

REFERENCE TITLE: historical water use; subsequent AMA

State of Arizona
House of Representatives
Fifty-seventh Legislature
First Regular Session
2025

HB 2203

Introduced by
Representative Griffin

AN ACT

AMENDING SECTIONS 45-402, 45-416, 45-452, 45-463, 45-464 AND 45-476,
ARIZONA REVISED STATUTES; 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 45-402, Arizona Revised Statutes, is amended to
3 read:

4 45-402. Definitions

5 In this chapter, unless the context otherwise requires:

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

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13 stored water, withdrawn from a well.

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

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

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

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

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

26 (a) With respect to an initial active management area, June 12,
27 1980.

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

35 8. "Exempt well" means a well that has a pump with a maximum
36 capacity of not more than thirty-five gallons per minute and that is used
37 to withdraw groundwater pursuant to section 45-454.

38 9. "Expanded animal industry use" means increased water use by an
39 animal industrial enterprise on the land in use by the enterprise on June
40 12, 1980 or on immediately adjoining land, excluding irrigation uses.

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

1 11. "Farm unit" means:

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

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

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

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

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

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

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

30 17. "Integrated farming operation" means:

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

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

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

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

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

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

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

9 23. "Irrigation use" means:

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

16 (b) With respect to the Santa Cruz active management area, the use
17 of water, other than stored water, withdrawn from a well on two or more
18 acres of land to produce plants or parts of plants for sale or human
19 consumption, or for use as feed for livestock, range livestock or poultry,
20 as ~~such~~ THOSE terms are defined in section 3-1201.

21 24. "Irrigation water duty" or "water duty" means the amount of
22 water in acre-feet per acre that is reasonable to apply to irrigated land
23 in a farm unit during the accounting period, as determined by the director
24 pursuant to sections 45-564 through 45-568 or as prescribed in section
25 45-483.

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

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

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

33 28. "Non-irrigation use" means:

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

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

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

1 30. "Private water company" means:

2 (a) With respect to areas outside an active management area and
3 with respect to an active management area other than the Santa Cruz active
4 management area, any entity that distributes or sells groundwater, except
5 a political subdivision or an entity that is established pursuant to title
6 48 and that is not regulated as a public service corporation by the
7 Arizona corporation commission under a certificate of public convenience
8 and necessity. A city or town is not a private water company.

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

16 31. "Service area" means:

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

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

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

25 (b) With respect to a private water company, the area of land of
26 the private water company actually being served water, for a
27 non-irrigation use, by the private water company plus additions to such
28 area that contain an operating distribution system owned by the private
29 water company primarily for the delivery of water for a non-irrigation
30 use.

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

32 (a) With respect to an irrigation district that was engaged in the
33 withdrawal, delivery and distribution of groundwater as of the date of the
34 designation of the active management area, the area of land within the
35 boundaries of the irrigation district actually being served water by the
36 irrigation district at any time during the ~~five~~ TEN years preceding the
37 date of the designation of the active management area plus any areas as of
38 the date of the designation of the active management area within the
39 boundaries of the irrigation district that contain an operating system of
40 canals, flumes, ditches and other works owned or operated by the
41 irrigation district. The service area may be modified pursuant to section
42 45-494.01.

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

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

6 (ii) Any areas of land that contain an operating system of canals,
7 flumes, ditches and other works owned or operated by the irrigation
8 district for the withdrawal, delivery and distribution of water, except
9 that additional areas containing an operating system of canals, flumes,
10 ditches and other works owned or operated by the irrigation district may
11 not be added after December 31, 2027.

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

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

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

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

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

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

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

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

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

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

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

Sec. 2. Section 45-416, Arizona Revised Statutes, is amended to read:

45-416. Limitation on number of irrigated acres

A. If the director initiates the procedure for designating a subsequent active management area or the board of supervisors calls an election to establish an active management area, an irrigation user may irrigate within the proposed active management area only acres of land ~~which~~ THAT were legally irrigated at any time during the ~~five~~ TEN years preceding the date of the notice of the initiation of designation procedures or the call for the election.

B. The limitation on the acres ~~which~~ THAT may be irrigated shall continue in effect until the director makes a final determination pursuant to section 45-414 or the final results of an election to establish an active management area pursuant to section 45-415 are certified by the board of supervisors of the county or counties in which the proposed subsequent active management area is located.

Sec. 3. Section 45-452, Arizona Revised Statutes, is amended to read:

45-452. No new irrigated acreage in active management areas; central Arizona project water; exemption

A. In an initial active management area, except as provided in subsections B, H, I and J of this section and sections 45-172, 45-465.01 and 45-465.02, only acres of land ~~which~~ THAT were legally irrigated at any time from January 1, 1975 through January 1, 1980, ~~which~~ THAT are capable of being irrigated, ~~which~~ THAT have not been retired from irrigation for a non-irrigation use pursuant to section 45-463 or 45-469 and for which the irrigation grandfathered right has not been conveyed for a non-irrigation use, ~~may~~ be irrigated with any groundwater, effluent, diffused water on the surface or surface water, except that this does not prohibit irrigation with surface water used pursuant to decreed or appropriative rights established before June 12, 1980. In an initial active management area, land ~~which~~ THAT was not irrigated at any time from January 1, 1975 through January 1, 1980 is deemed to have been in irrigation if the director finds that either of the following applies:

1. In areas of an initial active management area not designated as critical groundwater areas under prior statutory law ~~prior to~~ BEFORE the date of the designation of the active management area, land is deemed to have been in irrigation if substantial capital investment has been made for the subjugation of such land for an irrigation use including on-site irrigation distribution facilities and a well or wells the drilling and construction of which were substantially commenced ~~prior to~~ BEFORE the date of the designation of the active management area.

1 2. In areas of an initial active management area ~~which~~ THAT were
2 designated as critical groundwater areas under prior statutory law, land
3 is deemed to have been in irrigation if substantial capital investment has
4 been made in the twelve months before June 12, 1980 for the improvement of
5 the land and on-site irrigation distribution facilities, including the
6 drilling of wells, for an irrigation use. This paragraph does not allow
7 irrigation of land ~~which~~ THAT could not have been legally irrigated under
8 prior statutory law.

9 B. In an initial active management area, a person who owns acres of
10 land ~~which~~ THAT may be irrigated pursuant to subsection A of this section
11 may apply to the director to permanently retire all or a portion of such
12 acres from irrigation and to irrigate conjunctively with central Arizona
13 project water the same number of substitute acres. The director may
14 approve the substitution of acres if the director determines that all of
15 the following exist:

16 1. The substitute acres were legally irrigated during the period of
17 September 30, 1958 to September 30, 1968, or such other period as the
18 United States secretary of the interior may designate.

19 2. The acres to be retired from irrigation and the substitute acres
20 are located outside of the exterior boundaries of the service area of a
21 city, town or private water company and such acres are located within the
22 same irrigation district and the same ~~sub-basin~~ SUBBASIN.

23 3. The substitution of acres is necessary to enable the irrigation
24 district within which the acres are located to more efficiently deliver
25 central Arizona project water.

26 4. Central Arizona project water available to the irrigation
27 district within which the acres are located will be adequate to supply the
28 substitute acres.

29 5. The substitution of acres will benefit the management of the
30 active management area in which the acres are located.

31 C. Any acres permanently retired from irrigation pursuant to
32 subsection B of this section relinquish their irrigation grandfathered
33 rights, and such rights are deemed to be appurtenant to the substitute
34 acres. Groundwater withdrawn or received for the irrigation of the
35 substitute acres pursuant to an irrigation grandfathered right shall be
36 reduced by the amount of central Arizona project water received for such
37 acres.

38 D. The service area of the irrigation district in which the acres
39 are located shall be modified to permanently delete the acres permanently
40 retired from irrigation and include the substitute acres.

41 E. If a person retires land from irrigation pursuant to subsection
42 B of this section, groundwater shall not be withdrawn from such retired
43 land for any purpose unless pursuant to a groundwater withdrawal permit or
44 unless withdrawn by a city, town or private water company within the
45 service area of such city, town or private water company.

1 F. The director may reverse the substitution of irrigated acres as
2 provided by subsections B through E of this section under the following
3 conditions and procedures:

4 1. Title to the retired acres and substitute acres has reverted
5 involuntarily, or voluntarily in lieu of foreclosure or forfeiture, to a
6 previous owner or owners of the retired and substitute acres.

7 2. The current owner of the retired acres must apply to the
8 director in writing stating:

9 (a) The history of the original substitution of acres under
10 subsections B through E of this section.

11 (b) The circumstances regarding the reversion of title to the
12 current owner or owners.

13 (c) Why reversal of the substitution of acres is necessary.

14 3. The director must find that reversing the substitution of acres:

15 (a) Will benefit the management of the active management area.

16 (b) Is necessary to prevent unreasonable hardship to the current
17 owner of the retired acres.

18 (c) Will not cause unreasonable hardship to the current owner of
19 the substitute acres, if owned separately from the retired acres.

20 4. If the director decides to reverse the substitution of acres:

21 (a) The originally retired irrigation acres regain their original
22 irrigation grandfathered rights, but groundwater withdrawn or received for
23 the irrigation of those acres pursuant to an irrigation grandfathered
24 right shall be reduced by any amount of central Arizona project water
25 received for such acres.

26 (b) The substitute acres relinquish all irrigation grandfathered
27 rights that were transferred to them under the original substitution of
28 acres.

29 (c) The service area of the irrigation district in which the acres
30 are located shall be modified to delete the substitute acres and include
31 the originally retired irrigation acres.

32 (d) Groundwater may not thereafter be withdrawn from the substitute
33 acres for any purpose unless pursuant to a groundwater withdrawal permit
34 or unless withdrawn by a city, town or private water company within its
35 service area.

36 G. In a subsequent active management area, except as provided in
37 subsections H, I and J of this section or section 45-172, only acres of
38 land ~~which~~ **THAT** were legally irrigated at any time during the ~~five~~ **TEN**
39 years preceding the date of the notice of the initiation of designation
40 procedures or the call for the election, ~~which~~ **THAT** are capable of being
41 irrigated, ~~which~~ **THAT** have not been retired from irrigation for a
42 non-irrigation use pursuant to section 45-463 or 45-469 and for which the
43 irrigation grandfathered right has not been conveyed for a non-irrigation
44 use, ~~may~~ **may** be irrigated with groundwater, effluent, diffused water on the
45 surface or surface water, except that this does not prohibit irrigation

1 with surface water used pursuant to decreed or appropriative rights
2 established before the date of the notice or the call. In a subsequent
3 active management area, land is deemed to have been in irrigation if the
4 director finds that either of the following applies:

5 1. In areas of a subsequent active management area ~~which~~ THAT were
6 not irrigation non-expansion areas, land is deemed to have been in
7 irrigation if substantial capital investment has been made for the
8 subjugation of such land for an irrigation use including on-site
9 irrigation distribution facilities and a well or wells the drilling and
10 construction of which were substantially commenced before the date of the
11 notice of the initiation of designation procedures or the call for the
12 election.

13 2. In areas of a subsequent active management area ~~which~~ THAT were
14 irrigation non-expansion areas, land is deemed to have been in irrigation
15 if the director finds that substantial capital investment has been made in
16 the twelve months before the date of the notice of the initiation of
17 designation procedures or the call for the election, for the improvement
18 of the land and on-site irrigation distribution facilities, including the
19 drilling of wells, for an irrigation use. This paragraph does not allow
20 irrigation of land ~~which~~ THAT could not have been legally irrigated under
21 section 45-437.

22 H. In an active management area, a state university engaged in the
23 teaching and study of and experimentation in the science of agriculture
24 may irrigate not more than three hundred twenty acres of land for such
25 purposes with not more than five acre-feet of groundwater per acre per
26 year. Water produced from any well pursuant to this subsection shall not
27 be leased, sold or transported off the irrigated land operated by the
28 state university. The right to withdraw and use groundwater pursuant to
29 this subsection does not require a withdrawal permit, is not a
30 grandfathered right, shall not give rise to a grandfathered right and may
31 not be conveyed to any other user.

32 I. In an active management area, a correctional facility under the
33 jurisdiction of the state department of corrections may irrigate with
34 groundwater, effluent, diffused water on the surface or surface water up
35 to a total of ten acres of land that otherwise may not be irrigated
36 pursuant to subsection A or G of this section if the irrigation is for the
37 purpose of producing plants or parts of plants for consumption by inmates
38 at the correctional facility as part of a prisoner work program and if the
39 correctional facility notifies the director of water resources in writing
40 of the location of the acres of land to be irrigated ~~prior to~~ BEFORE their
41 irrigation. The actual number of acres of land that a correctional
42 facility may irrigate pursuant to this subsection shall be calculated by
43 subtracting the number of acres of land the correctional facility may
44 already irrigate under subsection A or G of this section from ten. The
45 amount of water that a correctional facility may use during a year to

1 irrigate acres of land pursuant to this subsection shall not exceed an
2 amount calculated by multiplying the number of acres of land that are
3 actually irrigated by the correctional facility during the year pursuant
4 to this subsection, ~~by~~ by four and one-half acre-feet of water. The right
5 to withdraw and use groundwater pursuant to this subsection does not
6 require an irrigation grandfathered right, is not a grandfathered right,
7 shall not give rise to a grandfathered right, ~~and~~ and may not be conveyed to
8 any other user.

9 J. During the second management period, acres of land in an active
10 management area ~~which~~ ~~THAT~~ have been retired from irrigation for a
11 non-irrigation use pursuant to section 45-463 or 45-469 or for which the
12 irrigation grandfathered right has been conveyed for a non-irrigation use
13 pursuant to section 45-472 may be irrigated with effluent, other than
14 effluent recovered pursuant to a recovery well permit issued under chapter
15 3.1 of this title or effluent given or received pursuant to a water
16 exchange under chapter 4 of this title, and shall retain its appurtenant
17 type 1 non-irrigation grandfathered right where the following conditions
18 are met:

19 1. The land to be irrigated lies within the boundaries of an
20 incorporated city or town.

21 2. The governing body or manager of the city or town has consented
22 in writing to the irrigation of the land with effluent.

23 3. The effluent proposed for irrigation of the land cannot be
24 reasonably beneficially used otherwise.

25 4. The owner of the land gives written notice to the director of
26 intention to irrigate the land with effluent and receives written approval
27 from the director before commencing irrigation. The notice shall set
28 forth the legal description of the land to be irrigated, the certificate
29 number of the type 1 non-irrigation grandfathered right appurtenant to the
30 land, the source of effluent and the reasons the effluent cannot be
31 reasonably beneficially used otherwise, ~~and~~ and shall be accompanied by a
32 copy of the written consent of the city or town in which the land to be
33 irrigated is located.

34 K. A person who may irrigate with effluent land to which a type 1
35 non-irrigation right is appurtenant under subsection J of this section may
36 relinquish the right to irrigate all or a portion of the land by giving
37 the director written notice that the person relinquishes the right. The
38 notice shall include a legal description of the acres to be relinquished.
39 The relinquishment is effective ~~upon~~ ~~ON~~ receipt of the notice by the
40 director.

41 L. If a person who may irrigate with effluent land to which a type
42 1 non-irrigation grandfathered right is appurtenant under subsection J of
43 this section conveys all or a portion of the land to a successor owner,
44 the successor owner shall not irrigate the land ~~prior to~~ ~~BEFORE~~ providing
45 written notification to the director of the successor owner's intention to

1 irrigate the land and receiving approval from the director pursuant to
2 subsection J of this section.

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

8 Sec. 4. Section 45-463, Arizona Revised Statutes, is amended to
9 read:

10 45-463. Type 1 non-irrigation grandfathered right associated
11 with retired irrigated land; appurtenancy;
12 ownership

13 A. In an initial active management area, a person who owns land
14 ~~which~~ THAT was legally entitled to be irrigated with groundwater and who
15 retired such land from irrigation after January 1, 1965 but ~~prior to~~
16 BEFORE the date of the designation of the active management area in
17 anticipation of a non-irrigation use has the right to withdraw from or
18 receive for such land three acre-feet of groundwater per acre per year
19 ~~upon~~ ON showing that:

20 1. The land has been held under the same ownership since it was
21 retired.

22 2. A development plan for the proposed non-irrigation use existed
23 at the time the land was retired.

24 B. In a subsequent active management area, a person who owns land
25 ~~which~~ THAT was legally entitled to be irrigated with groundwater and
26 retires such land from irrigation ~~prior to~~ BEFORE the date of the
27 designation of the active management area in anticipation of a
28 non-irrigation use has the right to withdraw from or receive for such land
29 the lesser of three acre-feet of groundwater per acre per year or the
30 average annual amount of groundwater ~~which~~ THAT was used per acre during
31 the ~~five~~ TEN years preceding the time the land was retired ~~upon~~ ON
32 showing that:

33 1. The land has been held under the same ownership since it was
34 retired.

35 2. A development plan for the proposed non-irrigation use existed
36 at the time the land was retired and is filed with the director within
37 ninety days after the active management area is designated.

38 C. The development plan requirements of this section are deemed
39 fulfilled if the land retired from irrigation has been described in an
40 application for a certificate of exemption or if the land retired from
41 irrigation is owned in conjunction with non-irrigation uses existing or
42 for which substantial capital commitments have been incurred for the non-
43 irrigation development of such land as of the date of the designation of
44 the active management area.

1 D. The right to withdraw or receive groundwater pursuant to this
2 section is a non-irrigation grandfathered right associated with retired
3 irrigated land, ~~or~~ or a type 1 non-irrigation grandfathered right.

4 E. A type 1 non-irrigation grandfathered right is appurtenant to
5 the acre of retired irrigated land associated with the right, is owned by
6 the owner of the land to which the right is appurtenant and may be leased
7 with the land.

8 F. At the request of a city or town in the Tucson active management
9 area that holds a type 1 non-irrigation grandfathered right under
10 subsection A of this section, the director, in determining whether to
11 designate or redesignate the city or town as having an assured water
12 supply pursuant to section 45-576, shall include four and one-half
13 acre-feet of groundwater for each acre of retired irrigated land to which
14 the right is appurtenant, multiplied by the number of years between the
15 year of retirement and the year of the request, minus the quantity of
16 groundwater withdrawn from the land between June 12, 1980 and the year of
17 the request, except that:

18 1. No groundwater may be included for any acre of retired irrigated
19 land for any year after the land is developed for any municipal or
20 industrial use.

21 2. The amount of groundwater that is included under this subsection
22 shall not exceed four and one-half acre-feet for each acre of retired
23 irrigated land to which the right is appurtenant multiplied by the number
24 of years between the year of retirement and December 31, 2025 minus the
25 quantity of groundwater withdrawn from the land between June 12, 1980 and
26 December 31, 2025.

27 3. The net amount of groundwater included under this subsection
28 shall not exceed two million acre-feet.

29 4. The city or town, before making the request of the director,
30 shall extinguish any irrigation grandfathered rights or type 1
31 non-irrigation grandfathered rights held by the city or town and
32 appurtenant to land acquired or contracted for by the city or town after
33 June 12, 1980 in the same ~~sub-basin~~ SUBBASIN.

34 G. In determining whether to designate a city or town as having an
35 assured water supply pursuant to section 45-576, the director shall not
36 consider the exercise of the right to withdraw groundwater under
37 subsection F of this section to be the withdrawal of groundwater available
38 from natural or artificial groundwater recharge.

39 Sec. 5. Section 45-464, Arizona Revised Statutes, is amended to
40 read:

41 45-464. Type 2 non-irrigation grandfathered right not
42 associated with retired irrigated land;
43 determination of amount; ownership; definition

44 A. In an active management area, a person who owns land from which
45 groundwater was being legally withdrawn and used for a non-irrigation

1 purpose as of the date of the designation of the active management area
2 has the right to withdraw annually:

3 1. If the person holds a certificate of exemption, the greater of:

4 (a) The amount of groundwater established in proceedings on the
5 application for certificate of exemption, subject to any modification as a
6 result of a finding on appeal of a factual mistake by the state land
7 department or Arizona water commission in computing the amount of the
8 authorized withdrawal, less the amount of any right obtained by the person
9 pursuant to section 45-463.

10 (b) The maximum amount of groundwater legally withdrawn from such
11 land and used by the person in any one of the ~~five~~ TEN years preceding the
12 date of the designation of the active management area, less the amount of
13 any right obtained by the person pursuant to section 45-463.

14 2. If the person does not hold a certificate of exemption, the
15 maximum amount of groundwater legally withdrawn from such land and used by
16 the person withdrawing the groundwater in any one of the ~~five~~ TEN years
17 preceding the date of the designation of the active management area, less
18 the amount of any right ~~which~~ ~~AND THAT~~ ~~has not been~~ ~~subtracted by the person withdrawing the groundwater in calculating the~~
19 amount of another right pursuant to this section.

22 B. If the calculation in subsection A of this section results in an
23 amount greater than zero, that amount is a grandfathered right in addition
24 to any right obtained pursuant to section 45-463.

25 C. For the purposes of this section, "person" includes:

26 1. A city, town or private water company ~~which~~ ~~THAT~~ owns land
27 outside of the service area of such city, town or private water company
28 from which groundwater was being legally withdrawn for a non-irrigation
29 use as of the date of the designation of the active management area.

30 2. A city, town or private water company withdrawing groundwater
31 from within its service area pursuant to a certificate of exemption.

32 3. Any other non-irrigation user.

33 D. If a person has been using groundwater for less than one year
34 during the twelve months immediately preceding the date of the designation
35 of the active management area, the amount of the grandfathered right
36 pursuant to this section is the annual amount determined by the director
37 to be reasonable for a full year to meet the requirements for a facility
38 owned by such person in existence as of the date of the designation of the
39 active management area.

40 E. If a person has received a certificate of environmental
41 compatibility pursuant to title 40, chapter 2, article 6.2 for the
42 construction of an electrical generating facility within a subsequent
43 active management area for which expenditures or financial commitments for
44 land acquisition, water development, materials, construction or
45 engineering in excess of ~~five hundred thousand dollars~~ \$500,000 have been

made before the date of the notice of the initiation of designation procedures or the call for the election for the area, the amount of the grandfathered right pursuant to this section is the annual amount determined by the director to be reasonable to meet the operational requirements for the facility for a full year.

F. The right to withdraw groundwater pursuant to this section is a non-irrigation grandfathered right not associated with retired irrigated land, or a type 2 non-irrigation grandfathered right.

G. A type 2 non-irrigation grandfathered right may be leased. Except as provided in subsection H of this section, the owner or lessee of a type 2 non-irrigation grandfathered right may withdraw groundwater pursuant to the right only from a location within the same active management area in which the certificate of grandfathered right is issued.

H. Beginning July 1, 1994, the holder of a type 2 non-irrigation grandfathered right issued in the Tucson active management area ~~prior to~~ **BEFORE** July 1, 1994, may withdraw groundwater pursuant to the right only from a location within the same active management area in which the well or wells listed on the certificate of grandfathered right on July 1, 1994, are located. If no well is listed on the certificate of grandfathered right on July 1, 1994, the holder of the right may withdraw groundwater pursuant to the right only from a location within the same active management area in which the land from which the originating withdrawals were made is located. For **THE** purposes of this subsection, ~~the term~~ "originating withdrawals" means the withdrawals of groundwater on which the issuance of a type 2 non-irrigation grandfathered right was based.

I. If the user of a type 2 non-irrigation grandfathered right is different from the owner of the right, either the owner, or the user of the right on behalf of the owner, may apply for a certificate of grandfathered right pursuant to section 45-476.

Sec. 6. Section 45-476, Arizona Revised Statutes, is amended to read:

45-476. Application for certificate of grandfathered right

A. Except as provided in section 45-476.01, a person claiming the right to withdraw or receive and use groundwater pursuant to a grandfathered right shall file an application for a certificate of grandfathered right with the department not later than fifteen months after the date of the designation of the active management area on a form provided by the department.

B. The application for a certificate of grandfathered right not based ~~upon~~ **ON** prior proceedings on a certificate of exemption shall include the following:

1. The name and mailing address of the applicant.
2. The name of the active management area within which the withdrawal of groundwater pursuant to the claimed grandfathered right is being or has been made.

1 3. If the application is for a type 1 non-irrigation grandfathered
2 right:

3 (a) The legal description and a map of the retired irrigated land
4 in respect of which the right is claimed.

5 (b) The date when the irrigated land was retired.

6 (c) Such evidence as the director shall require that the retired
7 irrigated land has been held under the same ownership since it was retired
8 and that a development plan for the proposed non-irrigation use existed at
9 the time the land was retired.

10 (d) If in a subsequent active management area, the amount of
11 groundwater used per acre for the retired irrigated land each year during
12 the ~~five~~ TEN years preceding the time the land was retired.

13 (e) Whether the well from which the water will be withdrawn is
14 located in a groundwater replenishment district.

15 4. If the application is for a type 2 non-irrigation grandfathered
16 right:

17 (a) The maximum amount of groundwater legally withdrawn from land
18 owned by the applicant and used in any one year during the ~~five~~ TEN years
19 preceding the date of the designation of the active management area.

20 (b) If the person withdrawing groundwater from the land owned by
21 the applicant has made an application for a type 1 non-irrigation
22 grandfathered right, a copy of the application.

23 5. If the application is for an irrigation grandfathered right:

24 (a) The legal description and a map of all land owned by the
25 applicant ~~which~~ THAT was legally irrigated at any time during the five
26 years preceding January 1, 1980 for initial active management areas or the
27 date of the designation of the active management area for subsequent
28 active management areas and the highest number of acres legally irrigated
29 with groundwater at one time in any one year during the five-year period.

30 (b) The type of crops grown on such land and the cropping patterns
31 used during the five-year period.

32 (c) The irrigation methods and devices currently being used in the
33 irrigation of such land.

34 6. The location of each well from which groundwater is being or has
35 been withdrawn by the applicant to irrigate such land.

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

39 8. Any other information the director may require.

40 C. A person or ~~his~~ THE PERSON'S successor claiming the right to use
41 groundwater pursuant to a grandfathered right, described in whole or in
42 part by a certificate of exemption, shall file an application for a
43 certificate of grandfathered right as provided in subsection D of this
44 section and shall automatically be entitled to a certificate or
45 certificates of grandfathered right for the portion of the grandfathered

1 right claimed which is evidenced by the certificate of exemption or
 2 established by the proceedings on the certificate of exemption. Notice of
 3 the application is not required and hearings shall not be held. If the
 4 applicant claims grandfathered rights in addition to the amount of use
 5 described in the certificate of exemption, application for such additional
 6 amount shall be made pursuant to subsection B of this section, and such
 7 application is subject to the notice, objection and hearing provisions
 8 applicable to applications made pursuant to that subsection.

9 D. The application for a certificate of grandfathered right based
 10 ~~upon~~ ON prior proceedings ~~upon~~ ON an application for a certificate of
 11 exemption shall include the following:

- 12 1. The name and mailing address of the applicant.
- 13 2. The name of the active management area within which the
 14 withdrawal of groundwater pursuant to the claimed grandfathered right is
 15 being or has been made.
- 16 3. The total amount of groundwater to be withdrawn annually under
 17 the certificate of exemption.
- 18 4. The number of retired irrigated acres described in the
 19 application for a certificate of exemption.
- 20 5. Such evidence as the director shall require that the retired
 21 irrigated land has been held under the same ownership since it was
 22 retired.
- 23 6. The number of the certificate of exemption and a copy of the
 24 certificate of exemption.
- 25 7. The sworn statement that the information contained in the
 26 application is true and correct to the best knowledge and belief of the
 27 applicant.
- 28 8. Any other information the director may require.

29 Sec. 7. Retroactivity

30 This act applies retroactively to from and after August 29, 2022.