

REFERENCE TITLE: watershed health; use; survey.

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

HB 2740

Introduced by
Representative Dalessandro

AN ACT

AMENDING SECTIONS 45-101, 45-105, 45-151, 45-152.01 AND 45-172, ARIZONA
REVISED STATUTES; 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 45-101, Arizona Revised Statutes, is amended to
3 read:

4 45-101. Definitions

5 In this title, unless the context otherwise requires:

6 1. "Appropriator" means the person or persons initiating or
7 perfecting the right to use appropriable water based on state law, or the
8 person's successor or successors in interest.

9 2. "Department" means the department of water resources.

10 3. "Director" means the director of water resources, who is also
11 the director of the department.

12 4. "ECOLOGICAL WATER NEEDS" MEANS WATER SUFFICIENT TO SUSTAIN
13 FRESHWATER ECOSYSTEMS, INCLUDING RIPARIAN AREAS, AND THE WILDLIFE HABITAT,
14 HUMAN LIVELIHOODS AND WELL-BEING THAT DEPEND ON THOSE ECOSYSTEMS.

15 ~~4.~~ 5. "Effluent" means water that has been collected in a sanitary
16 sewer for subsequent treatment in a facility that is regulated pursuant to
17 title 49, chapter 2. Such water remains effluent until it acquires the
18 characteristics of groundwater or surface water.

19 ~~5.~~ 6. "Groundwater" means water under the surface of the earth
20 regardless of the geologic structure in which it is standing or moving.
21 Groundwater does not include water flowing in underground streams with
22 ascertainable beds and banks.

23 ~~6.~~ 7. "Interstate stream" means any stream constituting or flowing
24 along the exterior boundaries of this state, and any tributary originating
25 in another state or foreign country and flowing into or through this
26 state.

27 ~~7.~~ 8. "Riparian area" means a geographically delineated area with
28 distinct resource values, that is characterized by deep-rooted plant
29 species that depend on having roots in the water table or its capillary
30 zone and that occurs within or adjacent to a natural perennial or
31 intermittent stream channel or within or adjacent to a lake, pond or marsh
32 bed maintained primarily by natural water sources. Riparian area does not
33 include areas in or adjacent to ephemeral stream channels, artificially
34 created stockponds, man-made storage reservoirs constructed primarily for
35 conservation or regulatory storage, municipal and industrial ponds or
36 man-made water transportation, distribution, off-stream storage and
37 collection systems.

38 ~~8.~~ 9. "Sanitary sewer" means any pipe or other enclosed conduit
39 that carries, among other substances, any water-carried wastes from the
40 human body from residences, commercial buildings, industrial plants or
41 institutions.

42 ~~9.~~ 10. "Surface water" means the waters of all sources, flowing in
43 streams, canyons, ravines or other natural channels, or in definite
44 underground channels, whether perennial or intermittent, floodwater,
45 wastewater or surplus water, and of lakes, ponds and springs on the

1 surface. For the purposes of administering this title, surface water is
2 deemed to include central Arizona project water.

3 11. "WATERSHED HEALTH USES" MEANS WATER THAT IS CONSERVED IN A
4 NATURAL WATERCOURSE AND NOT OTHERWISE USED AND THAT SUPPORTS THE
5 ATTRIBUTES OF WATERSHED HEALTH FOR AN INDIVIDUAL WATERSHED AS PRESCRIBED
6 IN THE REPORT REQUIRED BY SECTION 45-105, SUBSECTION B.

7 Sec. 2. Section 45-105, Arizona Revised Statutes, is amended to
8 read:

9 45-105. Powers and duties of director

10 A. The director may:

11 1. Formulate plans and develop programs for the practical and
12 economical development, management, conservation and use of surface water,
13 groundwater and the watersheds in this state, including the management of
14 water quantity and quality.

15 2. Investigate works, plans or proposals pertaining to surface
16 water and groundwater, including management of watersheds, and acquire,
17 preserve, publish and disseminate related information the director deems
18 advisable.

19 3. Collect and investigate information on and prepare and devise
20 means and plans for the development, conservation and utilization of all
21 waterways, watersheds, surface water, groundwater and groundwater basins
22 in this state and of all related matters and subjects, including
23 irrigation, drainage, water quality maintenance, regulation of flow,
24 diversion of running streams adapted for development in cooperating with
25 the United States or by this state independently, flood control,
26 utilization of water power, prevention of soil waste and storage,
27 conservation and development of water for every useful purpose.

28 4. Measure, survey and investigate the water resources of this
29 state and their potential development and cooperate and contract with
30 agencies of the United States for such purposes.

31 5. Acquire, hold and dispose of property, including land,
32 rights-of-way, water and water rights, as necessary or convenient for the
33 performance of the groundwater and water quality management functions of
34 the department.

35 6. Acquire, other than by condemnation, construct, improve,
36 maintain and operate early warning systems for flood control purposes and
37 works for the recovery, storage, treatment and delivery of water.

38 7. Accept grants, gifts or donations of money or other property
39 from any source, which may be used for any purpose consistent with this
40 title. All property acquired by the director is public property and is
41 subject to the same tax exemptions, rights and privileges granted to
42 municipalities, public agencies and other public entities.

43 8. Enter into an interagency contract or agreement with any public
44 agency pursuant to title 11, chapter 7, article 3 and contract, act

1 jointly or cooperate with any person to carry out the purposes of this
2 title.

3 9. Prosecute and defend all rights, claims and privileges of this
4 state respecting interstate streams.

5 10. Initiate and participate in conferences, conventions or
6 hearings, including ~~meetings of the Arizona water resources advisory~~
7 ~~board~~, congressional hearings, court hearings or hearings of other
8 competent judicial or quasi-judicial departments, agencies or
9 organizations, and negotiate and cooperate with agencies of the United
10 States or of any state or government and represent this state concerning
11 matters within the department's jurisdiction.

12 11. Apply for and hold permits and licenses from the United States
13 or any agency of the United States for reservoirs, dam sites and
14 rights-of-way.

15 12. Receive and review all reports, proposed contracts and
16 agreements from and with the United States or any agencies, other states
17 or governments or their representatives and recommend to the governor and
18 the legislature action to be taken on such reports, proposed contracts and
19 agreements. The director shall take action on such reports, if authorized
20 by law, and review and coordinate the preparation of formal comments of
21 this state on both the preliminary and final reports relating to water
22 resource development of the United States army corps of engineers, the
23 United States secretary of the interior and the United States secretary of
24 agriculture, as provided for in the flood control act of 1944 (58 Stat.
25 887; 33 United States Code section 701-1).

26 13. Contract with any person for imported water or for the
27 acquisition of water rights or rights to withdraw, divert or use surface
28 water or groundwater as necessary for the performance of the groundwater
29 management functions of the director prescribed by chapter 2 of this
30 title. If water becomes available under any contract executed under this
31 paragraph, the director may contract with any person for its delivery or
32 exchange for any other water available.

33 14. Recommend to the administrative heads of agencies, boards and
34 commissions of this state, and political subdivisions of this state, rules
35 to promote and protect the rights and interests of this state and its
36 inhabitants in any matter relating to the surface water and groundwater in
37 this state.

38 15. Conduct feasibility studies and remedial investigations
39 relating to groundwater quality and enter into contracts and cooperative
40 agreements under section 104 of the comprehensive environmental response,
41 compensation, and liability act of 1980 (P.L. 96-510) to conduct such
42 studies and investigations.

43 16. Dispose informally by stipulation, agreed settlement, consent
44 order or alternative means of dispute resolution, including arbitration,

1 if the parties and director agree, or by default of any case in which a
2 hearing before the director is required or allowed by law.

3 17. Cooperate and coordinate with the appropriate governmental
4 entities in Mexico regarding water planning in areas near the border
5 between Mexico and Arizona and for the exchange of relevant hydrological
6 information.

7 B. The director shall:

8 1. Exercise and perform all powers and duties vested in or imposed
9 on the department and adopt and issue rules necessary to carry out the
10 purposes of this title.

11 2. Administer all laws relating to groundwater, as provided in this
12 title.

13 3. Be responsible for the supervision and control of reservoirs and
14 dams of this state and, when deemed necessary, conduct investigations to
15 determine whether the existing or anticipated condition of any dam or
16 reservoir in this state is or may become a menace to life and property.

17 4. Coordinate and confer with and may contract with:

18 (a) The Arizona power authority, the game and fish commission, the
19 state land department, the Arizona outdoor recreation coordinating
20 commission, the Arizona commerce authority, the department of health
21 services, active management area water authorities or districts and
22 political subdivisions of this state with respect to matters within their
23 jurisdiction relating to surface water and groundwater and the development
24 of state water plans.

25 (b) The department of environmental quality with respect to title
26 49, chapter 2 for its assistance in the development of state water plans.

27 (c) The department of environmental quality regarding water plans,
28 water resource planning, water management, wells, water rights and
29 permits, and other appropriate provisions of this title pertaining to
30 remedial investigations, feasibility studies, site prioritization,
31 selection of remedies and implementation of the water quality assurance
32 revolving fund program pursuant to title 49, chapter 2, article 5.

33 (d) The department of environmental quality regarding coordination
34 of databases that are necessary for activities conducted pursuant to title
35 49, chapter 2, article 5.

36 5. Cooperate with the Arizona power authority in the performance of
37 the duties and functions of the authority.

38 6. Maintain a permanent public depository for existing and future
39 records of stream flow, groundwater levels and water quality and other
40 data relating to surface water and groundwater.

41 7. Maintain a public docket of all matters before the department
42 that may be subject to judicial review pursuant to this title.

43 8. Investigate and take appropriate action on any complaints
44 alleging withdrawals, diversions, impoundments or uses of surface water or

1 groundwater that may violate this title or the rules adopted pursuant to
2 this title.

3 ~~9. Report to and consult with the Arizona water resources advisory~~
4 ~~board at regular intervals.~~

5 ~~10.~~ 9. Adopt an official seal for the authentication of records,
6 orders, rules and other official documents and actions.

7 ~~11.~~ 10. Provide staff support to the Arizona water protection fund
8 commission established pursuant to chapter 12 of this title.

9 ~~12.~~ 11. Exercise and perform all powers and duties invested in the
10 chairperson of the Arizona water banking authority commission as
11 prescribed by chapter 14 of this title.

12 ~~13.~~ 12. Provide staff support to the Arizona water banking
13 authority established pursuant to chapter 14 of this title.

14 13. ON OR BEFORE DECEMBER 31 EVERY THREE YEARS AFTER THE INITIAL
15 PRELIMINARY SURVEY, ISSUE A REPORT THAT INCLUDES AN ASSESSMENT OF THE
16 OVERALL HEALTH OF EACH WATERSHED IN THIS STATE, BASED ON AN EVALUATION OF
17 THE FOLLOWING ATTRIBUTES OF THE WATERSHED:

18 (a) HYDROLOGY.

19 (b) LANDSCAPE CONDITION.

20 (c) HABITAT CONDITION.

21 (d) GEOMORPHOLOGY.

22 (e) WATER QUALITY.

23 (f) BIOLOGICAL CONDITION, INCLUDING THE BIODIVERSITY OF PLANTS,
24 ANIMALS AND AQUATIC SPECIES.

25 (g) THREATS TO OR VULNERABILITIES OF THE WATERSHED THAT IMPACT THE
26 ATTRIBUTES PRESCRIBED BY THIS PARAGRAPH.

27 14. In the year following each regular general election, present
28 information to the committees with jurisdiction over water issues in the
29 house of representatives and the senate. A written report is not required
30 but the presentation shall include information concerning the following:

31 (a) The current status of the water supply in this state and any
32 likely changes in that status.

33 (b) Issues of regional and local drought effects, short-term and
34 long-term drought management efforts and the adequacy of drought
35 preparation throughout the state.

36 (c) The status of current water conservation programs in this
37 state.

38 (d) The current state of each active management area and the level
39 of progress toward management goals in each active management area.

40 (e) Issues affecting management of the Colorado river and the
41 reliability of this state's two million eight hundred thousand acre-foot
42 allocation of Colorado river water, including the status of water supplies
43 in and issues related to the Colorado river basin states and Mexico.

1 (f) The status of any pending or likely litigation regarding
2 surface water adjudications or other water related litigation and the
3 potential impacts on this state's water supplies.

4 (g) The status of Indian water rights settlements and related
5 negotiations that affect this state.

6 (h) Other matters related to the reliability of this state's water
7 supplies, the responsibilities of the department and the adequacy of the
8 department's and other entities' resources to meet this state's water
9 management needs.

10 Sec. 3. Section 45-151, Arizona Revised Statutes, is amended to
11 read:

12 45-151. Right of appropriation; permitted uses; water rights
13 in stockponds

14 A. Any person, ~~the THIS state of Arizona~~ or a political subdivision
15 ~~thereof OF THIS STATE~~ may appropriate unappropriated water for domestic,
16 municipal, irrigation, stock watering, water power, recreation, wildlife,
17 including fish, nonrecoverable water storage pursuant to section
18 45-833.01, ~~or~~ mining uses ~~OR WATERSHED HEALTH USES~~, for ~~his~~ personal use
19 or for delivery to consumers. The person, ~~the THIS state of Arizona~~ or a
20 political subdivision ~~thereof OF THIS STATE~~ first appropriating the water
21 shall have the better right.

22 B. To effect the beneficial use, the person, ~~the THIS state of~~
23 ~~Arizona~~ or a political subdivision ~~thereof OF THIS STATE~~ appropriating the
24 water may construct and maintain reservoirs, storage facilities pursuant
25 to chapter 3.1 of this title, dams, canals, ditches, flumes and other
26 necessary waterways.

27 C. A water right in a stockpond, certified pursuant to article 10
28 of this chapter, shall be recognized as if such water had been
29 appropriated pursuant to this article.

30 Sec. 4. Section 45-152.01, Arizona Revised Statutes, is amended to
31 read:

32 45-152.01. Instream flow applications; process; definition

33 A. In addition to the information prescribed in section 45-152, any
34 person, including the United States, this state or a municipality, who
35 files an instream flow application after ~~the effective date of this~~
36 ~~section~~ AUGUST 2, 2012 shall comply with the following:

37 1. The applicant shall submit at least five years of streamflow
38 measurement data to support the proposed beneficial use which shall be
39 submitted at the time the application is filed. The director shall not
40 accept for filing an instream flow application that is not accompanied by
41 at least five years of continuous streamflow measurement data. The
42 streamflow data submitted shall consist of gauged on-site measurements of
43 available water flow from the area in which the claimed beneficial use
44 occurs.

1 2. The instream flow application shall describe the proposed
2 beneficial use and shall specify both of the following:

3 (a) The amount of streamflow required for the proposed beneficial
4 use.

5 (b) The availability of the requested flows during claimed periods
6 of beneficial use.

7 B. Applications that are submitted after ~~the effective date of this~~
8 ~~section~~ AUGUST 2, 2012 shall be rejected if the application does not
9 comply with this section.

10 C. THIS SECTION DOES NOT APPLY TO APPLICATIONS FOR A PERMIT TO MAKE
11 AN APPROPRIATION OF WATER FOR WATERSHED HEALTH USES UNDER SECTION 45-152.

12 ~~C.~~ D. For the purposes of this section, "instream flow
13 application" means an application for a permit to make an appropriation of
14 water for purposes of recreation or wildlife, including fish, in a
15 specific stream reach without diverting the water from the stream.

16 Sec. 5. Section 45-172, Arizona Revised Statutes, is amended to
17 read:

18 45-172. Transfer of water rights; application; limitations;
19 required consent

20 A. A water right may be severed from the land to which it is
21 appurtenant or from the site of its use if for other than irrigation
22 purposes and with the consent and approval of the owner of such right may
23 be transferred for use for irrigation of agricultural lands or for
24 municipal, WATERSHED HEALTH, stock watering, power and mining purposes and
25 to the state or its political subdivisions for use for recreation and
26 wildlife purposes, including fish, without losing priority theretofore
27 established, subject to the following limitations and conditions:

28 1. Except as otherwise provided in this section no such severance
29 or transfer shall be made unless approved by the director, and the
30 approval of the director shall prescribe the conditions of the approval.

31 2. Vested or existing rights to the use of water shall not be
32 affected, infringed ~~upon nor~~ ON OR interfered with, and in no event shall
33 the water diverted or used after the transfer of such rights exceed the
34 vested rights existing at the time of such severance and transfer, and the
35 director shall by order so define and limit the amount of water to be
36 diverted or used annually subsequent to such transfer.

37 3. The water rights sought to be transferred shall have been
38 lawfully perfected under the laws of the territory or the state of Arizona
39 and shall not have thereafter been forfeited or abandoned.

40 4. No such severance or transfer of water rights shall be permitted
41 or allowed from lands within the exterior boundaries of any irrigation
42 district, agricultural improvement district or water users' association
43 without first having obtained the written consent and approval of such
44 irrigation district, agricultural improvement district or water users'
45 association.

1 5. No right to the use of water on or from any watershed or
 2 drainage area ~~which~~ THAT supplies or contributes water for the irrigation
 3 of lands within an irrigation district, agricultural improvement district
 4 or water users' association shall be severed or transferred without the
 5 consent of the governing body of such irrigation district, agricultural
 6 improvement district or water users' association. All proposed
 7 applications for the severance and transfer of a right to use water of or
 8 from any watershed or drainage area ~~which~~ THAT supplies or contributes
 9 water for the irrigation of lands within any irrigation district,
 10 agricultural improvement district or water users' association shall be
 11 submitted to the governing body of such irrigation district, agricultural
 12 improvement district or water users' association ~~prior to~~ BEFORE the
 13 filing of such application with the director. Within forty-five days
 14 after the receipt of the application such governing body shall reject or
 15 approve the proposed application. Failure of such governing body to
 16 approve or reject the proposed application within forty-five days after
 17 receipt shall constitute approval of the proposed application by such
 18 governing body. No application for the severance or transfer of a right
 19 to the use of water of or from any watershed or drainage area ~~which~~ THAT
 20 supplies or contributes water for the irrigation of lands within any
 21 irrigation district, agricultural improvement district or water users'
 22 association shall be accepted for filing by the director unless
 23 accompanied by the written consent of the governing body of such
 24 irrigation district, agricultural improvement district or water users'
 25 association to the proposed application or by satisfactory evidence that
 26 such governing body failed to either accept or reject the proposed
 27 application within forty-five days after receipt by such governing body.

28 6. A severance and transfer of an irrigation water right
 29 appurtenant to lands within the boundaries of an irrigation district to
 30 other lands within the boundaries of the same irrigation district for
 31 agricultural use may be accomplished by the exclusion of lands to which a
 32 water right is appurtenant from within the boundaries of an irrigation
 33 district, and the inclusion in lieu of other lands within the boundaries
 34 of such irrigation district. Such severance and transfer of a water right
 35 shall require the consent of only the irrigation district within which the
 36 affected lands are situated and of the owners of the lands affected by the
 37 severance and transfer. No proceedings before ~~not~~ OR approval by the
 38 director shall be required to accomplish such severance and transfer.

39 7. An application for severance and transfer of a water right shall
 40 be filed with the director. The director shall give notice of the
 41 application by publication once a week for three successive weeks in a
 42 newspaper of general circulation in the county or counties in which the
 43 watershed or drainage area is located. The notice shall state that any
 44 interested person may file written objections to the proposed severance
 45 and transfer with the director within thirty days after the last

1 publication of the notice. In appropriate cases, including cases in which
2 an objection has been filed, an administrative hearing may be held before
3 the director's decision on the application if the director deems a hearing
4 necessary.

5 B. Section 45-114, subsections A and B govern administrative
6 proceedings, rehearing or review and judicial review of final decisions of
7 the director under this section.

8 Sec. 6. Survey of status of waters of this state;
9 definitions; delayed repeal

10 A. The director of water resources shall:

11 1. Establish a set of standard measures, using the best available
12 science, to define ecological water needs in this state. The standard
13 measures established by the director of water resources shall include
14 criteria for examining the relationship between ecological water needs,
15 groundwater withdrawal and surface water appropriations in this state.

16 2. On or before December 31, 2023, publish a preliminary survey of
17 the status of the waters of this state, including the following:

18 (a) A watershed by watershed description of the waters of this
19 state, including an assessment of the overall health of the watershed as
20 prescribed by section 45-105, subsection B, Arizona Revised Statutes, as
21 amended by this act.

22 (b) A description of each subwatershed in which there is
23 insufficient water to satisfy the ecological water needs that are
24 identified as prescribed in paragraph 1 of this subsection.

25 (c) A determination of the appropriate methods and steps necessary
26 to monitor, maintain, improve and restore the ecosystems of each
27 watershed.

28 (d) A recommendation of any statutory changes that are needed to
29 facilitate actions supporting the ecological water needs of this state.

30 3. Provide for notice and comment of the preliminary survey by:

31 (a) Posting on the department of water resources' website the
32 preliminary survey prescribed by subsection A, paragraph 2 of this
33 section, copies of all notices required by section 41-1022, Arizona
34 Revised Statutes, and all proposed rulemakings.

35 (b) Notifying by first class mail, fax or email each person who has
36 made a timely request to the department of water resources for
37 notification of the preliminary survey prescribed by subsection A,
38 paragraph 2 of this section or for notification of all proposed
39 rulemakings under section 41-1022, Arizona Revised Statutes.

40 (c) Holding an open meeting and taking public comment not sooner
41 than sixty days after the department of water resources provides
42 notification under subdivisions (a) and (b) of this paragraph.

43 (d) Responding in writing to all public comments, whether received
44 at the hearing or otherwise, that are received by a date announced by the
45 director of water resources in the initial notice.

1 4. Post the final survey and responses to all public comments
2 received on the department of water resources' website for a period of not
3 less than six months.

4 B. Any agency or political subdivision of this state that has
5 information relevant to developing the survey, the determinations and the
6 recommendations prescribed by this section shall cooperate with the
7 director of water resources and shall timely provide information requested
8 pursuant to this section by the director of water resources.

9 C. For the purposes of this section, "ecological water needs",
10 "groundwater" and "surface water" have the same meanings prescribed in
11 section 45-101, Arizona Revised Statutes, as amended by this act.

12 D. This section is repealed from and after September 30, 2024.