

ARIZONA REVISED STATUTES

Title 45 - Waters

Chapter 4 – Water Exchanges

Article 1 - General Provisions

45-1001. Definitions

Unless the context otherwise requires, the terms defined in section 45-402 have the same meaning in this chapter and:

1. "Applicant" means a person who applies for a water exchange permit pursuant to section 45-1041.
2. "Holder" means a person to whom a water exchange permit is issued under section 45-1041 or a person to whom the permit is conveyed.
3. "Indian community" means an Indian community organized under section 16 or 17 of the Indian reorganization act (48 Stat. 984; 25 United States Code section 461 et seq.).
4. "Participant" means a person who participates in a water exchange subject to the water exchange notice provisions of article 4 of this chapter.
5. "Party" means a person or Indian community that has entered into a water exchange contract or that is a successor in interest to such a person or Indian community.
6. "Water exchange" means a trade between one or more persons, or between one or more persons and one or more Indian communities, of any water for any other water, if each party has a right or claim to use the water it gives in trade. This definition applies whether or not water is traded in equal amounts or other consideration is included in the trade.
7. "Water exchange contract" means a valid written or oral contract for a water exchange.

45-1002. Water exchanges; conditions

A. A person may withdraw, divert or use water received through a water exchange only if one or more of the following apply:

1. Neither the water exchange is in an amount nor any associated water exchange contract provides for a water exchange in an amount exceeding fifty acre-feet in any twelve month period. If two or more water exchanges or water exchange contracts allow the same use at the same location, the aggregate quantity of the water exchanges and water exchanges pursuant to the water exchange contracts may not exceed fifty acre-feet in any twelve month period to qualify for this condition.

2. All water exchanged pursuant to the water exchange or water exchange contract is effluent.

3. The water exchange is made pursuant to a water exchange contract enrolled under section 45-1021 and either:

- (a) The amount of water exchanged does not exceed either the maximum amount of water exchanged in any twelve month period before 1992 or any specific maximum amount established in the water exchange contract, whichever is more.

- (b) If no water was exchanged in any twelve month period before 1992 and no specific maximum amount of water was established in the water exchange contract, the water to be exchanged by one of the parties is central Arizona project water for which a subcontract was not offered by the secretary of the interior by January 1, 1992.

4. The water exchange involves surface water other than Colorado river water, and the person who gives surface water other than Colorado river water in the exchange holds a permit under section 45-1041.

5. The water exchange is made pursuant to a notice of water exchange filed with the director under section 45-1051.

6. All water exchanged pursuant to the water exchange or water exchange contract is groundwater and the exchange is between an irrigation district and an irrigation grandfathered right holder within that irrigation district.

B. A party that gives water pursuant to a water exchange authorized under subsection A of this section must receive the water to be exchanged for it within a twelve month period unless one of the following applies:

1. The exchange is made pursuant to a water exchange contract enrolled under section 45-1021 and the contract contains an explicit term providing for a longer period.
2. The exchange is made pursuant to subsection A, paragraph 6 of this section.
3. The parties to the exchange demonstrate to the director that the water to be received cannot be delivered within the period allowed for the exchange or that the water to be received cannot reasonably be put to beneficial use within the period allowed for the exchange. On this demonstration the director may grant an extension of six months if the director has determined that the extension is consistent with the goal of efficient water management and does not impair vested rights to the use of water.
4. The exchange is between a multi-county water conservation district established pursuant to title 48, chapter 22 and an agricultural improvement district established pursuant to title 48, chapter 17 and the exchange involves surface water that is stored in reservoirs that are operated by the agricultural improvement district.

45-1003. Use of water pursuant to a water exchange

- A. A person who receives water pursuant to a water exchange or water exchange contract:
1. May withdraw, or divert, and use the water without holding a right to that water other than the authority granted by the water exchange or water exchange contract.
 2. May use the water only in the same manner in which the person had the right to use the water that person gave in trade.
 3. Shall comply with all orders of the director and all laws and rules relating to the water that the person gives in the exchange, including the restrictions on transportation of groundwater in chapter 2, articles 8 and 8.1 of this title.
- B. A person who gives groundwater in an exchange is subject to the restrictions on transportation of groundwater and the provisions regarding payment of damages in chapter 2, articles 8 and 8.1 of this title as though:
1. The person who gave the groundwater withdrew the groundwater at the location where it was actually withdrawn by or for another party.
 2. The person who gave the groundwater used the groundwater at the location where the person who gave the groundwater actually used the water it received in the exchange.
- C. If groundwater is withdrawn in an active management area or irrigation non-expansion area, the person who actually withdraws the groundwater shall comply with section 45-604.

45-1004. Annual report of water exchange; record keeping; penalties

- A. Each person who is authorized to give or receive any water pursuant to a water exchange contract enrolled under section 45-1021, a water exchange permit issued under section 45-1041, or a notice of water exchange filed with the director under section 45-1051 shall file an annual report with the director, whether or not any water was actually given or received. The report shall contain:
1. The name and address of the person filing the report.
 2. The source and quantity of water received pursuant to the water exchange in the preceding calendar year on a month by month basis.
 3. The source and quantity of water given pursuant to the water exchange in the preceding calendar year on a month by month basis.
 4. Such other information as the director may require to carry out the purposes of this chapter.
- B. Each report shall contain either a sworn statement or a certification, under penalty of perjury, that the information contained in the report is true and correct according to the best belief and knowledge of the person filing the report.
- C. The annual report shall be maintained on a calendar year basis unless a different accounting period is authorized by the director and is specified in the water exchange contract, permit or notice. The report shall be filed with the director no later than March 31 of each year for the preceding calendar year unless the director has authorized a different accounting period, in which case the report shall be filed no later than the end of the third month after the closing date of the accounting period. If a person who is required under this section to file an annual report fails to file a report for a calendar year on or before March 31 of the following year or a later date authorized by the director, the director may assess and collect a penalty of twenty-five dollars for each month or portion of a month that the annual report is delinquent. The

total penalty assessed under this subsection shall not exceed one hundred fifty dollars. All penalties collected under this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

D. Each person required to file an annual report under this section shall maintain current accurate records of the withdrawals, diversions and use of any water given or received in a water exchange.

E. The records and reports required to be kept and filed under this section shall be in such form as the director prescribes. The director shall prepare blank forms and furnish them on request. Failure to receive or obtain the forms does not relieve any person of responsibility for keeping the required records or making any required report.

45-1005. Registry of water exchanges

A. The director shall establish and maintain a registry of water exchange contracts enrolled under section 45-1021, water exchange permits issued under section 45-1041, and notices of water exchange filed with the director under section 45-1051.

B. Each person who is a party to an enrolled water exchange contract, a holder of a water exchange permit or a participant in a water exchange conducted pursuant to a notice of water exchange filed with the director under section 45-1051 shall notify the director within sixty days of a change in name or mailing address, a conveyance of the water exchange contract or permit or a valid change in point of withdrawal or diversion.

C. The director may require a person who is a party to an enrolled water exchange contract, a holder of a water exchange permit or a participant in a water exchange conducted pursuant to a notice of water exchange filed with the director under section 45-1051 to file additional information as necessary to keep the registry current and accurate.

45-1006. Effect on water rights

A. This chapter shall not be construed to affect vested water rights.

B. Any determination made by the director for purposes of this chapter regarding the validity, nature, extent or relative priority of a water right claimed by a party or another person is not binding in any other administrative proceeding or in any judicial proceeding.

Article 2 - Enrollment of Water Exchange Contracts

45-1021. Enrollment of water exchange contracts; fee

A. A water exchange contract may be enrolled by any party to the contract by filing a statement of water exchange contract with the director and complying with all of the following requirements:

1. The water exchange contract was in effect before January 1, 1992 and, if originally oral, is reduced to writing before December 31, 1994.

2. A water exchange actually was made after January 1, 1982 pursuant to the contract unless the water to be exchanged by one of the parties is central Arizona project water for which a subcontract was not offered by the secretary of the interior by January 1, 1992.

3. Each statement of water exchange contract is filed on a separate prescribed form not later than December 31, 1994.

4. Each statement of water exchange contract includes a description of the legal basis for acquiring and using the water subject to the water exchange.

5. If the water exchange involves water pumped from wells, each statement of water exchange contract includes the well registration numbers of the wells pumping water pursuant to the exchange.

6. A copy of the water exchange contract is attached to the statement of water exchange contract.

7. Each blank in the prescribed form is completed legibly with the required information pursuant to instructions furnished by the director.

8. The statement of water exchange contract is certified as true under penalty of perjury.

9. The prescribed form is accompanied by a filing fee in an amount to be determined by rule by the director to cover the cost of administering this article.

B. The director shall not accept a statement of water exchange contract that does not meet all of the requirements of subsection A of this section. If the director determines that a statement of water exchange contract fails to meet these requirements, the director shall return it to the sender within ninety days

specifying the deficiencies in the statement and providing the sender with sixty days within which to revise or supplement the statement in order to meet the requirements. The director may reject a revised or supplemented statement if, on resubmittal, it is still deficient. In such case, the director shall provide the sender an additional sixty days in which to further revise or supplement the statement. The director shall not accept a revised or supplemented statement of water exchange contract after June 30, 1995.

C. The director shall deposit, pursuant to sections 35-146 and 35-147, all fees received under this section in the water resources fund established by section 45-117.

45-1022. [Effect of enrollment of a water exchange contract](#)

Enrollment of a water exchange contract under section 45-1021 does not affect the validity of any water exchange conducted pursuant to that contract before the effective date of this chapter.

Article 3 - Permits for Water Exchanges

45-1041. [Water exchange permits; fee](#)

A. A person who seeks to give surface water, other than Colorado river water, in a water exchange to which neither section 45-1002, subsection A, paragraph 1 nor 3 applies shall apply to the director for a water exchange permit. The director shall issue either a specific use water exchange permit or a general use water exchange permit, as applicable, if the applicant demonstrates that all of the following apply:

1. The water exchange will be made pursuant to a written contract.
2. The water exchange will not affect vested rights to water.
3. Each party to the water exchange contract has a right to the water the party will give in the water exchange.
4. If an applicant is not a city, town, private water company or irrigation district, any new or increased pumping by the applicant from a well within an active management area pursuant to the water exchange will not unreasonably increase damage to surrounding land or other water users.

5. If an applicant is a city, town, private water company or irrigation district with a service area located partly or wholly in an active management area, any new or increased pumping by the applicant within the applicant's service area pursuant to the water exchange is consistent with the management plan and achievement of the management goal for the active management area.

6. Each party to a water exchange contract either:

(a) Receives at least ninety per cent of the quantity of water that the other party gives in the water exchange.

(b) Receives at least fifty per cent of the quantity of water that the other party gives in the water exchange, unless otherwise authorized by law, and the director determines the water exchange is beneficial to water management in this state.

B. Subsection A of this section does not apply to the proposed modification of a previously enrolled or permitted water exchange contract that involves surface water other than Colorado river water, if the proposed modification meets both of the following conditions:

1. The proposed modification involves the addition of one or more of the following water sources as the only new or additional water source of exchange:

(a) Colorado river water.

(b) Groundwater.

(c) Effluent.

(d) Surface water that is captured in the additional storage capacity created by modified Roosevelt dam after April 9, 1986.

2. Notice of the proposed modification is filed by the person seeking the modification pursuant to section 45-1051 and is subject to the requirements of that section and the conditions prescribed by section 45-1052.

C. Any person may apply for a specific use water exchange permit. A specific use permit allows the parties to exchange specific sources of water in specific quantities for the uses and in the locations specified in the permit.

D. Two or more political subdivisions of this state, or one or more political subdivisions and one or more private water companies, Indian communities, agencies of this state or agencies of the United States may apply for a general use water exchange permit. A general use permit shall specify that the holders may engage in one or more exchanges of water at any time during the term of the permit. The water received pursuant to a general use permit may be used for any lawful purpose specified in the permit. Before making any exchange pursuant to a general use permit, the parties to the permit shall notify the director of the amounts of water to be exchanged and the specific uses to which each source of water will be applied.

E. An application for a water exchange permit shall be accompanied by a filing fee in an amount to be determined by rule by the director to cover the cost of administering this article.

F. The director shall deposit, pursuant to sections 35-146 and 35-147, all fees received under this section in the water resources fund established by section 45-117.

45-1042. [Application for water exchange permit; notice; objections; hearing](#)

A. On receiving an application for a water exchange permit, the director shall endorse on the application the date of receipt and keep a record of the application. The director shall conduct an initial review of the application within fifteen days after receiving the application. If the director determines in the initial review that the application is incomplete, the director shall notify each applicant. The application is incomplete until the applicants file the information requested in the application. The director shall determine whether the application is correct within ninety days after receiving a complete application. The director may request additional information from the applicants. The director may conduct independent investigations as may be necessary to determine whether the application should be approved or rejected.

B. Within fifteen days after the director determines that an application for a water exchange permit is complete and correct or a longer period if requested by an applicant, the director shall give notice of the application once each week for three consecutive weeks in a newspaper of general circulation in the county or counties in which any water is proposed to be withdrawn, diverted or used pursuant to the water exchange. In appropriate cases, including those in which surface water subject to decreed or appropriative rights is to be exchanged, the director shall provide personal notice of the application to each person who has made a written request to the director for a mailed copy of the notice. The notice shall state that objections to the issuance of the permit may be filed in writing with the director by interested persons within thirty days after the last publication of notice and that objections are limited to whether the permit application meets the criteria for issuing a permit as prescribed by this article. An objection shall state the name and mailing address of the objector, shall be signed by the objector, the objector's agent or the objector's attorney and shall clearly state reasons why the permit should not be issued. The director shall prepare the notice and shall determine the cost of publishing the notice. Before the notice is published, the applicant shall pay for publication by submitting to the director a check or money order made payable to the newspaper in which the notice is to be published for the cost of publishing the notice. The director shall transmit the check or money order with the notice to the newspaper for publication.

C. In appropriate cases, including cases in which a proper written objection to the permit 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. At least thirty days before the date of the hearing, the director shall give notice to the applicants and to any person who filed a proper written objection to the issuance of the permit. 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. If a hearing is not held, the director shall issue a decision and order within six months after the date notice of the application is first given pursuant to subsection B of this section.

D. The approval or rejection of an application for a water exchange permit shall be endorsed on the application and dated. If the permit is denied, the director shall return the application to the applicants specifically stating the reasons for denial.

E. 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. If an administrative hearing is held, it shall be conducted in any county in which water may be withdrawn, diverted or used pursuant to the permit.

45-1043. Contents of permit

A. A specific use permit issued by the director pursuant to section 45-1041 shall contain the following information:

1. The names and mailing addresses of the persons to whom the permit is issued.
2. The name of any active management area or irrigation non-expansion area from which groundwater may be withdrawn pursuant to the permit.
3. The point or points of withdrawal, including well registration number, of any groundwater or stored water and the point or points of diversion of any surface water or other water to be exchanged pursuant to the permit.
4. The legal descriptions of the lands on which the water may be used pursuant to the permit.
5. The total annual amount of water that may be used pursuant to the permit.
6. The duration of the permit, up to a maximum of fifty years.
7. Conditions on the permit authorized by this chapter or rules adopted pursuant to this chapter.
8. Such other information as the director deems appropriate.

B. A general use permit issued by the director pursuant to section 45-1041 shall contain the following information:

1. The names and mailing addresses of the political subdivisions, or political subdivisions and private water companies, to which the permit is issued.
2. The name of any active management area or irrigation non-expansion area from which groundwater may be withdrawn pursuant to the permit.
3. The geographic areas within which the parties may withdraw groundwater or divert surface water, as applicable.
4. The uses to which any exchanged water may be applied during the term of the permit.
5. The maximum amount of water that may be exchanged by each party during any twelve month period.
6. The duration of the permit, up to a maximum of fifty years.
7. Conditions on the permit authorized by this chapter or rules adopted pursuant to this chapter.
8. Such other information as the director deems appropriate.

45-1044. Actions for judicial review

A person whose application for a water exchange permit is denied or a person who contested a permit by filing a proper objection pursuant to section 45-1042 may seek judicial review of the director's decision in superior court as provided in section 45-405.

45-1045. Modification of water exchange permit

Holders of a water exchange permit may seek renewal of a permit within six months before the date the permit expires or may seek modification of an unexpired water exchange permit. All applications to renew or modify a permit shall be treated in the same manner as provided in section 45-1042 for the initial permit application and are subject to the criteria prescribed by section 45-1041.

45-1046. Revocation of water exchange permits

A. After an administrative hearing the director may permanently or temporarily revoke all or part of a water exchange permit for any of the following reasons:

1. A false statement in regard to a material issue in an application to initiate, modify or renew a permit, or a false statement in regard to a material issue in any report required to be filed by a person using water pursuant to the provisions of the permit.
2. A material violation of the terms of the permit.
3. Failure to exchange water pursuant to a permit for five or more consecutive years except for reasons beyond the control of the permit holders. During the first five years a permit is in effect, the parties may request, and the director may approve, an extension of this period for not more than an additional five years, if necessary to complete construction of facilities or other works to be used to effectuate a permitted exchange.

B. The director may revoke a water exchange permit with the written consent of the holders, and in such a case a hearing is not required.

C. 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.

Article 4 - Water Exchanges Pursuant to Notice

45-1051. Notice of water exchange; contents forms; review by director

A. A person who seeks to engage in a water exchange that does not meet the requirements of section 45-1002, subsection A, paragraph 1, 2, 3, 4 or 6 shall file a notice of water exchange with the director. The notice shall include the following:

1. The names and mailing addresses of each participant in the water exchange.
2. A copy of the contract pursuant to which the water exchange will be conducted.
3. The name of any active management area or irrigation non-expansion area from which groundwater will be withdrawn pursuant to the notice of water exchange.
4. The point or points of withdrawal, including well registration number, of any groundwater or stored water to be exchanged pursuant to the notice of water exchange.
5. The legal descriptions of the lands on which the water will be used pursuant to the notice of water exchange.
6. The total annual amount of water that may be used pursuant to the notice of water exchange.
7. The duration of the water exchange contract.
8. The uses to which any exchanged water may be applied during the term of the water exchange contract.
9. Such other information as the director deems appropriate.

B. The notice of water exchange shall be filed with the director on a form prescribed by the director. Blank forms shall be furnished on request.

C. The director shall not accept a notice of water exchange that does not contain all of the information required by subsection A of this section. If the director determines that a notice of water exchange does not contain all of the required information, the director shall return it to the sender within sixty days specifying the deficiencies in the notice and provide the sender an opportunity to revise or supplement the notice. The director shall reject a revised or supplemented notice if, on resubmittal, it is still deficient.

45-1052. Water exchanges pursuant to notice; conditions

After filing a notice of water exchange that conforms with the requirements of section 45-1051, subsection A, the exchange may be initiated if it satisfies the following conditions:

1. The water exchange will be made pursuant to a written contract.
2. The water exchange will not affect vested rights to water.
3. Each participant in the water exchange has a right to the water the party will give in the exchange.
4. For each participant that is not a city, town, private water company or irrigation district, any new or increased pumping by that participant from a well within an active management area pursuant to the water exchange will not unreasonably increase damage to surrounding land or other water users.
5. For each participant that is a city, town, private water company or irrigation district with a service area located partly or wholly in an active management area, any new or increased pumping by that participant within that participant's service area pursuant to the water exchange is consistent with the management plan and achievement of the management goal for the active management area.
6. Each participant in the water exchange either:
 - (a) Receives at least ninety per cent of the quantity of water that the participant gives in the water exchange.
 - (b) Receives at least fifty per cent of the quantity of water that the participant gives in the water exchange, unless otherwise authorized by law, and the director determines the water exchange is beneficial to water management in this state.

Article 5 – Enforcement

45-1061. Inspections; investigations and audits

A. The director or the director's authorized representative may enter at reasonable times on private or public property where water is withdrawn, diverted or used pursuant to a water exchange, and the owner, manager or occupant of the property shall permit the entry to:

1. Inspect facilities for withdrawal, diversion or use of the water.
2. Ascertain compliance with this chapter.

B. Inspections and investigations under this section shall be on reasonable notice to the owner, manager or occupant of the property unless reasonable grounds exist to believe that the notice would frustrate the enforcement of this chapter. The director shall adopt rules for conducting inspections and obtaining warrants under this section. If warrants are required by law, the director shall apply for and obtain warrants for entry and inspection to carry out the administrative and enforcement purposes of this chapter.

C. The director may require a person who is required to keep records under section 45-1004 to appear, at reasonable times and on reasonable notice, at the director's office and produce such records and information as are specified in the notice to determine whether the records and annual reports required by section 45-1004 are complete, true and correct. The director shall audit a sufficient number of persons under this subsection to ensure general compliance with this chapter.

D. The director shall provide a written report of each inspection, investigation and audit under this section to the person who is subject to such action.

45-1062. Cease and desist order; temporary cease and desist order; hearings; injunctive relief

A. If the director has reason to believe that a person is violating or has violated any provision of this chapter, a permit or order issued pursuant to this chapter or a rule adopted to carry out the purpose of this chapter, the director may give the person written notice that the person may appear and show cause at an administrative hearing at least thirty days after the date of service of the notice why the person should not be ordered to cease and desist from the violation. The notice shall inform the person of the date, time and place of the hearing and the consequences of failure to appear.

B. Notwithstanding subsection A of this section, if the director finds that a person is withdrawing, diverting or using water in violation of any provision of this chapter, a permit or order issued pursuant to this chapter or a rule adopted to carry out the purposes of this chapter, the director may issue a temporary order for the person to cease and desist the withdrawal, diversion or use pending final action by the director pursuant to subsection C of this section. The order shall include written notice to the person of the date and time when and place where the person may appear at an administrative hearing to show cause why the temporary order should be vacated. The hearing shall be held within fifteen days after the date of the order unless the person consents to a longer period.

C. The decision and order of the director under subsections A and B of this section may take such form as the director determines to be reasonable and appropriate and may include a determination of violation, a cease and desist order, the recommendation of a civil penalty and an order directing that positive steps be taken to abate or ameliorate any harm or damage arising from the violation. The person affected may seek judicial review of the final decision of the director as provided in section 45-114, subsection B in the superior court in the county in which the violation is alleged to have occurred.

D. If the person continues the violation after the director has issued a final decision and order pursuant to subsection C of this section or a temporary order pursuant to subsection B of this section, the director may apply for a temporary restraining order or preliminary or permanent injunction from the superior court. A decision to seek injunctive relief does not preclude other forms of relief or enforcement against the violator.

E. 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.

45-1063. Civil penalties

A. A person who is determined pursuant to section 45-1062 to be in violation of any provision of this chapter, a permit or order issued pursuant to this chapter or a rule adopted to carry out the purpose of this chapter may be assessed a civil penalty in an amount not exceeding:

1. One hundred dollars per day for a violation not directly related to the illegal withdrawal, diversion or use of water pursuant to a water exchange.

2. One thousand dollars per day for a violation directly related to the illegal withdrawal, diversion or use of water pursuant to a water exchange.

B. The director shall bring any action to recover penalties under this section in superior court in the county in which the violation occurred.

C. In determining the amount of the penalty, the court shall consider the degree of harm to the public, whether the violation was knowing or wilful, the past conduct of the defendant, whether the defendant should have been on notice of the violation, whether the defendant has taken steps to cease, remove or mitigate the violation and any other relevant information.

D. All penalties collected under this article shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.