

# ARIZONA REVISED STATUTES

## Title 45 - Waters

### Chapter 1 – Administration and General Provisions

#### Article 9 - General Adjudication of Water Rights

##### 45-251. Definitions

In this article, unless the context otherwise requires:

1. "Domestic use" means a single appropriative water right serving a residence, or multiple residences up to a maximum of three residential connections, for household purposes with associated irrigation of lawns, gardens or landscape in an amount of not more than one-half acre per residence. Domestic use does not include the use of water delivered to a residence or multiple residences by a city, town, private water company, irrigation provider or special taxing district established pursuant to title 48.

2. "General adjudication" means an action for the judicial determination or establishment of the extent and priority of the rights of all persons to use water in any river system and source.

3. "Person" means an individual, a partnership, a corporation, a municipal corporation, the state of Arizona or any political subdivision, the United States of America, an Indian tribe or a community or any other legal entity, public or private.

4. "Potential claimant" means all persons claiming water rights or on whose behalf claims to water rights are asserted.

5. "Prior decree" means any judgment or decree that is entered by a court of competent jurisdiction and that applies to the water right claim or use that is subject to adjudication.

6. "Prior filing" means a notice of appropriation recorded with the county recorder or the recorder's predecessor, an application to appropriate filed pursuant to section 45-152, a statement of claim filed pursuant to article 7 of this chapter or a claim of water right filed pursuant to article 10 of this chapter, any or all of which reasonably relate to the water right claim or use that is subject to adjudication.

7. "River system and source" means all water appropriable under section 45-141 and all water subject to claims based on federal law.

8. "Small water use claim" means any claim for a stockpond, stock watering use or water well that is identified in a statement of claimant filed in the adjudication pursuant to section 45-254 and the claim is for any of the following specific conditions:

(a) A stockpond having a capacity of not more than fifteen acre feet that is used solely for watering livestock or wildlife and that contains water that is appropriable under section 45-141, subsection A.

(b) Any well that is equipped so that it has a maximum pumping capacity of not more than thirty-five gallons per minute.

(c) A stock watering use by livestock and wildlife where the place of stock watering use is either directly from a naturally occurring body of water, such as an undeveloped spring, cienega, seep, bog, lake, depression, sink or stream, or from a developed facility that is not a stockpond or reservoir and that is served by a diversion of water that is appropriable under section 45-141, subsection A, including a drinker, trough, pipeline, spring box or other developed facility.

9. "Stockpond" means an on-channel or off-channel impoundment of any size that stores water that is appropriable under section 45-141, subsection A and that is for the sole purpose of watering livestock and wildlife.

10. "Stock watering use" means the consumption of water by livestock and wildlife, either:

(a) Directly from a naturally occurring body of water, such as an undeveloped spring, cienega, seep, bog, lake, depression, sink or stream.

(b) From small facilities, other than a stockpond, that are served by a diversion of water that is appropriable under section 45-141, subsection A.

45-252. General adjudication; representation; superior court; assignment to judge; petition

A. One or more water users upon a river system and source, the water rights of which have not been previously adjudicated under this article and administered by the director of water resources, or the state of Arizona upon the request of any state agency other than the department of water resources may file a petition to have determined in a general adjudication the nature, extent and relative priority of the water rights of all persons in the river system and source.

B. The attorney general shall represent the state of Arizona in connection with all water claims asserted by this state. The director shall be represented by legal counsel retained in accordance with section 45-104, subsection F.

C. The general adjudication shall be brought and maintained in the superior court in the county in which the largest number of potential claimants resides. The clerk of the court in which the petition is filed shall notify the supreme court and the supreme court shall be responsible for assigning the general adjudication to a superior court judge and appointing a master and for consolidating the general adjudication with other pending general adjudications, if appropriate.

D. The petition for a general adjudication shall be captioned: "In re the general adjudication of all rights to use water in the \_\_\_\_\_ river system and source" and shall request that the court determine the nature, extent and relative priority of the water rights of all persons in the river system and source.

45-253. Service of summons; statement of claimant form; record

A. Personal service of the summons and petition shall not be required. The court shall order that:

1. The clerk of the court issue the summons which shall specify the date by which the statement of claimant must be filed, generally describe the nature of the general adjudication and set forth such other information as may be necessary or desirable in the circumstances. The form of the summons shall be approved by the court.

2. The clerk of the court deliver the summons to the director who shall make such copies and prepare such documents as may be necessary to effect service. The director shall assist the court in determining the scope of adjudication by recommending the portions of the river, its tributaries and any other relevant sources subject to the adjudication and in development of a statement of claimant form which shall include such duplicates as may be necessary. Upon identifying the potential claimants pursuant to section 45-256, subsection A, paragraph 1, the director shall effect service on all known potential claimants by mailing a copy of the summons by registered or certified mail, return receipt requested, to such known potential claimants.

3. When the superior court determines that the services of a master or masters appointed pursuant to section 45-255 are no longer necessary and enters an order terminating the appointment the clerk of the court shall reimburse the director from the fund of fees paid by the claimants pursuant to section 45-254 for funds expended by the director in effecting service of process and any subsequent notices to claimants. Reimbursement shall only be from monies remaining in the fund after payment of the costs and expenses attributable to the appointment of a master or masters in accordance with section 45-255, subsection B.

B. At the time of commencement of mailing of service of process on known potential claimants, the director shall effect service on all unknown potential claimants by publication of the summons at least once a week for four consecutive weeks in a newspaper published in each of the counties within which interests in and to the use of water may be affected by the general adjudication.

C. The director shall publicize the general adjudication through the electronic media and in general circulation newspapers.

D. The court shall direct the director:

1. To return the original summons to the clerk of the court with an endorsement of the dates on which mailing and publication were completed.

2. To maintain a true and accurate record of the names and addresses of all persons who have in fact been served by registered mail, return receipt requested. Any such record, together with all supporting documents, shall constitute the records of the court which shall be subject as such to the supervision and control of the court.

45-254. Statement of claimant; filing; information to be included; verification; failure to file; fees

A. Each potential claimant who is served shall present in writing the particulars of his claim on the court-approved statement of claimant form and shall file the statement of claimant form with the court within ninety days of the date of service, unless otherwise ordered by the court. The court may extend the time for good cause. A duplicate of each statement of claimant shall be made available by the clerk of the court to the director.

B. The statement of claimant form may be filed by a person on behalf of its members or users and shall constitute the required filing of its members or users.

C. The statements of claimant shall include the following information, where appropriate:

1. The name and mailing address of the potential claimant.  
2. The name of the specific river, stream, tributary, wash or other source from which the right to divert or make use of water is claimed.

3. The quantities of water and the periods of time during the year for which use is claimed.

4. If distributing works are used or required, the date of beginning and completion of construction or of enlargements and the dimensions of the ditch as originally constructed and as enlarged.

5. If the use is for irrigation, the amount of land reclaimed the first year and in subsequent years, and the amount and general location of the land, the character of the soil and the kind of crops cultivated.

6. The legal description of the point or points of diversion and place of use of the waters to the nearest forty-acre tract or by other appropriate description and such map or plat showing the relative points of diversion and place of use as may be required.

7. The purpose and extent of use.

8. The time of the initiation of the right and the date when water was first used for beneficial purposes for the various amounts and times claimed in paragraph 3 of this subsection.

9. The legal basis for the claim.

D. The statement of claimant shall be verified by the claimant or the person authorized to file as provided in subsection B of this section.

E. After the date by which statements of claimant are required to be filed as set forth in the summons or in an order of the court, the filing of a statement of claimant or an amendment is permitted under the following circumstances:

1. At any time up to ninety days before the publication of the director's final report pursuant to section 45-256, subsection B for a subwatershed or federal reservation within the river system and source, a person may file a statement of claimant or an amendment to a statement of claimant with the director without leave of the court.

2. After the expiration of the ninety day period prescribed by paragraph 1 of this subsection and before the conclusion of hearings by the master for a subwatershed or federal reservation within the river system and source, a person may assert a claim for a water use within the subwatershed or federal reservation without leave of the court by filing the original of the statement of claimant or amended statement of claimant with the director and a notice of filing with the court. After the conclusion of hearings on an existing claim, an amendment to that existing statement of claimant may only be permitted as prescribed by paragraph 3 of this subsection. If a statement of claimant or an amendment to a statement of claimant is filed after the expiration of the ninety day period, other parties may object to the elements of the claim or amended claim.

3. After the master has completed hearings on a subwatershed or federal reservation within the river system and source and has filed a report with the court for the entire subwatershed or federal reservation pursuant to section 45-257, a person may not assert a late claim for a water right within that subwatershed or reservation as a matter of right. A person may request the court's permission to intervene in the adjudication and file a statement of claimant with the director. The court may grant the motion if it finds that the intervention would not unduly delay or prejudice the adjudication of the rights of the original parties. An amendment to an existing statement of claimant after the filing of the master's report for the entire subwatershed or federal reservation is permitted only by leave of the court in its discretion and on motion of the party seeking an amendment. Other parties may object to the elements of a claim or an amended claim filed pursuant to this paragraph.

F. On entry of the final decree pursuant to section 45-257, any potential claimant who is properly served and who failed to file a statement of claimant as prescribed by this article for any water right or whose

motion for permissive intervention was finally denied by the court is barred and estopped from subsequently asserting any right that was previously acquired on the river system and source and that was not included in a statement of claimant and forfeits any rights to the use of water in the river system and source that were not included in a properly filed statement of claimant.

G. On March 17, 1995, all statements of claimant previously filed in an adjudication pending under this article are deemed to be timely filed. An objection to the timeliness of any statement of claimant that was filed before March 17, 1995 in an adjudication pending under this article is not permitted.

H. The fee for filing a statement of claimant by an individual is twenty dollars and by a corporation, municipal corporation, the state or any political subdivision, an association or partnership is two cents for every acre-foot of water claimed, or twenty dollars, whichever is greater. The director shall review the statements of claimant and the amount of fees paid as to each and report to the court or master the sufficiency of the fees paid with respect to each statement of claimant. A claim shall not be considered by the court or the master unless all fees with respect to such claim have been fully paid in accordance with the provisions of this article. Fees shall not be imposed on any Indian tribe, community or allottee personally appearing in the general adjudication to assert claims to water.

#### 45-255. Appointment of master; compensation

A. The superior court judge assigned to the adjudication may appoint a master or masters under rule 53 of the Arizona rules of civil procedure to report on legal and factual issues designated under a specific order of reference.

B. A master's compensation and other expenses related to the conduct of an adjudication shall be fixed by the court and paid out of the fund of fees paid by the claimants pursuant to section 45-254. If that fund of fees is insufficient, a master's compensation and other expenses related to the conduct of an adjudication shall be paid from the state general fund as a separate line item appropriation for the superior court.

#### 45-256. Technical assistance of director; report

A. The court or the master shall request technical assistance from the director in all aspects of the general adjudication with respect to which the director possesses hydrological or other expertise. In rendering such technical assistance, the director shall expeditiously:

1. Identify the hydrological boundaries of the river system and source and the names and addresses of all reasonably identifiable potential claimants. In identifying potential claimants, the director, at a minimum, shall identify as far as reasonably possible the current record owners of all real property within the geographical scope of the adjudication.

2. Locate, procure and make available all public and other records relevant to determination of any factual or legal issues.

3. Conduct a general investigation or examination of the river system and source.

4. Investigate or examine the facts pertaining to the claim or claims asserted by each claimant.

5. Make a map or plat on a scale not less than one inch to the mile adequate to show with substantial accuracy the course of the river system and source, the location of the ditch or canal diverting water from such river system and source, and the legal subdivisions of lands that have been irrigated or are susceptible to irrigation from the ditches and canals already constructed.

6. Take such other steps and gather such other information as may be necessary or desirable for a proper determination of the relative rights of the parties.

B. The technical assistance rendered by the director shall be set forth in summary form on a claim by claim basis in a report prepared by the director and filed with the court or the master, which shall then be available for inspection by any claimant. The report shall list all information that is obtained by the director and that reasonably relates to the water right claim or use investigated. The report shall also include the director's proposed water right attributes for each individual water right claim or use investigated as prescribed by this article. If no water right is proposed in connection with an individual water right claim or use, the director's recommendations shall so indicate. Any claimant may file with the court or the master written objections to the report or any part of the report within one hundred eighty days of the date on which the report was filed. An objection shall specifically address the director's recommendations regarding the particular water right claim or use investigated. The court or master shall summarily dismiss with prejudice

objections that do not comply with this subsection. Each claimant who has filed timely written objections that comply with this subsection shall have a fair and reasonable opportunity to present evidence in support of or in opposition to those recommendations of the director. Any claimant may present evidence in support of the claimant's claim.

C. Those portions of the report that do not contain the director's recommendations for the water rights claims and uses investigated shall not be summarily admitted into evidence but may be offered into evidence for any purpose relevant to the determination of a water right claim or use that is subject to adjudication. The appropriator and any other claimant who has filed an objection to the water right as prescribed by subsection B of this section shall have a fair and reasonable opportunity to present evidence in support of or in opposition to those portions of the director's report before the conclusion of hearings on the water right. If admitted into evidence over an objection, those portions of the report shall not be given any presumption of correctness.

D. Information that is included in the director's report and that describes a water right claim or use of five hundred acre-feet or less per year for any type of use claimed shall be summarily admitted into evidence. If conflicting evidence is presented, the director's proposed attributes of the water right shall be given the weight deemed appropriate by the master and the court consistent with this article.

E. Information that is included in the director's report and that describes a water right claim or use of more than five hundred acre-feet per year shall not be summarily admitted into evidence. If offered into evidence and if admitted over objection, it shall be given no presumption of correctness.

F. Claimants who are in agreement with those parts of the report that describe the claimants' water right claims or uses are not required to file objections to the report and may rely on the report as evidence of their water right. If the owner of a water right claim or use provides evidence in support of the report, that evidence shall be presented after all evidence has been introduced by the objectors.

G. On request of any party, the director shall present evidence concerning the facts stated in the report. This section shall not be construed to prevent the court or the master from issuing a protective order on a showing of good cause.

H. Before filing the report with the court or the master as provided in subsection B of this section, the director shall prepare a preliminary report. The director shall give notice to each water claimant that the preliminary report is available for inspection and comment. Upon expiration of the period provided for timely comment, the director shall revise the preliminary report as may be appropriate and shall file the report with the court or the master in accordance with subsection B of this section. At least one hundred twenty days before the final report is to be filed, the director shall file with the court a notice stating the date on which the final report is to be filed. The director shall adopt such rules as may be necessary to ensure that adequate notice is given, that the preliminary report is sufficiently available for inspection by the water claimants and that provisions are made for adequate time and procedure for comment on the preliminary report.

45-257. Hearings; report of master; final judgment by court; administration and enforcement of decree

A. The master shall:

1. After due notice, conduct such hearings and take such testimony as shall be necessary to determine the relative water rights of each claimant. The determination of water rights of all small water use claims in any specific subwatershed shall be deferred until all other claims in that subwatershed are determined by the superior court in the course of the adjudication, except that for a claimant who asserted a small water use claim and who asserted other water use claims in the same subwatershed that are not small water use claims, the claimant's small water use claim shall be determined in conjunction with the determination of that claimant's other claims. This paragraph does not preclude the superior court or the master from approving settlements of small water use claims at any time during the course of the adjudication.

2. Subject to paragraph 1 of this subsection, for all determinations, recommendations, findings of fact or conclusions of law issued, prepare and file with the court a report in accordance with rule 53(g) of the Arizona rules of civil procedure, which shall contain those determinations, recommendations, findings of fact and conclusions of law. Each claimant may file written objections with the court to any rule 53(g) report within the later of sixty days after the report is filed with the court or before May 17, 1995. If the report covers an entire subwatershed or federal reservation, each claimant may file with the court written

objections to the report within one hundred eighty days of the date on which the report was filed with the court.

3. Maintain under his control all records and documents at such locations as may be designated by the court.

B. The court, on review of the report and in accordance with subsection A, paragraph 1 of this section and rule 53 of the Arizona rules of civil procedure, shall:

1. Determine the extent and priority date of and adjudicate any interest in or right to use the water of the river system and source, provided that when rights to the use of water or dates of appropriation have previously been determined in a prior decree of a court, the court shall accept the determination of such rights and dates of appropriation as found in the prior decree unless such rights have been abandoned. Except if otherwise provided in an applicable prior filing, certificate of water right or prior decree, the decreed capacity of a reservoir includes the right to continuous filling and refilling in priority throughout the year.

2. Establish, in whatever form determined to be most appropriate by the court, one or more tabulations or lists of all water rights and their relative priorities on the river system and source.

3. Refer the final judgment or decree to the director for administration and enforcement under the continuing jurisdiction of the court.

4. Make appropriate orders to ensure that the entire record of the general adjudication is preserved in an accessible and usable form.

5. Record a certified copy of the final judgment or decree in each county within the geographical scope of the general adjudication which shall constitute constructive notice of the contents of the judgment or decree.

C. If ownership of a right to use water for stock watering or stockpond purposes or for domestic use on a ranch or farm on state land is disputed in a general adjudication of the rights to use the waters of a river system and source, the water right shall be adjudicated in the name of a claimant other than the state if both of the following apply:

1. The point of diversion and the place of use, or the perfection of the water right by the appropriator, comply with section 37-321.01, subsection A.

2. The state land commissioner has been afforded the opportunity to resolve the claim.

#### 45-259. Rules governing general adjudications

The general adjudication is governed in all respects by the Arizona rules of evidence, the Arizona rules of civil procedure and any other procedural rules generally applicable to civil proceedings, except that the specific provisions of this article govern if they conflict with the Arizona rules of civil procedure or any other procedural rules generally applicable to civil proceedings. Any proceedings previously initiated under prior law and transferred to the superior court for adjudication are subject to the provisions of this article only after the transfer has been effected.

#### 45-260. General adjudication fund

A. The general adjudication fund is established. All money appropriated to effect service of process and notices on potential claimants pursuant to section 45-253, subsection A, paragraphs 1 and 2, and all reimbursements to the director pursuant to section 45-253, subsection A, paragraph 3 shall be deposited, pursuant to sections 35-146 and 35-147, in such fund.

B. Monies in the general adjudication fund are exempt from the provisions of section 35-190, relating to lapsing of appropriations.

#### 45-261. Presumption in favor of prior filings and decrees

A. Except as otherwise specifically provided in this article and to the extent that water rights have not been forfeited or abandoned, the director, the master and the court shall apply the following evidentiary rules in determining the attributes of water rights claimed pursuant to this article:

1. The court shall accept information in an applicable prior decree as prescribed by section 45-257, subsection B, paragraph 1.

2. If information in a prior decree conflicts with information in one or more applicable prior filings, the court shall accept the information in the prior decree as prescribed by section 45-257, subsection B, paragraph 1.

3. If there is no information in any applicable prior filing or decree or if the court finds that information contained in an applicable prior filing regarding a water right attribute is clearly erroneous, the court shall determine the attribute. In making a determination pursuant to this subsection, the court may use the director's report, statement of claimant information, information obtained in claimant interviews, aerial photographs, satellite technology, historical records, maps, technical data or other relevant information in evidence.

B. If there is a conflict in applicable prior filings regarding the ownership of a water right and multiple parties have filed applicable statements of claimant, any claimant may offer that information to support or refute a claim of water right ownership.

C. Section 45-256, subsections D and E apply to the evidentiary weight given to the following determinations made by the director:

1. That information contained in a prior filing is clearly erroneous as it relates to the water right claim or use being investigated.

2. That no water right was initiated or perfected under the applicable federal, state or territorial law.

3. That a water right was forfeited or abandoned.

D. The director's report shall contain the basis for determinations made pursuant to subsection D of this section.

**45-263. [State law applicable](#)**

State law, including all defenses available under state law, applies to the adjudication of all water rights initiated or perfected pursuant to state law.

**45-264. [Joint legislative adjudication monitoring committee](#)**

A. A joint legislative committee shall be appointed to monitor the progress of general adjudications and the status of their funding. The committee shall consist of three members of the senate appointed by the president of the senate, not more than two of whom shall be members of the same political party, and of three members of the house of representatives appointed by the speaker of the house of representatives, not more than two of whom shall be members of the same political party.

B. The committee shall meet periodically and shall conduct hearings and request information from the director as it deems necessary to be apprised of the status of the adjudications. The committee shall report to the president of the senate and the speaker of the house of representatives at least annually on its findings, and include in that report any recommendations for legislative action it considers necessary to the efficient, prompt and just conclusion of the adjudications.