

House Engrossed
water conservation notice; no forfeiture

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

HOUSE BILL 2056

AN ACT

AMENDING SECTIONS 45-141, 45-188 AND 45-189, ARIZONA REVISED STATUTES;
AMENDING TITLE 45, CHAPTER 1, ARTICLE 7, ARIZONA REVISED STATUTES, BY
ADDING SECTION 45-189.01; RELATING TO WATERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 45-141, Arizona Revised Statutes, is amended to
3 read:

4 45-141. Public nature of waters of the state; beneficial use;
5 reversion to state; actions not constituting
6 abandonment or forfeiture

7 A. The waters of all sources, flowing in streams, canyons, ravines
8 or other natural channels, or in definite underground channels, whether
9 perennial or intermittent, flood, waste or surplus water, and of lakes,
10 ponds and springs on the surface, belong to the public and are subject to
11 appropriation and beneficial use as provided in this chapter.

12 B. Beneficial use shall be the basis, measure and limit to the use
13 of water.

14 C. Except as otherwise provided in this title or in title 48, when
15 the owner of a right to the use of water ceases or fails to use the water
16 appropriated for five successive years, the right to the use shall cease,
17 and the water shall revert to the public and shall again be subject to
18 appropriation.

19 D. Underground water storage, pursuant to chapter 3.1 of this
20 title, for future beneficial use of waters appropriated pursuant to this
21 chapter does not constitute an abandonment or forfeiture.

22 E. The following water exchange arrangements or substitutions do
23 not constitute an abandonment or forfeiture of all or any portion of a
24 right to use surface water:

25 1. Exchanging surface water for groundwater, effluent, Colorado
26 River water, including water delivered through the central Arizona
27 project, or another source of surface water pursuant to chapter 4 of this
28 title.

29 2. Substituting groundwater, effluent, Colorado River water,
30 including water delivered through the central Arizona project, or another
31 source of surface water for surface water.

32 F. CONSERVATION OF WATER PURSUANT TO A WATER CONSERVATION PLAN
33 NOTICE FILED WITH THE DIRECTOR AS PRESCRIBED BY SECTION 45-189.01 DOES NOT
34 CONSTITUTE AN ABANDONMENT OR FORFEITURE OF THE WATER CONSERVED.

35 Sec. 2. Section 45-188, Arizona Revised Statutes, is amended to
36 read:

37 45-188. Future rights acquired through appropriation; rights
38 within service area of agricultural or municipal
39 provider

40 A. Any person who is entitled to divert or withdraw public waters
41 of the state through an appropriation and evidenced by a certificate of
42 water right issued under article 5 of this chapter, a court decree, or
43 previous possession or continued beneficial use and who intentionally
44 abandons the use thereof or who voluntarily fails, without sufficient
45 cause, to beneficially use all or any part of the right to withdraw for

1 any period of five successive years shall relinquish such right or portion
2 thereof. The rights relinquished shall revert to the state, and the
3 waters affected by such rights shall become available for appropriation to
4 the extent they are not lawfully claimed or used by existing
5 appropriators.

6 B. If a use or claim is subject to forfeiture by nonuse, failure by
7 the appropriator to use water within a five year period does not result in
8 a forfeiture of the associated water right if water use is resumed before
9 the occurrence of the earlier of any of the following:

10 1. The initiation of proceedings pursuant to section 45-189 to
11 determine whether the right has been forfeited or abandoned.

12 2. The filing by a third party of a statement of claimant in a
13 general adjudication instituted pursuant to article 9 of this chapter that
14 asserts the right to use water from the stream in which the subject nonuse
15 has occurred.

16 3. The assertion by a third party of written objections in response
17 to an application by the appropriator to sever and transfer the right
18 pursuant to section 45-172.

19 C. CONSERVATION OF WATER PURSUANT TO A WATER CONSERVATION PLAN
20 NOTICE FILED WITH THE DIRECTOR AS PRESCRIBED BY SECTION 45-189.01 DOES NOT
21 CONSTITUTE AN ABANDONMENT OR FORFEITURE OF THE WATER CONSERVED.

22 Sec. 3. Section 45-189, Arizona Revised Statutes, is amended to
23 read:

24 45-189. Reversion of rights due to nonuse; notice; hearing;
25 order; exception

26 A. When it appears to the director that a person entitled to the
27 use of water has not beneficially used all or a portion of the water right
28 for a period of five or more consecutive years, and it appears that the
29 right has or may have reverted to the state because of such nonuse, as
30 provided by section 45-141 and section 45-188, subsection A, the director
31 shall notify such person to show cause at an administrative hearing why
32 the right or portion of the right should not be declared relinquished.

33 B. The notice shall contain:

34 1. The time and place of the hearing.

35 2. A description of the water right, including the approximate
36 location of the point of diversion, the general description of the lands
37 or places where such waters were used, the water source, the amount
38 involved, the purpose of use, the apparent authority ~~upon~~ ON which the
39 right is based and the factual basis for the notice to show cause.

40 3. A statement that unless sufficient cause is shown the water
41 right will be declared relinquished.

42 C. The notice shall be served at least thirty days before the
43 hearing.

1 D. The director shall make an order determining whether such water
2 right has been relinquished and give notice to each party of the order by
3 serving such persons at their last known addresses.

4 E. For the purposes of this section, section 45-141, subsection C
5 and section 45-188, subsection A, the following reasons shall be
6 sufficient cause for nonuse:

7 1. Drought, or other unavailability of water.

8 2. Active service in the armed forces of the United States during
9 military crisis.

10 3. Nonvoluntary service in the armed forces of the United States.

11 4. The operation of legal proceedings.

12 5. Federal, state or local laws imposing land or water use
13 restrictions, or acreage limitations, or production quotas.

14 6. Compliance with an applicable conservation requirement
15 established by the director pursuant to chapter 2, article 9 of this
16 title.

17 7. CONSERVATION OF WATER PURSUANT TO A WATER CONSERVATION PLAN
18 NOTICE FILED WITH THE DIRECTOR AS PRESCRIBED BY SECTION 45-189.01.

19 ~~7-~~ 8. With respect to a water right appropriated for an irrigation
20 use, either of the following:

21 (a) Pendency of a proceeding before a court or the director to
22 change the permitted use from irrigation to municipal or other uses
23 pursuant to a court decree or section 45-156 or to sever the right from
24 the land to which it is appurtenant and transfer it for municipal use
25 pursuant to section 45-172.

26 (b) After a change in the permitted use from irrigation to
27 municipal pursuant to a court decree or section 45-156 or 45-172,
28 insufficient demand for the water by the municipal users.

29 ~~8-~~ 9. Any other reason that a court of competent jurisdiction
30 deems would warrant nonuse.

31 F. Section 45-114, subsections A and B govern administrative
32 proceedings, rehearing or review and judicial review of final decisions of
33 the director under this section.

34 Sec. 4. Title 45, chapter 1, article 7, Arizona Revised Statutes,
35 is amended by adding section 45-189.01, to read:

36 45-189.01. Water conservation plan notice; filing; exemption;
37 duration

38 A. BEGINNING ON THE EFFECTIVE DATE OF THIS SECTION, A PERSON WHO IS
39 ENTITLED TO THE USE OF WATER MAY FILE WITH THE DIRECTOR A WATER
40 CONSERVATION PLAN NOTICE. A WATER CONSERVATION PLAN NOTICE SHALL INCLUDE
41 THE FOLLOWING:

42 1. THE NAME AND ADDRESS OF THE PERSON WHO IS ENTITLED TO THE USE OF
43 WATER THAT IS INCLUDED IN THE WATER CONSERVATION PLAN.

1 2. A DESCRIPTION OF ALL WATER RIGHTS AND CLAIMS THAT THE PERSON WHO
2 IS ENTITLED TO USE THOSE WATER RIGHTS AND CLAIMS IS INCLUDING IN THE WATER
3 CONSERVATION PLAN.

4 3. THE PLACE AND PURPOSE OF THE USE OF THE IDENTIFIED WATER RIGHTS
5 AND CLAIMS AND THE HISTORICAL AND CURRENT WATER USE.

6 4. A DESCRIPTION OF ANY WATER CONSERVATION MEASURES THAT WILL BE
7 IMPLEMENTED AS PART OF THE WATER CONSERVATION PLAN.

8 5. A STATEMENT THAT THE WATER CONSERVATION PLAN IS VOLUNTARY AND
9 TEMPORARY IN NATURE.

10 6. A STATEMENT THAT THE WATER CONSERVATION PLAN IS INTENDED TO
11 RESULT IN THE TEMPORARY REDUCTION IN THE USE OF WATER OR A REDUCTION IN
12 THE DIVERSION OF WATER.

13 7. A STATEMENT THAT THE ACTIVITIES DESCRIBED IN THE WATER
14 CONSERVATION PLAN WILL CONTRIBUTE TO THE PRACTICAL AND ECONOMICAL
15 MANAGEMENT, CONSERVATION AND USE OF SURFACE WATER IN THE WATERSHEDS OF
16 THIS STATE.

17 8. A STATEMENT THAT THE PERSON WHO HOLDS THE VALID WATER RIGHT THAT
18 IS SUBJECT TO THE WATER CONSERVATION PLAN DOES NOT INTEND TO ABANDON SUCH
19 WATER RIGHT DURING THE TERMS OF THE WATER CONSERVATION PLAN.

20 B. ON FILING A WATER CONSERVATION PLAN NOTICE, THE CONSERVATION OF
21 WATER PURSUANT TO THE PLAN DOES NOT CONSTITUTE AN ABANDONMENT OR
22 FORFEITURE OF THE WATER CONSERVED. A PERSON MAY NOT ACCRUE LONG-TERM
23 STORAGE CREDITS FOR ANY WATER THAT IS CONSERVED IN A WATER CONSERVATION
24 PLAN NOTICE FILED PURSUANT TO THIS SECTION.

25 C. A WATER CONSERVATION PLAN SHALL DESIGNATE A DURATION OF UP TO
26 TEN YEARS. THE PERSON FILING THE WATER CONSERVATION PLAN NOTICE MAY FILE
27 A SUBSEQUENT NOTICE FOR SOME OR ALL OF THE WATER RIGHTS AND CLAIMS BEFORE
28 EXPIRATION OF THE DESIGNATED TIME AND MAY FILE SUBSEQUENT WATER
29 CONSERVATION PLAN NOTICES FOR ONE OR MORE PERIODS OF UP TO TEN YEARS EACH.

30 Sec. 5. Legislative intent; prospective effect only;
31 clarification

32 The legislature intends that this act apply prospectively only and
33 that it clarifies that conservation of water as prescribed by this act
34 contributes to the practical and economical management, conservation and
35 use of surface water in the watersheds of this state without affecting
36 water rights or claims associated with conserved water.