

COMMITTEE ON NATURAL RESOURCES, ENERGY AND WATER

SENATE AMENDMENTS TO H.B. 2095

(Reference to House engrossed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 45-544, Arizona Revised Statutes, is amended to
3 read:

4 45-544. Transportation in areas not subject to active management;
5 damages; upper San Pedro water district; Little Colorado river
6 plateau, Parker and Coconino plateau groundwater basins; definitions

7 A. Except as otherwise provided in this section, ~~section~~ SECTION 45-
8 547 and article 8.1 of this chapter, in areas outside of active management
9 areas:

10 1. Groundwater may be transported:

11 (a) Within a subbasin of a groundwater basin or within a groundwater
12 basin, if there are no subbasins, without payment of damages.

13 (b) Between subbasins of a groundwater basin, subject to payment of
14 damages.

15 2. Groundwater shall not be transported away from a groundwater basin
16 EXCEPT AS PROVIDED IN SECTION 45-548.

17 3. Groundwater shall not be transported away from the upper San Pedro
18 water district if established under title 48, chapter 37.

19 B. Notwithstanding subsection A, paragraph 2 or 3 of this section,
20 subject to payment of damages:

21 1. A person who at any time during the twelve months before January
22 1, 1991 was transporting away from the Little Colorado river plateau
23 groundwater basin or the Parker groundwater basin groundwater that was
24 legally withdrawn from a well in either groundwater basin has the right,
25 subject to subsection C of this section, to transport groundwater that is
26 legally withdrawn from the well or a replacement well in approximately the

1 same location to another groundwater basin in an annual amount equal to the
2 greater of the maximum amount of groundwater either:

3 (a) That was withdrawn from the well and transported by the person
4 away from the groundwater basin in any one of the five calendar years
5 immediately preceding January 1, 1991.

6 (b) That could have been withdrawn from the well during the twelve
7 month period, taking into account the pump capacity and specific capacity
8 of the well during that period, or twenty-five acre-feet, whichever is
9 less.

10 2. A person may transport groundwater by motor vehicle from the
11 Little Colorado river plateau groundwater basin or the Parker groundwater
12 basin to an adjacent groundwater basin for domestic purposes or stock
13 watering.

14 3. A city or town whose service area is located either in the Little
15 Colorado river plateau groundwater basin and an adjacent groundwater basin
16 or in the Parker groundwater basin and an adjacent groundwater basin may
17 transport groundwater that is withdrawn within that portion of its service
18 area located in the Little Colorado river plateau groundwater basin or the
19 Parker groundwater basin to the adjacent groundwater basin for the benefit
20 of landowners and residents within its service area.

21 4. A city, town or private water company whose service area is
22 located in two adjacent groundwater basins and provides water utility
23 service to landowners or residents in both basins as of July 1, 1993 may
24 transport groundwater between those adjacent groundwater basins.

25 5. The transportation of groundwater in which groundwater is
26 transported away from the groundwater basin and expansions of that transfer
27 by the same person or its successor for the same purpose are valid if that
28 transfer was occurring before September 1, 1993.

29 6. A city or town in the Coconino plateau groundwater basin with a
30 population of not more than eight thousand persons that was transporting
31 groundwater into its municipal water service area from an adjacent
32 groundwater basin as of January 1, 2001, from wells that the director

1 determines were erroneously drilled without knowledge that the wells were
2 in the adjacent groundwater basin, may continue and expand that transfer
3 subject to all of the following conditions:

4 (a) The groundwater may be withdrawn only from wells that are located
5 not more than two miles from the Coconino plateau groundwater basin
6 boundary and that are drilled to depths of at least two thousand five
7 hundred feet below land surface.

8 (b) The groundwater may be used only within the municipal water
9 service area of the city or town, and the city or town shall use available
10 surface water supplies within its municipal water service area to the
11 extent practicable.

12 (c) The total amount of groundwater that may be transported during a
13 year shall not exceed seven hundred acre-feet, except that a city or town
14 may apply to the director to increase the amount of groundwater that may be
15 transported during a year under this subdivision if additional groundwater
16 is needed to provide fire protection for the city or town because of an
17 emergency condition. The director shall post an application filed under
18 this subdivision on the department's website before approving or denying
19 the application. The director shall approve an application filed under this
20 subdivision if the city or town demonstrates to the satisfaction of the
21 director that an emergency condition exists that makes it necessary for the
22 city or town to transport groundwater in excess of the amount allowed under
23 this subdivision to provide adequate fire protection for the city or town.
24 If the director approves an application filed under this subdivision, the
25 director shall specify the amount of groundwater that the city or town may
26 transport in excess of the amount allowed under this subdivision and may
27 impose other conditions that the director deems appropriate.

28 (d) The city or town shall no longer transport any groundwater
29 pursuant to this paragraph if all of the following apply:

30 (i) After January 1, 2009, the city or town obtains the legal right
31 to receive a new supply of water originating from outside of its corporate
32 boundaries, other than groundwater pursuant to this paragraph.

1 (ii) The supply of water is physically available to the city or town
2 through a canal or pipeline.

3 (iii) The director determines that the supply of water, together with
4 other water supplies physically available to the city or town, other than
5 groundwater pursuant to this paragraph, is sufficient to provide a
6 sustainable water supply for the city or town, including projected growth,
7 and notifies the city or town of that determination.

8 7. Groundwater may be transported away from a groundwater basin for
9 mineral extraction and processing, except that no groundwater may be
10 transported away from the Parker groundwater basin or the Little Colorado
11 river plateau groundwater basin for that purpose and, if the district is
12 established, groundwater shall not be transported away from the upper San
13 Pedro water district for that purpose except as provided in paragraphs 8
14 and 9 of this subsection.

15 8. If the upper San Pedro water district is established under title
16 48, chapter 37:

17 (a) A city, town or private water company whose service area is
18 located in the district and a groundwater basin adjacent to the district,
19 other than the upper San Pedro groundwater basin, and that provides water
20 utility service to landowners or residents in the district and that
21 adjacent groundwater basin as of July 1, 1993 may transport groundwater
22 between the district and that adjacent groundwater basin.

23 (b) The transportation of groundwater in which groundwater is
24 transported away from the district and away from the upper San Pedro
25 groundwater basin and expansions of that transfer by the same person or its
26 successor for the same purpose are valid if that transfer was occurring
27 before September 1, 1993.

28 (c) The transportation of groundwater in which groundwater is
29 transported away from the district but not away from the upper San Pedro
30 groundwater basin and expansions of that transfer by the same person or its
31 successor for the same purpose are valid if that transfer was occurring
32 before the date the district is established.

1 9. A metal mining facility that is located in both the upper San
2 Pedro and Douglas groundwater basins may transport groundwater between the
3 two basins to the extent that the transportation is necessary to comply
4 with an order issued by the director of environmental quality pursuant to
5 title 49, chapter 2, article 5, including an order issued by the director
6 of environmental quality pursuant to section 49-286. Before transporting
7 groundwater pursuant to this paragraph, a metal mining facility shall give
8 written notice to the director of water resources, which shall include a
9 copy of the order requiring the remedial action or mitigation activities.

10 C. The director may limit by order the amount of groundwater
11 withdrawn from a well in the Little Colorado river plateau groundwater
12 basin for transportation away from the basin pursuant to subsection B,
13 paragraph 1 of this section in any year in which the director determines
14 that the projected withdrawals from the well for that purpose will
15 unreasonably increase damage to surrounding land or other water users and
16 if the well:

17 1. Was drilled on or before January 1, 1991.

18 2. Was not completed on January 1, 1991, but a notice of intention to
19 drill the well was on file on that date.

20 3. Is a replacement well, in approximately the same location, for a
21 well described in paragraph 1 or 2 of this subsection.

22 D. Groundwater may be withdrawn from a well drilled in the Little
23 Colorado river plateau groundwater basin after January 1, 1991, except a
24 replacement well in approximately the same location or a well drilled after
25 that date pursuant to a notice of intention to drill that was on file with
26 the department on that date, for transportation away from the basin
27 pursuant to subsection B, paragraph 1 of this section only if the location
28 of the well complies with the rules adopted pursuant to section 45-598,
29 subsection A to prevent unreasonably increasing damage to surrounding land
30 or other water users from the concentration of wells.

31 E. For the purposes of this section:

1 1. "Domestic purposes" means uses related to the supply, service and
2 activities of households and private residences and includes the
3 application of water to less than two acres of land to produce plants or
4 parts of plants for sale or human consumption, or for use as feed for
5 livestock, range livestock or poultry, as such terms are defined in section
6 3-1201.

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

9 Sec. 2. Title 45, chapter 2, article 8, Arizona Revised Statutes, is
10 amended by adding section 45-548, to read:

11 45-548. Transportation of groundwater withdrawn in McMullen valley
12 basin and Butler valley groundwater basin within La Paz county; weed and
13 dust control; damages; rules; definition

14 A. IN ADDITION TO TRANSPORTATION OF GROUNDWATER TO AN INITIAL ACTIVE
15 MANAGEMENT AREA AS ALLOWED IN ARTICLE 8.1 OF THIS CHAPTER, AN ENTITY
16 DESCRIBED IN SUBSECTION B OF THIS SECTION MAY WITHDRAW GROUNDWATER FROM
17 LAND THAT THE ENTITY OWNS IN THE BUTLER VALLEY GROUNDWATER BASIN, THE
18 PORTION OF THE MCMULLEN VALLEY GROUNDWATER BASIN IN LA PAZ COUNTY OR THE
19 PORTION OF THE HARQUAHALA IRRIGATION NON-EXPANSION AREA IN LA PAZ COUNTY
20 SUBJECT TO THE LIMITATIONS PRESCRIBED IN THIS SECTION FOR DIRECT OR
21 INDIRECT TRANSPORTATION AND USE IN A GROUNDWATER BASIN OR SUB-BASIN THAT IS
22 WITHIN LA PAZ COUNTY.

23 B. THE FOLLOWING ENTITIES ARE ELIGIBLE TO TRANSPORT GROUNDWATER AWAY
24 FROM THE BUTLER VALLEY GROUNDWATER BASIN, THE MCMULLEN VALLEY GROUNDWATER
25 BASIN OR THE HARQUAHALA IRRIGATION NON-EXPANSION AREA PURSUANT TO
26 SUBSECTION A OF THIS SECTION:

27 1. A POLITICAL SUBDIVISION OF THIS STATE LOCATED IN LA PAZ COUNTY.

28 2. A PUBLIC SERVICE CORPORATION THAT IS REGULATED BY THE CORPORATION
29 COMMISSION AND THAT HOLDS A CERTIFICATE OF CONVENIENCE AND NECESSITY FOR
30 WATER SERVICE IN LA PAZ COUNTY.

31 C. THE AMOUNT OF GROUNDWATER THAT MAY BE TRANSPORTED AWAY FROM THE
32 MCMULLEN VALLEY GROUNDWATER BASIN SHALL BE DETERMINED PURSUANT TO

1 SUBSECTION D OF THIS SECTION PROVIDED THAT GROUNDWATER MAY NOT BE
2 TRANSPORTED FROM LANDS THAT ARE NOT WITHIN LA PAZ COUNTY. THE AMOUNT OF
3 GROUNDWATER THAT MAY BE TRANSPORTED AWAY FROM THE MCMULLEN VALLEY
4 GROUNDWATER BASIN MAY NOT EXCEED:

5 1. IN ANY YEAR, TWO TIMES THE ANNUAL TRANSPORTATION ALLOTMENT FOR THE
6 LAND DETERMINED PURSUANT TO SUBSECTION D OF THIS SECTION.

7 2. FOR ANY PERIOD OF TEN CONSECUTIVE YEARS COMPUTED IN CONTINUING
8 PROGRESSIVE SERIES BEGINNING IN THE YEAR TRANSPORTATION OF GROUNDWATER FROM
9 THE LAND BEGINS, TEN TIMES THE ANNUAL TRANSPORTATION ALLOTMENT FOR THE LAND
10 DETERMINED PURSUANT TO SUBSECTION D OF THIS SECTION.

11 3. A TOTAL OF SIX MILLION ACRE-FEET BY ALL ENTITIES TRANSPORTING
12 GROUNDWATER FROM THE BASIN PURSUANT TO THIS SECTION AND SECTION 45-552.

13 D. THE DIRECTOR SHALL DETERMINE THE ANNUAL TRANSPORTATION ALLOTMENT
14 FOR LAND THAT IS SUBJECT TO SUBSECTION C AS FOLLOWS:

15 1. DETERMINE EACH FARM OR PORTION OF A FARM ON THAT LAND.

16 2. FOR EACH SUCH FARM OR PORTION OF A FARM, DETERMINE THE
17 HISTORICALLY IRRIGATED ACRES.

18 3. MULTIPLY THE SUM OF THOSE HISTORICALLY IRRIGATED ACRES FOR ALL
19 SUCH FARMS OR PORTIONS OF FARMS BY THREE ACRE-FEET PER ACRE.

20 E. THE AMOUNT OF GROUNDWATER THAT MAY BE TRANSPORTED AWAY FROM THE
21 HARQUAHALA IRRIGATION NON-EXPANSION AREA SHALL BE DETERMINED PURSUANT TO
22 SUBSECTION F OF THIS SECTION PROVIDED THAT GROUNDWATER MAY NOT BE
23 TRANSPORTED FROM LANDS THAT ARE NOT WITHIN LA PAZ COUNTY.

24 F. GROUNDWATER MAY BE WITHDRAWN AND TRANSPORTED FROM THE HARQUAHALA
25 IRRIGATION NON-EXPANSION AREA ONLY:

26 1. IF THE GROUNDWATER IS WITHDRAWN:

27 (a) FROM A DEPTH TO ONE THOUSAND FEET AT THE SITE OR SITES OF THE
28 PROPOSED WITHDRAWALS.

29 (b) AT A RATE THAT, WHEN ADDED TO THE EXISTING RATE OF WITHDRAWALS IN
30 THE AREA, DOES NOT CAUSE THE GROUNDWATER TABLE AT THE SITE OR SITES OF THE
31 WITHDRAWALS TO DECLINE MORE THAN AN AVERAGE OF TEN FEET PER YEAR DURING THE
32 ONE HUNDRED YEAR EVALUATION PERIOD.

1 2. IN AN AMOUNT EITHER:

2 (a) PER ACRE OF THE ELIGIBLE LAND, NOT TO EXCEED:

3 (i) SIX ACRE-FEET IN ANY YEAR.

4 (ii) THIRTY ACRE-FEET FOR ANY PERIOD OF TEN CONSECUTIVE YEARS
5 COMPUTED IN CONTINUING PROGRESSIVE SERIES BEGINNING IN THE YEAR
6 TRANSPORTATION OF GROUNDWATER FROM THE LAND BEGINS.

7 (b) ESTABLISHED BY THE DIRECTOR, BUT ONLY IF THE DIRECTOR DETERMINES
8 THAT WITHDRAWALS IN AN AMOUNT GREATER THAN THAT PERMITTED BY SUBDIVISION

9 (a) OF THIS PARAGRAPH WILL NOT UNREASONABLY INCREASE DAMAGE TO RESIDENTS OF
10 SURROUNDING LAND AND OTHER WATER USERS IN THE IRRIGATION NON-EXPANSION AREA
11 WITHIN LA PAZ COUNTY, OR THAT ONE OR MORE OF THE ENTITIES WITHDRAWING THE
12 GROUNDWATER WILL MITIGATE THE DAMAGE TO THE RESIDENTS AND OTHER WATER
13 USERS.

14 G. IF THIS STATE OR ONE OR MORE POLITICAL SUBDIVISIONS OF THIS STATE
15 OWN EIGHTY PER CENT OR MORE OF THE LAND THAT IS ELIGIBLE TO BE IRRIGATED
16 UNDER SECTION 45-437, SUBSECTION B IN THE IRRIGATION NON-EXPANSION AREA
17 WITHIN LA PAZ COUNTY, EACH OF THE ELIGIBLE ENTITIES DESCRIBED IN SUBSECTION
18 B OF THIS SECTION MAY WITHDRAW GROUNDWATER FROM THE ELIGIBLE LAND IT OWNS:

19 1. FROM A DEPTH TO ONE THOUSAND FEET AT THE SITE OR SITES OF
20 WITHDRAWALS.

21 2. FROM A DEPTH BETWEEN ONE THOUSAND AND ONE THOUSAND TWO HUNDRED
22 FEET AT THE SITE OR SITES OF THE WITHDRAWALS ONLY IF THE DIRECTOR
23 DETERMINES EITHER THAT THE WITHDRAWALS WILL NOT UNREASONABLY INCREASE
24 DAMAGE TO RESIDENTS OF SURROUNDING LAND OR THAT ONE OR MORE OF THE ENTITIES
25 WITHDRAWING THE GROUNDWATER WILL MITIGATE THE DAMAGE TO THE RESIDENTS.

26 H. GROUNDWATER MAY ONLY BE TRANSPORTED PURSUANT TO SUBSECTION A OF
27 THIS SECTION IF THE GROUNDWATER IS USED BY CUSTOMERS OF AN ENTITY DESCRIBED
28 IN SUBSECTION B WITHIN FIVE YEARS AFTER THE GROUNDWATER IS TRANSPORTED AND
29 THE GROUNDWATER IS NOT SOLD OR OTHERWISE CONVEYED FOR USE OTHER THAN BY AN
30 ENTITY DESCRIBED IN SUBSECTION B OF THIS SECTION.

31 I. A PUBLIC SERVICE CORPORATION MAY WITHDRAW AND TRANSPORT
32 GROUNDWATER PURSUANT TO SUBSECTION A OF THIS SECTION IF ALL COSTS

1 ASSOCIATED WITH WITHDRAWING, TRANSPORTING AND DELIVERING GROUNDWATER ARE
2 COLLECTED FROM THE CUSTOMERS OF THE WATER DISTRIBUTION SYSTEM OF THE PUBLIC
3 SERVICE CORPORATION WHERE THE TRANSPORTED GROUNDWATER IS USED.

4 J. A PERSON SHALL MAINTAIN PROPERTY THAT IS OWNED OR CONTROLLED BY
5 THE PERSON AND FROM WHICH GROUNDWATER IS OR WILL BE TRANSPORTED PURSUANT TO
6 THIS SECTION FREE OF NOXIOUS WEEDS AS DEFINED IN SECTION 3-201, RUSSIAN
7 THISTLES (SALSOLA KALI) AND BLOWING DUST THAT CREATES A THREAT TO HEALTH OR
8 SAFETY.

9 K. ANY TRANSPORTATION OF GROUNDWATER THAT IS AUTHORIZED BY THIS
10 SECTION IS SUBJECT TO PAYMENT OF DAMAGES PURSUANT TO SECTION 45-545.

11 L. THE DIRECTOR SHALL ADOPT RULES TO IMPLEMENT THIS SECTION.

12 M. FOR THE PURPOSES OF THIS SECTION:

13 1. "HISTORICALLY IRRIGATED ACRES" MEANS LAND OVERLYING AN AQUIFER
14 THAT WAS IRRIGATED WITH GROUNDWATER FROM THAT AQUIFER BEFORE JANUARY 1,
15 1988.

16 2. "INDIRECT TRANSPORTATION" MEANS TRANSPORTATION THROUGH EXCHANGE,
17 INDIRECT RECHARGE OR ANY OTHER METHOD OF PROVIDING WATER THROUGH
18 RECIPROCATATION.

19 Sec. 3. Exemption from rulemaking

20 Notwithstanding any other law, for the purpose of section 45-548,
21 Arizona Revised Statutes, as added by this act, the department of water
22 resources is exempt from the rulemaking requirements of title 41, chapter
23 6, Arizona Revised Statutes, for one year after the effective date of this
24 act."

25 Amend title to conform