

45-181. Definitions

In this article, unless the context otherwise requires:

1. "Beneficial use" includes but is not limited to use for domestic, municipal, recreation, wildlife, including fish, agricultural, mining, stockwatering and power purposes.
2. "Person" means any individual, partnership, association, public or private corporation, city or other municipality, county or state agency, a recognized Indian tribe and the United States of America when claiming water rights established under the laws of this state.
3. "Public waters" or "water" means waters of all sources flowing in streams, canyons, ravines or other natural channels or in definite underground channels, whether perennial or intermittent, flood, waste or surplus water, and of lakes, ponds and springs on the surface.

45-182. Claim of right to withdraw, divert or use public waters; exception; administration by director of water resources

A. Except as provided by subsections B and E of this section, all persons who before March 17, 1995 were using and claiming the right to withdraw or divert and make beneficial use of public waters of the state based on state law shall file not later than ninety days before the date of the filing of the director's final report pursuant to section 45-256 for the subwatershed in which the claimed right is located a statement of claim for each water right asserted, on a prescribed form. The filing by any person on behalf of its members or users shall constitute the required filing of the individual users under this section.

B. The requirement of the filing of a statement of claim shall not apply to any of the following:

1. Any water rights issued pursuant to a permit or certificate issued pursuant to law.
2. Rights acquired to the use of the mainstream waters of the Colorado river.
3. Rights acquired or validated by contract with the United States of America, court decree or other adjudication.

C. The director succeeds to the administration of this article and may adopt such rules as may be necessary to do so. Such rules supersede those previously adopted by the state land department and the Arizona water commission relating to this article.

D. A person who before March 17, 1995 was using and claimed the right to withdraw or divert and make beneficial use of public waters of the state based on state law and who is exempt from filing pursuant to subsection B of this section is permitted to file a statement of claim of right under this article for each water right asserted not later than ninety days before the date of filing of the director's final report pursuant to section 45-256 for the subwatershed or federal reservation in which the claimed right is located. Any statement of claim of right filed pursuant to this section may be amended at any time before ninety days before the filing of the director's final report pursuant to section 45-256 for the subwatershed or federal reservation in which the claimed right is located.

E. Water right claims may be asserted under this article for uses, diversions or withdrawals of public waters of the state based on state law and initiated at any time before March 17, 1995. A claim may not be asserted under this article for uses, diversions or withdrawals of public waters of the state initiated on or after March 17, 1995. Any person who before March 17, 1995 filed a statement of claim for a water right under this article is not required to file another statement of claim for the same water right after March 17, 1995.

45-183. Contents of statement of claim; filing procedure; fee

A. The statement of claim for each water right shall include the following:

1. The name and mailing address of the person filing the claim.
2. The name of the watercourse or water source from which the right to divert or make use of water is claimed.
3. The quantities of water and times of year use is claimed.
4. The legal description to the nearest forty-acre tract or by other appropriate description of the point or points of diversion and place of use of the waters.
5. The purpose and extent of use.
6. The approximate dates of first putting water to beneficial use for the various amounts and times claimed in paragraph 3 of this subsection.

7. The legal basis for the claim.

8. The sworn statement that the claim set forth is true and correct.

B. A statement of claim for a water right may be verified by the person claiming the right or may be verified by an authorized agent of such person.

C. Filing of a statement of claim shall be complete upon timely receipt by the department of a properly executed statement of claim and a five dollar filing fee for each such claim. The director shall deposit, pursuant to sections 35-146 and 35-147, the fees received pursuant to this subsection in the water resources fund established by section 45-117.

#### 45-184. Waiver and relinquishment of water right

Any person who is claiming the right to divert or withdraw public waters of the state based on state law and who fails to file a statement of claim as provided in this article shall have waived and relinquished any right, title or interest in that right.

#### 45-185. Filing of claim not deemed adjudication of right; presumption; exemption

A. The filing of a statement of claim under this article does not constitute an adjudication of any claim to the right to the use of waters as between the person and the state, or as between one or more persons asserting the water right, and the date of filing under this article shall have no effect upon the priority of such rights. A statement of claim is not admissible in evidence for the purpose of demonstrating that water diverted or withdrawn and beneficially used is appropriable under section 45-141, subsection A, but a statement of claim is admissible in evidence as a rebuttable presumption of the truth and accuracy of the contents of the claim.

B. Wells used to produce water exclusively for domestic or stock watering purposes are exempt from the provisions of this article, but the granting of this exemption shall not establish the presumption that a water right exists.

#### 45-186. Water rights claims registry

All claims set forth pursuant to this article shall be filed in a water rights claims registry in such a manner as deemed appropriate by the director.

#### 45-187. No rights acquired by adverse use or adverse possession

No rights to the use of public waters of the state may be acquired by adverse use or adverse possession as between the person and the state, or as between one or more persons asserting the water right, but nothing contained herein shall be deemed to diminish or enhance the validity of a claim filed under this article originating prior to the effective date of chapter 164 of the laws of 1919.

45-188. Future rights acquired through appropriation; rights within service area of agricultural or municipal provider

A. Any person who is entitled to divert or withdraw public waters of the state through an appropriation and evidenced by a certificate of water right issued under article 5 of this chapter, a court decree, or previous possession or continued beneficial use and who intentionally abandons the use thereof or who voluntarily fails, without sufficient cause, to beneficially use all or any part of the right to withdraw for any period of five successive years shall relinquish such right or portion thereof. The rights relinquished shall revert to the state, and the waters affected by such rights shall become available for appropriation to the extent they are not lawfully claimed or used by existing appropriators.

B. If a use or claim is subject to forfeiture by nonuse, failure by the appropriator to use water within a five year period does not result in a forfeiture of the associated water right if water use is resumed before the occurrence of the earlier of any of the following:

1. The initiation of proceedings pursuant to section 45-189 to determine whether the right has been forfeited or abandoned.
2. The filing by a third party of a statement of claimant in a general adjudication instituted pursuant to article 9 of this chapter that asserts the right to use water from the stream in which the subject nonuse has occurred.
3. The assertion by a third party of written objections in response to an application by the appropriator to sever and transfer the right pursuant to section 45-172.

C. Conservation of water pursuant to a water conservation plan notice filed with the director as prescribed by section 45-189.01 does not constitute an abandonment or forfeiture of the water conserved.

45-189. Reversion of rights due to nonuse; notice; hearing; order; exception

A. When it appears to the director that a person entitled to the use of water has not beneficially used all or a portion of the water right for a period of five or more

consecutive years, and it appears that the right has or may have reverted to the state because of such nonuse, as provided by section 45-141 and section 45-188, subsection A, the director shall notify such person to show cause at an administrative hearing why the right or portion of the right should not be declared relinquished.

B. The notice shall contain:

1. The time and place of the hearing.
2. A description of the water right, including the approximate location of the point of diversion, the general description of the lands or places where such waters were used, the water source, the amount involved, the purpose of use, the apparent authority on which the right is based and the factual basis for the notice to show cause.
3. A statement that unless sufficient cause is shown the water right will be declared relinquished.

C. The notice shall be served at least thirty days before the hearing.

D. The director shall make an order determining whether such water right has been relinquished and give notice to each party of the order by serving such persons at their last known addresses.

E. For the purposes of this section, section 45-141, subsection C and section 45-188, subsection A, the following reasons shall be sufficient cause for nonuse:

1. Drought, or other unavailability of water.
2. Active service in the armed forces of the United States during military crisis.
3. Nonvoluntary service in the armed forces of the United States.
4. The operation of legal proceedings.
5. Federal, state or local laws imposing land or water use restrictions, or acreage limitations, or production quotas.
6. Compliance with an applicable conservation requirement established by the director pursuant to chapter 2, article 9 of this title.
7. Conservation of water pursuant to a water conservation plan notice filed with the director as prescribed by section 45-189.01.

8. With respect to a water right appropriated for an irrigation use, either of the following:

(a) Pendency of a proceeding before a court or the director to change the permitted use from irrigation to municipal or other uses pursuant to a court decree or section 45-156 or to sever the right from the land to which it is appurtenant and transfer it for municipal use pursuant to section 45-172.

(b) After a change in the permitted use from irrigation to municipal pursuant to a court decree or section 45-156 or 45-172, insufficient demand for the water by the municipal users.

9. Any other reason that a court of competent jurisdiction deems would warrant nonuse.

F. 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.

**45-189.01. Water conservation plan notice; filing; exemption; duration**

A. Beginning on September 29, 2021, a person who is entitled to the use of water may file with the director a water conservation plan notice. A water conservation plan notice shall include the following:

1. The name and address of the person who is entitled to the use of water that is included in the water conservation plan.

2. A description of all water rights and claims that the person who is entitled to use those water rights and claims is including in the water conservation plan.

3. The place and purpose of the use of the identified water rights and claims and the historical and current water use.

4. A description of any water conservation measures that will be implemented as part of the water conservation plan.

5. A statement that the water conservation plan is voluntary and temporary in nature.

6. A statement that the water conservation plan is intended to result in the temporary reduction in the use of water or a reduction in the diversion of water.

7. A statement that the activities described in the water conservation plan will contribute to the practical and economical management, conservation and use of surface water in the watersheds of this state.

8. A statement that the person who holds the valid water right that is subject to the water conservation plan does not intend to abandon such water right during the terms of the water conservation plan.

B. On filing a water conservation plan notice, the conservation of water pursuant to the plan does not constitute an abandonment or forfeiture of the water conserved. A person may not accrue long-term storage credits for any water that is conserved in a water conservation plan notice filed pursuant to this section.

C. A water conservation plan shall designate a duration of up to ten years. The person filing the water conservation plan notice may file a subsequent notice for some or all of the water rights and claims before expiration of the designated time and may file subsequent water conservation plan notices for one or more periods of up to ten years each.

#### 45-190. Overstating claim; classification

The filing of a statement of claim pursuant to this article which knowingly provides for an overstatement of a right either in quantities of water or times of use claimed constitutes a class 3 misdemeanor.