



Bill Number: H.B. 2203

Dunn Floor Amendment

Reference to: House engrossed bill

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FLOOR AMENDMENT EXPLANATION

1. Deems that a person who owned land in an active management area (AMA) that was legally irrigated in whole or in part with groundwater at any time during the 10 years preceding the date of the notice of the initiation of designation procedures or the call for the election for subsequent AMAs, that is capable of being irrigated and which has not been retired from irrigation for a non-irrigation use, has the right to use groundwater for irrigation of such land.
2. Modifies the method to calculate the maximum amount of groundwater that may be used to irrigate land within a subsequent AMA by determining that:
 - a) the water duty acres used in the calculation are the highest number of acres in the farm, taking land rotation into account, that were legally irrigated during the 10 years preceding the date of the notice of initiation of designation procedures or the call for the election for subsequent AMAs; and
 - b) the irrigation acres used in the calculation are the acres in the farm that were legally irrigated at any time during the 10 years preceding the date of the notice of initiation of designation procedures or the call for the election for subsequent AMAs.
3. Makes technical changes.

DUNN FLOOR AMENDMENT
SENATE AMENDMENTS TO H.B. 2203
(Reference to House engrossed bill)

Amendment instruction key:

[GREEN UNDERLINING IN BRACKETS] indicates text added to statute or previously enacted session law.

[Green underlining in brackets] indicates text added to new session law or text restoring existing law.

[~~GREEN STRIKEOUT IN BRACKETS~~] indicates new text removed from statute or previously enacted session law.

[~~Green strikeout in brackets~~] indicates text removed from existing statute, previously enacted session law or new session law.

<<Green carets>> indicate a section added to the bill.

<<~~Green strikeout in carets~~>> indicates a section removed from the bill.

1 The bill as proposed to be amended is reprinted as follows:

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

1 becomes effective as provided in section 45-414 or the date on which the
2 final results of an election approving the establishment of the active
3 management area pursuant to section 45-415 are certified by the board of
4 supervisors of the county or counties in which the active management area
5 is located.

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

9 9. "Expanded animal industry use" means increased water use by an
10 animal industrial enterprise on the land in use by the enterprise on June
11 12, 1980 or on immediately adjoining land, excluding irrigation uses.

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

16 11. "Farm unit" means:

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

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

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

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

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

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

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

45 17. "Integrated farming operation" means:

46 (a) With respect to land within an irrigation non-expansion area,
47 more than ten acres of land that are contiguous or in close proximity,

1 that may be irrigated pursuant to section 45-437, that are not under the
2 same ownership and that are farmed as a single farming operation.

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

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

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

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

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

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

22 23. "Irrigation use" means:

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

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

34 24. "Irrigation water duty" or "water duty" means the amount of
35 water in acre-feet per acre that is reasonable to apply to irrigated land
36 in a farm unit during the accounting period, as determined by the director
37 pursuant to sections 45-564 through 45-568 or as prescribed in section
38 45-483.

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

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

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

46 28. "Non-irrigation use" means:

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

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

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

13 30. "Private water company" means:

14 (a) With respect to areas outside an active management area and
15 with respect to an active management area other than the Santa Cruz active
16 management area, any entity that distributes or sells groundwater, except
17 a political subdivision or an entity that is established pursuant to title
18 48 and that is not regulated as a public service corporation by the
19 Arizona corporation commission under a certificate of public convenience
20 and necessity. A city or town is not a private water company.

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

28 31. "Service area" means:

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

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

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

37 (b) With respect to a private water company, the area of land of
38 the private water company actually being served water, for a
39 non-irrigation use, by the private water company plus additions to such
40 area that contain an operating distribution system owned by the private
41 water company primarily for the delivery of water for a non-irrigation
42 use.

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

44 (a) With respect to an irrigation district that was engaged in the
45 withdrawal, delivery and distribution of groundwater as of the date of the
46 designation of the active management area, the area of land within the
47 boundaries of the irrigation district actually being served water by the

1 irrigation district at any time during the ~~five~~ TEN years preceding the
2 date of the designation of the active management area plus any areas as of
3 the date of the designation of the active management area within the
4 boundaries of the irrigation district that contain an operating system of
5 canals, flumes, ditches and other works owned or operated by the
6 irrigation district. The service area may be modified pursuant to section
7 45-494.01.

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

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

16 (ii) Any areas of land that contain an operating system of canals,
17 flumes, ditches and other works owned or operated by the irrigation
18 district for the withdrawal, delivery and distribution of water, except
19 that additional areas containing an operating system of canals, flumes,
20 ditches and other works owned or operated by the irrigation district may
21 not be added after December 31, 2027.

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

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

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

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

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

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

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

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

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

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

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

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

13 45-416. Limitation on number of irrigated acres

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

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

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

29 45-452. No new irrigated acreage in active management areas;
30 central Arizona project water; exemption

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

45 1. In areas of an initial active management area not designated as
46 critical groundwater areas under prior statutory law ~~prior to~~ BEFORE the
47 date of the designation of the active management area, land is deemed to

1 have been in irrigation if substantial capital investment has been made
2 for the subjugation of such land for an irrigation use including on-site
3 irrigation distribution facilities and a well or wells the drilling and
4 construction of which were substantially commenced ~~prior to~~ BEFORE the
5 date of the designation of the active management area.

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

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

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

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

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

31 4. Central Arizona project water available to the irrigation
32 district within which the acres are located will be adequate to supply the
33 substitute acres.

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

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

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

46 E. If a person retires land from irrigation pursuant to subsection
47 B of this section, groundwater shall not be withdrawn from such retired

1 land for any purpose unless pursuant to a groundwater withdrawal permit or
2 unless withdrawn by a city, town or private water company within the
3 service area of such city, town or private water company.

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

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

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

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

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

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

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

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

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

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

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

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

29 (b) The substitute acres relinquish all irrigation grandfathered
30 rights that were transferred to them under the original substitution of
31 acres.

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

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

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

1 surface or surface water, except that this does not prohibit irrigation
2 with surface water used pursuant to decreed or appropriative rights
3 established before the date of the notice or the call. In a subsequent
4 active management area, land is deemed to have been in irrigation if the
5 director finds that either of the following applies:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 45-463. Type 1 non-irrigation grandfathered right associated
9 with retired irrigated land; appurtenancy;
10 ownership

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

18 1. The land has been held under the same ownership since it was
19 retired.

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

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

31 1. The land has been held under the same ownership since it was
32 retired.

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

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

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

46 E. A type 1 non-irrigation grandfathered right is appurtenant to
47 the acre of retired irrigated land associated with the right, is owned by

1 the owner of the land to which the right is appurtenant and may be leased
2 with the land.

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

13 1. No groundwater may be included for any acre of retired irrigated
14 land for any year after the land is developed for any municipal or
15 industrial use.

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

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

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

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

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

36 45-464. Type 2 non-irrigation grandfathered right not
37 associated with retired irrigated land;
38 determination of amount; ownership; definition

39 A. In an active management area, a person who owns land from which
40 groundwater was being legally withdrawn and used for a non-irrigation
41 purpose as of the date of the designation of the active management area
42 has the right to withdraw annually:

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

44 (a) The amount of groundwater established in proceedings on the
45 application for certificate of exemption, subject to any modification as a
46 result of a finding on appeal of a factual mistake by the state land
47 department or Arizona water commission in computing the amount of the

1 authorized withdrawal, less the amount of any right obtained by the person
2 pursuant to section 45-463.

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

7 2. If the person does not hold a certificate of exemption, the
8 maximum amount of groundwater legally withdrawn from such land and used by
9 the person withdrawing the groundwater in any one of the ~~five~~ TEN years
10 preceding the date of the designation of the active management area, less
11 the amount of any right THAT IS obtained pursuant to section 45-463 by the
12 person withdrawing groundwater from such land ~~which~~ AND THAT has not been
13 subtracted by the person withdrawing the groundwater in calculating the
14 amount of another right pursuant to this section.

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

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

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

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

25 3. Any other non-irrigation user.

26 D. If a person has been using groundwater for less than one year
27 during the twelve months immediately preceding the date of the designation
28 of the active management area, the amount of the grandfathered right
29 pursuant to this section is the annual amount determined by the director
30 to be reasonable for a full year to meet the requirements for a facility
31 owned by such person in existence as of the date of the designation of the
32 active management area.

33 E. If a person has received a certificate of environmental
34 compatibility pursuant to title 40, chapter 2, article 6.2 for the
35 construction of an electrical generating facility within a subsequent
36 active management area for which expenditures or financial commitments for
37 land acquisition, water development, materials, construction or
38 engineering in excess of ~~five hundred thousand dollars~~ \$500,000 have been
39 made before the date of the notice of the initiation of designation
40 procedures or the call for the election for the area, the amount of the
41 grandfathered right pursuant to this section is the annual amount
42 determined by the director to be reasonable to meet the operational
43 requirements for the facility for a full year.

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

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

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

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

22 <<Sec. 6. Section 45-465, Arizona Revised Statutes, is amended to
23 read:

24 45-465. Irrigation grandfathered right; determination of
25 acres entitled to and amount; appurtenancy

26 A. In an active management area, a person who owns land ~~[which]~~
27 ~~[THAT]~~ was legally irrigated in whole or in part with groundwater at any
28 time during the five years preceding January 1, 1980 for initial active
29 management areas or [WHO OWNED LAND THAT WAS LEGALLY IRRIGATED IN WHOLE OR
30 IN PART WITH GROUNDWATER AT ANY TIME DURING THE TEN YEARS PRECEDING] the
31 date of the notice of the initiation of designation procedures or the call
32 for the election for subsequent active management areas, ~~[which]~~ ~~[THAT]~~ is
33 capable of being irrigated and which has not been retired from irrigation
34 for a non-irrigation use pursuant to section 45-463 or 45-469 has the
35 right to use groundwater for the irrigation of such land as determined
36 pursuant to subsections B and C of this section.

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

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

42 2. Determine the irrigation water duty, as defined in section
43 45-402, for each farm unit in an active management area, pursuant to
44 sections 45-564 through 45-568.

45 3. Determine the water duty acres for each farm within the farm
46 unit. The water duty acres are the highest number of acres in the farm,
47 taking land rotation into account, ~~[which]~~ ~~[THAT]~~ were legally irrigated

1 during any one year in the five years preceding January 1, 1980 for
2 initial active management areas or [THAT WERE LEGALLY IRRIGATED AT ANY
3 TIME DURING THE TEN YEARS PRECEDING] the date of the notice of the
4 initiation of designation procedures or the call for the election for
5 subsequent active management areas.

6 4. Determine the irrigation acres for each farm within the farm
7 unit. The irrigation acres are the acres in the farm [which] [THAT] were
8 legally irrigated at any time during the five years preceding January 1,
9 1980 for initial active management areas or [THAT WERE LEGALLY IRRIGATED
10 AT ANY TIME DURING THE TEN YEARS PRECEDING] the date of the notice of the
11 initiation of designation procedures or the call for the election for
12 subsequent active management areas, [which] [THAT] are capable of being
13 irrigated and [which] [THAT] have not been retired from irrigation for a
14 non-irrigation use pursuant to section 45-463 or 45-469.

15 5. Multiply the water duty acres for each farm within the farm unit
16 by the irrigation water duty for the farm unit and divide that amount by
17 the number of irrigation acres in the farm. The result shall be the
18 maximum amount of groundwater [which] [THAT] may be used per year for the
19 irrigation of each irrigation acre in the farm. If the farm is located in
20 an active management area other than the Santa Cruz active management area
21 and is irrigated solely with groundwater, the amount of groundwater used
22 by the farm for irrigation shall be accounted for pursuant to section
23 45-467, subsection C. If a farm is located in an active management area
24 other than the Santa Cruz active management area and is irrigated with a
25 combination of surface water and groundwater, the amount of groundwater
26 used by the farm for irrigation shall be accounted for pursuant to section
27 45-467, subsection D. If a farm is located in the Santa Cruz active
28 management area, the amount of water, other than stored water, withdrawn
29 from a well and used by the farm for irrigation purposes shall be
30 accounted for pursuant to section 45-467, subsection E or F.

31 C. A person who owns land described in subsection A of this section
32 and whose water use on the land is regulated under a best management
33 practices program that is adopted by the director pursuant to section
34 45-566.02, subsection F, section 45-567.02, subsection G or section
35 45-568.02, subsection G:

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

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

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

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

4 F. If the irrigation water duty for the farm unit in which an
5 irrigation acre is located is reduced by the director pursuant to article
6 9 of this chapter, the amount of groundwater which may be used for the
7 irrigation of such acre pursuant to the irrigation grandfathered right
8 under subsection B of this section is reduced accordingly.

9 G. For [THE] purposes of this chapter, the amount of groundwater
10 which may be used or is used is the amount of groundwater withdrawn by the
11 groundwater user, measured at the point of withdrawal, and the amount of
12 groundwater received by the groundwater user from an irrigation district
13 or other source.>>

14 Sec. 7. Section 45-476, Arizona Revised Statutes, is amended to
15 read:

16 45-476. Application for certificate of grandfathered right

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

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

26 1. The name and mailing address of the applicant.

27 2. The name of the active management area within which the
28 withdrawal of groundwater pursuant to the claimed grandfathered right is
29 being or has been made.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 8. Any other information the director may require.

24 C. A person or ~~his~~ THE PERSON'S successor claiming the right to use
25 groundwater pursuant to a grandfathered right, described in whole or in
26 part by a certificate of exemption, shall file an application for a
27 certificate of grandfathered right as provided in subsection D of this
28 section and shall automatically be entitled to a certificate or
29 certificates of grandfathered right for the portion of the grandfathered
30 right claimed which is evidenced by the certificate of exemption or
31 established by the proceedings on the certificate of exemption. Notice of
32 the application is not required and hearings shall not be held. If the
33 applicant claims grandfathered rights in addition to the amount of use
34 described in the certificate of exemption, application for such additional
35 amount shall be made pursuant to subsection B of this section, and such
36 application is subject to the notice, objection and hearing provisions
37 applicable to applications made pursuant to that subsection.

38 D. The application for a certificate of grandfathered right based
39 ~~upon~~ ON prior proceedings ~~upon~~ ON an application for a certificate of
40 exemption shall include the following:

41 1. The name and mailing address of the applicant.

42 2. The name of the active management area within which the
43 withdrawal of groundwater pursuant to the claimed grandfathered right is
44 being or has been made.

45 3. The total amount of groundwater to be withdrawn annually under
46 the certificate of exemption.

Senate Amendments to H.B. 2203

1 4. The number of retired irrigated acres described in the
2 application for a certificate of exemption.

3 5. Such evidence as the director shall require that the retired
4 irrigated land has been held under the same ownership since it was
5 retired.

6 6. The number of the certificate of exemption and a copy of the
7 certificate of exemption.

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

11 8. Any other information the director may require.

12 Sec. 8. Retroactivity

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

14 Enroll and engross to conform

15 Amend title to conform

TIMOTHY "TIM" DUNN

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