

# ARIZONA REVISED STATUTES

## Title 45 - Waters

### Chapter 12 – Arizona Water Protection Fund

#### Article 1 - General Provisions

##### 45-2101. Declaration of policy

A. It is the declared policy of the legislature to provide for a coordinated effort for the restoration and conservation of the water resources of this state. This policy is designed to allow the people of this state to prosper while protecting and restoring this state's rivers and streams and associated riparian habitats, including fish and wildlife resources that are dependent on these important habitats. In support of this policy, financial resources shall be made available by this state to the appropriate public and private entities to assist in water resource management activities that protect this state's rivers and streams and associated riparian habitats.

B. The primary purpose of this chapter is to establish the Arizona water protection fund commission and the Arizona water protection fund that shall provide an annual source of monies for the development and implementation of measures to protect water of sufficient quality and quantity to maintain, enhance and restore rivers and streams and associated riparian habitats, including fish and wildlife resources that are dependent on these important habitats consistent with existing water law and water rights, and measures to increase water availability. The commission may also provide funding to develop and protect riparian habitats in conjunction with a man-made water resource project, if the man-made water resource water project directly or indirectly benefits a river or stream and includes or creates a riparian habitat. This funding shall occur primarily through the grant of monies from the Arizona water protection fund by the commission to entities that cooperate and work in conjunction with local residents and affected jurisdictions.

C. This declaration of policy and the use of the words "restore", "restoring" and "restoration" in this chapter does not imply an intent to prescribe the removal of dams, levees or other man-made structures.

D. This chapter does not limit or restrict the authority or opportunities of state or local governments or other political subdivisions to plan, develop or implement projects consistent with this chapter.

##### 45-2102. Definitions

In this chapter, unless the context otherwise specifies:

1. "Commission" means the Arizona water protection fund commission.
2. "Fund" means the Arizona water protection fund.

##### 45-2103. Arizona water protection fund commission

A. The Arizona water protection fund commission is established and consists of two ex officio members, two advisory members and nine appointed members who are residents of this state, who have demonstrated an interest in natural resources and who are appointed as follows:

1. One person who represents a multi-county water conservation district established pursuant to title 48, chapter 22 and named by that district's governing board.

2. One person who represents a state association of natural resource conservation districts and who is appointed by the governor.

3. Four persons who represent natural resource conservation districts established pursuant to title 37, chapter 6, and who represent geographically diverse areas of this state, two of whom shall be appointed by the president of the senate and two of whom are appointed by the speaker of the house of representatives.

4. One member of the public who has at least a bachelor's degree in hydrology, who represents a city that is served by the central Arizona project and who is appointed by the governor.

5. One person who is knowledgeable in natural resource conservation issues or in water resource issues related to riparian ecosystems, who represents an agricultural improvement district established pursuant to title 48, chapter 17 and who is appointed by the governor.

6. One person who represents an Indian tribe and who is appointed by the chairman of the intertribal council of Arizona.

7. As nonvoting ex officio members, the director of the department of water resources and the state land commissioner.

8. As nonvoting advisory members, one member of the house of representatives who is appointed by the speaker of the house of representatives and one member of the senate who is appointed by the president of the senate. Advisory members may not be considered for purposes of establishing a quorum.

B. Members of the commission appointed pursuant to subsection A, paragraphs 1 through 6 of this section shall be appointed for staggered terms of three years. A member may serve more than one term and may continue to serve beyond the expiration of the term until a successor is appointed and assumes office.

C. On request, members who are not ex officio members of the commission are eligible to receive compensation pursuant to section 38-611, not to exceed three thousand dollars in any calendar year, and are eligible for reimbursement for expenses pursuant to title 38, chapter 4, article 2.

D. Members of the commission are immune from liability for any action necessary to carry out the purposes of this chapter.

#### 45-2104. Powers and duties; limitations

A. The powers and authority vested in and the duties imposed on the members of the commission shall be exercised by a quorum of members, which consists of a majority of members then in office, except that a lesser number may hold public meetings without taking legal action.

B. The commission shall:

1. Adopt rules necessary to perform its duties.

2. Administer the expenditure of monies in accordance with section 45-2113.

3. Coordinate its staffing needs with the director and the state land commissioner.

4. Make and execute all necessary contracts, including grants and intergovernmental agreements pursuant to title 11, chapter 7, article 3.

5. Adopt an official seal for the authentication of its records, decisions and resolutions.

6. 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.

7. Designate the person or persons who shall execute all documents and instruments on behalf of the commission.

8. Each year elect two members to act as a chair and a vice-chair for the commission.

9. Manifest and record its actions by motion, resolution, order or other appropriate means.

10. In addition to those meetings required by law to be open, hold open public meetings as the commission considers appropriate.

11. Prepare an annual report of its activities.

C. The commission may:

1. Sue and be sued.

2. Contract with any person for the expenditure of monies, including the granting of monies, consistent with section 45-2113.

3. Meet jointly with federal or state authorities to consider matters of mutual interest.

4. Secure from any federal or state agency or department information necessary to enable the commission to carry out its purposes.

5. Accept, use and dispose of appropriations, gifts or grants of money or other property or donations of services, from whatever source, only to carry out the purposes authorized in this chapter.

6. Perform all other acts necessary to carry out the purposes of this chapter.

D. Nothing in this chapter shall be construed to authorize the commission to purchase real property or to use this state's right of eminent domain to acquire water or water rights or long-term storage credits using monies derived from the Arizona water protection fund established by section 45-2111.

#### 45-2105. Application guidelines

Before any monies are granted pursuant to section 45-2113, and by July 1, 1995, and every three years thereafter, the commission shall develop in conjunction with the department guidelines for applicants for funding. Guidelines shall include the following:

1. Delineation of geographic areas in this state where protection and restoration will be emphasized.
2. Identification of issues of concern.
3. Types of measures needed to address issues of concern.
4. A requirement that the applicant include a description of the relationship between the proposed project and existing plans, reports and information that are relevant to the proposed project.

**45-2106. Public involvement**

- A. The commission is subject to the provisions of title 38, chapter 3, article 3.1 and title 39, chapter 1.
- B. The commission shall develop and may amend the guidelines for applicants required by section 45-2105 after reviewing the recommendations submitted by the natural resource conservation districts developed pursuant to section 37-1054, subsections D and E and the information gathered during the public involvement process.
- C. The commission shall gather information from the following:
  1. The director of the department of water resources and the state land commissioner.
  2. The federal and state fish, wildlife, recreation and natural resource agencies.
  3. County and municipal entities.
  4. The public.
- D. The commission shall develop procedures to assure adequate public participation. At a minimum, public participation procedures shall prescribe public notice requirements including the content and publication of the notice, provide an opportunity for public hearings and specify the procedures governing the hearings and require the public availability of relevant documents. Public hearings shall be held at places and times which afford a reasonable opportunity to persons to participate.
- E. The commission shall make available for viewing copies of the recommendations and supporting documents submitted pursuant to this section and may charge a reasonable fee for copying.

**45-2107. Reporting**

Beginning July 1, 1996, and on July 1 every year thereafter, the commission shall submit a detailed report to the governor, the president of the senate and the speaker of the house of representatives. The report shall describe the actions taken by the commission and the expenditures made from the fund during the previous fiscal year.

**Article 2 - Financial Provisions**

**45-2111. Arizona water protection fund**

- A. The Arizona water protection fund is established. The commission shall administer the fund.
- B. The commission may grant monies from the fund to reimburse or advance monies to persons pursuant to section 45-2113. Grants made pursuant to this article are exempt from title 41, chapter 23.
- C. On notice from the commission, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund. Monies in the fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

**45-2112. Funding sources**

- A. The fund shall consist of monies collected pursuant to section 48-3715.05.
- B. In addition to the amounts prescribed in subsection A of this section the fund may accept any gifts, grants or donations.

**45-2113. Fund grants; applications**

- A. The commission shall grant monies from the fund consistent with the application guidelines developed pursuant to section 45-2105. The commission shall establish a procedure by which monies may be granted annually which shall include a maximum of six months between the receipt of the proposal by the commission and the disbursement of monies. The commission shall give priority in funding to the following:

1. Projects for which matching monies or assets of comparable value, including in-kind contributions, will be provided by other sources.

2. Projects that provide for the continued maintenance of the portion of the river and stream and associated riparian habitat that are enhanced by the project.

3. Projects that include broad based local involvement.

4. Projects that directly benefit perennial or intermittent rivers or streams or that otherwise increase the supply of water.

B. The commission shall require as a condition of approval of any proposal all of the following provisions:

1. Allowing access for inspection and evaluation of the project.

2. Controlling the expenditure of and accounting for any monies granted by the commission

3. Requiring that those persons responsible for the project submit all pertinent information and research gained from the project to the commission.

4. Requiring that any person receiving a grant spend no more than five percent of the grant on costs of administration.

C. The commission shall provide for public involvement regarding the applications submitted to the commission which shall include notice to any person who requests notice of applications and which shall provide a reasonable opportunity for comment on the application which shall not be less than forty-five days.

D. On receipt of an application the commission shall notify cities, towns, counties, natural resource conservation districts, special districts and Indian communities affected by the proposal and shall provide a reasonable opportunity for comment on the application which shall not be less than forty-five days.

E. Any person, state agency or political subdivision of this state may submit a request for funding from the fund for purposes prescribed by this section. A federal agency is not eligible for funding from the fund. Requests for funding shall be made to the commission. Requests for funding submitted to the commission may be accompanied by expressions of support from affected cities, towns, counties, natural resource conservation districts, special districts or Indian communities.

F. As a condition of approval by the commission, the applicant shall commit to work jointly with the affected cities, towns, counties, natural resource conservation districts, special districts and Indian communities that have contacted the commission pursuant to subsection D of this section on all aspects of the proposal's implementation and monitoring, unless the jurisdiction chooses not to participate.

G. Monies in the fund may only be spent to finance programs located in this state.

H. Monies in the fund may be spent for any of the following:

1. Granting monies to entities for the acquisition of central Arizona project water or effluent that will protect or restore rivers or streams consistent with state water law. No entity may exercise the right of eminent domain to acquire water or water rights using monies derived from this fund.

2. Granting monies to assist in developing, promoting and implementing water conservation programs, directly related to the purposes of this chapter, outside of the active management areas.

3. Granting monies in support of research and data collection, compilation and analysis directly related to the purposes of this chapter except that no more than five percent of the monies deposited in the fund in any fiscal year may be spent for this purpose. Before the approval of any such project, the commission shall consult with the department of water resources and the state land department to determine whether any research of a similar nature has been or is in the process of being performed and is already available. The commission shall not approve a proposal if either department determines that sufficient data exists and notifies the commission in writing.

4. Granting monies for the development and implementation of capital projects or specific measures consistent with the purposes of this chapter.

I. Monies in the fund may not be spent for:

1. Any project that includes the planting of mesquite, tamarisk or other nonnative high water usage trees that consume water to a degree that is detrimental to water conservation efforts, but may be used for removal of mesquite, tamarisk or other nonnative high water usage trees that consume water to a degree that is detrimental to water conservation efforts.

2. Any remedial action purposes undertaken pursuant to the comprehensive environmental response, compensation, and liability act of 1980, as amended (P.L. 96-510; 94 Stat. 2767; 42 United States Code section 9601) or title 49, chapter 2, article 5.

45-2114. Administration

A. The director shall provide administrative, technical and legal support to the commission to the extent funding is available as prescribed by subsection B of this section and from legislative appropriations. This support may include the hiring of a contract administrator, an attorney, office support and technical support staff, who shall be employees of the department of water resources.

B. Interest may be spent by the department of water resources and the state land department for the administration of this chapter. The department of water resources and the state land department shall apply for grants from the fund for any additional monies necessary for the administration of this chapter. Any interest in excess of administration costs may be spent for the purposes prescribed in section 45-2113.

C. In addition to the expenditures from the fund authorized by section 45-2113, the commission may use five per cent of the total monies deposited in the fund during the previous calendar year to grant to the department of water resources and the state land department additional monies for administration of this chapter.