

DRAFT – 2/10/2014

REFERENCE TITLE: **water banking authority; storage credits**

State of Arizona

House of Representatives

Fifty-first Legislature

Second Regular Session

2014

HB 2326

Introduced by

Representatives Shope: Orr

amending sections 45-2423, 45-2457 and 45-2491, Arizona Revised Statutes; relating to the arizona water banking authority.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 45-2423, Arizona Revised Statutes, is amended to read:

45-2423. Powers and duties of authority

A. The authority, acting through its commission, shall:

1. Administer the Arizona water banking fund in accordance with this chapter.
2. Coordinate its staffing needs with the director and CAWCD.
3. Coordinate the storage of water and distribution and extinguishment of long-term storage credits with the director in accordance with this chapter and the water management objectives set forth in chapter 2 of this title.
4. Coordinate with CAWCD for the purchase, delivery and storage of Colorado river water delivered through the central Arizona project in accordance with this chapter, AND CONFER WITH CAWCD REGARDING THE PURCHASE OF LONG-TERM STORAGE CREDITS FOR WHICH CAWCD WILL BE THE RECOVERY AGENT.
5. Coordinate and confer with state agencies, municipal corporations, special districts, authorities, other political subdivisions, private entities, Indian communities and the United States on matters within their jurisdiction relating to the policy and purposes of this chapter.
6. Determine, on an annual basis, the quantity of Colorado river water, surface water other than Colorado river water and effluent to be stored by the authority, ~~and~~ where that storage will occur AND THE VOLUME OF LONG-TERM STORAGE CREDITS TO BE PURCHASED BY THE AUTHORITY.
7. Account for, hold and distribute or extinguish long-term storage credits in accordance with this chapter.

8. Comply with all aspects of chapter 3.1 of this title.
 9. Perform the authority's replenishment responsibilities under chapter 15, article 3 of this title with monies appropriated from the state general fund by the legislature for that purpose and to the extent that monies appropriated by the legislature for that purpose are not available, with monies collected in the Pinal active management area pursuant to section 45-611, subsection C, paragraph 3.
 10. Carry out the obligations of this state under section 105 of Public Law 108-451 as agent for this state, including the direct delivery of water to Indian communities in this state and the leasing of non-Indian agricultural priority and Indian priority central Arizona project water as prescribed by article 5 of this chapter.
 11. Adopt an official seal for the authentication of its records, decisions and resolutions.
 12. Keep the minutes of its meetings and all records, reports and other information relating to its work and programs in permanent form, systematically indexed and filed.
- B. The authority, acting through its commission, may:
1. Apply for and hold water storage permits.
 2. Accrue, **PURCHASE**, exchange, assign, lend and hold long-term storage credits in accordance with this chapter, **SUBJECT TO THE FOLLOWING:-**
 - (a) **EXCEPT FOR THE PURCHASE OF LONG-TERM STORAGE CREDITS FROM AN INDIAN COMMUNITY PURSUANT TO SECTION 45-841.01, THE AUTHORITY MAY PURCHASE LONG-TERM STORAGE CREDITS ONLY AFTER THE AUTHORITY HAS STORED, OR SCHEDULED FOR STORAGE, ALL AVAILABLE EXCESS CENTRAL ARIZONA PROJECT WATER OR WHEN CENTRAL ARIZONA PROJECT WATER IS OTHERWISE UNAVAILABLE OR UNDELIVERABLE.**
 - (b) **LONG-TERM STORAGE CREDITS ACCRUED OR PURCHASED BY THE AUTHORITY MUST BE DISTRIBUTED OR EXTINGUISHED IN ACCORDANCE WITH THE RULES OF OPERATION PRESCRIBED IN SECTION 45-2457, FOR THE MONIES USED BY THE AUTHORITY TO ACCRUE OR PURCHASE THE CREDITS.**
 3. Exchange Colorado river water for any type of water in accordance with chapter 4 of this title.
 4. Enter into water banking services agreements.
 5. Charge fees for water banking services.
 6. Apply for and hold any water quality permit required for water storage by the department of environmental quality under title 49, chapter 2, article 3 or by federal law.
 7. Make and execute all contracts, including intergovernmental agreements pursuant to title 11, chapter 7, article 3, that shall be signed by the chairperson, or in the chairperson's absence the vice-chairperson, and attested by the secretary, necessary to:
 - (a) Obtain for storage Colorado river water delivered through the central Arizona project. Agreements by which the authority obtains Colorado river water are exempt from the requirements of title 41, chapter 23.
 - (b) Obtain effluent or surface water other than Colorado river water for storage but only **AFTER** ~~after~~ ~~TO THE EXTENT THAT MONIES AND STORAGE CAPACITY ARE AVAILABLE TO~~ the authority **HAS STORED, OR SCHEDULED FOR STORAGE, has stored IN EXCESS OF THE AMOUNTS REQUIRED TO PURCHASE AND STORE** all

available excess Central Arizona project water or when central Arizona project water is otherwise unavailable or undeliverable.

(c) Affiliate water storage permits held by the authority with storage facility permits.

(d) Store water for purposes of this chapter at permitted storage facilities.

(e) Distribute long-term storage credits ~~earned~~ ACCRUED OR PURCHASED by the authority to make water available to municipal and industrial users of Colorado river water in this state that are inside or outside of the CAWCD service area, in accordance with the provisions of this chapter.

(f) Store Colorado river water in Arizona on behalf of appropriately authorized agencies in California and Nevada.

(g) Cause a decrease in Arizona diversions from the Colorado river, ensuring that Arizona will use less than its full entitlement to Colorado river water in years in which California and Nevada agencies are contractually authorized to call on the water stored on their behalf by the authority.

(h) Distribute long-term storage credits ~~earned~~ ACCRUED OR PURCHASED by the authority on behalf of agencies in California and Nevada to Colorado river water users in Arizona to use in place of Colorado river water that would have otherwise been used by those Arizona users.

(i) Replenish water pursuant to chapter 15, article 3 of this title, including entering into an intergovernmental agreement with the Gila river Indian community pursuant to section 45-2624.

(j) Distribute long-term storage credits ~~earned~~ ACCRUED OR PURCHASED by the authority to make water available to Indian communities in this state for Indian firming measures pursuant to article 5 of this chapter.

8. Sue and be sued.

9. Perform all other acts necessary for the authority to carry out its purposes, powers and duties in accordance with this chapter.

10. Submit a request for a general fund appropriation to the legislature each year. A request shall be accompanied by a budget detailing how the appropriation would be used and justifying the need for the appropriation.

11. Form temporary committees as deemed necessary by the authority to provide the authority with advice on issues identified by the authority. Advisory committees may consist of members of the public selected by the authority, members of the authority and authority staff.

~~12. Purchase long-term storage credits accrued by an Indian community pursuant to section 45-841.01, provided such long-term storage credits are distributed or extinguished in accordance with the rules of operation specified in section 45-2457 for the funds used by the authority to purchase the credits.~~

Sec. 2. Section 45-2457, Arizona Revised Statutes, is amended to read:

45-2457. Accounting; rules of operation

A. The authority shall develop an accounting system for the long-term storage credits accrued OR PURCHASED by the authority. The accounting system shall be designed to allow the authority to determine which funding source of the banking fund paid for each long-term storage credit accrued OR PURCHASED by the authority.

B. The authority shall operate in accordance with all of the following rules of operation:

1. The authority shall reserve a reasonable number of long-term storage credits accrued **OR PURCHASED** with general fund appropriations, other than general fund appropriations for replenishment under chapter 15, article 3 of this title, for the benefit of municipal and industrial users of Colorado river water in this state that are outside of the service area of CAWCD.

2. The authority may distribute long-term storage credits accrued **OR PURCHASED** with general fund appropriations, other than general fund appropriations for replenishment under chapter 15, article 3 of this title, for both of the following:

(a) To make water available to a municipal and industrial user of Colorado river water in this state that is outside of the service area of CAWCD, if both of the following apply:

(i) The municipal and industrial user would otherwise suffer a water shortage. The authority may distribute long-term credits to the extent reasonably necessary to offset the water shortage.

(ii) The authority collects reimbursement for the cost to the authority of replacing the long-term storage credits distributed. The authority may replace the long-term storage credits in any year it deems appropriate but shall use good faith efforts to replace the long-term storage credits at a reasonable cost to the person who is responsible for reimbursing the authority for the credits distributed.

(b) To make water available to CAWCD to the extent necessary for CAWCD to meet the demands of its municipal and industrial subcontractors, if all of the following apply:

(i) CAWCD's normal diversions from the Colorado river have been or will be disrupted by shortages on the river or by disruptions in the operation of the central Arizona project.

(ii) The authority does not distribute for this purpose the long-term storage credits reserved in accordance with paragraph 1 **OF THIS SUBSECTION**.

(iii) The authority collects reimbursement from CAWCD for the cost to the authority of replacing the long-term storage credits distributed. The authority may replace the long-term storage credits in any year it deems appropriate but shall use good faith efforts to replace the long-term storage credits at a reasonable cost to CAWCD.

3. The authority may distribute or extinguish long-term storage credits accrued **OR PURCHASED** with general fund appropriations, other than general fund appropriations for replenishment under chapter 15, article 3 of this title, to implement the settlement of water right claims by Indian communities in this state.

4. On request from the director, the authority may extinguish long-term storage credits accrued **or PURCHASED** with general fund appropriations, other than general fund appropriations for replenishment under chapter 15, article 3 of this title, to fulfill the water management objectives set forth in chapter 2 of this title.

5. The authority may exchange long-term storage credits accrued **OR PURCHASED** with general fund appropriations for long-term storage credits held by other persons if the long-term storage credits received by the authority were stored in a location that better enables the authority to fulfill the purposes and policies of this chapter than were the long-term storage credits exchanged by the authority. For the purposes of this paragraph, the authority may make exchanges of long-term storage credits stored in one active management area for long-term storage credits stored in a different active management area or of long-term storage credits stored

in one groundwater basin for long-term storage credits stored in a different groundwater basin.

6. The authority shall distribute or extinguish long-term storage credits accrued **OR PURCHASED** with monies collected in accordance with section 45-611, subsection C, paragraph 3 only for the benefit of the active management area in which the monies were collected. The authority may distribute or extinguish these long-term storage credits to the extent necessary to meet the demands of CAWCD's municipal and industrial subcontractors during times in which CAWCD's diversions from the Colorado river have been or will be disrupted by shortages on the Colorado river or by disruptions in operation of the central Arizona project, to implement the settlement of water right claims by Indian communities in this state or, on request from the director, to meet the other water management objectives set forth in chapter 2 of this title. The authority may use the monies collected in the Pinal active management area under section 45-611, subsection C, paragraph 3 to acquire long-term storage credits for replenishment purposes under chapter 15, article 3 of this title.

7. The authority shall distribute long-term storage credits accrued **OR PURCHASED** with monies deposited in the fund in accordance with section 48-3715.03, subsection B only for the benefit of the county in which the monies were collected. The authority shall distribute these long-term storage credits to CAWCD to the extent necessary to meet the demands of CAWCD's municipal and industrial subcontractors during times in which CAWCD's diversions from the Colorado river have been or will be disrupted by shortages on the Colorado river or by disruptions in operation of the central Arizona project.

8. For each county within the CAWCD service area, on a determination by the authority that the number of long-term storage credits accrued **OR PURCHASED** with monies deposited in the fund in accordance with section 48-3715.03, subsection B exceeds the needs specified in paragraph 7 **OF THIS SUBSECTION** for that county, the authority shall distribute those excess long-term storage credits to municipal water providers within that county that are at the time of distribution experiencing surface water supply shortages not associated with the central Arizona project. The authority shall distribute to each such municipal water provider the lesser of the following number of long-term storage credits:

(a) The total number of credits determined to be available by the authority under this paragraph multiplied by the percentage produced by dividing a numerator equaling the amount of revenues paid pursuant to section 48-3715.02, subsections B and C by taxpayers that are within both the boundaries of the municipal provider that is experiencing the shortage and the boundaries of the surface water supply system that is experiencing the shortage by a denominator equaling the total revenues paid pursuant to section 48-3715.02, subsections B and C by all taxpayers that are located within both the boundaries of a municipal water provider and the boundaries of a surface water supply system in the county. In making these computations, the authority shall use the amounts of revenue paid by taxpayers during the most recent tax year for which this information is available.

(b) Twenty per cent of the total surface water shortage that the municipal and industrial water provider is experiencing.

9. The authority shall distribute or replace long-term storage credits accrued with monies collected pursuant to water banking services agreements in accordance with the terms of those agreements.

10. The authority shall acquire sufficient water supplies to perform its replenishment responsibilities under chapter 15, article 3 of this title. The authority shall acquire those water supplies with monies appropriated from the state general fund by the legislature for replenishment under chapter 15, article 3 of this title and to the extent that monies appropriated by the legislature for that purpose are not available, with monies collected in the Pinal active management area under section 45-611, subsection C, paragraph 3. The authority shall use the water supplies acquired pursuant to this paragraph for any replenishment activity authorized by section 45-2623 and for implementation of the southside replenishment bank established by section 45-2624, including delivering water directly to the Gila river Indian community for those purposes.

C. Any other long-term storage credits accrued **OR PURCHASED** by the authority may be distributed or extinguished by the authority in accordance with the policy and purposes of this chapter.

D. Except as provided by subsection B, paragraph 7 of this section and except as provided by agreements entered into by the authority, the decision to distribute or extinguish any long-term storage credit accrued **OR PURCHASED** by the authority is at the complete discretion of the authority.

Sec. 3. Section 45-2491, Arizona Revised Statutes, is amended to read:

45-2491. State commitments to firm Indian settlement water

A. The authority shall act as agent for this state in meeting this state's obligation to deliver water in times of shortage pursuant to Public Law 108-451, fulfilling the requirements of sections 105, 207(c)(I)(ii) and 302(b)(8), and the Indian firming measures established pursuant to this article. In carrying out this obligation the authority may:

1. Store water at permitted recharge facilities for the purpose of Indian firming.

2. PURCHASE LONG-TERM STORAGE CREDITS FOR THE PURPOSE OF INDIAN FIRMING USING THE FUNDING SOURCES IDENTIFIED IN SUBSECTION B OF THIS SECTION, BUT ONLY AFTER THE AUTHORITY HAS STORED, OR SCHEDULED FOR STORAGE, ALL AVAILABLE EXCESS CENTRAL ARIZONA PROJECT WATER OR WHEN CENTRAL ARIZONA PROJECT WATER IS OTHERWISE UNAVAILABLE OR UNDELIVERABLE.

~~2.~~ 3. Enter into contracts or agreements with the United States and Indian communities for storage, recovery or direct delivery of water for Indian firming.

~~3.~~ 4. Enter into leasing agreements with one or more Indian communities in partnership with other entities for non-Indian agricultural priority or Indian priority central Arizona project water.

4. 5. Enter into contracts for the use of water sources including Colorado river water, surface water other than Colorado river water and effluent.

~~5.~~ 6. Enter into contracts with eligible entities for the use of imported groundwater from allowable groundwater basins pursuant to sections 45-552, 45-553 and 45-554 for the purposes of Indian firming.

~~6.~~ 7. Enter into agreements with a multi-county water conservation district established pursuant to title 48, chapter 22 for delivery of water to Indian communities.

~~7.~~ 8. Subject to periodic review of progress toward meeting this state's Indian firming obligation, allow for the use of existing long-term storage credits developed from withdrawal fees collected pursuant to section 45-611, subsection C, paragraph 3.

~~8.~~ 9. Transfer long-term storage credits to a multi-county water conservation district established pursuant to title 48, chapter 22 for recovery and subsequent delivery to Indian communities in times of shortage.

~~9.~~ 10. Enter into agreements for the recovery of long-term storage credits for purposes of Indian firming.

B. Indian firming measures established pursuant to this article shall include funding from the following sources:

1. Legislative appropriations provided for Indian firming on an annual basis to carry out Indian firming measures.

2. To the extent necessary to carry out Indian firming measures after expenditure of legislative appropriations, the authority may use withdrawal fees collected from the Phoenix, Pinal and Tucson active management area water management accounts.