

REFERENCE TITLE: watersheds; beneficial use; instream flows

State of Arizona  
House of Representatives  
Fifty-sixth Legislature  
First Regular Session  
2023

## **HB 2674**

Introduced by  
Representatives Travers: De Los Santos, Mathis, Stahl Hamilton, Sun

AN ACT

AMENDING SECTIONS 17-231, 17-298, 45-101, 45-105, 45-151, 45-152.01 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 17-231, Arizona Revised Statutes, is amended to  
3 read:

4 17-231. General powers and duties of the commission

5 A. The commission shall:

6 1. Adopt rules and establish services it deems necessary to carry  
7 out the provisions and purposes of this title.

8 2. Establish broad policies and long-range programs for the  
9 management, preservation and harvest of wildlife.

10 3. Establish hunting, trapping and fishing rules and prescribe the  
11 manner and methods that may be used in taking wildlife, but the commission  
12 shall not limit or restrict the magazine capacity of any authorized  
13 firearm.

14 4. Be responsible for the enforcement of laws for the protection of  
15 wildlife.

16 5. Provide for the assembling and distribution of information to  
17 the public relating to wildlife and activities of the department.

18 6. Prescribe rules for the expenditure, by or under the control of  
19 the director, of all funds arising from appropriation, licenses, gifts or  
20 other sources.

21 7. Exercise such powers and duties necessary to carry out fully the  
22 provisions of this title and in general exercise powers and duties that  
23 relate to adopting and carrying out policies of the department and control  
24 of its financial affairs.

25 8. Prescribe procedures for use of department personnel,  
26 facilities, equipment, supplies and other resources in assisting search or  
27 rescue operations on request of the director of the division of emergency  
28 management.

29 9. Cooperate with the Arizona-Mexico commission in the governor's  
30 office and with researchers at universities in this state to collect data  
31 and conduct projects in the United States and Mexico on issues that are  
32 within the scope of the department's duties and that relate to quality of  
33 life, trade and economic development in this state in a manner that will  
34 help the Arizona-Mexico commission to assess and enhance the economic  
35 competitiveness of this state and of the Arizona-Mexico region.

36 B. The commission may:

37 1. Conduct investigations, inquiries or hearings in the performance  
38 of its powers and duties.

39 2. Establish game management units or refuges for the preservation  
40 and management of wildlife.

41 3. Construct and operate game farms, fish hatcheries, fishing lakes  
42 or other facilities for or relating to the preservation or propagation of  
43 wildlife.

44 4. ~~Expend funds~~ SPEND MONIES to provide training in the safe  
45 handling and use of firearms and safe hunting practices.

1           5. Remove or ~~permit~~ ALLOW to be removed from public or private  
2 waters fish ~~which~~ THAT hinder or prevent propagation of game or food fish  
3 and dispose of such fish in such manner as it may designate.

4           6. Purchase, sell or barter wildlife for the purpose of stocking  
5 public or private lands and waters and take at any time in any manner  
6 wildlife for research, propagation and restocking purposes or for use at a  
7 game farm or fish hatchery and declare wildlife salable when in the public  
8 interest or the interest of conservation.

9           7. Enter into agreements with the federal government, with other  
10 states or political subdivisions of ~~the~~ THIS state and with private  
11 organizations for the construction and operation of facilities and for  
12 management studies, measures or procedures for or relating to the  
13 preservation and propagation of wildlife and ~~expend funds~~ SPEND MONIES for  
14 carrying out such agreements.

15           8. Prescribe rules for the sale, trade, importation, exportation or  
16 possession of wildlife.

17           9. ~~Expend~~ SPEND monies for the purpose of producing publications  
18 relating to wildlife and activities of the department for sale to the  
19 public and establish the price to be paid for annual subscriptions and  
20 single copies of such publications. All monies received from the sale of  
21 such publications shall be deposited in the game and fish publications  
22 revolving fund.

23           10. Contract with any person or entity to design and produce artwork  
24 on terms that, in the commission's judgment, will produce an original and  
25 valuable work of art relating to wildlife or wildlife habitat.

26           11. Sell or distribute the artwork authorized under paragraph 10 of  
27 this subsection on such terms and for such price as it deems acceptable.

28           12. Consider the adverse and beneficial short-term and long-term  
29 economic impacts on resource dependent communities, small businesses and  
30 ~~the~~ THIS state ~~of Arizona~~, of policies and programs for the management,  
31 preservation and harvest of wildlife by holding a public hearing to  
32 receive and consider written comments and public testimony from interested  
33 persons.

34           13. Adopt rules relating to range operations at public shooting  
35 ranges operated by and under the jurisdiction of the commission, including  
36 the hours of operation, the fees for the use of the range, the regulation  
37 of groups and events, the operation of related range facilities, the type  
38 of firearms and ammunition that may be used at the range, the safe  
39 handling of firearms at the range, the required safety equipment for a  
40 person using the range, the sale of firearms, ammunition and shooting  
41 supplies at the range, and the authority of range officers to enforce  
42 these rules, to remove violators from the premises and to refuse entry for  
43 repeat violations.

1           14. Solicit and accept grants, gifts or donations of money or other  
2 property from any source, which may be used for any purpose consistent  
3 with this title.

4           15. ACQUIRE AND LEASE SURFACE WATER RIGHTS FOR WATERSHED HEALTH USES  
5 AND INSTREAM USES. FOR THE PURPOSES OF THIS PARAGRAPH, "WATERSHED HEALTH  
6 USES" HAS THE SAME MEANING PRESCRIBED IN SECTION 45-101.

7           C. The commission shall confer and coordinate with the director of  
8 water resources with respect to the commission's activities, plans and  
9 negotiations relating to water development and use, restoration projects  
10 under the restoration acts pursuant to chapter 4, article 1 of this title,  
11 where water development and use are involved, the abatement of pollution  
12 injurious to wildlife and in the formulation of fish and wildlife aspects  
13 of the director of water resources' plans to develop and ~~utilize~~ USE water  
14 resources of the state and shall have jurisdiction over fish and wildlife  
15 resources and fish and wildlife activities of projects constructed for the  
16 state under or pursuant to the jurisdiction of the director of water  
17 resources.

18           D. The commission may enter into one or more agreements with a  
19 multi-county water conservation district and other parties for  
20 participation in the lower Colorado river multispecies conservation  
21 program under section 48-3713.03, including the collection and payment of  
22 any monies authorized by law for the purposes of the lower Colorado river  
23 multispecies conservation program.

24           Sec. 2. Section 17-298, Arizona Revised Statutes, is amended to  
25 read:

26           17-298. Expenditures from fund; purpose and amounts; annual  
27 report

28           A. Monies received pursuant to section 5-572 shall be spent as  
29 follows:

30           1. Five percent on public access, including maintenance and  
31 operation expenses.

32           2. Sixty percent on the identification, inventory, acquisition,  
33 protection and management, including maintenance and operations, of  
34 property with sensitive habitat, WATERSHED HEALTH USES AND INSTREAM  
35 USES. At least twenty percent of the monies available under this  
36 paragraph shall be spent to acquire property with sensitive habitat used  
37 by endangered, threatened and candidate species. Not more than twenty  
38 percent of the monies available under this paragraph may be spent on the  
39 operation and maintenance of the acquired property, including the acquired  
40 property's infrastructure. The commission may dispose of any lands  
41 acquired for use as habitat by an endangered, threatened or candidate  
42 species under this paragraph when the species no longer qualifies as an  
43 endangered, threatened or candidate species. The Arizona game and fish  
44 commission shall dispose of the land in a manner consistent with the  
45 preservation of the species of concern. The disposal may include

1 conservation easements and fee simple transfers with associated  
2 instruments of protection. The commission shall follow the guidelines  
3 established pursuant to section 37-803 relating to the disposition of real  
4 property by a state agency. In addition, disposal shall include a written  
5 agreement between the commission and the purchaser requiring the purchaser  
6 to incorporate management actions to ensure proper maintenance of the  
7 species of concern. Management actions may include maintenance of  
8 habitat, selective control of nonnative species, maintenance of genetic  
9 viability, monitoring of populations and habitat, coordinating  
10 conservation activities, funding conservation actions and assessing  
11 conservation progress. FOR THE PURPOSES OF THIS PARAGRAPH, "WATERSHED  
12 HEALTH USES" HAS THE SAME MEANING PRESCRIBED IN SECTION 45-101.

13 3. Fifteen percent on habitat evaluation or habitat protection.

14 4. Fifteen percent on urban wildlife and urban wildlife habitat  
15 programs.

16 5. Five percent on environmental education.

17 B. All monies earned as interest on monies received pursuant to  
18 section 5-572 shall be spent only in the percentages and for the purposes  
19 described in subsection A of this section or for costs of administering  
20 the Arizona game and fish commission heritage fund in such amounts as  
21 determined by the Arizona game and fish commission.

22 C. On or before December 31, the commission shall submit its annual  
23 report to the president of the senate, the speaker of the house of  
24 representatives and the chairmen of the senate and house of  
25 representatives committees on natural resources and agriculture, or their  
26 successor committees, and shall provide a copy of this report to the  
27 secretary of state. The annual report shall include information on:

28 1. The amount of monies spent or encumbered in the fund during the  
29 preceding fiscal year and a summary of the projects, activities and  
30 expenditures relating to:

31 (a) Property acquisition, operation and maintenance.

32 (b) Identification, inventory, protection and management of  
33 sensitive habitat.

34 (c) Habitat evaluation and protection.

35 (d) Urban wildlife.

36 (e) Environmental education.

37 (f) Public access.

38 2. The number and location of parcels of property acquired during  
39 the preceding fiscal year.

40 3. For personal and real properties acquired with fund monies  
41 during the preceding fiscal year, the amount of property tax revenue paid  
42 to each taxing jurisdiction during the last full tax year prior to  
43 acquisition.

44 4. The amount of money spent from the fund during the preceding  
45 fiscal year for employee personal services.

1           5. The number of full-time employees employed in the preceding  
2 fiscal year in connection with property acquisition, including survey,  
3 appraisal and other related activities.

4           6. The total number of full-time employees employed in the  
5 preceding fiscal year for the programs listed in subsection A of this  
6 section.

7           7. A list of the grants awarded during the preceding fiscal year,  
8 including information on the recipients, purposes and amounts.

9           Sec. 3. Section 45-101, Arizona Revised Statutes, is amended to  
10 read:

11           45-101. Definitions

12           In this title, unless the context otherwise requires:

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

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

17           3. "Director" means the director of water resources, who is also  
18 the director of the department.

19           4. "Effluent" means water that has been collected in a sanitary  
20 sewer for subsequent treatment in a facility that is regulated pursuant to  
21 title 49, chapter 2. Such water remains effluent until it acquires the  
22 characteristics of groundwater or surface water.

23           5. "Groundwater" means water under the surface of the earth  
24 regardless of the geologic structure in which it is standing or moving.  
25 Groundwater does not include water flowing in underground streams with  
26 ascertainable beds and banks.

27           6. "Interstate stream" means any stream constituting or flowing  
28 along the exterior boundaries of this state, and any tributary originating  
29 in another state or foreign country and flowing into or through this  
30 state.

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

42           8. "Sanitary sewer" means any pipe or other enclosed conduit that  
43 carries, among other substances, any water-carried wastes from the human  
44 body from residences, commercial buildings, industrial plants or  
45 institutions.

1           9. "Surface water" means the waters of all sources, flowing in  
2 streams, canyons, ravines or other natural channels, or in definite  
3 underground channels, whether perennial or intermittent, floodwater,  
4 wastewater or surplus water, and of lakes, ponds and springs on the  
5 surface. For the purposes of administering this title, surface water is  
6 deemed to include central Arizona project water.

7           10. "WATERSHED HEALTH USES" MEANS WATER THAT IS CONSERVED IN A  
8 NATURAL WATERCOURSE AND NOT OTHERWISE USED AND THAT SUPPORTS THE  
9 ATTRIBUTES OF WATERSHED HEALTH FOR AN INDIVIDUAL WATERSHED AS PRESCRIBED  
10 IN THE REPORT REQUIRED BY SECTION 45-105, SUBSECTION B.

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

13           45-105. Powers and duties of director

14           A. The director may:

15           1. Formulate plans and develop programs for the practical and  
16 economical development, management, conservation and use of surface water,  
17 groundwater and the watersheds in this state, including the management of  
18 water quantity and quality.

19           2. Investigate works, plans or proposals pertaining to surface  
20 water and groundwater, including management of watersheds, and acquire,  
21 preserve, publish and disseminate related information the director deems  
22 advisable.

23           3. Collect and investigate information on and prepare and devise  
24 means and plans for the development, conservation and use of all  
25 waterways, watersheds, surface water, groundwater and groundwater basins  
26 in this state and of all related matters and subjects, including  
27 irrigation, drainage, water quality maintenance, regulation of flow,  
28 diversion of running streams adapted for development in cooperating with  
29 the United States or by this state independently, flood control, use of  
30 water power, prevention of soil waste and storage, conservation and  
31 development of water for every useful purpose.

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

35           5. Acquire, hold and dispose of property, including land,  
36 rights-of-way, water and water rights, as necessary or convenient for the  
37 performance of the groundwater and water quality management functions of  
38 the department.

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

42           7. Accept grants, gifts or donations of money or other property  
43 from any source, which may be used for any purpose consistent with this  
44 title. All property acquired by the director is public property and is

1 subject to the same tax exemptions, rights and privileges granted to  
2 municipalities, public agencies and other public entities.

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

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

9 10. Initiate and participate in conferences, conventions or  
10 hearings, including congressional hearings, court hearings or hearings of  
11 other competent judicial or quasi-judicial departments, agencies or  
12 organizations, and negotiate and cooperate with agencies of the United  
13 States or of any state or government and represent this state concerning  
14 matters within the department's jurisdiction.

15 11. Apply for and hold permits and licenses from the United States  
16 or any agency of the United States for reservoirs, dam sites and  
17 rights-of-way.

18 12. Receive and review all reports, proposed contracts and  
19 agreements from and with the United States or any agencies, other states  
20 or governments or their representatives and recommend to the governor and  
21 the legislature action to be taken on such reports, proposed contracts and  
22 agreements. The director shall take action on such reports, if authorized  
23 by law, and review and coordinate the preparation of formal comments of  
24 this state on both the preliminary and final reports relating to water  
25 resource development of the United States army corps of engineers, the  
26 United States secretary of the interior and the United States secretary of  
27 agriculture, as provided for in the flood control act of 1944 (58 Stat.  
28 887; 33 United States Code section 701-1).

29 13. Contract with any person for imported water or for the  
30 acquisition of water rights or rights to withdraw, divert or use surface  
31 water or groundwater as necessary for the performance of the groundwater  
32 management functions of the director prescribed by chapter 2 of this  
33 title. If water becomes available under any contract executed under this  
34 paragraph, the director may contract with any person for its delivery or  
35 exchange for any other water available.

36 14. Recommend to the administrative heads of agencies, boards and  
37 commissions of this state, and political subdivisions of this state, rules  
38 to promote and protect the rights and interests of this state and its  
39 inhabitants in any matter relating to the surface water and groundwater in  
40 this state.

41 15. Conduct feasibility studies and remedial investigations  
42 relating to groundwater quality and enter into contracts and cooperative  
43 agreements under section 104 of the comprehensive environmental response,  
44 compensation, and liability act of 1980 (P.L. 96-510) to conduct such  
45 studies and investigations.



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

5           17. Cooperate and coordinate with the appropriate governmental  
6 entities in Mexico regarding water planning in areas near the border  
7 between Mexico and Arizona and for the exchange of relevant hydrological  
8 information.

9           B. The director shall:

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

13           2. Administer all laws relating to groundwater, as provided in this  
14 title.

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

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

20           (a) The Arizona power authority, the game and fish commission, the  
21 state land department, the Arizona outdoor recreation coordinating  
22 commission, the Arizona commerce authority, the department of health  
23 services, active management area water authorities or districts and  
24 political subdivisions of this state with respect to matters within their  
25 jurisdiction relating to surface water and groundwater and the development  
26 of state water plans.

27           (b) The department of environmental quality with respect to title  
28 49, chapter 2 for its assistance in the development of state water plans.

29           (c) The department of environmental quality regarding water plans,  
30 water resource planning, water management, wells, water rights and  
31 permits, and other appropriate provisions of this title pertaining to  
32 remedial investigations, feasibility studies, site prioritization,  
33 selection of remedies and implementation of the water quality assurance  
34 revolving fund program pursuant to title 49, chapter 2, article 5.

35           (d) The department of environmental quality regarding coordination  
36 of databases that are necessary for activities conducted pursuant to title  
37 49, chapter 2, article 5.

38           5. Cooperate with the Arizona power authority in the performance of  
39 the duties and functions of the authority.

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

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

1           8. Investigate and take appropriate action on any complaints  
2 alleging withdrawals, diversions, impoundments or uses of surface water or  
3 groundwater that may violate this title or the rules adopted pursuant to  
4 this title.

5           9. Adopt an official seal for the authentication of records,  
6 orders, rules and other official documents and actions.

7           10. Provide staff support to the Arizona water protection fund  
8 commission established pursuant to chapter 12 of this title.

9           11. Exercise and perform all powers and duties invested in the  
10 chairperson of the Arizona water banking authority commission as  
11 prescribed by chapter 14 of this title.

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

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

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

20           (b) Issues of regional and local drought effects, short-term and  
21 long-term drought management efforts and the adequacy of drought  
22 preparation throughout the state.

23           (c) The status of current water conservation programs in this  
24 state.

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

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

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

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

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

40           14. Not later than December 1, 2023 and on or before December 1 of  
41 each year thereafter, prepare and issue a water supply and demand  
42 assessment for at least six of the forty-six groundwater basins  
43 established pursuant to section 45-403. The director shall ensure that a  
44 water supply and demand assessment is completed for all groundwater basins  
45 at least once every five years. The director may contract with outside

1 entities to perform some or all of the assessments and those outside  
2 entities shall be identified in the assessment.

3 15. ON OR BEFORE DECEMBER 31 EVERY THREE YEARS AFTER THE INITIAL  
4 PRELIMINARY SURVEY, ISSUE A REPORT THAT INCLUDES AN ASSESSMENT OF THE  
5 OVERALL HEALTH OF EACH WATERSHED IN THIS STATE. ANY AGENCY OR POLITICAL  
6 SUBDIVISION OF THIS STATE THAT HAS INFORMATION RELEVANT TO DEVELOPING THE  
7 SURVEY AND REPORT PRESCRIBED BY THIS PARAGRAPH, INCLUDING THE  
8 DETERMINATIONS, ASSESSMENTS AND RECOMMENDATIONS PRESCRIBED BY THIS  
9 PARAGRAPH, SHALL COOPERATE WITH THE DIRECTOR AND SHALL TIMELY PROVIDE  
10 INFORMATION REQUESTED BY THE DIRECTOR. THE ASSESSMENT OF THE OVERALL  
11 HEALTH OF EACH WATERSHED IN THIS STATE SHALL BE BASED ON AN EVALUATION OF  
12 THE FOLLOWING ATTRIBUTES OF THE WATERSHED:

13 (a) HYDROLOGY.

14 (b) LANDSCAPE CONDITION.

15 (c) HABITAT CONDITION.

16 (d) GEOMORPHOLOGY.

17 (e) WATER QUALITY.

18 (f) BIOLOGICAL CONDITION, INCLUDING THE BIODIVERSITY OF PLANTS,  
19 ANIMALS AND AQUATIC SPECIES.

20 (g) THREATS TO OR VULNERABILITIES OF THE WATERSHED THAT IMPACT THE  
21 ATTRIBUTES PRESCRIBED BY THIS PARAGRAPH.

22 Sec. 5. Section 45-151, Arizona Revised Statutes, is amended to  
23 read:

24 45-151. Right of appropriation; permitted uses; water rights  
25 in stockponds

26 A. Any person, ~~the THIS state, of Arizona~~ INCLUDING THE ARIZONA  
27 GAME AND FISH DEPARTMENT, or a political subdivision ~~thereof~~ OF THIS STATE  
28 may appropriate unappropriated water for domestic, municipal, irrigation,  
29 stock watering, water power, recreation, wildlife, including fish,  
30 nonrecoverable water storage pursuant to section 45-833.01, ~~or~~ mining uses  
31 OR WATERSHED HEALTH USES, for ~~his~~ personal use or for delivery to  
32 consumers. The person, ~~the THIS state of Arizona~~ or a political  
33 subdivision ~~thereof~~ OF THIS STATE first appropriating the water shall have  
34 the better right.

35 B. To effect the beneficial use, the person, ~~the THIS state of~~  
36 ~~Arizona~~ or a political subdivision ~~thereof~~ OF THIS STATE appropriating the  
37 water may construct and maintain reservoirs, storage facilities pursuant  
38 to chapter 3.1 of this title, dams, canals, ditches, flumes and other  
39 necessary waterways.

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

1           Sec. 6. Section 45-152.01, Arizona Revised Statutes, is amended to  
2 read:

3           45-152.01. Instream flow applications; process; definition

4           A. In addition to the information prescribed in section 45-152, any  
5 person, including the United States, this state, **INCLUDING THE ARIZONA**  
6 **GAME AND FISH DEPARTMENT, A POLITICAL SUBDIVISION OF THIS STATE** or a  
7 municipality, who files an instream flow application after ~~the effective~~  
8 ~~date of this section~~ **AUGUST 2, 2012** shall comply with the following:

9           1. The applicant shall submit at least five years of streamflow  
10 measurement data to support the proposed beneficial use which shall be  
11 submitted at the time the application is filed. The director shall not  
12 accept for filing an instream flow application that is not accompanied by  
13 at least five years of continuous streamflow measurement data. The  
14 streamflow data submitted shall consist of gauged on-site measurements of  
15 available water flow from the area in which the claimed beneficial use  
16 occurs.

17           2. The instream flow application shall describe the proposed  
18 beneficial use and shall specify both of the following:

19           (a) The amount of streamflow required for the proposed beneficial  
20 use.

21           (b) The availability of the requested flows during claimed periods  
22 of beneficial use.

23           B. Applications that are submitted after ~~the effective date of this~~  
24 ~~section~~ **AUGUST 2, 2012** shall be rejected if the application does not  
25 comply with this section.

26           C. For the purposes of this section, "instream flow application"  
27 means an application for a permit to make an appropriation of water for  
28 purposes of **WATERSHED HEALTH**, recreation or wildlife, including fish, in a  
29 specific stream reach without diverting the water from the stream.

30           Sec. 7. Section 45-172, Arizona Revised Statutes, is amended to  
31 read:

32           45-172. Transfer of water rights; application; limitations;  
33 required consent

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

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

1           2. Vested or existing rights to the use of water shall not be  
2 affected, infringed ~~upon nor~~ ON OR interfered with, and in no event shall  
3 the water diverted or used after the transfer of such rights exceed the  
4 vested rights existing at the time of such severance and transfer, and the  
5 director shall by order so define and limit the amount of water to be  
6 diverted or used annually subsequent to such transfer.

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

10          4. No such severance or transfer of water rights shall be permitted  
11 or allowed from lands within the exterior boundaries of any irrigation  
12 district, agricultural improvement district or water users' association  
13 without first having obtained the written consent and approval of such  
14 irrigation district, agricultural improvement district or water users'  
15 association.

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

43          6. A severance and transfer of an irrigation water right  
44 appurtenant to lands within the boundaries of an irrigation district to  
45 other lands within the boundaries of the same irrigation district for

1 agricultural use may be accomplished by the exclusion of lands to which a  
2 water right is appurtenant from within the boundaries of an irrigation  
3 district, and the inclusion in lieu of other lands within the boundaries  
4 of such irrigation district. Such severance and transfer of a water right  
5 shall require the consent of only the irrigation district within which the  
6 affected lands are situated and of the owners of the lands affected by the  
7 severance and transfer. No proceedings before ~~TOP~~ OR approval by the  
8 director shall be required to accomplish such severance and transfer.

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

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