

ARIZONA REVISED STATUTES

Title 45 - Waters

Chapter 1 – Administration and General Provisions

Article 1 - Department of Water Resources

45-101. Definitions

In this title, unless the context otherwise requires:

1. "Appropriator" means the person or persons initiating or perfecting the right to use appropriable water based on state law, or the person's successor or successors in interest.
2. "Department" means the department of water resources.
3. "Director" means the director of water resources, who is also the director of the department.
4. "Effluent" means water that has been collected in a sanitary sewer for subsequent treatment in a facility that is regulated pursuant to title 49, chapter 2. Such water remains effluent until it acquires the characteristics of groundwater or surface water.
5. "Groundwater" means water under the surface of the earth regardless of the geologic structure in which it is standing or moving. Groundwater does not include water flowing in underground streams with ascertainable beds and banks.
6. "Interstate stream" means any stream constituting or flowing along the exterior boundaries of this state, and any tributary originating in another state or foreign country and flowing into or through this state.
7. "Riparian area" means a geographically delineated area with distinct resource values, that is characterized by deep-rooted plant species that depend on having roots in the water table or its capillary zone and that occurs within or adjacent to a natural perennial or intermittent stream channel or within or adjacent to a lake, pond or marsh bed maintained primarily by natural water sources. Riparian area does not include areas in or adjacent to ephemeral stream channels, artificially created stockponds, man-made storage reservoirs constructed primarily for conservation or regulatory storage, municipal and industrial ponds or man-made water transportation, distribution, off-stream storage and collection systems.
8. "Sanitary sewer" means any pipe or other enclosed conduit that carries, among other substances, any water-carried wastes from the human body from residences, commercial buildings, industrial plants or institutions.
9. "Surface water" means the waters of all sources, flowing in streams, canyons, ravines or other natural channels, or in definite underground channels, whether perennial or intermittent, floodwater, wastewater or surplus water, and of lakes, ponds and springs on the surface. For the purposes of administering this title, surface water is deemed to include central Arizona project water.

45-102. Department of water resources; director; appointment; qualifications; compensation

- A. There is established a department of water resources.
- B. There shall be a director of the department who shall be responsible for the direction, operation and control of the department.
- C. The director shall be appointed by the governor pursuant to section 38-211 and shall serve at the pleasure of the governor.
- D. The director shall be experienced and competent in water resources management and conservation, and shall have proven administrative ability.
- E. The director is entitled to receive compensation pursuant to section 38-611.

45-103. Scope of authority and responsibility of department and director

- A. The department, through the director, succeeds to the authority, powers, duties and responsibilities of the Arizona water commission and the state water engineer relating to surface water, groundwater and dams and reservoirs.

B. The director has general control and supervision of surface water, its appropriation and distribution, and of groundwater to the extent provided by this title, except distribution of water reserved to special officers appointed by courts under existing judgments or decrees.

45-104. Department organization; deputy directors; employees; legal counsel; branch offices; consultants

A. The director may establish and organize divisions within the department and otherwise organize the department in the manner the director deems necessary to make the operation of the department efficient and effective.

B. The director may appoint a deputy director to each division or organizational unit that the director may establish. Subject to title 41, chapter 4, article 4, deputy directors shall serve at the pleasure of the director and are entitled to receive compensation pursuant to section 38-611.

C. Subject to title 41, chapter 4, article 4 and, as applicable, articles 5 and 6, the director may employ, define the duties of and prescribe the terms and conditions of employment of such clerical, technical, professional and administrative personnel as necessary to efficiently perform the responsibilities of the department. Compensation for all employees shall be pursuant to section 38-611.

D. The director may employ on a contract basis geologists, hydrologists, consulting engineers, other expert consultants and engineering and other assistants as the director deems advisable, who are not subject to the classification provided for in title 41, chapter 4, article 5.

E. The director may utilize the services of accounting, legal or engineering personnel made available by any department or agency of this state, who shall serve without additional compensation.

F. Subject to title 41, chapter 4, article 4, the director may employ legal counsel to advise and represent the department in connection with legal matters before other departments and agencies of this state, and represent the department and this state in litigation concerning affairs of the department. Legal counsel is not subject to the classification provided for in title 41, chapter 4, article 5.

G. The director shall maintain the director's office in Phoenix and may establish a branch office of the department in each active management area established pursuant to chapter 2, article 2 of this title.

H. The director on behalf of the department may contract with private consultants for the purposes of assisting the department in reviewing applications for licenses, permits or other authorizations to determine whether an applicant meets the criteria for issuance of the license, permit or other authorization. If the department contracts with a consultant under this subsection, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and by agreeing to pay the department the costs of the consultant's services. Notwithstanding any other law, monies paid by applicants for expedited reviews pursuant to this subsection are appropriated to the department for use in paying consultants for services.

45-105. Powers and duties of director

A. The director may:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. The director shall:

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

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

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

4. Coordinate and confer with and may contract with:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45-106. Limitation of powers

An agreement entered into between the director and the United States or a state or government involving a sovereign right or claim of this state is not effective unless approved by the legislature by concurrent resolution.

45-107. Cooperation with the secretary of the interior of the United States

A. The director is authorized, for and on behalf of the state of Arizona, to consult, advise and cooperate with the secretary of the interior of the United States, as follows:

1. In the exercise of any authority conferred upon the secretary of the interior under the provisions of sections 4, 5 and 14 of the act commonly known as the Boulder Canyon project act (43 United States Code sections 617 through 617t), as contemplated and provided in section 16 of the Boulder Canyon project act.

2. In respect to the authority of the secretary of the interior to contract for the delivery of water of the main stream of the Colorado river for use within the state of Arizona.

3. In respect to all powers and duties of the secretary of the interior under the provisions of that certain contract between the United States of America, acting by Harold L. Ickes, secretary of the interior, and the state of Arizona, acting by the Colorado river commission, entered into on the 9th day of February, 1944, pursuant to chapter 46 of the 1939 session laws of Arizona, and approved by chapter 4 of the 1944 session laws of Arizona.

4. In respect to the exercise by the secretary of the interior of any authority relative to the water of the Colorado river conferred upon the secretary of the interior by the provisions of any legislation enacted by the Congress of the United States of America.

5. In respect to the development, negotiation and execution of interstate banking agreements in accordance with chapter 14 of this title.

B. The powers and duties of the director authorized by this section shall be limited and restricted to only that quantity of water which may be available for use in the state of Arizona, after the satisfaction of all existing contracts between the secretary of the interior and users in the state of Arizona for the delivery of water of the main stream of the Colorado river, and shall not extend to any such contracts, any amendments or supplements thereto, or to any federal statute enacted before June 21, 1962 pertaining to any federal reclamation project within the state of Arizona constructed and using water of the main stream of the Colorado river before June 21, 1962. Nothing shall be done under the authority of this section which will impair existing rights in the state of Arizona for the diversion and use of Colorado river water.

C. The privilege and right of individuals, irrigation districts, corporations, state departments, agencies, boards, commissions or political subdivisions of the state of Arizona to negotiate and directly contract with the secretary of the interior for the delivery of water of the main stream of the Colorado river for use within the state of Arizona and to negotiate and subcontract with the secretary of the interior and a multi-county water conservation district for the delivery of Colorado river water through the central Arizona project for use within the state of Arizona, and all rights under such contracts or subcontracts shall not be affected by the provisions of this section, except as provided in subsection D.

D. Individuals, irrigation districts, corporations, state departments, agencies, boards, commissions and political subdivisions of the state shall cooperate, confer with and obtain the advice of the director as to those negotiations, contracts and subcontracts described in subsection C that affect the allocation and use of main stream Colorado river water or the allocation and use of Colorado river water delivered through the central Arizona project. For a proposed contract or subcontract or a proposed amendment of a contract or subcontract that will result in a transfer of an allocation or entitlement of Colorado river water, including central Arizona project water, from a non-Indian Arizona contractor or subcontractor for a term of more than one year, the obligation to cooperate, confer with and obtain the advice of the director shall include the obligation to submit to the director for review the proposed contract or subcontract or the proposed amendment, and all related exhibits and agreements, prior to its execution by the contractor or subcontractor.

45-107.01. Waiver of rights to return flow credits

Before the beginning of each accounting year on the Colorado river, the director may consider a request by the secretary of the interior or the secretary's designated representative to waive rights held by this state to return flow credits for Colorado river water to the extent that water is returned to the Colorado river pursuant to a permit issued to the secretary under section 45-547. The director may grant the request on an annual basis, on behalf of this state, if all of the following apply:

1. The secretary holds a permit issued under section 45-547.

2. The secretary will use the water added to the Colorado river as a portion of the national obligation to provide replacement water for the specific purposes of replacement of the reject stream from the Yuma desalting plant, and of any Wellton-Mohawk drainage water bypassed to the Santa Clara slough to satisfy the requirements of minute 242 of the international boundary and water commission for the United States and Mexico that was concluded pursuant to the Mexican water treaty of February 3, 1944.

3. The secretary expressly agrees that the waiver granted on behalf of this state under this section does not in any way limit or impair the rights of this state to Colorado river water except for the specific quantity of water in the specific year for which the waiver is granted.

4. No person in Arizona has applied for and obtained a permit under section 45-547 that would allow the return flow credit to be fully used to increase the beneficial use of water in this state. If other permits have been issued under section 45-547 that would allow the return flow credit to be partially used to increase the beneficial use of water in this state, the director may grant the secretary the waiver for only that amount of the return flow credit that will not be used to increase the beneficial use of water in this state.

5. The director finds that granting the waiver will not impair the rights of this state or any holder in this state of a water delivery contract entered into pursuant to section 5 of the Boulder Canyon project act of 1928 (45 stat. 1060; 43 United States Code section 617d) to Colorado river water.

45-108. Evaluation of subdivision water supply; definition

A. In areas outside of active management areas established pursuant to chapter 2, article 2 of this title, the developer of a proposed subdivision including dry lot subdivisions, regardless of subdivided lot size, prior to recordation of the plat, shall submit plans for the water supply for the subdivision and demonstrate the adequacy of the water supply to meet the needs projected by the developer to the director. The director shall evaluate the plans and issue a report on the plans.

B. The director shall evaluate the proposed source of water for the subdivision to determine whether there is an adequate water supply for the subdivision, and shall forward a copy of the director's report to the state real estate commissioner and the city, town or county responsible for platting the subdivision.

C. The director may designate cities, towns and private water companies as having an adequate water supply by reporting that designation to the water department of the city or town or private water company and the state real estate commissioner.

D. As an alternative to designation under subsection C of this section, the director may designate a city or town that has entered into a contract with the United States secretary of the interior or a county water authority established pursuant to chapter 13 of this title for permanent supplies of Colorado river water for municipal and industrial use as having an adequate water supply if all of the following apply:

1. The city or town has entered into a contract with each private water company that serves water within the city or town to provide Colorado river water to those private water companies.

2. The Colorado river water for which the city or town has contracted is sufficient together with other water supplies available to the city or town and the private water companies that serve water within that city or town to provide an adequate supply of water for the city or town.

3. The director finds that new subdivisions within the city or town will be served primarily with Colorado river water by the city or town or one of the private water companies that serve water within that city or town.

E. The director shall not require a developer to submit plans for the water supply pursuant to subsection A of this section if either:

1. Both of the following apply:

(a) The developer has obtained a written commitment of water service from cities, towns or private water companies that have been designated as having an adequate water supply.

(b) That city, town or private water company has been designated as having an adequate water supply pursuant to subsection C of this section.

2. All of the following apply:

(a) The city or town has been designated as having an adequate water supply pursuant to subsection D of this section.

(b) The developer has obtained a written commitment of water service from the city or town or a private water company that serves water within that city or town.

(c) The developer has obtained the written concurrence of the city or town that has been designated.

F. The director may revoke a designation made pursuant to this section when the director finds that the water supply may become inadequate.

G. The state of Arizona and the director or department shall not be liable for any report, designation or evaluation prepared in good faith pursuant to this section.

H. If the director receives written notice from the board of supervisors of a county that it has adopted the provision authorized by section 11-823, subsection A, the director shall give written notice of the provision to the mayors of all cities and towns in the county. A city or town that receives the notice shall comply with section 9-463.01, subsections J, K, L, M and N.

I. For the purposes of this section, "adequate water supply" means both of the following:

1. Sufficient groundwater, surface water or effluent of adequate quality will be continuously, legally and physically available to satisfy the water needs of the proposed use for at least one hundred years.

2. The financial capability has been demonstrated to construct the water facilities necessary to make the supply of water available for the proposed use, including a delivery system and any storage facilities or treatment works. The director may accept evidence of the construction assurances required by section 9-463.01, 11-823 or 32-2181 to satisfy this requirement.

45-108.01. Application for water report or designation of adequate water supply; notice; objections; hearing; appeals

A. On receipt of an application for a water report or an application by a city, town or private water company to be designated as having an adequate water supply under section 45-108, if the proposed use is in a county that has adopted the provision authorized by section 11-823, subsection A or in a city or town that has enacted an ordinance pursuant to section 9-463.01, subsection O, the director shall publish notice of the application once each week for two consecutive weeks in a newspaper of general circulation in the groundwater basin in which the applicant proposes to use water. The first publication shall occur within fifteen days after the application is determined or deemed to be administratively complete. If the application is substantially modified after notice of the application is given pursuant to this subsection, the director shall give notice of the application as modified in the manner prescribed by this subsection. The first publication of any subsequent notice shall occur within fifteen days after the modified application is determined or deemed to be administratively complete.

B. Notice pursuant to subsection A of this section shall state that written objections to the application may be filed with the director by residents and landowners within the groundwater basin within fifteen days after the last publication of notice. An objection shall state the name and mailing address of the objector and be signed by the objector, the objector's agent or the objector's attorney. The grounds for objection are limited to whether the application meets the criteria for determining an adequate water supply set forth in section 45-108, subsection I. The objection shall clearly set forth reasons why the application does not meet the criteria.

C. In appropriate cases, including cases in which a proper written objection to the application has been filed, an administrative hearing may be held before the director's decision on the application if the director deems a hearing necessary. Thirty days before the date of the hearing, the director shall give notice of the hearing to the applicant and to any person who filed a proper written objection to the application. The hearing shall be scheduled for at least sixty days but not more than ninety days after the expiration of the time in which to file objections.

D. If the application is for a water report:

1. If the director determines that an adequate water supply exists for the proposed use, the director shall issue a water report stating that the water supply for the subdivision is adequate.

2. If the director determines that an adequate water supply does not exist, the director shall issue a water report stating that the water supply for the subdivision is inadequate.

E. If the application is for a designation of adequate water supply:

1. If the director determines that an adequate water supply exists for the proposed use, the director shall approve the application.

2. If the director determines that an adequate water supply does not exist, the director shall deny the application.

F. The applicant or a person who contested the application by filing a proper objection pursuant to subsection B of this section may seek judicial review of the final decision of the director as provided in section 45-114, subsection B in the superior court.

G. Section 45-114, subsections A and B govern administrative proceedings, rehearings or reviews and judicial reviews of final decisions of the director under this section. If an administrative hearing is held, it shall be conducted in the groundwater basin in which the use is located.

45-108.02. Exemption from adequate water supply requirements for city, town or county based on substantial capital investment; application; criteria; expiration

A. If the director determines pursuant to section 45-108 that an adequate water supply does not exist for a proposed subdivision and the proposed subdivision is located in a city, town or county that requires a determination of adequate water supply by the director as a condition of approval of the plat pursuant to section 9-463.01, subsection J or O or section 11-823, subsection A, the subdivider may apply to the director for an exemption from the water adequacy requirement pursuant to this section on a form prescribed by the director within one year after the requirement first becomes effective. The director shall grant the exemption if the subdivider demonstrates to the satisfaction of the director that all of the following apply:

1. The subdivider has made substantial capital investment toward the construction of the proposed subdivision before the date the water adequacy requirement first became effective. For the purposes of this paragraph, substantial capital investment may include construction costs, site preparation costs, construction of off-site improvements and conversion or remodeling costs for existing structures, as well as planning and design costs associated with those items, but does not include the original cost of acquiring the property.

2. The subdivider was not aware of the proposed water adequacy requirement at the time the investment was made.

3. The proposed subdivision complied in all other respects with existing state laws as of the date the water adequacy requirement became effective.

B. If the director grants an exemption pursuant to subsection A of this section:

1. The exemption expires five years after the date the exemption is granted, unless before that date at least one parcel in the subdivision is sold to a bona fide purchaser or the director extends the exemption pursuant to paragraph 2 of this subsection.

2. The director may extend the period of the exemption for no more than two successive five-year periods if the subdivider applies for an extension before the exemption expires and demonstrates to the satisfaction of the director that the subdivider has made material progress in developing the subdivision, but that sales of parcels in the subdivision have been delayed for reasons outside the control of the subdivider.

C. If an exemption granted under this section expires, any public report issued for the subdivision by the state real estate commissioner pursuant to section 32-2183 expires and the subdivider shall not sell any lots in the subdivision unless both of the following apply:

1. The subdivider files with the state real estate commissioner a new notice of intention to subdivide lands pursuant to section 32-2181 and complies with section 32-2181, subsection F.

2. The state real estate commissioner issues a new public report for the subdivision pursuant to section 32-2183.

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

45-108.03. Exemption from adequate water supply requirements for city, town or county based on an adequate water supply within twenty years; criteria; application

A. If a proposed subdivision is located in a city, town or county that requires an adequate water supply determination by the director as a condition of approval of the plat pursuant to section 9-463.01, subsection J or O or section 11-823, subsection A, the subdivider may apply to the director for an exemption from the requirement

pursuant to this section on a form prescribed by the director. The director shall grant the exemption if the subdivider demonstrates to the satisfaction of the director that the subdivision will be served by a water supply project to which both of the following apply:

1. The subdivider has demonstrated financial capability pursuant to section 45-108, subsection I, but the water supply project will not be capable of serving the subdivision with sufficient water to meet its demands in a timely manner because of one of the following:

(a) The physical works for delivering water to the subdivision are not complete but are under construction and will be completed within twenty years.

(b) The subdivision will be served Colorado river water by a water provider that does not currently have the legal right to serve the water to the subdivision, but the water provider has an existing permanent contract for the Colorado river water and will have the legal right to serve the water to the subdivision within twenty years.

2. The subdivision will have an adequate water supply when the construction of the physical works is completed or the water supply is legally available to serve the subdivision, whichever applies, and the interim water supply that will serve the subdivision meets all of the criteria for an adequate water supply under section 45-108 except that the interim water supply will not be available for one hundred years.

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

45-108.04. Definition of adequate water supply; upper San Pedro water district

For the purposes of section 45-108, if the upper San Pedro water district is established under title 48, chapter 37 for proposed uses in the district, "adequate water supply" means a water supply that complies with all of the following:

1. Sufficient groundwater, surface water or effluent of adequate quality will be continuously, legally and physically available to satisfy the water needs of the proposed use for at least one hundred years.

2. The projected water use is consistent with the goal of the district as set forth in section 48-6403, subsection B and the district's ability to meet the measurable objectives for achieving the goal as included in the district's most recent comprehensive plan, as determined by the director. If the district is established, the director shall adopt rules containing criteria for making determinations under this paragraph and shall consult with the district board in developing the rules.

3. The financial capability has been demonstrated to construct the water facilities necessary to make the supply of water available for the proposed use, including a delivery system and any storage facilities or treatment works. The director may accept evidence of the construction assurances required by section 9-463.01, 11-823 or 32-2181 to satisfy this requirement.

45-108.05. Water supply definitions

The director shall post and maintain on the department's website definitions of the following subdivision water supply terms that apply to areas outside of active management areas:

1. Adequate water supply.

2. Inadequate water supply.

3. Property served by a water provider currently designated as having an adequate water supply.

4. No water supply determination, which shall apply to properties that were subdivided prior to May 1, 1973 and for which there have been no plat changes after that date, properties that are exempt from the requirements of section 45-108 and properties that have not received a determination of adequate water supply or inadequate water supply and that are not served by a water provider currently designated as having an adequate water supply.

45-108.06. Water provider water supply information; definitions

A. On or after January 1, 2009, at the request of any person, all cities, towns and private water companies outside of an active management area as established pursuant to chapter 2, article 2 of this title shall provide a written statement describing the water supply status of real property within the service area of that city, town or private water company based on the most recent determination of the director pursuant to section 45-108. The

water supply status description provided by the city, town or private water company shall include the applicable director's water supply definition posted pursuant to section 45-108.05.

B. The written statement required in subsection A of this section shall be delivered by fax, electronic mail or United States mail as designated by the person requesting the information. The city, town or private water company shall deliver the written statement of water supply within three business days after receipt of the request.

C. For the purposes of this section, "city", "town", "private water company" and "service area" have the same meanings prescribed in section 45-402, but also include cities, towns and private water companies serving surface water and Colorado river water.

45-109. Division of state into water districts; district water superintendent

A. The director shall divide the state into water districts with reference to drainage watersheds in order to secure the best protection to claimants to water and the most economical supervision by the state. Districts shall not be created until necessary but shall be created as the claims from the streams or supply of the state are determined.

B. The director shall appoint one water superintendent for each district, who is eligible to receive such compensation as the director fixes, which shall be paid by the water users of the district. Each superintendent shall keep an account of the time spent by the superintendent and assistants in performing their duties in each county, and present a verified copy of the account to the superior court of each county at the end of each month, whereupon the judge of the court shall order the account paid according to an equitable distribution of the amount among the water users. The superintendent may employ assistants whose compensation shall be fixed and paid in like manner as the superintendent.

45-110. Duties of superintendent; injunctive relief of injured water user

A. The superintendent of each water district shall:

1. Divide the water of the sources of supply of his district among the several ditches and reservoirs taking water therefrom, and among the laterals and ditches according to the rights of each.

2. Shut and fasten the head gates of ditches, and regulate the controlling works of reservoirs in time of scarcity of water as is necessary by reason of the rights existing from the supply of his district.

3. Regulate the distribution of water among the users under a partnership ditch or reservoir in accordance with existing judgments or decrees where the rights have been determined.

4. As far as practicable, divide, regulate and control the use of waters in his district by closing head gates to prevent the waste of water or its use in excess of the volume to which the owner of the right is lawfully entitled.

B. When the superintendent regulates a head gate to a ditch or the controlling works of reservoirs, he shall attach to the head gate or controlling works a written notice, dated and signed, stating that the head gate or controlling works has been regulated by him and is wholly under his control, and the notice shall be legal notice to all parties interested in the division and distribution of the water of the ditch or reservoir.

C. Any person injured by such action by the superintendent may apply to the superior court for an injunction against the superintendent, but the injunction shall not be issued unless it appears that the superintendent has failed to carry into effect the order of the director or a judgment or decree of court determining existing rights to the use of the water.

45-111. Annual report by director

On or before July 1 each year the director shall render to the governor and the legislature a full and true report of the department's operations under this title. The report shall include suggestions as to amending existing laws or enacting new legislation as the director and the Arizona water resources advisory board deem necessary and such other information, suggestions and recommendations as the director considers of value to the public. The report shall be published and made available to the public.

45-112. Violations; classification; enforcement

A. A person is guilty of a class 2 misdemeanor who:

1. Knowingly and without authority opens, closes, changes or interferes with a lawfully established headgate, measuring device or water box.
 2. Knowingly uses water or conducts into or through such person's ditch water lawfully denied such person by the water superintendent or other competent authority.
 3. Without authority uses water to which another is entitled except for water taken through a registered well without knowledge that such water constitutes the subflow of a river or stream.
 4. Without authority diverts water from a stream.
 5. Knowingly wastes water to the detriment of another.
 6. Diverts a stream to the injury or threatened injury of the lands of another.
 7. Uses, stores or diverts water without or before the issuance of a permit to appropriate such waters.
 8. Places or maintains an obstruction interfering with the use of works, or prevents convenient access thereto, when an appropriator of water has the lawful right of way for the storage, diversion or carriage of such water.
- B. The possession or use of water when it has been lawfully denied by the water superintendent or other competent authority is prima facie evidence of the guilt of the person using it.
- C. The water superintendent or the water superintendent's assistants, within the water superintendent's district, may arrest any person violating this section and deliver that person to the sheriff or other police officer within the county, and on delivery shall immediately make a complaint against that person before a justice of the peace. If no water superintendent has been appointed for a water district, any affected person within the district may make a complaint to the sheriff or other police officer within the county against a person who violates this section.

45-113. Fees; refunds

- A. Except as otherwise prescribed, the director shall establish by rule and shall collect reasonable fees to cover the costs of administrative services and expenses.
- B. Except as otherwise prescribed, the director may establish by rule and collect fees for applications, certificates, licenses and permits relating to surface water, groundwater, water exchanges, wells, grandfathered rights, substitution of acres, adequate and assured water supply, groundwater oversupply and lakes and for inspections relating to dam safety.
- C. If the director determines that a fee, including a fee collected pursuant to section 45-611, has been erroneously paid during the same fiscal year or during any prior fiscal year, the director shall make an administrative adjustment or a refund, without interest, from the agency fund in which the fee was originally deposited to the current holder of the right, application or registration for which the fee was paid.
- D. This section does not apply to fees paid or payable under section 45-254 or section 45-255, subsection B.
- E. Except as provided in subsection F of this section, the director shall deposit, pursuant to sections 35-146 and 35-147, the monies collected under this section in the water resources fund established by section 45-117.
- F. The director shall deposit, pursuant to sections 35-146 and 35-147, the fees collected under this section relating to adequate and assured water supply pursuant to sections 45-108, 45-576 and 45-579 in the assured and adequate water supply administration fund established by section 45-580.

45-114. Administrative proceedings; rehearing or review; judicial review

- A. Administrative proceedings under this title are subject to title 41, chapter 6, article 10, except for administrative proceedings under section 45-476.01. If an administrative hearing is held before the director's decision, the administrative proceeding is a contested case under title 41, chapter 6, article 10. If an administrative hearing is not held before the director's decision, the director's decision is an appealable agency action under title 41, chapter 6, article 10. This subsection does not apply to a public hearing conducted under this title or to a decision of the director that is entered after a public hearing conducted under this title.
- B. Except for a decision of the director under section 45-476.01, after service of a final decision of the director under this title, a party may file a motion for rehearing or review under section 41-1092.09 and may seek

judicial review under title 12, chapter 7, article 6, except as provided in section 41-1092.08, subsection H. This subsection does not apply to a decision of the director that is entered after a public hearing conducted under this title.

C. A decision of the director that is entered after a public hearing conducted under this title is subject to rehearing or review and judicial review as provided in this subsection. A party is not required to file a motion for rehearing or review in order to exhaust administrative remedies and may seek judicial review of the director's final decision under title 12, chapter 7, article 6 as follows:

1. If a party files a motion for rehearing or review, the director's decision is not final for the purposes of judicial review until the director denies the motion or the director issues a decision after rehearing or review. A party shall file a motion for rehearing or review within thirty days after the publication or issuance of the director's findings and order as provided in sections 45-404, 45-414, 45-436, 45-571 and 45-576.03 or by rule. The director shall issue an order either granting or denying the motion within sixty days after the filing of the motion. The director's decision after rehearing or review is the director's final decision for the purposes of judicial review by the party who filed the motion for rehearing or review or by any other party.

2. If a motion for rehearing or review is not filed by any party, the director's decision is final for the purposes of judicial review by any party.

45-115. Production and copying fund; use; account; nonreversion

A. The department of water resources production and copying fund is established consisting of monies paid to the department for publications produced by the department and for copies of department records. The department shall administer the fund. Monies in the fund are continuously appropriated and shall be used for expenses incurred by the department in producing and distributing publications of the department and for copying department records for the public.

B. The fund shall be a separate account on the books of the department. Monies remaining in the fund at the end of the fiscal year remain in the fund, except that any monies in excess of twenty thousand dollars at the end of the fiscal year revert to the water resources fund established by section 45-117.

45-116. Publication and mailing fund; use; account; nonreversion

A. The department of water resources publication and mailing fund is established consisting of monies paid to the department for the publication and mailing of legal notices required by law. The department shall administer the fund. Monies in the fund are continuously appropriated and shall be used for expenses incurred by the department in publishing and mailing legal notices required by law.

B. The fund shall be a separate account on the books of the department. Monies remaining in the fund at the end of the fiscal year remain in the fund, except that any monies in excess of twenty thousand dollars at the end of the fiscal year revert to the water resources fund established by section 45-117.

45-117. Water resources fund; purpose; monies held in trust

A. The water resources fund is established to be maintained in perpetuity consisting of:

1. Except as provided in section 45-113, subsection F, monies received pursuant to sections 45-113, 45-115, 45-116, 45-183, 45-273, 45-292, 45-411.01, 45-467, 45-476.01, 45-595, 45-612, 45-703, 45-871.01, 45-874.01, 45-1021, 45-1041, 45-1205, 45-1603 and 45-1605.

2. Monies appropriated by the legislature to the water resources fund.

3. Gifts, grants and donations to the fund from any public or private source.

4. Interest and other income received from investing monies in the fund.

B. Monies in the fund are subject to legislative appropriation. Monies remaining in the fund at the end of the fiscal year remain in the fund and are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

C. Monies in the fund shall be used exclusively by the department of water resources to carry out the purposes of this title and shall not be appropriated for any other purpose.

D. The director shall administer the fund. On notice from the director, the state treasurer shall invest and divest the monies in the fund as provided by section 35-313 and monies earned from investment shall be credited to the fund.

E. Any fee, assessment or other levy that is authorized by law or administrative rule and that is collected and deposited in the water resources fund shall be held in trust. The monies in the fund may be used only for the purposes prescribed by statute and shall not be appropriated or transferred by the legislature to fund the general operations of this state or to otherwise meet the obligations of the general fund of this state. This subsection does not apply to any taxes or other levies that are imposed pursuant to title 42 or 43.

[45-118. Arizona system conservation fund; purpose; report](#)

(Rpld. 4/1/27)

A. The Arizona system conservation fund is established consisting of legislative appropriations, grants and contributions from private and public entities. The director shall administer the fund. Monies in the fund are continuously appropriated for the purposes of this section. The director may spend monies from the fund to contract with Colorado River water users in this state that hold entitlements to Colorado River water under the decree in Arizona v. California to forgo water deliveries or diversions for the purpose of creating system conservation. Contracts entered into pursuant to this section are exempt from title 41, chapter 23.

B. System conservation created through the use of the fund shall provide for Colorado River water to be conserved in Lake Mead through a verified reduction in existing consumptive use in order to decrease the likelihood of lake elevations dropping to levels that could result in reductions to this state's Colorado River allocation. System conservation must be created for the benefit of the Colorado River system and not for the benefit of any individual Colorado River water user.

C. On notice from the director, the state treasurer shall invest and divest monies earned as provided by section 35-313, and monies earned from investment shall be credited to the fund. Monies in the fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

D. Beginning July 1, 2021 and on July 1 each year thereafter, the director shall submit a detailed report to the governor, the president of the senate and the speaker of the house of representatives and provide a copy of this report to the secretary of state. The report shall describe the expenditures made from the fund during the previous fiscal year and the volume of water that was conserved in Lake Mead.