

REFERENCE TITLE: basin-fill aquifers; groundwater; correlative rights

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

HB 2842

Introduced by
Representatives Kolodin: Heap

AN ACT

REPEALING SECTION 45-544, ARIZONA REVISED STATUTES; AMENDING TITLE 45, CHAPTER 2, ARTICLE 8, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 45-544; RELATING TO THE GROUNDWATER CODE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Repeal

3 Section 45-544, Arizona Revised Statutes, is repealed.

4 Sec. 2. Title 45, chapter 2, article 8, Arizona Revised Statutes,
5 is amended by adding a new section 45-544, to read:

6 45-544. Transportation in areas not subject to active
7 management; correlative rights; damages; rules;
8 definition

9 A. NOTWITHSTANDING ANY OTHER LAW, IN BASIN-FILL AQUIFER AREAS
10 OUTSIDE OF ACTIVE MANAGEMENT AREAS, IRRIGATION NON-EXPANSION AREAS AND
11 BASINS OR SUBBASINS THAT WATER MAY BE TRANSPORTED OUT OF PURSUANT TO
12 ARTICLE 8.1 OF THIS CHAPTER:

13 1. GROUNDWATER MAY BE TRANSPORTED FREELY WITHIN THE SAME BASIN OR
14 SUBBASIN, IS NOT APPURTENANT TO A WELL OR OTHER LOCATION FROM WHICH IT WAS
15 TRANSFERRED AND MAY BE CONVEYED SEPARATELY FROM ANY PARCEL OF LAND.

16 2. GROUNDWATER MAY BE WITHDRAWN AND USED IN A MANNER THAT IS
17 CONSISTENT WITH CORRELATIVE RIGHTS OF OWNERS OF LAND, AS DETERMINED
18 PURSUANT TO SUBSECTIONS B AND C OF THIS SECTION, IN A MANNER THAT IS
19 REASONABLE AND CONSISTENT WITH BENEFICIAL USE AS OTHERWISE PROVIDED BY
20 LAW. GROUNDWATER TRANSFERS AND CONVEYANCES WITHIN THE SAME BASIN OR
21 SUBBASIN PURSUANT TO THIS SECTION SHALL BE DEEMED A REASONABLE AND
22 BENEFICIAL USE.

23 3. THE DEPARTMENT MAY NOT REQUIRE A PERMIT OR ANY OTHER FORM OF
24 APPROVAL FOR ANY TRANSFER PRESCRIBED BY THIS SECTION.

25 4. A TRANSFER PRESCRIBED BY THIS SECTION IS NOT SUBJECT TO ANY
26 CLAIM FOR DAMAGES FROM ANY OTHER GROUNDWATER USER.

27 B. WITHIN NINETY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION, THE
28 DIRECTOR SHALL DO ALL OF THE FOLLOWING TO DETERMINE THE CORRELATIVE RIGHTS
29 OF OWNERS OF LAND IN THE RELEVANT BASIN OR SUBBASIN:

30 1. DETERMINE THE TOTAL SURFACE AREA OF ELIGIBLE ACRES IN A BASIN OR
31 SUBBASIN. FOR THE PURPOSES OF THIS PARAGRAPH, THE DIRECTOR SHALL ROUND
32 ALL PARTIAL ACRES TO THE NEAREST ACRE.

33 2. DETERMINE THE TOTAL VOLUME OF GROUNDWATER AVAILABLE IN ACRE-FEET
34 IN THE RELEVANT BASIN OR SUBBASIN AT THE TIME OF INQUIRY TO A DEPTH OF ONE
35 THOUSAND TWO HUNDRED FEET. FOR THE PURPOSES OF THIS PARAGRAPH, THE
36 DIRECTOR SHALL ROUND TO THE NEAREST ACRE-FOOT.

37 3. DETERMINE THE TOTAL AVERAGE VOLUME OF ANNUAL NATURAL RECHARGE IN
38 ACRE-FEET PER YEAR IN THE RELEVANT BASIN OR SUBBASIN OVER THE PRECEDING
39 THIRTY YEARS. FOR THE PURPOSES OF THIS PARAGRAPH, THE DIRECTOR SHALL
40 ROUND TO THE NEAREST ACRE-FOOT PER YEAR.

41 4. DETERMINE EACH ELIGIBLE ACRE'S PROPORTIONAL SHARE OF THE TOTAL
42 SURFACE AREA OF ELIGIBLE ACRES IN THE RELEVANT BASIN OR SUBBASIN BY
43 DIVIDING THE NUMBER ONE BY THE TOTAL SURFACE AREA DETERMINED PURSUANT TO
44 PARAGRAPH 1 OF THIS SUBSECTION.

1 5. DETERMINE EACH ELIGIBLE ACRE'S PROPORTIONAL SHARE OF THE TOTAL
2 VOLUME OF GROUNDWATER AVAILABLE IN THE RELEVANT BASIN OR SUBBASIN TO A
3 DEPTH OF ONE THOUSAND TWO HUNDRED FEET BY MULTIPLYING THE TOTAL SURFACE
4 AREA DETERMINED PURSUANT TO PARAGRAPH 1 OF THIS SUBSECTION BY THE
5 PROPORTIONAL SHARE DETERMINED PURSUANT TO PARAGRAPH 4 OF THIS SUBSECTION.

6 6. DETERMINE EACH ELIGIBLE ACRE'S PROPORTIONAL SHARE OF TOTAL
7 ANNUAL NATURAL RECHARGE IN THE RELEVANT BASIN OR SUBBASIN BY MULTIPLYING
8 EACH ACRE'S PROPORTIONAL SHARE OF THE TOTAL SURFACE AREA DETERMINED
9 PURSUANT TO PARAGRAPH 4 OF THIS SUBSECTION BY THE TOTAL AVERAGE VOLUME OF
10 ANNUAL NATURAL RECHARGE OVER THE PREVIOUS THIRTY YEARS AS DETERMINED BY
11 PARAGRAPH 3 OF THIS SUBSECTION.

12 7. IDENTIFY EACH TAX PARCEL IN EACH RELEVANT BASIN OR SUBBASIN THAT
13 CONTAINS A PORTION OF ELIGIBLE ACRES.

14 8. DETERMINE A TAX PARCEL'S TOTAL PROPORTIONAL SHARE OF THE TOTAL
15 SURFACE AREA AS DETERMINED PURSUANT TO PARAGRAPH 1 OF THIS SUBSECTION BY
16 ADDING THE TOTAL NUMBERS OF ACRES OF ELIGIBLE ACRES IN THE RELEVANT BASIN
17 OR SUBBASIN.

18 9. DETERMINE A TAX PARCEL'S TOTAL CORRELATIVE RIGHT IN ACRE-FEET TO
19 A DEPTH OF ONE THOUSAND TWO HUNDRED FEET BY MULTIPLYING A TAX PARCEL'S
20 TOTAL PROPORTIONAL SHARE DETERMINED PURSUANT TO PARAGRAPH 8 OF THIS
21 SUBSECTION BY THE TOTAL VOLUME OF GROUNDWATER AVAILABLE IN THE RELEVANT
22 BASIN OR SUBBASIN DETERMINED PURSUANT TO PARAGRAPH 5 OF THIS SUBSECTION.

23 10. DETERMINE A TAX PARCEL'S TOTAL CORRELATIVE RIGHT IN ACRE-FEET
24 TO THE ANNUAL RECHARGE IN THE RELEVANT BASIN OR SUBBASIN BY MULTIPLYING
25 THE TAX PARCEL'S TOTAL PROPORTIONAL SHARE DETERMINED PURSUANT TO PARAGRAPH
26 8 OF THIS SUBSECTION BY THE TOTAL AVERAGE VOLUME OF ANNUAL NATURAL
27 RECHARGE IN THE RELEVANT BASIN OR SUBBASIN DETERMINED PURSUANT TO
28 PARAGRAPH 3 OF THIS SUBSECTION.

29 C. THE DIRECTOR SHALL:

30 1. ESTABLISH A PERSONAL GROUNDWATER ACCOUNT FOR EACH OWNER OF A TAX
31 PARCEL IDENTIFIED PURSUANT TO SUBSECTION B, PARAGRAPH 7 OF THIS SECTION.

32 2. ASSIGN EACH ACCOUNT A LUMP VOLUME OF GROUNDWATER THAT IS EQUAL
33 TO THE CORRELATIVE RIGHTS CALCULATED PURSUANT TO SUBSECTION B, PARAGRAPH 9
34 OF THIS SECTION.

35 3. ASSIGN EACH ACCOUNT AN ANNUAL CREDIT OF ANNUAL GROUNDWATER
36 RECHARGE CONSISTENT WITH A TAX PARCEL'S TOTAL CORRELATIVE RIGHT IN
37 ACRE-FEET TO THE ANNUAL RECHARGE IN THE RELEVANT BASIN OR SUBBASIN
38 CALCULATED PURSUANT TO SUBSECTION B, PARAGRAPH 10 OF THIS SECTION.

39 4. WITHIN NINETY DAYS AFTER THE EFFECTIVE DATE OF THE
40 DETERMINATIONS PRESCRIBED BY SUBSECTION B OF THIS SECTION, ASSIGN TO THE
41 OWNER OF EACH EXEMPT AND NONEXEMPT WELL REGISTERED IN THE BASIN OR
42 SUBBASIN A PERSONAL GROUNDWATER ACCOUNT AND THE CORRESPONDING CORRELATIVE
43 RIGHTS.

1 5. ADOPT RULES THE DIRECTOR DEEMS NECESSARY TO IMPLEMENT THIS
2 SECTION, INCLUDING RULES:

3 (a) RELATING TO THE ENFORCEMENT AND MEASURING OF GROUNDWATER
4 WITHDRAWALS.

5 (b) ESTABLISHING AN APPLICATION AND VERIFICATION PROCESS FOR THE
6 ESTABLISHMENT, AGGREGATION AND ASSIGNMENT OF PERSONAL GROUNDWATER ACCOUNTS
7 TO LANDOWNERS IN THE RELEVANT BASIN OR SUBBASIN.

8 D. BEGINNING ON THE EFFECTIVE DATE OF THIS SECTION, A LANDOWNER WHO
9 OWNS TAX PARCELS THAT ARE LOCATED IN A BASIN-FILL AQUIFER AND THAT MEET
10 THE REQUIREMENTS OF SUBSECTION A OF THIS SECTION MAY APPLY TO THE DIRECTOR
11 TO CLAIM OWNERSHIP OF ANY PERSONAL GROUNDWATER ACCOUNTS THAT CORRESPOND TO
12 EACH RELEVANT TAX PARCEL THE LANDOWNER OWNS IF ALL OF THE FOLLOWING APPLY:

13 1. THE TAX PARCELS MEET THE REQUIREMENTS OF SUBSECTION A OF THIS
14 SECTION.

15 2. THE TAX PARCELS CONTAIN ELIGIBLE ACRES AS DETERMINED PURSUANT TO
16 THIS SECTION.

17 3. THE TAX PARCELS ARE NOT LOCATED WITH THE DESIGNATED SERVICE AREA
18 OF AN ENTITY DESCRIBED IN SUBSECTION F OF THIS SECTION.

19 E. THE OWNER OF A PERSONAL GROUNDWATER ACCOUNT:

20 1. MAY NOT WITHDRAW ANY WATER FROM AN EXEMPT OR NONEXEMPT WELL THAT
21 EXCEEDS THE AMOUNT AVAILABLE IN THE PERSON'S PERSONAL GROUNDWATER ACCOUNT.

22 2. MAY CREDIT TO THE PERSON'S ACCOUNT A VOLUME OF GROUNDWATER THAT
23 IS EQUAL TO THE VOLUME CREDITED FROM ANOTHER PERSON'S ACCOUNT LOCATED IN
24 THE SAME BASIN OR SUBBASIN AFTER PROVIDING WRITTEN NOTICE OF A TRANSFER TO
25 THE DIRECTOR.

26 3. MAY NOT APPROPRIATE SUBFLOW OR SURFACE WATER OUT OF PRIORITY.

27 4. SHALL BE RESPONSIBLE FOR ENSURING THAT THE PERSONAL GROUNDWATER
28 ACCOUNT OWNER'S WELL REMAINS DEEP ENOUGH TO USE OR WITHDRAW ALL
29 GROUNDWATER THAT THE PERSON DESIRES TO USE OR WITHDRAW FROM THE PERSON'S
30 PERSONAL GROUNDWATER ACCOUNT.

31 F. BEGINNING NINETY DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION,
32 THE DIRECTOR SHALL GRANT A PERSON THAT OWNS A COMMUNITY WATER SYSTEM,
33 MUNICIPAL WATER SYSTEM OR OTHER WATER DISTRIBUTION SYSTEM THAT PROVIDES
34 WATER SERVICE TO MORE THAN ONE ELIGIBLE TAX PARCEL ALL CORRELATIVE RIGHTS
35 ASSOCIATED WITH THE ELIGIBLE ACRES TO WHICH THE PERSON PROVIDES WATER
36 SERVICE.

37 G. THE DIRECTOR SHALL CREDIT AN OWNER OF AN ACTIVE OR PASSIVE
38 GROUNDWATER REPLENISHMENT OR RECHARGE FACILITY LOCATED ON ELIGIBLE ACRES
39 WITH THE DIFFERENCE BETWEEN THE OWNER'S CORRELATIVE RIGHTS TO ANNUAL
40 NATURAL RECHARGE IN THE BASIN OR SUBBASIN AND THE INCREASED ANNUAL NATURAL
41 RECHARGE CAUSED OR CREATED BY THE OWNER'S FACILITY AS CONFIRMED BY THE
42 DIRECTOR. IF AN ACTIVE OR PASSIVE GROUNDWATER REPLENISHMENT OR RECHARGE
43 FACILITY IS OWNED BY MULTIPLE PERSONS, THE DIRECTOR SHALL AWARD THE
44 ADDITIONAL CREDIT TO EACH OWNER'S PERSONAL GROUNDWATER ACCOUNT IN

1 PROPORTION TO THE OWNERSHIP OF A FACILITY OR AS CONTRACTED AMONG THE
2 PARTIES.

3 H. ON THE TENTH ANNIVERSARY OF THE DIRECTOR'S DETERMINATIONS
4 PURSUANT TO SUBSECTION B OF THIS SECTION AND EVERY TEN YEARS THEREAFTER,
5 THE DIRECTOR SHALL COMPLETE AN AUDIT AND HYDROLOGICAL UPDATE FOR THE
6 RELEVANT BASIN OR SUBBASIN AND EACH PERSONAL GROUNDWATER ACCOUNT LOCATED
7 WITHIN THE BASIN OR SUBBASIN, INCLUDING:

8 1. REASSESSING THE TOTAL VOLUME OF GROUNDWATER AVAILABLE IN THE
9 RELEVANT BASIN OR SUBBASIN TO A DEPTH OF ONE THOUSAND TWO HUNDRED FEET.

10 2. REASSESSING THE TOTAL AVERAGE VOLUME OF ANNUAL NATURAL RECHARGE
11 IN THE RELEVANT BASIN OR SUBBASIN OVER THE PRECEDING THIRTY YEARS.

12 3. REASSIGNING EACH PERSONAL GROUNDWATER ACCOUNT IN THE RELEVANT
13 BASIN WITH AN UPDATED LUMP-SUM VOLUME OF GROUNDWATER ASSOCIATED WITH THE
14 ACCOUNT HOLDER'S CORRELATIVE RIGHT MINUS THE TOTAL VOLUME OF GROUNDWATER
15 WITHDRAWN OR CREDITED FROM THE ACCOUNT DURING EACH OF THE LAST TEN YEARS
16 PLUS THE TOTAL VOLUME OF GROUNDWATER CREDITED TO THE ACCOUNT DURING EACH
17 OF THE LAST TEN YEARS.

18 4. REASSIGNING EACH PERSONAL GROUNDWATER ACCOUNT IN THE RELEVANT
19 BASIN AN ANNUAL CREDIT OF THE ANNUAL GROUNDWATER RECHARGE ASSOCIATED WITH
20 A PERSONAL GROUNDWATER ACCOUNT HOLDER'S CORRELATIVE RIGHTS.

21 I. FOR THE PURPOSES OF THIS SECTION:

22 1. A PERSON MAY NOT APPROPRIATE SUBFLOW OR SURFACE WATER OUT OF
23 PRIORITY.

24 2. SUBFLOW OR SURFACE WATER IS NOT EXEMPT FROM A GENERAL STREAM
25 ADJUDICATION.

26 J. FOR THE PURPOSES OF THIS SECTION, "ELIGIBLE ACRES" MEANS LAND
27 THAT CONSTITUTES THE SURFACE AREA OF ALLUVIUM THAT COMPOSES A BASIN-FILL
28 AQUIFER THAT MEETS THE REQUIREMENTS OF SUBSECTION A OF THIS SECTION.

29 Sec. 3. Conforming legislation

30 The legislative council staff shall prepare proposed legislation
31 conforming the Arizona Revised Statutes to the provisions of this act for
32 consideration in the fifty-seventh legislature, first regular session.