

Senate Engrossed House Bill

~~remedial groundwater incentive; brackish groundwater~~
~~(now: brackish groundwater incentive; brackish groundwater)~~
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State of Arizona
House of Representatives
Fifty-sixth Legislature
Second Regular Session
2024

HOUSE BILL 2186

AN ACT

AMENDING SECTIONS 45-561 AND 45-576.01, ARIZONA REVISED STATUTES; AMENDING TITLE 45, CHAPTER 2, ARTICLE 9, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 45-581, 45-581.01, 45-581.02, 45-581.03, 45-581.04 AND 45-581.05; AMENDING SECTION 49-201, ARIZONA REVISED STATUTES; REPEALING LAWS 1997, CHAPTER 287, SECTION 52, AS AMENDED BY LAWS 1999, CHAPTER 295, SECTION 50 AND LAWS 2021, CHAPTER 272, SECTION 1; RELATING TO BRACKISH GROUNDWATER.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 45-561, Arizona Revised Statutes, is amended to
3 read:

4 45-561. Definitions

5 In this article, unless the context otherwise requires:

6 1. "ANNUAL AUTHORIZED VOLUME" MEANS THE ANNUAL VOLUME OF BRACKISH
7 GROUNDWATER THAT A PERSON MAY WITHDRAW PURSUANT TO AN APPROVED BRACKISH
8 GROUNDWATER PLAN ISSUED BY THE DIRECTOR.

9 2. "APPROVED BRACKISH GROUNDWATER PLAN" MEANS A PLAN THAT THE
10 DIRECTOR HAS APPROVED AND DETERMINED TO BE CONSISTENT WITH THE MANAGEMENT
11 GOALS OF AN ACTIVE MANAGEMENT AREA FOR THE WITHDRAWAL OF BRACKISH
12 GROUNDWATER WITHIN AN ACTIVE MANAGEMENT AREA.

13 3. "APPROVED REMEDIAL ACTION PROJECT" MEANS A REMEDIAL ACTION
14 PROJECT APPROVED BY THE DEPARTMENT OF ENVIRONMENTAL QUALITY PURSUANT TO
15 TITLE 49 OR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY PURSUANT TO
16 CERCLA AS DEFINED IN SECTION 45-802.01.

17 ~~1.~~ 4. "Aquifer" means a geologic formation that contains
18 sufficient saturated materials to be capable of storing water and
19 transmitting water in usable quantities to a well.

20 ~~2.~~ 5. "Augmentation" means to supplement the water supply of an
21 active management area and may include the importation of water into the
22 active management area, storage of water or storage of water pursuant to
23 chapter 3.1 of this title.

24 6. "BRACKISH GROUNDWATER" MEANS GROUNDWATER THAT CONTAINS TOTAL
25 DISSOLVED SOLIDS BETWEEN ONE THOUSAND AND TEN THOUSAND MILLIGRAMS PER
26 LITER.

27 7. "BRACKISH GROUNDWATER USE" MEANS, FOR ANY YEAR, THE AMOUNT OF
28 BRACKISH GROUNDWATER WITHDRAWN FROM WITHIN AN ACTIVE MANAGEMENT AREA
29 PURSUANT TO AN APPROVED BRACKISH GROUNDWATER PLAN AND USED BY A PERSON
30 WITH OR APPLYING FOR A CERTIFICATE OR DESIGNATION OF ASSURED WATER SUPPLY
31 DURING THE YEAR, NOT TO EXCEED THE ANNUAL AUTHORIZED VOLUME.

32 ~~3.~~ 8. "Incidental recharge" means the percolation of water to an
33 aquifer after the water has been withdrawn, diverted or received for
34 delivery by a municipal provider for use within its service area, except
35 water that is added to an aquifer pursuant to chapter 3.1 of this title.

36 ~~4.~~ 9. "Incidental recharge factor" means the ratio of the amount
37 of incidental recharge attributable to a municipal provider during a
38 calendar year to the amount of water withdrawn, diverted or received for
39 delivery by the municipal provider for use within its service area during
40 the year. The amount of incidental recharge attributable to a municipal
41 provider during a calendar year is the amount of water that is
42 incidentally recharged during the year after it is withdrawn, diverted or
43 received for delivery by the municipal provider for use within its service
44 area.

1 ~~5.~~ 10. "Industrial use" means a non-irrigation use of water not
2 supplied by a city, town or private water company, including animal
3 industry use and expanded animal industry use.

4 ~~6.~~ 11. "Intermediate water duty" means an irrigation water duty,
5 as defined in section 45-402, ~~which~~ THAT is established by the director
6 during a management period to apply for a specific number of years during
7 the management period.

8 ~~7.~~ 12. "Large untreated water provider" means a municipal provider
9 that as of January 1, 1990 was serving untreated water to at least five
10 hundred persons or supplying at least one hundred acre-feet of untreated
11 water during a calendar year.

12 ~~8.~~ 13. "Management period" means a period of years prescribed by
13 sections 45-564 through 45-568 during which a prescribed management plan
14 applies.

15 ~~9.~~ 14. "Mined groundwater" means the amount of groundwater
16 withdrawn or received by a municipal provider from within an active
17 management area during a calendar year for use in its service area, minus
18 both of the following, as applicable:

19 (a) An amount of water computed by multiplying the amount of water
20 supplied by the municipal provider for use within its service area during
21 the calendar year by the incidental recharge factor established for the
22 municipal provider pursuant to this article.

23 (b) If the municipal provider is a city or town in the Tucson
24 active management area, the amount of groundwater withdrawn by the
25 municipal provider during the calendar year from land owned or leased by
26 the municipal provider to which a type 1 non-irrigation grandfathered
27 right under section 45-463, subsection A is appurtenant, up to the
28 following amount:

29 (i) If the municipal provider has made a request to the director as
30 described in section 45-463, subsection F, the amount of groundwater
31 computed by the director under section 45-463, subsection F, in
32 determining whether to designate or redesignate the municipal provider as
33 having an assured water supply, minus the amount of any groundwater
34 withdrawn by the municipal provider from the land during the period
35 beginning with January 1 of the year in which the request was made and
36 ending on December 31 of the year immediately preceding the calendar year
37 for which the calculation of mined groundwater is being made.

38 (ii) If the municipal provider has not made a request to the
39 director as described in section 45-463, subsection F, the amount of
40 groundwater that the director would have been required to include in
41 determining whether to designate or redesignate the municipal provider as
42 having an assured water supply, as computed under section 45-463,
43 subsection F, if the municipal provider had made a request to the director
44 as described in that subsection on January 1 of the calendar year for
45 which the calculation of mined groundwater is being made.

1 ~~10.~~ 15. "Municipal provider" means a city, town, private water
2 company or irrigation district that supplies water for non-irrigation use.

3 ~~11.~~ 16. "Municipal use" means all non-irrigation uses of water
4 supplied by a city, town, private water company or irrigation district,
5 except for uses of water, other than Colorado river water, released for
6 beneficial use from storage, diversion or distribution facilities to avoid
7 spilling that would otherwise occur due to uncontrolled surface water
8 inflows that exceed facility capacity.

9 17. "REMEDIAL GROUNDWATER":

10 (a) MEANS GROUNDWATER WITHDRAWN PURSUANT TO AN APPROVED REMEDIAL
11 ACTION PROJECT.

12 (b) DOES NOT INCLUDE GROUNDWATER WITHDRAWN TO PROVIDE AN
13 ALTERNATIVE WATER SUPPLY PURSUANT TO SECTION 49-282.03.

14 ~~12.~~ 18. "Safe-yield" means a groundwater management goal which
15 attempts to achieve and thereafter maintain a long-term balance between
16 the annual amount of groundwater withdrawn in an active management area
17 and the annual amount of natural and artificial recharge in the active
18 management area.

19 ~~13.~~ 19. "Small municipal provider" means a municipal provider that
20 supplies two hundred fifty acre-feet or less of water for non-irrigation
21 use during a calendar year. For THE purposes of this paragraph, the
22 amount of untreated water that is supplied by a large untreated water
23 provider during a year shall not be counted in determining whether the
24 municipal provider supplied two hundred fifty acre-feet or less of water
25 for non-irrigation use.

26 ~~14.~~ 20. "Untreated water" means water that is not treated to
27 improve its quality and that is supplied by a municipal provider through a
28 distribution system other than a potable water distribution system.

29 Sec. 2. Section 45-576.01, Arizona Revised Statutes, is amended to
30 read:

31 45-576.01. Determining consistency with management goal in a
32 replenishment district, conservation district
33 and water district

34 A. For the purpose of determining whether an assured water supply
35 exists, the director shall find that a groundwater replenishment district
36 member's projected use is consistent with achieving the management goal
37 for the active management area under section 45-576 if:

38 1. The land for which a certificate or the city, town or private
39 water company for which a designation is sought is in a groundwater
40 replenishment district established pursuant to title 48, chapter 27.

41 2. The director has made either a preliminary determination that
42 has not expired or a final determination that the district's plan for
43 operation is consistent with achieving the management goal according to
44 section 45-576.03, subsection E.

1 3. The master replenishment account established pursuant to section
2 45-858.01 does not have a debit balance that exceeds the cumulative amount
3 of the district's debits accrued during the four preceding calendar years.

4 B. For the purpose of determining whether an assured water supply
5 exists, the director shall find that a projected use is consistent with
6 achieving the management goal for the active management area under section
7 45-576 if all of the following apply:

8 1. The land for which a certificate is sought is a member land, or
9 the service area of a city, town or private water company for which a
10 designation is sought is a member service area, in a conservation district
11 as provided by title 48, chapter 22, article 4, or the land for which a
12 certificate is sought is a water district member land, or the service area
13 for which a designation is sought is a water district member service area
14 in a water district as provided by title 48, chapter 28, article 7.

15 2. The director's most recent determination pursuant to section
16 45-576.03, subsection M, O or R that the plan for operation submitted by
17 the conservation district or water district is consistent with achieving
18 the management goal for the active management area in which the use is
19 located has not expired.

20 3. The conservation district or the water district, whichever is
21 obligated to replenish groundwater on behalf of the land for which a
22 certificate is sought or the service area of a city, town or private water
23 company for which a designation is sought, is currently in compliance with
24 its groundwater replenishment obligation for the active management area in
25 which the use is located, as determined by the director pursuant to
26 section 45-859.01 or 45-860.01.

27 C. THE USE OF BRACKISH GROUNDWATER BY A PERSON WITH OR APPLYING FOR
28 A CERTIFICATE OR DESIGNATION OF ASSURED WATER SUPPLY DURING A YEAR IS
29 DEEMED CONSISTENT WITH THE MANAGEMENT GOAL OF THE ACTIVE MANAGEMENT AREA
30 IN WHICH THE BRACKISH GROUNDWATER IS WITHDRAWN AND IS EXCLUDED WHEN
31 DETERMINING COMPLIANCE WITH MANAGEMENT GOAL REQUIREMENTS IN THIS ARTICLE
32 IF ALL OF THE FOLLOWING APPLY:

33 1. THE DIRECTOR DETERMINES THAT THE BRACKISH GROUNDWATER USE IS
34 CONSISTENT WITH THE MANAGEMENT GOAL PURSUANT TO SECTION 45-581.01.

35 2. THE PERSON COMPLIES WITH THE METERING AND REPORTING REQUIREMENTS
36 PRESCRIBED IN SECTIONS 45-581.01 AND 45-581.02.

37 3. THE DIRECTOR APPROVES A BRACKISH GROUNDWATER PLAN FOR THE
38 PROPOSED WITHDRAWAL AND USE.

39 4. THE PERSON AGREES TO DESALINATE THE BRACKISH GROUNDWATER SO THAT
40 THE WATER NO LONGER MEETS THE DEFINITION OF BRACKISH GROUNDWATER AND
41 COMPLIES WITH ALL APPLICABLE POTABLE DRINKING WATER STANDARDS.

42 5. IF THE BRACKISH GROUNDWATER WILL BE WITHDRAWN FROM AN EXEMPTION
43 AREA AS PRESCRIBED BY SECTION 45-411.01 OR THAT IS LOCATED WITHIN THE
44 BOUNDARIES OF AN IRRIGATION DISTRICT ESTABLISHED PURSUANT TO TITLE 48,
45 CHAPTER 19, THE PERSON USES OR OTHERWISE RETURNS THE TREATED BRACKISH

1 GROUNDWATER TO THE SAME EXEMPTION AREA OR SERVICE AREA OF AN IRRIGATION
2 DISTRICT FROM WHICH THE BRACKISH GROUNDWATER WAS ORIGINALLY WITHDRAWN.

3 Sec. 3. Title 45, chapter 2, article 9, Arizona Revised Statutes,
4 is amended by adding sections 45-581, 45-581.01, 45-581.02, 45-581.03,
5 45-581.04 and 45-581.05, to read:

6 45-581. Brackish groundwater; applications; authorization;
7 rules

8 A. A PERSON WITH OR APPLYING FOR A CERTIFICATE OR DESIGNATION OF
9 ASSURED WATER SUPPLY THAT IS USING OR PROPOSING TO USE BRACKISH
10 GROUNDWATER MAY APPLY TO THE DIRECTOR FOR AN APPROVED BRACKISH GROUNDWATER
11 PLAN, INCLUDING A DETERMINATION THAT THE PERSON'S USE OF THE BRACKISH
12 GROUNDWATER IS CONSISTENT WITH THE MANAGEMENT GOAL OF THE ACTIVE
13 MANAGEMENT AREA BY SUBMITTING AN APPLICATION ON A FORM PROVIDED BY THE
14 DIRECTOR.

15 B. IF THE DIRECTOR APPROVES AN APPLICATION FOR AN APPROVED BRACKISH
16 GROUNDWATER PLAN, THE DIRECTOR SHALL CALCULATE THE ANNUAL AMOUNT OF
17 BRACKISH GROUNDWATER USE THAT IS DEEMED CONSISTENT WITH THE MANAGEMENT
18 GOAL.

19 C. THE DIRECTOR SHALL ADOPT RULES:

20 1. ESTABLISHING A SIMPLIFIED APPLICATION PROCESS TO DETERMINE THAT
21 BRACKISH GROUNDWATER USE IS CONSISTENT WITH THE MANAGEMENT GOALS OF AN
22 ACTIVE MANAGEMENT AREA.

23 2. OUTLINING THE TIMELINE FOR REVIEW FOR AN APPLICATION SUBMITTED
24 PURSUANT TO THIS SECTION.

25 3. OUTLINING THE FORMULATION TO CALCULATE, INCREASE OR DECREASE THE
26 ANNUAL AUTHORIZED VOLUME THAT CAN BE WITHDRAWN.

27 45-581.01. Brackish groundwater; metering; reporting

28 A. A PERSON WITH OR APPLYING FOR A CERTIFICATE OR DESIGNATION OF
29 ASSURED WATER SUPPLY THAT IS WITHDRAWING OR PROPOSING TO WITHDRAW BRACKISH
30 GROUNDWATER THAT IS OR HAS BEEN DETERMINED TO BE CONSISTENT WITH THE
31 MANAGEMENT GOAL UNDER SECTION 45-576.01 SHALL METER THE BRACKISH
32 GROUNDWATER WITHDRAWALS SEPARATELY FROM GROUNDWATER WITHDRAWN PURSUANT TO
33 ANOTHER GROUNDWATER WITHDRAWAL AUTHORITY.

34 B. A PERSON WITH OR APPLYING FOR A CERTIFICATE OR DESIGNATION OF
35 ASSURED WATER SUPPLY THAT IS WITHDRAWING OR PROPOSING TO WITHDRAW BRACKISH
36 GROUNDWATER THAT IS OR HAS BEEN DETERMINED TO BE CONSISTENT WITH THE
37 MANAGEMENT GOAL UNDER SECTION 45-576.01 SHALL INCLUDE IN ITS ANNUAL
38 REPORTS, FILED UNDER SECTION 45-632, THE AMOUNT OF BRACKISH GROUNDWATER
39 WITHDRAWN DURING THE REPORTING YEAR THAT IS CONSISTENT WITH THE MANAGEMENT
40 GOAL UNDER THIS ARTICLE AND THE PURPOSES FOR WHICH THE BRACKISH
41 GROUNDWATER WAS USED.

42 45-581.02. Brackish groundwater; brackish groundwater
43 desalination; notice

44 A PERSON WITH OR APPLYING FOR A CERTIFICATE OR DESIGNATION OF
45 ASSURED WATER SUPPLY THAT IS WITHDRAWING OR PROPOSING TO WITHDRAW OR USE

1 BRACKISH GROUNDWATER AND IS DEEMED CONSISTENT WITH THE MANAGEMENT GOALS OF
2 AN ACTIVE MANAGEMENT AREA PURSUANT TO SECTION 45-576.01 SUBSECTION C SHALL
3 PROVIDE NOT LESS THAN ONE HUNDRED TWENTY DAYS BEFORE COMMENCEMENT OF THE
4 WITHDRAWALS OR USE OR ONE HUNDRED TWENTY DAYS AFTER THE EFFECTIVE DATE OF
5 THIS SECTION, WHICHEVER IS LATER, WRITTEN NOTICE TO THE DIRECTOR OF THE
6 FOLLOWING:

7 1. THE ANNUAL VOLUME OF BRACKISH GROUNDWATER TO BE WITHDRAWN FROM
8 EACH WELL PURSUANT TO THE APPROVED BRACKISH GROUNDWATER PLAN.

9 2. THE TOTAL AMOUNT OF BRACKISH GROUNDWATER THAT IS LOCATED IN THE
10 RELEVANT AREA FROM WHICH THE ANNUAL AUTHORIZED VOLUME OF BRACKISH
11 GROUNDWATER WILL BE WITHDRAWN.

12 3. THE TIME PERIOD IN WHICH BRACKISH GROUNDWATER WILL BE WITHDRAWN
13 AND USED.

14 4. THE ANTICIPATED OR ACTUAL COMMENCEMENT DATE OF WITHDRAWALS OR
15 USE.

16 5. THE PURPOSE FOR WHICH THE BRACKISH GROUNDWATER WILL BE USED.

17 6. THE PERSON WITH OR APPLYING FOR A CERTIFICATE OR DESIGNATION OF
18 ASSURED WATER SUPPLY TO WHICH THE BRACKISH GROUNDWATER WILL BE PLEDGED.

19 7. THE NAME AND TELEPHONE NUMBER THE DEPARTMENT OF WATER RESOURCES
20 MAY CONTACT REGARDING THE WITHDRAWAL OR USE.

21 45-581.03. Remedial groundwater; incentive; consistency with
22 management goal; definition

23 A. FOR EACH CALENDAR YEAR, THE USE OF UP TO AN AGGREGATE OF
24 SIXTY-FIVE THOUSAND ACRE-FEET OF GROUNDWATER WITHDRAWN WITHIN ALL ACTIVE
25 MANAGEMENT AREAS PURSUANT TO APPROVED REMEDIAL ACTION PROJECTS PURSUANT TO
26 CERCLA OR TITLE 49, EXCEPT FOR GROUNDWATER WITHDRAWN TO PROVIDE AN
27 ALTERNATIVE WATER SUPPLY PURSUANT TO SECTION 49-282.03, SHALL BE
28 CONSIDERED CONSISTENT WITH THE MANAGEMENT GOAL OF THE ACTIVE MANAGEMENT
29 AREA AS PRESCRIBED IN SECTION 45-576.

30 B. THE USE OF AN AMOUNT OF GROUNDWATER WITHDRAWN PURSUANT TO
31 APPROVED REMEDIAL ACTION PROJECTS PURSUANT TO CERCLA OR TITLE 49, EXCEPT
32 FOR GROUNDWATER WITHDRAWN TO PROVIDE AN ALTERNATIVE WATER SUPPLY PURSUANT
33 TO SECTION 49-282.03, IN EXCESS OF THE AGGREGATE VOLUME OF SIXTY-FIVE
34 THOUSAND ACRE-FEET OF GROUNDWATER AUTHORIZED IN SUBSECTIONS A AND C OF
35 THIS SECTION SHALL BE CONSIDERED CONSISTENT WITH THE MANAGEMENT GOAL OF
36 THE ACTIVE MANAGEMENT AREA AS PRESCRIBED IN SECTION 45-576.

37 C. A MUNICIPAL WATER PROVIDER THAT PROPOSES TO USE GROUNDWATER
38 WITHDRAWN PURSUANT TO AN APPROVED REMEDIAL ACTION PROJECT PURSUANT TO
39 CERCLA OR TITLE 49 AND THAT WISHES THE DIRECTOR TO DETERMINE THAT THE USE
40 OF SOME OR ALL OF THE MUNICIPAL PROVIDER'S PROJECTED GROUNDWATER
41 WITHDRAWALS ARE CONSISTENT WITH THE MANAGEMENT GOAL PURSUANT TO SUBSECTION
42 A OR B OF THIS SECTION MAY APPLY TO THE DIRECTOR FOR A DETERMINATION. THE
43 AMOUNT OF GROUNDWATER FOR WHICH THE USE IS DETERMINED TO BE CONSISTENT
44 WITH THE MANAGEMENT GOAL PURSUANT TO THIS SECTION MAY NOT EXCEED THE
45 AMOUNT THAT THE MUNICIPAL PROVIDER IS LEGALLY OBLIGATED TO WITHDRAW OR

1 USE. THE AGGREGATE VOLUME AUTHORIZED BY THE DIRECTOR PURSUANT TO
2 SUBSECTION A OF THIS SECTION MAY NOT EXCEED SIXTY-FIVE THOUSAND ACRE-FEET
3 IN ANY CALENDAR YEAR.

4 D. NOT LATER THAN JANUARY 1, 2025, THE DIRECTOR SHALL AMEND THE
5 RULES ADOPTED PURSUANT TO SECTION 45-576, SUBSECTION H TO CARRY OUT THE
6 PURPOSE OF THIS SECTION. BEFORE THE AMENDMENT OF THESE RULES, THE
7 DIRECTOR SHALL TREAT ANY GROUNDWATER WITHDRAWN PURSUANT TO AN APPROVED
8 REMEDIAL ACTION PROJECT PURSUANT TO CERCLA OR TITLE 49 ISSUED AFTER THE
9 EFFECTIVE DATE OF THIS SECTION AS CONSISTENT WITH THE MANAGEMENT GOAL AS
10 PROVIDED IN SUBSECTIONS A, B AND C OF THIS SECTION.

11 E. FOR ANNUAL REMEDIATED GROUNDWATER WITHDRAWALS OF TWO HUNDRED
12 FIFTY ACRE-FEET OR LESS THAT ARE WITHDRAWN PURSUANT TO AN APPROVED
13 REMEDIAL ACTION UNDER CERCLA, THE WATER QUALITY ASSURANCE REVOLVING FUND
14 PROGRAM OR OTHER APPLICABLE LAW AND EXCEPT FOR GROUNDWATER WITHDRAWN TO
15 PROVIDE AN ALTERNATIVE WATER SUPPLY PURSUANT TO SECTION 49-282.03, THE
16 AMOUNT OF GROUNDWATER WITHDRAWN MAY NOT BE DEBITED AGAINST THE WATER
17 PROVIDER'S ASSURED WATER SUPPLY MINED GROUNDWATER ACCOUNT AND IS NOT
18 SUBJECT TO A REPLENISHMENT OBLIGATION. AN ANNUAL USER OF TWO HUNDRED
19 FIFTY ACRE-FEET OR LESS OF REMEDIATED GROUNDWATER SHALL NOTIFY THE
20 DIRECTOR OF COMPLIANCE WITH THE EXEMPTION AND THESE USES DO NOT APPLY IN
21 CALCULATING THE SIXTY-FIVE THOUSAND ACRE-FEET PER YEAR TOTAL PRESCRIBED BY
22 SUBSECTION A OF THIS SECTION.

23 F. FOR THE PURPOSES OF THIS SECTION, "CERCLA" HAS THE SAME MEANING
24 PRESCRIBED IN SECTION 49-201.

25 45-581.04. Remedial groundwater; metering; reporting

26 A. A PERSON WITH OR APPLYING FOR A CERTIFICATE OR DESIGNATION OF
27 ASSURED WATER SUPPLY THAT IS WITHDRAWING OR PROPOSING TO WITHDRAW REMEDIAL
28 GROUNDWATER THAT IS OR HAS BEEN DETERMINED TO BE CONSISTENT WITH THE
29 MANAGEMENT GOAL PURSUANT TO SECTION 45-576.03 SHALL METER THE REMEDIAL
30 GROUNDWATER WITHDRAWALS SEPARATELY FROM GROUNDWATER WITHDRAWN PURSUANT TO
31 ANOTHER GROUNDWATER WITHDRAWAL AUTHORITY.

32 B. A PERSON WITH OR APPLYING FOR A CERTIFICATE OR DESIGNATION OF
33 ASSURED WATER SUPPLY THAT IS WITHDRAWING OR PROPOSING TO WITHDRAW REMEDIAL
34 GROUNDWATER THAT IS OR HAS BEEN DETERMINED TO BE CONSISTENT WITH THE
35 MANAGEMENT GOAL PURSUANT TO SECTION 45-576.03 SHALL INCLUDE IN ITS ANNUAL
36 REPORTS FILED PURSUANT TO SECTION 45-632 THE AMOUNT OF REMEDIAL
37 GROUNDWATER WITHDRAWN DURING THE REPORTING YEAR THAT IS CONSISTENT WITH
38 THE MANAGEMENT GOAL PURSUANT TO THIS ARTICLE AND THE PURPOSES FOR WHICH
39 THE REMEDIAL GROUNDWATER WAS USED.

40 45-581.05. Remedial groundwater; desalination; notice

41 A PERSON WITH OR APPLYING FOR A CERTIFICATE OR DESIGNATION OF
42 ASSURED WATER SUPPLY THAT IS WITHDRAWING OR PROPOSING TO WITHDRAW OR USE
43 REMEDIAL GROUNDWATER THAT IS OR HAS BEEN DETERMINED TO BE CONSISTENT WITH
44 THE MANAGEMENT GOAL PURSUANT TO SECTION 45-576.03 SHALL PROVIDE NOT LESS
45 THAN ONE HUNDRED TWENTY DAYS BEFORE COMMENCEMENT OF THE WITHDRAWALS OR USE

1 OR ONE HUNDRED TWENTY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION,
2 WHICHEVER IS LATER, WRITTEN NOTICE TO THE DIRECTOR OF THE FOLLOWING:

3 1. THE ANNUAL VOLUME OF REMEDIAL GROUNDWATER TO BE WITHDRAWN FROM
4 EACH WELL PURSUANT TO THE APPROVED REMEDIAL ACTION PROJECT.

5 2. THE TIME PERIOD IN WHICH REMEDIAL GROUNDWATER WILL BE WITHDRAWN
6 AND USED.

7 3. THE ANTICIPATED OR ACTUAL COMMENCEMENT DATE OF WITHDRAWALS OR
8 USE.

9 4. THE PURPOSE FOR WHICH THE REMEDIAL GROUNDWATER WILL BE USED.

10 5. A COPY OF A DOCUMENT EVIDENCING DEPARTMENT OF ENVIRONMENTAL
11 QUALITY OR UNITED STATES ENVIRONMENTAL PROTECTION AGENCY APPROVAL OF THE
12 PERSON'S WITHDRAWAL AND USE OF REMEDIAL GROUNDWATER, SUCH AS A REMEDIAL
13 ACTION PLAN, RECORD OF DECISION OR CONSENT DECREE.

14 6. THE PERSON WITH OR APPLYING FOR A CERTIFICATE OR DESIGNATION OF
15 ASSURED WATER SUPPLY TO WHICH THE REMEDIAL GROUNDWATER WILL BE PLEDGED.

16 7. THE NAME AND TELEPHONE NUMBER THE DEPARTMENT OF WATER RESOURCES
17 MAY CONTACT REGARDING THE WITHDRAWAL OR USE.

18 Sec. 4. Section 49-201, Arizona Revised Statutes, is amended to
19 read:

20 49-201. Definitions

21 In this chapter, unless the context otherwise requires:

22 1. "Administrator" means the administrator of the United States
23 environmental protection agency.

24 2. "Aquifer" means a geologic unit that contains sufficient
25 saturated permeable material to yield usable quantities of water to a well
26 or spring.

27 3. "Best management practices" means those methods, measures or
28 practices to prevent or reduce discharges and includes structural and
29 nonstructural controls and operation and maintenance procedures. Best
30 management practices may be applied before, during and after discharges to
31 reduce or eliminate the introduction of pollutants into receiving waters.
32 Economic, institutional and technical factors shall be considered in
33 developing best management practices.

34 4. "CERCLA" means the comprehensive environmental response,
35 compensation, and liability act of 1980, as amended (P.L. 96-510; 94 Stat.
36 2767; 42 United States Code sections 9601 through 9657), commonly known as
37 "superfund".

38 5. "Clean closure" means implementation of all actions specified in
39 an aquifer protection permit, if any, as closure requirements, as well as
40 elimination, to the greatest degree practicable, of any reasonable
41 probability of further discharge from the facility and of either exceeding
42 aquifer water quality standards at the applicable point of compliance or,
43 if an aquifer water quality standard is exceeded at the time the permit is
44 issued, causing further degradation of the aquifer at the applicable point
45 of compliance as provided in section 49-243, subsection B, paragraph 3.

1 Clean closure also means postclosure monitoring and maintenance are
2 unnecessary to meet the requirements in an aquifer protection permit.

3 6. "Clean water act" means the federal water pollution control act
4 amendments of 1972 (P.L. 92-500; 86 Stat. 816; 33 United States Code
5 sections 1251 through 1376), as amended.

6 7. "Closed facility" means:

7 (a) A facility that ceased operation before January 1, 1986, that
8 is not, on August 13, 1986, engaged in the activity for which the facility
9 was designed and that was previously operated and for which there is no
10 intent to resume operation.

11 (b) A facility that has been approved as a clean closure by the
12 director.

13 (c) A facility at which any postclosure monitoring and maintenance
14 plan, notifications and approvals required in a permit have been
15 completed.

16 8. "Concentrated animal feeding operation" means an animal feeding
17 operation that meets the criteria prescribed in 40 Code of Federal
18 Regulations part 122, appendix B for determining a concentrated animal
19 feeding operation for purposes of 40 Code of Federal Regulations sections
20 122.23 and 122.24, appendix C.

21 9. "Department" means the department of environmental quality.

22 10. "Direct reuse" means the beneficial use of reclaimed water for
23 specific purposes authorized pursuant to section 49-203, subsection A,
24 paragraph 7.

25 11. "Director" means the director of environmental quality or the
26 director's designee.

27 12. "Discharge" means the direct or indirect addition of any
28 pollutant to the waters of the state from a facility. For purposes of the
29 aquifer protection permit program prescribed by article 3 of this chapter,
30 discharge means the addition of a pollutant from a facility either
31 directly to an aquifer or to the land surface or the vadose zone in such a
32 manner that there is a reasonable probability that the pollutant will
33 reach an aquifer.

34 13. "Discharge impact area" means the potential areal extent of
35 pollutant migration, as projected on the land surface, as the result of a
36 discharge from a facility.

37 14. "Discharge limitation" means any restriction, prohibition,
38 limitation or criteria established by the director, through a rule, permit
39 or order, on quantities, rates, concentrations, combinations, toxicity and
40 characteristics of pollutants.

41 15. "Effluent-dependent water" means a surface water or portion of
42 a surface water that consists of a point source discharge without which
43 the surface water would be ephemeral. An effluent-dependent water may be
44 perennial or intermittent depending on the volume and frequency of the
45 point source discharge of treated wastewater.

1 16. "Environment" means WOTUS, any other surface waters,
2 groundwater, drinking water supply, land surface or subsurface strata or
3 ambient air, within or bordering on this state.

4 17. "Ephemeral water" means a surface water or portion of surface
5 water that flows or pools only in direct response to precipitation.

6 18. "Existing facility" means a facility on which construction
7 began before August 13, 1986 and that is neither a new facility nor a
8 closed facility. For the purposes of this definition, construction on a
9 facility has begun if the facility owner or operator has either:

10 (a) Begun, or caused to begin, as part of a continuous on-site
11 construction program any placement, assembly or installation of a
12 building, structure or equipment.

13 (b) Entered a binding contractual obligation to purchase a
14 building, structure or equipment that is intended to be used in its
15 operation within a reasonable time. Options to purchase or contracts that
16 can be terminated or modified without substantial loss, and contracts for
17 feasibility engineering and design studies, do not constitute a
18 contractual obligation for purposes of this definition.

19 19. "Facility" means any land, building, installation, structure,
20 equipment, device, conveyance, area, source, activity or practice from
21 which there is, or with reasonable probability may be, a discharge.

22 20. "Gray water" means wastewater that has been collected
23 separately from a sewage flow and that originates from a clothes washer or
24 a bathroom tub, shower or sink but that does not include wastewater from a
25 kitchen sink, dishwasher or toilet.

26 21. "Hazardous substance" means:

27 (a) Any substance designated pursuant to sections 311(b)(2)(A) and
28 307(a) of the clean water act.

29 (b) Any element, compound, mixture, solution or substance
30 designated pursuant to section 102 of CERCLA.

31 (c) Any hazardous waste having the characteristics identified under
32 or listed pursuant to section 49-922.

33 (d) Any hazardous air pollutant listed under section 112 of the
34 federal clean air act (42 United States Code section 7412).

35 (e) Any imminently hazardous chemical substance or mixture with
36 respect to which the administrator has taken action pursuant to section 7
37 of the federal toxic substances control act (15 United States Code section
38 2606).

39 (f) Any substance that the director, by rule, either designates as
40 a hazardous substance following the designation of the substance by the
41 administrator under the authority described in subdivisions (a)
42 through (e) of this paragraph or designates as a hazardous substance on
43 the basis of a determination that such substance represents an imminent
44 and substantial endangerment to public health.

1 (g) PERFLUOROCTANESULFONIC ACID, PERFLUOROCTANOIC ACID AND ANY
2 OTHER SUBSTANCE THAT IS CATEGORIZED AS A PERFLUOROALKYL OR POLYFLUOROALKYL
3 SUBSTANCE AND THAT IS DETECTED IN A SYSTEM THAT IS CLASSIFIED AS A PUBLIC
4 WATER SYSTEM AS PRESCRIBED BY SECTION 49-352 AND THAT EXCEEDS A MAXIMUM
5 CONTAMINANT LEVEL FOR PERFLUOROALKYL AND POLYFLUOROALKYL SUBSTANCES IN
6 DRINKING WATER ADOPTED BY THE UNITED STATES ENVIRONMENTAL PROTECTION
7 AGENCY.

8 22. "Inert material":

9 (a) Means broken concrete, asphaltic pavement, manufactured
10 asbestos-containing products, brick, rock, gravel, sand and soil. ~~Inert~~
11 ~~material also includes~~

12 (b) DOES NOT INCLUDE material that when subjected to a water leach
13 test that is designed to approximate natural infiltrating waters will not
14 leach substances in concentrations that exceed numeric aquifer water
15 quality standards established pursuant to section 49-223, including
16 overburden and wall rock that is not acid generating, taking into
17 consideration acid neutralization potential, and that has not and will not
18 be subject to mine leaching operations.

19 23. "Intermittent water" means a surface water or portion of
20 surface water that flows continuously during certain times of the year and
21 more than in direct response to precipitation, such as when it receives
22 water from a spring, AN elevated groundwater table or another surface
23 source, such as melting snowpack.

24 24. "Major modification" means a physical change in an existing
25 facility or a change in its method of operation that results in a
26 significant increase or adverse alteration in the characteristics or
27 volume of the pollutants discharged, or the addition of a process or major
28 piece of production equipment, building or structure that is physically
29 separated from the existing operation and that causes a discharge,
30 provided that:

31 (a) A modification to a groundwater protection permit facility as
32 defined in section 49-241.01, subsection C that would qualify for an
33 area-wide permit pursuant to section 49-243 consisting of an activity or
34 structure listed in section 49-241, subsection B shall not constitute a
35 major modification solely because of that listing.

36 (b) For a groundwater protection permit facility as defined in
37 section 49-241.01, subsection C, a physical expansion that is accomplished
38 by lateral accretion or upward expansion within the pollutant management
39 area of the existing facility or group of facilities shall not constitute
40 a major modification if the accretion or expansion is accomplished through
41 sound engineering practice in a manner compatible with existing facility
42 design, taking into account safety, stability and risk of environmental
43 release. For a facility described in section 49-241.01, subsection C,
44 paragraph 1, expansion of a facility shall conform with the terms and
45 conditions of the applicable permit. For a facility described in section

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

5 25. "New facility" means a previously closed facility that resumes
6 operation or a facility on which construction was begun after August 13,
7 1986 on a site at which no other facility is located or to totally replace
8 the process or production equipment that causes the discharge from an
9 existing facility. A major modification to an existing facility is deemed
10 a new facility to the extent that the criteria in section 49-243,
11 subsection B, paragraph 1 can be practicably applied to such modification.
12 For the purposes of this definition, construction on a facility has begun
13 if the facility owner or operator has either:

14 (a) Begun, or caused to begin as part of a continuous on-site
15 construction program, any placement, assembly or installation of a
16 building, structure or equipment.

17 (b) Entered a binding contractual obligation to purchase a
18 building, structure or equipment that is intended to be used in its
19 operation within a reasonable time. Options to purchase or contracts that
20 can be terminated or modified without substantial loss, and contracts for
21 feasibility engineering and design studies, do not constitute a
22 contractual obligation for purposes of this definition.

23 26. "Nonpoint source" means any conveyance that is not a point
24 source from which pollutants are or may be discharged to WOTUS.

25 27. "Non-WOTUS protected surface water" means a protected surface
26 water that is not a WOTUS.

27 28. "Non-WOTUS waters of the state" means waters of the state that
28 are not WOTUS.

29 29. "On-site wastewater treatment facility" means a conventional
30 septic tank system or alternative system that is installed at a site to
31 treat and dispose of wastewater of predominantly human origin that is
32 generated at that site.

33 30. "Ordinary high watermark" means the line on the shore of an
34 intermittent or perennial protected surface water established by the
35 fluctuations of water and indicated by physical characteristics such as a
36 clear, natural line impressed on the bank, shelving, changes in the
37 character of soil, destruction of terrestrial vegetation, the presence of
38 litter and debris or other appropriate means that consider the
39 characteristics of the channel, floodplain and riparian area.

40 31. "Perennial water" means a surface water or portion of surface
41 water that flows continuously throughout the year.

42 32. "Permit" means a written authorization issued by the director
43 or prescribed by this chapter or in a rule adopted under this chapter
44 stating the conditions and restrictions governing a discharge or governing
45 the construction, operation or modification of a facility. For the

1 purposes of regulating non-WOTUS protected surface waters, a permit shall
2 not include provisions governing the construction, operation or
3 modification of a facility except as necessary for the purpose of ensuring
4 that a discharge meets water quality-related effluent limitations or to
5 require best management practices for the purpose of ensuring that a
6 discharge does not cause an exceedance of an applicable surface water
7 quality standard.

8 33. "Person" means an individual, employee, officer, managing body,
9 trust, firm, joint stock company, consortium, public or private
10 corporation, including a government corporation, partnership, association
11 or state, a political subdivision of this state, a commission, the United
12 States government or any federal facility, interstate body or other
13 entity.

14 34. "Point source":

15 (a) Means any discernible, confined and discrete conveyance,
16 including any pipe, ditch, channel, tunnel, conduit, well, discrete
17 fissure, container, rolling stock, concentrated animal feeding operation
18 or vessel or other floating craft from which pollutants are or may be
19 discharged to WOTUS or protected surface water. ~~Point source~~

20 (b) Does not include return flows from irrigated agriculture.

21 35. "Pollutant" means fluids, contaminants, toxic wastes, toxic
22 pollutants, dredged spoil, solid waste, substances and chemicals,
23 pesticides, herbicides, fertilizers and other agricultural chemicals,
24 incinerator residue, sewage, garbage, sewage sludge, munitions, petroleum
25 products, chemical wastes, biological materials, radioactive materials,
26 heat, wrecked or discarded equipment, rock, sand, cellar dirt and mining,
27 industrial, municipal and agricultural wastes or any other liquid, solid,
28 gaseous or hazardous substances.

29 36. "Postclosure monitoring and maintenance" means those activities
30 that are conducted after closure notification and that are necessary to:

31 (a) Keep the facility in compliance with either the aquifer water
32 quality standards at the applicable point of compliance or, for any
33 aquifer water quality standard that is exceeded at the time the aquifer
34 protection permit is issued, the requirement to prevent the facility from
35 further degrading the aquifer at the applicable point of compliance as
36 provided under section 49-243, subsection B, paragraph 3.

37 (b) Verify that the actions or controls specified as closure
38 requirements in an approved closure plan or strategy are routinely
39 inspected and maintained.

40 (c) Perform any remedial, mitigative or corrective actions or
41 controls as specified in the aquifer protection permit or perform
42 corrective action as necessary to comply with this paragraph and article 3
43 of this chapter.

44 (d) Meet property use restrictions.

1 37. "Practicably" means able to be reasonably done from the
2 standpoint of technical practicability and, except for pollutants
3 addressed in section 49-243, subsection I, economically achievable on an
4 industry-wide basis.

5 38. "Protected surface waters" means waters of the state listed on
6 the protected surface waters list under section 49-221, subsection G and
7 all WOTUS.

8 39. "Public waters" means waters of the state open to or managed
9 for use by members of the general public.

10 40. "Recharge project" means a facility necessary or convenient to
11 obtain, divert, withdraw, transport, exchange, deliver, treat or store
12 water to infiltrate or reintroduce that water into the ground.

13 41. "Reclaimed water" means water that has been treated or
14 processed by a wastewater treatment plant or an on-site wastewater
15 treatment facility.

16 42. "Regulated agricultural activity" means the application of
17 nitrogen fertilizer or a concentrated animal feeding operation.

18 43. "Safe drinking water act" means the federal safe drinking water
19 act, as amended (P.L. 93-523; 88 Stat. 1660; 95-190; 91 Stat. 1393).

20 44. "Standards" means water quality standards, pretreatment
21 standards and toxicity standards established pursuant to this chapter.

22 45. "Standards of performance" means performance standards, design
23 standards, best management practices, technologically based standards and
24 other standards, limitations or restrictions established by the director
25 by rule or by permit condition.

26 46. "Tank" means a stationary device, including a sump, that is
27 constructed of concrete, steel, plastic, fiberglass, or other non-earthen
28 material that provides substantial structural support, and that is
29 designed to contain an accumulation of solid, liquid or gaseous materials.

30 47. "Toxic pollutant" means a substance that will cause significant
31 adverse reactions if ingested in drinking water. Significant adverse
32 reactions are reactions that may indicate a tendency of a substance or
33 mixture to cause long lasting or irreversible damage to human health.

34 48. "Trade secret" means information to which all of the following
35 apply:

36 (a) A person has taken reasonable measures to protect from
37 disclosure and the person intends to continue to take such measures.

38 (b) The information is not, and has not been, reasonably obtainable
39 without the person's consent by other persons, other than governmental
40 bodies, by use of legitimate means, other than discovery based on a
41 showing of special need in a judicial or quasi-judicial proceeding.

42 (c) No statute specifically requires disclosure of the information
43 to the public.

1 (d) The person has satisfactorily shown that disclosure of the
2 information is likely to cause substantial harm to the business's
3 competitive position.

4 49. "Vadose zone" means the zone between the ground surface and any
5 aquifer.

6 50. "Waters of the state" means all waters within the jurisdiction
7 of this state including all perennial or intermittent streams, lakes,
8 ponds, impounding reservoirs, marshes, watercourses, waterways, wells,
9 aquifers, springs, irrigation systems, drainage systems and other bodies
10 or accumulations of surface, underground, natural, artificial, public or
11 private water situated wholly or partly in or bordering on the state.

12 51. "Well" means a bored, drilled or driven shaft, pit or hole
13 whose depth is greater than its largest surface dimension.

14 52. "Wetland" means, for the purposes of non-WOTUS protected
15 surface waters, an area that is inundated or saturated by surface or
16 groundwater at a frequency and duration sufficient to support, and under
17 normal conditions does support, a prevalence of vegetation typically
18 adapted for life in saturated soil conditions.

19 53. "WOTUS" means waters of the state that are also navigable
20 waters as defined by section 502(7) of the clean water act.

21 54. "WOTUS protected surface water" means a protected surface water
22 that is a WOTUS.

23 Sec. 5. Repeal
24 Laws 1997, chapter 287, section 52, as amended by Laws 1999, chapter
25 295, section 50 and Laws 2021, chapter 272, section 1, is repealed.