per acre of those crops by an irrigation efficiency of eighty per cent, except that a lower irrigation efficiency may be used for a farm unit or portion of a farm unit determined by the director to have limiting soils or excessive slopes and for a farm unit where orchard crops were historically grown and continue to be grown. After computing the irrigation water duty or intermediate water duties for the third management period, the director may adjust the highest twenty-five per cent of the water duties within an area of similar farming conditions by reducing each water duty in an amount up to ten per cent, except that in making the adjustment, no water duty may be reduced to an amount less than the greater of the following:

(a) The highest water duty within the lowest seventy-five per cent of the water duties computed within the area of similar farming conditions for the third management period.

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

2. Shall establish in each plan, except the plan for the Santa Cruz active management area, additional conservation requirements for all non-irrigation uses of groundwater to be achieved by the end of the third management period and may establish intermediate conservation requirements to be achieved at specified intervals during the third management period. In the plan for the Santa Cruz active management area, the director shall establish additional conservation requirements for all non-irrigation uses of water, other than stored water, withdrawn from a well to be achieved by the end of the third management period and may establish intermediate conservation requirements to be achieved at specified intervals during the third management period. For municipal uses, except as provided in section 45-566.01 and paragraphs 3 and 4 of this subsection, the program in each plan shall require additional reasonable reductions in per capita use to those required in the second management period and use of such other conservation measures as may be appropriate for individual users. For industrial uses, including industrial uses within the exterior boundaries of the service area of a city, town, private water company or irrigation district, the program in each plan shall require the use of or establish conservation requirements based on the use of the latest commercially available conservation technology consistent with reasonable economic return.

3. Shall establish in each plan conservation or rate of use requirements for deliveries of untreated water by large untreated water providers based on the use of the latest commercially available conservation technology consistent with reasonable economic return.

4. Shall establish in each plan reasonable conservation requirements for small municipal providers.
 5. Except as provided in section 45-411.01, subsection B, shall establish in each plan, except the plan for the Santa Cruz active management area, additional economically reasonable conservation requirements for the distribution of groundwater by cities, towns, private water companies and irrigation districts within their service areas. In the plan for the Santa Cruz active management area, the director shall establish additional economically reasonable conservation requirements for the distribution of water, other than stored water, withdrawn from wells, for cities, towns, private water companies and irrigation districts within their service areas.
 6. Shall include in each plan a program for additional augmentation of the water supply of the active management area, if feasible, including incentives for artificial groundwater recharge.
 7. Shall, in cooperation with the department of environmental quality, include in each plan an assessment of groundwater quality in the active management area and any proposed program for groundwater quality protection. Any such program shall be submitted to the legislature for any necessary enabling legislation or coordination with existing programs of the department of environmental quality.
 8. Shall include in each plan a program for conservation assistance to water users within the active management area.
 9. May include in each plan a program for the purchase and retirement of grandfathered rights by the department to begin no earlier than January 1, 2006.
 10. Shall establish in the plan for an active management area in which a groundwater replenishment district is located the historic annual net natural recharge for the groundwater replenishment district, computed by determining the net natural recharge, as defined by section 48-4401, for the groundwater basin beneath the district during calendar years 1967 through 1996 and dividing the result by thirty.
 11. Shall include in the plan for the Santa Cruz active management area criteria for the location of new wells and replacement wells in new locations consistent with the management goal of the active management area.
 12. Shall include in the plan for the Santa Cruz active management area an evaluation of the potential impact of the plan on the Tucson active management area.
 13. Shall include in the plans for the Tucson, Phoenix and Pinal active management areas recommendations to the Arizona water banking authority regarding all of the following:
 - (a) Whether additional water storage in the active management area would help to achieve the management goal for the active management area.
 - (b) Where additional water storage in the active management area would be most useful to achieve the management goal for the active management area.
 - (c) Whether extinguishment of long-term storage credits accrued or to be accrued by the Arizona water banking authority would help to achieve the management goal for the active management area.
- B. Within thirty days after the management plan for the third management period is adopted, the director shall give written notice in the manner and to the persons prescribed in section 45-565, subsection B. Two years before the compliance date specified in the management plan for any irrigation water duty, intermediate water duty, conservation requirement or intermediate conservation requirement, the director shall give additional written notice by first class mail to the last known addresses of the persons prescribed in section 45-565, subsection B.
- C. Except for a person who has obtained a variance under section 45-574 or who is exempt from irrigation water duties under section 45-563.02, subsection A, all persons notified pursuant to subsection B of this section shall comply with the applicable irrigation water duty or conservation requirements for the third management period not later than January 1, 2010 and shall remain in compliance until the compliance date for any applicable irrigation water duty or conservation requirements established in the management plan for the fourth management period. If intermediate water duties or intermediate conservation requirements have been established, a person to whom those water duties or conservation requirements apply shall comply with the intermediate water duties or conservation requirements not later than the compliance date specified in the management plan unless the person obtains a variance pursuant to section 45-574 or is exempt from intermediate water duties under section 45-563.02, subsection A. A person who obtains a variance under section 45-574 shall comply with the applicable irrigation water duty or conservation requirements by the date specified in the variance and shall remain in compliance until the subsequent compliance date for any applicable irrigation water duty or conservation requirements established in the management plan for the third management period or, if that management plan does not establish any

applicable subsequent compliance date, until the applicable compliance date established in the management plan for the fourth management period.

D. A person who is entitled to use groundwater pursuant to an irrigation grandfathered right may apply to the director at any time during the management period for an exemption from the irrigation water duties established pursuant to subsection A, paragraph 1 of this section. The director shall grant the exemption if the person demonstrates to the director's satisfaction that granting the exemption is consistent with achieving the management goal of the active management area and that one of the following applies:

1. Withdrawal of groundwater pursuant to the irrigation grandfathered right during the management period will intercept the groundwater that would otherwise flow out of and be lost to the active management area within the next fifteen years without entering another active management area.

2. Withdrawal of groundwater pursuant to the irrigation grandfathered right during the management period will prevent encroachment of a rising depth to groundwater level that will cause waterlogging problems within the next fifteen years.

45-566.01. Non-per capita conservation program for municipal providers; third management period

A. In addition to the provisions of the management plan for the third management period prescribed by section 45-566, subsection A, paragraph 2, no later than January 1, 2008, the director shall modify the management plan to replace the non-per capita conservation program for municipal providers in effect on the effective date of this amendment to this section with a non-per capita conservation program that is consistent with the guidelines in this amendment to this section. Except as provided in subsections J, K, L and M of this section, all municipal providers shall comply with the non-per capita conservation program by the date prescribed in subsection I of this section. The non-per capita conservation program shall require a municipal provider regulated under the program to implement water conservation measures in its service area, including all of the following:

1. A public education program relating to water conservation.

2. A program to meter all service area connections, except connections to fire services, dwelling units in multifamily residential structures, mobile homes in mobile home parks with master meters and construction users.

3. One or more additional conservation measures selected by the provider from the list of conservation measures adopted by the director pursuant to subsection B of this section, subject to approval by the director pursuant to subsection G or H of this section. The program may prescribe the number of additional conservation measures that a provider must implement under this paragraph based on the number of service connections in the provider's service area.

B. The director shall include in the non-per capita conservation program a list and description of conservation measures that municipal providers regulated under the program must select from to comply with the requirements adopted pursuant to subsection A, paragraph 3 of this section.

C. In addition to the requirements prescribed in subsection A of this section, a municipal provider regulated under the non per-capita conservation program shall:

1. Include in its annual reports filed pursuant to section 45-632 a copy of the provider's current water rate structure unless no changes have been made to the rate structure since it was last submitted to the director. A municipal provider regulated under the non-per capita conservation program is encouraged to adopt a water rate structure that promotes efficient use of water, subject to approval by the corporation commission if the provider is a public service corporation.

2. For at least five years after a year in which the municipal provider is regulated under the non-per capita conservation program, keep and maintain accurate records verifying that the municipal provider implemented the conservation measures required by the non-per capita conservation program during that year.

D. The director shall design the non-per capita conservation program to achieve water use efficiency in the service areas of municipal providers regulated under the program equivalent to the water use efficiency that was assumed by the director in establishing the municipal provider's per capita conservation requirements pursuant to section 45-566, subsection A, paragraph 2.

E. Within thirty days after the management plan for the third management period is modified to include the non-per capita conservation program required by this amendment to this section, the director shall give written notice of the program to all municipal providers.

F. Except as provided in subsections J, K, L and M of this section:

1. No later than July 1, 2009, a municipal provider notified of the non-per capita conservation program pursuant to subsection E of this section shall submit to the director, on a form prescribed by the director, a provider profile that contains the following information:

(a) A description of the municipal provider's existing service area characteristics and water use patterns.

(b) A description of the conservation measures the municipal provider is currently implementing and any additional conservation measures that the provider intends to implement to comply with the non-per capita conservation program.

(c) An explanation of how each conservation measure described in the provider profile is relevant to the municipal provider's existing service area characteristics or water use patterns.

2. No later than the date specified in the management plan, a municipal provider notified of the non-per capita conservation program pursuant to section 45-571.01, subsection B shall submit to the director, on a form prescribed by the director, a provider profile that includes the information described in paragraph 1 of this subsection.

G. Within ninety days after receiving a municipal provider's provider profile under subsection F of this section, the director shall approve or disapprove the provider profile and send written notice of the decision to the municipal provider. The director shall approve the provider profile if the director determines that the profile contains information demonstrating that the municipal provider will implement at least the minimum number of conservation measures required by the non-per capita conservation program and that the conservation measures are reasonably relevant to the municipal provider's existing service area characteristics or water use patterns. If the director disapproves the provider profile, the director shall include with the written notice of the decision the reasons for the disapproval. A decision of the director disapproving a provider profile is an appealable agency action pursuant to title 41, chapter 6, article 10. If the director fails to send the municipal provider written notice approving or disapproving the municipal provider's provider profile within ninety days after receiving the provider profile, the provider profile shall be deemed approved.

H. If the director disapproves a municipal provider's provider profile pursuant to subsection G of this section, within ninety days after the date of the director's written notice disapproving the provider profile, or within ninety days after the director's decision is final if the municipal provider files a timely notice of appeal of the decision pursuant to title 41, chapter 6, article 10, the municipal provider shall revise the provider profile to correct the deficiencies identified by the director in the written notice and submit the revised provider profile to the director. Within ninety days after receiving a municipal provider's revised provider profile pursuant to this subsection, the director shall approve or disapprove the revised provider profile pursuant to subsection G of this section. If the director disapproves the revised provider profile:

1. The decision is an appealable agency action pursuant to title 41, chapter 6, article 10.

2. The municipal provider is in violation of this section beginning on the date the director's decision is final until the municipal provider submits a provider profile that is approved by the director, except that the provider shall not be in violation before January 1, 2010.

I. Except as provided in subsections J, K, L and M of this section:

1. A municipal provider notified of the non-per capita conservation program pursuant to subsection E of this section shall be regulated under the program beginning on the date the director approves the municipal provider's provider profile pursuant to subsection G or H of this section, but not earlier than January 1, 2010 unless the municipal provider agrees to be regulated under the program before that date and the director has approved the municipal provider's provider profile. A municipal provider regulated under the non-per capita conservation program shall comply with the program beginning on the date the provider is first regulated under the program until the compliance date for the applicable conservation requirements established in the management plan for the fourth management period.

2. A municipal provider notified of the non-per capita conservation program pursuant to section 45-571.01, subsection B shall be regulated under the non-per capita conservation program beginning on the date the director approves the municipal provider's provider profile pursuant to subsection G or H of this section, or such later date as determined by the director, and shall comply with the program beginning on that date until the compliance date for the applicable conservation requirements established in the management plan for the fourth management period.

J. Except as provided in subsection K of this section, a municipal provider designated as having an assured water supply pursuant to section 45-576 shall not be regulated under the non-per capita conservation program established under this section, but instead shall be regulated under the per capita conservation program established by the director pursuant to section 45-566, subsection A, paragraph 2, unless both of the following apply:

1. The municipal provider notifies the director in writing that it elects to be regulated under the non-per capita conservation program and includes with the notice a provider profile that contains the information prescribed by subsection F, paragraph 1 of this section.

2. The director approves the municipal provider's provider profile pursuant to subsection G of this section or a revised provider profile pursuant to subsection H of this section. The municipal provider shall be regulated under the non-per capita conservation program beginning on the date the director approves the municipal provider's provider profile or revised provider profile.

K. If a municipal provider designated as having an assured water supply pursuant to section 45-576 is regulated under a municipal conservation program other than the per capita conservation program established by the director pursuant to section 45-566, subsection A, paragraph 2 on the date the provider receives written notice pursuant to subsection E of this section and the provider is in compliance with that program as of that date:

1. The municipal provider shall continue to comply with the requirements of that program until the compliance date for the applicable conservation requirements established in the management plan for the fourth management period.

2. The provider may elect to be regulated under the per capita conservation program adopted pursuant to section 45-566, subsection A, paragraph 2 by giving written notice of the election to the director. After giving such written notice, the provider shall comply with the per capita conservation requirements prescribed by the director beginning on a date specified by the director.

L. A large untreated water provider shall not be regulated under the non-per capita conservation program with respect to its deliveries of untreated water. A large untreated water provider shall comply with the conservation or rate of use requirements established pursuant to section 45-566, subsection A, paragraph 3 with respect to its deliveries of untreated water.

M. A small municipal provider shall not be regulated under the non-per capita conservation program established under this section, but instead shall comply with the conservation requirements established for small municipal providers pursuant to section 45-566, subsection A, paragraph 4.

N. A municipal provider that is regulated under the non-per capita conservation program established under this section shall comply with any individual user requirements prescribed pursuant to section 45-566, subsection A, paragraph 2, except as provided in section 45-571.02.

O. A municipal provider regulated under the non-per capita conservation program established under this section is exempt from the per capita conservation requirements prescribed under section 45-566, subsection A, paragraph 2.

P. The director shall prepare a guidance document to assist municipal providers entering into the non-per capita conservation program. The guidance document shall inform municipal providers of the requirements of the program as adopted in the management plan and the manner in which the director will implement the program. The director shall cooperate with municipal providers in developing the guidance document.

45-566.02. Alternative conservation programs for agriculture; third management period

A. In addition to the provisions of the management plan for the third management period prescribed by section 45-566, subsection A, paragraph 1, the director shall include in the management plan the historic cropping program prescribed by this section as an alternative agricultural conservation program that achieves conservation equivalent to that required by section 45-566, subsection A, paragraph 1.

B. The director shall establish the components of the historic cropping program in the management plan for the third management period to assure that conservation equivalent to that required by section 45-566, subsection A, paragraph 1 will be achieved. In addition to the program components established by the director, the historic cropping program shall include the following provisions:

1. The director shall calculate the maximum annual groundwater allotment as provided in section 45-465.

2. The director shall calculate the irrigation water duty in the same manner as that required by section 45-566, subsection A, paragraph 1 using an irrigation efficiency of seventy-five per cent. In areas deemed by the director to have limiting soils, the director may use an irrigation efficiency of seventy per cent for the water duty calculation.

3. The flexibility account provisions of section 45-467 apply except as otherwise provided in this section.

4. The director shall not register credits to the flexibility account established under section 45-467 that cause the credit balance to exceed seventy-five per cent of the maximum annual groundwater allotment established pursuant to this subsection.

5. Only owners of an irrigation grandfathered right may apply for participation in the historic cropping program.

C. In the management plan, the director shall establish criteria that the applicant shall satisfy to enter the historic cropping program to assure that conservation equivalent to that required by section 45-566, subsection A, paragraph 1 will be achieved. An owner of an irrigation grandfathered right may apply to participate in the historic cropping program by filing an application with the director. The director shall not approve an application for the historic cropping program unless the applicant satisfies the entrance criteria established by the director and the following conditions are satisfied:

1. The applicant's accumulation of credits in the applicant's flexibility account under section 45-467 is equal to or less than seventy-five per cent of the farm's maximum annual groundwater allotment established under section 45-566, subsection A, paragraph 1. To satisfy this condition, the applicant may either sell or convey any excess credits as provided by section 45-467 or the applicant may relinquish any excess credits.

2. The applicant's accumulation of debits in the applicant's flexibility account under section 45-467 is equal to or less than twenty-five per cent of the farm's maximum annual groundwater allotment established under section 45-566, subsection A, paragraph 1.

D. In the management plan, the director shall establish performance standards that the owner of an irrigation grandfathered right or any person using groundwater pursuant to that right shall satisfy while participating in the historic cropping program to assure that conservation equivalent to that required by section 45-566, subsection A, paragraph 1 will be achieved. After an owner of an irrigation grandfathered right has been approved for participation in the historic cropping program, the owner of the irrigation grandfathered right, and any person using groundwater pursuant to that right, shall meet both of the following conditions:

1. Comply with the performance standards established by the director.

2. Not accumulate debits to the flexibility account established under section 45-467 that exceed twenty-five per cent of the maximum annual groundwater allotment established under subsection B of this section. The owner of the irrigation grandfathered right, and any person entitled to use groundwater pursuant to that right, violate this section if the debit balance exceeds the amount stated in this paragraph.

E. Notwithstanding the provisions of section 45-467, an owner of an irrigation grandfathered right, while participating in the historic cropping program, shall not convey or sell flexibility account credits from, or purchase flexibility account credits for, the flexibility account regulated by the historic cropping program.

F. The director shall include in a modification to the management plan for the third management period a best management practices program that is an alternative to the agricultural conservation program required by section 45-566, subsection A, paragraph 1 and that the director determines will achieve conservation that is at least equivalent to that required under section 45-566, subsection A, paragraph 1. The best management practices program shall require the owner of an irrigation grandfathered right and any person using groundwater pursuant to the right to implement specific agricultural conservation practices for water use on the land or farm unit to which the right is appurtenant in lieu of complying with an irrigation water duty and a maximum annual groundwater allotment. The director may include in the adoption of, or a modification to, the management plan for the third management period additional alternative agricultural

conservation programs that the director determines achieve conservation that is at least equivalent to that required under section 45-566, subsection A, paragraph 1. The director may establish a cropped acreage program in which the maximum annual groundwater allotment is determined based on the crops grown during the calendar year in which the irrigation efficiency is applied.

45-567. Management plan for fourth management period; guidelines

A. For the fourth management period, 2010 to 2020, the director shall promulgate a management plan for each initial active management area not later than January 1, 2008. The director:

1. Except as provided in section 45-563.02, subsection B, shall include in each plan an irrigation water duty or intermediate water duties. These duties shall be calculated in the manner provided in section 45-566, subsection A, paragraph 1 and shall be subject to an exemption under subsection E of this section. In setting the irrigation water duty or intermediate water duties for the fourth management period, the director may adjust the highest twenty-five per cent of the final irrigation water duties established within an area of similar farming conditions pursuant to section 45-566 by reducing each water duty in an amount up to ten per cent, except that, in making the adjustment, no water duty may be reduced to an amount less than the greater of the following:

(a) The highest water duty within the lowest seventy-five per cent of the water duties computed within the area of similar farming conditions for the fourth management period.

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

2. May include in each plan, if feasible, additional conservation requirements for non-irrigation uses and intermediate conservation requirements, which shall apply subject to section 45-567.01.

3. May include in each plan, if feasible, conservation or rate of use requirements for deliveries of untreated water by large untreated water providers based on the use of the latest commercially available conservation technology consistent with reasonable economic return.

4. May include in each plan, except the plan for the Santa Cruz active management area, if feasible, additional economically reasonable conservation requirements for the distribution of groundwater by cities, towns, private water companies and irrigation districts within their service areas. In the plan for the Santa Cruz active management area, the director may include, if feasible, additional economically reasonable conservation requirements for the distribution of water, other than stored water, withdrawn from wells, for cities, towns, private water companies and irrigation districts within their service areas.

5. May include in each plan, if feasible, a program for additional augmentation of the water supply of the active management area, including incentives for artificial groundwater recharge.

6. May include in each plan, if feasible, in cooperation with the department of environmental quality, an assessment of groundwater quality in the active management area and any proposed program for groundwater quality protection. Any such program shall be submitted to the legislature for any necessary enabling legislation or coordination with existing programs of the department of environmental quality.

7. May include in each plan, if feasible, a program for conservation assistance to water users within the active management area.

8. May include in each plan, if feasible, a program for purchase and retirement of grandfathered rights by the department.

9. Shall include in the plan for the Santa Cruz active management area criteria for the location of new wells and replacement wells in new locations consistent with the management goal of the active management area.

10. Shall include in the plan for the Santa Cruz active management area an evaluation of the potential impact of the plan on the Tucson active management area.

11. Shall include in the plans for the Tucson, Phoenix and Pinal active management areas recommendations to the Arizona water banking authority regarding all of the following:

(a) Whether additional water storage in the active management area would help to achieve the management goal for the active management area.

(b) Where additional water storage in the active management area would be most useful to achieve the management goal for the active management area.

(c) Whether extinguishment of long-term storage credits accrued or to be accrued by the Arizona water banking authority would help to achieve the management goal for the active management area.

B. In the plans adopted under subsection A of this section, the director shall establish the historic annual net natural recharge for any groundwater replenishment district in the active management area,

computed by determining the net natural recharge, as defined in section 48-4401, for the groundwater basin beneath the district during calendar years 1977 through 2006 and dividing the result by thirty.

C. Within thirty days after the management plan for the fourth management period is adopted, the director shall give written notice in the manner and to the persons prescribed in section 45-565, subsection B and shall give written notice of the non-per capita conservation program established pursuant to section 45-567.01 to all municipal providers. Two years before the compliance date specified in the management plan for any irrigation water duty, intermediate water duty, conservation requirement or intermediate conservation requirement, the director shall give additional written notice by first class mail to the last known addresses of the persons prescribed in section 45-565, subsection B and this subsection.

D. Except for a person who obtains a variance under section 45-574 or who is exempt from irrigation water duties under section 45-563.02, subsection A, all persons notified pursuant to subsection C of this section shall comply with the applicable irrigation water duty or conservation requirements for the fourth management period not later than January 1, 2020 and shall remain in compliance until the compliance date for any applicable irrigation water duty or conservation requirements established in the management plan for the fifth management period. If intermediate water duties or intermediate conservation requirements have been established, a person to whom those water duties or conservation requirements apply shall comply with the intermediate water duties or intermediate conservation requirements not later than the compliance date specified in the management plan, unless the person obtains a variance pursuant to section 45-574 or is exempt from intermediate water duties under section 45-563.02, subsection A. A person who obtains a variance under section 45-574 shall comply with the applicable irrigation water duty or conservation requirements by the date specified in the variance and shall remain in compliance until the subsequent compliance date for any applicable irrigation water duty or conservation requirements established in the management plan for the fourth management period or, if that management plan does not establish any applicable subsequent compliance date, until the applicable compliance date established in the management plan for the fifth management period.

E. A person who is entitled to use groundwater pursuant to an irrigation grandfathered right may apply to the director at any time during the fourth management period for an exemption from the irrigation water duties established under subsection A, paragraph 1 of this section. The director shall grant the exemption if the person demonstrates to the director's satisfaction that granting the exemption is consistent with achieving the management goal of the active management area and that one of the following applies:

1. Withdrawal of groundwater pursuant to the irrigation grandfathered right during the management period will intercept groundwater that would otherwise flow out of and be lost to the active management area within the next fifteen years without entering another active management area.

2. Withdrawal of groundwater pursuant to the irrigation grandfathered right during the management period will prevent encroachment of a rising depth to groundwater level that will cause waterlogging problems within the next fifteen years.

45-567.01. Non-per capita conservation program for municipal providers; fourth management period

A. In addition to the provisions of the management plan for the fourth management period prescribed by section 45-567, subsection A, the director shall include in the management plan a non-per capita conservation program for municipal providers. The program shall require a municipal provider regulated under the program to implement water conservation measures in its service area, including all of the following:

1. A public education program relating to water conservation.

2. A program to meter all service area connections, except connections to fire services, dwelling units in multifamily residential structures, mobile homes in mobile home parks with master meters and construction users.

3. One or more additional conservation measures selected by the provider from the list of conservation measures adopted by the director pursuant to subsection B of this section, subject to approval by the director pursuant to subsection F or G of this section. The program may prescribe the number of additional conservation measures that a provider must implement under this paragraph based on the number of service connections in the provider's service area.

B. The director shall include in the non-per capita conservation program a list and description of conservation measures that municipal providers regulated under the program must select from to comply with the requirements adopted pursuant to subsection A, paragraph 3 of this section.

C. In addition to the requirements prescribed in subsection A of this section, a municipal provider regulated under the non-per capita conservation program shall:

1. Include in its annual reports filed pursuant to section 45-632 a copy of the provider's current water rate structure unless no changes have been made to the rate structure since it was last submitted to the director. A municipal provider regulated under the non-per capita conservation program is encouraged to adopt a water rate structure that promotes efficient use of water, subject to approval by the corporation commission if the provider is a public service corporation.

2. For at least five years after a year in which the municipal provider is regulated under the non-per capita conservation program, keep and maintain accurate records verifying that the municipal provider implemented the conservation measures required by the non-per capita conservation program during that year.

D. The director shall design the non-per capita conservation program to achieve water use efficiency in the service areas of municipal providers regulated under the program equivalent to the water use efficiency assumed by the director in establishing the per capita conservation requirements pursuant to section 45-567, subsection A, paragraph 2.

E. Except as provided in subsections I, J and K of this section, on or before the date specified in the management plan, a municipal provider notified of the non-per capita conservation program pursuant to section 45-567, subsection C or section 45-571.01, subsection B shall submit to the director, on a form prescribed by the director, a provider profile that contains the following information:

1. A description of the municipal provider's existing service area characteristics and water use patterns.

2. A description of the conservation measures the municipal provider is currently implementing and any additional conservation measures that the provider intends to implement to comply with the non-per capita conservation program.

3. An explanation of how each conservation measure described in the provider profile is relevant to the municipal provider's existing service area characteristics or water use patterns.

F. Within ninety days after receiving a municipal provider's provider profile under subsection E of this section, the director shall approve or disapprove the provider profile and send written notice of the decision to the municipal provider. The director shall approve the provider profile if the director determines that the profile contains information demonstrating that the municipal provider will implement at least the minimum number of conservation measures required by the non-per capita conservation program and that the conservation measures are reasonably relevant to the municipal provider's existing service area characteristics or water use patterns. If the director disapproves the provider profile, the director shall include with the written notice of the decision the reasons for the disapproval. A decision of the director disapproving a provider profile is an appealable agency action pursuant to title 41, chapter 6, article 10. If the director fails to send the municipal provider written notice approving or disapproving the provider profile within ninety days after receiving the provider profile, the provider profile shall be deemed approved.

G. If the director disapproves a municipal provider's provider profile pursuant to subsection F of this section, within ninety days after the date of the director's written notice disapproving the provider profile, or within ninety days after the director's decision is final if the municipal provider files a timely notice of appeal of the decision pursuant to title 41, chapter 6, article 10, the municipal provider shall revise the provider profile to correct the deficiencies identified by the director in the written notice and submit the revised provider profile to the director. Within ninety days after receiving a municipal provider's revised provider profile pursuant to this subsection, the director shall approve or disapprove the revised provider profile pursuant to subsection F of this section. If the director disapproves the revised provider profile:

1. The decision is an appealable agency action pursuant to title 41, chapter 6, article 10.

2. The municipal provider is in violation of this section beginning on the date the director's decision is final until the municipal provider submits a provider profile that is approved by the director, except that the provider shall not be in violation before the compliance date for the non-per capita conservation program specified in the management plan.

H. Except as provided in subsections I, J and K of this section, a municipal provider notified of the non-per capita conservation program pursuant to section 45-567, subsection C or section 45-571.01,

subsection B shall be regulated under the program beginning on the date the director approves the municipal provider's provider profile pursuant to subsection F or G of this section, but not earlier than the compliance date specified in the management plan. A municipal provider regulated under the non-per capita conservation program shall comply with the program beginning on the date the provider is first regulated under the program until the compliance date for the applicable conservation requirements established in the management plan for the fifth management period.

I. A municipal provider designated as having an assured water supply pursuant to section 45-576 shall not be regulated under the non-per capita conservation program, but instead shall be regulated under the per capita conservation program established by the director pursuant to section 45-567, subsection A, paragraph 2, unless both of the following apply:

1. The municipal provider notifies the director in writing that it elects to be regulated under the non-per capita conservation program and includes with the notice a provider profile that contains the information prescribed by subsection E of this section.

2. The director approves the municipal provider's provider profile pursuant to subsection F of this section or a revised provider profile pursuant to subsection G of this section. The municipal provider shall be regulated under the non-per capita conservation program beginning on the date the director approves the provider profile or a revised provider profile.

J. A large untreated water provider shall not be regulated under the non-per capita conservation program with respect to its deliveries of untreated water. A large untreated water provider shall comply with any conservation or rate of use requirements established pursuant to section 45-567, subsection A, paragraph 3 with respect to its deliveries of untreated water.

K. A small municipal provider shall not be regulated under the non-per capita conservation program, but instead shall comply with any conservation requirements established for small municipal providers pursuant to section 45-567, subsection A, paragraph 2.

L. A municipal provider regulated under the non-per capita conservation program established under this section shall comply with any individual user requirements prescribed pursuant to section 45-567, subsection A, paragraph 2, except as provided in section 45-571.02.

M. A municipal provider regulated under the non-per capita conservation program established under this section is exempt from the per capita conservation requirements prescribed under section 45-567, subsection A, paragraph 2.

45-567.02. Alternative conservation programs for agriculture; fourth management period

A. In addition to the provisions of the management plan for the fourth management period prescribed by section 45-567, subsection A, paragraph 1, the director shall include in the management plan the historic cropping program prescribed by this section as an alternative agricultural conservation program that achieves conservation equivalent to that required by section 45-567, subsection A, paragraph 1.

B. The director shall establish the components of the historic cropping program in the management plan for the fourth management period to assure that conservation equivalent to that required by section 45-567, subsection A, paragraph 1 will be achieved. In addition to the program components established by the director, the historic cropping program shall include the following provisions:

1. The director shall calculate the maximum annual groundwater allotment as provided in section 45-465.

2. The director shall calculate the irrigation water duty in the same manner as that required by section 45-567, subsection A, paragraph 1 using an irrigation efficiency of seventy-five per cent. In areas deemed by the director to have limiting soils, the director may use an irrigation efficiency of seventy per cent for the water duty calculation.

3. The flexibility account provisions of section 45-467 apply except as otherwise provided in this section.

4. The director shall not register credits to the flexibility account established under section 45-467 that cause the credit balance to exceed seventy-five per cent of the maximum annual groundwater allotment established pursuant to this subsection.

5. Only owners of an irrigation grandfathered right may apply for participation in the historic cropping program.

C. In the management plan, the director shall establish criteria that the applicant shall satisfy to enter the historic cropping program to assure that conservation equivalent to that required by section 45-567, subsection A, paragraph 1 will be achieved. An owner of an irrigation grandfathered right may apply to participate in the historic cropping program by filing an application with the director. The director shall not approve an application for the historic cropping program unless the applicant satisfies the entrance criteria established by the director and the following conditions are satisfied:

1. The applicant's accumulation of credits in the applicant's flexibility account under section 45-467 is equal to or less than seventy-five per cent of the farm's maximum annual groundwater allotment established under section 45-567, subsection A, paragraph 1. To satisfy this requirement, the applicant may either sell or convey any excess credits as provided by section 45-467 or the applicant may relinquish any excess credits.

2. The applicant's accumulation of debits in the applicant's flexibility account under section 45-467 is equal to or less than twenty-five per cent of the farm's maximum annual groundwater allotment established under section 45-567, subsection A, paragraph 1.

D. In the management plan, the director shall establish performance standards that the owner of an irrigation grandfathered right or any person using groundwater pursuant to that right shall satisfy while participating in the historic cropping program to assure that conservation equivalent to that required by section 45-567, subsection A, paragraph 1 will be achieved. After an owner of an irrigation grandfathered right has been approved for participation in the historic cropping program, the owner of that right, and any person using groundwater pursuant to that right, shall meet both of the following conditions:

1. Comply with the performance standards established by the director.

2. Not accumulate debits to the flexibility account established under section 45-467 that exceed twenty-five per cent of the maximum annual groundwater allotment established under subsection B of this section. The owner of the irrigation grandfathered right, and any person entitled to use groundwater pursuant to that right, violate this section if the debit balance exceeds the amount stated in this paragraph.

E. Notwithstanding the provisions of section 45-467, an owner of an irrigation grandfathered right, while participating in the historic cropping program, shall not convey or sell flexibility account credits from, or purchase flexibility account credits for, the flexibility account regulated by the historic cropping program.

F. The director may include in the adoption of, or a modification to, the management plan for the fourth management period additional alternative agricultural conservation programs that the director determines achieve conservation that is at least equivalent to that required under section 45-567, subsection A, paragraph 1, including a cropped acreage program in which the maximum annual groundwater allotment is determined based on the crops grown during the calendar year in which the irrigation efficiency is applied.

G. The director shall include in the adoption of the management plan for the fourth management period a best management practices program that requires the owner of an irrigation grandfathered right and any person using groundwater pursuant to the right to implement specific agricultural conservation practices for water use on the land or farm unit to which the right is appurtenant in lieu of complying with an irrigation water duty and a maximum annual groundwater allotment. The program shall be designed to achieve conservation that is at least equivalent to that required under section 45-567, subsection A, paragraph 1.

45-568. [Management plan for fifth management period; guidelines](#)

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

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

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

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

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

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

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

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

B. Within thirty days after the management plan for the fifth management period is adopted, the director shall give written notice in the manner and to the persons prescribed in section 45-565, subsection B and shall give written notice of the non-per capita conservation program established pursuant to section 45-568.01 to all municipal providers. Two years before the compliance date specified in the management plan for any irrigation water duty, intermediate water duty, conservation requirement or intermediate conservation requirement, the director shall give additional written notice by first class mail to the last known addresses of the persons prescribed in section 45-565, subsection B and this subsection.

C. Except for a person who is exempt from irrigation water duties under section 45-563.02, subsection A, all persons notified pursuant to subsection B of this section shall comply with the applicable irrigation water duty or conservation requirements for the fifth management period not later than January 1, 2025 and shall remain in compliance until the legislature determines otherwise.

45-568.01. Non-per capita conservation program for municipal providers: fifth management period

A. In addition to the provisions of the management plan for the fifth management period prescribed by section 45-568, subsection A, the director shall include in the management plan a non-per capita conservation program for municipal providers. The program shall require a municipal provider regulated under the program to implement one or more water conservation measures in its service area from the list adopted by the director pursuant to subsection B of this section, subject to approval by the director pursuant to subsection F or G of this section. The program may prescribe the number of conservation measures that a provider must implement under this subsection based on the number of service connections in the provider's service area.

B. The director shall include in the non-per capita conservation program a list and description of conservation measures that municipal providers regulated under the program must select from to comply with the requirements adopted pursuant to subsection A of this section, which may include the conservation measures described in section 45-567.01, subsection A, paragraphs 1 and 2.

C. In addition to the requirements prescribed in subsection A of this section, a municipal provider regulated under the non-per capita conservation program shall:

1. Include in its annual reports filed pursuant to section 45-632 a copy of the provider's current water rate structure unless no changes have been made to the rate structure since it was last submitted to the director. A municipal provider regulated under the non-per capita conservation program is encouraged to adopt a water rate structure that promotes efficient use of water, subject to approval by the corporation commission if the provider is a public service corporation.

2. For at least five years after a year in which the municipal provider is regulated under the non-per capita conservation program, keep and maintain accurate records verifying that the municipal provider implemented the conservation measures required by the non-per capita conservation program during that year.

D. The director shall design the non-per capita conservation program to achieve water use efficiency in the service areas of municipal providers regulated under the program equivalent to the water use efficiency assumed by the director in establishing the per capita conservation requirements pursuant to section 45-568, subsection A.

E. Except as provided in subsections I, J and K of this section, on or before the date specified in the management plan, a municipal provider notified of the non-per capita conservation program pursuant to section 45-568, subsection B or section 45-571.01, subsection B shall submit to the director, on a form prescribed by the director, a provider profile that contains the following information:

1. A description of the municipal provider's existing service area characteristics and water use patterns.

2. A description of the conservation measures the municipal provider is currently implementing and any additional conservation measures that the provider intends to implement to comply with the non-per capita conservation program.

3. An explanation of how each conservation measure described in the provider profile is relevant to the municipal provider's existing service area characteristics or water use patterns.

F. Within ninety days after receiving a municipal provider's provider profile under subsection E of this section, the director shall approve or disapprove the provider profile and send written notice of the decision to the municipal provider. The director shall approve the provider profile if the director determines that the profile contains information demonstrating that the municipal provider will implement at least the minimum number of conservation measures required by the non-per capita conservation program and that the conservation measures are reasonably relevant to the municipal provider's existing service area characteristics or water use patterns. If the director disapproves the provider profile, the director shall include with the written notice of the decision the reasons for the disapproval. A decision of the director disapproving a provider profile is an appealable agency action pursuant to title 41, chapter 6, article 10. If the director fails to send the municipal provider written notice approving or disapproving the provider profile within ninety days after receiving the provider profile, the provider profile shall be deemed approved.

G. If the director disapproves a municipal provider's provider profile pursuant to subsection F of this section, within ninety days after the date of the director's written notice disapproving the provider profile, or within ninety days after the director's decision is final if the municipal provider files a timely notice of appeal of the decision pursuant to title 41, chapter 6, article 10, the municipal provider shall revise the provider profile to correct the deficiencies identified by the director in the written notice and submit the revised provider profile to the director. Within ninety days after receiving a municipal provider's revised provider profile pursuant to this subsection, the director shall approve or disapprove the revised provider profile pursuant to subsection F of this section. If the director disapproves the revised provider profile:

1. The decision is an appealable agency action pursuant to title 41, chapter 6, article 10.

2. The municipal provider is in violation of this section beginning on the date the director's decision is final until the municipal provider submits a provider profile that is approved by the director, except that the provider shall not be in violation before the compliance date for the non-per capita conservation program specified in the management plan.

H. Except as provided in subsections I, J and K of this section, a municipal provider notified of the non-per capita conservation program pursuant to section 45-568, subsection B or section 45-571.01, subsection B shall be regulated under the program beginning on the date the director approves the municipal provider's provider profile pursuant to subsection F or G of this section, but not earlier than the compliance date specified in the management plan. A municipal provider regulated under the non-per capita conservation program shall comply with the program beginning on the date the provider is first regulated under the program.

I. A municipal provider designated as having an assured water supply pursuant to section 45-576 shall not be regulated under the non-per capita conservation program, but instead shall be regulated under the per capita conservation program established by the director pursuant to section 45-568, subsection A, unless both of the following apply:

1. The municipal provider notifies the director in writing that it elects to be regulated under the non-per capita conservation program and includes with the notice a provider profile that contains the information prescribed by subsection E of this section.

2. The director approves the municipal provider's provider profile pursuant to subsection F of this section or a revised provider profile pursuant to subsection G of this section. The municipal provider shall be regulated under the non-per capita conservation program beginning on the date the director approves the provider profile or a revised provider profile.

J. A large untreated water provider shall not be regulated under the non-per capita conservation program with respect to its deliveries of untreated water. A large untreated water provider shall comply with any conservation or rate of use requirements established for deliveries of untreated water by large untreated water providers pursuant to section 45-568, subsection A with respect to its deliveries of untreated water.

K. A small municipal provider shall not be regulated under the non-per capita conservation program, but instead shall comply with any conservation requirements established for small municipal providers pursuant to section 45-568, subsection A.

L. A municipal provider that is regulated under the non-per capita conservation program established under this section shall comply with any individual user requirements prescribed pursuant to section 45-568, subsection A, except as provided in section 45-571.02.

M. A municipal provider regulated under the non-per capita conservation program established under this section is exempt from the per capita conservation requirements prescribed under section 45-568, subsection A.

45-568.02. Alternative conservation programs for agriculture: fifth management period

A. In addition to the provisions of the management plan for the fifth management period prescribed by section 45-568, subsection A, the director shall include in the management plan the historic cropping program prescribed by this section as an alternative agricultural conservation program that achieves conservation equivalent to that required by section 45-568, subsection A.

B. The director shall establish the components of the historic cropping program in the management plan for the fifth management period to assure that conservation equivalent to that required by section 45-568, subsection A will be achieved. In addition to the program components established by the director, the historic cropping program shall include the following provisions:

1. The director shall calculate the maximum annual groundwater allotment as provided in section 45-465.

2. The director shall calculate the irrigation water duty in the same manner as that required by section 45-568, subsection A using an irrigation efficiency of seventy-five per cent. In areas deemed by the director to have limiting soils, the director may use an irrigation efficiency of seventy per cent for the water duty calculation.

3. The flexibility account provisions of section 45-467 apply except as otherwise provided in this section.

4. The director shall not register credits to the flexibility account established under section 45-467 that cause the credit balance to exceed seventy-five per cent of the maximum annual groundwater allotment established pursuant to this subsection.

5. Only owners of an irrigation grandfathered right may apply for participation in the historic cropping program.

C. In the management plan, the director shall establish criteria that the applicant shall satisfy to enter the historic cropping program to assure that conservation equivalent to that required by section 45-568, subsection A will be achieved. An owner of an irrigation grandfathered right may apply to participate

in the historic cropping program by filing an application with the director. The director shall not approve an application for the historic cropping program unless the applicant satisfies the entrance criteria established by the director and the following conditions are satisfied:

1. The applicant's accumulation of credits in the applicant's flexibility account under section 45-467 is equal to or less than seventy-five per cent of the farm's maximum annual groundwater allotment established under section 45-568, subsection A. To satisfy this requirement, the applicant may either sell or convey any excess credits as provided by section 45-467, or the applicant may relinquish any excess credits.

2. The applicant's accumulation of debits in the applicant's flexibility account under section 45-467 is equal to or less than twenty-five per cent of the farm's maximum annual groundwater allotment established under section 45-568, subsection A.

D. In the management plan, the director shall establish performance standards that the owner of an irrigation grandfathered right or any person using groundwater pursuant to that right shall satisfy while participating in the historic cropping program to assure that conservation equivalent to that required by section 45-568, subsection A will be achieved. After an owner of an irrigation grandfathered right has been approved for participation in the historic cropping program, the owner of that right, and any person using groundwater pursuant to that right, shall meet both of the following conditions:

1. Comply with the performance standards established by the director.

2. Not accumulate debits to the flexibility account established under section 45-467 that exceed twenty-five per cent of the maximum annual groundwater allotment established under subsection B of this section. The owner of the irrigation grandfathered right, and any person entitled to use groundwater pursuant to that right, violate this section if the debit balance exceeds the amount stated in this paragraph.

E. Notwithstanding the provisions of section 45-467, an owner of an irrigation grandfathered right, while participating in the historic cropping program, shall not convey or sell flexibility account credits from, or purchase flexibility account credits for, the flexibility account regulated by the historic cropping program.

F. The director may include in the adoption of, or a modification to, the management plan for the fifth management period additional alternative agricultural conservation programs that the director determines achieve conservation that is at least equivalent to that required under section 45-568, subsection A, including a cropped acreage program in which the maximum annual groundwater allotment is determined based on the crops grown during the calendar year in which the irrigation efficiency is applied.

G. The director shall include in the adoption of the management plan for the fifth management period a best management practices program that requires the owner of an irrigation grandfathered right and any person using groundwater pursuant to the right to implement specific agricultural conservation practices for water use on the land or farm unit to which the right is appurtenant in lieu of complying with an irrigation water duty and a maximum annual groundwater allotment. The program shall be designed to achieve conservation that is at least equivalent to that required under section 45-568, subsection A.

45-569. Management goals and management plans for subsequent active management areas

A. Within thirty days of the designation of a subsequent active management area pursuant to article 2 of this chapter, the director shall establish a management goal for the active management area and the number of years in which the goal is to be achieved.

B. Not later than two years after the designation of a subsequent active management area, the director shall promulgate an initial management plan for the active management area and may provide for subsequent management plans to be promulgated during the time set for achieving the management goal. If the director determines that active management is necessary to preserve the existing supply of groundwater for future needs or that land subsidence or fissuring is endangering property or potential groundwater storage capacity, the director, in developing the plan or plans, shall include measures for reducing groundwater withdrawals which follow as closely as practicable the program set forth in sections 45-564 through 45-568. If the director determines that active management is necessary because the use of groundwater is resulting in actual or threatened groundwater quality degradation, the director shall, in cooperation with the department of environmental quality, include in the plan or plans a program for prevention or amelioration of groundwater quality problems and a schedule for implementation of the proposed solutions. The director shall submit such program to the legislature for any necessary enabling legislation or coordination with existing programs of the department of environmental quality.

C. All management plans, including the management goal, for a subsequent active management area, shall be adopted only after public hearings pursuant to sections 45-570 and 45-571.

45-570. Hearing on management plans; notice; procedures

A. The director shall hold a public hearing on each proposed management plan in each active management area prior to final adoption of the management plan.

B. The director shall give notice of the hearing within thirty days after the proposed management plan is completed. The notice shall include a summary of the management plan, a map or a description of the boundaries of the active management area, and the time and place of the hearing. The notice shall be published once each week for two consecutive weeks in a newspaper of general circulation in each county in which the active management area is located.

C. The hearing shall be held at a location within the active management area as soon as practicable but no less than thirty days and no more than sixty days after the first publication of the notice of the hearing.

D. At the hearing, the director shall present data in support of the adoption of the proposed management plan and a summary of the comments on the draft management plan made to the director by the groundwater users advisory council pursuant to section 45-421, paragraph 1. Any person may appear at the hearing either in person or by representative and submit oral or documentary evidence for or against the adoption of the management plan.

45-571. Findings upon hearing; order for adoption of management plan; publication

A. Within thirty days after the hearing, the director shall make and file in the department a written summary and findings with respect to matters considered during the hearing.

B. If in the findings the director decides to adopt the management plan, the director shall make and file an order adopting the plan pursuant to the findings. If the director determines that modifications in the management plan are necessary, the director shall make such modifications and make and file an order adopting the modified plan and include the director's reasons for the modifications.

C. A summary of the management plan, findings and order shall be published in the manner and for the length of time prescribed for the publication of notice of the public hearing, and the order is effective when published for the final time. The factual data compiled by the director, a transcript of the hearing, a copy of the findings and a copy of the management plan are public records of the department and shall be available for examination by the public during regular business hours.

D. The findings and order of the director are subject to rehearing or review and to judicial review as provided in section 45-114, subsection C.

45-571.01. Notification to persons filing late applications for certificates of grandfathered rights and to persons with new groundwater rights or uses; compliance; variance; review

A. The director, at the time a certificate of grandfathered right is issued pursuant to the late application procedures in section 45-476.01, shall establish and give written notice of any applicable irrigation water duty or conservation requirement.

B. The director may give written notice at any time of a conservation requirement to a person in the active management area with a right to withdraw, distribute or use groundwater in the active management area pursuant to this chapter, if the right or the use by the person was not in existence when the management plan was adopted. A person given written notice pursuant to this subsection shall comply with the conservation requirement not later than the compliance date specified in the notice.

C. A person given written notice pursuant to subsection A of this section shall comply with the applicable irrigation water duty or conservation requirement not later than January 1 of the calendar year following the first full year after the date of the notice.

D. Except as provided in subsection E of this section, a person who is given notice of an irrigation water duty or conservation requirement pursuant to subsection A or B of this section may request a variance or an administrative review pursuant to sections 45-574 and 45-575. A party aggrieved by the director's decision regarding a request for variance or administrative review 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 irrigated land or non-irrigation use is located.

E. A person who acquires an interest in land on which groundwater is being used and who is given notice of an irrigation water duty or conservation requirement for the use pursuant to subsection B of this section does not have the right to request an administrative review of the irrigation water duty or conservation requirement pursuant to section 45-575, subsection A if any previous owner of an interest in

the land had the right to request an administrative review of the irrigation water duty or conservation requirement. This subsection does not apply if both of the following exist:

1. The person who is given notice pursuant to subsection B of this section previously owned the land on which the groundwater is being used and title to the land has reverted involuntarily, or voluntarily in lieu of foreclosure, to that person.

2. The person who is given notice pursuant to subsection B of this section did not previously have the right to request an administrative review of the irrigation water duty or conservation requirement.

45-571.02. Municipal conservation requirements; compliance

A. A municipal provider that has been given notice, in the manner prescribed in section 45-565, subsection B, of a municipal conservation requirement that is substantially identical to an industrial conservation requirement is not required to comply with that municipal conservation requirement respecting an individual user to which one of the following applies:

1. The individual user was given written notice of the municipal conservation requirement by the director in the manner prescribed in section 45-565, subsection B or section 45-571.01, subsection B.

2. The individual user was reported by the municipal provider, on a form provided by the department and received by the director at least ninety days before the adoption of the applicable management plan, as being an individual user to which the municipal conservation requirement applies.

3. The individual user was given written notice of the municipal conservation requirement by the director in the manner prescribed in subsection B of this section, except that the municipal provider shall comply with the municipal conservation requirement until the first date on which the individual user is required to comply with the requirement.

B. If the individual user was not reported by the municipal provider as an individual user to which the municipal conservation requirement applies on a form provided by the department and received by the director at least ninety days before the adoption of the management plan, the director may give written notice of a municipal conservation requirement that is substantially identical to an industrial conservation requirement to that individual user more than thirty days after the adoption of the management plan in which the requirement is established. An individual user that is given written notice pursuant to this subsection shall comply with the conservation requirement not later than January 1 of the calendar year following the first full year after the date of the notice.

45-572. Modification of conservation program; notice

A. After a management plan is adopted, the director may modify the plan after public hearing pursuant to sections 45-570 and 45-571, except that the director may modify an irrigation water duty or conservation requirement only if the director determines that extraordinary circumstances, errors or mistakes justify the modification.

B. Within thirty days after a modification of an irrigation water duty or conservation requirement is adopted, the director shall give written notice of the modification in the manner and to the persons prescribed in section 45-564, subsection B. Any aggrieved person may request an administrative review pursuant to section 45-575.

C. All persons notified pursuant to subsection B of this section shall comply with the modified irrigation water duty or modified conservation requirements not later than the compliance date specified in the modification notice, unless the person obtains a variance pursuant to section 45-574.

D. A management plan is deemed to be modified to the extent the director has established and given written notice of irrigation water duties or conservation requirements pursuant to section 45-571.01.

45-573. Water quality considerations; consultation with department of environmental quality

The director shall consult with the department of environmental quality on water quality considerations in developing and implementing management plans under this article.

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

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

1. The name and mailing address of the applicant.

2. The name of the active management area in which the use is located.

3. The amount of groundwater currently being withdrawn annually by the person.

4. The irrigation water duty or conservation requirement from which the variance is sought.
 5. A general description of the economic circumstances preventing timely compliance with the irrigation water duty or conservation requirement and any information relevant to such circumstances.
 6. The sworn statement that the information contained in the application is true and correct to the best belief and knowledge of the applicant.
 7. Such other information as the director may require.
- B. The director shall give written notice to the applicant of the opportunity for an administrative hearing. An administrative hearing shall be held before the director's decision on the application if the director deems a hearing necessary or a hearing is requested by the applicant.
- C. The director may grant a variance upon a showing of compelling economic circumstances. The variance shall specify:
1. The amount of groundwater which may be withdrawn by the person during the variance period, or a schedule of intermediate water duties or conservation requirements to be reached at specified intervals during the variance period.
 2. The duration of the variance, which may not exceed five years from the date of the director's final determination of the variance.
- D. A party aggrieved by the director's decision 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 irrigated land or non-irrigation use is located.
- 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. If an administrative hearing is held, it shall be conducted in the active management area in which the use is located.

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

- A. Any aggrieved party may request an administrative review of an irrigation water duty or conservation requirement established pursuant to section 45-565, 45-566, 45-566.01, 45-567, 45-567.01, 45-568 or 45-568.01. Except as provided in subsection B of this section, the request must be made not later than ninety days from the date of notice of such duty or requirement given thirty days after the adoption of the management plan or if the notice was given pursuant to section 45-566.01, subsection E or 45-571.02, subsection B, not later than ninety days from the date of the notice.
- B. An aggrieved person who claims that extraordinary circumstances not in existence as of the date of notice that was given thirty days after adoption of the management plan justify modification of an irrigation water duty or conservation requirement established pursuant to section 45-565, 45-566, 45-566.01, 45-567, 45-567.01, 45-568 or 45-568.01 may request administrative review of the water duty or conservation requirement more than ninety days from the date of notice of the water duty or conservation requirement. The director may modify the water duty or conservation requirement if the aggrieved person demonstrates to the director by clear and convincing evidence that extraordinary circumstances not in existence as of the date of the notice that was given thirty days after adoption of the management plan make it unreasonable to require compliance with a water duty or conservation requirement.
- C. The director shall give written notice to the aggrieved party who is requesting an administrative review of the opportunity for an administrative hearing. An administrative hearing shall be held before the director's decision on the application if the director deems a hearing necessary or a hearing is requested by the applicant.
- D. A party aggrieved by the director's decision 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 irrigated land or the non-irrigation use is located.
- 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. If an administrative hearing is held, it shall be conducted in the active management area in which the use is located.

45-576. Certificate of assured water supply; designated cities, towns and private water companies; exemptions; definition

- A. Except as provided in subsections G and J of this section, a person who proposes to offer subdivided lands, as defined in section 32-2101, for sale or lease in an active management area shall apply for and obtain a certificate of assured water supply from the director prior to presenting the plat for approval to

the city, town or county in which the land is located, where such is required, and prior to filing with the state real estate commissioner a notice of intention to offer such lands for sale or lease, pursuant to section 32-2181, unless the subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an assured water supply pursuant to this section.

B. Except as provided in subsections G and J of this section, a city, town or county may approve a subdivision plat only if the subdivider has obtained a certificate of assured water supply from the director or the subdivider has obtained a written commitment of water service for the subdivision from a city, town or private water company designated as having an assured water supply pursuant to this section. The city, town or county shall note on the face of the approved plat that a certificate of assured water supply has been submitted with the plat or that the subdivider has obtained a written commitment of water service for the proposed subdivision from a city, town or private water company designated as having an assured water supply pursuant to this section.

C. Except as provided in subsections G and J of this section, the state real estate commissioner may issue a public report authorizing the sale or lease of subdivided lands only on compliance with either of the following:

1. The subdivider, owner or agent has paid any activation fee required under section 48-3772, subsection A, paragraph 7 and any replenishment reserve fee required under section 48-3774.01, subsection A, paragraph 2 and has obtained a certificate of assured water supply from the director.

2. The subdivider has obtained a written commitment of water service for the lands from a city, town or private water company designated as having an assured water supply pursuant to this section and the subdivider, owner or agent has paid any activation fee required under section 48-3772, subsection A, paragraph 7.

D. The director shall designate private water companies in active management areas that have an assured water supply. If a city or town acquires a private water company that has contracted for central Arizona project water, the city or town shall assume the private water company's contract for central Arizona project water.

E. The director shall designate cities and towns in active management areas where an assured water supply exists. If a city or town has entered into a contract for central Arizona project water, the city or town is deemed to continue to have an assured water supply until December 31, 1997. Commencing on January 1, 1998, the determination that the city or town has an assured water supply is subject to review by the director and the director may determine that a city or town does not have an assured water supply.

F. The director shall notify the mayors of all cities and towns in active management areas and the chairmen of the boards of supervisors of counties in which active management areas are located of the cities, towns and private water companies designated as having an assured water supply and any modification of that designation within thirty days of the designation or modification. If the service area of the city, town or private water company has qualified as a member service area pursuant to title 48, chapter 22, article 4, the director shall also notify the conservation district of the designation or modification and shall report the projected average annual replenishment obligation for the member service area based on the projected and committed average annual demand for water within the service area during the effective term of the designation or modification subject to any limitation in an agreement between the conservation district and the city, town or private water company. For each city, town or private water company that qualified as a member service area under title 48, chapter 22 and was designated as having an assured water supply before January 1, 2004, the director shall report to the conservation district on or before January 1, 2005 the projected average annual replenishment obligation based on the projected and committed average annual demand for water within the service area during the effective term of the designation subject to any limitation in an agreement between the conservation district and the city, town or private water company. Persons proposing to offer subdivided lands served by those designated cities, towns and private water companies for sale or lease are exempt from applying for and obtaining a certificate of assured water supply.

G. This section does not apply in the case of the sale of lands for developments that are subject to a mineral extraction and processing permit or an industrial use permit pursuant to sections 45-514 and 45-515.

H. The director shall adopt rules to carry out the purposes of this section. On or before January 1, 2008, the rules shall provide for a reduction in water demand for an application for a designation of assured water supply or a certificate of assured water supply if a gray water reuse system will be installed that meets

the requirements of the rules adopted by the department of environmental quality for gray water systems and if the application is for a certificate of assured water supply, the land for which the certificate is sought must qualify as a member land in a conservation district pursuant to title 48, chapter 22, article 4. For the purposes of this subsection, "gray water" has the same meaning prescribed in section 49-201.

I. If the director designates a municipal provider as having an assured water supply under this section and the designation lapses or otherwise terminates while the municipal provider's service area is a member service area of a conservation district, the municipal provider or its successor shall continue to comply with the consistency with management goal requirements in the rules adopted by the director under subsection H of this section as if the designation was still in effect with respect to the municipal provider's designation uses. When determining compliance by the municipal provider or its successor with the consistency with management goal requirements in the rules, the director shall consider only water delivered by the municipal provider or its successor to the municipal provider's designation uses. A person is the successor of a municipal provider if the person commences water service to uses that were previously designation uses of the municipal provider. Any groundwater delivered by the municipal provider or its successor to the municipal provider's designation uses in excess of the amount allowed under the consistency with management goal requirements in the rules shall be considered excess groundwater for purposes of title 48, chapter 22. For the purposes of this subsection, "designation uses" means all water uses served by a municipal provider on the date the municipal provider's designation of assured water supply lapses or otherwise terminates and all recorded lots within the municipal provider's service area that were not being served by the municipal provider on that date but that received final plat approval from a city, town or county on or before that date. Designation uses do not include industrial uses served by an irrigation district under section 45-497.

J. Subsections A, B and C of this section do not apply to a person who proposes to offer subdivided land for sale or lease in an active management area if all the following apply:

1. The director issued a certificate of assured water supply for the land to a previous owner of the land and the certificate was classified as a type A certificate under rules adopted by the director pursuant to subsection H of this section.

2. The director has not revoked the certificate of assured water supply described in paragraph 1 of this subsection, and proceedings to revoke the certificate are not pending before the department or a court. The department shall post on its website a list of all certificates of assured water supply that have been revoked or for which proceedings are pending before the department or a court.

3. The plat submitted to the department in the application for the certificate of assured water supply described in paragraph 1 of this subsection has not changed.

4. Water service is currently available to each lot within the subdivided land and the water provider listed on the certificate of assured water supply described in paragraph 1 of this subsection has not changed.

5. The subdivided land qualifies as a member land under title 48, chapter 22 and the subdivider has paid any activation fee required under section 48-3772, subsection A, paragraph 7 and any replenishment reserve fee required under section 48-3774.01, subsection A, paragraph 2.

6. The plat is submitted for approval to a city, town or county that is listed on the department's website as a qualified platting authority.

K. Subsection J of this section does not affect the assignment of a certificate of assured water supply as prescribed by section 45-579.

L. For the purposes of this section, "assured water supply" means all of the following:

1. Sufficient groundwater, surface water or effluent of adequate quality will be continuously available to satisfy the water needs of the proposed use for at least one hundred years. Beginning January 1 of the calendar year following the year in which a groundwater replenishment district is required to submit its preliminary plan pursuant to section 45-576.02, subsection A, paragraph 1, with respect to an applicant that is a member of the district, "sufficient groundwater" for the purposes of this paragraph means that the proposed groundwater withdrawals that the applicant will cause over a period of one hundred years will be of adequate quality and will not exceed, in combination with other withdrawals from land in the replenishment district, a depth to water of one thousand feet or the depth of the bottom of the aquifer, whichever is less. In determining depth to water for the purposes of this paragraph, the director shall consider the combination of:

(a) The existing rate of decline.

(b) The proposed withdrawals.

(c) The expected water requirements of all recorded lots that are not yet served water and that are located in the service area of a municipal provider.

2. The projected groundwater use is consistent with the management plan and achievement of the management goal for the active management area.

3. The financial capability has been demonstrated to construct the water facilities necessary to make the supply of water available for the proposed use, including a delivery system and any storage facilities or treatment works. The director may accept evidence of the construction assurances required by section 9-463.01, 11-823 or 32-2181 to satisfy this requirement.

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

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

1. The land for which a certificate or the city, town or private water company for which a designation is sought is in a groundwater replenishment district established pursuant to title 48, chapter 27.

2. The director has made either a preliminary determination that has not expired or a final determination that the district's plan for operation is consistent with achieving the management goal according to section 45-576.03, subsection E.

3. The master replenishment account established pursuant to section 45-858.01 does not have a debit balance that exceeds the cumulative amount of the district's debits accrued during the four preceding calendar years.

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

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

2. The director's most recent determination pursuant to section 45-576.03, subsection M, O or R that the plan for operation submitted by the conservation district or water district is consistent with achieving the management goal for the active management area in which the use is located has not expired.

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

45-576.02. Replenishment district plans, conservation district plans and water district plans

A. A groundwater replenishment district that is established pursuant to title 48, chapter 27 shall submit to the director:

1. On or before January 1 of the second calendar year following the year in which the district is established, a preliminary plan describing the activities that the district proposes to undertake during the seventeen calendar years following submittal of the preliminary plan.

2. On or before January 1 of the twelfth calendar year following the year in which the district is established, a long-range plan describing the district's proposed activities through the first calendar year in which achieving safe-yield is required.

B. The district's plan shall include:

1. An estimate of the district members' replenishment obligations that will arise during the planning period.

2. A description of water resources that are expected to be available to the district during the planning period.

3. A description of any facilities and projects to be used for replenishment during the planning period.

4. An analysis of potential groundwater replenishment sites in each groundwater subbasin in the district.

5. A description of the district's financial capabilities and financial requirements that are necessary to address the district members' replenishment obligations during the planning period.

6. A description of the district's current capability to meet the district members' replenishment obligations for the five calendar years following the calendar year in which the district submits its plan.

7. Any other information that the director may reasonably require.

C. A conservation district that is established pursuant to title 48, chapter 22 shall submit to the director the following:

1. On or before June 1, 1994, a plan describing the activities that the conservation district proposes to undertake during the twenty calendar years following submitting the plan. Except as provided in subsection D of this section, the plan shall include the following information for each active management area in which a member land or member service area is or may be located:

(a) An estimate of the conservation district's current and projected groundwater replenishment obligations, as that term is defined and used in title 48, chapter 22, for the twenty calendar years following the submission of the plan.

(b) A description of water resources that are expected to be available to the conservation district for replenishment purposes during the twenty calendar years following the submission of the plan.

(c) A description of any facilities and projects to be used for replenishment purposes during the twenty calendar years following the submission of the plan.

(d) An analysis of potential groundwater replenishment sites in each groundwater subbasin.

(e) A description of the conservation district's financial capabilities and financial requirements that are necessary to address the conservation district's groundwater replenishment obligations during the twenty calendar years following the submission of the plan.

(f) A description of the conservation district's current capability to meet the current and projected groundwater replenishment obligations for the five calendar years following the calendar year in which the conservation district submits the plan.

(g) If a water district has adopted an ordinance or resolution to undertake water district groundwater replenishment obligations pursuant to section 48-4971, subsection A, a description of central Arizona project water that may be available to the water district for replenishment purposes during the twenty calendar years following the submission of the plan.

(h) Any other information that the director may require.

2. On or before January 1, 2005 and within one year before January 1 of every tenth calendar year thereafter, a plan describing the activities for each active management area that the conservation district proposes to undertake during the one hundred calendar years following submitting the plan. Except as provided in subsection D of this section, the plan shall include the following information for each active management area in which a member land or member service area is or may be located:

(a) The conservation district's groundwater replenishment obligations and the extent to which those obligations have been met in the ten years preceding submittal of the plan.

(b) An estimate of the conservation district's current and projected groundwater replenishment obligations, as that term is defined and used in title 48, chapter 22, for current members for the twenty calendar years following the submission of the plan and an estimate of the district's projected groundwater replenishment obligations for the one hundred calendar years following the submission of the plan for current members and potential members based on reasonable projections of real property and service areas that could qualify for membership in the ten years following the submission of the plan.

(c) A description of the water resources that the conservation district plans to use for replenishment purposes during the twenty calendar years following submission of the plan and water resources potentially available to the conservation district for groundwater replenishment purposes during the subsequent eighty calendar years.

(d) A description of the district's current replenishment reserve activities in each active management area for the ten years preceding the current plan and planned replenishment reserve activities for the ensuing ten years to be undertaken pursuant to section 48-3772, subsection E.

(e) A description of any facilities and projects to be used for replenishment and the replenishment capacity available to the conservation district during the twenty calendar years following submission of the plan.

(f) An analysis of potential storage facilities that may be used by the conservation district for replenishment purposes.

(g) A description of the conservation district's capability to meet the current and projected groundwater replenishment obligations for the twenty calendar years following the calendar year in which the conservation district submits the plan.

(h) Any other information that the director may require.

D. The information required by subsection C, paragraph 1, subdivisions (b) and (f) and paragraph 2, subdivisions (c) and (g) of this section need not be included in a conservation district's plan if the conservation district demonstrates to the director that it has obtained an allocation of central Arizona project water or other water supplies determined by the director to be consistent with the assured water supply requirements pursuant to section 45-576 in an amount that equals or exceeds the projected groundwater replenishment obligation for the one hundred calendar years following the submission of the plan. If the conservation district demonstrates to the director that it has obtained an allocation of central Arizona project water or other water supplies determined by the director to be consistent with the assured water supply requirements pursuant to section 45-576 in an amount that is less than the projected groundwater replenishment obligation for the one hundred calendar years following the submission of the plan, the information required by subsection C, paragraph 1, subdivisions (b) and (f) and paragraph 2, subdivisions (c) and (g) of this section shall be submitted only for the amount of the obligation in excess of the total amount of the central Arizona project water allocation and other supplies. The director shall quantify the amount of an allocation of central Arizona project water associated with a nondeclining municipal and industrial subcontract on the basis of the amount of the contract. The director shall quantify the amount of an allocation of central Arizona project water associated with a subcontract other than a nondeclining municipal and industrial subcontract on the basis of the reliability of the source.

E. A water district shall submit to the director on or before June 1 of the calendar year following the year in which the water district has adopted an ordinance or resolution to undertake the water district groundwater replenishment obligations under section 48-4971, and on or within one year before each date on which a plan is required to be submitted by the conservation district under subsection C of this section, a plan describing the replenishment activities that the water district proposes to undertake during the twenty calendar years following the submittal of the plan. The plan shall include the following information for the active management area in which the water district is located:

1. An estimate of the water district's current and projected water district groundwater replenishment obligation, as that term is defined and used in title 48, chapter 28, for the twenty calendar years following the submission of the plan.

2. A description of water resources that are expected to be available to the water district for replenishment purposes during the twenty calendar years following the submission of the plan.

3. A description of any facilities and projects to be used for replenishment purposes during the twenty calendar years following the submission of the plan.

4. An analysis of potential groundwater replenishment sites in each groundwater subbasin.

5. A description of the water district's financial capabilities and financial requirements that are necessary to address the water district groundwater replenishment obligation during the twenty calendar years following the submission of the plan.

6. A description of the water district's current capability to meet the current and projected water district groundwater replenishment obligation for the five calendar years following the calendar year in which the water district submits the plan.

7. Any other information that the director may require.

F. For each plan submitted by the water district, the water district may incorporate applicable portions of the conservation district's plan.

45-576.03. [Director's review of plans](#)

A. Within sixty days after receiving a groundwater replenishment district's preliminary and long-range plans pursuant to section 45-576.02, the director shall determine if the district has submitted sufficient information to determine whether the district's plan for operation is consistent with the management goal of the active management area. If the director determines that the information is

insufficient for such a determination, the director shall notify the district of the insufficiency in writing and shall specify what additional information is required. The district shall provide the information to the director within thirty days after receiving the notice.

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

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

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

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

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

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

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

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

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

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

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

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

as the case may be, shall provide the information to the director within a reasonable time as specified by the director.

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

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

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

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

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

M. Within sixty days after the hearing on the first plan required under section 45-576.02, subsection C or the first plan required under section 45-576.02, subsection E and within one hundred twenty days after the hearing on any subsequent plan required under section 45-576.02, subsection C or E, including a revised plan pursuant to subsection R of this section, the director shall issue a decision for each of the active management areas in which a member land or member service area is or may be located, and the active management area in which a water district member land or water district member service area is or may be located, as to whether or not the plan submitted with respect to an active management area is consistent with achieving the management goal of the active management area. The director shall include findings with the decision and a summary of all public comments received in writing and public comments made at the public hearing. If the director's decision includes a determination that the plan submitted for an active management area is consistent with achieving the management goal of that active management area, except as provided in subsection S of this section, the determination expires on December 31 of the year following the year in which the conservation district or the water district, as the case may be, is required to submit its next plan under section 45-576.02, subsections C and E, or the date the director issues a decision determining that the next plan is consistent with achieving the management goal of the active management area, whichever occurs first.

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

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

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

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

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

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

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

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

R. If, at any time between the second anniversary and the eighth anniversary of the director's determination of consistency with the management goal, the director finds that there has been either an unexpected increase in the conservation district's projected groundwater replenishment obligations or an unexpected reduction in water supplies available to meet the conservation district's current obligations such that the conservation district's plan no longer demonstrates consistency with the management goal for one or more active management areas, the director shall require the conservation district to submit a revised plan for operation. The revised plan for operation shall be submitted within one calendar year after the date that the director notifies the conservation district of such a finding, unless the director extends this time for good cause. The director shall review, hold a hearing on and make a decision on the revised plan as provided by this section, except that the director shall only hold a hearing regarding those conditions that have changed.

S. Unless the conservation district successfully appeals the director's decision pursuant to subsection Q of this section, if the director's decision includes a finding for one or more active management areas that the conservation district's revised plan for operation is not consistent with achieving the management goal of that active management area pursuant to this section and the conservation district is unable to satisfy the director's concerns within sixty days after the director has notified the conservation district of the decision, the determination that the district's plan is consistent with the management goal of the active management area shall expire.

45-576.04. Report and review of plans by groundwater replenishment district

A. At least once every five years after the final determination that a groundwater replenishment district's plan for operation is consistent with achieving the management goal of the active management area, the district shall prepare and submit a replenishment report to the director and to the district's board of directors. The replenishment report shall include at least the following:

1. An estimate of the district members' replenishment obligations that will arise during the following twenty year period.
2. A description of water resources that will be available to the district during the following twenty year period.
3. A description of any facilities and projects to be used for replenishment during the following twenty year period.
4. A description of the district's financial capabilities and financial requirements necessary to address the replenishment obligations during the following twenty year period.
5. A description of the district's current capability to meet the replenishment obligations for the five calendar years following the calendar year in which the district submits its report.

B. Within thirty days after receiving the district report, the director shall submit written comments to the district. On receiving the director's comments, the district shall publish a notice in a newspaper of general statewide circulation once each week for two consecutive weeks:

1. Requesting public comment concerning information supplied by the district in the report.
2. Setting a date and location of a public hearing to be held pursuant to subsection C.

C. Within sixty days after the last day of notice under subsection B, the district shall hold a hearing concerning the report. The hearing shall be conducted in an informal manner without adhering to the rules of evidence required in judicial proceedings. At the hearing, the district shall present a summary of the director's comments and public comments received before the hearing relating to the report. Any person, including the director, shall have an opportunity to present evidence and comments relating to the report.

D. Within ninety days after the hearing, the district shall transmit to the director a summary of all comments and evidence submitted at the hearing relating to the report. The district shall include in this document its written response to all comments it received, including the director's comments.

E. Within one hundred twenty days after the hearing, the district's board of directors shall determine whether to adopt the report. The decision shall be based on the following factors:

1. Whether the report indicates that the district has sufficient projected replenishment efforts to meet the projected replenishment obligations for the twenty calendar years following the calendar year in which the district submits the report.

2. Whether the report indicates that the district has the current capability to meet the replenishment obligations for the five calendar years following the calendar year in which the district submits its report.

F. If the district's board of directors does not adopt the report, it shall require that the report be modified to sufficiently address the factors described in subsection E. The board shall adopt the report as modified.

G. On adoption, the board of directors shall transmit a copy of the report to the director and shall make the report and the information described in subsection D available to the general public.

45-576.05. Alternative method for determining consistency with the management goal in a groundwater replenishment district; terminating designation

A. If at any time after January 1 of the calendar year following the year in which a groundwater replenishment district is required to submit its preliminary plan under section 45-576.02, subsection A, paragraph 1 the director determines that one or more of the conditions prescribed in section 45-576.01, subsection A, paragraphs 2 and 3 are not met and for as long as the condition or conditions are not met, the director shall consider only the groundwater replenishment district member's projected supplies of surface water, effluent or groundwater withdrawn outside the active management area in which the district member is located and the amount in a long-term storage account established pursuant to section 45-852.01 in making a determination of whether the district member's projected water use is consistent with the management goal of the active management area under section 45-576.

B. If a groundwater replenishment district member is a municipal provider that was designated as having an assured water supply, and the director determines that one or more of the conditions prescribed by section 45-576.01, subsection A, paragraphs 2 and 3 are no longer met, and until the director again determines that all of those conditions are met, the designation terminates unless the district member reapplies for and the director grants a redesignation pursuant to this subsection. In considering whether to redesignate the district member, the director shall only consider the following in determining whether the district member's projected water use is consistent with the management goal of the active management area pursuant to section 45-576:

1. The district member's projected supplies of:

(a) Surface water.

(b) Effluent.

(c) Groundwater withdrawn outside the active management area in which the district member is located.

2. The district member's projected supply of groundwater withdrawn in the active management area in which the district member is located up to an amount equal to one hundred times the largest amount of groundwater withdrawn in the active management area by the district member for its customers' use in any calendar year in the five calendar years immediately preceding the year in which the director determines that one of the conditions prescribed by section 45-576, subsection A, paragraphs 2 and 3 is no longer met.

3. The amount in a district member's long-term storage account established pursuant to chapter 3.1 of this title.

45-576.06. Termination of designation for members of conservation district or members of water district; moratorium on adding new member lands and member service areas

A. After a conservation district has been established under title 48, chapter 22, if one or more of the conditions established under section 45-576.01, subsection B, paragraph 2 or 3 are not met for an active management area with respect to a conservation district and for as long as the condition is not met:

1. Any municipal provider whose service area is in that active management area and that was designated as having an assured water supply on the basis that its service area is a member service area shall lose its designation. The municipal provider may reapply for and reobtain its designation if the director determines that the municipal provider's projected use is consistent with achieving the management goal of the active management area under section 45-576.

2. No additional real property in that active management area may become a member land.

3. No additional service area of a city, town or private water company in that active management area may become a member service area.

B. After a water district has adopted an ordinance or resolution to undertake the water district groundwater replenishment obligations established under title 48, chapter 28, article 7, if one or more of the conditions established under section 45-576.01, subsection B, paragraph 2 or 3 are not met with respect to the water district and for as long as the condition is not met:

1. Any municipal provider whose service area is in the active management area in which the water district is located and that was designated as having an assured water supply on the basis that its service area is a water district member service area shall lose its designation. The municipal provider may reapply for and reobtain its designation if the director determines that the municipal provider's projected use is consistent with achieving the management goal of the active management area under section 45-576.

2. No additional real property in that active management area may become a water district member land.

3. No additional service area of a city, town or private water company in that active management area may become a water district member service area.

C. If the conservation district notifies the director pursuant to section 48-3781, subsection G that a municipal provider that was designated as having an assured water supply on the basis that its service area is a member service area has failed to pay any portion of the required annual replenishment tax assessed under section 48-3781, the director may revoke the municipal provider's designation. The municipal provider may reapply for and reobtain its designation if the director determines that the municipal provider's projected use is consistent with achieving the management goal of the active management area under section 45-576.

D. After a water district has adopted an ordinance or resolution to undertake the water district groundwater replenishment obligations established under title 48, chapter 28, article 7, if the water district notifies the director pursuant to section 48-4982, subsection G that a municipal provider that was designated as having an assured water supply on the basis that its service area is a water district member service area has failed to pay any portion of the required annual replenishment tax assessed under section 48-4982, the director may revoke the municipal provider's designation. The municipal provider may reapply for and reobtain its designation if the director determines that the municipal provider's projected use is consistent with achieving the management goal of the active management area under section 45-576.

45-576.07. Determining water sufficiency and availability; water availability status capability plans

A. For the purposes of determining whether to designate or maintain the designation of a city, town or private water company as having an assured water supply, when the service area of that city, town or private water company has qualified as a member service area of a conservation district pursuant to title 48, chapter 22, article 4, and when the member service area has been granted water availability status by a resolution of the conservation district adopted pursuant to section 48-3772, subsection B, paragraph 10, the director shall find that sufficient groundwater, surface water or effluent will be continuously available to satisfy the water needs of a proposed use for at least one hundred years under section 45-576 if all of the following apply:

1. The conservation district has committed through the resolution granting water availability status to the city, town or private water company to replenish a specified average annual volume of water in a location where the city, town or private water company may physically access the water for service to its customers.

2. The director finds that the commitment by the conservation district to replenish the specified average annual volume of water will provide a sufficient supply of water that will be continuously available to

satisfy the water needs of the city, town or private water company's proposed use for at least one hundred years.

3. The director finds that, without the water supply provided through the resolution adopted by the conservation district, the city, town or private water company would be unable to obtain or maintain a designation as having an assured water supply for its current and committed demands beyond 2010.

4. The director finds that the commitment by the conservation district to replenish a specified average annual volume of water in a location where the city, town or private water company may physically access the water for service to its customers is consistent with the most recent plan approved by the director pursuant to subsection H of this section.

5. The director finds that the conservation district or the city, town or private water company has committed to ensure that a five year supply of water will be maintained and available for use by the city, town or private water company in years in which water is not available for replenishment.

6. The conservation district or the city, town or private water company has obtained all permits necessary to replenish water at the location specified in the resolution, including underground storage facility permits and water storage permits issued under chapter 3.1 of this title.

7. If the water supply made available to the city, town or private water company through replenishment by the conservation district will serve only a portion of the water needs of the city, town or private water company, the director finds that the city, town or private water company has sufficient groundwater, surface water or effluent that will be continuously available to satisfy the remaining needs of the city, town or private water company for at least one hundred years, in accordance with the rules adopted by the director pursuant to section 45-576, subsection H.

8. The director has determined pursuant to subsection H of this section that the most recent plan submitted by the conservation district pursuant to this section establishes that the conservation district has the capability to grant water availability status to member service areas.

B. To establish that the conservation district has the capability to grant water availability status to member service areas in an active management area, the conservation district may submit a plan for the active management area to the director that includes all of the following information:

1. An estimate of the conservation district's current and projected groundwater replenishment obligations, as defined in section 48-3701, for the following one hundred calendar years.

2. An estimate of the conservation district's current and projected contract replenishment obligations, as defined in section 48-3701, for the following one hundred calendar years.

3. An estimate of the conservation district's current and projected commitments to member service areas that have or will be granted water availability status by the conservation district.

4. A description of water resources that are available to the conservation district for use in satisfying the obligations described in paragraphs 1 through 3 of this subsection during the following twenty calendar years.

5. A description of water resources that are expected to be available to the conservation district for use in satisfying the obligations described in paragraphs 1 through 3 of this subsection during the following one hundred calendar years.

6. A description of the transportation facilities and available capacity in those facilities to be used in satisfying the obligations described in paragraphs 1 through 3 of this subsection during the following twenty calendar years.

7. An analysis of potential transportation facilities and available capacity in those facilities that could be used in satisfying the obligations described in paragraphs 1 through 3 of this subsection during the following one hundred calendar years.

C. Within sixty days after receiving the conservation district's plan, the director shall determine if the conservation district has submitted sufficient information to determine whether the conservation district has the capability to grant water availability status to member service areas. If the director determines that the information is insufficient for that determination, the director shall notify the conservation district of the insufficiency in writing and shall specify what additional information is required. The conservation district shall provide the information to the director within a reasonable time as specified by the director.

D. Upon determination that the plan of the conservation district is complete, the director shall publish notice in a newspaper of general statewide circulation once each week for two consecutive weeks:

1. Requesting public comment concerning information supplied by the conservation district to meet the requirements of subsection B of this section.

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

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

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

G. Within sixty days after the hearing on the first plan submitted under subsection B of this section, or within one hundred twenty days after the hearing on any subsequent plan submitted under subsection K of this section, the director shall issue a decision for each of the active management areas in which the conservation district is attempting to establish that the conservation district has the capability to grant water availability status to member service areas.

H. The director shall issue a decision that the conservation district's plan establishes that the conservation district has the capability to grant water availability status to member service areas, if the director finds that the conservation district has the current capability to meet the obligations described in subsection B, paragraphs 1 through 3 for the twenty calendar years following the submission of the plan and if the director finds that the conservation district has established an adequate plan to meet those obligations for the one hundred calendar years following the submission of the plan.

I. Unless the conservation district successfully appeals the director's decision pursuant to subsection J of this section, if the director has made a determination that the conservation district does not have the capability to grant water availability status to member service areas, the director shall notify the conservation district of the insufficiency of the plan in writing and shall specify the insufficiencies of the plan. If, at the time the conservation district receives the insufficiencies of the plan from the director, any member service area has water availability status, the conservation district shall modify and resubmit the plan, and the director shall review the plan as provided in this section, except that the director shall only hold a hearing regarding those matters that the conservation district has modified in its resubmitted plan.

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

K. If the conservation district submits a plan for an active management area to the director pursuant to subsection B of this section, the conservation district shall thereafter, in conjunction with every plan required by section 45-576.02, subsection C, also submit the plan for that active management area described by subsection B of this section. The director shall then review the plan in accordance with subsections C through J of this section. The conservation district shall not be required to submit the plan described in this section for an active management area unless a member service area which has water availability status is located within that active management area.

45-577. [Application; hydrological study; review of application](#)

A. The director shall prescribe the form of application for a certificate of assured water supply, to include, as applicable:

1. The legal description of the land.
2. The plats, plans and maps of the proposed development.
3. Information on the nature and magnitude of the proposed development, including the number of parcels, lots or dwelling units and the annual amount of water which will be required.
4. Evidence of contracts for the delivery of water and information relating to the terms of the contracts.
5. If groundwater is a proposed source of water:
 - (a) Evidence of ownership of any grandfathered rights pursuant to which groundwater may be withdrawn for the proposed development.
 - (b) The legal description of the location of any existing wells from which the applicant proposes to withdraw groundwater or the proposed location of new wells.
6. Evidence of the right to use surface water pursuant to chapter 1, article 4 of this title, pursuant to a judicial decree or pursuant to a right established prior to 1919.

7. Financing arrangements for the development and evidence of financial capability to construct the delivery system and any treatment works necessary to make the supply of water available for the proposed use.

8. A sworn statement that the information contained in the application is true and correct to the best knowledge and belief of the applicant.

9. Any other information which the director may require.

B. If groundwater is a proposed source of water, the applicant shall submit with the application for a certificate of assured water supply a copy of a hydrological study on the groundwater resources that demonstrates an assured supply for the proposed use. The director shall prescribe the contents of the study which is to be submitted with the application.

C. The director shall review and evaluate the application. The director may request additional information from the applicant and conduct independent investigations as may be necessary to determine whether an assured water supply exists.

45-578. [Notice; objections; hearing; issuance of certificate; appeals](#)

A. The director shall give notice of the application for a certificate of assured water supply once each week for two consecutive weeks in a newspaper of general circulation in the active management area in which the applicant proposes to use water. The first publication shall occur within fifteen days after the application is determined complete and correct or at any earlier time as the applicant may request after the application is determined complete. If the application is substantially modified after notice of the application is given pursuant to this subsection, the director shall give notice of the application as modified in the manner prescribed by this subsection. The first publication of any subsequent notice shall occur within fifteen days after the modified application is determined complete and correct or at any earlier time as the applicant may request after the modified application is determined complete.

B. Notice pursuant to subsection A of this section shall state that objections to the issuance of the certificate may be filed by residents of the active management area, in writing, with the director within fifteen days after the last publication of notice. An objection shall state the name and mailing address of the objector, be signed by the objector, the objector's agent or the objector's attorney and clearly set forth reasons why the certificate should not be issued. The grounds for objection are limited to whether the certificate application meets the criteria for determining an assured water supply set forth in section 45-576, subsection I.

C. In appropriate cases, including cases where a proper written objection to the certificate 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. The director, thirty days prior to the date of the hearing, shall give notice of the hearing to the applicant and to any person who filed a proper written objection to the issuance of the certificate. The hearing shall be scheduled for not less than sixty days nor more than ninety days after the expiration of the time in which to file objections.

D. Upon finding that an assured water supply exists for the proposed use, the director shall issue a certificate of assured water supply to the applicant. Upon finding that an assured water supply does not exist, the director shall deny the application and return it to the applicant.

E. An aggrieved party or a person who contested a certificate by filing a proper objection pursuant to subsection B of this section may seek judicial review of the final decision of the director as provided in section 45-114, subsection B in the superior court.

F. If the application for a certificate of assured water supply is for land that has qualified as a member land under title 48, chapter 22, the director shall notify the conservation district when a certificate of assured water supply is issued and shall report the total projected average annual replenishment obligation at build-out for each plat under the certificate. On or before January 1, 2005, the director shall provide a written report to the conservation district indicating the total projected average annual replenishment obligation at build-out for each plat under certificates of assured water supply issued for land that qualified as member land under title 48, chapter 22 before January 1, 2004.

G. 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. If an administrative hearing is held, it shall be conducted in the active management area in which the use is located.

45-579. [Assignment of certificate of assured water supply; definition](#)

A. A holder of a certificate of assured water supply issued pursuant to section 45-576 may assign the certificate, in whole or in part, to another person if the holder applies to the director for approval within ten years after the original certificate was issued and the director approves the application. An application may

be filed under this section more than ten years after the original certificate was issued if a minimum of five hundred lots within the subdivision covered by the certificate have been sold to individual home buyers by the holder of the certificate and any previous holders of the certificate. An application filed under this section shall be on a form prescribed by the director. The director shall approve a timely application for assignment of a certificate of assured water supply if the director determines that all of the following apply:

1. The proposed assignee owns or is acquiring the subdivision to which the current certificate applies, or if the application is for a partial assignment, the portion of the subdivision to which the current certificate applies that is the subject of the proposed assignment.

2. There has not been any material change in the subdivision plat, plan or map since the certificate was originally issued, including an increase in the total number of housing units or an increase in the total water demand for the subdivision, including all assignments.

3. Either there is water delivery infrastructure in place that is capable of delivering water to each lot within the subdivision or the proposed assignee has demonstrated financial capability to complete the infrastructure. In determining whether the proposed assignee has demonstrated financial capability to complete the infrastructure, the director shall apply the same standards that are used in evaluating financial capability for a new certificate application.

4. The water provider serving the subdivision and the source of supply have not changed since the current certificate was issued and the water provider has agreed to serve the subdivision after the assignment.

5. Water rights, permits, licenses, contracts and easements other than the municipal provider's service area rights at the time the current certificate was issued have been assigned and may be used to support water service to the portion of the subdivision that is the subject of the assignment and to any remaining portions of the subdivision that are retained by the subdivider.

6. There has not been any change in the manner in which the consistency with management goal requirements were satisfied at the time the original certificate was issued.

B. After a change of ownership has occurred and on approval of an assignment, the director shall issue a certificate of assured water supply in the name of the assignee, retaining the date of the original certificate as the date of issuance.

C. In the case of a partial assignment, the director shall issue a certificate in the name of the assignee for the portion of the subdivision that is the subject of the proposed assignment, and shall issue a certificate in the name of the assignor for the portion of the subdivision retained, each with the date of the original certificate as the date of issuance. The new certificates shall include all water demand for the subdivision represented by the current certificate. The allocation of demand between the certificates shall be based on a reasonable plan for allocation of the total subdivision demand as approved by the director.

D. Section 45-578 does not apply to an application filed under this section. Section 45-114, subsections A and B govern administrative proceedings, rehearing and 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 use is located.

E. Within two business days after receiving an application under subsection A of this section, the director shall post notice of the application on the department's web site until the director issues a decision on the application. The notice shall include notice of the right to submit comments on the application as provided in this subsection, including a toll free number where comments may be submitted by telephone and the addresses where comments may be submitted by United States mail, electronic mail and hand delivery. Any person may submit comments on the application within fourteen calendar days after the first day that notice of the application is posted on the department's web site. The director shall consider all timely comments submitted on the application before issuing a decision on the application. Within two business days after issuing a decision on the application, the director shall post notice of the decision on the department's web site for a minimum of fourteen days. Notwithstanding title 41, chapter 6, article 10 and section 45-114, a person who submits comments on an application pursuant to this subsection is not a party for purposes of title 41, chapter 6, article 10, is not entitled to an administrative hearing before or after the director's decision on the application and is not entitled to judicial review of the director's decision.

F. For the purposes of this section, "original certificate" means the initial certificate of assured water supply that is issued by the director for a subdivision.

45-580. [Assured and adequate water supply administration fund; purpose](#)

A. The assured and adequate water supply administration fund is established consisting of the fees that are paid to the department for applications relating to adequate and assured water supply pursuant to sections 45-108, 45-576 and 45-579 and that are established by the director pursuant to section 45-113, subsection B. The department shall administer the fund. Monies in the fund are subject to appropriation and shall be used by the department for the costs and expenses of the department in administering sections 45-108, 45-576 and 45-579.

B. The director shall deposit, pursuant to sections 35-146 and 35-147, all fees received pursuant to subsection A of this section in the fund. The fund shall be a separate account on the books of the department. Monies remaining in the fund at the end of the fiscal year remain in the fund and are exempt from the provisions of section 35-190 relating to the lapsing of appropriations. On notice from the director, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

Article 10 – Wells

45-591. Definitions

In this article, unless the context otherwise requires:

1. "Existing well" means a well which was drilled before June 12, 1980 and which is not abandoned or sealed or a well which was not completed on June 12, 1980 but for which a notice of intention to drill was on file with the Arizona water commission on such date.

2. "New well" means a well for which a notice of intention to drill or a permit is required pursuant to this article or which is drilled pursuant to a permit issued under section 45-834.01.

45-591.01. Oil, gas, helium and geothermal wells; exemption

Wells drilled for oil, gas or helium pursuant to the provisions of title 27 are not wells as defined in this chapter. The director, by rule or regulation, may exempt exploration wells from any requirement of this article that the director determines is not necessary for the protection of groundwater. Geothermal wells drilled pursuant to the provisions of title 27 are not wells as defined in this chapter when the director finds that the rules and regulations of the oil and gas conservation commission require the reinjection of all waters associated with the geothermal resource to the producing strata.

45-592. Wells in general

A. A person may construct, replace or deepen a well in this state only pursuant to this article and section 45-834.01. The drilling of a well may not begin until all requirements of this article and section 45-834.01, as applicable, are met.

B. The director may adopt temporary rules to allow a person to construct, replace or deepen a well prior to the adoption of final rules pursuant to this article.

45-593. Registration of existing wells; permanent record of all wells; reporting open wells

A. On or before June 12, 1982, a person who owns an existing well which is or has been used to withdraw or monitor water shall register the well on a registration form provided by the director. The registration form shall include:

1. The registration number of any well previously required to be registered in this state before June 12, 1980.

2. The legal description of the land upon which the well is located, the location of the well on the land and the name and mailing address of the owner of the land.

3. The depth, diameter and type of casing of the well.

4. Such legal description of the land upon which the groundwater is being used as may be required by the director to administer this chapter.

5. The maximum pumping capacity of the well.

6. Any other information which the director may require.

B. The director shall assign a registration number to each well registered pursuant to this section and to all other wells drilled pursuant to this chapter and shall maintain a permanent record of registration numbers and all other information on new and existing wells pursuant to this chapter and previous law.

C. The person to whom a well is registered shall notify the director of a change in ownership of the well, and the new owner shall furnish information as required by the director to keep the department's well registration records current and accurate.

D. Within thirty days after a change of ownership of real property, the new owner shall notify the director in writing of the existence of any open well or wells on the property which the new owner has discovered. Thereafter, the owner shall report the existence of any open well on the property within ten days after the owner discovers the well.

E. This article shall not be construed to legalize any well existing on June 12, 1980, the effective date of this article, which was not in accordance with prior statutory law.

45-594. Well construction standards; remedial measures

A. The director shall adopt rules establishing construction standards for new wells and replacement wells, the deepening and abandonment of existing wells and the capping of open wells.

B. All well construction, replacement, deepening and abandonment operations shall comply with the rules adopted pursuant to this section. A well owner shall cap an open well according to the rules adopted pursuant to subsection A.

C. If the director determines that a well is not capped in compliance with the rules adopted pursuant to subsection A, that the well is dangerous to property or public health or safety and that there is not sufficient time to issue and enforce an order relative to its capping, the director may employ remedial measures necessary to protect property or public health or safety. The remedial measures may include remaining in full charge and control of the well site until the well has been rendered safe and capping the well. This subsection does not relieve an owner or operator of a well from the legal duties, obligations and liabilities arising from such ownership or operation.

45-595. Well construction requirements; licensing of well drillers

A. New well construction, including modifications of wells, shall be performed under the direct and personal supervision of a well driller who holds a well driller's license pursuant to subsection B of this section.

B. A person who intends to construct or modify one or more wells in this state shall file an application for a well driller's license with the director. The application shall include:

1. The name, mailing address and place of business of the applicant.
2. The applicant's experience and qualifications.
3. Such other information as the director may require.

C. The director, by rule, shall establish qualifications and a reasonable fee of not more than fifty dollars for licenses for well drillers and establish procedures for the evaluation and licensing of applicants. A nontransferable well driller's license shall be issued if the director finds that the applicant meets the qualifications established pursuant to this subsection. The director may revoke a well driller's license for good cause.

D. A person who drills or modifies an exempt well on land owned by that person shall first obtain a single well license from the department. The department shall issue the license to drill the well according to standard small well construction standards. No fee may be charged for a single well license.

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

45-596. Notice of intention to drill; fee

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

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

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

1. The name and mailing address of the person filing the notice.

2. The legal description of the land on which the well is proposed to be drilled and the name and mailing address of the owner of the land.
3. The legal description of the location of the well on the land.
4. The depth, diameter and type of casing of the proposed well.
5. Such legal description of the land on which the groundwater is proposed to be used as may be required by the director to administer this chapter.
6. When construction is to begin.
7. The proposed uses to which the groundwater will be applied.
8. The name and well driller's license number of the well driller who is to construct the well.
9. The design pumping capacity of the well.
10. If for a replacement well, the maximum capacity of the original well and the distance of the replacement well from the original well.
11. Proof that the director determines to be satisfactory that the person proposing to construct the well holds a valid license issued by the registrar of contractors pursuant to title 32, chapter 10 and that the license is of the type necessary to construct the well described in the notice of intention to drill. If the proposed well driller does not hold a valid license, the director may accept proof that the proposed well driller is exempt from licensing as prescribed by section 32-1121.
12. If any water from the proposed well will be used for domestic purposes as defined in section 45-454, evidence of compliance with the requirements of subsection F of this section.
13. If for a second exempt well at the same location for the same use pursuant to section 45-454, subsection I, proof that the requirements of that subsection are met.
14. If for a well to obtain geophysical, mineralogical or geotechnical data within a single section of land, the information prescribed by this subsection for each well that will be included in that section of land before each well is drilled.
15. Such other information as the director may require.

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

E. The well shall be completed within one year after the date of the notice unless the director approves a longer period of time pursuant to this subsection. If the well is not completed within one year or within the time approved by the director pursuant to this subsection, the person shall file a new notice before proceeding with further construction. At the time the drilling card for the well is issued, the director may provide for and approve a completion period that is greater than one year but not to exceed five years from the date of the notice if both of the following apply:

1. The proposed well is a nonexempt well within an active management area and qualifies as a replacement well in approximately the same location as prescribed in rules adopted by the director pursuant to section 45-597.
2. The applicant has submitted evidence that demonstrates one of the following:
 - (a) This state or a political subdivision of this state has acquired or has begun a condemnation action to acquire the land on which the original well is located.
 - (b) The original well has been rendered inoperable due to flooding, subsidence or other extraordinary physical circumstances that are beyond the control of the well owner.

F. If any water from a proposed well will be used for domestic purposes as defined in section 45-454 on a parcel of land of five or fewer acres, the applicant shall submit a well site plan of the property with the notice of intention to drill. The site plan shall:

1. Include the county assessor's parcel identification number.

2. Show the proposed well location and the location of any septic tank or sewer system that is either located on the property or within one hundred feet of the proposed well site.

3. Show written approval by the county health authority that controls the installation of septic tanks or sewer systems in the county, or by the local health authority in areas where the authority to control installation of septic tanks or sewer systems has been delegated to a local authority. In areas where there is no local or county authority that controls the installation of septic tanks or sewer systems, the applicant shall apply for approval directly to the department of water resources.

G. Before approving a well site plan submitted pursuant to subsection F of this section, the county or local health authority or the department of water resources, as applicable, pursuant to subsection F of this section, shall review the well site plan and determine whether the proposed well location complies with applicable local laws, ordinances and regulations and any laws or rules adopted under this title and title 49 regarding the placement of wells and the proximity of wells to septic tanks or sewer systems. If the health authority or the department of water resources, as applicable, pursuant to subsection F of this section, finds that the proposed well location complies with this title and title 49 and with local requirements, it shall endorse the site plan and the proposed well placement in a manner indicating approval. On endorsement, the director of water resources shall approve the construction of the well, if all remaining requirements have been met. If the health authority is unable to determine whether the proposed well location complies with this title and title 49 and local requirements, it shall indicate this on the site plan and the decision to approve or reject the proposed construction rests with the director of water resources. If parcel size, geology or location of improvements on the property prevents the well from being drilled in accordance with this title and title 49 or local requirements, the property owner may apply for a variance. The property owner shall make the request for a variance to the county or local authority if a county or local law, ordinance or regulation prevents the proposed construction. If a law or rule adopted under this title or title 49 prevents the proposed construction, the property owner shall make the request for a variance directly to the department of water resources. The request for a variance shall be in the form and shall contain the information that the department of water resources, county or local authority may require. The department of water resources, or the county or local authority whose law, ordinance or regulation prevents the proposed construction, may expressly require that a particular variance shall include certification by a registered professional engineer or geologist that the location of the well will not pose a health hazard to the applicant or surrounding property or inhabitants. If all necessary variances are obtained, the director of water resources shall approve the construction of the well if all remaining requirements have been met.

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

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

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

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

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

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

(c) The site of a voluntary remediation action undertaken pursuant to title 49, chapter 1, article 5.

(d) The site of a remedial action undertaken pursuant to title 49, chapter 2, article 5, including mitigation of a nonhazardous release undertaken pursuant to an order issued by the department of environmental quality pursuant to section 49-286.

(e) The site of a remedial action undertaken pursuant to the resource conservation and recovery act of 1976 (P.L. 94-580; 90 Stat. 2795; 42 United States Code sections 6901 through 6992).

(f) The site of remedial action undertaken pursuant to the department of defense environmental restoration program (P.L. 99-499; 100 Stat. 1719; 10 United States Code section 2701).

J. Except as prescribed in subsection K of this section, the director shall approve or deny the drilling of a well within forty-five days after receipt of the notice of intention to drill if one of the following applies:

1. The proposed well is located within a remedial action site.
2. The proposed well is located within one mile of any of the following remedial action sites:

(a) A remedial action undertaken pursuant to title 49, chapter 2, article 5, including mitigation of a nonhazardous release undertaken pursuant to an order issued by the department of environmental quality pursuant to section 49-286.

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

(c) A remedial action undertaken pursuant to the department of defense environmental restoration program (P.L. 99-499; 100 Stat. 1719; 10 United States Code section 2701).

3. The proposed well is located within one-half mile of either of the following remedial action sites:

(a) A remedial action undertaken pursuant to title 49, chapter 1, article 5.

(b) A remedial action undertaken pursuant to the resource conservation and recovery act of 1976 (P.L. 94-580; 90 Stat. 2795; 42 United States Code sections 6901 through 6992).

4. The proposed well is located within five hundred feet of the site of a corrective action undertaken pursuant to title 49, chapter 6.

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

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

45-596.01. Additional information required with notice of intention to drill well to pump Colorado river water; exception

(Conditionally Eff.)

In addition to the information required by section 45-596, a person who files a notice of intention to drill a well that will pump Colorado river water shall include with the notice proof that the director determines to be satisfactory that the person has the legal right to use Colorado river water. This section does not apply to a proposed well that will have a pump with a maximum capacity of not more than thirty-five gallons per minute and that will be used for the supply, service and activities of households and private residences, including the application of water to less than two acres of land to produce plants or parts of plants for sale or human consumption or for use as feed for livestock, range livestock or poultry, as those terms are defined in section 3-1201.

45-597. Deepening and replacement of wells in active management areas; filing of notice

A. A person entitled to withdraw groundwater in an active management area or a person entitled to recover stored water pursuant to section 45-834.01 may deepen an existing well or construct a replacement well at approximately the same location. The director shall by rule define what constitutes a replacement well, including the distance from the original well site that is deemed to be the same location for a replacement well.

B. Prior to deepening an existing well or constructing a replacement well at approximately the same location, the person shall file a notice of intention to drill pursuant to section 45-596 and provide the director with any other information as the director may by rules require.

45-598. New wells and replacement wells in new locations in active management areas; rules; permit required

A. The director shall adopt rules governing the location of new wells and replacement wells in new locations in active management areas to prevent unreasonably increasing damage to surrounding land or other water users from the concentration of wells.

B. A person entitled to withdraw groundwater in an active management area pursuant to article 5 or 6 of this chapter may construct a new well or a replacement well in a new location if the location of the new well or the replacement well complies with the rules adopted by the director pursuant to subsection A of this section and if the person has applied for and received a permit from the director pursuant to section 45-599.

C. An applicant for a general industrial use permit pursuant to sections 45-515 and 45-521 who proposes to construct a new well or a replacement well in a new location shall also apply for a permit pursuant to section 45-599.

D. A person who is entitled to withdraw groundwater in an active management area under article 5 or 6 of this chapter may withdraw groundwater under article 5 or 6 of this chapter from a well drilled to withdraw groundwater pursuant to a groundwater withdrawal permit issued under article 7 of this chapter if the location of the well complies with the rules adopted by the director under subsection A of this section and if the person has applied for and received a permit from the director pursuant to section 45-599. A person entitled to withdraw groundwater in an active management area under a general industrial use permit issued under section 45-515 may withdraw groundwater under section 45-515 from a well used to withdraw groundwater pursuant to another category of groundwater withdrawal permit issued under article 7 of this chapter if the location of the well complies with the rules adopted by the director under subsection A of this section and if the person has applied for and received a permit from the director pursuant to section 45-599.

45-599. Permit application; contents; correction of defective application; issuance of permit; fee

A. An application for a permit to construct a new well or replacement well in a new location shall be made on a form that is prescribed and furnished by the director and that includes:

1. The name and mailing address of the applicant.
2. The legal description of the land upon which the new well is proposed to be constructed and the name and mailing address of the owner of the land.
3. The legal description of the proposed location of the new well on the land.
4. If for a replacement well, the legal description of the land upon which the original well is located, the name and mailing address of the owner of the land, the legal description of the location of the original well on the land, the depth and diameter of the original well and evidence of proper abandonment.
5. The depth, diameter and type of casing of the new well.
6. Such legal description of the land upon which the groundwater is proposed to be used as may be required by the director to administer this chapter.
7. When construction is to begin.
8. The proposed use of the groundwater to be withdrawn.
9. The design pumping capacity of the new well.
10. The name and well driller's license number of the well driller who is to construct the well.
11. The estimated time required to complete the well, if more than one year from the date of receipt of the permit.
12. Such other information including any maps, drawings and data as the director may require.

B. Upon receipt of a permit application and the fee required by subsection J of this section, the director shall endorse on the application the date of its receipt. If the application is incorrect or incomplete, the director may request additional information from the applicant. The director may conduct independent investigations as may be necessary to determine whether the application should be approved or rejected.

C. The director shall approve an application for a permit for a new well or a replacement well in a new location if the proposed well complies with the rules adopted pursuant to section 45-598, subsection A and, if the proposed well is in the Santa Cruz active management area, if the location of the proposed well is consistent with the management plan for the active management area.

D. Except as provided in subsection E of this section, within sixty days of receipt of a complete and correct application and the fee required by subsection J of this section, the director shall approve or reject the application and mail notice of the action to the applicant.

E. If the director determines that an administrative hearing should be held before approving or rejecting an application, the director shall notify the applicant of the date of the hearing within sixty days of receipt of the complete and correct application and the fee required by subsection J of this section.

F. If at the request of the applicant the director determines that an emergency exists, the director shall expedite all decisions under this section.

G. If the application is approved, the director shall issue a permit and the applicant may proceed to construct the well. If the application is rejected, the applicant shall not proceed with construction of the well. The 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.

H. The permit shall state the following:

1. The legal description of the land upon which the well may be constructed.
2. The legal description of the location of the new well on the land.
3. The depth and diameter of the well and type of casing.
4. The maximum pumping capacity of the well.
5. The legal description of the land upon which the groundwater will be used.
6. The use of the groundwater to be withdrawn.
7. The latest date for completing the well.

I. 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. If an administrative hearing is held, it shall be conducted in the active management area in which the use is located.

J. An application for a permit filed under this section shall be accompanied by a filing fee of one hundred fifty dollars. The director shall deposit, pursuant to sections 35-146 and 35-147, all fees collected pursuant to this subsection in the well administration and enforcement fund established by section 45-606.

45-600. Filing of report by driller; filing of completion report

A. A well driller shall maintain a complete and accurate log of each well drilled. Within thirty days of completion of the drilling of any well in this state, the driller shall file a well driller report with the director which shall include all information contained in the log of the well, including information on the casing of the well and, if the well is an artesian well, the capping. The director shall prescribe well driller report forms and the department shall furnish them on request.

B. Within thirty days after the installation of pumping equipment in any well in this state, the registered well owner shall file a completion report with the director. The director shall prescribe the completion report form and the department shall furnish them on request. The completion report form shall include:

1. The type of equipment installed.
2. Tested pumping capacity of the well in gallons per minute as determined for a non-flowing well by measuring the discharge of the pump after continuous operation for at least four hours, or for a flowing well by measuring the natural flow at the land surface.
3. Drawdown of the water level measured in feet for a non-flowing well after not less than four hours of continuous operation and while still in operation, or for a flowing well, the shut-in pressure measured in feet above the land surface or in pounds per square inch at the land surface.
4. Depth in feet from the land surface to the static groundwater level, measured immediately prior to the well-capacity test.
5. Such other information as the director may require.

45-601. Operating rules for multiple wells

The director may adopt rules governing pumping patterns of persons who withdraw groundwater or recover stored water, as defined in section 45-802.01, from multiple wells in an active management area to minimize damage to adjacent groundwater users. The director may not require a person who withdraws groundwater or recovers stored water from multiple wells to change the person's pumping patterns if the person or user cannot reasonably accommodate such changes.

45-602. Capping of wells; waste

A. Groundwater which has been withdrawn shall not be allowed to waste. To effectuate the purposes of this section, the director shall:

1. Require all flowing wells to be capped or equipped with valves so that the flow of water can be completely stopped when not in use.

2. Require both flowing and non-flowing wells to be constructed and maintained so as to prevent waste of groundwater through leaky casing, lack of casings, pipes, fittings, valves or pumps, either above or below the surface of the ground.

B. The reasonable withdrawal of groundwater for development, testing or repair of a well or the inadvertent loss of water due to breakage of a pump, valve, pipe or fitting is not waste if reasonable diligence is shown in effecting the necessary repairs.

45-603. Criteria for rules and regulations

In developing rules and regulations under this article, the director shall consider, among other things, water quality, cones of depression and land subsidence.

45-604. Water measuring devices

A. Except as provided in subsections B, C and D of this section, a person who withdraws groundwater from a nonexempt well in an active management area or an irrigation non-expansion area, a person who withdraws water from a non-exempt well in the Santa Cruz active management area or a person who withdraws groundwater for transportation to an initial active management area pursuant to article 8.1 of this chapter shall use a water measuring device approved by the director.

B. A person who holds a type 2 non-irrigation grandfathered right or a groundwater withdrawal permit in the amount of ten or fewer acre-feet per year is not required to use a water measuring device to measure withdrawals pursuant to that grandfathered right or groundwater withdrawal permit unless the person holds more than one such right or permit in the aggregate amount of more than ten acre-feet per year and withdraws more than ten acre-feet of groundwater per year pursuant to those rights or permits from one well.

C. In an irrigation non-expansion area:

1. A person who withdraws ten or fewer acre-feet of groundwater per year from a non-exempt well for a non-irrigation use is not required to use a water measuring device to measure withdrawals from that well.

2. A person who withdraws groundwater from a non-exempt well for an irrigation use is not required to use a water measuring device to measure withdrawals from that well if both of the following apply:

(a) Groundwater withdrawn from the well for an irrigation use is used only on land that is owned by a person who has the right under section 45-437 to irrigate ten or fewer contiguous acres at the place of the use.

(b) Groundwater withdrawn from the well is not used on land that is part of an integrated farming operation.

D. In an active management area, a person, other than an irrigation district, who withdraws groundwater from a non-exempt well for use pursuant to an irrigation grandfathered right that is appurtenant to ten or fewer irrigation acres is not required to use a water measuring device to measure withdrawals from that well unless groundwater withdrawn from the well is also used pursuant to either a service area right pursuant to article 6 of this chapter or a grandfathered groundwater right other than an irrigation grandfathered right that is appurtenant to irrigation acres that are exempt from irrigation water duties pursuant to section 45-563.02.

E. The director shall adopt rules setting forth the requirements and specifications for water measuring devices.

45-605. Well inspections; cross-contamination; remedial measures; definition

A. The director of water resources, in consultation with the director of environmental quality, may inspect wells for vertical cross-contamination of groundwater by hazardous substances and may take appropriate remedial actions to prevent or mitigate the cross-contamination at no cost to the well owner, subject to subsection D of this section. The director shall consult with and seek the voluntary compliance of affected well owners regarding well access, investigations and remedial actions. On receiving permission from the well owner or operator, the director or the director's designee may enter property owned or operated by the well owner at reasonable times under any of the following circumstances:

1. To inspect and collect samples from a well and to inspect and copy all documents or records relating to the well. If a sample is obtained pursuant to this section, the director, before leaving the property, shall give to the well owner or operator a receipt describing the sample obtained and, if requested, a portion of each sample. A copy of the results of any analysis made of these samples shall be furnished promptly to the well owner.

2. To conduct appropriate remedial actions regarding vertical cross-contamination.

B. The director shall provide notice to the director of environmental quality of the results of the inspection, including copies of the department's records and documents and the analysis of any samples taken. If it is determined that the well results in vertical cross-contamination, the director, upon receiving permission from the well owner or operator and approval from the director of the department of environmental quality, may take appropriate remedial actions, including well modification, abandonment or replacement, or provision of a replacement water supply.

C. A well owner who is not a responsible party pursuant to title 49, chapter 2, article 5 and who cooperates with the investigation and remedial activities of the director and the department of environmental quality to the extent possible and consistent with the owner's water delivery responsibilities and system operational requirements, shall receive a covenant not to sue from the director of environmental quality pursuant to section 49-282.04, subsection C.

D. Notwithstanding subsection C of this section, if the director takes a remedial action pursuant to subsection A of this section and the well owner or operator is later determined to be responsible under title 49, chapter 2, article 5 for a release or threatened release of hazardous substances that contaminated or may have contaminated the well, the well owner or operator shall reimburse the water quality assurance revolving fund established pursuant to section 49-282 for the owner or operator's proportionate share of the costs incurred in taking the action.

E. The director shall notify an applicant for a permit or a person who files a notice of intent to drill a new or replacement well if the location of the proposed well is within a sub-basin where there is a site on the registry established pursuant to section 49-287.01, subsection D. The director shall adopt rules requiring the review of notices and applications regarding new or replacement wells to identify whether a well will be located where existing or anticipated future groundwater contamination presents a risk of vertical cross-contamination by the well. The rules shall require that a new or replacement well in this type of location be designed and constructed in a manner to prevent vertical cross-contamination within an aquifer.

F. On approval from the director of environmental quality, the department of water resources may be reimbursed for any actions conducted pursuant to title 49, chapter 2, article 5.

G. The well inspection authority granted the director in this section is in addition to any other well inspection authority otherwise prescribed in this title.

H. For purposes of this section, "vertical cross-contamination" has the same meaning prescribed by section 49-281.

45-606. Well administration and enforcement fund; purpose

A. The well administration and enforcement fund is established consisting of fees paid to the department pursuant to section 45-596, subsection L and section 45-599, subsection J. The department shall administer the fund. Monies in the fund are continuously appropriated and shall be used by the director for the following purposes:

1. For the reasonable and necessary costs of the department to implement this article.

2. For compliance monitoring, investigation and enforcement activities of the department pertaining to the construction, replacement, deepening and abandonment of wells and capping of open wells under this article.

B. The fund shall be a separate account on the books of the department. Monies remaining in the fund at the end of the fiscal year remain in the fund and are exempt from the provisions of section 35-190 relating to the lapsing of appropriations. On notice from the director, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

Article 11 - Financial Provisions

45-611. Groundwater withdrawal fee; amounts and purposes of fee; exception

A. Except as provided in subsection B of this section, the director shall levy and collect an annual groundwater withdrawal fee from each person withdrawing groundwater in the Prescott active management area or the person who owns the right to withdraw the groundwater, in an amount not to exceed \$5 per acre-foot of groundwater withdrawn and beneficially used. The director shall levy and collect an annual withdrawal fee from each person withdrawing water, other than stored water, from a well in the Santa Cruz active management area or the person who owns the right to withdraw the water, in an amount not to exceed \$5 per acre-foot of water, other than stored water, that is withdrawn and beneficially used. For the purposes of this article, the annual withdrawal fee levied and collected in the Santa Cruz active management area shall be considered a groundwater withdrawal fee. The actual amount of the fee levied and collected by the director pursuant to this subsection shall be set by the director as follows:

1. For administration and enforcement of this chapter, an amount not less than \$.50 and not greater than \$1 per acre-foot per year. The initial fee for administration and enforcement shall be levied as soon as practicable after the active management area is established.

2. For augmentation of the water supply of the active management area, conservation assistance to water users within the active management area and monitoring and assessing water availability within the active management area, an amount not greater than \$2 per acre-foot per year.

3. For purchasing and retiring grandfathered rights, an amount not greater than \$2 per acre-foot per year. The initial fee for purchasing and retiring grandfathered rights shall be levied in the first year in which the director develops and implements a program for the purchase and retirement of grandfathered rights as part of the management plan for the active management area, but not earlier than January 1, 2006. The director may not levy a fee under this paragraph on a district member of a groundwater replenishment district that withdraws groundwater in the district for a non-irrigation use in the district.

B. A person, other than an irrigation district, who withdraws groundwater in an active management area from a non-exempt well for use pursuant to an irrigation grandfathered right that is appurtenant to ten or fewer irrigation acres and the person who owns the right to withdraw the groundwater are exempt from the groundwater withdrawal fee requirements of subsections A and C of this section for those withdrawals unless the irrigation acres are part of an integrated farming operation.

C. Except as provided in section 45-411.01, subsection C and subsection B of this section, the director shall levy and collect an annual groundwater withdrawal fee from each person who withdraws groundwater in the Tucson, Phoenix and Pinal active management areas or the person who owns the right to withdraw the groundwater, in an amount of not more than \$5 per acre-foot of groundwater withdrawn and beneficially used. The director shall set the actual amount of the fee as follows:

1. In the Tucson and Phoenix active management areas, beginning in 2017, for administration and enforcement of this chapter, an amount of at least \$.50 but not more than \$1 per acre-foot per year. In the Pinal active management area, beginning in 2017, for administration and enforcement of this chapter, an amount of not more than \$1 per acre-foot per year.

2. For augmentation of the water supply of the active management area, conservation assistance to water users within the active management area and monitoring and assessing water availability within the active management area, an amount of not more than \$2 per acre-foot per year. If a permanent board of directors of an active management area water district assumes office under section 48-4831, the fee for augmentation under this paragraph shall not be levied in that active management area.

3. In the Tucson and Phoenix active management areas, for Arizona water banking purposes, the amount of \$2.50 per acre-foot per year. In the Pinal active management area, for Arizona water banking purposes, including replenishment under chapter 15, article 3 of this title, an amount of not more than \$2.50 per acre-foot per year, except that no fee shall be levied in the Pinal active management area for this purpose during calendar years 2020 through 2026.

4. For purchasing and retiring grandfathered rights, an amount of not more than \$2 per acre-foot per year. The initial fee for purchasing and retiring grandfathered rights shall be levied in the first year in which the director develops and implements a program for the purchase and retirement of grandfathered rights as part of the management plan for the active management area, but not earlier than January 1, 2006. The director may not levy a fee pursuant to this paragraph on a district member of a groundwater replenishment district that withdraws groundwater in the district for non-irrigation use in the district.

5. In the Pinal active management area, beginning from and after December 31, 2019 through December 31, 2026, an amount of not more than \$2.50 per acre-foot per year for groundwater and irrigation efficiency projects.

45-612. Administration and enforcement withdrawal fee; exemption from lapsing; disposition of excess monies

A. Each year the legislature shall appropriate sufficient monies to the department to cover all costs of administration and enforcement of this chapter.

B. Not later than October 1 of each year, the director shall estimate the total amount of groundwater to be withdrawn in all active management areas except the Tucson, Phoenix, Pinal and Santa Cruz active management areas during the following calendar year and the total amount of water, other than stored water, to be withdrawn in the Santa Cruz active management area during the following calendar year, and set the administration and enforcement fee pursuant to section 45-611, subsection A, paragraph 1 to produce an amount equal to one-half of the amount budgeted by the director for administration and enforcement purposes for the following fiscal year. In setting the administration and enforcement fee, the director shall account for excess payments or deficiencies in payments in the past fiscal year. Except as provided in section 45-113, subsection C, monies collected from administration and enforcement fees shall be deposited in the water resources fund established by section 45-117.

C. For the Tucson, Phoenix and Pinal active management areas, not later than October 1, 2016 and by October 1 of each year thereafter, the director shall estimate the total amount of groundwater to be withdrawn in each active management area and shall set the administration and enforcement fee pursuant to section 45-611, subsection C, paragraph 1 to produce an amount equal to one-half of the amount budgeted by the director for administration and enforcement purposes for the following fiscal year. In setting the administration and enforcement fee, the director shall account for excess payments or deficiencies in payments in the past fiscal year. Except as provided in section 45-113, subsection C, monies collected from administration and enforcement fees shall be deposited in the water resources fund established by section 45-117.

D. Monies budgeted for administration and enforcement purposes pursuant to this section are exempt from the provisions of section 35-190 relating to lapsing of appropriations. If the administration and enforcement fee is set at fifty cents and excess payments have been received, such excess payments shall be credited to the augmentation and conservation assistance fund established under section 45-615 and credited among the active management areas in proportion to the amount of such monies collected from each active management area.

45-613. Use of withdrawal fees collected for augmentation and conservation and purchase and retirement of grandfathered rights, Arizona water banking purposes and groundwater and irrigation efficiency projects

A. Except as provided in section 45-615, paragraph 2 and sections 45-1972 and 48-4504, monies collected in an active management area for purposes of augmentation, conservation assistance and monitoring and assessing water availability under section 45-611, subsection A, paragraph 2 and subsection C, paragraph 2 shall be used only to finance the augmentation and conservation programs that are part of the management plan for the active management area and to fund any projects that are authorized by the director for monitoring and assessing water availability within the active management area.

B. Monies collected in an active management area for the purpose of purchasing and retiring grandfathered rights under section 45-611, subsection A, paragraph 3 and subsection C, paragraph 4 shall be used only to finance the program for the purchase and retirement of grandfathered rights that is part of the management plan for the active management area.

C. Monies collected in an active management area for the purpose of Arizona water banking under section 45-611, subsection C, paragraph 3 shall be used only for the benefit of the active management area in which they are collected.

D. Except as provided in section 45-615.01, subsection G, monies collected in the Pinal active management area for the purpose of groundwater and irrigation efficiency projects under section 45-611, subsection C, paragraph 5 shall be used only to finance projects for the construction and rehabilitation of wells and related infrastructure for the withdrawal and efficient delivery of groundwater by irrigation districts in the Pinal active management area.

45-614. Setting groundwater withdrawal fee; statement entered in record; statement transmitted to state treasurer; notice; payment; penalty

A. The director, not later than October 1 each year, shall set the groundwater withdrawal fee for each active management area for the following calendar year. In setting the fee, the director shall comply with the requirements of section 45-611, subsections A and C and shall consider, among other things:

1. The estimated financial requirements for the next fiscal year.
2. The estimated amount of groundwater which will be withdrawn in the active management areas, except the Santa Cruz active management area, in the next calendar year.
3. The estimated amount of water, other than stored water, that will be withdrawn from wells in the Santa Cruz active management area in the next calendar year.
4. The amount of monies collected from groundwater withdrawal fees in the preceding calendar year.

B. The director shall enter in the records of the department a statement of the estimated financial requirements for the next fiscal year and a statement of the groundwater withdrawal fees for each active management area for the next calendar year, itemized to show the amounts to be levied for administration and enforcement, augmentation, conservation assistance and monitoring and assessing water availability, Arizona water banking and the purchase and retirement of grandfathered rights. The director shall transmit to the state treasurer a copy of the itemized statement of the groundwater withdrawal fees.

C. Within thirty days after the director sets the groundwater withdrawal fees for the next calendar year, the director shall give notice of the fees by:

1. Giving written notice to the clerk of the board of supervisors of the county or counties in which the active management area is located and to the mayor of each city or town, to each private water company and to the presiding officer of each political subdivision established pursuant to title 48, chapter 17, 18, 19 or 20 and located in the active management area.

2. Written notice to all holders of groundwater withdrawal permits in the active management area.

D. A person who, under section 45-604, subsection B, is not required to use and does not use a water measuring device to measure withdrawals made pursuant to a type 2 non-irrigation grandfathered right or a groundwater withdrawal permit shall pay an amount equal to the groundwater withdrawal fee set by the director for the calendar year multiplied by the number of acre-feet of the grandfathered right or the groundwater withdrawal permit.

E. The groundwater withdrawal fee shall be paid to the department at the time the person withdrawing the water files a report on annual withdrawals pursuant to section 45-632. If a person who is required under section 45-611 to pay a groundwater withdrawal fee for calendar year 1985 or any subsequent calendar year fails to pay the fee for the calendar year in question on or before March 31 of the following year, 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. The director shall transmit all penalties collected under this section to the state treasurer for deposit in the state general fund.

45-615. Deposits; divisions of collections into funds

Except as provided in section 45-113, subsection C, the director shall deposit, pursuant to sections 35-146 and 35-147, all monies collected by the department pursuant to section 45-611, subsection A, paragraphs 2 and 3 and subsection C, paragraphs 2, 3 and 4 and any other monies received for that purpose. Based on the statement of the director transmitted pursuant to section 45-614, subsection B, the monies collected shall be allocated as follows:

1. Except as provided in paragraph 2 of this section, monies received for the purpose of augmentation of the water supply of the active management area, conservation assistance to water users within the active management area and monitoring and assessing water availability within the active management area shall be kept in an augmentation and conservation assistance fund. Separate accounts for each active management area shall be maintained within the fund. On notice from the director, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

2. If an active management area water district has been established in an active management area, all monies received pursuant to section 45-611, subsection A, paragraph 2 for the purpose of augmentation of the water supply of that active management area shall be transmitted to the secretary-treasurer of the district for deposit in the general fund of the district.

3. Monies received for the purpose of purchase and retirement of grandfathered rights shall be kept in a purchase and retirement fund. Separate accounts for each active management area shall be maintained

within the fund. On notice from the director, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

4. Monies received for the purpose of Arizona water banking shall be deposited, pursuant to sections 35-146 and 35-147, in the Arizona water banking fund.

5. Monies collected by the director pursuant to section 45-611, subsection C, paragraph 5 shall be deposited in the temporary groundwater and irrigation efficiency projects fund established by section 45-615.01.

45-615.01. Temporary groundwater and irrigation efficiency projects fund; purpose; report; definition

(Rpld. 4/1/28)

A. The temporary groundwater and irrigation efficiency projects fund is established for the purpose of funding projects for the construction and rehabilitation of wells and related infrastructure for the withdrawal and efficient delivery of groundwater by qualified irrigation districts in the Phoenix active management area, the Pinal active management area and the Harquahala irrigation non-expansion area. The fund consists of legislative appropriations, groundwater withdrawal fees collected in the Pinal active management area pursuant to section 45-611, subsection C, paragraph 5, grants from federal agencies and monies deposited in the fund by qualified irrigation districts in the Phoenix active management area, the Pinal active management area and the Harquahala irrigation non-expansion area. Groundwater withdrawal fees deposited in the fund shall be accounted for separately from other monies in the fund and shall be used only for constructing and rehabilitating wells and related infrastructure in the Pinal active management area. Monies in the fund are continuously appropriated for the purposes of this section.

B. The director may accept and deposit into the fund monies, grants, gifts, contributions and devises to assist in carrying out the purposes of this section.

C. The director shall administer the fund. On notice from the director, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

D. The director may grant monies from the fund to qualified irrigation districts established pursuant to title 48, chapter 19 in the Phoenix active management area, the Pinal active management area and the Harquahala irrigation non-expansion area for the purposes described in subsection A of this section. In granting monies from the fund, the director may give preference to wells and related infrastructure that would be used to recover stored water. Grants made to qualified irrigation districts are exempt from title 41, chapter 24.

E. Before December 31 of each year, the director shall submit to the speaker of the house of representatives and the president of the senate a written report describing the activities of the department for the preceding fiscal year related to expenditures from the fund. The report shall include an accounting for expenditures from the fund and how the monies were used to finance projects for the construction and rehabilitation of wells and related infrastructure for the withdrawal and efficient delivery of groundwater by qualified irrigation districts in the Phoenix active management area, the Pinal active management area and the Harquahala irrigation non-expansion area.

F. Except as provided in subsection G of this section, monies in the fund are exempt from the provisions of sections 35-190 relating to lapsing of appropriations.

G. On June 30, 2027, any unencumbered monies in the fund shall be proportionally distributed to the fund's contributors by December 31, 2027 according to the total amount of monies deposited in the fund by each contributor. The proportion of the unencumbered monies attributable to groundwater withdrawal fees levied under section 45-611, subsection c, paragraph 5 shall be deposited in the Arizona water banking fund established by section 45-2425 and shall be used only in the Pinal active management area in the same manner as groundwater withdrawal fees collected in the Pinal active management area pursuant to section 45-611, subsection C, paragraph 3.

H. All monies deposited in the temporary groundwater and irrigation efficiency projects fund shall be held in trust. The monies in the fund may be used only for the purposes prescribed in this section and may not be appropriated or transferred by the legislature to fund the general operations of this state or to otherwise meet the obligations of the state general fund. This subsection does not apply to any taxes or other levies that are imposed pursuant to title 42 or 43.

I. For the purposes of this section, "qualified irrigation district" means an irrigation district that meets all of the following requirements:

1. The irrigation district received central Arizona project water in any year after calendar year 2014 other than through a groundwater savings facility permit issued under chapter 3.1 of this title.

2. There are at least nine thousand acres that may be lawfully irrigated within the boundaries of the irrigation district and the district did not deliver surface water other than central Arizona project water in calendar year 2017.

3. The irrigation district submitted an application to the department for monies from the fund established by this section to construct an irrigation efficiency project in the Phoenix active management area, the Pinal active management area or the Harquahala irrigation non-expansion area.

45-616. Water quality assurance fee; disposition of revenue

A. The director shall levy and collect, in a form prescribed by the department, an annual water quality assurance fee from each person who owns a type 1 or a type 2 non-irrigation grandfathered right pursuant to article 5 of this chapter or who holds a groundwater withdrawal permit for beneficial use issued pursuant to article 7 of this chapter.

B. Except as provided in subsection C of this section and section 45-411.01, subsection C, the fee is levied in an amount of two dollars twelve cents per acre-foot and at a proportionate rate for any lesser or greater quantity of groundwater withdrawn for beneficial use during the calendar year.

C. A person who, under section 45-604, subsection B, is not required to use and does not use a water measuring device to measure withdrawals made pursuant to a type 2 non-irrigation grandfathered right or a groundwater withdrawal permit shall pay an amount equal to the water quality assurance fee of two dollars twelve cents per acre-foot multiplied by the number of acre-feet of the grandfathered right or the groundwater withdrawal permit.

D. This section does not apply to any water that is subject to the tax on potable water imposed by section 42-5302.

E. The water quality assurance fee shall be paid to the department at the time the person withdrawing groundwater for beneficial use files the annual groundwater withdrawal report pursuant to section 45-632.

F. The director shall separately account for and remit monies collected under this section for deposit in the water quality assurance revolving fund established by section 49-282.

45-617. Augmentation and conservation assistance fund grants

The director may grant monies, either on a reimbursable basis or by advancing grant monies, from an active management area's augmentation and conservation assistance fund as received by the state treasurer pursuant to section 45-615, paragraph 1 for augmentation or conservation assistance projects that will benefit the active management area for which the monies were collected. Each grant shall be provided on such terms and conditions as the director may prescribe. Grants that are issued under this section are exempt from title 41, chapter 23.

45-618. Arizona water quality fund

A. An Arizona water quality fund is established for agency participation in activities related to title 49, chapter 2, article 5 and coordination of data bases necessary for those activities. The director shall administer the fund.

B. The Arizona water quality fund consists of monies from legislative appropriations, grants, contributions and transfers from other public agencies.

C. On notice from the director, the state treasurer shall invest and divest monies in the fund as provided by section 35-313 and monies earned from investment shall be credited to the fund.

D. Monies in the fund are exempt from lapsing under section 35-190.

E. Before December 31 of each year, the director shall submit to the speaker of the house of representatives and the president of the senate a written report describing the activities of the department for the preceding fiscal year relating to expenditures from the fund. The report shall include an accounting for expenditures from the fund and how the monies were used to perform duties in cooperation with the department of environmental quality pursuant to title 49, chapter 2, article 5. The report shall address the department of water resources' sharing and management of data with the department of environmental quality, well inspection activities conducted pursuant to this fund, measures to remediate wells pursuant to section 45-605, duties performed pursuant to agreements with the department of environmental quality and the status of other departmental participation in water quality assurance revolving fund activities.

Article 12 – Enforcement

45-631. Definition

In this article, unless the context otherwise requires, "person" means an individual, public or private corporation, company, partnership, firm, association, society, estate, trust, any other private organization or enterprise, the United States, any state, territory or country or a governmental entity, political subdivision or municipal corporation organized under or subject to the constitution and laws of this state.

45-632. Records and annual report of groundwater pumping, transportation and use: penalty

A. Each person who is required to file an annual report under this section or who files an annual report under subsection E of this section shall maintain current accurate records of the person's withdrawals, transportation, deliveries and use of groundwater and, in the Santa Cruz active management area, current accurate records of the person's withdrawals, deliveries and use of all water withdrawn from a well, as prescribed by the director under subsection P of this section.

B. Except as provided in subsections C and D of this section, an annual report shall be filed with the director by each person who:

1. Owns or leases a right under this chapter to withdraw, receive or use groundwater in an active management area, unless a report is filed for that person by an irrigation district under subsection E of this section or by another person in a form acceptable to the director.

2. Uses groundwater which is transported from an active management area.

3. Is an individual user subject to a municipal conservation requirement for appropriate conservation measures included in a management plan adopted by the director pursuant to article 9 of this chapter.

4. Withdraws groundwater for transportation to an initial active management area pursuant to article 8.1 of this chapter.

5. Withdraws water from a well in the Santa Cruz active management area or who uses water, other than stored water, withdrawn from a non-exempt well in the Santa Cruz active management area.

C. Persons who withdraw groundwater from exempt wells and non-irrigation customers of cities, towns, private water companies and irrigation districts, except customers receiving water pursuant to a permit, are exempt from the record keeping and reporting requirements of this section for such water.

D. A person who owns or leases an irrigation grandfathered right that is appurtenant to ten or fewer irrigation acres is exempt from the record keeping and reporting requirements of this section for the irrigation grandfathered right unless one of the following applies:

1. The land to which the irrigation grandfathered right is appurtenant is part of an integrated farming operation.

2. Groundwater is withdrawn from the land to which the irrigation grandfathered right is appurtenant and delivered for use pursuant to either a service area right pursuant to article 6 of this chapter or a grandfathered groundwater right other than an irrigation grandfathered right that is appurtenant to irrigation acres that are exempt from irrigation water duties pursuant to section 45-563.02.

3. Groundwater is withdrawn from land that is both owned by the owner of the irrigation grandfathered right and contiguous to the land to which the irrigation grandfathered right is appurtenant and delivered for use pursuant to either a service area right pursuant to article 6 of this chapter or a grandfathered groundwater right other than an irrigation grandfathered right that is appurtenant to irrigation acres that are exempt from irrigation water duties pursuant to section 45-563.02.

E. An irrigation district which delivers and distributes groundwater in an active management area may file an annual report with the director for each person who holds an irrigation grandfathered right appurtenant to irrigation acres within the service area of the irrigation district, if the irrigation district delivers all the water used on the person's irrigation acres. If an irrigation district files an annual report for such a person, the irrigation district shall report the following information for each such person:

1. The name of the person and the certificate number of the person's irrigation grandfathered right.

2. The quantity of groundwater, if any, delivered during the calendar year.

F. Persons who are required to report under subsection B, paragraph 1 of this section and who withdraw groundwater during the calendar year in an active management area shall report the following information for each well:

1. The registration number and location of the well.

2. The quantity of groundwater withdrawn from the well during the calendar year. A person who, under section 45-604, subsection B, is not required to use and does not use a water measuring device to measure withdrawals made pursuant to a type 2 non-irrigation grandfathered right or a groundwater withdrawal permit shall estimate the quantity of groundwater withdrawn pursuant to the grandfathered right or withdrawal permit.

3. The quantity of fuel or electricity consumed by the pump during the calendar year.

4. The uses to which the groundwater was applied or the persons to whom the groundwater was delivered during the calendar year.

G. Persons who are required to report under subsection B, paragraph 1 of this section and who use groundwater during the calendar year in an active management area and persons who are required to report under subsection B, paragraph 2 of this section shall report the following information:

1. The source of the groundwater, including:

- (a) The name of the person from whom the groundwater was obtained.

- (b) The registration number and location of the well, if known.

2. The quantity of groundwater used during the calendar year.

3. The specific uses to which the groundwater was applied during the calendar year.

H. Persons who are required to report under subsection B, paragraph 4 of this section and who transport groundwater during the calendar year to an initial active management area under article 8.1 of this chapter shall report the following information:

1. The registration number and location of each well.

2. The quantity of groundwater withdrawn from each well during the calendar year.

3. The quantity of groundwater transported during the calendar year to an initial active management area.

4. The quantity of groundwater that was withdrawn during the calendar year and that was not transported to an initial active management area and the uses to which the groundwater was applied.

5. The quantity of fuel or electricity consumed by each pump during the calendar year.

6. The uses to which the groundwater was applied or the persons to whom the groundwater was delivered during the calendar year.

I. Persons who are required to report under subsection B, paragraph 1 of this section and who neither withdraw nor use groundwater during the calendar year shall report the following information:

1. The fact that no groundwater was withdrawn or used during the calendar year.

2. The registration number and location of each well, if any.

J. Persons who are required to report under subsection B, paragraph 5 of this section and who withdraw water from a non-exempt well in the Santa Cruz active management area during the calendar year shall report the following information:

1. The registration number and location of the well.

2. The quantity of water, by type, withdrawn from the well during the calendar year.

3. The quantity of fuel or electricity consumed by the pump during the calendar year.

4. The uses to which the water was applied or the persons to whom the water was delivered during the calendar year.

K. Persons who are required to report under subsection B, paragraph 5 of this section and who use water withdrawn from a non-exempt well in the Santa Cruz active management area during the calendar year shall report the following information:

1. The source of the water, including:

- (a) The name of the person from whom the water was obtained.

- (b) The registration number and location of the well, if known.

2. The quantity of the water, by type, used during the calendar year.

3. The specific uses to which the water was applied during the calendar year.

L. If a person both withdraws groundwater in an active management area and uses such water, the person may combine the information required by subsections F and G of this section into one report. If a person both withdraws water, other than stored water, from a non-exempt well in the Santa Cruz active

management area and uses such water, the person may combine the information required by subsections J and K of this section into one report.

M. The director may require such other information in the report as may be necessary to accomplish the management goals of the applicable active management area.

N. Each report 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.

O. The annual report 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 under this section to file an annual report for calendar year 1985 or any subsequent calendar year fails to file a report for the calendar year in question on or before March 31 of the following year, 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.

P. The records and reports required to be kept and filed under this section shall be in such form as the director prescribes. The director shall prepare blank forms and distribute them on a timely schedule throughout each active management area and furnish them upon request. Failure to receive or obtain the forms does not relieve any person from keeping the required records or making any required report. The director shall cooperate with cities and towns, private water companies and irrigation districts in establishing the form of the records and reports to be kept and filed by them.

45-633. Inspections, investigations and audits

A. The director or the director's authorized representative may enter at reasonable times upon private or public property where a well, including a well under construction or a well not used to withdraw groundwater or another facility for the withdrawal, transportation or use of groundwater is located and the owner, manager or occupant of the property shall permit such entry to:

1. Inspect a well, including a well under construction or a well not used to withdraw groundwater, or another facility for the withdrawal, transportation or use of groundwater that is subject to this chapter.
2. Obtain factual data or access to records required to be kept under section 45-632.
3. Ascertain compliance with this chapter.

B. Inspections and investigations under subsection A of this section shall be upon reasonable notice to the owner, manager or occupant of the property unless reasonable grounds exist to believe that such notice would frustrate the enforcement of this chapter or where entry is sought for the sole purpose of inspecting water measuring devices required pursuant to section 45-604. The director shall adopt rules for conducting inspections, examining records and obtaining warrants pursuant to this section. The director may apply for and obtain warrants. If warrants are required by law, the director 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 section 45-632 to appear, at reasonable times and upon reasonable notice, at the director's office and produce such records and information as are specified in the notice to determine whether the records and annual reports required by section 45-632 are complete, true and correct. The director shall audit the records of a sufficient number of persons under this subsection to ensure general compliance with this chapter.

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

45-634. 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 why the person should not be ordered to cease and desist from the violation.

B. If the director finds that a person is constructing or modifying a well and the person does not hold a well driller's or single well license pursuant to section 45-595 or has not obtained the necessary authority to construct or modify the well pursuant to article 7 of this chapter or section 45-596, 45-597, 45-598 or

45-834.01, the director may issue a temporary order for the person to cease and desist the construction or modification 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 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 take such form as 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 according to the Arizona rules of civil procedure. A decision to seek 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.

45-635. Violation; civil penalties

A. A person who is determined pursuant to section 45-634 to be in violation of this chapter or a permit, rule, regulation or order issued or adopted pursuant to this chapter may be assessed a civil penalty in an amount not exceeding:

1. Except as provided in paragraph 3 of this subsection, one hundred dollars per day of violation not directly related to illegal withdrawal, use or transportation of groundwater.

2. Ten thousand dollars per day of violation directly related to illegal withdrawal, use or transportation of groundwater.

3. In the Santa Cruz active management area, ten thousand dollars per day of violation for a violation of an applicable conservation requirement established by the director pursuant to article 9 of this chapter for the withdrawal of water, other than stored water, from a well or the distribution or use of water, other than stored water, withdrawn from a well.

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. All civil penalties assessed pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

45-636. Violation; classification

A. Unless otherwise specified, a person who knowingly violates or refuses to comply with a provision of this chapter or a permit, rule, regulation or order issued or adopted pursuant to this chapter is guilty of a class 2 misdemeanor. A person who, after notice of violation, continues in violation of a provision of this chapter or a permit, rule, regulation or order issued or adopted pursuant to this chapter is guilty of a separate offense for each day of violation.

B. A person who knowingly falsifies or renders inaccurate a measuring device required to be installed or maintained under this chapter is guilty of a class 6 felony.

C. A person who knowingly and intentionally withdraws or uses groundwater in violation of this chapter is guilty of:

1. A class 6 felony if the amount of groundwater illegally withdrawn or used is one thousand acre-feet or more.

2. A class 1 misdemeanor if the amount of groundwater illegally withdrawn or used is more than one hundred acre-feet but less than one thousand acre-feet.

3. A class 3 misdemeanor if the amount of groundwater illegally withdrawn or used is one hundred acre-feet or less.

Article 15 - Certificate of Groundwater Oversupply

45-701. Definitions

In this article, unless the context otherwise requires:

1. "District" means a groundwater replenishment district established under title 48, chapter 27.
2. "District member" means a member of the district as provided by title 48, chapter 27.

45-702. Certificate of groundwater oversupply

A. A district member may apply to the director for a certificate of groundwater oversupply for all or part of the groundwater that the district member has a legal right to withdraw.

B. The director may issue a certificate of groundwater oversupply for all or part of the groundwater that the district member has a legal right to withdraw if the director determines that both of the following apply:

1. The groundwater is located in an area of localized excess groundwater in the district.
2. There is a substantial probability that if the district member does not withdraw the groundwater either of the following could occur in the active management area in which the district is located:

(a) The groundwater would be discharged from the district without being used and would not contribute hydrologically to achieving safe-yield.

(b) The groundwater would contribute to a waterlogging or groundwater drainage problem.

C. The director may issue a certificate of groundwater oversupply for a period of not more than ten years. On request of a certificate holder the director may renew the certificate if the director determines that the requirements of subsection B continue to apply.

D. A certificate of groundwater oversupply shall include the following information:

1. The name and mailing address of the district member to whom the certificate is issued.
2. The name of the active management area in which the groundwater will be withdrawn.
3. A description of the district member's right under articles 4 through 7 of this chapter to withdraw the groundwater designated as groundwater oversupply.
4. The locations and well registration numbers of the wells from which the designated groundwater will be withdrawn.

5. The duration of the certificate.

6. Any other information as determined by the director.

45-703. Application for certificate of groundwater oversupply; fee

A. The director shall prescribe and furnish an application form for a certificate of groundwater oversupply that includes the following:

1. The name and mailing address of the district member.
2. The name of the active management area in which the groundwater will be withdrawn.
3. The estimated annual quantity of groundwater to be designated as groundwater oversupply.
4. The locations and well registration numbers of the wells from which the designated groundwater will be withdrawn.

5. The proposed duration of the certificate.

6. Evidence of the district member's right under articles 4 through 7 of this chapter to withdraw the groundwater to be designated as groundwater oversupply.

7. Evidence that the groundwater to be designated will be withdrawn from an area in the district of localized excess groundwater.

8. Evidence that if the district member does not withdraw the groundwater to be designated either of the following could occur in the active management area in which the district is located:

(a) The groundwater would be discharged from the district without being used and would not contribute hydrologically to achieving safe-yield.

(b) The groundwater would contribute to a waterlogging or drainage problem.

9. Any other information the director may reasonably require.

B. 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 a certificate of

groundwater oversupply. 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.

45-704. Notice of application; objections; hearing; approval or rejection

A. On receiving an application under section 45-703, the director shall record the application and endorse on the application the date of receipt. The director shall conduct an initial review of the application within fifteen days of receiving the application. If the director determines in the initial review that the application is incomplete, the director shall notify the applicant. The application is incomplete until the applicant files all of the information requested in the application. The director shall determine whether the application is correct within ninety days after receiving a complete application. The director may request additional information from the applicant. The director may conduct independent investigations as may be necessary to determine whether the application should be approved or rejected.

B. If the director determines that the application is complete and correct, the director, within fifteen days after the determination, or a longer period if the applicant requests, 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 designation of groundwater oversupply. The notice shall state that persons who may be adversely affected by the designation may file written objections to the issuance of the certificate with the director within 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 certificate should not be issued. The grounds for objection are limited to whether the application meets the criteria for issuing a certificate prescribed in section 45-702, subsection B.

C. In appropriate cases, including cases in which a proper objection to the certificate 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 certificate. The hearing shall be scheduled for at least sixty but not more than ninety days after the expiration of the time in which to file objections.

D. The director shall record and endorse the approval or denial of the application on the application. If the certificate is denied, the director shall return a copy of the application to the applicant specifically stating the reasons for denial.

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. If an administrative hearing is held, it shall be conducted in the active management area in which the use is located.