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

Section 1. Section 45-101, Arizona Revised Statutes, is amended to read:

45-101. Definitions

In this title, unless the context otherwise requires:

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

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

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

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

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

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

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

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

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

10. "Surface water" means the waters of all sources, flowing in streams, canyons, ravines or other natural channels, or in definite underground channels, whether perennial or intermittent, floodwater, wastewater or surplus water, and of lakes, ponds and springs on the
surface. For the purposes of administering this title, surface water is
deemed to include central Arizona project water.

11. "WATERSHED HEALTH USES" MEANS WATER THAT IS CONSERVED IN A
NATURAL WATERCOURSE AND NOT OTHERWISE USED AND THAT SUPPORTS THE
ATTRIBUTES OF WATERSHED HEALTH FOR AN INDIVIDUAL WATERSHED AS PRESCRIBED
IN THE REPORT REQUIRED BY SECTION 45-105, SUBSECTION B.
Sec. 2. Section 45-105, Arizona Revised Statutes, is amended to
read:

45-105. Powers and duties of director

A. The director may:
1. Formulate plans and develop programs for the practical and
economical development, management, conservation and use of surface water,
groundwater and the watersheds in this state, including the management of
water quantity and quality.
2. Investigate works, plans or proposals pertaining to surface
water and groundwater, including management of watersheds, and acquire,
preserve, publish and disseminate related information the director deems
advisable.
3. Collect and investigate information on and prepare and devise
means and plans for the development, conservation and use of all
waterways, watersheds, surface water, groundwater and groundwater basins
in this state and of all related matters and subjects, including
irrigation, drainage, water quality maintenance, regulation of flow,
diversion of running streams adapted for development in cooperating with
the United States or by this state independently, flood control, use of
water power, prevention of soil waste and storage, conservation and
development of water for every useful purpose.
4. Measure, survey and investigate the water resources of this
state and their potential development and cooperate and contract with
agencies of the United States for such purposes.
5. Acquire, hold and dispose of property, including land,
rights-of-way, water and water rights, as necessary or convenient for the
performance of the groundwater and water quality management functions of
the department.
6. Acquire, other than by condemnation, construct, improve,
maintain and operate early warning systems for flood control purposes and
works for the recovery, storage, treatment and delivery of water.
7. Accept grants, gifts or donations of money or other property
from any source, which may be used for any purpose consistent with this
title. All property acquired by the director is public property and is
subject to the same tax exemptions, rights and privileges granted to
municipalities, public agencies and other public entities.
8. Enter into an interagency contract or agreement with any public
agency pursuant to title 11, chapter 7, article 3 and contract, act
jointly or cooperate with any person to carry out the purposes of this title.

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

10. Initiate and participate in conferences, conventions or hearings, including congressional hearings, court hearings or hearings of other competent judicial or quasi-judicial departments, agencies or organizations, and negotiate and cooperate with agencies of the United States or of any state or government and represent this state concerning matters within the department's jurisdiction.

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

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

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

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

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

16. Dispose informally by stipulation, agreed settlement, consent order or alternative means of dispute resolution, including arbitration, if the parties and director agree, or by default of any case in which a hearing before the director is required or allowed by law.
17. Cooperate and coordinate with the appropriate governmental entities in Mexico regarding water planning in areas near the border between Mexico and Arizona and for the exchange of relevant hydrological information.

B. The director shall:

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

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

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

4. Coordinate and confer with and may contract with:

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

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

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

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

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

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

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

8. Investigate and take appropriate action on any complaints alleging withdrawals, diversions, impoundments or uses of surface water or groundwater that may violate this title or the rules adopted pursuant to this title.
9. Adopt an official seal for the authentication of records, orders, rules and other official documents and actions.

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

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

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

13. In the year following each regular general election, present information to the committees with jurisdiction over water issues in the house of representatives and the senate. A written report is not required but the presentation shall include information concerning the following:
   (a) The current status of the water supply in this state and any likely changes in that status.
   (b) Issues of regional and local drought effects, short-term and long-term drought management efforts and the adequacy of drought preparation throughout the state.
   (c) The status of current water conservation programs in this state.
   (d) The current state of each active management area and the level of progress toward management goals in each active management area.
   (e) Issues affecting management of the Colorado river and the reliability of this state's two million eight hundred thousand acre-foot allocation of Colorado river water, including the status of water supplies in and issues related to the Colorado river basin states and Mexico.
   (f) The status of any pending or likely litigation regarding surface water adjudications or other water-related litigation and the potential impacts on this state's water supplies.
   (g) The status of Indian water rights settlements and related negotiations that affect this state.
   (h) Other matters related to the reliability of this state's water supplies, the responsibilities of the department and the adequacy of the department's and other entities' resources to meet this state's water management needs.

14. Not later than December 1, 2023 and on or before December 1 of each year thereafter, prepare and issue a water supply and demand assessment for at least six of the forty-six groundwater basins established pursuant to section 45-403. The director shall ensure that a water supply and demand assessment is completed for all groundwater basins at least once every five years. The director may contract with outside entities to perform some or all of the assessments and those outside entities shall be identified in the assessment.

15. On or before December 31 every three years after the Initial Preliminary Survey, issue a report that includes an assessment of the
OVERALL HEALTH OF EACH WATERSHED IN THIS STATE. ANY AGENCY OR POLITICAL
SUBDIVISION OF THIS STATE THAT HAS INFORMATION RELEVANT TO DEVELOPING THE
SURVEY AND REPORT PRESCRIBED BY THIS PARAGRAPH, INCLUDING THE
DETERMINATIONS, ASSESSMENTS, AND RECOMMENDATIONS PRESCRIBED BY THIS
PARAGRAPH, SHALL COOPERATE WITH THE DIRECTOR AND SHALL TIMELY PROVIDE
INFORMATION REQUESTED BY THE DIRECTOR. THE ASSESSMENT IF THE OVERALL
HEALTH OF EACH WATERSHED IN THIS STATE SHALL BE BASED ON AN EVALUATION OF
THE FOLLOWING ATTRIBUTES OF THE WATERSHED:

(a) HYDROLOGY.
(b) LANDSCAPE CONDITION.
(c) HABITAT CONDITION.
(d) GEOMORPHOLOGY.
(e) WATER QUALITY.
(f) BIOLOGICAL CONDITION, INCLUDING THE BIODIVERSITY OF PLANTS,
ANIMALS AND AQUATIC SPECIES.
(g) THREATS OR VULNERABILITIES OF THE WATERSHED THAT IMPACT THE
ATTRIBUTES PRESCRIBED BY THIS PARAGRAPH.

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

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

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

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

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

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

45-152.01. Instream flow applications; process; definition

A. In addition to the information prescribed in section 45-152, any
person, including the United States, this state or a municipality, who
files an instream flow application after the effective date of this
section AUGUST 2, 2012 shall comply with the following:
1. The applicant shall submit at least five years of streamflow measurement data to support the proposed beneficial use which shall be submitted at the time the application is filed. The director shall not accept for filing an instream flow application that is not accompanied by at least five years of continuous streamflow measurement data. The streamflow data submitted shall consist of gauged on-site measurements of available water flow from the area in which the claimed beneficial use occurs.

2. The instream flow application shall describe the proposed beneficial use and shall specify both of the following:
   (a) The amount of streamflow required for the proposed beneficial use.
   (b) The availability of the requested flows during claimed periods of beneficial use.

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

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

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

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

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

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

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

2. Vested or existing rights to the use of water shall not be affected, infringed upon or interfered with, and in no event shall the water diverted or used after the transfer of such rights exceed the vested rights existing at the time of such severance and transfer, and the director shall by order so define and limit the amount of water to be diverted or used annually subsequent to such transfer.
3. The water rights sought to be transferred shall have been
lawfully perfected under the laws of the territory or the state of Arizona
and shall not have thereafter been forfeited or abandoned.

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

5. No right to the use of water on or from any watershed or
drainage area which supplies or contributes water for the irrigation
of lands within an irrigation district, agricultural improvement district
or water users' association shall be severed or transferred without the
consent of the governing body of such irrigation district, agricultural
improvement district or water users' association. All proposed
applications for the severance and transfer of a right to use water of or
from any watershed or drainage area which supplies or contributes
water for the irrigation of lands within any irrigation district, agricultural
improvement district or water users' association shall be submitted to the governing body of such irrigation district, agricultural
improvement district or water users' association prior to the filing of such application with the director. Within forty-five days
after the receipt of the application such governing body shall reject or
approve the proposed application. Failure of such governing body to
approve or reject the proposed application within forty-five days after
receipt shall constitute approval of the proposed application by such
governing body. No application for the severance or transfer of a right
to the use of water of or from any watershed or drainage area which supplies or contributes water for the irrigation of lands within any
irrigation district, agricultural improvement district or water users'
association shall be accepted for filing by the director unless
accompanied by the written consent of the governing body of such
irrigation district, agricultural improvement district or water users'
association to the proposed application or by satisfactory evidence that
such governing body failed to either accept or reject the proposed
application within forty-five days after receipt by such governing body.

6. A severance and transfer of an irrigation water right
appurtenant to lands within the boundaries of an irrigation district to
other lands within the boundaries of the same irrigation district for
agricultural use may be accomplished by the exclusion of lands to which a
water right is appurtenant from within the boundaries of an irrigation
district, and the inclusion in lieu of other lands within the boundaries
of such irrigation district. Such severance and transfer of a water right
shall require the consent of only the irrigation district within which the
affected lands are situated and of the owners of the lands affected by the
severance and transfer. No proceedings before nor approval by the
director shall be required to accomplish such severance and transfer.

7. An application for severance and transfer of a water right shall
be filed with the director. The director shall give notice of the
application by publication once a week for three successive weeks in a
newspaper of general circulation in the county or counties in which the
watershed or drainage area is located. The notice shall state that any
interested person may file written objections to the proposed severance
and transfer within thirty days after the last publication of the notice. In appropriate cases, including cases in which
an objection has been filed, an administrative hearing may be held before
the director's decision on the application if the director deems a hearing
necessary.

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

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

A. The director of water resources shall:
1. Establish a set of standard measures, using the best available
science, to define ecological water needs in this state. The standard
measures established by the director of water resources shall include
criteria for examining the relationship between ecological water needs,
groundwater withdrawal and surface water appropriations in this state.
2. On or before December 31, 2024, publish a preliminary survey of
the status of the waters of this state, including the following:
(a) A watershed by watershed description of the waters of this
state, including an assessment of the overall health of the watershed as
prescribed by section 45-105, subsection B, Arizona Revised Statutes, as
amended by this act.
(b) A description of each subwatershed in which there is
insufficient water to satisfy the ecological water needs that are
identified as prescribed in paragraph 1 of this subsection.
(c) A determination of the appropriate methods and steps necessary
to monitor, maintain, improve and restore the ecosystems of each
watershed.
(d) A recommendation of any statutory changes that are needed to
facilitate actions supporting the ecological water needs of this state.
3. Provide for notice and comment of the preliminary survey by:
(a) Posting on the department of water resources' website the
preliminary survey prescribed by subsection A, paragraph 2 of this
section, copies of all notices required by section 41-1022, Arizona
Revised Statutes, and all proposed rulemakings.
(b) Notifying by first class mail, fax or email each person who has made a timely request to the department of water resources for notification of the preliminary survey prescribed by subsection A, paragraph 2 of this section or for notification of all proposed rulemakings under section 41-1022, Arizona Revised Statutes.

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

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

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

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

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

D. This section is repealed from and after September 30, 2025.