

REFERENCE TITLE: physical availability credits; water supply

State of Arizona  
Senate  
Fifty-sixth Legislature  
Second Regular Session  
2024

## **SB 1172**

Introduced by  
Senator Shope

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27 C. THE AMOUNT OF GROUNDWATER THAT MAY BE WITHDRAWN OR RECEIVED  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.