

House Engrossed
groundwater replenishment reserves

State of Arizona
House of Representatives
Fifty-fifth Legislature
First Regular Session
2021

CHAPTER 21
HOUSE BILL 2041

AN ACT

AMENDING SECTIONS 48-3701 AND 48-3772, ARIZONA REVISED STATUTES; RELATING
TO MULTI-COUNTY WATER CONSERVATION DISTRICTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 48-3701, Arizona Revised Statutes, is amended to
3 read:

4 **48-3701. Definitions**

5 In this chapter, unless the context otherwise requires:

6 1. "Active management area" means an active management area
7 established under title 45, chapter 2, article 2.

8 2. "Board" means the board of directors of a multi-county water
9 conservation district.

10 3. "Contract replenishment obligation" means an amount of
11 groundwater that the district contracts to replenish in a year on behalf
12 of a municipal provider pursuant to a contract authorized under section
13 48-3772, subsection B, paragraph 9.

14 4. "Credits" means any groundwater in addition to the amount of
15 groundwater that may be used at a member land or delivered within a member
16 service area for use within the member service area pursuant to the
17 applicable assured water supply rules adopted by the department of water
18 resources.

19 5. "Declaration" means an instrument recorded against real property
20 and conforming to the requirements prescribed by section 48-3774,
21 subsection A, paragraph 5.

22 6. "District" means a multi-county water conservation district
23 organized under the authority of this chapter.

24 7. "Excess groundwater" means an amount of groundwater equal to
25 that amount of groundwater delivered to a member land in a calendar year
26 or delivered within a member service area by the municipal provider for
27 that member service area in a calendar year in excess of the amount of
28 groundwater that may be used at the member land in that calendar year or
29 that may be delivered by the municipal provider for use within the member
30 service area in that calendar year and consistent with the applicable
31 assured water supply rules adopted by the department of water resources
32 for the active management area where the member land or the member service
33 area is located.

34 8. "Excess groundwater increment" means the amount by which excess
35 groundwater reported for a member service area under section 48-3775,
36 subsection B in any year exceeds the maximum amount of excess groundwater
37 reported for that member service area in any prior year.

38 9. "Groundwater replenishment obligation" means, for each active
39 management area in which member lands or member service areas are or may
40 be located, the total of the cumulative parcel replenishment obligation of
41 all parcels of member land in that active management area for a particular
42 calendar year plus the cumulative service area replenishment obligation of
43 all member service areas in that active management area for a particular
44 calendar year.

45 10. "Member land" means any real property that meets the
46 requirements of section 48-3774.

1 11. "Member service area" means the service area of a municipal
2 provider that qualifies as a member service area under section 48-3780,
3 including any additions to or extensions of the service area.

4 12. "Multi-county water conservation district" means a district
5 composed of three or more counties that have joined together for the
6 creation of a district.

7 13. "Municipal provider" means a city, town or private water
8 company or an irrigation district that supplies water for non-irrigation
9 use.

10 14. "Parcel of member land" means any portion of member land for
11 which the tax assessor for the county in which the member land is located
12 has issued a separate county parcel number.

13 15. "Parcel replenishment obligation" means, with respect to any
14 particular parcel of member land, an amount of groundwater that is equal
15 to the amount of groundwater delivered to the parcel of member land in a
16 calendar year multiplied by the percentage that the excess groundwater of
17 the applicable member land for that year bears to the total amount of
18 groundwater delivered to the applicable member land during that year.

19 16. "Population" means the population determined in the most recent
20 United States decennial census.

21 17. "Private water company" has the same meaning prescribed in
22 section 45-402.

23 18. "Projected ~~one hundred year~~ replenishment obligation" means for
24 each active management area, the district's total projected annual
25 groundwater replenishment obligation ~~at active management area build-out,~~
~~multiplied by one hundred FOR EACH OF THE ONE HUNDRED YEARS FOLLOWING~~
~~SUBMISSION OF THE DISTRICT PLAN OF OPERATION.~~

26 19. "Replenish" means to increase the amount of groundwater in an
27 aquifer through water storage pursuant to title 45, chapter 3.1 for the
28 purpose of meeting the obligations of article 4 of this chapter.

29 20. "Reserve target" means the volume calculated for each active
30 management area as prescribed by section 48-3772, subsection E.

31 21. "Resolution" means a resolution adopted by the governing body
32 of a city or town, by the board of directors of a private water company
33 that is a corporation, by the general partners of a private water company
34 that is a partnership or by the individual owners of a private water
35 company that is individually owned.

36 22. "Secretary" means the secretary of the interior of the United
37 States of America.

38 23. "Service area" has the same meaning prescribed in section
39 45-402.

40 24. "Service area replenishment obligation" means, with respect to
41 any particular member service area, the excess groundwater of that member
42 service area in a particular calendar year reduced by the replenishment
43 credits, if any, applied by the municipal provider with respect to the
44 member service area under section 48-3772, subsection H.

1 25. "Water storage" has the same meaning prescribed in section
2 45-802.01.

3 Sec. 2. Section 48-3772, Arizona Revised Statutes, is amended to
4 read:

5 48-3772. Duties and powers of district regarding
6 replenishment

7 A. The district shall:

8 1. Establish annually the costs and expenses to replenish
9 groundwater pursuant to this article with respect to all parcels of member
10 lands and all member service areas located in each active management area,
11 including capital expenses, debt service expenses, the operation,
12 maintenance, replacement and administrative costs and expenses of the
13 district, replenishment reserve costs and expenses as provided in
14 subsection E of this section and reasonable reserves. Separate
15 calculations of costs and expenses shall be made for each active
16 management area in which member lands or member service areas are located
17 and for each membership category. Costs and expenses attributed by the
18 district to contract replenishment obligations shall not be included in
19 these calculations.

20 2. Provide for the payment of all costs and expenses to replenish
21 groundwater pursuant to this chapter and the payment of operation,
22 maintenance, replacement and administrative costs and expenses and debt
23 service expenses of the district.

24 3. Levy an annual replenishment assessment against each parcel of
25 member land pursuant to section 48-3778 and an annual replenishment tax
26 against each municipal provider that has a member service area pursuant to
27 section 48-3781 to pay the district's costs and expenses as established
28 pursuant to paragraph 1 of this subsection.

29 4. Levy a contract replenishment tax against municipal providers
30 that are parties to contracts authorized under subsection B, paragraph 9
31 of this section to pay the district's costs and expenses to replenish
32 groundwater based on contract replenishment obligations.

33 5. Establish and maintain reserve accounts in amounts as may be
34 deemed necessary to perform the district's obligations under this article.

35 6. Fulfill all obligations under resolutions adopted pursuant to
36 subsection B, paragraph 10 of this section.

37 7. Levy an activation fee as follows:

38 (a) For subdivisions within member lands and member service areas
39 that are enrolled before May 6, 2004 and that had not been issued a public
40 report before August 12, 2005, the district shall levy a ~~one-time~~ **ONETIME**
41 activation fee against each housing unit to be constructed within the
42 subdivision.

43 (b) For subdivisions within member lands and member service areas
44 that are enrolled on or after May 6, 2004, the district shall levy a
45 ~~one-time~~ **ONETIME** activation fee against each housing unit to be
46 constructed within the subdivision.

3 (i) Paid in full before issuance of a public report for each real
4 estate subdivision identified in subdivision (a) or (b) of this paragraph.

(ii) One-half paid before issuance of a public report for each real estate subdivision identified in subdivision (a) or (b) of this paragraph and the remaining amount paid no later than one year after the issuance of the public report. The total amount of the activation fee must be the amount of the activation fee in effect at the time of the initial payment. Payment of the initial one-half of the activation fee pursuant to this item constitutes sufficient payment of applicable fees for notice of

11 item constitutes sufficient payment of applicable fees for notice of
12 intent to subdivide as prescribed in section 32-2181, subsection C and for
13 issuance of a public report as prescribed in section 32-2183, subsection G
14 and section 45-576, subsection C, except that on failure to pay the
15 remaining amount, the commissioner shall suspend the public report for
16 that subdivision pursuant to section 32-2183.

17 (d) The activation fee shall be established annually by the
18 district. The amount of the activation fee to be paid to the district
19 under subdivision (c) of this paragraph must be the amount of the
20 activation fee in effect at the time of payment. Revenues from the
21 activation fee together with revenues from other sources that are legally
22 available to the district for those uses shall be used by the district to
23 acquire, lease or exchange water or water rights and develop
24 infrastructure necessary for the district to perform its replenishment
25 obligations.

26 8. For any year, set all of its rates and charges associated with
27 the acquisition, lease or exchange of water or water rights and
28 development of infrastructure necessary for the district to perform its
29 replenishment obligations, other than the annual membership dues
30 established pursuant to section 48-3779, so that the total projected
31 revenues from revenue sources other than the annual membership dues, that
32 are legally available to the district in that year to pay costs associated
33 with the acquisition, lease or exchange of water or water rights and
34 development of infrastructure necessary for the district to perform its
35 replenishment obligations, shall be at least three times the total
36 projected revenues from the annual membership dues in that year. For the
37 purposes of this paragraph, costs associated with the acquisition, lease
38 or exchange of water or water rights do not include the annual costs
39 associated with delivery of water for replenishment purposes.

40 B. The district may:

41 1. Acquire, develop, construct, operate, maintain, replace and
42 acquire permits for water storage, storage facilities and recovery wells
43 for replenishment purposes.

44 2. Acquire, transport, hold, exchange, own, lease, store or
45 replenish water, except groundwater withdrawn from an active management

1 area, subject to the provisions of title 45, for the benefit of member
2 lands and member service areas.

3 3. Acquire, hold, exchange, own, lease, retire or dispose of water
4 rights for the benefit of member lands and member service areas.

5 4. Require municipal providers to provide such information, in such
6 form and within the time limits prescribed by the district, as may be
7 necessary to carry out the purpose of this chapter.

8 5. Levy and collect assessments, fees, charges, taxes and other
9 revenues as are provided in this chapter for the financing of
10 replenishment activities.

11 6. Contract for or perform feasibility studies of water storage,
12 storage facilities and recovery wells for replenishment purposes.

13 7. Acquire real and personal property for water storage, storage
14 facilities and recovery wells for replenishment purposes by purchase,
15 lease, donation, dedication, exchange or other lawful means.

16 8. Use any facilities and any excess storage capacity of any state
17 demonstration projects undertaken pursuant to title 45, chapter 3.1 for
18 water storage for replenishment purposes.

19 9. Subject to subsection G of this section, contract with any
20 municipal provider having a member service area to replenish groundwater
21 on behalf of the municipal provider and with respect to the member service
22 area in an amount in excess of the sum of the service area replenishment
23 obligations applicable to the member service area for all years in which
24 the district has not completed the replenishment of the groundwater
25 replenishment obligation for the member service area.

26 10. Adopt resolutions granting water availability status to a member
27 service area of a city, town or private water company and committing to
28 replenish a specified average annual volume of water in a location where
29 the city, town or private water company may physically access the water
30 for service to its customers, if all of the following apply:

31 (a) The district has reviewed its requirements for transportation
32 of central Arizona project water, its contracts, subcontracts, letter
33 agreements, excess water contracts, and other contractual obligations and
34 its member service area and member land requirements and has determined
35 that the district can meet those obligations and that capacity remains in
36 the central Arizona project to meet the obligations undertaken through the
37 resolution.

38 (b) The resolution acknowledges that the commitment to replenish
39 the specified average annual volume of water in the location cited in the
40 resolution shall be a permanent obligation of the district, unless one of
41 the following applies:

42 (i) A permanent substitute supply of water is found for the city,
43 town or private water company and the substitution is approved by the
44 director of water resources, thus terminating the water availability
45 status of the member service area.

(ii) The requirements of section 45-576.07, subsection A are not met, and thus the director of water resources does not issue an order granting or maintaining the city, town or private water company as having an assured water supply based in whole or in part on section 45-576.07. If no order is issued within two years of the district adopting the resolution, the resolution may be repealed, and the district shall be relieved of all obligations under the resolution.

(c) The average annual volume of water specified in the resolution, when added to the average annual volume of water specified in all other resolutions adopted pursuant to this paragraph, does not exceed twenty thousand acre-feet.

(d) The district has entered into an agreement with the city, town or private water company under which the city, town or private water company will hold for the district's future use, and provide to the district when needed, sufficient water to meet the obligations undertaken by the district through the resolution.

(e) The district determines that the obligations undertaken by the district through the resolution will not increase annual replenishment assessment rates or costs to central Arizona project contract and subcontract holders and its member service areas and member lands.

(f) The director of water resources has found, pursuant to section 45-576.07, subsection H, that the district has the capability to grant water availability status to member service areas.

11. Provide in resolutions adopted pursuant to paragraph 10 of this subsection that the district may fulfill its obligations under the resolution in any year by directly delivering to the city, town or private water company the water that otherwise would have been replenished pursuant to the resolution, if all of the following apply:

(a) The district has reviewed its requirements for transportation of central Arizona project water, its contracts, subcontracts, letter agreements, excess water contracts, and other contractual obligations, AND its member service area and member land requirements and has determined that the district can meet those obligations and that capacity remains in the central Arizona project to make direct deliveries pursuant to this paragraph.

(b) The district determines that the delivery will not increase annual replenishment assessment rates or costs to central Arizona project contract and subcontract holders, its member service area and member lands.

12. Enter into agreements with a city, town or private water company that will have water made available to it through a resolution adopted pursuant to paragraph 10 of this subsection and under which the city, town or private water company compensates the district for the costs and fair value of the water supply provided by the district.

13. Issue revenue bonds pursuant to article 3 of this chapter to fund the costs and expenses of the district for the acquisition, lease or

1 exchange of water or water rights and the development of infrastructure
2 necessary for the district to perform its replenishment obligations
3 subject to the following:

4 (a) The principal of, interest and premiums, if any, on revenue
5 bonds issued pursuant to article 3 of this chapter to acquire, lease or
6 exchange water or water rights and develop infrastructure necessary for
7 the district to perform its replenishment obligations are not payable from
8 any revenues of the district other than revenues generated or collected
9 pursuant to this article that are legally available to the district for
10 those purposes and revenues from the investment of the proceeds of the
11 bonds.

12 (b) The district may not use the proceeds of the bonds to acquire
13 or lease:

14 (i) Groundwater, as defined in section 45-101, except as expressly
15 authorized in sections 45-547, 45-553 and 45-554.

16 (ii) Surface water, as defined in section 45-101, that is the
17 subject of a general adjudication pursuant to title 45, chapter 1,
18 article 9.

19 (c) Nothing in subdivision (b) of this paragraph prohibits the
20 district from acquiring or leasing central Arizona project water.

21 14. Except as provided in section 48-3780.01, subsection B, in
22 addition to any other assessments, fees, charges or taxes levied and
23 collected under this chapter, or under any declaration, contract or
24 agreement entered into under this chapter, charge annual dues for
25 membership pursuant to section 48-3779 against each parcel of member land
26 and each municipal provider that has a member service area.

27 C. The functions of the district under subsection B, paragraph 1 of
28 this section may be performed on behalf of the district by other persons
29 under contract with the district.

30 D. The capital costs of the facilities of any state demonstration
31 projects used by the district pursuant to subsection B, paragraph 8 of
32 this section shall not be included in the capital costs and expenses
33 established by the district under subsection A, paragraph 1 of this
34 section.

35 E. The district shall establish and maintain a replenishment
36 reserve as follows:

37 1. The district shall calculate a reserve target for each of the
38 three active management areas within the district and shall identify the
39 reserve target in the plan of operation prepared pursuant to section
40 45-576.02. The reserve target for each active management area shall be
41 calculated as follows:

42 (a) ~~Establish FOR EACH ACTIVE MANAGEMENT AREA, ADD TOGETHER the~~
43 ~~projected one hundred year~~ replenishment obligation for each ~~active~~
44 ~~management area OF THE ONE HUNDRED YEARS FOLLOWING SUBMISSION OF THE PLAN~~
45 ~~OF OPERATION.~~ For the purposes of this subdivision, each active
46 management area's projected ~~one hundred year~~ replenishment obligation does

1 not include replenishment obligations under resolutions adopted pursuant
2 to subsection B, paragraph 10 of this section or replenishment obligations
3 for category 2 member lands.

4 (b) Subtract from the **SUM OF THE** active management area's projected
5 ~~one hundred year~~ replenishment obligation **OVER THE ONE HUNDRED YEAR PERIOD**
6 the sum of the following volumes of water derived from sources identified
7 in the plan as water that the district plans to use to meet its
8 replenishment obligations for that active management area:

9 (i) The annual volume of each nondeclining, long-term municipal and
10 industrial subcontract for central Arizona project water multiplied by one
11 hundred.

12 (ii) The annual volume of water under leases or contracts that can
13 be made physically and legally available to the district consistent with
14 the rules adopted pursuant to section 45-576, subsection H, multiplied by
15 the number of years, not to exceed one hundred, in which the water is to
16 be made available to the district. The water need not be continuously
17 available to be included in this item. A lease or contract shall not be
18 considered under this item if the water to be made available under the
19 lease or contract is for a term of less than twenty years.

20 (iii) The total volume of groundwater that the district plans to
21 transport to the active management area during the next one hundred years
22 as allowed by title 45, chapter 2, article 8.1.

23 (iv) The total volume of all sources of water not identified in
24 items (i), (ii) or (iii) of this subdivision that will not be held by the
25 district under a lease or contract. Volumes to be included under this
26 item must be consistent with the rules adopted by the director pursuant to
27 section 45-576, subsection H.

28 (c) Multiply the result from subdivision (b) of this paragraph by
29 twenty ~~per cent~~ **PERCENT**. The result is the reserve target for the active
30 management area.

31 2. The reserve target for an active management area may be adjusted
32 by the district, subject to the approval of the director of water
33 resources, based on changes in either of the following:

34 (a) The active management area's projected ~~one hundred year~~
35 replenishment obligation.

36 (b) The volumes of water identified in the plan of operation
37 prepared pursuant to section 45-576.02 as water that the district plans to
38 use to meet its replenishment obligations for that active management area.

39 3. The district shall include a replenishment reserve charge in the
40 annual replenishment assessment levied against all parcels of category 1
41 member land as provided in section 48-3774.01 and in the annual
42 replenishment tax levied against all municipal providers that have member
43 service areas as provided in section 48-3780.01. The replenishment
44 reserve charge for each active management area is established annually by
45 the district based on the reserve target for that active management area.

1 4. The district shall levy a replenishment reserve fee against
2 category 1 member lands pursuant to section 48-3774.01 and against member
3 service areas pursuant to section 48-3780.01. For category 1 member lands
4 the fee is equal to twice the applicable replenishment reserve charge
5 multiplied by the total projected average annual replenishment obligation
6 for the member lands as reported by the director of water resources
7 pursuant to section 45-578, subsection F. For member service areas the
8 fee is equal to twice the applicable replenishment reserve charge
9 multiplied by the excess groundwater increment. With the approval of the
10 district and the director of water resources, long-term storage credits as
11 defined in section 45-802.01 may be assigned to the district's
12 replenishment reserve subaccount in lieu of paying the replenishment
13 reserve fee.

14 5. The district shall use replenishment reserve charges and
15 replenishment reserve fees collected within each active management area
16 together with all interest earned on the charges and fees to store water
17 in that active management area in advance of groundwater replenishment
18 obligations for the purpose of developing long-term storage credits as
19 defined in section 45-802.01 that shall be credited to the replenishment
20 reserve subaccount for that active management area as provided in section
21 45-859.01.

22 6. Beginning on January 1, 2030 or earlier, on approval of the
23 director of water resources pursuant to section 45-859.01, subsection K,
24 the district may transfer credits from a replenishment reserve subaccount
25 to a conservation district account as provided in section 45-859.01 to
26 satisfy its groundwater replenishment obligations.

27 7. If the district transfers credits from the replenishment reserve
28 subaccount for an active management area pursuant to section 45-859.01,
29 subsection E, the district shall include in the annual replenishment
30 assessment levied against all parcels of category 1 member land in that
31 active management area and, except as provided in section 48-3780.01,
32 subsection B, in the annual replenishment tax levied against all municipal
33 providers that have member service areas in that active management area a
34 reserve replacement component to fund the replacement of the transferred
35 credits. The district shall use all monies from the reserve replacement
36 component collected within an active management area together with all
37 interest earned on the monies to develop long-term storage credits as
38 defined in section 45-802.01 within that active management area to be
39 credited to the replenishment reserve subaccount for that active
40 management area as provided in section 45-859.01.

41 8. For the purposes of establishing and maintaining the
42 replenishment reserve, the district shall have access to excess central
43 Arizona project water equivalent to but ~~to~~ NOT more than the access the
44 Arizona water banking authority has for the purposes specified in section
45 45-2401, subsection H, paragraph 2.

1 F. Groundwater replenished by the district pursuant to a contract
2 to replenish groundwater under subsection B, paragraph 9 of this section
3 shall not be credited to a replenishment reserve subaccount established
4 under section 45-859.01.

5 G. The district shall not enter into a contract authorized under
6 subsection B, paragraph 9 of this section unless the district has
7 determined that the contract will not adversely affect the district's
8 ability to fulfill its obligations under this chapter. For each contract
9 entered into under subsection B, paragraph 9 of this section, the district
10 shall perform its contract replenishment obligations in the active
11 management area in which the service area of the municipal provider that
12 is the party to the contract is located.

13 H. If the district replenishes groundwater on behalf of a municipal
14 provider pursuant to a contract to replenish groundwater under subsection
15 B, paragraph 9 of this section, the amount of groundwater so replenished
16 shall be a replenishment credit to the municipal provider that may be
17 applied by the municipal provider on notice to the district to reduce the
18 service area replenishment obligations applicable to the municipal
19 provider.

20 I. In the Phoenix active management area, the district, to the
21 extent reasonably feasible, shall replenish groundwater in the east
22 portion of the active management area and in the west portion of the
23 active management area in the approximate proportion that the groundwater
24 replenishment obligation attributable in a particular year to member lands
25 and member service areas located in the east portion of the active
26 management area bears to the groundwater replenishment obligation
27 attributable in that year to member lands and member service areas located
28 in the west portion of the active management area. For the purposes of
29 this subsection, the boundary between the east Salt river valley subbasin
30 and the west Salt river valley subbasin is the boundary between the east
31 and west portions of the active management area.

32 J. The costs and expenses charged by the district to an active
33 management area water district established under chapter 28 of this title
34 for delivery of surplus central Arizona project water to such active
35 management area water district for replenishment purposes shall not exceed
36 the costs and expenses for delivery of such water that are or would be
37 included by the district in the costs and expenses of replenishment for
38 member lands and member service areas within the active management area in
39 which such active management area water district is situated.

APPROVED BY THE GOVERNOR FEBRUARY 18, 2021.

FILED IN THE OFFICE OF THE SECRETARY OF STATE FEBRUARY 18, 2021.