

REFERENCE TITLE: groundwater sales; online exchange.

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

SB 1243

Introduced by
Senators Wadsack: Bolick, Hoffman, Kern; Representatives Chaplik, Heap,
Jones, Kolodin, McGarr, Parker J

AN ACT

AMENDING SECTION 45-558, ARIZONA REVISED STATUTES; AMENDING TITLE 45,
CHAPTER 2, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 13; RELATING TO THE
GROUNDWATER CODE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 45-558, Arizona Revised Statutes, is amended to
3 read:

4 45-558. Weeds and dust

5 A person shall maintain property owned by the person and from which
6 groundwater is or will be transported pursuant to this article OR FROM
7 WHICH GROUNDWATER MAY BE SOLD, LEASED OR OTHERWISE CONVEYED PURSUANT TO
8 ARTICLE 13 OF THIS CHAPTER free of noxious weeds as defined in section
9 3-201, Russian thistles (salsola kali) and blowing dust that creates a
10 threat to health or safety.

11 Sec. 2. Title 45, chapter 2, Arizona Revised Statutes, is amended
12 by adding article 13, to read:

13 ARTICLE 13. WATER MARKETPLACE

14 45-651. Right to buy and sell groundwater; notice; exemption;
15 disclosure

16 A. NOTWITHSTANDING ANY OTHER LAW, A PERSON WITH A GRANDFATHERED
17 RIGHT TO GROUNDWATER AS PRESCRIBED IN SECTION 45-462 IN THE PHOENIX,
18 TUCSON OR PINAL ACTIVE MANAGEMENT AREA MAY SELL, LEASE OR OTHERWISE CONVEY
19 ANY PORTION OF THE RIGHT TO PUMP GROUNDWATER OR THE GROUNDWATER ITSELF TO
20 ANY OTHER PERSON IN THE PHOENIX, TUCSON OR PINAL ACTIVE MANAGEMENT AREA.
21 THIS ARTICLE DOES NOT AUTHORIZE A PERSON TO SELL, LEASE OR OTHERWISE
22 CONVEY THE RIGHT TO PUMP GROUNDWATER OR GROUNDWATER ITSELF IN ONE SUBBASIN
23 FOR USE OR WITHDRAWAL IN ANOTHER SUBBASIN BUT GROUNDWATER MAY BE
24 TRANSPORTED BETWEEN SUBBASINS BY OTHER MEANS. ANY GROUNDWATER WITHDRAWN
25 PURSUANT TO THIS SECTION SHALL BE WITHDRAWN AT EITHER OF THE FOLLOWING:

26 1. THE SAME LOCATION AUTHORIZED IN THE ORIGINAL GRANDFATHERED
27 RIGHT.

28 2. ANY OTHER LOCATION IN THE SAME SUBBASIN IF THE PROPOSED LOCATION
29 OF WITHDRAWAL COMPLIES WITH RULES ADOPTED PURSUANT TO SECTION 45-598,
30 SUBSECTION A.

31 B. A PERSON WHO SELLS, LEASES OR OTHERWISE CONVEYS THE RIGHT TO
32 PUMP GROUNDWATER OR GROUNDWATER ITSELF AS PRESCRIBED BY SUBSECTION A OF
33 THIS SECTION SHALL NOTIFY THE DEPARTMENT OF THE FOLLOWING WITH RESPECT TO
34 THE TRANSACTION:

35 1. IF THE TRANSACTION IS A SALE, THE NAME AND ADDRESS OF THE BUYER
36 AND SELLER.

37 2. IF THE TRANSACTION IS FOR A LEASE, THE NAME AND ADDRESS OF THE
38 LESSOR AND LESSEE.

39 3. IF THE TRANSACTION IS A LEASE OR SALE.

40 4. IF FOR A LEASE, THE DURATION OF THE LEASE.

41 5. IF KNOWN, IF THE TRANSACTION IS FOR THE RIGHT TO PUMP
42 GROUNDWATER OR THE RIGHT TO GROUNDWATER ITSELF.

43 6. IF KNOWN AND IF THE TRANSACTION IS ONLY FOR A SALE OF THE RIGHT
44 TO PUMP GROUNDWATER, THE ANTICIPATED POINT OF REDUCTION AND WITHDRAWAL.

45 7. IF KNOWN, THE ANTICIPATED METHOD OF CONVEYANCE OR TRANSPORT.

1 8. THE AMOUNT OF GROUNDWATER TO BE FORGONE BY THE SELLER OR LESSOR.

2 9. THE AMOUNT OF GROUNDWATER TO BE RECEIVED OR WITHDRAWN BY THE
3 BUYER OR LESSEE.

4 10. THE AMOUNT OF ANY TRANSACTION COSTS INCURRED FROM THE
5 TRANSACTION.

6 11. THE PRICE PER ACRE-FOOT TO BE PAID FOR ANY GROUNDWATER RECEIVED
7 OR WITHDRAWN BY THE BUYER OR LESSEE.

8 12. ANY OTHER RELEVANT INFORMATION PRESCRIBED BY THE DEPARTMENT.

9 C. THE DEPARTMENT MAY PRESCRIBE A FORM FOR THE NOTICE REQUIRED
10 UNDER SUBSECTION B OF THIS SECTION. THE PARTIES TO A TRANSACTION
11 AUTHORIZED BY THIS SECTION MAY UPDATE THE INFORMATION PROVIDED TO THE
12 DEPARTMENT AT ANY TIME.

13 D. FOR ANY SALE, LEASE OR CONVEYANCE PRESCRIBED BY SUBSECTION A OF
14 THIS SECTION, THE BUYER OR LESSEE SHALL RECEIVE THE RIGHT TO RECEIVE OR
15 WITHDRAW SIXTY-FIVE PERCENT OF THE TOTAL AMOUNT OF GROUNDWATER FORGONE BY
16 A SELLER OR LESSOR RESULTING FROM THE TRANSACTION.

17 E. FOR ANY SALE AUTHORIZED BY THIS SECTION, THIRTY-FIVE PERCENT OF
18 THE ORIGINAL GRANDFATHERED RIGHT CONVEYED TO A SELLER MAY NOT BE PUMPED,
19 OTHERWISE USED OR FURTHER CONVEYED.

20 F. FOR ANY LEASE AUTHORIZED BY THIS SECTION, THIRTY-FIVE PERCENT OF
21 THE ORIGINAL GRANDFATHERED RIGHT CONVEYED TO A SELLER MAY NOT BE PUMPED,
22 OTHERWISE USED OR FURTHER CONVEYED DURING THE DURATION OF THE LEASE.

23 G. IN CALCULATING THE AMOUNT OF GROUNDWATER ITSELF OR RIGHT TO PUMP
24 GROUNDWATER THAT A SELLER OR LESSOR MAY FORGO PURSUANT TO THIS SECTION,
25 THE DEPARTMENT SHALL USE THE AVERAGE AMOUNT OF WATER PUMPED PURSUANT TO
26 THE GRANDFATHERED RIGHT OVER THE PRECEDING FIVE YEARS.

27 H. ANY GROUNDWATER OR RIGHT TO GROUNDWATER ITSELF CONVEYED PURSUANT
28 TO SUBSECTION A OF THIS SECTION AND THE USE OF SUCH GROUNDWATER SHALL BE:

29 1. EXEMPT FROM ANY REPLENISHMENT OBLIGATION ON THE PART OF THE
30 BUYER OR LESSEE, INCLUDING A REPLENISHMENT TAX.

31 2. EXCLUDED FROM A CITY'S OR TOWN'S GROUNDWATER USE FOR THE
32 PURPOSES OF DETERMINING THE CITY'S OR TOWN'S GROUNDWATER ALLOWANCE.

33 3. DEEMED CONSISTENT WITH THE MANAGEMENT GOAL FOR THE ACTIVE
34 MANAGEMENT AREA.

35 4. FOR THE PURPOSE OF OBTAINING A CERTIFICATE OF ASSURED WATER
36 SUPPLY, DEEMED PHYSICALLY AVAILABLE TO THE BUYER OR TO THE LESSEE FOR THE
37 DURATION OF THE LEASE.

38 I. GROUNDWATER THAT IS RECEIVED OR WITHDRAWN PURSUANT TO SUBSECTION
39 A OF THIS SECTION MAY BE APPLIED TOWARD OBTAINING A CERTIFICATE OF ASSURED
40 WATER SUPPLY.

41 J. GROUNDWATER THAT IS FORGONE BY A SELLER AS PRESCRIBED BY
42 SUBSECTION G OF THIS SECTION SHALL BE TREATED BY THE DEPARTMENT AS
43 FOLLOWS:

1 1. FIFTY PERCENT SHALL BE ALLOCATED TO THE COMMON AQUIFER AND
2 TREATED AS INFLOW FOR THE PURPOSES OF ANY WATER MODELING COMPLETED BY THE
3 DEPARTMENT.

4 2. FIFTY PERCENT SHALL BE TREATED AS INFLOW FOR THE PURPOSES OF ANY
5 WATER MODELING COMPLETED BY THE DEPARTMENT, SEPARATELY ACCOUNTED FOR AND
6 RESERVED FOR THE EXCLUSIVE BENEFIT OF AN APPLICATION FOR A CERTIFICATE OF
7 ASSURED WATER SUPPLY.

8 3. FOR THE PURPOSES OF ANY WATER OR POTENTIAL WATER USE FOR THE
9 SELLER, ALL GROUNDWATER SHALL BE DEEMED PERMANENTLY RETIRED, RELINQUISHED
10 OR EXTINGUISHED FOR THE PURPOSES OF THE SELLER.

11 K. GROUNDWATER THAT IS FORGONE BY A LESSOR AS PRESCRIBED BY
12 SUBSECTION G OF THIS SECTION SHALL:

13 1. BE EXCLUDED FROM ANY WATER MODELING USED TO EVALUATE AN
14 APPLICATION FOR A CERTIFICATE OR DESIGNATION OF ASSURED WATER SUPPLY,
15 UNLESS THE LEASE IS FOR A PERIOD OF ONE HUNDRED YEARS OR LONGER IN WHICH
16 CASE FIFTY PERCENT SHALL BE TREATED AS INFLOW FOR THE PURPOSES OF ANY
17 WATER MODELING COMPLETED BY THE DEPARTMENT, SEPARATELY ACCOUNTED FOR AND
18 RESERVED FOR THE EXCLUSIVE BENEFIT OF AN APPLICATION FOR A CERTIFICATE OF
19 ASSURED WATER SUPPLY.

20 2. REVERT BACK TO THE LESSOR AT THE END OF THE LEASE TERM.

21 L. THIS SECTION DOES NOT APPLY TO WATER IN THE SUBFLOW ZONE OF A
22 RIVER OR STREAM OR WATER IN THE CONE OF DEPRESSION OF A WELL THAT MAY BE
23 PUMPING SURFACE WATER AND SHALL NOT BE CONSTRUED TO MODIFY EXISTING LAW IN
24 ANY WAY WITH RESPECT TO DETERMINING WHICH WATER IS SURFACE WATER AND WHICH
25 WATER IS GROUNDWATER.

26 M. THIS SECTION DOES NOT AUTHORIZE THE DEPARTMENT OR ANY POLITICAL
27 SUBDIVISION OF THIS STATE TO:

28 1. CURTAIL THE SCOPE OF EXISTING GRANDFATHERED RIGHTS UNLESS THE
29 RIGHTS ARE SOLD, LEASED OR OTHERWISE CONVEYED PURSUANT TO THIS SECTION.

30 2. IMPOSE ADDITIONAL REQUIREMENTS OR RESTRICTIONS ON THE USE OR
31 EXERCISE OF TYPE 2 NON-IRRIGATION GRANDFATHERED RIGHTS.

32 N. A SELLOR OR LEASOR THAT SELLS, LEASES OR OTHERWISE CONVEYS THE
33 RIGHT TO PUMP GROUNDWATER OR GROUNDWATER ITSELF PURSUANT TO THIS SECTION
34 SHALL DISCLOSE ANY TRANSACTION COSTS RELATED TO THE SALE, LEASE OR
35 CONVEYANCE IN THE CONTRACT FOR ANY SUCH SALE, LEASE OR CONVEYANCE.

36 45-652. Department of water resources; online water exchange

37 THE DEPARTMENT SHALL ESTABLISH, MAINTAIN AND HOST ON ITS WEBSITE AN
38 ONLINE WATER EXCHANGE FOR GROUNDWATER AND GROUNDWATER RIGHTS THAT ARE
39 TRANSFERRED, SOLD, LEASED OR OTHERWISE CONVEYED AS PRESCRIBED BY SECTION
40 45-651. THE ONLINE WATER EXCHANGE SHALL BE PUBLICLY ACCESSIBLE AND SHALL
41 INCLUDE FOR EACH TRANSACTION THE INFORMATION SUBMITTED IN THE NOTICES
42 PRESCRIBED BY SECTION 45-651.