

REFERENCE TITLE: physical availability credits; water supply.

State of Arizona
House of Representatives
Fifty-sixth Legislature
Second Regular Session
2024

HB 2647

Introduced by
Representatives Smith: Griffin

AN ACT

AMENDING TITLE 45, CHAPTER 2, ARTICLE 5, ARIZONA REVISED STATUTES, BY
ADDING SECTION 45-465.05; AMENDING SECTION 45-576, ARIZONA REVISED
STATUTES; RELATING TO GROUNDWATER.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 45, chapter 2, article 5, Arizona Revised
3 Statutes, is amended by adding section 45-465.05, to read:

4 45-465.05. Permanent retirement of irrigation grandfathered
5 right for non-irrigation; physical availability
6 credit; assured water supply; definition

7 A. A PERSON WHO OWNS LAND THAT MAY BE LEGALLY IRRIGATED WITH
8 GROUNDWATER PURSUANT TO AN IRRIGATION GRANDFATHERED RIGHT AND THAT IS
9 LOCATED WITHIN AN ACTIVE MANAGEMENT AREA MAY PERMANENTLY RETIRE THE LAND
10 FROM IRRIGATION IN ANTICIPATION OF A FUTURE NON-IRRIGATION USE AND RETAIN
11 A PHYSICAL AVAILABILITY CREDIT.

12 B. A PHYSICAL AVAILABILITY CREDIT MAY BE USED TO WITHDRAW FROM OR
13 RECEIVE FOR THE LAND SUBJECT TO IRRIGATION THE AMOUNT OF GROUNDWATER
14 CALCULATED PURSUANT TO SUBSECTION C OF THIS SECTION FOR A NON-IRRIGATION
15 USE IF ALL OF THE FOLLOWING APPLY:

16 1. THE LAND HAS BEEN ACTIVELY FARMED IN THREE OF THE LAST SEVEN
17 CALENDAR YEARS AND IS PERMANENTLY RETIRED FROM IRRIGATION USE PURSUANT TO
18 THIS SECTION.

19 2. THE NEW NON-IRRIGATION USE OF WATER REMAINS APPURTENANT TO THE
20 ORIGINAL IRRIGATION ACRES DESCRIBED IN THE CERTIFICATE OF GRANDFATHERED
21 RIGHT OR PORTION THEREOF RETIRED UNDER THIS SECTION.

22 3. THE WATER IS DELIVERED BY A MUNICIPAL PROVIDER WITHIN AN ACTIVE
23 MANAGEMENT AREA PURSUANT TO A CONTRACT THAT REQUIRES THE MUNICIPAL
24 PROVIDER TO DELIVER AT LEAST THE SAME QUANTITY OF WATER AVAILABLE UNDER
25 THIS SECTION TO THE RETIRED ORIGINAL IRRIGATION ACRES AND TO WITHDRAW ANY
26 GROUNDWATER THAT IS PART OF THE DELIVERY FROM WITHIN ITS SERVICE AREA.

27 C. THE AMOUNT OF GROUNDWATER THAT MAY BE WITHDRAWN OR RECEIVED
28 ANNUALLY PER ACRE PURSUANT TO THIS SECTION SHALL BE THE LESSER OF THE
29 FOLLOWING:

30 1. THE CURRENT MAXIMUM AMOUNT OF GROUNDWATER THAT MAY BE USED
31 PURSUANT TO THE IRRIGATION GRANDFATHERED RIGHT FOR THE ACRE AT THE TIME IT
32 IS RETIRED PURSUANT TO SECTION 45-465, SUBSECTION B.

33 2. THREE ACRE-FEET MULTIPLIED BY THE WATER DUTY ACRES IN THE FARM
34 OR PORTION THEREOF IN WHICH THE RIGHT IS APPURTENANT DIVIDED BY THE NUMBER
35 OF IRRIGATION ACRES IN THE FARM OR PORTION THEREOF.

36 D. A PHYSICAL AVAILABILITY CREDIT TO WITHDRAW OR RECEIVE THE AMOUNT
37 OF GROUNDWATER CALCULATED IN SUBSECTION C OF THIS SECTION MUST BE USED ON
38 THE ORIGINAL IRRIGATION ACRES. IF THE AMOUNT OF WATER CALCULATED IN
39 SUBSECTION C OF THIS SECTION IS MORE THAN NEEDED TO MEET THE WATER DEMAND
40 ON THE ORIGINAL IRRIGATION ACRES, THE BALANCE OF THE PHYSICAL AVAILABILITY
41 CREDIT MAY BE USED ANYWHERE WITHIN THE MUNICIPAL PROVIDER'S SERVICE AREA.
42 FOR THE PURPOSES OF THIS SUBSECTION, THE BALANCE OF THE PHYSICAL
43 AVAILABILITY CREDIT IS THE DIFFERENCE BETWEEN THE AMOUNT OF WATER
44 CALCULATED IN SUBSECTION C OF THIS SECTION AND THE WATER DEMAND FOR USE ON
45 THE ORIGINAL IRRIGATION ACRES.

1 E. IN DETERMINING WHETHER TO ISSUE A CERTIFICATE OF ASSURED WATER
2 SUPPLY OR TO DESIGNATE OR REDESIGNATE A MUNICIPAL PROVIDER AS HAVING AN
3 ASSURED WATER SUPPLY PURSUANT TO SECTION 45-576, THE DIRECTOR SHALL:

4 1. INCLUDE THE AMOUNT OF GROUNDWATER THAT MAY BE WITHDRAWN AND USED
5 ANNUALLY PURSUANT TO SUBSECTION C OF THIS SECTION.

6 2. INCLUDE THE AMOUNT OF GROUNDWATER THAT MAY BE WITHDRAWN UNDER
7 SUBSECTION C OF THIS SECTION BASED ON THE REDUCTION IN WATER USE RESULTING
8 FROM THE TRANSITION FROM AN IRRIGATION USE TO A NON-IRRIGATION USE AND,
9 BASED ON THAT REDUCTION, FIND THAT GROUNDWATER USED PURSUANT TO THIS
10 SECTION MEETS THE PHYSICAL AVAILABILITY REQUIREMENTS TO DEMONSTRATE AN
11 ASSURED WATER SUPPLY IN ACCORDANCE WITH SECTION 45-576, SUBSECTION N,
12 PARAGRAPH 1 AND RULES ADOPTED PURSUANT TO SECTION 45-576.

13 3. FIND THAT THE PROJECTED USE OF THE GROUNDWATER THAT IS
14 DETERMINED TO BE AVAILABLE FOR ASSURED WATER SUPPLY PURPOSES UNDER
15 PARAGRAPH 2 OF THIS SUBSECTION MEETS THE CONSISTENCY WITH ACHIEVEMENT OF
16 THE MANAGEMENT GOAL REQUIREMENTS TO DEMONSTRATE AN ASSURED WATER SUPPLY
17 PURSUANT TO SECTION 45-576, SUBSECTION N, PARAGRAPH 2 AND RULES ADOPTED
18 PURSUANT TO SECTION 45-576.

19 F. SECTION 45-114, SUBSECTIONS A AND B GOVERN ADMINISTRATIVE
20 PROCEEDINGS, REHEARING OR REVIEW AND JUDICIAL REVIEW OF FINAL DECISIONS OF
21 THE DIRECTOR UNDER THIS SECTION.

22 G. FOR THE PURPOSES OF THIS SECTION, "MUNICIPAL PROVIDER" HAS THE
23 SAME MEANING PRESCRIBED IN SECTION 45-561.

24 Sec. 2. Section 45-576, Arizona Revised Statutes, is amended to
25 read:

26 45-576. Certificate of assured water supply; designated
27 cities, towns and private water companies;
28 exemptions; definition

29 A. Except as provided in subsections G and J of this section, a
30 person who proposes to offer subdivided lands, as defined in section
31 32-2101, for sale or lease in an active management area shall apply for
32 and obtain a certificate of assured water supply from the director before
33 presenting the plat for approval to the city, town or county in which the
34 land is located, where such is required, and before filing with the state
35 real estate commissioner a notice of intention to offer such lands for
36 sale or lease, pursuant to section 32-2181, unless the subdivider has
37 obtained a written commitment of water service for the subdivision from a
38 city, town or private water company designated as having an assured water
39 supply pursuant to this section.

40 B. Except as provided in subsections G and J of this section, a
41 city, town or county may approve a subdivision plat only if the subdivider
42 has obtained a certificate of assured water supply from the director or
43 the subdivider has obtained a written commitment of water service for the
44 subdivision from a city, town or private water company designated as
45 having an assured water supply pursuant to this section. The city, town

1 or county shall note on the face of the approved plat that a certificate
2 of assured water supply has been submitted with the plat or that the
3 subdivider has obtained a written commitment of water service for the
4 proposed subdivision from a city, town or private water company designated
5 as having an assured water supply pursuant to this section.

6 C. Except as provided in subsections G and J of this section, the
7 state real estate commissioner may issue a public report authorizing the
8 sale or lease of subdivided lands only on compliance with either of the
9 following:

10 1. The subdivider, owner or agent has paid any activation fee
11 required under section 48-3772, subsection A, paragraph 7 and any
12 replenishment reserve fee required under section 48-3774.01, subsection A,
13 paragraph 2 and has obtained a certificate of assured water supply from
14 the director.

15 2. The subdivider has obtained a written commitment of water
16 service for the lands from a city, town or private water company
17 designated as having an assured water supply pursuant to this section and
18 the subdivider, owner or agent has paid any activation fee required under
19 section 48-3772, subsection A, paragraph 7.

20 D. The director shall designate private water companies in active
21 management areas that have an assured water supply. If a city or town
22 acquires a private water company that has contracted for central Arizona
23 project water, the city or town shall assume the private water company's
24 contract for central Arizona project water.

25 E. The director shall designate cities and towns in active
26 management areas where an assured water supply exists. If a city or town
27 has entered into a contract for central Arizona project water, the city or
28 town is deemed to continue to have an assured water supply until December
29 31, 1997. Commencing on January 1, 1998, the determination that the city
30 or town has an assured water supply is subject to review by the director
31 and the director may determine that a city or town does not have an
32 assured water supply.

33 F. The director shall notify the mayors of all cities and towns in
34 active management areas and the chairmen of the boards of supervisors of
35 counties in which active management areas are located of the cities, towns
36 and private water companies designated as having an assured water supply
37 and any modification of that designation within thirty days ~~of~~ AFTER the
38 designation or modification. If the service area of the city, town or
39 private water company has qualified as a member service area pursuant to
40 title 48, chapter 22, article 4, the director shall also notify the
41 conservation district of the designation or modification and shall report
42 the projected average annual replenishment obligation for the member
43 service area based on the projected and committed average annual demand
44 for water within the service area during the effective term of the
45 designation or modification subject to any limitation in an agreement

1 between the conservation district and the city, town or private water
2 company. For each city, town or private water company that qualified as a
3 member service area under title 48, chapter 22 and THAT was designated as
4 having an assured water supply before January 1, 2004, the director shall
5 report to the conservation district on or before January 1, 2005 the
6 projected average annual replenishment obligation based on the projected
7 and committed average annual demand for water within the service area
8 during the effective term of the designation subject to any limitation in
9 an agreement between the conservation district and the city, town or
10 private water company. Persons proposing to offer subdivided lands served
11 by those designated cities, towns and private water companies for sale or
12 lease are exempt from applying for and obtaining a certificate of assured
13 water supply.

14 G. This section does not apply in the case of the sale of lands for
15 developments that are subject to a mineral extraction and METALLURGICAL
16 processing permit or an industrial use permit pursuant to sections 45-514
17 and 45-515.

18 H. The director shall adopt rules to carry out the purposes of this
19 section. ~~On or before January 1, 2008,~~ The rules shall provide for a
20 reduction in water demand for an application for a designation of assured
21 water supply or a certificate of assured water supply if a gray water
22 reuse system will be installed that meets the requirements of the rules
23 adopted by the department of environmental quality for gray water systems
24 and if the application is for a certificate of assured water supply, the
25 land for which the certificate is sought must qualify as a member land in
26 a conservation district pursuant to title 48, chapter 22, article 4. For
27 the purposes of this subsection, "gray water" has the same meaning
28 prescribed in section 49-201.

29 I. If the director designates a municipal provider as having an
30 assured water supply under this section and the designation lapses or
31 otherwise terminates while the municipal provider's service area is a
32 member service area of a conservation district, the municipal provider or
33 its successor shall continue to comply with the consistency with
34 management goal requirements in the rules adopted by the director under
35 subsection H of this section as if the designation was still in effect
36 with respect to the municipal provider's designation uses. When
37 determining compliance by the municipal provider or its successor with the
38 consistency with management goal requirements in the rules, the director
39 shall consider only water delivered by the municipal provider or its
40 successor to the municipal provider's designation uses. A person is the
41 successor of a municipal provider if the person commences water service to
42 uses that were previously designation uses of the municipal provider. Any
43 groundwater delivered by the municipal provider or its successor to the
44 municipal provider's designation uses in excess of the amount allowed
45 under the consistency with management goal requirements in the rules shall

1 be considered excess groundwater for purposes of title 48, chapter 22.
2 For the purposes of this subsection, "designation uses" means all water
3 uses served by a municipal provider on the date the municipal provider's
4 designation of assured water supply lapses or otherwise terminates and all
5 recorded lots within the municipal provider's service area that were not
6 being served by the municipal provider on that date but that received
7 final plat approval from a city, town or county on or before that date.
8 Designation uses do not include industrial uses served by an irrigation
9 district under section 45-497.

10 J. Subsections A, B and C of this section do not apply to a person
11 who proposes to offer subdivided land for sale or lease in an active
12 management area if all the following apply:

13 1. The director issued a certificate of assured water supply for
14 the land to a previous owner of the land and the certificate was
15 classified as a type A certificate under rules adopted by the director
16 pursuant to subsection H of this section.

17 2. The director has not revoked the certificate of assured water
18 supply described in paragraph 1 of this subsection, and proceedings to
19 revoke the certificate are not pending before the department or a court.
20 The department shall post on its website a list of all certificates of
21 assured water supply that have been revoked or for which proceedings are
22 pending before the department or a court.

23 3. The plat submitted to the department in the application for the
24 certificate of assured water supply described in paragraph 1 of this
25 subsection has not changed.

26 4. Water service is currently available to each lot within the
27 subdivided land and the water provider listed on the certificate of
28 assured water supply described in paragraph 1 of this subsection has not
29 changed.

30 5. The subdivided land qualifies as a member land under title 48,
31 chapter 22 and the subdivider has paid any activation fee required under
32 section 48-3772, subsection A, paragraph 7 and any replenishment reserve
33 fee required under section 48-3774.01, subsection A, paragraph 2.

34 6. The plat is submitted for approval to a city, town or county
35 that is listed on the department's website as a qualified platting
36 authority.

37 K. Subsection J of this section does not affect the assignment of a
38 certificate of assured water supply as prescribed by section 45-579.

39 L. On or before December 31, 2023, the director shall study and
40 submit to the governor, president of the senate and speaker of the house
41 of representatives a report on whether and how a person that seeks a
42 building permit for six or more residences within an active management
43 area, without regard to any proposed lease term for those residences,
44 should apply for and obtain a certificate of assured water supply from the
45 director before presenting the permit application for approval to the

1 county in which the land is located, unless the applicant has obtained a
2 written commitment of water service for the residences from a city, town
3 or private water company designated as having an assured water supply
4 pursuant to this section.

5 M. FOR THE PURPOSES OF THIS SECTION AND RULES ADOPTED PURSUANT TO
6 THIS SECTION, THE DIRECTOR SHALL FIND THAT:

7 1. THE AMOUNT OF GROUNDWATER CALCULATED PURSUANT TO SECTION
8 45-465.05, SUBSECTION C IS PHYSICALLY AVAILABLE FOR ASSURED WATER SUPPLY
9 PURPOSES IN ACCORDANCE WITH SUBSECTION N, PARAGRAPH 1 OF THIS SECTION.

10 2. THE PROJECTED USE OF GROUNDWATER THAT IS DETERMINED TO BE
11 AVAILABLE FOR ASSURED WATER SUPPLY PURPOSES PURSUANT TO SECTION 45-465.05,
12 SUBSECTION E, PARAGRAPH 2 IS CONSISTENT WITH ACHIEVEMENT OF THE MANAGEMENT
13 GOAL IN ACCORDANCE WITH SUBSECTION N, PARAGRAPH 2 OF THIS SECTION.

14 ~~M.~~ N. For the purposes of this section, "assured water supply"
15 means all of the following:

16 1. Sufficient groundwater, surface water or effluent of adequate
17 quality will be continuously available to satisfy the water needs of the
18 proposed use for at least one hundred years. Beginning January 1 of the
19 calendar year following the year in which a groundwater replenishment
20 district is required to submit its preliminary plan pursuant to section
21 45-576.02, subsection A, paragraph 1, with respect to an applicant that is
22 a member of the district, "sufficient groundwater" for the purposes of
23 this paragraph means that the proposed groundwater withdrawals that the
24 applicant will cause over a period of one hundred years will be of
25 adequate quality and will not exceed, in combination with other
26 withdrawals from land in the replenishment district, a depth to water of
27 one thousand feet or the depth of the bottom of the aquifer, whichever is
28 less. In determining depth to water for the purposes of this paragraph,
29 the director shall consider the combination of:

30 (a) The existing rate of decline.

31 (b) The proposed withdrawals.

32 (c) The expected water requirements of all recorded lots that are
33 not yet served water and that are located in the service area of a
34 municipal provider.

35 2. The projected groundwater use is consistent with the management
36 plan and achievement of the management goal for the active management
37 area.

38 3. The financial capability has been demonstrated to construct the
39 water facilities necessary to make the supply of water available for the
40 proposed use, including a delivery system and any storage facilities or
41 treatment works. The director may accept evidence of the construction
42 assurances required by section 9-463.01, ~~11-823~~ 11-822 or 32-2181 to
43 satisfy this requirement.