

ARIZONA REVISED STATUTES

Title 45 - Waters

Chapter 1 – Administration and General Provisions

Article 6 - Rights to Water

45-171. Effect of chapter on vested water rights

Nothing in this chapter shall impair vested rights to the use of water, affect relative priorities to the use of water determined by a judgment or decree of a court, or impair the right to acquire property by the exercise of the right of eminent domain when conferred by law. The right to take and use water shall not be impaired or affected by the provisions of this chapter when appropriations have been initiated under and in compliance with prior existing laws and the appropriators have in good faith and in compliance with such laws commenced the construction of works for application of the water so appropriated to a beneficial use and prosecuted the work diligently and continuously, but the rights shall be adjudicated as provided in this chapter.

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

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

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

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

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

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

5. No right to the use of water on or from any watershed or drainage area which supplies or contributes water for the irrigation of lands within an irrigation district, agricultural improvement district or water users' association shall be severed or transferred without the consent of the governing body of such irrigation district, agricultural improvement district or water users' association. All proposed applications for the severance and transfer of a right to use water of or from any watershed or drainage area which supplies or contributes water for the irrigation of lands within any irrigation district, agricultural improvement district or water users' association shall be submitted to the governing body of such irrigation district, agricultural improvement district or water users' association prior to the filing of such application with the director. Within forty-five days after the receipt of the application such governing body shall reject or approve the proposed application. Failure of such governing body to approve or reject the proposed application within forty-five days after receipt shall constitute approval of the proposed application by such governing body. No application for the severance or transfer of a right to the use of water of or from any watershed or drainage area which supplies or contributes water for the irrigation of lands within any irrigation district, agricultural improvement district or water users' association shall be accepted for filing by the director unless accompanied by the written consent of the governing body of such irrigation district, agricultural improvement district or water users' association to the proposed application or by satisfactory evidence that such governing body failed to either accept or reject the proposed application within forty-five days after receipt by such governing body.

6. A severance and transfer of an irrigation water right appurtenant to lands within the boundaries of an irrigation district to other lands within the boundaries of the same irrigation district for agricultural use may be accomplished by the exclusion of lands to which a water right is appurtenant from within the boundaries of an irrigation district, and the inclusion in lieu of other lands within the boundaries of such irrigation district. Such severance and transfer of a water right shall require the consent of only the irrigation district within which the affected lands are situated and of the owners of the lands affected by the severance and transfer. No proceedings before nor approval by the director shall be required to accomplish such severance and transfer.

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

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.

45-173. Use of natural waterway to carry water of another or for other water projects: dispute over division of waters

A. Although the waters which naturally flow in the natural channel of a stream have been previously appropriated and put to beneficial use by others, the channel may be used to carry water of another or used for the location of an underground storage facility pursuant to chapter 3.1 of this title, if such use can be made without diminishing the quantity of water which naturally flows therein the use of which has been appropriated.

B. When the parties interested cannot agree upon the division of the water turned into the natural channel from the water naturally flowing therein, or if it is difficult to ascertain the amount to which each party is entitled, the water superintendent of the district shall make the division.

45-174. Using bed of stream as carrier of reservoir waters

When the owner of a reservoir desires to use the bed of a stream or other watercourse for the purpose of carrying water from the reservoir to the consumer, he shall in writing notify the water superintendent of the district in which the water is to be used, giving the date when it is desired to discharge water from the reservoir, its volume, and the names of all persons and ditches entitled to its use. The superintendent shall supervise the opening of the reservoir gates and close or adjust the head gates of all ditches from the watercourse not entitled to the use of the stored water so that persons having the right will receive the water to which they are entitled.

45-175. Chronological preference to water in times of scarcity

During years when a scarcity of water exists, owners of lands shall have preference to the water for irrigation according to the dates of their appropriation or their occupation of the lands, either by themselves or their grantors. The oldest titles shall have precedence.