

ARIZONA REVISED STATUTES

Title 45 - Waters

Chapter 16 – Tohono O'odham Water Settlement Program

Article 1 - General Provisions

45-2701. Definitions

Unless the context otherwise requires, the terms defined in sections 45-402 and 45-802.01 have the same meaning in this chapter and for the purposes of this chapter:

1. "Exempt well" means a well that qualifies as an exempt well under section 45-454 in effect on January 1, 2005.
2. "Nation" means the Tohono O'odham nation organized under a constitution approved in accordance with section 16 of the act of June 18, 1934 (25 United States Code section 476).
3. "Nonexempt well" means any well, including a recovery well, that does not qualify as an exempt well or a replacement well.
4. "Replacement well" means a well that qualifies as a replacement well at approximately the same location under the rules adopted by the director pursuant to section 45-579, subsection B and that is no more than six hundred sixty feet from the well it is replacing.
5. "Reservation" means the San Xavier Indian reservation established by executive order of July 1, 1874.
6. "Tohono o'odham settlement agreement" means the agreement dated April 30, 2003 between the nation, this state and other parties, as amended before the effective date of this section, a copy of which is on file in the department.

45-2702. Jurisdiction

The superior court that has jurisdiction over the general adjudication of all rights to use water in the Gila river system and source has jurisdiction over all civil actions relating to the interpretation and enforcement of all of the following:

1. Title III of the Arizona water settlements act (P.L. 108-451), including sections 312(d) and 312(h).
2. The Tohono O'odham settlement agreement.
3. The groundwater protection program established pursuant to article 2 of this chapter.

Article 2 - San Xavier Reservation Water Protection Program

45-2711. Applications to drill nonexempt wells in the Tucson active management area; well impact analysis; requirements; exception

A. Except as provided in subsections B and E of this section, in the Tucson active management area, on receipt of an application to drill a new nonexempt well, including a notice of intention to drill a new nonexempt well under section 45-596, the director shall conduct a hydrologic analysis to determine the projected impacts of the proposed withdrawals from the well on the water levels at the exterior boundaries of the reservation. The director shall conduct the analysis using the methodology used by the director to determine well impacts under the rules adopted by the director under section 45-598. If the director determines that the projected withdrawals from the well over the initial five-year period of withdrawals will cause a water level decline of ten feet or more at any point on the exterior boundaries of the reservation, the director shall deny the application unless the applicant obtains and submits to the director the nation's written consent to drill the well.

B. Except as provided in subsection E of this section, if the director receives an application to drill a new nonexempt well, including a notice of intention to drill a new nonexempt well under section 45-596, at a location within two miles of the exterior boundaries of the reservation and the combined maximum pumping capacity of all proposed wells included in the application that will be located within two miles of the exterior

boundaries of the reservation is five hundred gallons per minute or more, the director shall deny the application to drill the well unless the applicant submits one of the following to the director:

1. A hydrologic study demonstrating to the director's satisfaction both of the following:

(a) That the water level at the proposed well site is declining at less than an average rate of two feet per year based on annual water level data collected during the five years before the date the application was filed.

(b) That the projected withdrawals from all of the proposed wells to be located within two miles of the exterior boundaries of the reservation over the initial five-year period of withdrawals will not cause a water level decline of ten feet or more at any point on the exterior boundaries of the reservation.

2. A hydrologic study demonstrating to the director's satisfaction that the projected withdrawals from all of the proposed wells to be located within two miles of the exterior boundaries of the reservation over the initial five-year period of withdrawals will not cause a water level decline of five feet or more at any point on the exterior boundaries of the reservation.

3. The nation's written consent to the drilling of the well.

C. In determining the water level declines caused by a proposed well under subsection B, paragraph 1 or 2 of this section, or in determining the average annual water level change at a proposed well site under subsection B, paragraph 1 of this section, the following shall not be considered:

1. The effects on water levels of pumping from wells within the reservation.

2. The effects on water levels of underground storage facilities located within two miles of the exterior boundaries of the reservation and recovery wells located within two miles of the exterior boundaries of the reservation, except that in determining the average annual water level change at a proposed well site under subsection B, paragraph 1 of this section, the storage of water at an underground storage facility located within two miles of the exterior boundaries of the reservation shall be considered if the water is stored by the applicant or by another person on behalf of the applicant.

D. For purposes of subsection B of this section, if an applicant submits two or more applications to drill a new nonexempt well within an eighteen-month period, the applications shall be considered one application.

E. This section does not apply to an application to drill a recovery well under section 45-834.01 if the recovery well will be located within two miles of the exterior boundaries of the reservation and will be permitted to recover only water stored at an underground storage facility located within one mile of the recovery well.

F. The director shall not issue a permit under section 45-513, 45-514, 45-516, 45-517, 45-518, 45-519 or 45-519.01 if the applicant for the permit proposes to withdraw groundwater from a new well or wells and the director is required to deny the application under this section.

G. An application for a permit to withdraw groundwater pursuant to chapter 2, article 7 of this title shall include a hydrologic study described in subsection B, paragraph 1 or 2 of this section or the consent described in subsection B, paragraph 3 of this section if the applicant proposes to withdraw groundwater from a new well or wells within two miles of the exterior boundaries of the reservation and the combined maximum pumping capacity of those wells is five hundred gallons per minute or more. This subsection does not apply to an application for a general industrial use permit under section 45-515.

H. A notice of intention to drill under section 45-596 shall include a hydrologic study described in subsection B, paragraph 1 or 2 of this section or the consent described in subsection B, paragraph 3 of this section if the proposed well or wells are nonexempt wells to be located within two miles of the exterior boundaries of the reservation and the combined maximum pumping capacity of those wells is five hundred gallons per minute or more. Notwithstanding section 45-596, subsection D, the director shall not authorize the drilling of a well under section 45-596 if the director is required to deny the notice of intention to drill under this section.

I. An application for a permit to construct a new well or replacement well in a new location under section 45-599 shall include a hydrologic study described in subsection B, paragraph 1 or 2 of this section or the consent described in subsection B, paragraph 3 of this section if the proposed well or wells are within two miles of the exterior boundaries of the reservation and the combined maximum pumping capacity of those wells is five hundred gallons per minute or more. Notwithstanding section 45-599, subsection C, the director shall deny an application for a permit for a new well or a replacement well in a new location under section 45-599 if the director is required to deny the application under this section.

J. An application for a recovery well permit under section 45-834.01 shall include a hydrologic study described in subsection B, paragraph 1 or 2 of this section or the consent described in subsection B, paragraph 3 of this section if the proposed recovery well or wells are within two miles of the exterior boundaries of the reservation and the combined maximum pumping capacity of those wells is five hundred gallons per minute or more. Notwithstanding section 45-834.01, subsection B, the director shall deny an application for a recovery well under section 45-834.01 if the director is required to deny the application under this section.

45-2712. Notice of well applications to nation; objection; hearing; appeal

A. Before making a decision on an application described in section 45-2711, subsection B, the director shall mail written notice of the application to the nation, including a copy of the application, and provide the nation an opportunity to object to the application in the manner provided in subsection B of this section.

B. The nation may file with the director a written objection to an application described in section 45-2711, subsection B within sixty days after the director mails written notice of the application to the nation. The grounds for objection are limited to whether the application should be denied under section 45-2711, subsection B.

C. If the nation files a timely objection to an application pursuant to subsection B of this section, the director shall schedule an administrative hearing on the objection within sixty days after receiving the objection. The administrative hearing shall be held by an administrative law judge of the office of administrative hearings under title 41, chapter 6, article 10 and the nation shall be a party to the hearing. Notwithstanding any other law, the administrative law judge shall issue a recommended decision to the director within thirty days after the close of the hearing and the director shall issue a final administrative decision within thirty days after receiving the administrative law judge's recommended decision. The director's final administrative decision is subject to judicial review by the superior court having jurisdiction over the general adjudication of all rights to use water in the Gila river system and source if a party to the administrative hearing files an action for judicial review within thirty days after the date the director mails notice of the final administrative decision to the party.

D. If the director receives an application to drill a replacement well in the Tucson active management area at a location within two miles of the exterior boundaries of the reservation, before making a decision on the application, the director shall mail written notice of the application to the nation, including a copy of the application, and provide the nation an opportunity to object to the application in the manner provided in subsection E of this section.

E. The nation may file with the director a written objection to an application described in subsection D of this section. The written objection shall be filed within sixty days after the director mails written notice of the application to the nation. The grounds for objection are limited to whether the proposed well qualifies as a replacement well. If the nation files a timely objection to the application, the hearing and appeal provisions set forth in subsection C of this section apply.

F. If the director fails to comply with a requirement in this section, the nation may bring an action in the superior court having jurisdiction over the general adjudication of all rights to use water in the Gila river system and source to obtain an order compelling the director's compliance.