APPENDIX C

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SURFACE WATER RIGHT AND ADJUDICATION FILINGS

Surface water is defined in Arizona as "waters of all sources, flowing in streams, canyons, ravines or other natural channels, or in definite underground channels, whether perennial or intermittent, floodwaters, wastewaters, or surplus water, and of lakes, ponds and springs on the surface" (A.R.S. § 45-101).

In 1864, the first territorial legislature of Arizona adopted the doctrine of prior appropriation to govern the use of surface water. The doctrine is based on the tenet of "first in time, first in right" which means that the person who first puts the water to beneficial use acquires a right that is superior to later appropriators of the water. Since the population and water use were both relatively small at that time, no method was initially specified by the legislature for filing surface water right claims or granting rights. By the late 1800s, rapid development of irrigated agriculture combined with drought years had resulted in severe water shortages along the Salt and Gila Rivers. The territorial legislature responded in 1893 with a requirement that new water appropriations be posted at the point of diversion. However, until 1919, a person could acquire a surface water right simply by applying the water to beneficial use and recording a notice of appropriation at the state and country recorder's office. There still was not a mechanism for granting surface water rights (ADWR, 1992).

On June 12, 1919, the state legislature enacted a surface water code. Now known as the Public Water Code, the law generally requires that a person apply for and obtain a permit in order to appropriate surface water. There is an exception for water use from the mainstem of the Colorado River, which requires a contract with the Secretary of the Interior. In addition, most persons claiming surface water rights prior to the code have been required to file a statement of claim under the Water Rights Registration Act of 1974, although the act did not provide a process for determining the validity of these claims. The legislature also enacted the Stockpond Registration Act in 1977 to recognize certain "unpermitted" stockponds constructed after 1919 that had not gone through the application process.

The Public Water Code provides that beneficial use shall be the basis, measure and limit to the use of water within the state. Beneficial uses are domestic (which includes the watering of gardens and lawns not exceeding one-half acre), municipal, irrigation, stockwatering, water power, recreation, wildlife including fish, nonrecoverable water storage, and mining uses (A.R.S. § 45-151(A)). The quantity of water that is reasonable for a particular beneficial use depends on a number of factors, including the location of the use.

The Department maintains a registry of surface water right applications and claims filed in Arizona since the Public Water Code was enacted. Each filing is assigned a unique number with one of the following prefixes

- "3R" – application to construct a reservoir filed before 1972;
- "4A" – application to appropriate surface water filed before 1972;

- "33" – application for permit to appropriate public water or construct a reservoir filed after 1972. In addition to surface water diversions and reservoirs, instream flow maintenance can applied for and is defined as a surface water right that remains in-situ or "in-stream", is not physically diverted or consumptively used, and is for maintaining the flow of water necessary to preserve wildlife, including fish, and/or recreation;
- "36" – statement of claim of rights to use public waters of the state. To make this claim, an applicant or predecessor-in-interest must have initiated a water use based on state law before March 17, 1995;
- "38" – claim of water right for a stockpond and application for certification filed for stockponds constructed after June 12, 1919 and before August 27, 1977. To file this claim and application, the stockpond should have been used exclusively for watering of livestock and/or wildlife, have a maximum capacity of 15 acre-feet, and not be subject to water rights litigation or protests prior to August 27, 1977;
- "39" – statement of claimant filed in *The General Adjudication of the Gila River System and Source* (Gila Adjudication) and *The General Adjudication of the Little Colorado River System and Source* (LCR Adjudication). As explained further below, the department maintains a separate registry of these filings on behalf of the Superior Court of Arizona; and,
- "BB" – decreed water rights determined through judicial action in state or federal court.

These filings specify the source of water, its point of diversion (POD) and place of use (POU), the type and quantity of water use, and date of first use or priority.

If, after moving through a number of administrative steps, an application to appropriate surface water or construct a reservoir (3R, 4A, or 33) is determined to be for beneficial use and not conflict with vested rights or be a menace to public safety or against the interests and welfare of the public, it may be approved and the applicant issued a permit to appropriate. The permit allows the permit holder to construct diversion works, as needed, and put the water to beneficial use. If the terms of the permit are met, the applicant can submit proof of appropriation through an application of certification and may be issued a Certificate of Water Right (CWR). The CWR has a priority date that relates back to the date of application and is evidence of a perfected surface water right that is superior to all other surface water rights with a later priority date, but junior to all rights with an earlier (older) priority date. The CWR also specifies the extent and purpose of the right and may be subject to abandonment and forfeiture if not beneficially used. There are currently approximately 850 applications to appropriate pending with ADWR, and approximately 420 permits and over 7,000 certificates have been issued by ADWR or its predecessors.

A CWR may also be issued based on a stockpond claim (38) if it is found that the facts stated in the claim are true and entitle the claimant to a water right for the stockpond. The priority date depends on the date that the owner of the stockpond filed the claim. If filed prior to March 17, 1996, the priority date is the date of construction. Otherwise, the priority date is the date of filing the claim. Regardless of the date, the CWR for a stockpond claim is junior to (a) Colorado River and other court decreed rights; (b) other rights acquired prior to June 12, 1919 and registered as a statement of claim; and (c) any other CWR issued pursuant to an application filed before August 27, 1977. To date, nearly 20,000 stockpond claims have been filed of which over 3,000 stockpond certificates have been issued by ADWR or its predecessors.

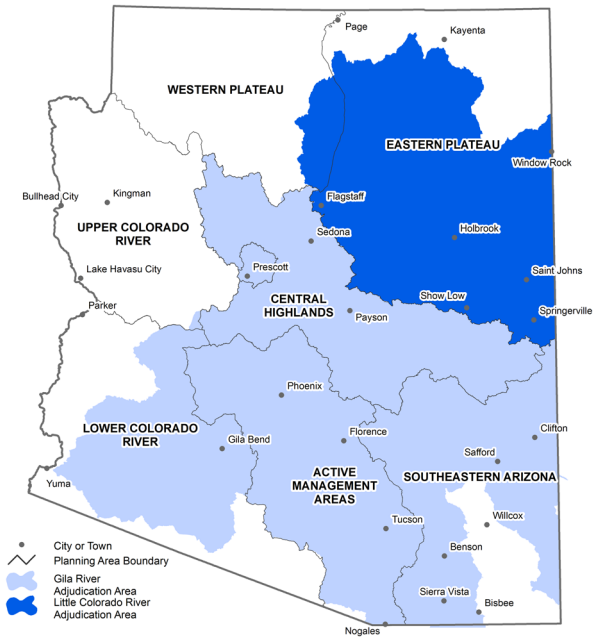
Unlike a CWR, the act of filing a statement of claim (36) does not in itself create a water right, nor does it constitute a judicial determination of the claim. Statements of claim are subject to challenge, but can be admitted "in evidence as a rebuttal presumption of the truth and accuracy of the information contained in the claim" (A.R.S. § 45-185). To date, nearly 30,000 statements of claim have been filed in Arizona.

In addition to the applications and claims described above, ADWR's registry of surface water right filings includes several rights determined through judicial action in state or federal court. These 'adjudications', in which a water right is determined by court action, may be initiated when one or more water users seek to know how their rights compare to the rights of other water users and/or seek judicial relief from alleged interference with their rights by other water users. The court process establishes or confirms the validity of surface water rights and claims, determines whether these have been properly maintained over the years, and ranks them according to their priority. The result is a decree that may, in addition to establishing and confirming rights, specifies terms under which the decreed rights may be exercised if water shortages occur. Court decreed rights are considered the most valued or certain surface water rights because in the absence of abandonment or forfeiture, they are normally accepted as to their validity. More than 1,000 court-decreed rights are listed in ADWR's registry and given the prefix "BB".

Although several surface water uses have been decreed, many claims and rights established before and after statehood have still not been examined to see if they remain valid. In addition, many water rights established under federal law and claimed by Indian tribes and the United States have not been quantified or prioritized. To better manage water resources in the state, these diverse rights and claims have been jointed into large, comprehensive determinations.

Arizona currently has two general stream adjudications – the Gila Adjudication and the LCR Adjudication. The purpose of these judicial proceedings is to determine the nature, extent, and priority of water rights across the entire river systems. In addition to confirming existing state-based surface water rights, the adjudications will quantify and prioritize reserved water rights for Indian and non-Indian federal lands. The latter include military bases, national parks and monuments, and national forests. The adjudications will also determine which wells are pumping appropriable underground water (subflow) and therefore are subject to the jurisdiction of the court. The Gila and LCR Adjudications are being conducted in the Superior Court of Arizona in Maricopa and Apache Counties, respectively. ADWR provides technical, legal and administrative support to the adjudication court, as described in A.R.S. § 45-256.

Figure C-1 General Stream Adjudications in Arizona



The Gila Adjudication was initiated in 1974 when SRP filed a petition to determine the water rights in the Salt River Watershed above the Granite Reef Diversion. Since that time, the adjudication area has grown and now covers over 53,000 square miles. It is divided into 7 watersheds and includes 12 Indian reservations and over 24,000 parties. The LCR Adjudication was initiated by a petition filed by Phelps Dodge in 1978. This adjudication now covers 27,000 square miles and includes 3 watersheds, 5 Indian reservations, and over 3,000 parties. A party is a person or entity that has filed one or more statement of claimant (SOC) in the adjudication.

All parties who claim to have a water right within the river systems are required to file an SOC or risk the loss of their right. Well owners are also encouraged to file an SOC since the adjudication process may include water use from a well depending on the well's location relative to streams and other factors. However, a person does not obtain a right to use water by filing an SOC nor is an SOC a legal permit to use water. Rights to use water must be acquired in accordance with state or federal law.

Each year, ADWR sends summons to new surface water appropriators and well owners in the adjudication areas that direct them to file an SOC. In response, the number of SOCs filed in the adjudications continues to increase as new water uses are initiated. To date, nearly 81,000 SOCs have been filed in the Gila Adjudication and over 14,000 SOCs have been filed in the LCR Adjudication. ADWR maintains a separate registry of these adjudication filings on behalf of the Superior Court and assigns each a unique number with the prefix "39".

Table C-1 summarizes the number of surface water right and adjudication filings for each planning area. The table was generated by querying ADWR's surface water right and SOC registries in February 2009. Files are only counted in the table if they include sufficient locational information (Township, Range, and Section) to allow a POD and/or POU to be mapped within the planning area. If a file lists more than one POD or POU in a planning area, it is only counted once in the table for that planning area. However, no attempt was made to avoid counting multiple filings for the same POD/POU which can result if a landowner or lessee has two or more filings or if different applicants each have at least one filing. Since many SOCs list surface water right filings as their basis of claim, multiple filings are common and account, in part, for the large number of filings. Sorting through multiple filings is one of the challenges facing the Department and the adjudication courts. Results from the Department's investigation of surface water right and adjudication filings are presented in Hydrographic Survey Reports (HSRs).

Figure C-2 shows the location of surface water diversion points listed in the Department's surface water rights registry. The numerous points mapped reflect the relatively large number of stockponds and reservoirs that have been constructed across the state as well as diversions from streams and springs. Locations for registered wells, many of which are referenced as the basis of claim in SOCs, are also shown in Figure C-2. Instream flow filings are not shown as these filings do not have points of diversion.

Table C-1 Count of surface water rights and adjudication filings by planning area[1]

PLANNING AREA	TYPE OF FILING							TOTAL
	BB[2]	3R[3]	4A[3]	33[3]	36[4]	38[5]	39[6]	
Eastern Plateau	134	163	196	373	3,289	3,275	12,099	**19,529**
Southeastern Arizona	483	395	716	898	8,288	6,415	19,288	**36,483**
Upper Colorado River	0	224	329	469	2,858	2,084	0	**5,964**
Central Highlands	1	287	625	897	8,517	3,928	25,443	**39,698**
Western Plateau	0	415	207	554	1,177	1,270	324	**3,947**
Lower Colorado River	0	26	48	86	355	304	2,323	**3,142**
Active Management Areas	1	269	341	687	4,072	2,913	27,134	**35,417**
Total	**619**	**1,779**	**2,462**	**3,964**	**28,556**	**20,189**	**86,611**	**144,180**

Notes:

[1] Based on a query of ADWR's surface water right and adjudication registries in February 2009. A file is only counted in this table if it provides sufficient information to allow a Point of Diversion (POD) and/or Place of Use (POU) to be mapped within the planning area. If a file lists more tha one POD or POU in a given planning area, it is only counted once in the table for that planning area. Several surface water right and adjudication filings are not counted here due to insufficient locational information. However, multiple filings for the same POD/POU are counted.

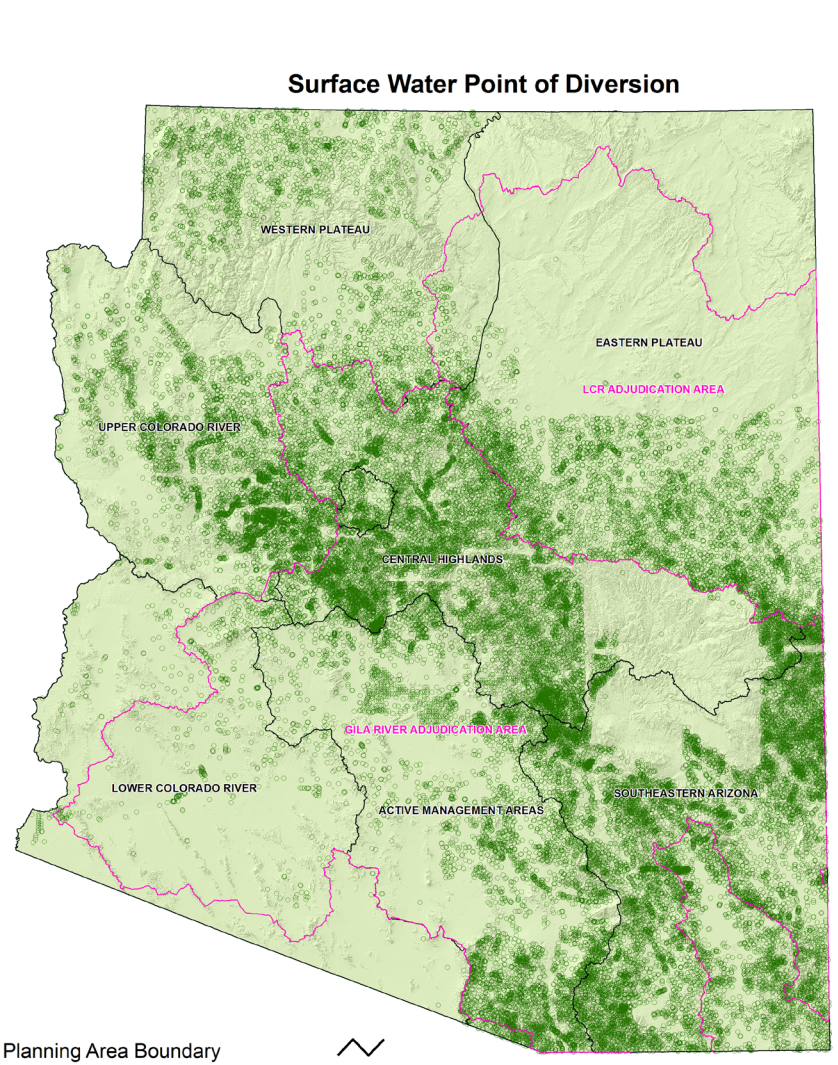
[2] Court decreed rights; not all of these rights have been identified and/or entered into ADWR's surface water rights registry.

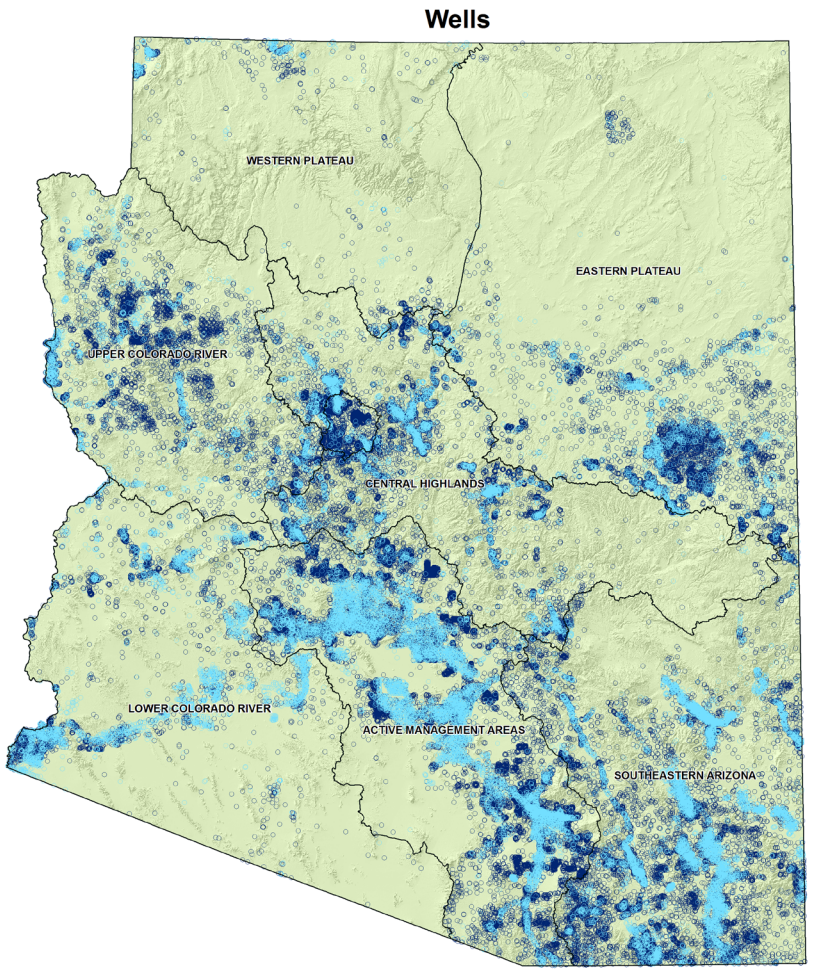
[3] Application to construct a reservoir, filed before 1972 (3R); application to appropriate surface water, filed before 1972 (4A); and application for permit to appropriate public water or construct a reservoir, filed after 1972 (33).

[4] Statement of claimant of rights to use public waters of the state, filed pursuant to the Water Rights Registration Act of 1974.

[5] Claim of water right for a stockpond and application for certification, filed pursuant to the Stockpond Registration Act of 1977.

[6] Statement of claimant, filed in the Gila or LCR General Stream Adjudications.





Planning Area Boundary

Wells

Non-Exempt Well

Exempt Well

Surface Water POD

Surface Water Point of Diversion

Adjudication Watershed Boundary

N

S

Figure C-2
Registered Wells and Surface Water Diversion Points in Arizona

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