

## ARTICLE 5 - WATER SHORTAGES

### Section 3501 SAWRSA CAP Water Shortages

- (A) This article applies to shortages in the deliveries of SAWRSA CAP Water to the Nation by the Secretary during Deficiency Years.
- (B) The Director, upon receiving notice from the Secretary that a future year will be a Deficiency Year, shall, within 15 days of receipt of the Secretarial notice, forward the Secretarial notice to all Persons that use or have a right to use any of the Nation's SAWRSA CAP Water. The Director shall include with the Secretarial notice a statement as to whether the shortage described by the Secretary will impact deliveries of SAWRSA CAP Water to the Nation and, if so, the extent and nature of those impacts. Within 60 days of receipt of the Secretarial notice, the Director shall schedule a meeting with users of the Nation's SAWRSA CAP Water to discuss the Secretarial notice and the procedures the Director will employ to reach the allocation of SAWRSA CAP Water provided for in this section 3501.
- (C) Uses of SAWRSA CAP Water within the San Xavier Reservation and eastern Schuk Toak District shall have absolute priority over all other uses of the Nation's SAWRSA CAP Water during a Deficiency Year.
- (D) In the event the quantity of SAWRSA CAP Water available to the Nation in a Deficiency Year is insufficient to fulfill all demands for SAWRSA CAP Water within the San Xavier Reservation and eastern Schuk Toak District, the Director shall allocate the available quantity of SAWRSA CAP Water for use within the San Xavier Reservation and eastern Schuk Toak District prorata based on the quantities of SAWRSA CAP Water used on the San Xavier Reservation ~~and,~~ including SAWRSA CAP Water used by the Asarco Mining Company, and in the eastern Schuk Toak District in the last year when all such uses within the San Xavier Reservation and eastern Schuk Toak District were met.

~~E~~(E) In determining the quantities of water to be delivered to the San Xavier Reservation and the eastern Schuk Toak Districts, respectively, in a Deficiency Year, the Director shall be governed by the following:

- (1) any permit applicants whose applications would result in the issuance of a license to perfect during or prior to the Deficiency Year, holders of a license to perfect, and permit holders; who did not use water in the last year when all such uses within the San Xavier Reservation and the eastern Schuk Toak District were met, and who want to use SAWRSA CAP Water in the Deficiency Year, may submit an affidavit to the Director requesting an allocation of water and detailing such person's plans to use water in the Deficiency Year; provided that such affidavit must be postmarked or received by the Director within 75 days of the date the

Director forwards the Secretarial notice of an upcoming Deficiency Year to all Persons registered on the records of the Department to receive such notices.

(2) the Director shall investigate to determine whether any permit applicants, holders of a license to perfect, and permit holders; who did not use water in the last year when all such uses within the San Xavier Reservation and the eastern Schuk Toak District were met, and who submitted an affidavit pursuant to subsection 1) above, should receive an allocation of water in the Deficiency Year. If the Director's determination is affirmative, the Director shall include such quantities of water in the Director's determination of the quantities of water to be allocated to the San Xavier District and the Schuk Toak District, respectively, in a Deficiency Year.

(3) the first 27,000 acre-feet of SAWRSA CAP Water allocated by the Director to the San Xavier District in a Deficiency Year shall be deemed to be the SAWRSA CAP Water deliverable to the San Xavier Reservation pursuant to subsection 304(a)(1) of the SAWRSA Amendments, and any additional portion of the San Xavier Reservation's 35,000 acre-feet of "first right of beneficial use" water described in subsection 307(a)(1)(G)(i)(I) allocated by the Director to the San Xavier District in a Deficiency Year shall be deemed to be a portion of the SAWRSA CAP Water deliverable to the San Xavier Reservation pursuant to subsection 306(a)(1) of the SAWRSA Amendments.

(4) the first 10,800 acre-feet of SAWRSA CAP Water allocated by the Director to the eastern Schuk Toak District in a Deficiency Year shall be deemed to be the SAWRSA CAP Water deliverable to the eastern Schuk Toak District pursuant to subsection 304(a)(2) of the SAWRSA Amendments, and any additional portion of the SAWRSA CAP Water allocated by the Director to the eastern Schuk Toak District in a Deficiency Year shall be deemed to be a portion of the SAWRSA CAP Water deliverable to the eastern Schuk Toak District pursuant to subsection 306(a)(2) of the SAWRSA Amendments.

**(F)** For purposes of the allocation of SAWRSA CAP Water in a Deficiency Year, the use of any SAWRSA CAP Water by Asarco in accordance with the Tohono O'odham Settlement Agreement shall be deemed to have been made on the San Xavier Reservation.

**(FG)** In the event the quantity of SAWRSA CAP Water available to the Nation during a Deficiency Year is sufficient to meet all demands for SAWRSA CAP Water within the San Xavier Reservation and eastern Schuk Toak District, the Director shall first allocate any remaining SAWRSA CAP Water to meet demands within the Nation's Lands and, second, for uses by the Nation outside the Nation's Lands.

- ~~(G)(H)~~ In the event, the SAWRSA CAP Water available to the Nation in a Deficiency Year is insufficient to meet all demands for SAWRSA CAP Water use within the Nation's Lands under the provisions of subsection ~~(FG)~~, the Director shall allocate SAWRSA CAP Water not required to be delivered to the San Xavier Reservation or the Schuk Toak District pro rata among those demands within the Nation's Lands based on the quantities used in the last year when all such uses within the Nation's Lands were met.
- ~~(H)~~ SAWRSA CAP Water available for use within the San Xavier Reservation during a Deficiency Year shall be allocated by the Director pursuant to the provisions of the San Xavier Water Management Plan. ~~Provided, however, unless Asareo otherwise agrees, the percentage of the total quantity of SAWRSA CAP Water available for use within the San Xavier Reservation and allocated to Asareo pursuant to this subsection, shall not be less than the percentage that the Asareo use was to the total SAWRSA CAP Water use within the San Xavier Reservation during the last year when all SAWRSA CAP Water demands within the San Xavier Reservation were met.~~
- ~~(I)~~ When the available SAWRSA CAP Water supply is insufficient to meet all demands for such water within the San Xavier Reservation and the eastern Schuk Toak District, the Director may allocate for use within the San Xavier Reservation and the eastern Schuk Toak District, respectively, any available SAWRSA Groundwater, Deferred Pumping Storage Credits, Direct Storage Credits, or Additional Groundwater; specific to these districts, respectively; in lieu of the use of SAWRSA CAP Water; provided, however, the Director may not require a Person to use any of the alternative water supplies if that Person is otherwise entitled to an allocation of SAWRSA CAP Water pursuant to the provisions of this section.
- ~~(K)~~ Any permit, lease, option to lease, assignment, exchange or temporary disposal of SAWRSA CAP Water for use outside the San Xavier Reservation and the Eastern Schuk Toak District, within or outside of the Nation's lands, shall include a clear written statement that such use is subject to the shortage sharing provisions of this Code.
- ~~(L)~~ The Director shall notify by certified mail each licensee to perfect and Permitted User in the area in which the shortage is declared of any change in the condition of the Person's license or Permit or any suspension of such license or Permit or any other restrictions on use of water for the duration of the water shortage.
- ~~(M)~~ Permits to use SAWRSA CAP Water within the San Xavier District or the Schuk Toak District shall include the right, on an annual basis, to withdraw and use a quantity of SAWRSA Groundwater, Deferred Pumping Storage Credits, Direct Storage Credits, or Additional Groundwater in an amount equal to the quantity of SAWRSA CAP Water that was ordered in a given year by the holder of the

Permit but not delivered in that year by the Secretary, provided that such use is consistent with the San Xavier Water Management Plan or the Schuk Toak Water Management Plan then in effect, respectively, and the Nation's Water Code.

**MARK-UP OF PROPOSED CHANGES IN ADDITIONAL CODE SECTIONS:**

**Section 3203(A)**

(A) Before adoption of any regulations, the Director shall-:

- (1) provide notice ~~and~~, a brief summary, and the text of the proposed regulations. ~~The notice shall be mailed or by mail and e-mailed~~ mail (when available) to the Chairperson, ~~to~~ each member of the Water Resources Committee, ~~to~~ each District, ~~and to the District Water Advisory Committee, the San Xavier Allottees Association,~~ each Person registered on the records of the Department to receive such notices, and any other Persons holding Permits or who have applications for Permits pending before the Department.
- (2) publish notice of regulations and the text of the proposed regulation in a local newspaper of general circulation on the Nation's Reservation not less than two times within a one month period; and

**Section 3203(B)**

(B) The notice of the proposed regulations required by subsection (A) shall generally describe the subject matter of the proposed regulations and state that copies of the proposed regulations are available for review at the Department, and at each District office. The notice shall invite written comments and give a deadline for their submission of not less than ~~30~~ 45 days after the date of the notice. The Director may hold public hearings on proposed regulations to take additional public comment on the proposed regulations. Regulations shall become effective on the date as ordered by the Director, but in no event sooner than 30 days after the final date for submission of comments, or 30 days following any public hearing unless the date is extended by the Director. In no event shall regulations become effective sooner than 75 days after the last date of publication. Copies of all final regulations shall be filed and made available for public inspection in the Director's office and at each District office. Copies of any regulations may be obtained at no cost.

**Section 3401(B)(2)**

- (2) a first right to use or provide for the use of the remaining 15,000 Acre-Foot of SAWRSA CAP Water deliverable under subsections 304(a)(1) and 306(a)(1) of the SAWRSA Amendments for any purpose and duration authorized by the SAWRSA Amendments within or outside the Nation's

Lands; ~~and~~ subject to any valid permit applications, licenses to perfect, or permits approved pursuant to this Code which would otherwise be satisfied out of the Nation's 15,000 acre-feet first right of use, and

**Section 3901(B)**

- (B) To conduct inspections or investigations, the Director or authorized representatives of the Director may enter upon any land within the Nation's Lands after giving ~~reasonable~~ 10 days notice to the Person that controls or holds a beneficial interest in the lands upon which the inspection or investigation is to be conducted. Notice of any inspection or investigation shall also be given to any Person with a Permitted Use on the lands upon which the inspection or investigation is to be conducted if that Person is not the Person that controls or holds a beneficial interest in the lands to be inspected or investigated.

**Section 3901(D)**

- (D) The Director or authorized representatives of the Director may enter upon any lands within the Nation's Lands without notice if the Director determines that an Emergency exists ~~or that a violation of the Code is occurring on the lands to be entered.~~