

Proposed Legislation Extending the Fifth Management Period to 2035 and Adding a Sixth Management Period

45-402. Definitions

In this chapter, unless the context otherwise requires:

1. "Accounting period" means the calendar year, except such other twelve-month period as may be otherwise agreed upon by the director and the owner of a farm or a district on behalf of its landowners.

2. "Active management area" means a geographical area which has been designated pursuant to article 2 of this chapter as requiring active management of groundwater or, in the case of the Santa Cruz active management area, active management of any water, other than stored water, withdrawn from a well.

3. "Animal industry use" means the production, growing and feeding of livestock, range livestock or poultry, as such terms are defined in section 3-1201. Animal industry use is included in the term and general treatment of industry in this chapter, unless specifically provided otherwise.

4. "City" or "town" means a city or town incorporated or chartered under the constitution and laws of this state.

5. "Conservation district" means a multi-county water conservation district established under title 48, chapter 22.

6. "Convey" means to transfer the ownership of a grandfathered right from one person to another.

7. "Date of the designation of the active management area" means:

(a) With respect to an initial active management area, June 12, 1980.

(b) With respect to a subsequent active management area, the date on which the director's order designating the active management area becomes effective as provided in section 45-414 or the date on which the final results of an election approving the establishment of the active management area pursuant to section 45-415 are certified by the board of supervisors of the county or counties in which the active management area is located.

8. "Exempt well" means a well having a pump with a maximum capacity of not more than thirty-five gallons per minute which is used to withdraw groundwater pursuant to section 45-454.

9. "Expanded animal industry use" means increased water use by an animal industrial enterprise on the land in use by the enterprise on June 12, 1980 or on immediately adjoining land, excluding irrigation uses.

10. "Farm" means an area of irrigated land which is under the same ownership, which is served by a water distribution system common to the irrigated land and to which can be applied common conservation, water measurement and water accounting procedures.

11. "Farm unit" means:

(a) With respect to areas outside an active management area and with respect to an active management area other than the Santa Cruz active management area, one or more farms which are irrigated with groundwater and which are contiguous or in proximity to each other with similar soil conditions, crops and cropping patterns.

(b) With respect to the Santa Cruz active management area, one or more farms which are irrigated with water, other than stored water, withdrawn from a well and which are contiguous or in proximity to each other with similar soil conditions, crops and cropping patterns.

12. "Grandfathered right" means a right to withdraw and use groundwater pursuant to article 5 of this chapter based on the fact of lawful withdrawals and use of groundwater prior to the date of the designation of an active management area.

13. "Groundwater basin" means an area which, as nearly as known facts permit as determined by the director pursuant to this chapter, may be designated so as to enclose a relatively hydrologically distinct body or related bodies of groundwater, which shall be described horizontally by surface description.

14. "Groundwater replenishment district" or "replenishment district" means a district that is established pursuant to title 48, chapter 27.

15. "Groundwater withdrawal permit" means a permit issued by the director pursuant to article 7 of this chapter.

16. "Initial active management area" means the Phoenix, Prescott or Pinal active management area established by section 45-411, the Tucson active management area established by section 45-411 and modified by section 45-411.02 and the Santa Cruz active management area established by section 45-411.03.

17. "Integrated farming operation" means:

(a) With respect to land within an irrigation non-expansion area, more than ten acres of land that are contiguous or in close proximity, that may be irrigated pursuant to section 45-437, that are not under the same ownership and that are farmed as a single farming operation.

(b) With respect to land within an active management area, two or more farms that are contiguous or in close proximity, that collectively have more than ten irrigation acres and that are farmed as a single farming operation.

18. "Irrigate" means to apply water to two or more acres of land to produce plants or parts of plants for sale or human consumption, or for use as feed for livestock, range livestock or poultry, as such terms are defined in section 3-1201.

19. "Irrigation acre" means an acre of land, as determined in section 45-465, subsection B, to which an irrigation grandfathered right is appurtenant.

20. "Irrigation district" means a political subdivision, however designated, established pursuant to title 48, chapter 17 or 19.

21. "Irrigation grandfathered right" means a grandfathered right determined pursuant to section 45-465.

22. "Irrigation non-expansion area" means a geographical area which has been designated pursuant to article 3 of this chapter as having insufficient groundwater to provide a reasonably safe supply for the irrigation of the cultivated lands at the current rate of withdrawal.

23. "Irrigation use" means:

(a) With respect to areas outside an active management area and with respect to an active management area other than the Santa Cruz active management area, the use of groundwater on two or more acres of land to produce plants or parts of plants for sale or human consumption, or for use as feed for livestock, range livestock or poultry, as such terms are defined in section 3-1201.

(b) With respect to the Santa Cruz active management area, the use of water, other than stored water, withdrawn from a well on two or more acres of land to produce plants or parts of

plants for sale or human consumption, or for use as feed for livestock, range livestock or poultry, as such terms are defined in section 3-1201.

24. "Irrigation water duty" or "water duty" means the amount of water in acre-feet per acre that is reasonable to apply to irrigated land in a farm unit during the accounting period, as determined by the director pursuant to sections 45-564 through ~~45-568~~ 45-568.03 or as prescribed in section 45-483.

25. "Member land" means real property that qualifies as a member land of a conservation district as provided by title 48, chapter 22.

26. "Member service area" means the service area of a city, town or private water company that qualifies as a member service area of a conservation district as provided by title 48, chapter 22.

27. "Non-irrigation grandfathered right" means a grandfathered right determined pursuant to section 45-463, 45-464, 45-469 or 45-472.

28. "Non-irrigation use" means:

(a) With respect to areas outside an active management area and with respect to an active management area other than the Santa Cruz active management area, a use of groundwater other than an irrigation use.

(b) With respect to the Santa Cruz active management area, a use of water, other than stored water, withdrawn from a well, other than an irrigation use.

29. "Person" means an individual, public or private corporation, company, partnership, firm, association, society, estate or trust, any other private organization or enterprise, the United States, any state, territory or country or a governmental entity, political subdivision or municipal corporation organized under or subject to the constitution and laws of this state.

30. "Private water company" means:

(a) With respect to areas outside an active management area and with respect to an active management area other than the Santa Cruz active management area, any entity which distributes or sells groundwater, except a political subdivision or an entity which is established pursuant to title 48 and which is not regulated as a public service corporation by the Arizona corporation commission under a certificate of public convenience and necessity. A city or town is not a private water company.

(b) With respect to the Santa Cruz active management area, any entity which distributes or sells water, other than stored water, withdrawn from a well, except a political subdivision or an entity which is established pursuant to title 48 and which is not regulated as a public service corporation by the Arizona corporation commission under a certificate of public convenience and necessity. A city or town is not a private water company.

31. "Service area" means:

(a) With respect to a city or town, the area of land actually being served water, for a non-irrigation use, by the city or town plus:

(i) Additions to such area which contain an operating distribution system owned by the city or town primarily for the delivery of water for a non-irrigation use.

(ii) The service area of a city, town or private water company that obtains its water from the city pursuant to a contract entered into prior to the date of the designation of the active management area.

(b) With respect to a private water company, the area of land of the private water company actually being served water, for a non-irrigation use, by the private water company plus

additions to such area which contain an operating distribution system owned by the private water company primarily for the delivery of water for a non-irrigation use.

32. "Service area of an irrigation district" means:

(a) With respect to an irrigation district which was engaged in the withdrawal, delivery and distribution of groundwater as of the date of the designation of the active management area, the area of land within the boundaries of the irrigation district actually being served water by the irrigation district at any time during the five years preceding the date of the designation of the active management area plus any areas as of the date of the designation of the active management area within the boundaries of the irrigation district which contain an operating system of canals, flumes, ditches and other works owned or operated by the irrigation district. The service area may be modified pursuant to section 45-494.01.

(b) With respect to an irrigation district which was not engaged in the withdrawal, delivery and distribution of groundwater as of the date of the designation of the active management area:

(i) The acres of member lands within the boundaries of the irrigation district which were legally irrigated at any time from January 1, 1975 through January 1, 1980 for initial active management areas or during the five years preceding the date of the designation of the active management area for subsequent active management areas.

(ii) Any areas as of the date of the designation of the active management area within the boundaries of the irrigation district which contain an operating system of canals, flumes, ditches and other works for the withdrawal, delivery and distribution of water.

33. "Stored water" means water that is stored underground for the purpose of recovery pursuant to a permit issued under chapter 3.1 of this title.

34. "Subbasin" means an area which, as nearly as known facts permit as determined by the director pursuant to this chapter, may be designated so as to enclose a relatively hydrologically distinct body of groundwater within a groundwater basin, which shall be described horizontally by surface description.

35. "Subsequent active management area" means an active management area established after June 12, 1980 pursuant to article 2 of this chapter.

36. "Subsidence" means the settling or lowering of the surface of land which results from the withdrawal of groundwater.

37. "Transportation" means the movement of groundwater from the point of withdrawal to the point of use.

38. "Type 1 non-irrigation grandfathered right" means a non-irrigation grandfathered right associated with retired irrigated land and determined pursuant to section 45-463, 45-469 or 45-472.

39. "Type 2 non-irrigation grandfathered right" means a non-irrigation grandfathered right not associated with retired irrigated land and determined pursuant to section 45-464.

40. "Water district" means an active management area water district that is established under title 48, chapter 28 and that has adopted an ordinance or resolution to undertake water district groundwater replenishment obligations as defined and used in title 48, chapter 28, article 7.

41. "Water district member land" means real property that qualifies as water district member land of a water district as provided by title 48, chapter 28.

42. "Water district member service area" means the service area of the city, town or private water company that qualifies as a water district member service area of a water district as provided by title 48, chapter 28.

43. "Well" means a man-made opening in the earth through which water may be withdrawn or obtained from beneath the surface of the earth except as provided in section 45-591.01.

45-561. Definitions

In this article, unless the context otherwise requires:

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

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

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

4. "Incidental recharge factor" means the ratio of the amount of incidental recharge attributable to a municipal provider during a calendar year to the amount of water withdrawn, diverted or received for delivery by the municipal provider for use within its service area during the year. The amount of incidental recharge attributable to a municipal provider during a calendar year is the amount of water that is incidentally recharged during the year after it is withdrawn, diverted or received for delivery by the municipal provider for use within its service area.

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

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

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

8. "Management period" means a period of years prescribed by sections 45-564 through ~~45-568~~ 45-568.03 during which a prescribed management plan applies.

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

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

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

(i) If the municipal provider has made a request to the director as described in section 45-463, subsection F, the amount of groundwater computed by the director under section 45-463,

subsection F, in determining whether to designate or redesignate the municipal provider as having an assured water supply, minus the amount of any groundwater withdrawn by the municipal provider from the land during the period beginning with January 1 of the year in which the request was made and ending on December 31 of the year immediately preceding the calendar year for which the calculation of mined groundwater is being made.

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

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

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

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

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

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

45-563. Management plans in active management areas; management periods; general provisions

A. The director shall develop a management plan for each initial active management area for each of ~~five~~ **SIX** management periods pursuant to the guidelines prescribed in sections 45-564 through ~~45-568~~ **45-568.05** and shall adopt the plans only after public hearings held pursuant to sections 45-570 and 45-571. The plans shall include a continuing mandatory conservation program for all persons withdrawing, distributing or receiving groundwater designed to achieve reductions in withdrawals of groundwater.

B. The director shall develop a management plan for the Santa Cruz active management area for the third, ~~fourth and fifth~~ **THROUGH SIXTH** management periods pursuant to the guidelines prescribed in sections 45-566, ~~45-566.01, 45-567, 45-567.01, 45-568 and 45-568.01~~ **THROUGH 45-568.05** and shall adopt the plans only after public hearings held pursuant to sections 45-570 and 45-571. The plans shall include a continuing mandatory conservation program designed to achieve the management goal of the active management area for all persons withdrawing water, other than stored water, from a well and all persons distributing or receiving

water, other than stored water, from a well. The plans shall also include criteria for the location of new wells and replacement wells in new locations consistent with the management goal of the active management area.

45-563.02. Exemption from irrigation water duties; small irrigation grandfathered rights; criteria; conservation requirement; exception

A. A person who is entitled to use groundwater pursuant to an irrigation grandfathered right is exempt from any irrigation water duties or intermediate water duties established for the farm to which the right is appurtenant under sections 45-564, 45-565, 45-566, 45-567, ~~and~~ 45-568 **AND 45-568.03** if both of the following apply:

1. There are ten or fewer irrigation acres in the farm.
2. The farm is not part of an integrated farming operation.

B. The director shall not establish irrigation water duties or intermediate water duties under section 45-566, 45-567, ~~or~~ 45-568 **OR 45-568.03** for a farm to which both of the following apply:

1. There are ten or fewer irrigation acres in the farm.
2. The farm is not part of an integrated farming operation.

C. Except as provided in subsection D of this section, a person who is exempt from the irrigation water duties established for a farm pursuant to subsection A of this section or who owns or uses groundwater on a farm for which irrigation water duties are prohibited in subsection B of this section shall not allow any groundwater to flow off the surface of the farm's irrigation acres unless the groundwater is used for a reasonable and beneficial use approved in writing by the director.

D. A person who is required under subsection C of this section to prevent groundwater from flowing off the surface of a farm's irrigation acres may apply to the director for an exemption from the requirement. The director may grant the exemption if the person demonstrates to the satisfaction of the director that one of the following applies:

1. Preventing groundwater from flowing off the surface of the farm's irrigation acres would not be economically feasible.
2. Any groundwater that will flow off the surface of the farm's irrigation acres will be used by a person with an exempt well in lieu of groundwater that otherwise would have been withdrawn from that well.

45-465. Irrigation grandfathered right; determination of acres entitled to and amount; appurtenancy

A. In an active management area, a person who owns land which was legally irrigated in whole or in part with groundwater at any time during the five years preceding January 1, 1980 for initial active management areas or the date of the notice of the initiation of designation procedures or the call for the election for subsequent active management areas, which is capable of being irrigated and which has not been retired from irrigation for a non-irrigation use pursuant to section 45-463 or 45-469 has the right to use groundwater for the irrigation of such land as determined pursuant to subsections B and C of this section.

B. Except as provided in subsection C of this section, the director shall compute the maximum amount of groundwater which may be used pursuant to this section as follows:

1. Determine the farm units, as defined in section 45-402, within the active management area.

2. Determine the irrigation water duty, as defined in section 45-402, for each farm unit in an active management area, pursuant to sections 45-564 through ~~45-568~~ 45-568.03.

3. Determine the water duty acres for each farm within the farm unit. The water duty acres are the highest number of acres in the farm, taking land rotation into account, which were legally irrigated during any one year in the five years preceding January 1, 1980 for initial active management areas or the date of the notice of the initiation of designation procedures or the call for the election for subsequent active management areas.

4. Determine the irrigation acres for each farm within the farm unit. The irrigation acres are the acres in the farm which were legally irrigated at any time during the five years preceding January 1, 1980 for initial active management areas or the date of the notice of the initiation of designation procedures or the call for the election for subsequent active management areas, which are capable of being irrigated and which have not been retired from irrigation for a non-irrigation use pursuant to section 45-463 or 45-469.

5. Multiply the water duty acres for each farm within the farm unit by the irrigation water duty for the farm unit and divide that amount by the number of irrigation acres in the farm. The result shall be the maximum amount of groundwater which may be used per year for the irrigation of each irrigation acre in the farm. If the farm is located in an active management area other than the Santa Cruz active management area and is irrigated solely with groundwater, the amount of groundwater used by the farm for irrigation shall be accounted for pursuant to section 45-467, subsection C. If a farm is located in an active management area other than the Santa Cruz active management area and is irrigated with a combination of surface water and groundwater, the amount of groundwater used by the farm for irrigation shall be accounted for pursuant to section 45-467, subsection D. If a farm is located in the Santa Cruz active management area, the amount of water, other than stored water, withdrawn from a well and used by the farm for irrigation purposes shall be accounted for pursuant to section 45-467, subsection E or F.

C. A person who owns land described in subsection A of this section and whose water use on the land is regulated under a best management practices program that is adopted by the director pursuant to section 45-566.02, subsection F, section 45-567.02, subsection G, ~~or~~ section 45-568.02, subsection G **OR SECTION 45-568.05, SUBSECTION B:**

1. Has the right to use groundwater for an irrigation use on the irrigation acres within that land as those acres are determined pursuant to subsection B, paragraph 4 of this section.

2. Is exempt from the provisions of subsection B of this section with respect to that land.

D. The right to use groundwater pursuant to this section for the irrigation of an irrigation acre is an irrigation grandfathered right and is appurtenant to that acre. An irrigation grandfathered right is owned by the owner of the land to which it is appurtenant and may be leased for an irrigation use with the land to which it is appurtenant.

E. A person who owns or leases irrigation acres may use the total amount of groundwater allowed by the irrigation grandfathered right for such acres for the irrigation of all or a portion of such acres.

F. If the irrigation water duty for the farm unit in which an irrigation acre is located is reduced by the director pursuant to article 9 of this chapter, the amount of groundwater which may be used for the irrigation of such acre pursuant to the irrigation grandfathered right under subsection B of this section is reduced accordingly.

G. For purposes of this chapter, the amount of groundwater which may be used or is used is the amount of groundwater withdrawn by the groundwater user, measured at the point of

withdrawal, and the amount of groundwater received by the groundwater user from an irrigation district or other source.

45-467. Withdrawals in excess of irrigation grandfathered right; withdrawals less than irrigation grandfathered right; flexibility account; conveyances; variance; exemption

A. A person who is entitled to use groundwater pursuant to an irrigation grandfathered right may:

1. In an active management area other than the Santa Cruz active management area, use groundwater in excess of the amount allowed by the right in an amount determined pursuant to subsection I of this section.

2. In the Santa Cruz active management area, use water, other than stored water, withdrawn from a well in excess of the farm's current irrigation water duty multiplied by the farm's water duty acres in an amount determined pursuant to subsection J of this section.

3. Use less than the amount allowed by the right in one accounting period and use the remaining amount allowed by the right in a succeeding accounting period or periods.

B. The director shall establish rules for the maintenance of a flexibility account for each farm in an active management area.

C. If a farm located in an active management area other than the Santa Cruz active management area is irrigated solely with groundwater, the director shall:

1. Register a debit to the account in any accounting period in which the amount of groundwater used for the irrigation of the irrigation acres in the farm is greater than the current irrigation water duty for the farm multiplied by the water duty acres in the farm.

2. Register a credit to the account in any accounting period in which the amount of groundwater used for the irrigation of the irrigation acres in the farm is less than the current irrigation water duty for the farm multiplied by the water duty acres in the farm.

D. Except as provided in subsection G of this section, if a farm located in an active management area other than the Santa Cruz active management area is irrigated with a combination of surface water or effluent, or both, and groundwater, and uses of water by the farm from all sources for irrigation purposes, except for surface water, other than Colorado river water, released for beneficial use from storage, diversion or distribution facilities to avoid spilling that would otherwise occur due to uncontrolled surface water inflows that exceed facility capacity, in the accounting period:

1. Exceed the amount of the current irrigation water duty for the farm multiplied by the water duty acres in the farm, the amount of groundwater used up to the amount of the excess, less any effluent used, shall be registered as a debit to the account.

2. Are less than the amount of the current irrigation water duty for the farm multiplied by the water duty acres in the farm, the amount of water not used which would have been groundwater shall be registered as a credit to the account.

E. If a farm located in the Santa Cruz active management area is irrigated solely with water, other than stored water, withdrawn from a well, the director shall:

1. Register a debit to the account in any accounting period in which the amount of water, other than stored water, withdrawn from a well and used for the irrigation of the irrigation acres in the farm is greater than the current irrigation water duty for the farm multiplied by the water duty acres in the farm. The amount of the debit shall equal the amount of the excess.

2. Register a credit to the account in any accounting period in which the amount of water, other than stored water, withdrawn from a well and used for the irrigation of the irrigation acres in the farm is less than the current irrigation water duty for the farm multiplied by the water duty acres in the farm.

F. If a farm located in the Santa Cruz active management area is irrigated with a combination of surface water not withdrawn from a well and effluent, or both, and water, other than stored water, withdrawn from a well, and uses of water by the farm from all sources for irrigation purposes in the accounting period:

1. Exceed the amount of the current irrigation water duty for the farm multiplied by the water duty acres in the farm, the amount of water, other than stored water, withdrawn from a well and used on the farm up to the amount of the excess, less any effluent used that does not qualify as stored water, shall be registered as a debit to the account.

2. Are less than the amount of the current irrigation water duty for the farm multiplied by the water duty acres in the farm, the amount of water not used which would have been water, other than stored water, withdrawn from a well shall be registered as a credit to the account.

G. Beginning January 1, 1995 through December 31, 1999, if a farm that qualifies under this subsection as determined pursuant to subsection H of this section is irrigated during an accounting period with a combination of surface water or effluent, or both, and groundwater, and uses of water by the farm from all sources for irrigation purposes, except for surface water, other than Colorado river water, released for beneficial use from storage, diversion or distribution facilities to avoid spilling that would otherwise occur due to uncontrolled surface water inflows that exceed facility capacity, in the accounting period:

1. Exceed the amount of the first intermediate irrigation water duty established for the farm pursuant to section 45-565 multiplied by the water duty acres in the farm, the amount of groundwater used up to the amount of the excess, less any effluent used, shall be registered as a debit to the account.

2. Are less than the amount of the current irrigation water duty for the farm multiplied by the water duty acres in the farm, the amount of water not used that would have been groundwater shall be registered as a credit to the account.

3. Exceed or equal the amount of the current irrigation water duty for the farm multiplied by the water duty acres in the farm but are less than or equal to the amount of the first intermediate irrigation water duty established for the farm pursuant to section 45-565 multiplied by the water duty acres in the farm, no credit or debit may be registered to the account.

H. A farm qualifies under subsection G of this section if it is located in an active management area other than the Santa Cruz active management area and either of the following applies:

1. The amount of groundwater used to irrigate the farm during the accounting period does not exceed an amount computed by multiplying the water duty acres in the farm by one and one-half acre-feet of water, except that an electrical district organized under title 48, chapter 12 or an irrigation district may apply to the director no later than March 31 of a year for an increase in that amount for that year for the farms located within the boundaries of the district that do not qualify under paragraph 2 of this subsection. The director shall grant the increase if the district demonstrates that it holds a contract for the purchase of hydroelectric power marketed by the western area power administration or the Arizona power authority and that the use of groundwater during that year by all of the farms within the boundaries of the district that do not qualify under paragraph 2 of this subsection in an amount that does not exceed one and one-half

acre-feet of water multiplied by the total number of water duty acres of those farms would result in the district being unable to use its hydroelectric power capacity entitlement under the contract. If the director grants the increase, the director shall compute the maximum amount of groundwater that may be used by a farm within the district during the year in order to qualify under subsection G of this section as follows:

(a) Determine the total amount of groundwater that must be used during the year by all farms in the district that do not qualify under paragraph 2 of this subsection to enable the district to efficiently use its hydroelectric kilowatt demand allocation.

(b) Divide the amount determined in subdivision (a) of this paragraph by the total number of water duty acres of the farms in the district that do not qualify under paragraph 2 of this subsection.

(c) Multiply the farm's water duty acres by the quotient in subdivision (b) of this paragraph or two acre-feet of water, whichever is less.

2. The farm is irrigated with water supplied by an irrigation district that owns or leases and operates all of the wells used to withdraw groundwater for irrigation use within the district, and the total amount of groundwater supplied by the irrigation district for irrigation use during the year does not exceed an amount computed by multiplying the total number of water duty acres within the irrigation district by one and one-half acre-feet of water, except that the irrigation district or an electrical district organized under title 48, chapter 12 may apply to the director no later than March 31 of a year for an increase in that amount for that year for the farms located within the boundaries of the irrigation district. The director shall grant the increase if the irrigation district or electrical district demonstrates that it holds a contract for the purchase of hydroelectric power marketed by the western area power administration or the Arizona power authority and that the irrigation district or electrical district would be unable to use its hydroelectric power capacity entitlement under the contract if the total amount of groundwater supplied by the irrigation district for irrigation use during the year does not exceed an amount computed by multiplying the total number of water duty acres within the irrigation district by one and one-half acre-feet of water. If the director grants the increase, the maximum amount of groundwater that may be supplied by the irrigation district for irrigation use during the year in order for the farms located within the boundaries of the irrigation district to qualify under subsection G of this section shall be the lesser of the following:

(a) The amount of groundwater that the director determines must be supplied by the irrigation district for irrigation use during the year to enable the irrigation district or electrical district to efficiently use its hydroelectric kilowatt demand allocation.

(b) An amount of groundwater computed by multiplying the total number of water duty acres within the irrigation district by two acre-feet of water.

I. The maximum excess amount of groundwater that may be used pursuant to this section is equal to fifty per cent of the current irrigation water duty for the farm multiplied by the water duty acres in the farm. An owner of an irrigation grandfathered right and the person using groundwater pursuant to the right violate this section if the flexibility account for the farm in which the irrigation acres to which the right is appurtenant are located is in arrears at any time in excess of this amount. Groundwater equal to the credit balance in the flexibility account may be used at any time.

J. In the Santa Cruz active management area, the maximum excess amount of water, other than stored water, withdrawn from a well that may be used pursuant to this section is equal to fifty per cent of the current irrigation water duty for the farm multiplied by the water duty

acres in the farm. A person using water, other than stored water, withdrawn from a well for an irrigation use in the Santa Cruz active management area violates this section if the flexibility account for the farm is in arrears at any time in excess of this amount. Water, other than stored water, withdrawn from a well in an amount equal to the credit balance in the flexibility account may be used at any time, except that if the water is surface water, the amount that may be used shall not exceed the amount allowed by the decreed or appropriative surface water right.

K. If an irrigation grandfathered right is conveyed for an irrigation use pursuant to section 45-472, each acre conveyed shall carry with it a proportional share of any debits or credits in the flexibility account for the farm. If an irrigation grandfathered right is conveyed for a non-irrigation use pursuant to section 45-472, each acre conveyed shall carry with it a proportional share of any debits in the flexibility account for the farm.

L. A person in an active management area other than the Santa Cruz active management area who is using groundwater pursuant to an irrigation grandfathered right and who is operating under a variance to the irrigation water duty pursuant to section 45-574:

1. May accumulate a maximum debit in an amount equal to fifty per cent of the current irrigation water duty for the farm multiplied by the water duty acres in the farm.

2. Shall accumulate credits pursuant to subsection C or D of this section.

M. A person in the Santa Cruz active management area who is using water, other than stored water, withdrawn from a well for an irrigation use and who is operating under a variance to the irrigation water duty pursuant to section 45-574:

1. May accumulate a maximum debit in an amount equal to fifty per cent of the current irrigation water duty for the farm multiplied by the water duty acres in the farm.

2. Shall accumulate credits pursuant to subsection E or F of this section.

N. In an active management area other than the Santa Cruz active management area, a person using groundwater pursuant to an irrigation grandfathered right shall file a report with the director each year which shall include the amount of groundwater used pursuant to the irrigation grandfathered right and such other information as the director shall require. In the Santa Cruz active management area, a person using water, other than stored water, withdrawn from a well for irrigation use shall file a report with the director each year which shall include the amount of water used on the farm and such other information as the director shall require. The director may consolidate the reporting requirements of this section with the reporting requirements of section 45-632. A person using groundwater pursuant to an irrigation grandfathered right that is regulated under a best management practices program adopted by the director, pursuant to section 45-566.02, subsection F, section 45-567.02, subsection G, ~~or~~ section 45-568.02, subsection F **OR SECTION 45-568.05, SUBSECTION B**, is exempt from the reporting requirements of this subsection for groundwater used pursuant to the irrigation grandfathered right, except that the person shall file a report with the director each year that includes the information required by the best management practices program. A person using groundwater pursuant to an irrigation grandfathered right that is appurtenant to ten or fewer irrigation acres is exempt from the reporting requirements of this subsection for groundwater used pursuant to the irrigation grandfathered right unless one of the following applies:

1. The land to which the irrigation grandfathered right is appurtenant is part of an integrated farming operation.

2. Groundwater is withdrawn from the land to which the irrigation grandfathered right is appurtenant and delivered for use pursuant to either a service area right pursuant to article 6 of this chapter or a grandfathered groundwater right other than an irrigation grandfathered right that

is appurtenant to irrigation acres that are exempt from irrigation water duties pursuant to section 45-563.02.

3. Groundwater is withdrawn from land that is both owned by the owner of the irrigation grandfathered right and contiguous to the land to which the irrigation grandfathered right is appurtenant and delivered for use pursuant to either a service area right pursuant to article 6 of this chapter or a grandfathered groundwater right other than an irrigation grandfathered right that is appurtenant to irrigation acres that are exempt from irrigation water duties pursuant to section 45-563.02.

O. A person who owns an irrigation grandfathered right that is appurtenant to irrigation acres that were capable of being irrigated as of December 31 of the preceding calendar year and whose farm has registered a credit balance to its flexibility account may convey or sell all or a portion of the credit balance to any person, including the conveyor or seller of the credit balance, who owns another irrigation grandfathered right or who uses groundwater pursuant to another irrigation grandfathered right, except that:

1. A credit balance that is registered to the flexibility account of a farm located within an irrigation district may be transferred only to:

(a) The flexibility account of a farm that is located within the same irrigation district.

(b) The flexibility account of a farm that is located outside of that irrigation district if both farms are located in the same groundwater subbasin and the same active management area and if the farm to which the credits are conveyed is owned or leased by the owner or lessee of the farm from which the credits are conveyed.

2. A credit balance that is registered to the flexibility account of a farm that is not located within an irrigation district may be transferred only to:

(a) The flexibility account of a farm that is located within the same groundwater subbasin and the same active management area and that is not located within an irrigation district.

(b) The flexibility account of a farm that is located within the same groundwater subbasin and the same active management area and that is located within an irrigation district if the farm to which the credits are conveyed is owned or leased by the owner or lessee of the farm from which the credits are conveyed.

3. A credit registered to a flexibility account for a year may be conveyed or sold only during the second calendar year following the year for which the credit was registered.

4. A person who owns a farm that includes protected farmland may not sell or otherwise convey any credit registered to the farm's flexibility account.

P. A person who sells or conveys all or a portion of a credit balance pursuant to subsection O of this section, and the person to whom the credit balance is sold or conveyed, shall notify the director of the sale or conveyance within thirty days after the sale or conveyance on a form prescribed and furnished by the director.

Q. The director shall establish and collect a reasonable fee from the conveyee or purchaser of a credit balance pursuant to subsection O of this section to cover the cost of administrative services and other expenses associated with registering a deduction to the conveyor's or seller's flexibility account balance and an addition to the conveyee's or purchaser's flexibility account balance pursuant to subsection R of this section. The conveyee or purchaser shall pay the fee at the time the notice required pursuant to subsection P of this section is given to the director. The director shall deposit, pursuant to sections 35-146 and 35-147, all fees received under this subsection in the water resources fund established by section 45-117.

R. A sale or conveyance of all or part of a credit balance under subsection O of this section is effective only if the director receives the notice required by subsection P of this section and the fee required by subsection Q of this section within thirty days after the sale or conveyance. After receiving the notice and the fee, the director shall register a deduction of the credit amount conveyed or sold from the conveyer's or seller's flexibility account balance and the corresponding addition to the conveyee's or purchaser's flexibility account balance. The deduction and addition to the flexibility account balances are effective as of the date of the sale or conveyance.

S. The director shall report to the president of the senate and the speaker of the house of representatives no later than June 30, 2002 on the effect of conveyances of flexibility account credit balances pursuant to subsection O, paragraph 2 of this section on the achievement of the management goal of each active management area as stated in section 45-562 and on the conservation program included in the management plan for each active management area as provided in section 45-565, and any recommended changes to subsection O, paragraph 2 of this section.

T. Except for subsection N of this section, this section does not apply to:

1. A farm if the person entitled to use groundwater on the farm is exempt from the irrigation water duties established for the farm as provided in section 45-563.02, subsection A or if the director may not establish irrigation water duties for the farm as provided in section 45-563.02, subsection B.

2. A farm if water use within the farm is regulated under a best management practices program adopted by the director pursuant to section 45-566.02, subsection F, section 45-567.02, subsection G, ~~or~~ section 45-568.02, subsection F **OR SECTION 45-568.05, SUBSECTION B.**

45-483. Designation of protected farmland; notice; revocation of designation; irrigation water duty; assured water supply credit for extinguishment of irrigation grandfathered right prohibited

A. A person who owns land within an active management area that is legally entitled to be irrigated with groundwater pursuant to an irrigation grandfathered right may apply to the director for designation of the land as protected farmland. On receipt of an application, the director shall grant the application and designate the land identified in the application as protected farmland if the director determines that the land is subject to a conservation easement that prohibits the development of the land for nonagricultural uses pursuant to the federal farmland protection program established by Public Law 104-127 (110 Stat. 888).

B. A person who owns land that has been designated by the director as protected farmland pursuant to subsection A of this section shall notify the director in writing if the conservation easement in the land terminates. The notice shall be given within thirty days after the termination of the easement and shall specify the reason for the termination.

C. After the director designates land as protected farmland pursuant to subsection A of this section, the director shall revoke the designation if either of the following applies:

1. The conservation easement in the land has terminated. If the director revokes a designation of protected farmland under this paragraph, the director shall determine at that time whether the conservation easement terminated because a partial or full condemnation of the land made farming impracticable. The director shall give written notice of the revocation and of the director's determination of whether the easement terminated because a partial or full

condemnation of the land made farming impracticable to the owner at the owner's last address on file with the department.

2. The owner of the land has requested the director to revoke the designation and the conservation easement in the land has not terminated.

D. Notwithstanding any other law, if the director designates land as protected farmland pursuant to subsection A of this section, the irrigation water duty for the land shall be the irrigation water duty in effect for the land under the applicable management plan when the application for designation was filed, including any subsequent adjustments to that water duty as a result of an application for administrative review filed with the director pursuant to section 45-575, subsection A. If the director revokes the designation of protected farmland pursuant to subsection C of this section, the irrigation water duty for the land shall be the irrigation water duty established for the land in the applicable management plan pursuant to section 45-566, 45-567, ~~OR~~ 45-568 OR 45-568.03.

E. Notwithstanding any other law or rule, the director shall not establish or grant an assured water supply credit for the extinguishment of an irrigation grandfathered right under the rules adopted by the director pursuant to section 45-576, subsection H if the land to which the irrigation grandfathered right is appurtenant was previously designated by the director as protected farmland pursuant to subsection A of this section. This subsection shall not apply to land that was designated by the director as protected farmland if the director revoked the designation pursuant to subsection C, paragraph 1 of this section and the director determined at that time that the conservation easement in the land was terminated because a partial or full condemnation of the land made farming impracticable.

F. Section 45-114, subsections A and B govern administrative proceedings, rehearing or review and judicial review of final decisions of the director under this section.

45-568. Management plan for fifth management period; guidelines

A. For the fifth management period, 2020 to ~~2025~~ 2035, the director shall promulgate a management plan for each initial active management area not later than January 1, 2019 pursuant to the guidelines prescribed in section 45-567, subsections A and B, except that:

1. The director shall establish the historic annual net natural recharge for any groundwater replenishment district in the active management area, computed by determining the net natural recharge, as defined by section 48-4401, for the groundwater basin beneath the district during calendar years 1988 through 2017 and dividing the result by thirty.

2. The director may adjust the highest twenty-five per cent of the irrigation water duties established within an area of similar farming conditions pursuant to section 45-567 by reducing each water duty in an amount up to five per cent, except that in making the adjustment, no water duty may be reduced to an amount less than the greater of the following:

(a) The highest water duty within the lowest seventy-five per cent of the water duties computed within the area of similar farming conditions for the fifth management period.

(b) A water duty computed for the farm unit under this paragraph using an irrigation efficiency of eighty per cent.

3. A person who is entitled to use groundwater pursuant to an irrigation grandfathered right may apply to the director at any time during the management period for an exemption from the irrigation water duties established pursuant to this section. The director shall grant the exemption if the person demonstrates to the director's satisfaction that granting the exemption is

consistent with achieving the management goal of the active management area and that one of the following applies:

(a) Withdrawal of groundwater pursuant to the irrigation grandfathered right during the management period will intercept groundwater that would otherwise flow out of and be lost to the active management area in the next fifteen years without entering another active management area.

(b) Withdrawal of groundwater pursuant to the irrigation grandfathered right during the management period will prevent encroachment of a rising depth to groundwater level that will cause waterlogging problems within the next fifteen years.

B. Within thirty days after the management plan for the fifth management period is adopted, the director shall give written notice in the manner and to the persons prescribed in section 45-565, subsection B and shall give written notice of the non-per capita conservation program established pursuant to section 45-568.01 to all municipal providers. Two years before the compliance date specified in the management plan for any irrigation water duty, intermediate water duty, conservation requirement or intermediate conservation requirement, the director shall give additional written notice by first class mail to the last known addresses of the persons prescribed in section 45-565, subsection B and this subsection.

C. Except for a person who **OBTAINS A VARIANCE UNDER SECTION 45-574 OR WHO** is exempt from irrigation water duties under section 45-563.02, subsection A, all persons notified pursuant to subsection B of this section shall comply with the applicable irrigation water duty or conservation requirements for the fifth management period not later than ~~January 1, 2025~~ **THE APPLICABLE COMPLIANCE DATE ESTABLISHED IN THE MANAGEMENT PLAN FOR THE FIFTH MANAGEMENT PERIOD** and shall remain in compliance until ~~the legislature determines otherwise~~ **THE APPLICABLE COMPLIANCE DATE ESTABLISHED IN THE MANAGEMENT PLAN FOR THE SIXTH MANAGEMENT PERIOD. IF INTERMEDIATE WATER DUTIES OR INTERMEDIATE CONSERVATION REQUIREMENTS HAVE BEEN ESTABLISHED, A PERSON TO WHOM THOSE WATER DUTIES OR CONSERVATION REQUIREMENTS APPLY SHALL COMPLY WITH THE INTERMEDIATE WATER DUTIES OR INTERMEDIATE CONSERVATION REQUIREMENTS NOT LATER THAN THE COMPLIANCE DATE SPECIFIED IN THE MANAGEMENT PLAN, UNLESS THE PERSON OBTAINS A VARIANCE PURSUANT TO SECTION 45-574 OR IS EXEMPT FROM INTERMEDIATE WATER DUTIES UNDER SECTION 45-563.02, SUBSECTION A. A PERSON WHO OBTAINS A VARIANCE UNDER SECTION 45-574 SHALL COMPLY WITH THE APPLICABLE IRRIGATION WATER DUTY OR CONSERVATION REQUIREMENTS BY THE DATE SPECIFIED IN THE VARIANCE AND SHALL REMAIN IN COMPLIANCE UNTIL THE SUBSEQUENT COMPLIANCE DATE FOR ANY APPLICABLE IRRIGATION WATER DUTY OR CONSERVATION REQUIREMENTS ESTABLISHED IN THE MANAGEMENT PLAN FOR THE FIFTH MANAGEMENT PERIOD OR, IF THAT MANAGEMENT PLAN DOES NOT ESTABLISH ANY APPLICABLE SUBSEQUENT COMPLIANCE DATE, UNTIL THE APPLICABLE COMPLIANCE DATE ESTABLISHED IN THE MANAGEMENT PLAN FOR THE SIXTH MANAGEMENT PERIOD.**

45-568.03. Management plan for sixth management period; guidelines

A. FOR THE SIXTH MANAGEMENT PERIOD, 2035 TO 2045, THE DIRECTOR SHALL PROMULGATE A MANAGEMENT PLAN FOR EACH INITIAL ACTIVE

MANAGEMENT AREA NOT LATER THAN **JANUARY 1, 2033** PURSUANT TO THE GUIDELINES PRESCRIBED IN SECTIONS 45-567, SUBSECTIONS A AND B, 45-568.06 AND 45-568.07, EXCEPT THAT:

1. THE DIRECTOR SHALL ESTABLISH THE HISTORIC ANNUAL NET NATURAL RECHARGE FOR ANY GROUNDWATER REPLENISHMENT DISTRICT IN THE ACTIVE MANAGEMENT AREA, COMPUTED BY DETERMINING THE NET NATURAL RECHARGE, AS DEFINED BY SECTION 48-4401, FOR THE GROUNDWATER BASIN BENEATH THE DISTRICT DURING THE MOST RECENT THIRTY-YEAR PERIOD OF RECORD AND DIVIDING THE RESULT BY THIRTY.

2. THE DIRECTOR MAY ADJUST THE HIGHEST TWENTY-FIVE PER CENT OF THE IRRIGATION WATER DUTIES ESTABLISHED WITHIN AN AREA OF SIMILAR FARMING CONDITIONS PURSUANT TO SECTION 45-567 BY REDUCING EACH WATER DUTY IN AN AMOUNT UP TO FIVE PER CENT, EXCEPT THAT IN MAKING THE ADJUSTMENT, NO WATER DUTY MAY BE REDUCED TO AN AMOUNT LESS THAN THE GREATER OF THE FOLLOWING:

(A) THE HIGHEST WATER DUTY WITHIN THE LOWEST SEVENTY-FIVE PER CENT OF THE WATER DUTIES COMPUTED WITHIN THE AREA OF SIMILAR FARMING CONDITIONS FOR THE SIXTH MANAGEMENT PERIOD.

(B) A WATER DUTY COMPUTED FOR THE FARM UNIT UNDER THIS PARAGRAPH USING AN IRRIGATION EFFICIENCY OF EIGHTY PER CENT.

3. A PERSON WHO IS ENTITLED TO USE GROUNDWATER PURSUANT TO AN IRRIGATION GRANDFATHERED RIGHT MAY APPLY TO THE DIRECTOR AT ANY TIME DURING THE MANAGEMENT PERIOD FOR AN EXEMPTION FROM THE IRRIGATION WATER DUTIES ESTABLISHED PURSUANT TO THIS SECTION. THE DIRECTOR SHALL GRANT THE EXEMPTION IF THE PERSON DEMONSTRATES TO THE DIRECTOR'S SATISFACTION THAT GRANTING THE EXEMPTION IS CONSISTENT WITH ACHIEVING THE MANAGEMENT GOAL OF THE ACTIVE MANAGEMENT AREA AND THAT ONE OF THE FOLLOWING APPLIES:

(A) WITHDRAWAL OF GROUNDWATER PURSUANT TO THE IRRIGATION GRANDFATHERED RIGHT DURING THE MANAGEMENT PERIOD WILL INTERCEPT GROUNDWATER THAT WOULD OTHERWISE FLOW OUT OF AND BE LOST TO THE ACTIVE MANAGEMENT AREA IN THE NEXT FIFTEEN YEARS WITHOUT ENTERING ANOTHER ACTIVE MANAGEMENT AREA.

(B) WITHDRAWAL OF GROUNDWATER PURSUANT TO THE IRRIGATION GRANDFATHERED RIGHT DURING THE MANAGEMENT PERIOD WILL PREVENT ENCROACHMENT OF A RISING DEPTH TO GROUNDWATER LEVEL THAT WILL CAUSE WATERLOGGING PROBLEMS WITHIN THE NEXT FIFTEEN YEARS.

B. WITHIN THIRTY DAYS AFTER THE MANAGEMENT PLAN FOR THE SIXTH MANAGEMENT PERIOD IS ADOPTED, THE DIRECTOR SHALL GIVE WRITTEN NOTICE IN THE MANNER AND TO THE PERSONS PRESCRIBED IN SECTION 45-565, SUBSECTION B AND SHALL GIVE WRITTEN NOTICE OF THE NON-PER CAPITA CONSERVATION PROGRAM ESTABLISHED PURSUANT TO SECTION 45-568.06 TO ALL MUNICIPAL PROVIDERS. TWO YEARS BEFORE THE COMPLIANCE DATE SPECIFIED IN THE MANAGEMENT PLAN FOR ANY IRRIGATION WATER DUTY, INTERMEDIATE WATER DUTY, CONSERVATION REQUIREMENT OR INTERMEDIATE CONSERVATION REQUIREMENT, THE DIRECTOR SHALL GIVE

ADDITIONAL WRITTEN NOTICE BY FIRST CLASS MAIL TO THE LAST KNOWN ADDRESSES OF THE PERSONS PRESCRIBED IN SECTION 45-565, SUBSECTION B AND THIS SUBSECTION.

C. EXCEPT FOR A PERSON WHO OBTAINS A VARIANCE UNDER SECTION 45-574 OR WHO IS EXEMPT FROM IRRIGATION WATER DUTIES UNDER SECTION 45-563.02, SUBSECTION A, ALL PERSONS NOTIFIED PURSUANT TO SUBSECTION B OF THIS SECTION SHALL COMPLY WITH THE APPLICABLE IRRIGATION WATER DUTY OR CONSERVATION REQUIREMENTS FOR THE SIXTH MANAGEMENT PERIOD NOT LATER THAN THE APPLICABLE COMPLIANCE DATE ESTABLISHED IN THE MANAGEMENT PLAN FOR THE SIXTH MANAGEMENT PERIOD AND SHALL REMAIN IN COMPLIANCE UNTIL THE LEGISLATURE DETERMINES OTHERWISE. IF INTERMEDIATE WATER DUTIES OR INTERMEDIATE CONSERVATION REQUIREMENTS HAVE BEEN ESTABLISHED, A PERSON TO WHOM THOSE WATER DUTIES OR CONSERVATION REQUIREMENTS APPLY SHALL COMPLY WITH THE INTERMEDIATE WATER DUTIES OR INTERMEDIATE CONSERVATION REQUIREMENTS NOT LATER THAN THE COMPLIANCE DATE SPECIFIED IN THE MANAGEMENT PLAN, UNLESS THE PERSON OBTAINS A VARIANCE PURSUANT TO SECTION 45-574 OR IS EXEMPT FROM INTERMEDIATE WATER DUTIES UNDER SECTION 45-563.02, SUBSECTION A. A PERSON WHO OBTAINS A VARIANCE UNDER SECTION 45-574 SHALL COMPLY WITH THE APPLICABLE IRRIGATION WATER DUTY OR CONSERVATION REQUIREMENTS BY THE DATE SPECIFIED IN THE VARIANCE AND SHALL REMAIN IN COMPLIANCE UNTIL THE SUBSEQUENT COMPLIANCE DATE FOR ANY APPLICABLE IRRIGATION WATER DUTY OR CONSERVATION REQUIREMENTS ESTABLISHED IN THE MANAGEMENT PLAN FOR THE SIXTH MANAGEMENT PERIOD OR, IF THAT MANAGEMENT PLAN DOES NOT ESTABLISH ANY APPLICABLE SUBSEQUENT COMPLIANCE DATE, UNTIL THE LEGISLATURE DETERMINES OTHERWISE.

45-568.04. Non-per capita conservation program for municipal providers; sixth management period

A. IN ADDITION TO THE PROVISIONS OF THE MANAGEMENT PLAN FOR THE SIXTH MANAGEMENT PERIOD PRESCRIBED BY SECTIONS 45-568.03, THE DIRECTOR SHALL INCLUDE IN THE MANAGEMENT PLAN A NON-PER CAPITA CONSERVATION PROGRAM FOR MUNICIPAL PROVIDERS. THE PROGRAM SHALL REQUIRE A MUNICIPAL PROVIDER REGULATED UNDER THE PROGRAM TO IMPLEMENT ONE OR MORE WATER CONSERVATION MEASURES IN ITS SERVICE AREA FROM THE LIST ADOPTED BY THE DIRECTOR PURSUANT TO SUBSECTION B OF THIS SECTION, SUBJECT TO APPROVAL BY THE DIRECTOR PURSUANT TO SUBSECTION F OR G OF THIS SECTION. THE PROGRAM MAY PRESCRIBE THE NUMBER OF CONSERVATION MEASURES THAT A PROVIDER MUST IMPLEMENT UNDER THIS SUBSECTION BASED ON THE NUMBER OF SERVICE CONNECTIONS IN THE PROVIDER'S SERVICE AREA.

B. THE DIRECTOR SHALL INCLUDE IN THE NON-PER CAPITA CONSERVATION PROGRAM A LIST AND DESCRIPTION OF CONSERVATION MEASURES THAT MUNICIPAL PROVIDERS REGULATED UNDER THE PROGRAM MUST SELECT FROM TO COMPLY WITH THE REQUIREMENTS ADOPTED

PURSUANT TO SUBSECTION A OF THIS SECTION, WHICH MAY INCLUDE THE CONSERVATION MEASURES DESCRIBED IN SECTION 45-567.01, SUBSECTION A, PARAGRAPHS 1 AND 2.

C. IN ADDITION TO THE REQUIREMENTS PRESCRIBED IN SUBSECTION A OF THIS SECTION, A MUNICIPAL PROVIDER REGULATED UNDER THE NON-PER CAPITA CONSERVATION PROGRAM SHALL:

1. INCLUDE IN ITS ANNUAL REPORTS FILED PURSUANT TO SECTION 45-632 A COPY OF THE PROVIDER'S CURRENT WATER RATE STRUCTURE UNLESS NO CHANGES HAVE BEEN MADE TO THE RATE STRUCTURE SINCE IT WAS LAST SUBMITTED TO THE DIRECTOR. A MUNICIPAL PROVIDER REGULATED UNDER THE NON-PER CAPITA CONSERVATION PROGRAM IS ENCOURAGED TO ADOPT A WATER RATE STRUCTURE THAT PROMOTES EFFICIENT USE OF WATER, SUBJECT TO APPROVAL BY THE CORPORATION COMMISSION IF THE PROVIDER IS A PUBLIC SERVICE CORPORATION.

2. FOR AT LEAST FIVE YEARS AFTER A YEAR IN WHICH THE MUNICIPAL PROVIDER IS REGULATED UNDER THE NON-PER CAPITA CONSERVATION PROGRAM, KEEP AND MAINTAIN ACCURATE RECORDS VERIFYING THAT THE MUNICIPAL PROVIDER IMPLEMENTED THE CONSERVATION MEASURES REQUIRED BY THE NON-PER CAPITA CONSERVATION PROGRAM DURING THAT YEAR.

D. THE DIRECTOR SHALL DESIGN THE NON-PER CAPITA CONSERVATION PROGRAM TO ACHIEVE WATER USE EFFICIENCY IN THE SERVICE AREAS OF MUNICIPAL PROVIDERS REGULATED UNDER THE PROGRAM EQUIVALENT TO THE WATER USE EFFICIENCY ASSUMED BY THE DIRECTOR IN ESTABLISHING THE PER CAPITA CONSERVATION REQUIREMENTS FOR THE MANAGEMENT PLAN PURSUANT TO SECTION 45-568.03.

E. EXCEPT AS PROVIDED IN SUBSECTIONS I, J AND K OF THIS SECTION, ON OR BEFORE THE DATE SPECIFIED IN THE MANAGEMENT PLAN, A MUNICIPAL PROVIDER NOTIFIED OF THE NON-PER CAPITA CONSERVATION PROGRAM PURSUANT TO SECTION 45-568.03, SUBSECTION B SHALL SUBMIT TO THE DIRECTOR, ON A FORM PRESCRIBED BY THE DIRECTOR, A PROVIDER PROFILE THAT CONTAINS THE FOLLOWING INFORMATION:

1. A DESCRIPTION OF THE MUNICIPAL PROVIDER'S EXISTING SERVICE AREA CHARACTERISTICS AND WATER USE PATTERNS.

2. A DESCRIPTION OF THE CONSERVATION MEASURES THE MUNICIPAL PROVIDER IS CURRENTLY IMPLEMENTING AND ANY ADDITIONAL CONSERVATION MEASURES THAT THE PROVIDER INTENDS TO IMPLEMENT TO COMPLY WITH THE NON-PER CAPITA CONSERVATION PROGRAM.

3. AN EXPLANATION OF HOW EACH CONSERVATION MEASURE DESCRIBED IN THE PROVIDER PROFILE IS RELEVANT TO THE MUNICIPAL PROVIDER'S EXISTING SERVICE AREA CHARACTERISTICS OR WATER USE PATTERNS.

F. WITHIN NINETY DAYS AFTER RECEIVING A MUNICIPAL PROVIDER'S PROVIDER PROFILE UNDER SUBSECTION E OF THIS SECTION, THE DIRECTOR SHALL APPROVE OR DISAPPROVE THE PROVIDER PROFILE AND SEND WRITTEN NOTICE OF THE DECISION TO THE MUNICIPAL PROVIDER. THE DIRECTOR SHALL APPROVE THE PROVIDER PROFILE IF THE DIRECTOR DETERMINES THAT THE

PROFILE CONTAINS INFORMATION DEMONSTRATING THAT THE MUNICIPAL PROVIDER WILL IMPLEMENT AT LEAST THE MINIMUM NUMBER OF CONSERVATION MEASURES REQUIRED BY THE NON-PER CAPITA CONSERVATION PROGRAM AND THAT THE CONSERVATION MEASURES ARE REASONABLY RELEVANT TO THE MUNICIPAL PROVIDER'S EXISTING SERVICE AREA CHARACTERISTICS OR WATER USE PATTERNS. IF THE DIRECTOR DISAPPROVES THE PROVIDER PROFILE, THE DIRECTOR SHALL INCLUDE WITH THE WRITTEN NOTICE OF THE DECISION THE REASONS FOR THE DISAPPROVAL. A DECISION OF THE DIRECTOR DISAPPROVING A PROVIDER PROFILE IS AN APPEALABLE AGENCY ACTION PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 10. IF THE DIRECTOR FAILS TO SEND THE MUNICIPAL PROVIDER WRITTEN NOTICE APPROVING OR DISAPPROVING THE PROVIDER PROFILE WITHIN NINETY DAYS AFTER RECEIVING THE PROVIDER PROFILE, THE PROVIDER PROFILE SHALL BE DEEMED APPROVED.

G. IF THE DIRECTOR DISAPPROVES A MUNICIPAL PROVIDER'S PROVIDER PROFILE PURSUANT TO SUBSECTION F OF THIS SECTION, WITHIN NINETY DAYS AFTER THE DATE OF THE DIRECTOR'S WRITTEN NOTICE DISAPPROVING THE PROVIDER PROFILE, OR WITHIN NINETY DAYS AFTER THE DIRECTOR'S DECISION IS FINAL IF THE MUNICIPAL PROVIDER FILES A TIMELY NOTICE OF APPEAL OF THE DECISION PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 10, THE MUNICIPAL PROVIDER SHALL REVISE THE PROVIDER PROFILE TO CORRECT THE DEFICIENCIES IDENTIFIED BY THE DIRECTOR IN THE WRITTEN NOTICE AND SUBMIT THE REVISED PROVIDER PROFILE TO THE DIRECTOR. WITHIN NINETY DAYS AFTER RECEIVING A MUNICIPAL PROVIDER'S REVISED PROVIDER PROFILE PURSUANT TO THIS SUBSECTION, THE DIRECTOR SHALL APPROVE OR DISAPPROVE THE REVISED PROVIDER PROFILE PURSUANT TO SUBSECTION F OF THIS SECTION. IF THE DIRECTOR DISAPPROVES THE REVISED PROVIDER PROFILE:

1. THE DECISION IS AN APPEALABLE AGENCY ACTION PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 10.

2. THE MUNICIPAL PROVIDER IS IN VIOLATION OF THIS SECTION BEGINNING ON THE DATE THE DIRECTOR'S DECISION IS FINAL UNTIL THE MUNICIPAL PROVIDER SUBMITS A PROVIDER PROFILE THAT IS APPROVED BY THE DIRECTOR, EXCEPT THAT THE PROVIDER SHALL NOT BE IN VIOLATION BEFORE THE COMPLIANCE DATE FOR THE NON-PER CAPITA CONSERVATION PROGRAM SPECIFIED IN THE MANAGEMENT PLAN.

H. EXCEPT AS PROVIDED IN SUBSECTIONS I, J AND K OF THIS SECTION, A MUNICIPAL PROVIDER NOTIFIED OF THE NON-PER CAPITA CONSERVATION PROGRAM PURSUANT TO SECTION 45-568.03, SUBSECTION B SHALL BE REGULATED UNDER THE PROGRAM BEGINNING ON THE DATE THE DIRECTOR APPROVES THE MUNICIPAL PROVIDER'S PROVIDER PROFILE PURSUANT TO SUBSECTION F OR G OF THIS SECTION, BUT NOT EARLIER THAN THE COMPLIANCE DATE SPECIFIED IN THE MANAGEMENT PLAN. A MUNICIPAL PROVIDER REGULATED UNDER THE NON-PER CAPITA CONSERVATION PROGRAM SHALL COMPLY WITH THE PROGRAM BEGINNING ON THE DATE THE PROVIDER IS FIRST REGULATED UNDER THE PROGRAM.

I. A MUNICIPAL PROVIDER DESIGNATED AS HAVING AN ASSURED WATER SUPPLY PURSUANT TO SECTION 45-576 SHALL NOT BE REGULATED UNDER THE NON-PER CAPITA CONSERVATION PROGRAM, BUT INSTEAD SHALL BE REGULATED UNDER THE PER CAPITA CONSERVATION PROGRAM ESTABLISHED BY THE DIRECTOR IN THE MANAGEMENT PLAN FOR THE SIXTH MANAGEMENT PERIOD PURSUANT TO SECTION 45-568.03, UNLESS BOTH OF THE FOLLOWING APPLY:

1. THE MUNICIPAL PROVIDER NOTIFIES THE DIRECTOR IN WRITING THAT IT ELECTS TO BE REGULATED UNDER THE NON-PER CAPITA CONSERVATION PROGRAM AND INCLUDES WITH THE NOTICE A PROVIDER PROFILE THAT CONTAINS THE INFORMATION PRESCRIBED BY SUBSECTION E OF THIS SECTION.

2. THE DIRECTOR APPROVES THE MUNICIPAL PROVIDER'S PROVIDER PROFILE PURSUANT TO SUBSECTION F OF THIS SECTION OR A REVISED PROVIDER PROFILE PURSUANT TO SUBSECTION G OF THIS SECTION. THE MUNICIPAL PROVIDER SHALL BE REGULATED UNDER THE NON-PER CAPITA CONSERVATION PROGRAM BEGINNING ON THE DATE THE DIRECTOR APPROVES THE PROVIDER PROFILE OR A REVISED PROVIDER PROFILE.

J. A LARGE UNTREATED WATER PROVIDER SHALL NOT BE REGULATED UNDER THE NON-PER CAPITA CONSERVATION PROGRAM WITH RESPECT TO ITS DELIVERIES OF UNTREATED WATER. A LARGE UNTREATED WATER PROVIDER SHALL COMPLY WITH ANY CONSERVATION OR RATE OF USE REQUIREMENTS ESTABLISHED FOR DELIVERIES OF UNTREATED WATER BY LARGE UNTREATED WATER PROVIDERS WITH RESPECT TO ITS DELIVERIES OF UNTREATED WATER.

K. A SMALL MUNICIPAL PROVIDER SHALL NOT BE REGULATED UNDER THE NON-PER CAPITA CONSERVATION PROGRAM, BUT INSTEAD SHALL COMPLY WITH ANY CONSERVATION REQUIREMENTS ESTABLISHED FOR SMALL MUNICIPAL PROVIDERS IN THE MANAGEMENT PLAN FOR THE SIXTH MANAGEMENT PERIOD PURSUANT TO SECTION 45-568.03.

L. A MUNICIPAL PROVIDER THAT IS REGULATED UNDER THE NON-PER CAPITA CONSERVATION PROGRAM ESTABLISHED UNDER THIS SECTION SHALL COMPLY WITH ANY INDIVIDUAL USER REQUIREMENTS PRESCRIBED IN THE MANAGEMENT PLAN FOR THE SIXTH MANAGEMENT PERIOD PURSUANT TO SECTION 45-568.03, EXCEPT AS PROVIDED IN SECTION 45-571.02.

M. A MUNICIPAL PROVIDER REGULATED UNDER THE NON-PER CAPITA CONSERVATION PROGRAM ESTABLISHED UNDER THIS SECTION IS EXEMPT FROM THE PER CAPITA CONSERVATION REQUIREMENTS PRESCRIBED IN THE MANAGEMENT PLAN FOR THE SIXTH MANAGEMENT PERIOD PURSUANT TO SECTION 45-568.03.

45-568.05. ALTERNATIVE CONSERVATION PROGRAMS FOR AGRICULTURE:
SIXTH MANAGEMENT PERIOD

A. THE DIRECTOR MAY INCLUDE IN THE ADOPTION OF, OR A MODIFICATION TO, THE MANAGEMENT PLAN FOR THE SIXTH MANAGEMENT PERIOD ALTERNATIVE AGRICULTURAL CONSERVATION PROGRAMS THAT THE DIRECTOR DETERMINES ACHIEVE CONSERVATION THAT IS AT LEAST EQUIVALENT TO THAT REQUIRED UNDER THE AGRICULTURAL CONSERVATION

PROGRAM INCLUDED IN THE MANAGEMENT PLAN PURSUANT TO SECTION 45-568.03, INCLUDING A CROPPED ACREAGE PROGRAM IN WHICH THE MAXIMUM ANNUAL GROUNDWATER ALLOTMENT IS DETERMINED BASED ON THE CROPS GROWN DURING THE CALENDAR YEAR IN WHICH THE IRRIGATION EFFICIENCY IS APPLIED.

B. THE DIRECTOR SHALL INCLUDE IN THE ADOPTION OF THE MANAGEMENT PLAN FOR THE SIXTH MANAGEMENT PERIOD A BEST MANAGEMENT PRACTICES PROGRAM THAT REQUIRES THE OWNER OF AN IRRIGATION GRANDFATHERED RIGHT AND ANY PERSON USING GROUNDWATER PURSUANT TO THE RIGHT TO IMPLEMENT SPECIFIC AGRICULTURAL CONSERVATION PRACTICES FOR WATER USE ON THE LAND OR FARM UNIT TO WHICH THE RIGHT IS APPURTENANT IN LIEU OF COMPLYING WITH AN IRRIGATION WATER DUTY AND A MAXIMUM ANNUAL GROUNDWATER ALLOTMENT. THE PROGRAM SHALL BE DESIGNED TO ACHIEVE CONSERVATION THAT IS AT LEAST EQUIVALENT TO THAT REQUIRED BY THE AGRICULTURAL CONSERVATION PROGRAM INCLUDED IN THE MANAGEMENT PLAN PURSUANT TO SECTION 45-568.03.

45-569. Management goals and management plans for subsequent active management areas

A. Within thirty days of the designation of a subsequent active management area pursuant to article 2 of this chapter, the director shall establish a management goal for the active management area and the number of years in which the goal is to be achieved.

B. Not later than two years after the designation of a subsequent active management area, the director shall promulgate an initial management plan for the active management area and may provide for subsequent management plans to be promulgated during the time set for achieving the management goal. If the director determines that active management is necessary to preserve the existing supply of groundwater for future needs or that land subsidence or fissuring is endangering property or potential groundwater storage capacity, the director, in developing the plan or plans, shall include measures for reducing groundwater withdrawals which follow as closely as practicable the program set forth in sections 45-564 through ~~45-568~~ 45-568.05. If the director determines that active management is necessary because the use of groundwater is resulting in actual or threatened groundwater quality degradation, the director shall, in cooperation with the department of environmental quality, include in the plan or plans a program for prevention or amelioration of groundwater quality problems and a schedule for implementation of the proposed solutions. The director shall submit such program to the legislature for any necessary enabling legislation or coordination with existing programs of the department of environmental quality.

C. All management plans, including the management goal, for a subsequent active management area, shall be adopted only after public hearings pursuant to sections 45-570 and 45-571.

45-574. Variances; application; notice; hearing; issuance

A. A person who requires additional time to comply with an irrigation water duty or conservation requirement established pursuant to ~~section~~ SECTIONS 45-565, ~~45-566, 45-566.01, 45-567, 45-567.01, 45-568 or 45-568.01~~ THROUGH 45-568.05 may apply to the director for a

variance from the water duty or requirement within ninety days from the date of notice of the water duty or requirement. The application shall include the following:

1. The name and mailing address of the applicant.
2. The name of the active management area in which the use is located.
3. The amount of groundwater currently being withdrawn annually by the person.
4. The irrigation water duty or conservation requirement from which the variance is sought.

5. A general description of the economic circumstances preventing timely compliance with the irrigation water duty or conservation requirement and any information relevant to such circumstances.

6. The sworn statement that the information contained in the application is true and correct to the best belief and knowledge of the applicant.

7. Such other information as the director may require.

B. The director shall give written notice to the applicant of the opportunity for an administrative hearing. An administrative hearing shall be held before the director's decision on the application if the director deems a hearing necessary or a hearing is requested by the applicant.

C. The director may grant a variance upon a showing of compelling economic circumstances. The variance shall specify:

1. The amount of groundwater which may be withdrawn by the person during the variance period, or a schedule of intermediate water duties or conservation requirements to be reached at specified intervals during the variance period.

2. The duration of the variance, which may not exceed five years from the date of the director's final determination of the variance.

D. A party aggrieved by the director's decision may seek judicial review of the final decision of the director as provided in section 45-114, subsection B in the superior court in the county in which the irrigated land or non-irrigation use is located.

E. Section 45-114, subsections A and B govern administrative proceedings, rehearing or review and judicial review of final decisions of the director under this section. If an administrative hearing is held, it shall be conducted in the active management area in which the use is located.

45-575. Administrative review of irrigation water duty and conservation requirements

A. Any aggrieved party may request an administrative review of an irrigation water duty or conservation requirement established pursuant to ~~section SECTIONS 45-565, 45-566, 45-566.01, 45-567, 45-567.01, 45-568 or 45-568.01~~ **THROUGH 45-568.05**. Except as provided in subsection B of this section, the request must be made not later than ninety days from the date of notice of such duty or requirement given thirty days after the adoption of the management plan or if the notice was given pursuant to section 45-566.01, subsection E or 45-571.02, subsection B, not later than ninety days from the date of the notice.

B. An aggrieved person who claims that extraordinary circumstances not in existence as of the date of notice that was given thirty days after adoption of the management plan justify modification of an irrigation water duty or conservation requirement established pursuant to ~~section SECTIONS 45-565, 45-566, 45-566.01, 45-567, 45-567.01, 45-568 or 45-568.01~~ **THROUGH 45-568.05** may request administrative review of the water duty or conservation requirement more than ninety days from the date of notice of the water duty or conservation

requirement. The director may modify the water duty or conservation requirement if the aggrieved person demonstrates to the director by clear and convincing evidence that extraordinary circumstances not in existence as of the date of the notice that was given thirty days after adoption of the management plan make it unreasonable to require compliance with a water duty or conservation requirement.

C. The director shall give written notice to the aggrieved party who is requesting an administrative review of the opportunity for an administrative hearing. An administrative hearing shall be held before the director's decision on the application if the director deems a hearing necessary or a hearing is requested by the applicant.

D. A party aggrieved by the director's decision may seek judicial review of the final decision of the director as provided in section 45-114, subsection B in the superior court in the county in which the irrigated land or the non-irrigation use is located.

E. Section 45-114, subsections A and B govern administrative proceedings, rehearing or review and judicial review of final decisions of the director under this section. If an administrative hearing is held, it shall be conducted in the active management area in which the use is located.