

REFERENCE TITLE: water; effluent; credits

State of Arizona  
Senate  
Fifty-sixth Legislature  
First Regular Session  
2023

## **SB 1660**

Introduced by  
Senators Kerr; Kaiser; Representative Dunn

### AN ACT

AMENDING SECTION 45-101, ARIZONA REVISED STATUTES; AMENDING TITLE 45, CHAPTER 3.1, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTION 45-837.01; AMENDING SECTION 45-852.01, ARIZONA REVISED STATUTES; RELATING TO WATER.

(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. "Effluent" means:

13 (a) Water that has been collected in a sanitary sewer for  
14 subsequent treatment in a facility that is regulated pursuant to title 49,  
15 chapter 2. Such water remains effluent until it acquires the  
16 characteristics of groundwater or surface water.

17 (b) WATER, OTHER THAN WATER THAT IS ORIGINALLY SUPPLIED BY A CITY,  
18 TOWN OR PRIVATE WATER COMPANY, THAT IS USED FOR NONIRRIGATION USE IN AN  
19 INDUSTRIAL FACILITY AND THAT IS TREATED AT THE SITE OF USE TO MEET OR  
20 EXCEED AQUIFER WATER QUALITY STANDARDS AS ESTABLISHED PURSUANT TO TITLE  
21 49, CHAPTER 2.

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

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

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

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

45 9. "Surface water" means the waters of all sources, flowing in  
46 streams, canyons, ravines or other natural channels, or in definite

1 underground channels, whether perennial or intermittent, floodwater,  
2 wastewater or surplus water, and of lakes, ponds and springs on the  
3 surface. For the purposes of administering this title, surface water is  
4 deemed to include central Arizona project water.

5 Sec. 2. Title 45, chapter 3.1, article 3, Arizona Revised Statutes,  
6 is amended by adding section 45-837.01, to read:

7 45-837.01. Industrial users; on-site treatment; underground  
8 storage; service provider

9 FOR AN INDUSTRIAL PROCESSING FACILITY, IF THE WATER AND WASTEWATER  
10 SERVICE PROVIDER THAT HOLDS A CERTIFICATE OF CONVENIENCE AND NECESSITY FOR  
11 THE SERVICE AREA IN WHICH THE INDUSTRIAL PROCESSING FACILITY IS LOCATED  
12 CANNOT OR DOES NOT ACCEPT THE ENTIRE DISCHARGING CAPACITY OF AN OTHERWISE  
13 LAWFUL INDUSTRIAL PROCESSING FACILITY, ALL OF THE FOLLOWING APPLY:

14 1. THE INDUSTRIAL PROCESSING FACILITY MAY CONSTRUCT AND OPERATE AN  
15 ON-SITE WASTEWATER TREATMENT FACILITY FOR SOME OR ALL OF ITS WASTEWATER,  
16 AS OTHERWISE PROVIDED BY LAW.

17 2. AFTER TREATMENT BY THE ON-SITE WASTEWATER TREATMENT FACILITY,  
18 THE INDUSTRIAL PROCESSING FACILITY MAY DISCHARGE ITS EFFLUENT TO A  
19 CONSTRUCTED UNDERGROUND STORAGE FACILITY AS OTHERWISE PROVIDED BY LAW.

20 3. THE WATER AND WASTEWATER SERVICE PROVIDER SHALL CONTINUE TO  
21 PROVIDE WATER SERVICE UNDER THE TERMS OF ITS CERTIFICATE OF CONVENIENCE  
22 AND NECESSITY THAT IS SUFFICIENT FOR THE INDUSTRIAL PROCESSING FACILITY TO  
23 COMPLY WITH THE OCCUPANCY REQUIREMENTS OF THE PERMITTING JURISDICTIONS AND  
24 AGENCIES FOR THE FACILITY.

25 Sec. 3. Section 45-852.01, Arizona Revised Statutes, is amended to  
26 read:

27 45-852.01. Long-term storage accounts

28 A. The director shall establish one long-term storage account for  
29 each person holding long-term storage credits. The director shall  
30 establish subaccounts within the long-term storage account according to  
31 each active management area, irrigation non-expansion area, groundwater  
32 basin or groundwater subbasin in which the person's stored water is  
33 located. The long-term storage account shall be further subdivided by  
34 type of water, if the person holds long-term storage credits for more than  
35 one type of water.

36 B. Water stored pursuant to a water storage permit at a storage  
37 facility may be credited to a long-term storage account if the director  
38 determines that all of the following apply:

39 1. Either:

40 (a) The water that was stored was water that cannot reasonably be  
41 used directly.

42 (b) The water was stored in a groundwater savings facility located  
43 in an active management area that does not have a management goal of  
44 achieving or maintaining a safe yield condition, the water was stored  
45 between January 1, 2020 and December 31, 2026 and the director determines  
46 that the storage assists in implementing within this state a drought

1 contingency plan for the lower basin of the Colorado River. The total  
2 maximum amount that may qualify under this subdivision is fifteen thousand  
3 acre-feet per year.

4 2. If the stored water was stored at a storage facility within an  
5 active management area, either:

6 (a) The water would not have been naturally recharged within the  
7 active management area.

8 (b) If the water was stored at a managed underground storage  
9 facility that has been designated as a facility that could add value to a  
10 national park, national monument or state park and the water stored is  
11 effluent, the water stored is water that could have been used or disposed  
12 of by the storer by means other than discharging the effluent into the  
13 stream.

14 3. The stored water was not recovered on an annual basis pursuant  
15 to section 45-851.01.

16 C. The director shall credit ninety-five percent of the recoverable  
17 amount of stored water that meets the requirements of subsection B of this  
18 section to the storer's long-term storage account, except that:

19 1. If the water was stored at a managed underground storage  
20 facility that does not qualify as an existing effluent managed underground  
21 storage facility and that had not been designated at the time of storage  
22 as a facility that could add value to a national park, national monument  
23 or state park and the water stored is effluent, the director shall credit  
24 to the storer's long-term storage account fifty percent of the recoverable  
25 amount of water that meets the requirements of subsection B of this  
26 section. For storage of effluent in a managed underground storage  
27 facility that is located in a recreational corridor channelization  
28 district established pursuant to title 48, chapter 35, the director may  
29 increase the storage credits earned from fifty percent to ninety-five  
30 percent if both of the following apply:

31 (a) The effluent was not discharged into the stream where the  
32 facility is located before the permit application for that facility was  
33 filed.

34 (b) The director determines that the storage of effluent in the  
35 facility will provide a greater benefit to aquifer conditions in the  
36 active management area or, if outside an active management area, to the  
37 groundwater basin than would accrue to the active management area or  
38 groundwater basin if the effluent is used or disposed of in another  
39 manner.

40 2. If the water was stored at a groundwater savings facility and  
41 the storer has not met the burden of proving that one hundred percent of  
42 the in lieu water was used on a gallon-for-gallon substitute basis for  
43 groundwater, the director shall credit to the storer's long-term storage  
44 account only the percentage of the in lieu water that meets the  
45 requirements of subsection B of this section and that was proven to the

1 director's satisfaction as being used on a gallon-for-gallon substitute  
2 basis for groundwater.

3 3. The director shall credit to the storer's long-term storage  
4 account ninety percent of the recoverable amount of the water that meets  
5 the requirements of subsection B of this section if all of the following  
6 apply:

7 (a) The stored water was central Arizona project water that  
8 qualifies as water that cannot reasonably be used directly due solely to  
9 the exclusion of groundwater withdrawn by the storer for mineral  
10 extraction or metallurgical processing under section 45-802.01, paragraph  
11 23, subdivision (c).

12 (b) The storer was engaged in mineral extraction and metallurgical  
13 processing within an initial active management area on or before January  
14 1, 2011.

15 (c) All exterior boundaries of the storage facility that is used to  
16 store the stored water are more than twenty miles from a well owned by the  
17 storer on January 1, 2012 and that well is not an exempt well and any one  
18 or more of the following apply:

19 (i) The well is an existing well as defined in section 45-591,  
20 paragraph 1.

21 (ii) The department has issued a permit for the well under section  
22 45-599, subsection C.

23 (iii) The well was drilled pursuant to a mineral extraction and  
24 metallurgical processing permit issued by the department under section  
25 45-514.

26 4. Except as otherwise provided in paragraph 2 of this subsection,  
27 the director shall credit to the storer's long-term storage account or  
28 conservation district account one hundred percent of the recoverable  
29 amount of water that meets the requirements of subsection B of this  
30 section if any of the following applies:

31 (a) The water stored was effluent that was stored at a constructed  
32 underground storage facility, a groundwater savings facility or a managed  
33 underground storage facility that was designated at the time of storage as  
34 a facility that could add value to a national park, national monument or  
35 state park.

36 (b) The water was stored in an active management area and the  
37 stored water is water from outside the active management area that would  
38 not have reached the active management area without the efforts of the  
39 holder of the long-term storage credits.

40 (c) The water was stored outside an active management area and the  
41 stored water is water from outside the groundwater basin in which the  
42 water was stored that would not have reached the groundwater basin without  
43 the efforts of the holder of the long-term storage credits.

44 (d) The water was stored for purposes of establishing and  
45 maintaining a replenishment reserve pursuant to section 48-3772,  
46 subsection E.

1 (e) The water was stored for replenishment purposes pursuant to  
2 section 48-3771 and credited directly to a conservation district account  
3 pursuant to section 45-859.01, subsection E.

4 5. IF THE WATER STORED WAS EFFLUENT THAT MEETS THE DEFINITION  
5 PRESCRIBED BY SECTION 45-101, PARAGRAPH 4, SUBDIVISION (b), ANY LONG-TERM  
6 STORAGE CREDITS ACCRUED MAY ONLY BE USED AT THE SITE WHERE THE WATER WAS  
7 STORED.

8 D. The director shall credit a person's long-term storage account  
9 by the amount of long-term storage credits assigned to that person by  
10 another holder of long-term storage credits pursuant to section 45-854.01.

11 E. The director shall debit the appropriate subaccount of a  
12 person's long-term storage account:

13 1. One hundred percent of the amount of stored water that the  
14 holder of the long-term storage credits has recovered during the calendar  
15 year pursuant to the permit.

16 2. The amount of long-term storage credits that the person has  
17 assigned to another person or transferred to a master replenishment  
18 account, conservation district account or water district account.

19 3. If the water was stored in an active management area, the amount  
20 of water during the calendar year that migrates to a location outside the  
21 active management area or to a location within the active management area  
22 where it cannot be beneficially used within a reasonable period of time by  
23 persons other than the storer with rights to withdraw and use groundwater.

24 4. If the water was stored outside of an active management area,  
25 the amount of water during the calendar year that migrates to a location  
26 outside the groundwater basin in which the storage facility is located or  
27 to a location in the groundwater basin where it cannot be beneficially  
28 used within a reasonable period of time by persons other than the storer  
29 with rights to withdraw and use groundwater.

30 5. The amount of long-term storage credits that the storer,  
31 pursuant to section 45-853.01, subsection B, has applied to offset  
32 groundwater withdrawn or used in excess of the storer's per capita  
33 municipal conservation requirements under the second management plan.

34 6. The amount of long-term storage credits that are held by the  
35 Arizona water banking authority and that the authority has chosen to  
36 extinguish.

37 F. To the extent the total amount of water withdrawn by a person  
38 from wells designated as recovery wells pursuant to section 45-834.01  
39 during a calendar year exceeds the amount of stored water recovered by the  
40 person on an annual basis pursuant to section 45-851.01 and the amount of  
41 long-term storage credits recovered by the person, the excess amount of  
42 water recovered shall be considered groundwater withdrawn pursuant to  
43 chapter 2 of this title.