

REFERENCE TITLE: water; municipal conservation requirements

State of Arizona
Senate
Forty-eighth Legislature
First Regular Session
2007

SB 1557

Introduced by
Senators Flake: Arzberger

AN ACT

AMENDING SECTIONS 45-566.01, 45-567, 45-567.01, 45-568, 45-568.01, 45-574 AND 45-575, ARIZONA REVISED STATUTES; RELATING TO GROUNDWATER MANAGEMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 45-566.01, Arizona Revised Statutes, is amended to
3 read:

4 45-566.01. Non-per capita conservation program for municipal
5 providers; third management period

6 A. In addition to the provisions of the management plan for the third
7 management period prescribed by section 45-566, subsection A, paragraph 2, ~~NO~~
8 ~~LATER THAN JANUARY 1, 2008~~, the director shall ~~include in the management~~
9 ~~plan a~~ ~~MODIFY THE MANAGEMENT PLAN TO REPLACE THE~~ non-per capita conservation
10 program for municipal providers ~~that requires~~ ~~IN EFFECT ON THE EFFECTIVE DATE~~
11 ~~OF THIS AMENDMENT TO THIS SECTION WITH A NON-PER CAPITA CONSERVATION PROGRAM~~
12 ~~THAT IS CONSISTENT WITH THE GUIDELINES IN THIS AMENDMENT TO THIS SECTION.~~
13 ~~EXCEPT AS PROVIDED IN SUBSECTIONS J, K, L AND M OF THIS SECTION, ALL~~
14 ~~MUNICIPAL PROVIDERS SHALL COMPLY WITH THE NON-PER CAPITA CONSERVATION PROGRAM~~
15 ~~BY THE DATE PRESCRIBED IN SUBSECTION I OF THIS SECTION. THE NON-PER CAPITA~~
16 ~~CONSERVATION PROGRAM SHALL REQUIRE a municipal provider~~ ~~approved for~~
17 ~~REGULATED UNDER~~ the program to implement ~~specific WATER~~ conservation ~~programs~~
18 ~~within MEASURES IN~~ its service area, including all of the following:

19 ~~1. Residential and nonresidential conservation programs for interior~~
20 ~~and exterior water use.~~

21 ~~2.~~ 1. A public education program relating to water conservation.

22 ~~3.~~ 2. A program to meter all service area connections, except
23 connections to fire services, dwelling units in multifamily residential
24 structures, mobile homes in mobile home parks with master meters and
25 construction users.

26 3. ONE OR MORE ADDITIONAL CONSERVATION MEASURES SELECTED BY THE
27 PROVIDER FROM THE LIST OF CONSERVATION MEASURES ADOPTED BY THE DIRECTOR
28 PURSUANT TO SUBSECTION B OF THIS SECTION, SUBJECT TO APPROVAL BY THE DIRECTOR
29 PURSUANT TO SUBSECTION G OR H OF THIS SECTION. THE PROGRAM MAY PRESCRIBE THE
30 NUMBER OF ADDITIONAL CONSERVATION MEASURES THAT A PROVIDER MUST IMPLEMENT
31 UNDER THIS PARAGRAPH BASED ON THE NUMBER OF SERVICE CONNECTIONS IN THE
32 PROVIDER'S SERVICE AREA.

33 ~~B. In a non per capita conservation program established under this~~
34 ~~section, the director shall establish a standard incidental recharge factor~~
35 ~~for all municipal providers that apply for the program, except for municipal~~
36 ~~providers that are members of a groundwater replenishment district~~
37 ~~established under title 48, chapter 27. A municipal provider that applies~~
38 ~~for the non-per capita conservation program may request in its application~~
39 ~~that the director establish an incidental recharge factor for the municipal~~
40 ~~provider that is different than the standard incidental recharge factor~~
41 ~~established in the program. The director may establish a different~~
42 ~~incidental recharge factor for the municipal provider if the municipal~~
43 ~~provider demonstrates to the satisfaction of the director that the ratio of~~
44 ~~the average annual amount of incidental recharge expected to be attributable~~
45 ~~to the municipal provider during the management period to the average annual~~

1 ~~amount of water expected to be withdrawn, diverted or received for delivery~~
2 ~~by the municipal provider for use within its service area during the~~
3 ~~management period is different than the standard incidental recharge factor.~~

4 ~~C. A municipal provider that was approved for a non per capita~~
5 ~~conservation program established pursuant to section 45-565.01 and that~~
6 ~~applies for the non per capita conservation program established under this~~
7 ~~section within ninety days from the date of the first notice of the~~
8 ~~conservation requirements prescribed pursuant to section 45-566, subsection~~
9 ~~A, paragraph 2 remains subject to the program established under section~~
10 ~~45-565.01 until the director approves or denies the application. If the~~
11 ~~director denies the application or if the provider fails to apply within~~
12 ~~ninety days from the date of the first notice of the conservation~~
13 ~~requirements prescribed pursuant to section 45-566, subsection A, paragraph~~
14 ~~2, the municipal provider shall comply with the per capita conservation~~
15 ~~requirements prescribed pursuant to section 45-566, subsection A, paragraph~~
16 ~~2, until the director approves an application filed by the provider for the~~
17 ~~non-per capita conservation program established pursuant to this section.~~

18 ~~D. A municipal provider may apply for a non per capita conservation~~
19 ~~program established under this section if any of the following applies:~~

20 ~~1. The municipal provider is a member of a groundwater replenishment~~
21 ~~district established under title 48, chapter 27.~~

22 ~~2. The service area of the municipal provider has qualified as a~~
23 ~~member service area under title 48, chapter 22, or as a water district member~~
24 ~~service area under title 48, chapter 28, and the conditions established under~~
25 ~~section 45-576.01, subsection B, paragraphs 2 and 3 are met by the~~
26 ~~conservation district or the water district, as applicable, for the active~~
27 ~~management area in which the service area is located.~~

28 ~~3. The municipal provider has developed a plan to both:~~

29 ~~(a) Reduce the proportion of mined groundwater supplied by it for use~~
30 ~~within its service area such that the result computed by dividing the volume~~
31 ~~of mined groundwater supplied by the provider for use within its service area~~
32 ~~in a year by the volume of all water supplied by the provider for use within~~
33 ~~its service area in that year does not exceed:~~

34 ~~(i) Two thirds for 2000.~~

35 ~~(ii) Three fifths for 2001.~~

36 ~~(iii) Eight fifteenths for 2002.~~

37 ~~(iv) Seven fifteenths for 2003.~~

38 ~~(v) Two fifths for 2004.~~

39 ~~(vi) One third for 2005.~~

40 ~~(vii) Four fifteenths for 2006.~~

41 ~~(viii) One fifth for 2007.~~

42 ~~(ix) Two fifteenths for 2008.~~

43 ~~(x) One fifteenth for 2009.~~

44 ~~(b) Deliver no mined groundwater for use within its service area after~~
45 ~~January 1, 2010.~~

1 ~~4. The municipal provider is designated as having an assured water~~
2 ~~supply under rules adopted by the director pursuant to section 45-576.~~

3 ~~E. The director shall prescribe and furnish an application form for a~~
4 ~~non-per capita conservation program established under this section that~~
5 ~~includes the following:~~

6 ~~1. If the municipal provider requests an incidental recharge factor~~
7 ~~different than the standard incidental recharge factor established by the~~
8 ~~director pursuant to subsection B of this section:~~

9 ~~(a) A copy of a hydrological study that demonstrates the amount of~~
10 ~~water withdrawn, diverted or received for delivery by the municipal provider~~
11 ~~for use within its service area during each of the preceding five years and~~
12 ~~the amount of incidental recharge that was attributable to the municipal~~
13 ~~provider during each of those years.~~

14 ~~(b) A copy of a hydrological study that projects the average annual~~
15 ~~amount of water that will be withdrawn, diverted or received for delivery by~~
16 ~~the municipal provider for use within its service area during the management~~
17 ~~period and the average annual amount of incidental recharge that will be~~
18 ~~attributable to the municipal provider during the management period.~~

19 ~~2. If the municipal provider is applying for the program under~~
20 ~~subsection D, paragraph 3 of this section, a copy of the plan described in~~
21 ~~that paragraph.~~

22 ~~3. A description of the conservation programs currently being~~
23 ~~implemented by the municipal provider, and any conservation programs that the~~
24 ~~municipal provider intends to implement if it is approved for the non-per~~
25 ~~capita conservation program, including a time schedule for implementing the~~
26 ~~programs.~~

27 ~~4. Any other information that the director may require.~~

28 B. THE DIRECTOR SHALL INCLUDE IN THE NON-PER CAPITA CONSERVATION
29 PROGRAM A LIST AND DESCRIPTION OF CONSERVATION MEASURES THAT MUNICIPAL
30 PROVIDERS REGULATED UNDER THE PROGRAM MUST SELECT FROM TO COMPLY WITH THE
31 REQUIREMENTS ADOPTED PURSUANT TO SUBSECTION A, PARAGRAPH 3 OF THIS SECTION.

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

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

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

1 THE CONSERVATION MEASURES REQUIRED BY THE NON-PER CAPITA CONSERVATION PROGRAM
2 DURING THAT YEAR.

3 ~~F. D. The director shall approve a municipal provider's application~~
4 ~~for a non per capita conservation program established under this section only~~
5 ~~if the following conditions are satisfied:~~

6 ~~1. The municipal provider agrees in writing to implement specific~~
7 ~~conservation programs that will result in achieving DESIGN THE NON-PER CAPITA~~
8 ~~CONSERVATION PROGRAM TO ACHIEVE water use efficiency in the municipal~~
9 ~~provider's service area AREAS OF MUNICIPAL PROVIDERS REGULATED UNDER THE~~
10 ~~PROGRAM equivalent to the water use efficiency that was assumed by the~~
11 ~~director in establishing the municipal provider's per capita conservation~~
12 ~~requirements pursuant to section 45-566, subsection A, paragraph 2, including~~
13 ~~the programs described in subsection A of this section.~~

14 ~~2. If the municipal provider is applying for the program under~~
15 ~~subsection D, paragraph 3 of this section, the municipal provider has~~
16 ~~demonstrated to the satisfaction of the director that it will reduce the~~
17 ~~proportion of mined groundwater supplied by it for use within its service~~
18 ~~area to the proportions described in subsection D, paragraph 3, subdivision~~
19 ~~(a) of this section, and that it will not deliver mined groundwater for use~~
20 ~~within its service area after January 1, 2010.~~

21 E. WITHIN THIRTY DAYS AFTER THE MANAGEMENT PLAN FOR THE THIRD
22 MANAGEMENT PERIOD IS MODIFIED TO INCLUDE THE NON-PER CAPITA CONSERVATION
23 PROGRAM REQUIRED BY THIS AMENDMENT TO THIS SECTION, THE DIRECTOR SHALL GIVE
24 WRITTEN NOTICE OF THE PROGRAM TO ALL MUNICIPAL PROVIDERS.

25 F. EXCEPT AS PROVIDED IN SUBSECTIONS J, K, L AND M OF THIS SECTION:

26 1. NO LATER THAN JULY 1, 2009, A MUNICIPAL PROVIDER NOTIFIED OF THE
27 NON-PER CAPITA CONSERVATION PROGRAM PURSUANT TO SUBSECTION E OF THIS SECTION
28 SHALL SUBMIT TO THE DIRECTOR, ON A FORM PRESCRIBED BY THE DIRECTOR, A
29 PROVIDER PROFILE THAT CONTAINS THE FOLLOWING INFORMATION:

30 (a) A DESCRIPTION OF THE MUNICIPAL PROVIDER'S EXISTING SERVICE AREA
31 CHARACTERISTICS AND WATER USE PATTERNS.

32 (b) A DESCRIPTION OF THE CONSERVATION MEASURES THE MUNICIPAL PROVIDER
33 IS CURRENTLY IMPLEMENTING AND ANY ADDITIONAL CONSERVATION MEASURES THAT THE
34 PROVIDER INTENDS TO IMPLEMENT TO COMPLY WITH THE NON-PER CAPITA CONSERVATION
35 PROGRAM.

36 (c) AN EXPLANATION OF HOW EACH CONSERVATION MEASURE DESCRIBED IN THE
37 PROVIDER PROFILE IS RELEVANT TO THE MUNICIPAL PROVIDER'S EXISTING SERVICE
38 AREA CHARACTERISTICS OR WATER USE PATTERNS.

39 2. NO LATER THAN THE DATE SPECIFIED IN THE MANAGEMENT PLAN, A
40 MUNICIPAL PROVIDER NOTIFIED OF THE NON-PER CAPITA CONSERVATION PROGRAM
41 PURSUANT TO SECTION 45-571.01, SUBSECTION B SHALL SUBMIT TO THE DIRECTOR, ON
42 A FORM PRESCRIBED BY THE DIRECTOR, A PROVIDER PROFILE THAT INCLUDES THE
43 INFORMATION DESCRIBED IN PARAGRAPH 1 OF THIS SUBSECTION.

44 G. WITHIN NINETY DAYS AFTER RECEIVING A MUNICIPAL PROVIDER'S PROVIDER
45 PROFILE UNDER SUBSECTION F OF THIS SECTION, THE DIRECTOR SHALL APPROVE OR

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

15 H. IF THE DIRECTOR DISAPPROVES A MUNICIPAL PROVIDER'S PROVIDER PROFILE
16 PURSUANT TO SUBSECTION G OF THIS SECTION, WITHIN NINETY DAYS AFTER THE DATE
17 OF THE DIRECTOR'S WRITTEN NOTICE DISAPPROVING THE PROVIDER PROFILE, OR WITHIN
18 NINETY DAYS AFTER THE DIRECTOR'S DECISION IS FINAL IF THE MUNICIPAL PROVIDER
19 FILES A TIMELY NOTICE OF APPEAL OF THE DECISION PURSUANT TO TITLE 41, CHAPTER
20 6, ARTICLE 10, THE MUNICIPAL PROVIDER SHALL REVISE THE PROVIDER PROFILE TO
21 CORRECT THE DEFICIENCIES IDENTIFIED BY THE DIRECTOR IN THE WRITTEN NOTICE AND
22 SUBMIT THE REVISED PROVIDER PROFILE TO THE DIRECTOR. WITHIN NINETY DAYS
23 AFTER RECEIVING A MUNICIPAL PROVIDER'S REVISED PROVIDER PROFILE PURSUANT TO
24 THIS SUBSECTION, THE DIRECTOR SHALL APPROVE OR DISAPPROVE THE REVISED
25 PROVIDER PROFILE PURSUANT TO SUBSECTION G OF THIS SECTION. IF THE DIRECTOR
26 DISAPPROVES THE REVISED PROVIDER PROFILE:

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

29 2. THE MUNICIPAL PROVIDER IS IN VIOLATION OF THIS SECTION BEGINNING ON
30 THE DATE THE DIRECTOR'S DECISION IS FINAL UNTIL THE MUNICIPAL PROVIDER
31 SUBMITS A PROVIDER PROFILE THAT IS APPROVED BY THE DIRECTOR, EXCEPT THAT THE
32 PROVIDER SHALL NOT BE IN VIOLATION BEFORE JANUARY 1, 2010.

33 I. EXCEPT AS PROVIDED IN SUBSECTIONS J, K, L AND M OF THIS SECTION:

34 1. A MUNICIPAL PROVIDER NOTIFIED OF THE NON-PER CAPITA CONSERVATION
35 PROGRAM PURSUANT TO SUBSECTION E OF THIS SECTION SHALL BE REGULATED UNDER THE
36 PROGRAM BEGINNING ON THE DATE THE DIRECTOR APPROVES THE MUNICIPAL PROVIDER'S
37 PROVIDER PROFILE PURSUANT TO SUBSECTION G OR H OF THIS SECTION, BUT NOT
38 EARLIER THAN JANUARY 1, 2010 UNLESS THE MUNICIPAL PROVIDER AGREES TO BE
39 REGULATED UNDER THE PROGRAM BEFORE THAT DATE AND THE DIRECTOR HAS APPROVED
40 THE MUNICIPAL PROVIDER'S PROVIDER PROFILE. A MUNICIPAL PROVIDER REGULATED
41 UNDER THE NON-PER CAPITA CONSERVATION PROGRAM SHALL COMPLY WITH THE PROGRAM
42 BEGINNING ON THE DATE THE PROVIDER IS FIRST REGULATED UNDER THE PROGRAM UNTIL
43 THE COMPLIANCE DATE FOR THE APPLICABLE CONSERVATION REQUIREMENTS ESTABLISHED
44 IN THE MANAGEMENT PLAN FOR THE FOURTH MANAGEMENT PERIOD.

1 2. A MUNICIPAL PROVIDER NOTIFIED OF THE NON-PER CAPITA CONSERVATION
2 PROGRAM PURSUANT TO SECTION 45-571.01, SUBSECTION B SHALL BE REGULATED UNDER
3 THE NON-PER CAPITA CONSERVATION PROGRAM BEGINNING ON THE DATE THE DIRECTOR
4 APPROVES THE MUNICIPAL PROVIDER'S PROVIDER PROFILE PURSUANT TO SUBSECTION G
5 OR H OF THIS SECTION, OR SUCH LATER DATE AS DETERMINED BY THE DIRECTOR, AND
6 SHALL COMPLY WITH THE PROGRAM BEGINNING ON THAT DATE UNTIL THE COMPLIANCE
7 DATE FOR THE APPLICABLE CONSERVATION REQUIREMENTS ESTABLISHED IN THE
8 MANAGEMENT PLAN FOR THE FOURTH MANAGEMENT PERIOD.

9 J. EXCEPT AS PROVIDED IN SUBSECTION K OF THIS SECTION, A MUNICIPAL
10 PROVIDER DESIGNATED AS HAVING AN ASSURED WATER SUPPLY PURSUANT TO SECTION
11 45-576 SHALL NOT BE REGULATED UNDER THE NON-PER CAPITA CONSERVATION PROGRAM
12 ESTABLISHED UNDER THIS SECTION, BUT INSTEAD SHALL BE REGULATED UNDER THE PER
13 CAPITA CONSERVATION PROGRAM ESTABLISHED BY THE DIRECTOR PURSUANT TO SECTION
14 45-566, SUBSECTION A, PARAGRAPH 2, UNLESS BOTH OF THE FOLLOWING APPLY:

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

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

25 K. IF A MUNICIPAL PROVIDER DESIGNATED AS HAVING AN ASSURED WATER
26 SUPPLY PURSUANT TO SECTION 45-576 IS REGULATED UNDER A MUNICIPAL CONSERVATION
27 PROGRAM OTHER THAN THE PER CAPITA CONSERVATION PROGRAM ESTABLISHED BY THE
28 DIRECTOR PURSUANT TO SECTION 45-566, SUBSECTION A, PARAGRAPH 2 ON THE DATE
29 THE PROVIDER RECEIVES WRITTEN NOTICE PURSUANT TO SUBSECTION E OF THIS SECTION
30 AND THE PROVIDER IS IN COMPLIANCE WITH THAT PROGRAM AS OF THAT DATE:

31 1. THE MUNICIPAL PROVIDER SHALL CONTINUE TO COMPLY WITH THE
32 REQUIREMENTS OF THAT PROGRAM UNTIL THE COMPLIANCE DATE FOR THE APPLICABLE
33 CONSERVATION REQUIREMENTS ESTABLISHED IN THE MANAGEMENT PLAN FOR THE FOURTH
34 MANAGEMENT PERIOD.

35 2. THE PROVIDER MAY ELECT TO BE REGULATED UNDER THE PER CAPITA
36 CONSERVATION PROGRAM ADOPTED PURSUANT TO SECTION 45-566, SUBSECTION A,
37 PARAGRAPH 2 BY GIVING WRITTEN NOTICE OF THE ELECTION TO THE DIRECTOR. AFTER
38 GIVING SUCH WRITTEN NOTICE, THE PROVIDER SHALL COMPLY WITH THE PER CAPITA
39 CONSERVATION REQUIREMENTS PRESCRIBED BY THE DIRECTOR BEGINNING ON A DATE
40 SPECIFIED BY THE DIRECTOR.

41 L. A LARGE UNTREATED WATER PROVIDER SHALL NOT BE REGULATED UNDER THE
42 NON-PER CAPITA CONSERVATION PROGRAM WITH RESPECT TO ITS DELIVERIES OF
43 UNTREATED WATER. A LARGE UNTREATED WATER PROVIDER SHALL COMPLY WITH THE
44 CONSERVATION OR RATE OF USE REQUIREMENTS ESTABLISHED PURSUANT TO SECTION

1 45-566, SUBSECTION A, PARAGRAPH 3 WITH RESPECT TO ITS DELIVERIES OF UNTREATED
2 WATER.

3 M. A SMALL MUNICIPAL PROVIDER SHALL NOT BE REGULATED UNDER THE NON-PER
4 CAPITA CONSERVATION PROGRAM ESTABLISHED UNDER THIS SECTION, BUT INSTEAD SHALL
5 COMPLY WITH THE CONSERVATION REQUIREMENTS ESTABLISHED FOR SMALL MUNICIPAL
6 PROVIDERS PURSUANT TO SECTION 45-566, SUBSECTION A, PARAGRAPH 4.

7 ~~G.~~ N. A municipal provider that is ~~approved for a~~ REGULATED UNDER THE
8 non-per capita conservation program established under this section shall
9 comply with any individual user requirements prescribed pursuant to section
10 45-566, subsection A, paragraph 2, except as provided in section 45-571.02.

11 ~~H. The director shall include in a non-per capita conservation program~~
12 ~~established under this section:~~

13 ~~1. A requirement that a municipal provider that applied for the~~
14 ~~program under subsection D, paragraph 3 of this section shall reduce the~~
15 ~~proportion of mined groundwater supplied by it for use within its service~~
16 ~~area to the proportions described in subsection D, paragraph 3, subdivision~~
17 ~~(a) of this section and shall not deliver mined groundwater for use within~~
18 ~~its service area after January 1, 2010. The director may excuse a municipal~~
19 ~~provider's failure to comply with the requirement during any year if the~~
20 ~~municipal provider demonstrates to the satisfaction of the director that the~~
21 ~~municipal provider's failure to comply with the requirement was due to~~
22 ~~drought conditions or the failure of a surface water distribution system.~~

23 ~~2. A requirement that a municipal provider that applied for the~~
24 ~~program under subsection D, paragraph 4 of this section shall not supply~~
25 ~~groundwater for use within its service area in an amount that exceeds the~~
26 ~~amount of groundwater that the municipal provider may supply for use within~~
27 ~~its service area consistent with rules adopted by the director pursuant to~~
28 ~~section 45-576.~~

29 ~~I. O. Except as provided in subsection C of this section, a municipal~~
30 ~~provider that applies for a non per capita conservation program under this~~
31 ~~section shall comply with the per capita conservation requirements~~
32 ~~established under section 45-566, subsection A, paragraph 2 until the~~
33 ~~director approves the application. If the municipal provider's application~~
34 ~~for the non per capita conservation program is approved by the director, the~~
35 ~~provider~~ A MUNICIPAL PROVIDER REGULATED UNDER THE NON-PER CAPITA CONSERVATION
36 PROGRAM ESTABLISHED UNDER THIS SECTION is exempt from the per capita
37 conservation requirements prescribed under section 45-566, subsection A,
38 paragraph 2.

39 P. THE DIRECTOR SHALL PREPARE A GUIDANCE DOCUMENT TO ASSIST MUNICIPAL
40 PROVIDERS ENTERING INTO THE NON-PER CAPITA CONSERVATION PROGRAM. THE
41 GUIDANCE DOCUMENT SHALL INFORM MUNICIPAL PROVIDERS OF THE REQUIREMENTS OF THE
42 PROGRAM AS ADOPTED IN THE MANAGEMENT PLAN AND THE MANNER IN WHICH THE
43 DIRECTOR WILL IMPLEMENT THE PROGRAM. THE DIRECTOR SHALL COOPERATE WITH
44 MUNICIPAL PROVIDERS IN DEVELOPING THE GUIDANCE DOCUMENT.

1 Sec. 2. Section 45-567, Arizona Revised Statutes, is amended to read:
2 45-567. Management plan for fourth management period; guidelines

3 A. For the fourth management period, 2010 to 2020, the director shall
4 promulgate a management plan for each initial active management area not
5 later than January 1, 2008. The director:

6 1. Except as provided in section 45-563.02, subsection B, shall
7 include in each plan an irrigation water duty or intermediate water duties.
8 These duties shall be calculated in the manner provided in section 45-566,
9 subsection A, paragraph 1 and shall be subject to an exemption under
10 subsection E of this section. In setting the irrigation water duty or
11 intermediate water duties for the fourth management period, the director may
12 adjust the highest twenty-five per cent of the final irrigation water duties
13 established within an area of similar farming conditions pursuant to section
14 45-566 by reducing each water duty in an amount up to ten per cent, except
15 that, in making the adjustment, no water duty may be reduced to an amount
16 less than the greater of the following:

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

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

22 2. May include in each plan, if feasible, additional conservation
23 requirements for non-irrigation uses and intermediate conservation
24 requirements, which shall apply subject to ~~the provisions of~~ section
25 45-567.01.

26 3. May include in each plan, if feasible, conservation or rate of use
27 requirements for deliveries of untreated water by large untreated water
28 providers based on the use of the latest commercially available conservation
29 technology consistent with reasonable economic return.

30 4. May include in each plan, except the plan for the Santa Cruz active
31 management area, if feasible, additional economically reasonable conservation
32 requirements for the distribution of groundwater by cities, towns, private
33 water companies and irrigation districts within their service areas. In the
34 plan for the Santa Cruz active management area, the director may include, if
35 feasible, additional economically reasonable conservation requirements for
36 the distribution of water, other than stored water, withdrawn from wells, for
37 cities, towns, private water companies and irrigation districts within their
38 service areas.

39 5. May include in each plan, if feasible, a program for additional
40 augmentation of the water supply of the active management area, including
41 incentives for artificial groundwater recharge.

42 6. May include in each plan, if feasible, in cooperation with the
43 department of environmental quality, an assessment of groundwater quality in
44 the active management area and any proposed program for groundwater quality
45 protection. Any such program shall be submitted to the legislature for any

1 necessary enabling legislation or coordination with existing programs of the
2 department of environmental quality.

3 7. May include in each plan, if feasible, a program for conservation
4 assistance to water users within the active management area.

5 8. May include in each plan, if feasible, a program for purchase and
6 retirement of grandfathered rights by the department.

7 9. Shall include in the plan for the Santa Cruz active management area
8 criteria for the location of new wells and replacement wells in new locations
9 consistent with the management goal of the active management area.

10 10. Shall include in the plan for the Santa Cruz active management area
11 an evaluation of the potential impact of the plan on the Tucson active
12 management area.

13 11. Shall include in the plans for the Tucson, Phoenix and Pinal active
14 management areas recommendations to the Arizona water banking authority
15 regarding all of the following:

16 (a) Whether additional water storage in the active management area
17 would help to achieve the management goal for the active management area.

18 (b) Where additional water storage in the active management area would
19 be most useful to achieve the management goal for the active
20 management area.

21 (c) Whether extinguishment of long-term storage credits accrued or to
22 be accrued by the Arizona water banking authority would help to achieve the
23 management goal for the active management area.

24 B. In the plans adopted under subsection A of this section, the
25 director shall establish the historic annual net natural recharge for any
26 groundwater replenishment district in the active management area, computed by
27 determining the net natural recharge, as defined ~~by~~ IN section 48-4401, for
28 the groundwater basin beneath the district during calendar years 1977 through
29 2006 and dividing the result by thirty.

30 C. Within thirty days after the management plan for the fourth
31 management period is adopted, the director shall give written notice in the
32 manner and to the persons prescribed in section 45-565, subsection B **AND**
33 **SHALL GIVE WRITTEN NOTICE OF THE NON-PER CAPITA CONSERVATION PROGRAM**
34 **ESTABLISHED PURSUANT TO SECTION 45-567.01 TO ALL MUNICIPAL PROVIDERS.** Two
35 years before the compliance date specified in the management plan for any
36 irrigation water duty, intermediate water duty, conservation requirement or
37 intermediate conservation requirement, the director shall give additional
38 written notice by first class mail to the last known addresses of the persons
39 prescribed in section 45-565, subsection B **AND THIS SUBSECTION.**

40 D. Except for a person who obtains a variance under section 45-574 or
41 who is exempt from irrigation water duties under section 45-563.02,
42 subsection A, all persons notified pursuant to subsection C of this section
43 shall comply with the applicable irrigation water duty or conservation
44 requirements for the fourth management period not later than January 1, 2020
45 and shall remain in compliance until the compliance date for any applicable

1 irrigation water duty or conservation requirements established in the
2 management plan for the fifth management period. If intermediate water
3 duties or intermediate conservation requirements have been established, a
4 person to whom those water duties or conservation requirements apply shall
5 comply with the intermediate water duties or intermediate conservation
6 requirements not later than the compliance date specified in the management
7 plan, unless the person obtains a variance pursuant to section 45-574 or is
8 exempt from intermediate water duties under section 45-563.02, subsection A.
9 A person who obtains a variance under section 45-574 shall comply with the
10 applicable irrigation water duty or conservation requirements by the date
11 specified in the variance and shall remain in compliance until the subsequent
12 compliance date for any applicable irrigation water duty or conservation
13 requirements established in the management plan for the fourth management
14 period or, if that management plan does not establish any applicable
15 subsequent compliance date, until the applicable compliance date established
16 in the management plan for the fifth management period.

17 E. A person who is entitled to use groundwater pursuant to an
18 irrigation grandfathered right may apply to the director at any time during
19 the fourth management period for an exemption from the irrigation water
20 duties established under subsection A, paragraph 1 of this section. The
21 director shall grant the exemption if the person demonstrates to the
22 director's satisfaction that granting the exemption is consistent with
23 achieving the management goal of the active management area and that one of
24 the following applies:

25 1. Withdrawal of groundwater pursuant to the irrigation grandfathered
26 right during the management period will intercept groundwater that would
27 otherwise flow out of and be lost to the active management area within the
28 next fifteen years without entering another active management area.

29 2. Withdrawal of groundwater pursuant to the irrigation grandfathered
30 right during the management period will prevent encroachment of a rising
31 depth to groundwater level that will cause waterlogging problems within the
32 next fifteen years.

33 Sec. 3. Section 45-567.01, Arizona Revised Statutes, is amended to
34 read:

35 45-567.01. Non-per capita conservation program for municipal
36 providers; fourth management period

37 A. In addition to the provisions of the management plan for the fourth
38 management period prescribed by section 45-567, subsection A, the director
39 shall include in the management plan a non-per capita conservation program
40 for municipal providers. ~~that requires~~ THE PROGRAM SHALL REQUIRE a municipal
41 provider ~~approved for~~ REGULATED UNDER the program to implement ~~specific~~ WATER
42 conservation ~~programs within~~ MEASURES IN its service area, including all of
43 the following:

44 ~~1. Residential and nonresidential conservation programs for interior~~
45 ~~and exterior water use.~~

- 1 ~~2.~~ 1. A public education program relating to water conservation.
2 ~~3.~~ 2. A program to meter all service area connections, except
3 connections to fire services, dwelling units in multifamily residential
4 structures, mobile homes in mobile home parks with master meters and
5 construction users.

6 3. ONE OR MORE ADDITIONAL CONSERVATION MEASURES SELECTED BY THE
7 PROVIDER FROM THE LIST OF CONSERVATION MEASURES ADOPTED BY THE DIRECTOR
8 PURSUANT TO SUBSECTION B OF THIS SECTION, SUBJECT TO APPROVAL BY THE DIRECTOR
9 PURSUANT TO SUBSECTION F OR G OF THIS SECTION. THE PROGRAM MAY PRESCRIBE THE
10 NUMBER OF ADDITIONAL CONSERVATION MEASURES THAT A PROVIDER MUST IMPLEMENT
11 UNDER THIS PARAGRAPH BASED ON THE NUMBER OF SERVICE CONNECTIONS IN THE
12 PROVIDER'S SERVICE AREA.

13 ~~B. In a non-per capita conservation program established under this
14 section, the director shall establish a standard incidental recharge factor
15 for all municipal providers that apply for the program, except for municipal
16 providers that are members of a groundwater replenishment district
17 established under title 48, chapter 27. A municipal provider that applies
18 for the non-per capita conservation program may request in its application
19 that the director establish an incidental recharge factor for the municipal
20 provider that is different than the standard incidental recharge factor
21 established in the program. The director may establish a different
22 incidental recharge factor for the municipal provider if the municipal
23 provider demonstrates to the satisfaction of the director that the ratio of
24 the average annual amount of incidental recharge expected to be attributable
25 to the municipal provider during the management period to the average annual
26 amount of water expected to be withdrawn, diverted or received for delivery
27 by the municipal provider for use within its service area during the
28 management period is different than the standard incidental recharge factor.~~

29 ~~C. A municipal provider that was approved for a non per capita
30 conservation program established pursuant to section 45-566.01 and that
31 applies for the non per capita conservation program established under this
32 section within ninety days from the date of the first notice of the
33 conservation requirements prescribed pursuant to section 45-567, subsection
34 A, paragraph 2 remains subject to the program established under section
35 45-566.01 until the director approves or denies the application. If the
36 director denies the application, or if the provider fails to apply for the
37 program within ninety days from the date of the first notice of the
38 conservation requirements prescribed pursuant to section 45-567, subsection
39 A, paragraph 2, the municipal provider shall comply with the per capita
40 conservation requirements prescribed pursuant to section 45-567, subsection
41 A, paragraph 2, until the director approves an application filed by the
42 provider for the non-per capita conservation program established pursuant to
43 this section.~~

44 ~~D. A municipal provider may apply for a non-per capita conservation
45 program established under this section if any of the following applies:~~

1 ~~1. The municipal provider is a member of a groundwater replenishment~~
2 ~~district established under title 48, chapter 27.~~

3 ~~2. The service area of the municipal provider has qualified as a~~
4 ~~member service area under title 48, chapter 22, or as a water district member~~
5 ~~service area under title 48, chapter 28, and the conditions established under~~
6 ~~section 45-576.01, subsection B, paragraphs 2 and 3 are met by the~~
7 ~~conservation district or the water district, as applicable, for the active~~
8 ~~management area in which the service area is located.~~

9 ~~3. The municipal provider has developed a plan to deliver no mined~~
10 ~~groundwater for use within its service area after January 1, 2010.~~

11 ~~4. The municipal provider is designated as having an assured water~~
12 ~~supply under rules adopted by the director pursuant to section 45-576.~~

13 ~~E. The director shall prescribe and furnish an application form for a~~
14 ~~non-per capita conservation program established under this section that~~
15 ~~includes the following:~~

16 ~~1. If the municipal provider requests an incidental recharge factor~~
17 ~~different than the standard incidental recharge factor established by the~~
18 ~~director pursuant to subsection B of this section:~~

19 ~~(a) A copy of a hydrological study that demonstrates the amount of~~
20 ~~water withdrawn, diverted or received for delivery by the municipal provider~~
21 ~~for use within its service area during each of the preceding five years and~~
22 ~~the amount of incidental recharge that was attributable to the municipal~~
23 ~~provider during each of those years.~~

24 ~~(b) A copy of a hydrological study that projects the average annual~~
25 ~~amount of water that will be withdrawn, diverted or received for delivery by~~
26 ~~the municipal provider for use within its service area during the management~~
27 ~~period and the average annual amount of incidental recharge that will be~~
28 ~~attributable to the municipal provider during the management period.~~

29 ~~2. If the municipal provider is applying for the program under~~
30 ~~subsection D, paragraph 3 of this section a copy of the plan described in~~
31 ~~that paragraph.~~

32 ~~3. A description of the conservation programs currently being~~
33 ~~implemented by the municipal provider, and any conservation programs that the~~
34 ~~municipal provider intends to implement if it is approved for the non-per~~
35 ~~capita conservation program, including a time schedule for implementing the~~
36 ~~programs.~~

37 ~~4. Any other information that the director may require.~~

38 B. THE DIRECTOR SHALL INCLUDE IN THE NON-PER CAPITA CONSERVATION
39 PROGRAM A LIST AND DESCRIPTION OF CONSERVATION MEASURES THAT MUNICIPAL
40 PROVIDERS REGULATED UNDER THE PROGRAM MUST SELECT FROM TO COMPLY WITH THE
41 REQUIREMENTS ADOPTED PURSUANT TO SUBSECTION A, PARAGRAPH 3 OF THIS SECTION.

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

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

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

13 ~~F. D. The director shall approve a municipal provider's application~~
14 ~~for a non-per capita conservation program established under this section only~~
15 ~~if the following conditions are satisfied:~~

16 ~~1. The municipal provider agrees in writing to implement specific~~
17 ~~conservation programs that will result in achieving DESIGN THE NON-PER CAPITA~~
18 ~~CONSERVATION PROGRAM TO ACHIEVE water use efficiency in the municipal~~
19 ~~provider's service area AREAS OF MUNICIPAL PROVIDERS REGULATED UNDER THE~~
20 ~~PROGRAM equivalent to the water use efficiency that was assumed by the~~
21 ~~director in establishing the municipal provider's per capita conservation~~
22 ~~requirements pursuant to section 45-567, subsection A, paragraph 2, including~~
23 ~~the programs described in subsection A of this section.~~

24 ~~2. If the municipal provider applied for the program under subsection~~
25 ~~D, paragraph 3 of this section, the municipal provider has demonstrated to~~
26 ~~the satisfaction of the director that it will not deliver mined groundwater~~
27 ~~for use within its service area after January 1, 2010.~~

28 E. EXCEPT AS PROVIDED IN SUBSECTIONS I, J AND K OF THIS SECTION, ON OR
29 BEFORE THE DATE SPECIFIED IN THE MANAGEMENT PLAN, A MUNICIPAL PROVIDER
30 NOTIFIED OF THE NON-PER CAPITA CONSERVATION PROGRAM PURSUANT TO SECTION
31 45-567, SUBSECTION C OR SECTION 45-571.01, SUBSECTION B SHALL SUBMIT TO THE
32 DIRECTOR, ON A FORM PRESCRIBED BY THE DIRECTOR, A PROVIDER PROFILE THAT
33 CONTAINS THE FOLLOWING INFORMATION:

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

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

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

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

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

14 G. IF THE DIRECTOR DISAPPROVES A MUNICIPAL PROVIDER'S PROVIDER PROFILE
15 PURSUANT TO SUBSECTION F OF THIS SECTION, WITHIN NINETY DAYS AFTER THE DATE
16 OF THE DIRECTOR'S WRITTEN NOTICE DISAPPROVING THE PROVIDER PROFILE, OR WITHIN
17 NINETY DAYS AFTER THE DIRECTOR'S DECISION IS FINAL IF THE MUNICIPAL PROVIDER
18 FILES A TIMELY NOTICE OF APPEAL OF THE DECISION PURSUANT TO TITLE 41, CHAPTER
19 6, ARTICLE 10, THE MUNICIPAL PROVIDER SHALL REVISE THE PROVIDER PROFILE TO
20 CORRECT THE DEFICIENCIES IDENTIFIED BY THE DIRECTOR IN THE WRITTEN NOTICE AND
21 SUBMIT THE REVISED PROVIDER PROFILE TO THE DIRECTOR. WITHIN NINETY DAYS
22 AFTER RECEIVING A MUNICIPAL PROVIDER'S REVISED PROVIDER PROFILE PURSUANT TO
23 THIS SUBSECTION, THE DIRECTOR SHALL APPROVE OR DISAPPROVE THE REVISED
24 PROVIDER PROFILE PURSUANT TO SUBSECTION F OF THIS SECTION. IF THE DIRECTOR
25 DISAPPROVES THE REVISED PROVIDER PROFILE:

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

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

33 H. EXCEPT AS PROVIDED IN SUBSECTIONS I, J AND K OF THIS SECTION, A
34 MUNICIPAL PROVIDER NOTIFIED OF THE NON-PER CAPITA CONSERVATION PROGRAM
35 PURSUANT TO SECTION 45-567, SUBSECTION C OR SECTION 45-571.01, SUBSECTION B
36 SHALL BE REGULATED UNDER THE PROGRAM BEGINNING ON THE DATE THE DIRECTOR
37 APPROVES THE MUNICIPAL PROVIDER'S PROVIDER PROFILE PURSUANT TO SUBSECTION F
38 OR G OF THIS SECTION, BUT NOT EARLIER THAN THE COMPLIANCE DATE SPECIFIED IN
39 THE MANAGEMENT PLAN. A MUNICIPAL PROVIDER REGULATED UNDER THE NON-PER CAPITA
40 CONSERVATION PROGRAM SHALL COMPLY WITH THE PROGRAM BEGINNING ON THE DATE THE
41 PROVIDER IS FIRST REGULATED UNDER THE PROGRAM UNTIL THE COMPLIANCE DATE FOR
42 THE APPLICABLE CONSERVATION REQUIREMENTS ESTABLISHED IN THE MANAGEMENT PLAN
43 FOR THE FIFTH MANAGEMENT PERIOD.

44 I. A MUNICIPAL PROVIDER DESIGNATED AS HAVING AN ASSURED WATER SUPPLY
45 PURSUANT TO SECTION 45-576 SHALL NOT BE REGULATED UNDER THE NON-PER CAPITA

1 CONSERVATION PROGRAM, BUT INSTEAD SHALL BE REGULATED UNDER THE PER CAPITA
2 CONSERVATION PROGRAM ESTABLISHED BY THE DIRECTOR PURSUANT TO SECTION 45-567,
3 SUBSECTION A, PARAGRAPH 2, UNLESS BOTH OF THE FOLLOWING APPLY:

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

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

13 J. A LARGE UNTREATED WATER PROVIDER SHALL NOT BE REGULATED UNDER THE
14 NON-PER CAPITA CONSERVATION PROGRAM WITH RESPECT TO ITS DELIVERIES OF
15 UNTREATED WATER. A LARGE UNTREATED WATER PROVIDER SHALL COMPLY WITH ANY
16 CONSERVATION OR RATE OF USE REQUIREMENTS ESTABLISHED PURSUANT TO SECTION
17 45-567, SUBSECTION A, PARAGRAPH 3 WITH RESPECT TO ITS DELIVERIES OF UNTREATED
18 WATER.

19 K. A SMALL MUNICIPAL PROVIDER SHALL NOT BE REGULATED UNDER THE NON-PER
20 CAPITA CONSERVATION PROGRAM, BUT INSTEAD SHALL COMPLY WITH ANY CONSERVATION
21 REQUIREMENTS ESTABLISHED FOR SMALL MUNICIPAL PROVIDERS PURSUANT TO SECTION
22 45-567, SUBSECTION A, PARAGRAPH 2.

23 ~~G.~~ L. A municipal provider ~~that is approved for a~~ REGULATED UNDER THE
24 non-per capita conservation program established under this section shall
25 comply with any individual user requirements prescribed pursuant to section
26 45-567, subsection A, paragraph 2, except as provided in section 45-571.02.

27 ~~H. The director shall include in a non per capita conservation program~~
28 ~~established under this section:~~

29 ~~1. A requirement that a municipal provider that applied for the~~
30 ~~program under subsection D, paragraph 3 of this section shall not deliver~~
31 ~~mined groundwater for use within its service area after January 1, 2010. The~~
32 ~~director may excuse a municipal provider's failure to comply with the~~
33 ~~requirement during any year if the municipal provider demonstrates to the~~
34 ~~satisfaction of the director that the municipal provider's failure to comply~~
35 ~~with the requirement was due to drought conditions or the failure of a~~
36 ~~surface water distribution system.~~

37 ~~2. A requirement that a municipal provider that applied for the~~
38 ~~program under subsection D, paragraph 4 of this section shall not supply~~
39 ~~groundwater for use within its service area in an amount that exceeds the~~
40 ~~amount of groundwater the municipal provider may supply for use within its~~
41 ~~service area consistent with rules adopted by the director pursuant to~~
42 ~~section 45-576.~~

43 ~~I.~~ M. ~~Except as provided in subsection C of this section, a municipal~~
44 ~~provider that applies for a non per capita conservation program established~~
45 ~~under this section shall comply with the per capita conservation requirements~~

1 ~~prescribed pursuant to section 45-567, subsection A, paragraph 2 until the~~
2 ~~director approves the application. If the municipal provider's application~~
3 ~~for the non-per capita conservation program is approved by the director, the~~
4 ~~provider~~ A MUNICIPAL PROVIDER REGULATED UNDER THE NON-PER CAPITA CONSERVATION
5 PROGRAM ESTABLISHED UNDER THIS SECTION is exempt from the per capita
6 conservation requirements prescribed under section 45-567, subsection A,
7 paragraph 2.

8 Sec. 4. Section 45-568, Arizona Revised Statutes, is amended to read:
9 45-568. Management plan for fifth management period; guidelines

10 A. For the fifth management period, 2020 to 2025, the director shall
11 promulgate a management plan for each initial active management area not
12 later than January 1, 2019 pursuant to the guidelines prescribed in section
13 45-567, subsections A and B, except that:

14 1. The director shall establish the historic annual net natural
15 recharge for any groundwater replenishment district in the active management
16 area, computed by determining the net natural recharge, as defined by section
17 48-4401, for the groundwater basin beneath the district during calendar years
18 1988 through 2017 and dividing the result by thirty.

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

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

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

29 3. A person who is entitled to use groundwater pursuant to an
30 irrigation grandfathered right may apply to the director at any time during
31 the management period for an exemption from the irrigation water duties
32 established pursuant to this section. The director shall grant the exemption
33 if the person demonstrates to the director's satisfaction that granting the
34 exemption is consistent with achieving the management goal of the active
35 management area and that one of the following applies:

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

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

44 B. Within thirty days after the management plan for the fifth
45 management period is adopted, the director shall give written notice in the

1 manner and to the persons prescribed in section 45-565, subsection B AND
2 SHALL GIVE WRITTEN NOTICE OF THE NON-PER CAPITA CONSERVATION PROGRAM
3 ESTABLISHED PURSUANT TO SECTION 45-568.01 TO ALL MUNICIPAL PROVIDERS. Two
4 years before the compliance date specified in the management plan for any
5 irrigation water duty, intermediate water duty, conservation requirement or
6 intermediate conservation requirement, the director shall give additional
7 written notice by first class mail to the last known addresses of the persons
8 prescribed in section 45-565, subsection B AND THIS SUBSECTION.

9 C. Except for a person who is exempt from irrigation water duties
10 under section 45-563.02, subsection A, all persons notified pursuant to
11 subsection B of this section shall comply with the applicable irrigation
12 water duty or conservation requirements for the fifth management period not
13 later than January 1, 2025 and shall remain in compliance until the
14 legislature determines otherwise.

15 Sec. 5. Section 45-568.01, Arizona Revised Statutes, is amended to
16 read:

17 45-568.01. Non-per capita conservation program for municipal
18 providers; fifth management period

19 A. In addition to the provisions of the management plan for the fifth
20 management period prescribed by section 45-568, subsection A, the director
21 shall include in the management plan a non-per capita conservation program
22 for municipal providers ~~pursuant to the guidelines prescribed in section~~
23 ~~45-567.01~~. THE PROGRAM SHALL REQUIRE A MUNICIPAL PROVIDER REGULATED UNDER
24 THE PROGRAM TO IMPLEMENT ONE OR MORE WATER CONSERVATION MEASURES IN ITS
25 SERVICE AREA FROM THE LIST ADOPTED BY THE DIRECTOR PURSUANT TO SUBSECTION B
26 OF THIS SECTION, SUBJECT TO APPROVAL BY THE DIRECTOR PURSUANT TO SUBSECTION F
27 OR G OF THIS SECTION. THE PROGRAM MAY PRESCRIBE THE NUMBER OF CONSERVATION
28 MEASURES THAT A PROVIDER MUST IMPLEMENT UNDER THIS SUBSECTION BASED ON THE
29 NUMBER OF SERVICE CONNECTIONS IN THE PROVIDER'S SERVICE AREA.

30 B. THE DIRECTOR SHALL INCLUDE IN THE NON-PER CAPITA CONSERVATION
31 PROGRAM A LIST AND DESCRIPTION OF CONSERVATION MEASURES THAT MUNICIPAL
32 PROVIDERS REGULATED UNDER THE PROGRAM MUST SELECT FROM TO COMPLY WITH THE
33 REQUIREMENTS ADOPTED PURSUANT TO SUBSECTION A OF THIS SECTION, WHICH MAY
34 INCLUDE THE CONSERVATION MEASURES DESCRIBED IN SECTION 45-567.01, SUBSECTION
35 A, PARAGRAPHS 1 AND 2.

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

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

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

6 D. THE DIRECTOR SHALL DESIGN THE NON-PER CAPITA CONSERVATION PROGRAM
7 TO ACHIEVE WATER USE EFFICIENCY IN THE SERVICE AREAS OF MUNICIPAL PROVIDERS
8 REGULATED UNDER THE PROGRAM EQUIVALENT TO THE WATER USE EFFICIENCY ASSUMED BY
9 THE DIRECTOR IN ESTABLISHING THE PER CAPITA CONSERVATION REQUIREMENTS
10 PURSUANT TO SECTION 45-568, SUBSECTION A.

11 E. EXCEPT AS PROVIDED IN SUBSECTIONS I, J AND K OF THIS SECTION, ON OR
12 BEFORE THE DATE SPECIFIED IN THE MANAGEMENT PLAN, A MUNICIPAL PROVIDER
13 NOTIFIED OF THE NON-PER CAPITA CONSERVATION PROGRAM PURSUANT TO SECTION
14 45-568, SUBSECTION B OR SECTION 45-571.01, SUBSECTION B SHALL SUBMIT TO THE
15 DIRECTOR, ON A FORM PRESCRIBED BY THE DIRECTOR, A PROVIDER PROFILE THAT
16 CONTAINS THE FOLLOWING INFORMATION:

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

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

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

26 F. WITHIN NINETY DAYS AFTER RECEIVING A MUNICIPAL PROVIDER'S PROVIDER
27 PROFILE UNDER SUBSECTION E OF THIS SECTION, THE DIRECTOR SHALL APPROVE OR
28 DISAPPROVE THE PROVIDER PROFILE AND SEND WRITTEN NOTICE OF THE DECISION TO
29 THE MUNICIPAL PROVIDER. THE DIRECTOR SHALL APPROVE THE PROVIDER PROFILE IF
30 THE DIRECTOR DETERMINES THAT THE PROFILE CONTAINS INFORMATION DEMONSTRATING
31 THAT THE MUNICIPAL PROVIDER WILL IMPLEMENT AT LEAST THE MINIMUM NUMBER OF
32 CONSERVATION MEASURES REQUIRED BY THE NON-PER CAPITA CONSERVATION PROGRAM AND
33 THAT THE CONSERVATION MEASURES ARE REASONABLY RELEVANT TO THE MUNICIPAL
34 PROVIDER'S EXISTING SERVICE AREA CHARACTERISTICS OR WATER USE PATTERNS. IF
35 THE DIRECTOR DISAPPROVES THE PROVIDER PROFILE, THE DIRECTOR SHALL INCLUDE
36 WITH THE WRITTEN NOTICE OF THE DECISION THE REASONS FOR THE DISAPPROVAL. A
37 DECISION OF THE DIRECTOR DISAPPROVING A PROVIDER PROFILE IS AN APPEALABLE
38 AGENCY ACTION PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE 10. IF THE DIRECTOR
39 FAILS TO SEND THE MUNICIPAL PROVIDER WRITTEN NOTICE APPROVING OR DISAPPROVING
40 THE PROVIDER PROFILE WITHIN NINETY DAYS AFTER RECEIVING THE PROVIDER PROFILE,
41 THE PROVIDER PROFILE SHALL BE DEEMED APPROVED.

42 G. IF THE DIRECTOR DISAPPROVES A MUNICIPAL PROVIDER'S PROVIDER PROFILE
43 PURSUANT TO SUBSECTION F OF THIS SECTION, WITHIN NINETY DAYS AFTER THE DATE
44 OF THE DIRECTOR'S WRITTEN NOTICE DISAPPROVING THE PROVIDER PROFILE, OR WITHIN
45 NINETY DAYS AFTER THE DIRECTOR'S DECISION IS FINAL IF THE MUNICIPAL PROVIDER

1 FILES A TIMELY NOTICE OF APPEAL OF THE DECISION PURSUANT TO TITLE 41, CHAPTER
2 6, ARTICLE 10, THE MUNICIPAL PROVIDER SHALL REVISE THE PROVIDER PROFILE TO
3 CORRECT THE DEFICIENCIES IDENTIFIED BY THE DIRECTOR IN THE WRITTEN NOTICE AND
4 SUBMIT THE REVISED PROVIDER PROFILE TO THE DIRECTOR. WITHIN NINETY DAYS
5 AFTER RECEIVING A MUNICIPAL PROVIDER'S REVISED PROVIDER PROFILE PURSUANT TO
6 THIS SUBSECTION, THE DIRECTOR SHALL APPROVE OR DISAPPROVE THE REVISED
7 PROVIDER PROFILE PURSUANT TO SUBSECTION F OF THIS SECTION. IF THE DIRECTOR
8 DISAPPROVES THE REVISED PROVIDER PROFILE:

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

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

16 H. EXCEPT AS PROVIDED IN SUBSECTIONS I, J AND K OF THIS SECTION, A
17 MUNICIPAL PROVIDER NOTIFIED OF THE NON-PER CAPITA CONSERVATION PROGRAM
18 PURSUANT TO SECTION 45-568, SUBSECTION B OR SECTION 45-571.01, SUBSECTION B
19 SHALL BE REGULATED UNDER THE PROGRAM BEGINNING ON THE DATE THE DIRECTOR
20 APPROVES THE MUNICIPAL PROVIDER'S PROVIDER PROFILE PURSUANT TO SUBSECTION F
21 OR G OF THIS SECTION, BUT NOT EARLIER THAN THE COMPLIANCE DATE SPECIFIED IN
22 THE MANAGEMENT PLAN. A MUNICIPAL PROVIDER REGULATED UNDER THE NON-PER CAPITA
23 CONSERVATION PROGRAM SHALL COMPLY WITH THE PROGRAM BEGINNING ON THE DATE THE
24 PROVIDER IS FIRST REGULATED UNDER THE PROGRAM.

25 I. A MUNICIPAL PROVIDER DESIGNATED AS HAVING AN ASSURED WATER SUPPLY
26 PURSUANT TO SECTION 45-576 SHALL NOT BE REGULATED UNDER THE NON-PER CAPITA
27 CONSERVATION PROGRAM, BUT INSTEAD SHALL BE REGULATED UNDER THE PER CAPITA
28 CONSERVATION PROGRAM ESTABLISHED BY THE DIRECTOR PURSUANT TO SECTION 45-568,
29 SUBSECTION A, UNLESS BOTH OF THE FOLLOWING APPLY:

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

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

39 J. A LARGE UNTREATED WATER PROVIDER SHALL NOT BE REGULATED UNDER THE
40 NON-PER CAPITA CONSERVATION PROGRAM WITH RESPECT TO ITS DELIVERIES OF
41 UNTREATED WATER. A LARGE UNTREATED WATER PROVIDER SHALL COMPLY WITH ANY
42 CONSERVATION OR RATE OF USE REQUIREMENTS ESTABLISHED FOR DELIVERIES OF
43 UNTREATED WATER BY LARGE UNTREATED WATER PROVIDERS PURSUANT TO SECTION
44 45-568, SUBSECTION A WITH RESPECT TO ITS DELIVERIES OF UNTREATED WATER.

1 K. A SMALL MUNICIPAL PROVIDER SHALL NOT BE REGULATED UNDER THE NON-PER
2 CAPITA CONSERVATION PROGRAM, BUT INSTEAD SHALL COMPLY WITH ANY CONSERVATION
3 REQUIREMENTS ESTABLISHED FOR SMALL MUNICIPAL PROVIDERS PURSUANT TO SECTION
4 45-568, SUBSECTION A.

5 L. A MUNICIPAL PROVIDER THAT IS REGULATED UNDER THE NON-PER CAPITA
6 CONSERVATION PROGRAM ESTABLISHED UNDER THIS SECTION SHALL COMPLY WITH ANY
7 INDIVIDUAL USER REQUIREMENTS PRESCRIBED PURSUANT TO SECTION 45-568,
8 SUBSECTION A, EXCEPT AS PROVIDED IN SECTION 45-571.02.

9 M. A MUNICIPAL PROVIDER REGULATED UNDER THE NON-PER CAPITA
10 CONSERVATION PROGRAM ESTABLISHED UNDER THIS SECTION IS EXEMPT FROM THE PER
11 CAPITA CONSERVATION REQUIREMENTS PRESCRIBED UNDER SECTION 45-568,
12 SUBSECTION A.

13 Sec. 6. Section 45-574, Arizona Revised Statutes, is amended to read:

14 45-574. Variances; application; notice; hearing; issuance

15 A. A person who requires additional time to comply with an irrigation
16 water duty or conservation requirement established pursuant to section
17 45-565, 45-566, 45-566.01, 45-567, 45-567.01, ~~or~~ 45-568 OR 45-568.01 may
18 apply to the director for a variance from the water duty or requirement
19 within ninety days from the date of notice of the water duty or requirement.
20 The application shall include the following:

- 21 1. The name and mailing address of the applicant.
- 22 2. The name of the active management area in which the use is located.
- 23 3. The amount of groundwater currently being withdrawn annually by the
24 person.
- 25 4. The irrigation water duty or conservation requirement from which
26 the variance is sought.
- 27 5. A general description of the economic circumstances preventing
28 timely compliance with the irrigation water duty or conservation requirement
29 and any information relevant to such circumstances.
- 30 6. The sworn statement that the information contained in the
31 application is true and correct to the best belief and knowledge of the
32 applicant.
- 33 7. Such other information as the director may require.

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

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

- 40 1. The amount of groundwater which may be withdrawn by the person
41 during the variance period, or a schedule of intermediate water duties or
42 conservation requirements to be reached at specified intervals during the
43 variance period.
- 44 2. The duration of the variance, which may not exceed five years from
45 the date of the director's final determination of the variance.

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

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

9 Sec. 7. Section 45-575, Arizona Revised Statutes, is amended to read:

10 45-575. Administrative review of irrigation water duty and
11 conservation requirements

12 A. Any aggrieved party may request an administrative review of an
13 irrigation water duty or conservation requirement established pursuant to
14 section 45-565, 45-566, 45-566.01, 45-567, 45-567.01, ~~or~~ 45-568 OR 45-568.01.
15 Except as provided in subsection B of this section, the request must be made
16 not later than ninety days from the date of notice of such duty or
17 requirement given thirty days after the adoption of the management plan or if
18 the notice was given pursuant to section 45-566.01, SUBSECTION E OR
19 45-571.02, subsection B, not later than ninety days from the date of the
20 notice.

21 B. An aggrieved person who claims that extraordinary circumstances not
22 in existence as of the date of notice that was given thirty days after
23 adoption of the management plan justify modification of an irrigation water
24 duty or conservation requirement established pursuant to section 45-565,
25 45-566, 45-566.01, 45-567, 45-567.01, ~~or~~ 45-568 OR 45-568.01 may request
26 administrative review of the water duty or conservation requirement more than
27 ninety days from the date of notice of the water duty or conservation
28 requirement. The director may modify the water duty or conservation
29 requirement if the aggrieved person demonstrates to the director by clear and
30 convincing evidence that extraordinary circumstances not in existence as of
31 the date of the notice that was given thirty days after adoption of the
32 management plan make it unreasonable to require compliance with a water duty
33 or conservation requirement.

34 ~~C. An aggrieved municipal provider that is subject to a non-per capita~~
35 ~~conservation program established pursuant to section 45-565.01, 45-566.01,~~
36 ~~45-567.01 or 45-568.01 may request an administrative review of a conservation~~
37 ~~requirement, other than a conservation requirement for individual users, only~~
38 ~~if the municipal provider claims at any time that significant circumstances~~
39 ~~that did not exist when the municipal provider's application for the non-per~~
40 ~~capita conservation program was approved by the director justify modification~~
41 ~~of the conservation requirement. The director may modify the conservation~~
42 ~~requirement if the aggrieved municipal provider demonstrates to the director~~
43 ~~by clear and convincing evidence that significant circumstances that did not~~
44 ~~exist when the application was approved by the director make it unreasonable~~
45 ~~to require compliance with the conservation requirement. Significant~~

~~1 circumstances include the aggrieved municipal provider's agreement to
2 substitute new conservation programs for the conservation programs that the
3 municipal provider is currently required to implement under the non per
4 capita conservation program if the new conservation programs are expected to
5 result in an equivalent or greater water use efficiency within the municipal
6 provider's service area as the conservation programs that the municipal
7 provider is currently required to implement.~~

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

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

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

21 Sec. 8. Review of non-per capita conservation programs;
22 advisory committee; modifications; notice

23 The director of water resources shall periodically review a non-per
24 capita conservation program adopted pursuant to section 45-566.01, 45-567.01
25 or 45-568.01, Arizona Revised Statutes, to evaluate the effectiveness of the
26 program, including the list of conservation measures adopted by the director
27 pursuant to section 45-566.01, subsection B, 45-567.01, subsection B or
28 45-568.01, subsection B, Arizona Revised Statutes. The director may
29 establish an advisory committee to assist the director in the evaluation.
30 The director may also contract with an independent researcher to assist the
31 director in the evaluation. If the director determines that changes to the
32 program are appropriate to improve the effectiveness of the program:

33 1. The director shall modify the program pursuant to section 45-572,
34 Arizona Revised Statutes, if the changes are consistent with section
35 45-566.01, 45-567.01 or 45-568.01, Arizona Revised Statutes, whichever
36 applies.

37 2. The director shall give written notice of the appropriate changes
38 to the speaker of the house of representatives, the president of the senate
39 and the governor if the changes are not consistent with section 45-566.01,
40 45-567.01 or 45-568.01, Arizona Revised Statutes, whichever applies.