

## ARIZONA REVISED STATUTES

### Title 45 - Waters

#### Chapter 15 – Gila River Indian Community Water Settlement Program

##### Article 1 – Administration

###### 45-2601. Definitions

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

1. "Central protection zone" means the central protection zone established under section 45-2602.

2. "Community" means the Gila river Indian community, a government composed of members of the Pima tribe and the Maricopa tribe and organized under section 16 of the act of June 18, 1934 (25 United States Code section 476).

3. "Dam" has the meaning prescribed in section 45-1201 on January 1, 2005.

4. "Designed storage capacity" means the storage capacity in acre-feet of a reservoir at the elevation of the lowest spillway in the dam impounding water in the reservoir, as the dam was originally constructed.

5. "Eastern protection zone" means the eastern protection zone north or the eastern protection zone south.

6. "Eastern protection zone north" means the eastern protection zone north established under section 45-2602, subsection A.

7. "Eastern protection zone south" means the eastern protection zone south established under section 45-2602, subsection A.

8. "Gila river maintenance area" means the Gila river maintenance area established under section 45-2603, subsection A.

9. "Gila river maintenance area impact zone" means the Gila river maintenance area impact zone established under section 45-2603, subsection B.

10. "Globe equity decree" means the decree dated June 29, 1935 and entered in United States of America v. Gila valley irrigation district, Globe equity No. 59, et al. by the United States district court for the district of Arizona and includes all court orders and decisions supplemental to that decree.

11. "Industrial use" means all of the following:

(a) A nonirrigation use of water commenced after December 31, 2002 that is not supplied by a municipal provider, including animal industry use and expanded animal industry use.

(b) A use of groundwater commenced before January 1, 2003 by a holder of a type 1 nonirrigation grandfathered right in existence on December 31, 2002, other than a type 1 nonirrigation grandfathered right held by a municipal provider and other than a use under another groundwater right or permit, in excess of the amount allowed under the type 1 nonirrigation grandfathered right.

(c) A use of groundwater commenced before January 1, 2003 by a holder of a type 2 nonirrigation grandfathered right in existence on December 31, 2002, other than a type 2 nonirrigation grandfathered right held by a municipal provider, in excess of the amount allowed under the right and for which the holder has no other groundwater right.

(d) A use of groundwater commenced before January 1, 2003 by a holder of a general industrial use permit issued under section 45-515 and in existence on December 31, 2002, other than a use under another groundwater right or permit, in excess of the amount allowed under the general industrial use permit.

12. "Irrigation use" means the use of water 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 defined in section 3-1201.

13. "Municipal acre" means the acre or acres of land within a protection zone, on which water pumped from within a protection zone is supplied by a municipal provider, on which water use was first commenced after December 31, 2002 and for which the water use is reported pursuant to section 45-632, 45-875.01 or 45-2602.

14. "Municipal provider" means a city, town, private water company or special taxing district established pursuant to title 48 that supplies water for nonirrigation use.

15. "Municipal use" means a nonirrigation use of water commenced after December 31, 2002 and supplied by a municipal provider on municipal acres.

16. "Nonirrigation use" means a use of water withdrawn from a well, other than an irrigation use.

17. "Reservation" means the Gila river Indian community reservation.

18. "Settlement agreement" means the agreement entitled the "Gila river Indian community water rights settlement agreement", dated February 4, 2003 between the community, this state and other parties, as amended before December 21, 2005, a copy of which is on file in the department.

19. "Southside protection zones" means the eastern protection zone north, the eastern protection zone south, the western municipal protection zone, the western municipal and industrial protection zone and the central protection zone.

20. "Stockpond" means a pond that has a capacity of not more than fifteen acre-feet and that is used solely for watering livestock or wildlife. Stockpond does not include a pond used primarily for fishing or for the culturing of fish.

21. "Stored water" means water that has been stored or saved underground pursuant to a storage permit issued under chapter 3.1 of this title.

22. "Underground water" means water, other than stored water, withdrawn from a well.

23. "Water company" means either of the following:

(a) A private water company that as of January 1, 2000 was regulated as a public service corporation by the Arizona corporation commission and was withdrawing underground water from lands now within the eastern protection zone north.

(b) Any successor of a private water company described in subdivision (a) of this paragraph.

24. "Western municipal and industrial protection zone" means the western municipal and industrial protection zone established under section 45-2602, subsection A.

25. "Western municipal protection zone" means the western municipal protection zone established under section 45-2602, subsection A.

26. "Western protection zones" means the western municipal protection zone and the western municipal and industrial protection zone.

#### 45-2602. Establishment of southside protection zones; reporting requirements

A. The following southside protection zones are established on the effective date of this section:

1. The eastern protection zone north.
2. The eastern protection zone south.
3. The western municipal and industrial protection zone.
4. The western municipal protection zone.
5. The central protection zone.

B. The boundaries of the southside protection zones established under subsection A are shown on the maps that are dated March 25, 2002 and that are on file in the department. The maps shall be available for examination by the public during regular business hours.

C. Each person in the Pinal active management area who withdraws underground water during a calendar year in a southside protection zone established under this section, other than the central protection zone, shall file an annual report with the director no later than March 31 of each year for the preceding calendar year. The report shall contain the following information in addition to any other information required by section 45-632:

1. The amount of underground water withdrawn within the southside protection zone and the name of the protection zone.

2. If the underground water was used for a nonirrigation use, the purpose for which the underground water was used, the location of the use, the acreage of the parcel or parcels of land on which the underground water was used and the date the use commenced.

3. The amount of any water replenished during the year pursuant to section 45-2611, subsection B, paragraph 2, the water use for which the water was replenished and the manner in which the water was replenished.

4. The amount of any water replaced during the year pursuant to section 45-2611, subsection B, paragraph 3, the water use for which the water was replaced and the manner in which the water was replaced.

D. A person who is required to file an annual report for a year under subsection C of this section:

1. Shall use a water measuring device approved by the director unless exempt under section 45-604.

2. Shall maintain current accurate records of the person's withdrawals, transportation, deliveries and use of underground water as prescribed by the director.

3. May combine the report with an annual report for the same year filed under section 45-632.

4. Shall comply with the requirements prescribed in section 45-632, subsections N, O and P and is subject to the penalties prescribed in section 45-632, subsection O as if the report was required by section 45-632.

E. A person who withdraws underground water from an exempt well is exempt from the record keeping and reporting requirements of subsections C and D of this section. For the purposes of this subsection, "exempt well" means a well that has a pump with a maximum capacity of not more than thirty-five gallons per minute, that is used to withdraw underground water and that would qualify as an exempt well under section 45-454 if used to withdraw groundwater.

F. If stored water is withdrawn in the Pinal active management area in a southside protection zone established under this section, other than the central protection zone, the annual report filed under section 45-875.01, subsection D shall include:

1. The amount of stored water withdrawn within the southside protection zone and the name of the protection zone.

2. If the stored water was used for a nonirrigation use, the purpose for which the water was used, the acreage of the parcel or parcels of land on which the water was used, the location of the use and the date the use commenced.

3. The identification of the storage facility in which the water was stored.

4. The amount of any water replenished during the year pursuant to section 45-2611, subsection B, paragraph 2, the water use for which the water was replenished and the manner in which the water was replenished.

5. The amount of any water replaced during the year pursuant to section 45-2611, subsection B, paragraph 3, the water use for which the water was replaced and the manner in which the water was replaced.

45-2603. Establishment of Gila river maintenance area and Gila river maintenance area impact zone; notice of intention to drill

A. The Gila river maintenance area is established on the effective date of this section. The boundaries of the Gila river maintenance area are shown on the map that is dated July, 2002 and that is on file in the department. The map shall be available for examination by the public during regular business hours.

B. The Gila river maintenance area impact zone is established on the effective date of this section. The boundaries of the Gila river maintenance area impact zone are shown on the map that is dated July, 2002 and that is on file in the department.

C. If a proposed well will withdraw water within the Gila river maintenance area impact zone established under subsection B of this section, as determined pursuant to section 45-2641, subsection A, and the water will be used to irrigate lands within the Gila river maintenance area established under subsection A of this section and outside of Cochise county, the notice of intention to drill filed pursuant to section 45-596 shall include one of the following:

1. Proof that the lands to be irrigated were irrigated with water from any source at any time from January 1, 2000 through the effective date of this section.

2. Proof that the irrigation is allowed under the exemptions prescribed in section 45-2641, subsection B, paragraph 1, 2 or 4.

45-2604. Conservation requirements for persons using groundwater in central protection zone no less restrictive than in third management plan

Notwithstanding any other law, beginning on the effective date of this section, when adopting or modifying a management plan for the Pinal active management area pursuant to chapter 2, article 9 of this title, the conservation requirements adopted by the director for persons using groundwater within the central protection zone shall be no less restrictive than the conservation requirements for persons using groundwater within the central protection zone as established in the management plan for the Pinal active management area for the third management period in effect on January 1, 2005 or as adjusted after that date as a result of judicial review or administrative review pursuant to section 45-570 or 45-575.

Article 2 - Transportation of Underground Water and Stored Water Away from Eastern Protection Zones and Western Protection Zones

45-2611. Transportation of underground water and stored water away from an eastern protection zone or western protection zone prohibited; exceptions

A. Except as provided in subsection B of this section, beginning on the effective date of this section, underground water or stored water withdrawn in an eastern protection zone or a western protection zone may not be transported away from the protection zone in which the water was withdrawn if the transportation is for a nonirrigation use.

B. Subsection A of this section does not apply to any of the following:

1. The transportation of underground water or stored water away from an eastern protection zone or a western protection zone for a nonirrigation use in an annual amount that does not exceed the highest annual volume of underground water or stored water transported away from the same protection zone for that use during calendar years 1999 through 2001.

2. The transportation of underground water or stored water away from an eastern protection zone or a western protection zone for a nonirrigation use if the person transporting the underground water or stored water replenishes the water as provided in section 45-2625 within twenty-four months after the end of the calendar year in which the transportation occurs.

3. The transportation of underground water or stored water away from an eastern protection zone or a western protection zone for a nonirrigation use if the person transporting the underground water or stored water replaces the water with an equivalent amount of water imported into that protection zone within the same calendar year in which the transportation occurs.

4. The transportation of stored water away from an eastern protection zone or a western protection zone if the stored water was originally stored in the protection zone from which the water was recovered.

5. The transportation of underground water or stored water between the eastern protection zone north and the eastern protection zone south.

6. The transportation of underground water or stored water between the western municipal and industrial protection zone and the western municipal protection zone if the water is transported for a municipal use on municipal acres.

7. Through 2023, the transportation of underground water and stored water withdrawn by a water company within an eastern protection zone and transported by the water company for municipal uses outside of the eastern protection zones. For the purposes of this paragraph, stored water does not include any water stored within an eastern protection zone and recovered within that protection zone.

8. Beginning with calendar year 2024, the annual transportation of up to one thousand two hundred seventy-five acre-feet of underground water and stored water withdrawn by a water company within the eastern protection zones and transported by the water company for municipal uses outside of the eastern protection zones. For the purposes of this paragraph, stored water does not include any water stored within an eastern protection zone and recovered within that protection zone.

### Article 3 - Replenishment of Underground Water and Stored Water Withdrawn in Eastern Protection Zones and Western Protection Zones

#### 45-2621. Definitions

In this article, unless the context otherwise requires:

1. "Authority" means the Arizona water banking authority established by section 45-2421 or its successor.

2. "Community's account" means the account established for the community in the southside replenishment bank pursuant to section 45-2624.

3. "Industrial acre" means the acre or acres in an eastern protection zone or in the western municipal and industrial protection zone on which water is used for an industrial use and for which the water use is reported to the director under section 45-632, 45-875.01 or 45-2602.

4. "Southside replenishment obligation" means a replenishment obligation calculated under section 45-2622.

45-2622. Annual southside replenishment obligations

A. No later than October 1 of each calendar year after 2007, the director shall calculate the southside replenishment obligations for the preceding calendar year and notify the authority of the amount of the obligations.

B. The director shall calculate the southside replenishment obligations for a calendar year as follows:

1. The director shall calculate the municipal and industrial replenishment obligation for the western municipal and industrial protection zone for the year as follows:

(a) Determine the total amount of underground water and stored water withdrawn during the year from within the western municipal and industrial protection zone for municipal uses within a western protection zone and the total amount of underground water and stored water withdrawn during the year from within the western municipal and industrial protection zone for industrial uses within the western municipal and industrial protection zone, as reported to the director under sections 45-632, 45-875.01 and 45-2602. For the purposes of this subdivision, stored water does not include any water stored at a storage facility located within the western municipal and industrial protection zone.

(b) Multiply the total number of municipal acres and industrial acres within the western protection zones on which the water determined in subdivision (a) of this paragraph was used during the year by two acre-feet.

(c) Subtract the product in subdivision (b) of this paragraph from the volume in subdivision (a) of this paragraph. The result is the municipal and industrial replenishment obligation for the western municipal and industrial protection zone for the year, except that if the result is less than zero, there is no replenishment obligation.

2. The director shall calculate the municipal replenishment obligation for the western municipal protection zone for the year as follows:

(a) Determine the total amount of underground water and stored water withdrawn during the year from within the western municipal protection zone for municipal uses within a western protection zone, as reported to the director under sections 45-632, 45-875.01 and 45-2602. For the purposes of this subdivision, stored water does not include any water stored at a storage facility located within the western municipal protection zone.

(b) Multiply the total number of municipal acres within the western protection zones on which the water determined in subdivision (a) of this paragraph was used during the year by two acre-feet.

(c) Subtract the product in subdivision (b) of this paragraph from the volume in subdivision (a) of this paragraph. The result is the municipal replenishment obligation for the western municipal protection zone for the year, except that if the result is less than zero, there is no replenishment obligation.

3. The director shall calculate the municipal and industrial replenishment obligation for the eastern protection zone north for the year as follows:

(a) Determine the total amount of underground water and stored water withdrawn during the year from within the eastern protection zone north for municipal uses and industrial uses within an eastern protection zone, as reported to the director under sections 45-632, 45-875.01 and 45-2602. For the purposes of this subdivision, stored water does not include any water stored at a storage facility located within the eastern protection zone north.

(b) Determine the total amount of underground water and stored water withdrawn during the year by a water company from within the eastern protection zone south and used for municipal uses within the eastern protection zone north. For the purposes of this subdivision, stored water

does not include any water stored at a storage facility located within the eastern protection zone south.

(c) Add the volumes of water in subdivisions (a) and (b) of this paragraph.

(d) Multiply the total number of municipal acres and industrial acres within the eastern protection zones on which the water determined in subdivision (c) of this paragraph was used during the year by 2.33 acre-feet.

(e) Subtract the product in subdivision (d) of this paragraph from the sum in subdivision (c) of this paragraph. The result is the municipal and industrial replenishment obligation for the eastern protection zone north for the year, except that if the result is less than zero, there is no replenishment obligation.

4. The director shall calculate the municipal and industrial replenishment obligation for the eastern protection zone south for the year as follows:

(a) Determine the total amount of underground water and stored water withdrawn during the year from within the eastern protection zone south for municipal uses and industrial uses within an eastern protection zone, as reported to the director under sections 45-632, 45-875.01 and 45-2602. For the purposes of this subdivision, stored water does not include any water stored at a storage facility located within the eastern protection zone south.

(b) Determine the total amount of underground water and stored water withdrawn during the year by a water company from within the eastern protection zone south and used for municipal uses within the eastern protection zone north. For the purposes of this subdivision, stored water does not include any water stored at a storage facility located within the eastern protection zone south.

(c) Subtract the volume in subdivision (b) of this paragraph from the volume in subdivision (a) of this paragraph.

(d) Multiply the total number of municipal acres and industrial acres within the eastern protection zones on which the water determined in subdivision (a) of this paragraph other than water determined in subdivision (b) of this paragraph was used during the year by 2.33 acre-feet.

(e) Subtract the product in subdivision (d) of this paragraph from the difference in subdivision (c) of this paragraph. The result is the municipal and industrial replenishment obligation for the eastern protection zone south for the year, except that if the result is less than zero, there is no replenishment obligation.

5. The director shall calculate the irrigation replenishment obligation for the western municipal and industrial protection zone and the western municipal protection zone for the year as follows:

(a) Determine the total amount of underground water and stored water withdrawn during the year from within the western municipal and industrial protection zone and the western municipal protection zone and used for the irrigation of lands within those protection zones, as reported to the director on the annual reports required by sections 45-632, 45-875.01 and 45-2602. For the purposes of this subdivision, stored water does not include any water stored at a storage facility located within the western municipal and industrial protection zone or the western municipal protection zone.

(b) For each farm within the western municipal and industrial protection zone and the western municipal protection zone for which an annual report is filed under section 45-632, 45-875.01 or 45-2602 for the year, calculate the maximum amount of groundwater that may be used on the farm for irrigation purposes during the year without causing the flexibility account for the farm to be in arrears in excess of the amount allowed under section 45-467, subsection I. In making this calculation, the director shall use the irrigation water duty established for the farm for the third management period pursuant to section 45-566, subsection A, paragraph 1.

(c) Add together the amount calculated for each farm under subdivision (b) of this paragraph.

(d) Subtract the amount in subdivision (c) of this paragraph from the amount in subdivision (a) of this paragraph. The difference is the irrigation replenishment obligation for the year for the western municipal and industrial protection zone and the western municipal protection zone, except that if the difference is less than zero, there is no replenishment obligation.

6. The director shall calculate the irrigation replenishment obligation for the eastern protection zone north and the eastern protection zone south for the year as follows:

(a) Determine the total amount of underground water and stored water withdrawn during the year from within the eastern protection zone north and the eastern protection zone south and used for the irrigation of lands within those protection zones, as reported to the director on the annual reports required by section 45-632, section 45-875.01, subsection D and section 45-2602. For the purposes of this subdivision, stored water does not include any water stored at a storage facility located within the eastern protection zone north or the eastern protection zone south.

(b) For each farm within the eastern protection zone north and the eastern protection zone south for which an annual report is filed under section 45-632, 45-875.01 or 45-2602 for the year, calculate the maximum amount of groundwater that may be used on the farm for irrigation purposes during the year without causing the flexibility account for the farm to be in arrears in excess of the amount allowed under section 45-467, subsection I. In making this calculation, the director shall use the irrigation water duty established for the farm for the third management period pursuant to section 45-566, subsection A, paragraph 1.

(c) Add together the amount calculated for each farm under subdivision (b) of this paragraph.

(d) Subtract the amount in subdivision (c) of this paragraph from the amount in subdivision (a) of this paragraph. The difference is the irrigation replenishment obligation for the year for the eastern protection zone north and the eastern protection zone south, except that if the difference is less than zero, there is no replenishment obligation.

7. Through 2023, the director shall calculate the water company replenishment obligation for the year by determining the amount of underground water and stored water withdrawn during the year from within the eastern protection zones by a water company and transported for municipal uses outside of the eastern protection zones and then subtracting from that amount one thousand two hundred seventy-five acre-feet. The difference is the water company replenishment obligation for the year, except that if the difference is less than zero, there is no replenishment obligation. For the purposes of this paragraph, stored water does not include any water stored at a storage facility located within an eastern protection zone and recovered within that protection zone.

#### 45-2623. Satisfaction of southside replenishment obligations

A. The authority shall satisfy the southside replenishment obligations for a particular year no later than June 1 of the third calendar year following that year, except that the authority shall satisfy the irrigation replenishment obligations described in section 45-2622, subsection B, paragraphs 5 and 6 for a particular year no later than June 1 of the fifth calendar year after that year.

B. A southside replenishment obligation for a year is satisfied when the authority performs one or more of the replenishment activities described in subsection C of this section in an amount equal to the replenishment obligation.

C. The authority shall satisfy a southside replenishment obligation for a year by performing one or more of the following replenishment activities, as applicable:

1. For any replenishment obligation, the authority may deliver water acquired by the authority under chapter 14 of this title to the community for direct use or for underground storage and recovery within the reservation. The authority shall not deliver water to the community under

this paragraph unless the community agrees in writing to accept the water and specifies in writing the locations, times and quantities of the deliveries.

2. For a replenishment obligation applicable to the western municipal and industrial protection zone or the western municipal protection zone, the authority may extinguish long-term storage credits earned or acquired by the authority under chapter 3.1 of this title, as authorized by chapter 14 of this title, and to which both of the following apply:

(a) The credits were earned within five years before the date the credits are extinguished.

(b) The credits were earned for the storage of water in the western municipal and industrial protection zone or the western municipal protection zone.

3. For a replenishment obligation applicable to the eastern protection zone north or the eastern protection zone south, the authority may extinguish long-term storage credits earned or acquired by the authority under chapter 3.1 of this title, as authorized under chapter 14 of this title, and to which both of the following apply:

(a) The credits were earned within seven years before the date the credits are extinguished.

(b) The credits were earned for the storage of water in the eastern protection zone north or the eastern protection zone south.

4. For any replenishment obligation, the authority may debit the community's account in the southside replenishment bank established under section 45-2624 in an amount not to exceed the amount of water in the account.

D. The authority shall maintain in its records an account of the replenishment activities performed by the authority to satisfy a southside replenishment obligation. Any water delivered to the community under subsection C, paragraph 1 of this section, any long-term storage credits extinguished under subsection C, paragraphs 2 and 3 of this section and any debits registered to the southside replenishment bank under subsection C, paragraph 4 of this section shall be applied toward the satisfaction of a replenishment obligation on an acre-foot per acre-foot basis.

E. After the authority performs a replenishment activity under subsection C of this section, the authority shall notify the community that the replenishment activity has been performed and identify the replenishment obligation for which the activity was performed.

#### 45-2624. Southside replenishment bank; credits

A. The southside replenishment bank is established as a separate bank in the records of the authority. The authority shall establish an account in the southside replenishment bank for the community.

B. Beginning with the first calendar year in which this section becomes effective, the authority shall annually deliver to the community in the manner provided in subsection D of this section, and at no cost to the community, not less than one thousand acre-feet of water acquired by the authority under chapter 14 of this title until the community's account has a credit balance of fifteen thousand acre-feet. The authority shall register one credit to the community's account for each acre-foot of water delivered to the community under this subsection.

C. If any debit registered to the southside replenishment bank under section 45-2623, subsection C, paragraph 4 causes the community's account to have a credit balance of less than five thousand acre-feet, the authority shall deliver water to the community in the manner provided in subsection D of this section in an amount sufficient to bring the balance up to at least five thousand acre-feet by the end of the calendar year.

D. The authority shall enter into an intergovernmental agreement with the community pursuant to title 11, chapter 7, article 3, which shall describe in detail the procedures for the delivery of water to the community under this section, including the method by which the community will schedule and order water that the authority is required to deliver to the community under subsections B and C of this section. The procedures shall not require the

authority to deliver in any month more than eleven per cent of the water required to be delivered during a year under subsection B of this section.

45-2625. Replenishment related to transportation of underground water or stored water away from an eastern protection zone or a western protection zone for nonirrigation use

If a person transporting underground water or stored water away from an eastern protection zone or a western protection zone for a nonirrigation use elects to replenish the underground water or stored water so that the transportation qualifies as an authorized transportation under section 45-2611, subsection B, paragraph 2, the person shall replenish the water by performing one or both of the following replenishment activities in an amount equivalent to the amount of water transported:

1. Pay the authority an amount of money sufficient to allow the authority to credit the community's account by delivering water to the community in accordance with the delivery procedures set forth in the intergovernmental agreement described in section 45-2624, subsection D. Any credits registered to the community's account under this paragraph shall not be used to meet the authority's requirement to deliver water to the community under section 45-2624, subsection B or C.

2. Replenish water in any manner that is approved in writing by the community and that is not prohibited under this title.

45-2626. Individual replenishment obligations of persons using underground water or stored water within an eastern protection zone or a western protection zone for industrial use; enforcement action; notice

A. If there is a municipal and industrial replenishment obligation for the eastern protection zone north for any year, as calculated under section 45-2622, subsection B, any person who withdraws underground water or stored water from within that protection zone during the year for an industrial use within an eastern protection zone in an amount that exceeds a volume calculated by multiplying the number of industrial acres associated with the industrial use by three and one-half acre-feet shall have an individual replenishment obligation for that year in the amount of the excess, except that if the industrial use was commenced prior to January 1, 2003, the replenishment obligation shall be limited to the volume of groundwater withdrawn in excess of the amount allowed under the industrial user's type 1 nonirrigation grandfathered right, type 2 nonirrigation grandfathered right or general industrial use permit issued under section 45-515. For the purposes of this subsection, stored water does not include any water stored at a storage facility located within the eastern protection zone north.

B. If there is a municipal and industrial replenishment obligation for the eastern protection zone south for any year, as calculated under section 45-2622, subsection B, any person who withdraws underground water or stored water from within that protection zone during the year for an industrial use within an eastern protection zone in an amount that exceeds a volume calculated by multiplying the number of industrial acres associated with the industrial use by three and one-half acre-feet shall have an individual replenishment obligation for that year in the amount of the excess, except that if the industrial use was commenced prior to January 1, 2003, the replenishment obligation shall be limited to the volume of groundwater withdrawn in excess of the amount allowed under the industrial user's type 1 nonirrigation grandfathered right, type 2 nonirrigation grandfathered right or general industrial use permit issued under section 45-515. For the purposes of this subsection, stored water does not include any water stored at a storage facility located within the eastern protection zone south.

C. If there is a municipal and industrial replenishment obligation for the western municipal and industrial protection zone for any year, as calculated under section 45-2622, subsection B, any person who withdraws underground water or stored water from within that protection zone during the year for an industrial use within that protection zone in an amount that exceeds a volume calculated by multiplying the number of industrial acres associated with the industrial use by three and one-half acre-feet shall have an individual replenishment obligation for that year in the amount of the excess, except that if the industrial use was commenced prior to January 1, 2003, the replenishment obligation shall be limited to the volume of groundwater withdrawn in excess of the amount allowed under the industrial user's type 1 nonirrigation grandfathered right, type 2 nonirrigation grandfathered right or general industrial use permit issued under section 45-515. For the purposes of this subsection, stored water does not include any water stored at a storage facility located within the western municipal and industrial protection zone.

D. A person who has an individual replenishment obligation under subsection A, B or C of this section shall satisfy the obligation no later than twelve months after the authority sends written notice of the obligation to the person as provided in subsection E of this section. The person shall satisfy the obligation by performing one of the following replenishment activities in an amount equivalent to the replenishment obligation:

1. Pay the authority the actual or estimated cost of replenishing the water under section 45-2623, subsection C as determined by the authority and included in the notice described in subsection E of this section.

2. If approved by the authority, deliver water or long-term storage credits to the authority in the amount of the replenishment obligation.

E. No later than December 31 of each year, the authority shall send written notice to each person who has an individual replenishment obligation for the preceding year. The notice shall be sent by first-class mail to the person's mailing address on file with the department. The notice shall specify the amount of the replenishment obligation, the authority's actual or estimated cost of replenishing the water under section 45-2623, subsection C, the date by which the person must satisfy the replenishment obligation and the manner in which the person may satisfy the replenishment obligation.

F. If a person with an individual replenishment obligation fails to satisfy the replenishment obligation by the date specified in the written notice received from the authority, the person shall be subject to an enforcement action by the department pursuant to article 6 of this chapter.

G. The director shall include written notice of the requirements of this section in any groundwater withdrawal permit, nonirrigation grandfathered right authorization to drill a nonexempt well under section 45-596 or recovery well permit issued in an eastern protection zone or the western municipal and industrial protection zone after the effective date of this section.

Article 4 - Dams Within Gila River Maintenance Area

45-2631. Construction or enlargement of new dams within maintenance area; prohibited; exceptions

A. Beginning on the effective date of this section, a person shall not construct a new dam or enlarge an existing dam within the Gila river maintenance area, and the director shall not issue a permit under chapter 6 of this title to construct a new dam or enlarge an existing dam within the Gila river maintenance area.

B. This section does not apply to:

1. The construction or enlargement of any of the following:

(a) Flood control structures.

(b) Structures for impounding mine tailings.

(c) Impoundments within hardrock mines or industrial facilities, or both, for environmental control or process management purposes.

(d) Impoundments for diverting surface water flows around hardrock mines or industrial facilities, or both.

(e) Groundwater impoundments.

(f) Effluent impoundments.

(g) Stockponds.

(h) Impoundments that may be constructed to store water otherwise authorized to be used by a party to the settlement agreement.

(i) Dams used to divert or store water that is decreed water under the globe equity decree.

2. The construction of a dam that replaces a dam in existence within the Gila river maintenance area on the effective date of this section if the replacement dam is in close proximity to the original dam and the designed storage capacity of the replacement dam does not exceed the designed storage capacity of the original dam.

3. The enlargement of a dam within the Gila river maintenance area if the enlargement does not increase the designed storage capacity of the dam.

4. The modification or repair of a dam within the Gila river maintenance area as necessary to comply with the dam safety requirements in chapter 6 of this title and any rules adopted by the director under that chapter, if the modification or repair does not increase the designed storage capacity of the dam. For the purposes of this paragraph, "modification or repair of a dam" includes the desilting, lining or rehabilitation of a dam.

C. The director shall not approve an application under section 45-1207 for construction or enlargement of a dam in the Gila river maintenance area established under section 45-2603 if the applicant is prohibited from constructing or enlarging the dam, as applicable, under this section.

D. Any violations of this article are subject to enforcement under article 6 of this chapter on the effective date of article 6 of this chapter, and such enforcement may include injunctive relief that requires removal of any structures constructed in violation of this article. Any delay between the date of the alleged violation of this article and the date of any enforcement action pursuant to article 6 of this chapter shall not be a factor in determining whether to issue an injunction pursuant to article 6 of this chapter.

## Article 5 - Irrigation of New Lands Within Gila River Maintenance Area

### 45-2641. Irrigation of new lands in Gila river maintenance area with water withdrawn or diverted from Gila river maintenance area impact zone prohibited; exception

A. Except as provided in subsection B of this section, a person shall not use water withdrawn or diverted within the Gila river maintenance area impact zone to irrigate land within the Gila river maintenance area unless the land was irrigated with water from any source at any time from January 1, 2000 through the effective date of this section. For the purposes of this section, water is withdrawn or diverted within the Gila river maintenance area impact zone if one of the following applies:

1. The water is withdrawn from a well located within the Gila river maintenance area impact zone.

2. The water is surface water diverted on the surface at a location within the Gila river maintenance area impact zone.

3. The water is withdrawn by a well located outside of the Gila river maintenance area impact zone and the well's cone of depression captures surface water within the Gila river maintenance area impact zone as determined by a cone of depression test adopted by the superior court with jurisdiction over the general adjudication of all rights to use water in the Gila river system and source.

B. This section does not apply to:

1. The irrigation of lands pursuant to an appropriative right with a priority date earlier than the effective date of this section and the irrigation of lands to which the right is severed and transferred.

2. The irrigation of lands if the irrigation is allowed under the settlement agreement.

3. The irrigation of lands within the portion of the Gila river maintenance area located in Cochise county.

4. The irrigation of lands if the irrigation is allowed under the globe equity decree or under other rights decreed before the effective date of this section and the irrigation of lands to which the right is severed and transferred.

C. Any violations of this article are subject to enforcement under article 6 of this chapter on the effective date of article 6 of this chapter, and such enforcement may include injunctive relief that requires removal of any structures constructed in violation of this article. Any delay between the date of the alleged violation of this article and the date of any enforcement action pursuant to article 6 of this chapter shall not be a factor in determining whether to issue an injunction pursuant to article 6 of this chapter.

## Article 6 – Enforcement

### 45-2651. Inspections, investigations and audits

A. The director or the director's authorized representative may enter, at reasonable times, private or public property and the owner, manager or occupant of the property shall permit the entry to ascertain compliance with this chapter.

B. Inspections and investigations under subsection A shall be on 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. 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 article.

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

**45-2652. Cease and desist order; hearing; injunctive relief**

A. If the director has reason to believe that a person is violating or has violated this chapter or an order issued pursuant to this chapter, the director may give the person written notice that the person may appear and show cause at an administrative hearing in the county in which the violation is alleged to have occurred why the person should not be ordered to cease and desist from the violation.

B. The decision and order of the director under 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.

C. If the person continues the violation after the director has issued a final decision and 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 in the county in which the violation is alleged to have occurred 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.

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.

**45-2653. Violation; civil penalties**

A. A person who is determined pursuant to section 45-2652 to be in violation of this chapter or an order issued pursuant to this chapter may be assessed a civil penalty in an amount not exceeding one thousand dollars per day of violation.

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 caused by the violation, whether the violation was knowing or wilfull, 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.

**45-2654. Violation; classification**

Unless otherwise provided, a person who knowingly violates or refuses to comply with this chapter or an order issued pursuant to this chapter is guilty of a class 2 misdemeanor. A person who, after notice of a violation, continues in violation of this chapter or an order issued pursuant to this chapter is guilty of a separate offense for each day of violation.