

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

AN ACT

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)

1 Be it enacted by the Legislature of the State of Arizona:  
2 Section 1. Section 45-2423, Arizona Revised Statutes, is amended to  
3 read:  
4 45-2423. Powers and duties of authority  
5 A. The authority, acting through its commission, shall:  
6 1. Administer the Arizona water banking fund in accordance with this  
7 chapter.  
8 2. Coordinate its staffing needs with the director and CAWCD.  
9 3. Coordinate the storage of water and distribution and extinguishment  
10 of long-term storage credits with the director in accordance with this  
11 chapter and the water management objectives set forth in chapter 2 of this  
12 title.  
13 4. Coordinate with CAWCD for the purchase, delivery and storage of  
14 Colorado river water delivered through the central Arizona project in  
15 accordance with this chapter.  
16 5. Coordinate and confer with state agencies, municipal corporations,  
17 special districts, authorities, other political subdivisions, private  
18 entities, Indian communities and the United States on matters within their  
19 jurisdiction relating to the policy and purposes of this chapter.  
20 6. Determine, on an annual basis, the quantity of Colorado river  
21 water, surface water other than Colorado river water and effluent to be  
22 stored by the authority and where that storage will occur.  
23 7. Account for, hold and distribute or extinguish long-term storage  
24 credits in accordance with this chapter.  
25 8. Comply with all aspects of chapter 3.1 of this title.  
26 9. Perform the authority's replenishment responsibilities under  
27 chapter 15, article 3 of this title with monies appropriated from the state  
28 general fund by the legislature for that purpose and to the extent that  
29 monies appropriated by the legislature for that purpose are not available,  
30 with monies collected in the Pinal active management area pursuant to section  
31 45-611, subsection C, paragraph 3.  
32 10. Carry out the obligations of this state under section 105 of Public  
33 Law 108-451 as agent for this state, including the direct delivery of water  
34 to Indian communities in this state and the leasing of non-Indian  
35 agricultural priority and Indian priority central Arizona project water as  
36 prescribed by article 5 of this chapter.  
37 11. Adopt an official seal for the authentication of its records,  
38 decisions and resolutions.  
39 12. Keep the minutes of its meetings and all records, reports and other  
40 information relating to its work and programs in permanent form,  
41 systematically indexed and filed.  
42 B. The authority, acting through its commission, may:  
43 1. Apply for and hold water storage permits.  
44 2. Accrue, PURCHASE, exchange, assign, lend and hold long-term storage  
45 credits in accordance with this chapter. LONG-TERM STORAGE CREDITS ACCRUED

1 OR PURCHASED BY THE AUTHORITY MUST BE DISTRIBUTED OR EXTINGUISHED IN  
2 ACCORDANCE WITH THE RULES OF OPERATION PRESCRIBED IN SECTION 45-2457 FOR THE  
3 MONIES USED BY THE AUTHORITY TO ACCRUE OR PURCHASE THE CREDITS.

4 3. Exchange Colorado river water for any type of water in accordance  
5 with chapter 4 of this title.

6 4. Enter into water banking services agreements.

7 5. Charge fees for water banking services.

8 6. Apply for and hold any water quality permit required for water  
9 storage by the department of environmental quality under title 49, chapter 2,  
10 article 3 or by federal law.

11 7. Make and execute all contracts, including intergovernmental  
12 agreements pursuant to title 11, chapter 7, article 3, that shall be signed  
13 by the chairperson, or in the chairperson's absence the vice-chairperson, and  
14 attested by the secretary, necessary to:

15 (a) Obtain for storage Colorado river water delivered through the  
16 central Arizona project. Agreements by which the authority obtains Colorado  
17 river water are exempt from the requirements of title 41, chapter 23.

18 (b) Obtain effluent or surface water other than Colorado river water  
19 for storage but only ~~after~~ **TO THE EXTENT THAT MONIES AND STORAGE CAPACITY ARE**  
20 **AVAILABLE TO** the authority ~~has stored~~ **IN EXCESS OF THE AMOUNTS REQUIRED TO**  
21 **PURCHASE AND STORE** all available excess Central Arizona project water or when  
22 central Arizona project water is otherwise unavailable or undeliverable.

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

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

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

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

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

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

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

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

4 8. Sue and be sued.

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

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

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

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

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

21 45-2457. Accounting; rules of operation

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

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

29 1. The authority shall reserve a reasonable number of long-term  
30 storage credits accrued **OR PURCHASED** with general fund appropriations, other  
31 than general fund appropriations for replenishment under chapter 15, article  
32 3 of this title, for the benefit of municipal and industrial users of  
33 Colorado river water in this state that are outside of the service area of  
34 CAWCD.

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

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

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

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

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

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

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

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

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

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

30 5. The authority may exchange long-term storage credits accrued OR  
31 PURCHASED with general fund appropriations for long-term storage credits held  
32 by other persons if the long-term storage credits received by the authority  
33 were stored in a location that better enables the authority to fulfill the  
34 purposes and policies of this chapter than were the long-term storage credits  
35 exchanged by the authority. For the purposes of this paragraph, the  
36 authority may make exchanges of long-term storage credits stored in one  
37 active management area for long-term storage credits stored in a different  
38 active management area or of long-term storage credits stored in one  
39 groundwater basin for long-term storage credits stored in a different  
40 groundwater basin.

41 6. The authority shall distribute or extinguish long-term storage  
42 credits accrued OR PURCHASED with monies collected in accordance with section  
43 45-611, subsection C, paragraph 3 only for the benefit of the active  
44 management area in which the monies were collected. The authority may  
45 distribute or extinguish these long-term storage credits to the extent

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

11 7. The authority shall distribute long-term storage credits accrued **OR**  
 12 **PURCHASED** with monies deposited in the fund in accordance with section  
 13 48-3715.03, subsection B only for the benefit of the county in which the  
 14 monies were collected. The authority shall distribute these long-term  
 15 storage credits to CAWCD to the extent necessary to meet the demands of  
 16 CAWCD's municipal and industrial subcontractors during times in which CAWCD's  
 17 diversions from the Colorado river have been or will be disrupted by  
 18 shortages on the Colorado river or by disruptions in operation of the central  
 19 Arizona project.

20 8. For each county within the CAWCD service area, on a determination  
 21 by the authority that the number of long-term storage credits accrued **OR**  
 22 **PURCHASED** with monies deposited in the fund in accordance with section  
 23 48-3715.03, subsection B exceeds the needs specified in paragraph 7 **OF THIS**  
 24 **SUBSECTION** for that county, the authority shall distribute those excess  
 25 long-term storage credits to municipal water providers within that county  
 26 that are at the time of distribution experiencing surface water supply  
 27 shortages not associated with the central Arizona project. The authority  
 28 shall distribute to each such municipal water provider the lesser of the  
 29 following number of long-term storage credits:

30 (a) The total number of credits determined to be available by the  
 31 authority under this paragraph multiplied by the percentage produced by  
 32 dividing a numerator equaling the amount of revenues paid pursuant to section  
 33 48-3715.02, subsections B and C by taxpayers that are within both the  
 34 boundaries of the municipal provider that is experiencing the shortage and  
 35 the boundaries of the surface water supply system that is experiencing the  
 36 shortage by a denominator equaling the total revenues paid pursuant to  
 37 section 48-3715.02, subsections B and C by all taxpayers that are located  
 38 within both the boundaries of a municipal water provider and the boundaries  
 39 of a surface water supply system in the county. In making these  
 40 computations, the authority shall use the amounts of revenue paid by  
 41 taxpayers during the most recent tax year for which this information is  
 42 available.

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

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

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

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

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

23           Sec. 3. Section 45-2491, Arizona Revised Statutes, is amended to read:  
24 **45-2491. State commitments to firm Indian settlement water**

25           A. The authority shall act as agent for this state in meeting this  
26 state's obligation to deliver water in times of shortage pursuant to Public  
27 Law 108-451, fulfilling the requirements of sections 105, 207(c)(I)(ii) and  
28 302(b)(8), and the Indian firming measures established pursuant to this  
29 article. In carrying out this obligation the authority may:

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

32           **2. PURCHASE LONG-TERM STORAGE CREDITS FOR THE PURPOSE OF INDIAN**  
33 **FIRMING.**

34           ~~2-~~ **3.** Enter into contracts or agreements with the United States and  
35 Indian communities for storage, recovery or direct delivery of water for  
36 Indian firming.

37           ~~3-~~ **4.** Enter into leasing agreements with one or more Indian  
38 communities in partnership with other entities for non-Indian agricultural  
39 priority or Indian priority central Arizona project water.

40           ~~4-~~ **5.** Enter into contracts for the use of water sources including  
41 Colorado river water, surface water other than Colorado river water and  
42 effluent.

43           ~~5-~~ **6.** Enter into contracts with eligible entities for the use of  
44 imported groundwater from allowable groundwater basins pursuant to sections  
45 45-552, 45-553 and 45-554 for the purposes of Indian firming.

1           ~~6.~~ 7. Enter into agreements with a multi-county water conservation  
2 district established pursuant to title 48, chapter 22 for delivery of water  
3 to Indian communities.  
4           ~~7.~~ 8. Subject to periodic review of progress toward meeting this  
5 state's Indian firming obligation, allow for the use of existing long-term  
6 storage credits developed from withdrawal fees collected pursuant to section  
7 45-611, subsection C, paragraph 3.  
8           ~~8.~~ 9. Transfer long-term storage credits to a multi-county water  
9 conservation district established pursuant to title 48, chapter 22 for  
10 recovery and subsequent delivery to Indian communities in times of shortage.  
11           ~~9.~~ 10. Enter into agreements for the recovery of long-term storage  
12 credits for purposes of Indian firming.  
13           B. Indian firming measures established pursuant to this article shall  
14 include funding from the following sources:  
15           1. Legislative appropriations provided for Indian firming on an annual  
16 basis to carry out Indian firming measures.  
17           2. To the extent necessary to carry out Indian firming measures after  
18 expenditure of legislative appropriations, the authority may use withdrawal  
19 fees collected from the Phoenix, Pinal and Tucson active management area  
20 water management accounts.