

REFERENCE TITLE: freshwater ecosystems; ecological water; survey

State of Arizona  
Senate  
Fifty-fourth Legislature  
First Regular Session  
2019

## **SB 1370**

Introduced by  
Senators Dalessandro: Alston, Bowie, Bradley, Contreras, Gonzales, Mendez,  
Navarrete, Peshlakai, Quezada, Rios, Steele

AN ACT

AMENDING SECTIONS 45-101, 45-105, 45-151 AND 45-172, ARIZONA REVISED  
STATUTES; RELATING TO WATERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

4 45-101. Definitions

5 In this title, unless the context otherwise requires:

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

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

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

12 4. "ECOLOGICAL WATER" MEANS WATER SUFFICIENT TO SUSTAIN FRESHWATER  
13 ECOSYSTEMS AND THE WILDLIFE HABITAT AND HUMAN LIVELIHOODS AND WELL-BEING  
14 THAT DEPEND ON THOSE ECOSYSTEMS.

15 ~~4.~~ 5. "Effluent" means water that has been collected in a sanitary  
16 sewer for subsequent treatment in a facility that is regulated pursuant to  
17 title 49, chapter 2. Such water remains effluent until it acquires the  
18 characteristics of groundwater or surface water.

19 ~~5.~~ 6. "Groundwater" means water under the surface of the earth  
20 regardless of the geologic structure in which it is standing or moving.  
21 Groundwater does not include water flowing in underground streams with  
22 ascertainable beds and banks.

23 ~~6.~~ 7. "Interstate stream" means any stream constituting or flowing  
24 along the exterior boundaries of this state, and any tributary originating  
25 in another state or foreign country and flowing into or through this  
26 state.

27 ~~7.~~ 8. "Riparian area" means a geographically delineated area with  
28 distinct resource values, that is characterized by deep-rooted plant  
29 species that depend on having roots in the water table or its capillary  
30 zone and that occurs within or adjacent to a natural perennial or  
31 intermittent stream channel or within or adjacent to a lake, pond or marsh  
32 bed maintained primarily by natural water sources. Riparian area does not  
33 include areas in or adjacent to ephemeral stream channels, artificially  
34 created stockponds, man-made storage reservoirs constructed primarily for  
35 conservation or regulatory storage, municipal and industrial ponds or man-  
36 made water transportation, distribution, off-stream storage and collection  
37 systems.

38 ~~8.~~ 9. "Sanitary sewer" means any pipe or other enclosed conduit  
39 that carries, among other substances, any water-carried wastes from the  
40 human body from residences, commercial buildings, industrial plants or  
41 institutions.

42 ~~9.~~ 10. "Surface water" means the waters of all sources, flowing in  
43 streams, canyons, ravines or other natural channels, or in definite  
44 underground channels, whether perennial or intermittent, floodwater,  
45 wastewater or surplus water, and of lakes, ponds and springs on the

1 surface. For the purposes of administering this title, surface water is  
2 deemed to include central Arizona project water.

3 Sec. 2. Section 45-105, Arizona Revised Statutes, is amended to  
4 read:

5 45-105. Powers and duties of director

6 A. The director may:

7 1. Formulate plans and develop programs for the practical and  
8 economical development, management, conservation and use of surface water,  
9 groundwater and the watersheds in this state, including the management of  
10 water quantity and quality.

11 2. Investigate works, plans or proposals pertaining to surface  
12 water and groundwater, including management of watersheds, and acquire,  
13 preserve, publish and disseminate related information the director deems  
14 advisable.

15 3. Collect and investigate information on and prepare and devise  
16 means and plans for the development, conservation and utilization of all  
17 waterways, watersheds, surface water, groundwater and groundwater basins  
18 in this state and of all related matters and subjects, including  
19 irrigation, drainage, water quality maintenance, regulation of flow,  
20 diversion of running streams adapted for development in cooperating with  
21 the United States or by this state independently, flood control,  
22 utilization of water power, prevention of soil waste and storage,  
23 conservation and development of water for every useful purpose.

24 4. Measure, survey and investigate the water resources of this  
25 state and their potential development and cooperate and contract with  
26 agencies of the United States for such purposes.

27 5. Acquire, hold and dispose of property, including land,  
28 rights-of-way, water and water rights, as necessary or convenient for the  
29 performance of the groundwater and water quality management functions of  
30 the department.

31 6. Acquire, other than by condemnation, construct, improve,  
32 maintain and operate early warning systems for flood control purposes and  
33 works for the recovery, storage, treatment and delivery of water.

34 7. Accept grants, gifts or donations of money or other property  
35 from any source, which may be used for any purpose consistent with this  
36 title. All property acquired by the director is public property and is  
37 subject to the same tax exemptions, rights and privileges granted to  
38 municipalities, public agencies and other public entities.

39 8. Enter into an interagency contract or agreement with any public  
40 agency pursuant to title 11, chapter 7, article 3 and contract, act  
41 jointly or cooperate with any person to carry out the purposes of this  
42 title.

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

1           10. Initiate and participate in conferences, conventions or  
2 hearings, including ~~meetings of the Arizona water resources advisory~~  
3 ~~board~~, congressional hearings, court hearings or hearings of other  
4 competent judicial or quasi-judicial departments, agencies or  
5 organizations, and negotiate and cooperate with agencies of the United  
6 States or of any state or government and represent this state concerning  
7 matters within the department's jurisdiction.

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

11           12. Receive and review all reports, proposed contracts and  
12 agreements from and with the United States or any agencies, other states  
13 or governments or their representatives and recommend to the governor and  
14 the legislature action to be taken on such reports, proposed contracts and  
15 agreements. The director shall take action on such reports, if authorized  
16 by law, and review and coordinate the preparation of formal comments of  
17 this state on both the preliminary and final reports relating to water  
18 resource development of the United States army corps of engineers, the  
19 United States secretary of the interior and the United States secretary of  
20 agriculture, as provided for in the flood control act of 1944 (58 Stat.  
21 887; 33 United States Code section 701-1).

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

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

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

39           16. Dispose informally by stipulation, agreed settlement, consent  
40 order or alternative means of dispute resolution, including arbitration,  
41 if the parties and director agree, or by default of any case in which a  
42 hearing before the director is required or allowed by law.

43           17. Cooperate and coordinate with the appropriate governmental  
44 entities in Mexico regarding water planning in areas near the border

1 between Mexico and Arizona and for the exchange of relevant hydrological  
2 information.

3 B. The director shall:

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

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

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

13 4. Coordinate and confer with and may contract with:

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

21 (b) The department of environmental quality with respect to title  
22 49, chapter 2 for its assistance in the development of state water plans.

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

29 (d) The department of environmental quality regarding coordination  
30 of databases that are necessary for activities conducted pursuant to title  
31 49, chapter 2, article 5.

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

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

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

39 8. Investigate and take appropriate action on any complaints  
40 alleging withdrawals, diversions, impoundments or uses of surface water or  
41 groundwater that may violate this title or the rules adopted pursuant to  
42 this title.

43 ~~9. Report to and consult with the Arizona water resources advisory~~  
44 ~~board at regular intervals.~~

1 ~~10.~~ 9. Adopt an official seal for the authentication of records,  
2 orders, rules and other official documents and actions.

3 ~~11.~~ 10. Provide staff support to the Arizona water protection fund  
4 commission established pursuant to chapter 12 of this title.

5 ~~12.~~ 11. Exercise and perform all powers and duties invested in the  
6 chairperson of the Arizona water banking authority commission as  
7 prescribed by chapter 14 of this title.

8 ~~13.~~ 12. Provide staff support to the Arizona water banking  
9 authority established pursuant to chapter 14 of this title.

10 ~~14.~~ 13. In the year following each regular general election,  
11 present information to the committees with jurisdiction over water issues  
12 in the house of representatives and the senate. A written report is not  
13 required but the presentation shall include information concerning the  
14 following:

15 (a) The current status of the water supply in this state and any  
16 likely changes in that status.

17 (b) Issues of regional and local drought effects, short-term and  
18 long-term drought management efforts and the adequacy of drought  
19 preparation throughout the state.

20 (c) The status of current water conservation programs in this  
21 state.

22 (d) The current state of each active management area and the level  
23 of progress toward management goals in each active management area.

24 (e) Issues affecting management of the Colorado river and the  
25 reliability of this state's two million eight hundred thousand acre-foot  
26 allocation of Colorado river water, including the status of water supplies  
27 in and issues related to the Colorado river basin states and Mexico.

28 (f) The status of any pending or likely litigation regarding  
29 surface water adjudications or other water related litigation and the  
30 potential impacts on this state's water supplies.

31 (g) The status of Indian water rights settlements and related  
32 negotiations that affect this state.

33 (h) **THE STATUS AND HEALTH OF THIS STATE'S ECOLOGICAL WATER.**

34 ~~(i)~~ (i) Other matters related to the reliability of this state's  
35 water supplies, the responsibilities of the department and the adequacy of  
36 the department's and other entities' resources to meet this state's water  
37 management needs.

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

40 45-151. Right of appropriation; permitted uses; water rights  
41 in stockponds; federal lands

42 A. Any person, ~~the~~ THIS state ~~of Arizona~~ or a political subdivision  
43 ~~thereof~~ OF THIS STATE may appropriate unappropriated water for domestic,  
44 municipal, **ECOLOGICAL WATER**, irrigation, stock watering, water power,  
45 recreation, wildlife, including fish, nonrecoverable water storage

1 pursuant to section 45-833.01 or mining uses, for ~~his~~ personal use or for  
2 delivery to consumers. The person, ~~the THIS state of Arizona~~ or a  
3 political subdivision ~~thereof~~ **OF THIS STATE** first appropriating the water  
4 shall have the better right.

5 B. To effect the beneficial use, the person, ~~the THIS state of~~  
6 ~~Arizona~~ or a political subdivision ~~thereof~~ **OF THIS STATE** appropriating the  
7 water may construct and maintain reservoirs, storage facilities pursuant  
8 to chapter 3.1 of this title, dams, canals, ditches, flumes and other  
9 necessary waterways.

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

13 D. The validity of and the right to exercise a water right obtained  
14 in accordance with state law shall not be diminished, impaired or  
15 otherwise affected because other water is or may be available to the  
16 appropriator from an alternative right or source to satisfy the same use.

17 E. The right to water appropriated on lands owned by the United  
18 States shall be held by the person who first effects the beneficial use of  
19 the water appropriated and by the person's successor. This subsection  
20 ~~shall~~ **DOES** not ~~be construed to~~ preclude the United States from being the  
21 holder of a right if the United States first effects the beneficial use.

22 F. A water source that is located on land owned by the United  
23 States and that has been or may be appropriated under state law may be  
24 beneficially used on any land whether or not owned by the United States.

25 Sec. 4. Section 45-172, Arizona Revised Statutes, is amended to  
26 read:

27 45-172. Transfer of water rights; application; limitations;  
28 required consent

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

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

40 2. Vested or existing rights to the use of water shall not be  
41 affected, infringed ~~upon nor~~ **ON OR** interfered with, and in no event shall  
42 the water diverted or used after the transfer of such rights exceed the  
43 vested rights existing at the time of such severance and transfer, and the  
44 director shall by order so define and limit the amount of water to be  
45 diverted or used annually subsequent to such transfer.

1           3. The water rights sought to be transferred shall have been  
2 lawfully perfected under the laws of the territory or the state of Arizona  
3 and shall not have thereafter been forfeited or abandoned.

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

10           5. No right to the use of water on or from any watershed or  
11 drainage area ~~which~~ THAT supplies or contributes water for the irrigation  
12 of lands within an irrigation district, agricultural improvement district  
13 or water users' association shall be severed or transferred without the  
14 consent of the governing body of such irrigation district, agricultural  
15 improvement district or water users' association. All proposed  
16 applications for the severance and transfer of a right to use water of or  
17 from any watershed or drainage area ~~which~~ THAT supplies or contributes  
18 water for the irrigation of lands within any irrigation district,  
19 agricultural improvement district or water users' association shall be  
20 submitted to the governing body of such irrigation district, agricultural  
21 improvement district or water users' association ~~prior to~~ BEFORE the  
22 filing of such application with the director. Within forty-five days  
23 after the receipt of the application such governing body shall reject or  
24 approve the proposed application. Failure of such governing body to  
25 approve or reject the proposed application within forty-five days after  
26 receipt shall constitute approval of the proposed application by such  
27 governing body. No application for the severance or transfer of a right  
28 to the use of water of or from any watershed or drainage area ~~which~~ THAT  
29 supplies or contributes water for the irrigation of lands within any  
30 irrigation district, agricultural improvement district or water users'  
31 association shall be accepted for filing by the director unless  
32 accompanied by the written consent of the governing body of such  
33 irrigation district, agricultural improvement district or water users'  
34 association to the proposed application or by satisfactory evidence that  
35 such governing body failed to either accept or reject the proposed  
36 application within forty-five days after receipt by such governing body.

37           6. A severance and transfer of an irrigation water right  
38 appurtenant to lands within the boundaries of an irrigation district to  
39 other lands within the boundaries of the same irrigation district for  
40 agricultural use may be accomplished by the exclusion of lands to which a  
41 water right is appurtenant from within the boundaries of an irrigation  
42 district, and the inclusion in lieu of other lands within the boundaries  
43 of such irrigation district. Such severance and transfer of a water right  
44 shall require the consent of only the irrigation district within which the  
45 affected lands are situated and of the owners of the lands affected by the



1 severance and transfer. No proceedings before ~~not~~ OR approval by the  
2 director shall be required to accomplish such severance and transfer.

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

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

17 Sec. 5. Survey of status of waters of this state; delayed  
18 repeal

19 A. The director of water resources shall:

20 1. Establish a set of standard measures, using the best available  
21 science, to define ecological water needs in this state. The standard  
22 measures established by the director of water resources shall include  
23 criteria for examining the relationship between ecological water and  
24 groundwater and surface water in this state.

25 2. On or before December 31, 2021, publish a preliminary survey of  
26 the status of the waters of this state, including the following:

27 (a) A watershed by watershed description of the waters of this  
28 state.

29 (b) A description of all segments or areas in each watershed that  
30 do not meet the requirements of ecological water as defined in section  
31 45-101, Arizona Revised Statutes.

32 (c) A determination of the appropriate methods and steps necessary  
33 to monitor, maintain, improve and restore the ecosystems of each  
34 watershed.

35 (d) A recommendation of any statutory changes that are needed to  
36 facilitate actions supporting the ecological water needs of this state.

37 3. Provide for notice and comment of the preliminary survey by:

38 (a) Posting on the department of water resources' website the  
39 preliminary survey prescribed by subsection A, paragraph 2 of this  
40 subsection, copies of all notices required by section 41-1022, Arizona  
41 Revised Statutes, and all proposed rulemakings.

42 (b) Notifying by first class mail, fax or e-mail each person who  
43 has made a timely request to the department of water resources for  
44 notification of the preliminary survey prescribed by subsection A,

1 paragraph 2 of this section or for notification of all proposed  
2 rulemakings under section 41-1022, Arizona Revised Statutes.

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

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

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

12 B. This section is repealed from and after September 30, 2022.