

# ARIZONA REVISED STATUTES

## Title 45 - Waters

### Chapter 1 – Administration and General Provisions

#### Article 5 - Appropriation of Water

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

A. Any person, the state of Arizona or a political subdivision thereof may appropriate unappropriated water for domestic, municipal, irrigation, stock watering, water power, recreation, wildlife, including fish, nonrecoverable water storage pursuant to section 45-833.01 or mining uses, for his personal use or for delivery to consumers. The person, the state of Arizona or a political subdivision thereof first appropriating the water shall have the better right.

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

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

##### 45-152. Application for permit to appropriate water

A. Any person, including the United States, the state or a municipality, intending to acquire the right to the beneficial use of water, shall make an application to the director of water resources for a permit to make an appropriation of the water. The application shall state:

1. The name and address of the applicant.
2. The water supply from which the appropriation is applied for.
3. The nature and amount of the proposed use.

4. The location, point of diversion and description of the proposed works by which the water is to be put to beneficial use.

5. The time within which it is proposed to begin construction of such works and the time required for completion of the construction and the application of the water to the proposed use.

B. The application also shall set forth:

1. If for agricultural purposes, the legal subdivisions of the land and the acreage to be irrigated.

2. If for power purposes, the nature of the works by which power is to be developed, the pressure head and amount of water to be utilized, the points of diversion and release of the water and the uses to which the power is to be applied.

3. If for the construction of a reservoir, the dimensions and description of the dam, the capacity of the reservoir for each foot in depth, the description of the land to be submerged and the uses to be made of the impounded waters.

4. If for municipal uses, the population to be served, and an estimate of the future population requirements.

5. If for mining purposes, the location and character of the mines to be served and the methods of supplying and utilizing the waters.

6. If for recreation or wildlife, including fish, the location and the character of the area to be used and the specific purposes for which such area shall be used.

C. The application shall be accompanied by maps, drawings and data prescribed by the director.

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

A. In addition to the information prescribed in section 45-152, any person, including the United States, this state or a municipality, who files an instream flow application after the effective date of this section shall comply with the following:

1. The applicant shall submit at least five years of streamflow measurement data to support the proposed beneficial use which shall be submitted at the time the application is filed. The director shall not accept for filing an instream flow application that is not accompanied by at least five years of continuous

streamflow measurement data. The streamflow data submitted shall consist of gauged on-site measurements of available water flow from the area in which the claimed beneficial use occurs.

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

- (a) The amount of streamflow required for the proposed beneficial use.
- (b) The availability of the requested flows during claimed periods of beneficial use.

B. Applications that are submitted after the effective date of this section shall be rejected if the application does not comply with this section.

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

#### 45-153. Criteria for approval or rejection of applications; restrictions on approval

A. The director shall approve applications made in proper form for the appropriation of water for a beneficial use, but when the application or the proposed use conflicts with vested rights, is a menace to public safety, or is against the interests and welfare of the public, the application shall be rejected. An administrative hearing may be held before the director's decision on the application if the director deems a hearing necessary.

B. An application may be approved for less water than applied for if substantial reasons exist but shall not be approved for more water than may be put to a beneficial use. Applications for municipal uses may be approved to the exclusion of all subsequent appropriations if the estimated needs of the municipality so demand after consideration by and upon order of the director.

C. If the director approves an application for the appropriation of water for use on land owned by the state of Arizona, a permit or certificate shall be issued as prescribed by section 37-321.01.

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.

#### 45-154. Correction of defective application

Upon receipt of the application, the director shall endorse on the application the date of its receipt and keep a record of applications received. If the application is defective it shall be returned for correction or completion, with the date of and reasons for returning it endorsed on the application and a record made of applications returned. The application shall not lose priority of filing because of defects if the application is corrected, completed and refiled with the director within sixty days after its return to the applicant, or within such further time as the director may, by an order of record, allow. Applications shall be recorded in a book kept for that purpose.

#### 45-155. Requiring additional information on application

A. Before approving or rejecting the application, the director may require additional information to enable it to protect properly the public interest and may, on applications proposing to divert more than ten cubic feet of water per second, require a statement of the following facts:

- 1. If a corporation, a copy of the articles of incorporation, the names and residences of directors and officers and the amount of its authorized and paid-up capital.
- 2. If not a corporation, the name of the party proposing to construct the works and a disclosure of the party's financial ability to complete the proposed work.

B. The director may also require the applicant to show that the proposed diversion of water will not conflict with vested rights.

#### 45-156. Legislative authorization for appropriation of water to generate power

A. An application for appropriation of waters of a stream within the state for generating electric energy in excess of twenty-five thousand horsepower, or an application for a permit to build a dam for generating hydroelectric energy on a stream within the state in excess of twenty-five thousand horsepower, shall not be approved or granted unless authorized by an act of the legislature.

B. Except as otherwise prescribed by this section, a change in the use of water appropriated for domestic, municipal or irrigation uses shall not be made without approval of the director, and if the change

contemplates generating hydroelectric energy or power of over twenty-five thousand horsepower, approval shall not be granted unless authorized by an act of the legislature.

C. The provisions of subsections A and B of this section requiring legislative authorization for the appropriation or use of water to generate electric energy in excess of twenty-five thousand horsepower and for the building of a dam for generating hydroelectric energy in excess of twenty-five thousand horsepower shall not apply to the generation of electricity by facilities constructed prior to January 1, 1985 as part of a federally authorized reclamation project or by an agricultural improvement district organized pursuant to title 48, chapter 17.

D. Subsection C of this section shall not affect the priority dates for facilities constructed prior to January 1, 1985, or the following components and appurtenant works:

1. New Waddell dam.
2. Cliff dam.
3. Increase in storage capacity of Roosevelt dam.
4. Modification of Stewart mountain dam.

#### 45-157. Relative value of uses

A. As between two or more pending conflicting applications for the use of water from a given water supply, when the capacity of the supply is not sufficient for all applications, preference shall be given by the director according to the relative values to the public of the proposed use.

B. The relative values to the public for the purposes of this section shall be:

1. Domestic and municipal uses. Domestic uses shall include gardens not exceeding one-half acre to each family.
2. Irrigation and stock watering.
3. Power and mining uses.
4. Recreation and wildlife, including fish.
5. Nonrecoverable water storage pursuant to section 45-833.01.

#### 45-158. Effect of approval or rejection of application

The approval or rejection of an application for the appropriation of water shall be endorsed on the application, a record of the action kept by the director, and the application returned immediately to the applicant. If approved, the applicant may construct the necessary works, take steps to apply the water to a beneficial use and perfect the appropriation. If the application is rejected, the applicant shall take no steps toward construction of the proposed work or diversion of the water.

#### 45-159. Conditions of acceptance of permit

An applicant accepts a permit to appropriate water upon the condition that no value in excess of the amount paid to the state shall be claimed for the permit or for the rights so acquired when a public authority is regulating or fixing the rate or charges of the services to be rendered by the permittee, his successors or assigns, or when the state, county, city, town, municipal water or irrigation district, or any political subdivision of the state, is seeking to acquire the rights and property of the permittee, his successors or assigns.

#### 45-160. Limitation on time of completion of construction; exception

Actual construction, except under applications by a city or town for municipal uses, shall begin within two years after approval of the application, and shall be prosecuted with reasonable diligence and completed within a reasonable time which shall be fixed in the permit at not to exceed five years from the date of approval. The director shall, for good cause shown, extend the time beyond the five-year period if the magnitude, physical difficulties and cost of the work justify extension.

#### 45-161. Applications for reservoir permits; secondary permits for water

A. Applications for reservoir permits shall be governed by this article, except that the lands proposed to be irrigated from the works need not be enumerated in the primary permit.

B. The person proposing to develop the supply of water or to complete the necessary works shall file an application for a primary permit that sets forth the plans and specifications for construction of the

reservoir and associated diversion or delivery works, if any. On completion of construction or development of the supply of water, the holder of the primary permit shall file a notice of completion with the director.

C. The person proposing to apply to a beneficial use the water stored in such reservoir shall file an application for a secondary permit, which shall refer to the reservoir as the supply of water and shall show that a written agreement has been entered into with the owners of the reservoir for a permanent interest in the reservoir sufficient for the purposes set forth in the application. When the beneficial use has been perfected under the secondary permit, the director shall issue to the holder of the secondary permit a final certificate of appropriation that describes both the conduit described in the secondary permit and the reservoir described in the primary permit.

D. If the development of the supply of water and the completion of the proposed works are to be undertaken by the same person proposing to apply the water to a beneficial use, the person shall file a single application for a reservoir permit. In processing an application filed pursuant to this subsection, the director shall not issue separate primary and secondary permits but shall issue a single reservoir permit for the development of the supply of water, construction of the proposed works and application of the water to a beneficial use. When the beneficial use has been perfected under the reservoir permit, the director shall issue to the holder of the reservoir permit a final certificate of appropriation that describes both the conduit and the reservoir described in the reservoir permit.

E. If at any time it appears to the director, after an administrative hearing, that the holder of the primary permit will not or cannot within a reasonable period develop the supply of water or complete the works, the director may, upon application of the holder of the secondary permit, permit such holder joint occupancy and use under the primary permit with the holder of the primary permit to the extent deemed advisable by the director, but such applicant shall pay to the holder of the primary permit a pro rata portion of the total cost of the works, which shall be based on the proportion of water used by the original and the additional users of such works.

F. Nothing in this section or in section 45-257, subsection B, paragraph 1, shall be construed as modifying the law of priority or the requirement of section 45-141, subsection B, that beneficial use shall be the basis, measure and limit to the use of water.

G. 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.

#### 45-162. Certificate of water right; time limitation on use of water for power purposes

A. When it appears to the satisfaction of the director that an appropriation has been perfected and a beneficial use completed in accordance with the provisions of this article, the director shall issue to the applicant a certificate signed by the director and attested by the seal of the department. The certificate shall set forth the name and address of the owner of the right, the priority of date and the extent and purpose of the right and, if the water is for irrigation purposes, a description of the legal subdivisions of land to which the water is appurtenant. On receiving the certificate, the owner may transmit the certificate and the recording fee to the county recorder of the county in which such right is located, who shall record the certificate in a book kept for that purpose and immediately transmit the certificate to the owner.

B. Certificates for rights to the use of water for power development shall limit the right or franchise to a period of forty years from the date of application, subject to a preferred right of renewal under the laws existing at the date of expiration of the franchise or right. The right acquired by the appropriation shall date from filing the application with the director.

#### 45-163. Assignments

Applications, permits and certificates of water right filed or issued pursuant to this chapter and statements of claim filed pursuant to article 7 of this chapter may be assigned.

#### 45-164. Registry; reporting

A. The director shall establish and maintain a registry of applications, permits and certificates of water right filed or issued pursuant to this chapter and statements of claim filed pursuant to article 7 of this chapter.

B. A person who has filed an application or a statement of claim or a person to whom the director has issued a permit or a certificate of water right shall notify the director of a change in name or mailing address or an assignment pursuant to section 45-163. A person to whom an application, permit, certificate of

water right or statement of claim is assigned shall notify the director of the assignment and shall furnish information as required by the director to keep the registry current and accurate. The director shall have continuing jurisdiction and shall issue revised permits and certificates as necessary.

C. If an appropriator of water filed an application for a permit to appropriate water pursuant to this article or an application for certification under article 10 of this chapter but the permit or certificate was issued or subsequently reissued to the United States or the state of Arizona, an appropriator of water may file a written application with the department to request that a permit or certificate be reissued in accordance with section 37-321.01, subsection A. Within thirty days after receiving the application, the department shall provide notice of the application to the state or federal agency that owns the land on which the water is used and, if applicable, to the owner of patented land from which the water is diverted or on which the water is stored. A person who is entitled to this notice from the department may file written objections to the application within forty-five days after the department mails the notice. If no timely objection is received by the department, the director shall approve or deny the application within ninety days from the date of filing of the application. If an objection is received, and on written request of either the applicant or the objector, an administrative hearing shall be held on the application and objections. If a request for a hearing is not received, the director shall grant or deny the relief sought in the application based upon the application and objections filed. A final decision of the director is subject to judicial review as provided in section 45-114, subsection B in the superior court in the county that has jurisdiction over the water right as part of a general adjudication conducted pursuant to article 9 of this chapter, or if the right is not subject to a general adjudication in the superior court pursuant to title 12, chapter 7, article 6. The form of the application and objection shall be prescribed by the director, but the department shall not charge a fee for processing an application.

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.

#### 45-165. Application for interstate operations

Except as provided by article 11 of this chapter, an application for appropriation of water shall not be denied because the point of diversion of water described in the application or any portion of the works to be constructed for the purpose of storing, diverting or distributing water, or the place of intended use, or the lands to be irrigated by the water or part of such water, is located in another state.

#### 45-166. Approval for appropriation of waters for generating electric energy

A. The consumptive use of up to thirty-four thousand one hundred acre feet of water per year chargeable to the water apportioned to the state of Arizona under the provisions of article III, section (a) (1) of the upper Colorado river basin compact (act of April 6, 1949; 63 Stat. 31) for the operation of a thermal generating plant to be located in the state of Arizona and for the benefit of all of the participants in such thermal generating plant is hereby approved.

B. The phrase "for the operation of a thermal generating plant", as used in this section, shall include the use of water for thermal generation of electric energy and all other purposes necessary or related to the operation of the thermal generating plant, including but not limited to mining, coal transportation and ash disposal.