

ARIZONA REVISED STATUTES

Title 45 - Waters

Chapter 14 – Arizona Water Banking Authority

Article 1 - General Provisions

45-2401. Declaration of policy and purpose

A. The legislature finds that this state is currently and temporarily underutilizing both the entitlement to Colorado river water confirmed to it by the United States supreme court in Arizona v. California, 373 U.S. 546 (1963), and the central Arizona project, which has the capacity to divert into this state a significant portion of this state's entitlement to Colorado river water. The legislature further finds that, due to the low priority on the Colorado river of the central Arizona project and other Arizona Colorado river water users, the susceptibility of this state to future shortages of water on the Colorado river is a threat to the general economy and welfare of this state and its citizens.

B. The legislature further finds that water users within the central Arizona project service area also rely on other surface water supplies, that these supplies are susceptible to future shortages of water and that these shortages are a threat to the general economy and welfare of this state and its citizens.

C. The legislature further finds that future water needs in the states of California and Nevada could exceed the entitlements of those states to Colorado river water. Those future water needs could thereby affect the general economy and welfare of this state and its citizens because of the close economic ties among Arizona, California and Nevada.

D. The legislature further finds that Arizona water users could more efficiently manage, distribute and use available water resources through the storage of water supplies and through stored water lending arrangements, but that not all of these Arizona water users have the opportunities or resources needed to store water or enter into stored water lending arrangements.

E. The legislature further finds that for the purposes of this chapter diverting Colorado river water for storage off of the Colorado river system is a consumptive use of that water.

F. The legislature further finds that water banking is complimentary and compatible with existing water management efforts. The Arizona water banking authority will compliment and assist the activities of the central Arizona water conservation district in its mission to provide a dependable and cost-effective water supply.

G. The legislature therefore finds that it is in the best interest of the general economy and welfare of this state and its citizens to:

1. Use the central Arizona project to store otherwise unused Arizona entitlement to Colorado river water within this state to meet future water needs within this state.

2. Provide the opportunity to the states of California and Nevada to store currently unused Colorado river water in Arizona to meet future needs in those states.

3. Provide the opportunity to facilitate the storage of water and stored water lending arrangements by entities in Arizona that may not have the opportunities or resources needed to store water.

4. Provide the opportunity to facilitate the settlement of Indian water rights claims by delivering and storing water.

H. The public policy and general purposes of this chapter are to:

1. Increase utilization of Arizona's Colorado river entitlement that was confirmed to Arizona by the United States supreme court in article ii(b)(1), (2) and (6) of the decree entered at Arizona v. California, 376 U.S. 340 (1964), and that would otherwise be unused in Arizona, by delivering that water into this state through the central Arizona project aqueducts.

2. Store water brought into this state through the central Arizona project to protect Arizona municipal and industrial water users against future water shortages on the Colorado river and disruptions of operation of the central Arizona project.

3. Store water brought into this state through the central Arizona project to fulfill the water management objectives of this state set forth in chapter 2 of this title.

4. Provide the opportunity for storing water brought into this state through the central Arizona project to be available to implement the settlement of water right claims by Indian communities within Arizona.

5. Provide the opportunity to authorized agencies in the states of California and Nevada to store otherwise unused Colorado river water in Arizona to assist those states in meeting future water needs.

6. Provide the opportunity to facilitate the storage of water and stored water lending arrangements by entities in Arizona that may not have the opportunities or resources needed to store water.

45-2402. Definitions

Unless the context otherwise requires, the terms defined in sections 45-101, 45-402 and 45-802.01 have the same meaning in this chapter and for purposes of this chapter:

1. "Authority" means the Arizona water banking authority.

2. "Banking fund" means the Arizona water banking fund.

3. "Central Arizona water conservation district" or "CAWCD" means the multi-county water conservation district established under title 48, chapter 22.

4. "Commission" means the Arizona water banking authority commission.

5. "Decree" means the decree entered by the United States supreme court in Arizona v. California, 376 U.S. 340 (1964).

6. "Excess central Arizona project water" means central Arizona project water that in any year would otherwise not be used, resold or exchanged pursuant to long-term contracts and subcontracts for central Arizona project water.

7. "Indian firming" means measures taken to ensure that central Arizona project non-Indian agricultural priority water that is made available to Indian tribes pursuant to Public Law 108-451 may be delivered during water shortages in the same manner that water with a municipal and industrial priority in the central Arizona project system is delivered during water shortages.

8. "Water banking services" means services provided by the authority to persons and Indian communities in this state to facilitate for those persons and Indian communities storage of water and stored water lending arrangements. Water banking services include the direct delivery of water to Indian communities in this state in replacement of or supplemental to the accrual of long-term storage credits pursuant to article 5 of this chapter. Water banking services include only arrangements by which water will be made available for use in this state. Water banking services do not include interstate water banking undertaken by the authority pursuant to article 4 of this chapter. Water banking services may include:

(a) Storage of water.

(b) Obtaining water storage permits.

(c) Accruing, exchanging and assigning long-term storage credits.

(d) Lending and obtaining repayment of long-term storage credits.

9. "Water banking services agreement" means an agreement entered into between the authority and a person or Indian community in this state under which the authority will provide water banking services to that person or Indian community.

Article 2 - Arizona Water Banking Authority

45-2421. Arizona water banking authority

A. The Arizona water banking authority is established. The purposes, powers and duties of the authority shall be executed by a commission to be known as the Arizona water banking authority commission.

B. The commission consists of the following members who are residents of this state:

1. The director of water resources who serves as chairperson of the commission.

2. The president of CAWCD or a representative designated by that president.

3. One person who is appointed by the governor pursuant to section 38-211 and who is knowledgeable in water resource management.

4. One person appointed by the governor pursuant to section 38-211 who represents an entity that holds a central Arizona project municipal and industrial subcontract.

5. One person appointed by the governor pursuant to section 38-211 who represents an entity located in a county adjacent to the mainstream of the Colorado river that holds a valid contract with the secretary of the interior executed before June 1, 1996, for diversion and beneficial consumptive use of Colorado river water in that county.

C. The commission members appointed by the governor shall serve a six year term of office. 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. The term of office for the commission members appointed by the governor begins and ends on the third Monday in January. The commission members appointed pursuant to subsection B, paragraphs 3, 4 and 5 may be removed by the governor for cause.

D. The commission members appointed by the governor serve without compensation but are eligible for reimbursement for expenses from the banking fund pursuant to title 38, chapter 4, article 2.

E. In order to qualify for office members of the commission shall take and subscribe to an official oath to perform the duties of their office. The oath shall be filed with the director. The official oaths shall be in the form prescribed by law for official oaths of state officers.

F. The president of the senate, or a senator designated by the president, and the speaker of the house of representatives, or a representative designated by the speaker, shall each serve as nonvoting ex officio members of the commission.

G. Members of the commission are public officers and are subject to all provisions of law applicable to these officers.

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

45-2422. Organization of commission; powers and duties; exemption

A. The commission shall select a vice-chairperson and a secretary from among its membership who shall each hold office for terms of two years to begin and end on the third Monday in January.

B. The powers and authority vested in and the duties imposed on the authority shall be exercised by a minimum of three voting members of the commission voting in agreement.

C. The authority is not a public service corporation subject to regulation by the Arizona corporation commission.

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.

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 specified 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 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.

(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 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 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 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.

45-2424. Administration

A. The director shall provide administrative, technical and legal support to the authority to the extent requested by the authority. The director may hire staff, who shall be employees of the department of water resources, necessary to provide the level of support requested by the authority.

B. The director may employ a person in the capacity of Arizona water banking authority manager who shall be an employee of the department of water resources. The person employed in this capacity shall possess a high level of expertise and experience in Colorado river and water resource management in Arizona.

C. The director, on an annual basis, shall prepare and submit to the authority a budget showing the cost of providing the services requested by the authority for the following fiscal year. The authority may adjust its request for services, or when satisfied with the budget, may adopt it. The authority shall reimburse the department of water resources with monies from the banking fund for the services provided the authority in accordance with an adopted budget.

D. The CAWCD shall provide technical support to the authority to the extent requested by the authority. That technical support shall include expertise in the annual operation and capacity of the central Arizona project aqueducts and on the use of those aqueducts to fulfill the purposes of this chapter without impeding other water deliveries by CAWCD. The CAWCD, on an annual basis, shall prepare and submit to the authority a budget showing the cost of providing the services requested by the authority for the following fiscal year. The authority may adjust its request for services, or when satisfied with the budget, may adopt it. The authority shall reimburse the CAWCD with monies from the banking fund for the services provided the authority in accordance with an adopted budget.

45-2425. Arizona water banking fund

A. The Arizona water banking fund is established and shall include subaccounts based on funding sources. The authority shall administer the banking fund in accordance with this chapter.

B. The banking fund consists of all of the following:

1. Monies appropriated from the state general fund by the legislature for water banking purposes other than replenishment under chapter 15, article 3 of this title.

2. Monies appropriated from the state general fund by the legislature for replenishment under chapter 15, article 3 of this title.

3. Reimbursement for the distribution of long-term storage credits, collected by the authority in accordance with section 45-2457, subsection B, paragraph 2.

4. Monies paid to the authority by the recipients of in lieu water at a groundwater savings facility, in accordance with section 45-2455, subsection C.

5. Monies collected in accordance with section 45-611, subsection C, paragraph 3.

6. Monies deposited in the banking fund in accordance with section 48-3715.03, subsection B.

7. Monies paid to the authority by agencies that have entered into interstate water banking agreements with the authority in accordance with section 45-2471. All monies received through an interstate water banking agreement with the state of Nevada that are not used to purchase or store water or otherwise fulfill contractual obligations with the state of Nevada are subject to legislative appropriation.

8. Monies paid to the authority by persons and Indian communities in this state that have entered into water banking services agreements with the authority in accordance with section 45-2458.

9. Monies deposited in the fund in accordance with section 45-615.01, subsection G.

C. In addition to the monies prescribed in this section, the authority may accept any gifts, grants or donations and deposit those monies in the banking fund.

D. Monies in the banking fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations. On notice from the authority, 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 banking fund. The authority may invest the monies paid to the authority in accordance with section 45-2471 with the state treasurer pursuant to section 35-326.

E. The authority may use the banking fund to pay all reasonable expenses incurred in carrying out its duties and responsibilities in accordance with this chapter.

F. The authority shall establish a reserve subaccount in the fund for the deposit of monies to be used for the purposes of article 5 of this chapter.

45-2426. Annual report

A. The commission shall make and submit to the governor, president of the senate and speaker of the house of representatives on or before July 1 of each year a report containing a full and complete account of its transactions and proceedings for the preceding calendar year.

B. The report shall contain all of the following:

1. An accounting of all monies expended from the banking fund.
2. An accounting of all monies in the banking fund remaining available to the authority.
3. The amount of water stored by the authority.
4. The number of long-term storage credits distributed or extinguished by the authority.
5. The purposes for which long-term storage credits were distributed or extinguished by the authority.

6. A description of the water banking services and interstate water banking to be undertaken by the authority during the following ten year period, and a projection of the capacity of the authority during that period to undertake those activities in addition to storing Colorado river water brought into the state through the central Arizona project for all of the following purposes:

(a) Protecting this state's municipal and industrial water users against future water shortages on the Colorado river and disruptions of operation of the central Arizona project.

(b) Fulfilling the water management objectives of this state as set forth in chapter 2 of this title.

(c) Making water available to implement the settlement of water rights claims by Indian communities within this state.

7. Any other matter determined by the authority to be relevant to the policy and purposes of this chapter.

45-2427. Limitation on powers

A. This chapter does not authorize the authority to exercise any right of eminent domain.

B. Except as provided in subsection E of this section:

1. The authority shall not store Colorado river water that would otherwise have been used in this state pursuant to a contract entered into pursuant to section 48-3703, paragraph 2, a section 5 contract under the Boulder Canyon project act (P.L. 108-6; 43 United States Code section 617) with a priority that is equal to or higher than a contract entered into pursuant to section 48-3703, paragraph 2 or any other section 5 contract under the Boulder Canyon project act entered into before September 18, 2003.

2. The authority shall not store for interstate water banking purposes Colorado river water that would otherwise have been used in this state.

C. The authority shall not enter into contracts with agencies in California and Nevada for the storage of water on their behalf until both of the following occur:

1. Regulations are in effect, promulgated by the secretary of the interior of the United States, that facilitate and allow the contractual distribution of unused entitlement under article II(b)(6) of the decree.

2. The director finds that the rules promulgated by the secretary of the interior adequately protect this state's rights to Colorado river water, as those rights are defined by the decree.

D. The authority shall not enter into water banking services agreements that will provide water for use outside this state. The authority may cancel any water banking services agreement without penalty or further obligation if after entering into a water banking services agreement, the authority finds that the agreement will provide water for use outside of this state. Notice of this subsection shall be included in every water banking services agreement entered into by the authority. The cancellation under this subsection shall be effective when written notice from the authority is received by all other parties to the water banking services agreement.

E. The authority may obtain and store or replenish, as applicable, any of the following excess central Arizona project water supplies as designated by CAWCD:

1. Any excess central Arizona project water made available by CAWCD in a year exclusively for the authority. The authority shall use any excess central Arizona project water obtained pursuant to this

paragraph in a manner consistent with articles 3 and 5 of this chapter or chapter 15, article 3 of this title, including meeting Indian firming obligations, replenishing water under the Gila river Indian water settlement program and storing water for municipal and industrial purposes in times of shortage.

2. Any excess central Arizona project water made available by CAWCD in a year for the purpose of storing water to meet a contractual obligation of the authority under an interstate water banking agreement entered into pursuant to article 4 of this chapter if the excess central Arizona project water resulted from the acquisition of additional Colorado river water by CAWCD using monies contributed by the authority.

Article 3 - Water Bank Planning and Implementation

45-2451. First year banking program

By July 1, 1997, the authority shall have used its best efforts to store pursuant to this chapter a minimum of one hundred thousand acre-feet of Colorado river water in this state. The annual report of the authority to the governor, the president of the senate and the speaker of the house of representatives due on August 1, 1997 shall report the amount of water stored since the effective date of this chapter and if one hundred thousand acre-feet of water have not been stored, the reasons why this goal has not been achieved.

45-2452. Storage facility inventory

A. By March 1, 1997, the authority shall prepare and assess an inventory of existing storage facilities in this state to determine whether existing storage facilities are available to meet the authority's needs for the following ten years. The authority shall give special consideration to storage facilities constructed with monies from the state water storage fund, established pursuant to section 45-897.01. The inventory shall identify the location and capacity of each storage facility and the feasibility of the authority storing water at the identified facilities.

B. In assessing the inventory, the authority shall consult with the department of water resources to determine whether storage by the authority at each storage facility identified in the inventory as a potential storage facility to be used by the authority promotes the water management objectives set forth in chapter 2 of this title.

C. In assessing the inventory, the authority shall consult with CAWCD to determine whether central Arizona project water delivery and storage are feasible at each storage facility identified in the inventory as a potential storage facility to be used by the authority.

D. Based on the consultations with the department of water resources and the CAWCD and any other relevant factors, the authority shall determine whether storage facilities exist in this state to meet the water storage needs of the authority for the following ten years. In making this determination, the authority shall maximize to the extent feasible storage facilities constructed with monies from the state water storage fund, established pursuant to section 45-897.01.

E. The authority shall adopt the storage facility inventory if the authority determines that all of the following apply to the storage facility inventory:

1. It represents an accurate inventory of storage facilities in this state.
2. It accurately identifies those storage facilities that are available for the authority's use.
3. It accurately determines whether additional storage facilities are needed for the authority's use during the following ten years.

F. The authority shall subsequently update the storage facility inventory at least once every five years.

45-2453. Plan for additional storage facilities

A. If a storage facility inventory or an update concludes that additional storage facilities are necessary to meet the needs of the authority for the following ten years, the authority shall develop a plan for the development of additional storage facilities that specifies the type, location, date needed and capacity of additional storage facilities necessary to meet the needs of the authority.

B. In developing the plan for additional storage facilities, the authority shall consider all of the following:

1. The amount of additional storage capacity needed to meet the authority's water storage needs.

2. The advice of the department of water resources regarding where water storage would most contribute to meeting the water management objectives set forth in chapter 2 of this title.

3. The advice of CAWCD regarding the feasibility of delivering and storing central Arizona project water at any proposed storage facility.

4. The advice of the department of environmental quality regarding any potential adverse impacts from a proposed storage facility to landowners and water users in the vicinity of any proposed storage facility.

5. The potential costs to the authority of facilitating the construction or development of a proposed storage facility and the cost-effectiveness of any proposed storage facility.

6. Whether CAWCD or other entities would be willing to construct, maintain and operate any proposed storage facility.

7. The way in which water stored at a proposed storage facility could be used by the authority to achieve the policy and purposes of this chapter.

8. Any other factor the authority determines to be relevant.

C. Before adopting a plan for additional storage facilities, the authority shall prepare a draft plan for additional storage facilities. The authority shall solicit public comment on the draft plan for additional storage facilities by presenting the draft plan:

1. To the groundwater users advisory councils for the Tucson, Phoenix and Pinal active management areas. The presentation shall be made at publicly noticed open meetings of each advisory council at which members of the public shall be allowed to comment on the draft plan for additional storage facilities.

2. If any proposed storage facility is located outside of an active management area, to the county board of supervisors for each county in which a proposed facility is to be located. The presentation shall be made at a publicly noticed open meeting of the county board of supervisors at which members of the public shall be allowed to comment on the draft plan for additional storage facilities.

D. The authority may revise the draft plan for additional storage facilities based on the public comment received.

E. The authority shall adopt the plan for additional storage facilities if the authority determines that the plan, when implemented, will meet the needs of the authority for the following ten years. If adopting a plan for additional storage facilities, the authority shall adopt the plan within nine months of adopting the storage facility inventory or update.

F. The authority may modify an adopted plan for additional storage facilities after soliciting public comment on the modification in accordance with subsection C of this section.

45-2454. Implementation of storage facilities plan

A. The authority shall implement an adopted plan for additional storage facilities.

B. To facilitate the development or construction of additional storage facilities required by a plan, the authority shall solicit proposals from CAWCD and other entities willing to undertake the development or construction of those storage facilities. The authority may negotiate and enter into water storage agreements in accordance with section 45-2455 with CAWCD and other entities that submit proposals acceptable to the authority.

45-2455. Water storage agreements; groundwater savings facilities

A. The authority may not own, develop, operate or construct storage facilities but may enter into contracts to reserve storage capacity at storage facilities and may pay reasonable compensation for those reservations.

B. The authority may enter into agreements with storage facility permit holders to store water at storage facilities and may pay reasonable compensation for the costs associated with operating and maintaining a storage facility to the extent that the storage facility is used to store water for the purposes of the authority.

C. To store water at a groundwater savings facility, the authority may enter into agreements that require the recipients of in lieu water to pay to the authority all or part of the cost of providing the in lieu water to the recipients.

D. Agreements entered into under this section shall not impede the ability of the CAWCD to meet the obligations of its central Arizona project water service contracts and subcontracts.

45-2456. Annual plan of operation

- A. By January 1 of each year, the authority shall adopt a plan of operation for that calendar year.
- B. In developing the plan of operation, the authority shall consider all of the following:
 - 1. The amount of Colorado river water available for storage.
 - 2. The advice of the department of water resources regarding where water storage would most contribute to fulfilling the water management objectives set forth in chapter 2 of this title.
 - 3. The advice of CAWCD regarding the amount and location of water delivery and storage that is feasible.
 - 4. The respective costs of storing water at available storage facilities.
 - 5. The amount of storage allowed by water storage permits held by the authority.
 - 6. The monies available from the banking fund.
 - 7. The way in which water stored could be used by the authority to achieve the policy and purposes of this chapter.
 - 8. The obligations of the authority under any water banking services agreement into which the authority has entered.
 - 9. Any other factor the authority determines to be relevant.
- C. The authority shall prepare a draft plan of operation each year. The authority shall solicit public comment on the draft plan of operation by presenting the draft plan of operation:
 - 1. To the groundwater users advisory councils for the Tucson, Phoenix and Pinal active management areas. The presentation shall be made at publicly noticed open meetings of each advisory council at which members of the public shall be allowed to comment on the draft plan of operation.
 - 2. If any water storage during the year is to occur outside of an active management area, to the county board of supervisors for each county in which the storage is to occur. The presentation shall be made at a publicly noticed open meeting of the county board of supervisors at which members of the public shall be allowed to comment on the draft plan of operation.
- D. The authority may revise the draft plan of operation based on the public comment received.
- E. An adopted plan of operation shall include all of the following:
 - 1. A projection of expenditures for acquiring water.
 - 2. A projection of the amount of water to be acquired each month by the authority.
 - 3. A projection of the cost of delivering that water through the central Arizona project to a storage facility, including fees for the operation, maintenance, pumping energy and capital costs of the central Arizona project as established by CAWCD.
 - 4. A projection of expenditures for water storage and long-term storage credits, including the funding sources to be used for those expenditures.
 - 5. A projection of water storage permits to be obtained and a projection of with which storage facility permit each water storage permit will be affiliated.
 - 6. A projection of the amount of water to be stored, accounted for by active management area, and if water storage will occur outside of an active management area, by groundwater basin or subbasin.
 - 7. A projection of the amount of long-term storage credits to be purchased by the authority, accounted for by active management area.
 - 8. A projection of long-term storage credits that will be distributed or extinguished, accounted for by location where the long-term storage credits were stored, the purpose for which the distribution or extinguishment will occur and the persons to whom the long-term storage credits will be distributed.
 - 9. A projection of long-term storage credits that will be stored, loaned, replaced or distributed pursuant to any water banking services agreement into which the authority has entered.
 - 10. Any other matter determined to be relevant by the authority.
- F. The authority may modify an adopted plan of operation.
- G. The authority shall operate in accordance with its adopted or modified plan of operation.

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.

45-2457.01. Exchange of long-term storage credits; limitations; fees

A. On or before December 31, 2019, the authority may enter into agreements to exchange long-term storage credits accrued or purchased in one active management area with monies collected pursuant to section 45-611, subsection C, paragraph 3 for long-term storage credits held by other persons in another active management area, on request of the director, if the director determines both of the following:

1. The exchange is beneficial to water management in this state.
2. The exchange will not substantially impair the authority's ability to meet its firming obligation under section 45-2491.

B. The term of any agreement entered into pursuant to subsection A of this section shall not extend beyond December 31, 2026.

C. Notwithstanding section 45-2457, subsection B, paragraph 6, the authority may distribute or extinguish long-term storage credits obtained by exchange pursuant to subsection A of this section for any purpose otherwise authorized under section 45-2457, subsection B, paragraph 6 for the benefit of any active management area.

D. An exchange of long-term storage credits pursuant to subsection A of this section is exempt from any fee established by the department of water resources for an assignment of long-term storage credits pursuant to section 45-854.01.

45-2458. [Water banking services agreements](#)

A. The authority may enter into a water banking services agreement under which the authority will loan long-term storage credits to a person or an Indian community in this state if all of the following apply:

1. The person or Indian community could have legally obtained the water that was stored to accrue the long-term storage credits that will be loaned under the agreement, could have accrued, in accordance with chapter 3.1 of this title, the long-term storage credits that will be loaned and could otherwise legally store water in accordance with the laws of this state.

2. The agreement requires the person or Indian community to pay the authority all costs incurred by the authority in accruing the long-term storage credits to be loaned under the agreement.

3. The agreement requires that the costs prescribed by paragraph 2 of this subsection for each long-term storage credit to be loaned under the agreement are to be paid to the authority before the authority distributes the credits pursuant to the agreement.

4. The agreement requires the person or Indian community to reimburse the authority for the costs of replacing each long-term storage credit loaned under the agreement, to the extent that cost exceeds the amount paid in accordance with paragraph 3 of this subsection.

5. The agreement requires the authority to use good faith efforts to replace the long-term storage credits at a reasonable cost to the person or Indian community.

6. The agreement requires that if the authority is unable to replace the long-term storage credits for any reason during the ten years following the distribution of the credits, the person or Indian community shall not be excused from reimbursing the costs specified in paragraph 4 of this subsection, and the person or Indian community shall pay to the authority at the end of that ten year period the approximate cost the authority will expend in replacing the credits distributed, less the amount paid pursuant to paragraph 2 of this subsection.

7. The agreement may provide that, subject to approval by the authority, the other party to the agreement may assign to the authority the number of long-term storage credits loaned to the party in lieu of the party paying the costs required by paragraphs 4, 5 and 6 of this section.

B. The authority may enter into a water banking services agreement with a person or Indian community to store water on behalf of the person, Indian community or other beneficiary named in the agreement, if all of the following apply:

1. The person, Indian community or named beneficiary could legally obtain the water that the authority will store under the agreement, could accrue long-term storage credits in accordance with chapter 3.1 of this title for the water to be stored and could otherwise legally store water in accordance with the laws of this state.

2. The agreement requires the person or Indian community entering into the agreement to pay to the authority all costs that are or will be incurred by the authority in entering into and executing its obligations under a water banking services agreement.

C. In determining costs of performing water banking services pursuant to subsections A and B, the authority may include the following costs:

1. The cost of acquiring water.

2. The cost of delivering that water to a storage facility, including fees for the operation, maintenance, pumping energy and capital costs of the central Arizona project, as established by the CAWCD, and other aqueducts.

3. The cost of storing water, including construction, operation and maintenance costs associated with using a storage facility.

4. A fee equivalent to the approximate amount of administrative, legal and technical expenses incurred by the authority in entering into and executing its obligations under a water banking services agreement.

5. Any additional costs the authority deems necessary to enter into and execute its obligations under a water banking services agreement.

D. A water banking services agreement shall require a person entering into the agreement to obtain a performance bond to ensure payment to the authority of all monies owed to the authority under the agreement, unless the person is an Indian community in this state or a government entity, political subdivision or municipal corporation organized under or subject to the constitution and laws of this state. If the person entering into the water banking services agreement is an Indian community in this state or a government entity, political subdivision or municipal corporation organized under or subject to the

constitution and laws of this state, the banking services agreement may require that person to obtain a performance bond to ensure payment to the authority of all monies owed to the authority under the agreement.

Article 4 - Interstate Water Banking

45-2471. [Interstate water banking agreements](#)

A. The authority may negotiate and enter into interstate water banking agreements with appropriately authorized agencies in California and Nevada, if all of the following apply:

1. The provisions of section 45-2427, subsection C have been met.
2. The director and at least two other voting members of the commission vote in agreement to enter into an interstate banking agreement.

3. The authority shall not enter into agreements with California and Nevada agencies that require the authority to reduce Arizona diversions from the Colorado river more than a total of one hundred thousand acre-feet of water in any one year.

4. No interstate banking agreement may be inconsistent with the decree.

B. In each interstate water banking agreement, the authority may agree to store Colorado river water in Arizona so that the stored water may be used in place of Arizona diversions from the Colorado river in years in which the California or Nevada agency requests water from the authority.

C. In each interstate water banking agreement, the California or Nevada agency shall agree to pay to the authority all costs that are or will be incurred by the authority in storing and recovering Colorado river water pursuant to the interstate banking agreement. The costs include all of the following:

1. The cost of acquiring Colorado river water.
2. The cost of delivering that Colorado river water through the central Arizona project to a storage facility, including fees for the operation, maintenance, pumping energy and capital costs of the central Arizona project as established by CAWCD.

3. Amounts equivalent to taxes ordinarily paid by CAWCD subcontractors and their customers to pay for the repayment, operation and maintenance costs of the central Arizona project, to the extent those equivalent amounts are not collected by paragraph 8 of this subsection.

4. The cost of storing that Colorado river water.

5. The cost of constructing, operating and maintaining a storage facility to the extent that facility stores water for the California or Nevada agency.

6. The cost of recovering the stored water and delivering it to Colorado river water users in this state to use in place of Colorado river water that would otherwise be used.

7. A fee equivalent to the approximate amount of administrative, legal and technical expenses incurred by the authority in storing water for the California or Nevada agency, recovering that stored water and making an equivalent amount of Colorado river water available to the California or Nevada agency.

8. Any fee paid in lieu of taxes pursuant to section 48-3715, subsection B by the authority in acquiring the water to be stored.

D. In each water banking agreement, the authority shall agree that in years in which the California or Nevada agency requests recovery of water stored in Arizona, the authority shall cause a decrease in Arizona diversions from the Colorado river by the amount of water requested for recovery by the California or Nevada agency, thus creating unused entitlement for delivery to that agency by the United States secretary of the interior pursuant to article ii(b)(6) of the decree. These banking agreements may provide that during years when the secretary of the interior has declared a shortage on the Colorado river, no decrease in Arizona diversions shall be required.

E. Each interstate banking agreement shall specify that if the California or Nevada agency breaches the terms of the agreement the authority shall cease creating unused entitlement for that entity until the breach is cured.

45-2472. [Distribution of long-term storage credits](#)

A. The authority may distribute long-term storage credits accrued through the use of monies paid by California and Nevada agencies pursuant to interstate banking agreements to CAWCD or other users of Colorado river water in this state, if both of the following apply:

1. CAWCD or other water user agrees to use the long-term storage credits to replace diversions that otherwise would have been made from the Colorado river.

2. CAWCD or other water user agrees to reduce its diversion of Colorado river water in years in which the authority is obligated to recover stored water on behalf of a California or Nevada agency in an amount equivalent to the long-term storage credits distributed.

B. The authority may pay from the monies collected from the California or Nevada agency in the banking fund to CAWCD or other users of Colorado river water that have agreed to reduce diversions from the Colorado river in accordance with subsection A the amount necessary to compensate CAWCD or other water user for increased costs incurred in recovering and using the stored water in place of diverting Colorado river water.

[45-2473. Arizona water banking authority; interstate water banking; accounting](#)

(Conditionally Rpld.)

A. For each year during which the Arizona water banking authority is owed or receives monies pursuant to an interstate water banking agreement with the state of Nevada, or any agency or political subdivision of the state of Nevada, including the southern Nevada water authority, the Arizona water banking authority shall provide a full report to the joint legislative budget committee that accounts for all of the monies received through the interstate water banking agreement and shall account for all disbursements made with those monies, including monies used to purchase or store water or otherwise fulfill contractual obligations with the state of Nevada under that agreement. The Arizona water banking authority shall include in these reports any prepaid monies to the central Arizona project, any monies received under the agreement that are placed in an account with the state treasurer and any contract that obligates the Arizona water banking authority to pay or disburse these monies to any other entity, including the central Arizona project.

B. The Arizona water banking authority shall submit the report prescribed in subsection A of this section to the joint legislative budget committee on or before October 1 following the fiscal year for which the report is made.

C. Pursuant to section 35-115, the budget request for the department of water resources shall include a separate accounting of the Nevada interstate water banking subaccount. This information shall appear in the same format and detail as required for the Arizona water banking fund.

D. The Arizona water banking authority shall not spend, encumber, lend or in any other way use the monies received pursuant to the interstate water banking agreement except to pay the costs directly incurred in meeting the Arizona water banking authority's obligations pursuant to the agreement and section 45-2425.

Article 5 - Indian Firming Measures

[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)(1)(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.

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

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.

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

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.

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.

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.

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.

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.