

SURFACE WATER REQUIREMENTS AND PROCEDURES CONCEPTS

1. General Application Requirements

- a. An application must be filed on a form provided by the Department, accompanied by the appropriate fee and signed.
- b. The application must contain the information required by applicable statute.
- c. Any points of diversion must be identified by longitude and latitude coordinates with datum; by township, range and quarter, quarter, quarter section; and by county assessor's parcel number.
- d. The place of use must be identified by township, range and quarter, quarter, quarter section, and by county assessor's parcel number.
- e. A map that agrees in all respects with the statements in the application must be submitted on a United States Geological Survey (USGS) Topographic 7.5 minute quadrangle map, or clear photocopy thereof, that clearly depicts the following:
 - i. Townships, ranges and sections.
 - ii. The source of water.
 - iii. The direction of flow of the source of water.
 - iv. The proposed points of diversion, ditches and conduits, if any.
 - v. Cross hatching showing the proposed place of use.
 - vi. For any storage of water, the contour of the ground surface to be submerged.
 - vii. Points of water measurement, if any.
- f. Evidence of ownership of the proposed place of use must be provided consisting of a recorded deed and a county assessor's map and parcel number, except as stated below.
 - i. If the applicant is a federal agency, a copy or true representation of the General Land Office plat.
 - ii. If the applicant is a lessee, permittee, or allottee of federal land, a copy of the lease, permit or allotment map.
 - iii. If the applicant is a lessee of state land, a copy of the lease and evidence that one of the exceptions listed in A.R.S. §§ 37-321.01(A)(1) through A(3) applies.

2. Additional Requirements if Wells are Points of Diversion

- a. If an application includes a well as a point of diversion, in addition to the general application requirements, evidence must be provided to the satisfaction of the Director that the well is withdrawing appropriable water.
- b. Evidence satisfactory to the Director that the well is withdrawing appropriable water may include the following:
 - i. A description of local hydrogeology including the depth and lateral extent of floodplain Holocene alluvium.
 - ii. Depth to water, drilled depth, screened intervals and lithologic logs.
 - iii. Pump capacities.
 - iv. Pump test data.

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- v. Groundwater-surface water interaction or streamflow depletion studies.
 - vi. Water level elevations of stream and piezometric surface of underground water.
 - vii. Channel slope of stream and hydraulic gradient of underground water.
 - viii. Chemical composition of water withdrawn from the well and the stream.
3. Additional Requirements for Applications for Non-Diversionary Water Rights
- a. In addition to the general application requirements, an application for a non-diversionary right to appropriate water for recreation and wildlife, including fish, must include the following information:
 - i. Stream data collection and assessment methods.
 - ii. A description of the relationship between the proposed quantity of water sought to be appropriated and the benefits to be received by recreation, wildlife or fish.
 - iii. Raw data and analysis of streamflow measurements of the proposed source of water collected for a minimum of one year. At least one in-situ measurement must be taken each month, or at least three random in-situ measurements must be taken during each primary flow season
 - iv. A description of the resources associated with the streamflow, including fish and wildlife species, riparian vegetation and stream and channel morphology at the location of the proposed appropriation.
 - v. An assessment of the quantity of water historically available at the location of the proposed appropriation.
 - vi. If the application is for recreational use, a description of the recreational opportunities to be afforded by the proposed appropriation.
 - vii. If the application is for wildlife, including fish, a description of the type and numbers of wildlife to be supported by the proposed appropriation.
4. Additional Requirements for Applications for a Diversionary Water Right For Recreation and Wildlife, Including Fish
- a. In addition to the general application requirements, an application for a diversionary water right for recreation and wildlife, including fish, shall include the following information:
 - i. A description of the relationship between the proposed quantity of water sought to be appropriated and the benefits to be received by recreation, wildlife or fish.

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- ii. If the application is for recreational use, a description of the recreational opportunities to be afforded by the proposed appropriation.
- iii. If the application is for wildlife, including fish, a description of the type and numbers of wildlife to be supported by the proposed appropriation.

5. Additional Requirements for Sever and Transfer Applications

- a. In addition to the general application requirements, an application to sever and transfer a water right shall include the following information:
 - i. The name and address of the applicant and the owner of the land to which the water right is appurtenant.
 - ii. The name and address of the owner of the land to which the water right is proposed to be transferred.
 - iii. The signed, written consent of the holder of the water right proposed to be severed and transferred, if the holder is not the applicant.
 - iv. The type of use, quantity of use, point of diversion, and place of use of the water right proposed to be severed and transferred. The existing place of use shall be cross hatched on the accompanying map.
 - v. The proposed type of use, quantity of use, point of diversion and place of use after the water is severed and transferred. The new place of use shall be cross hatched on the accompanying map.
 - vi. For a partial sever and transfer, the quantity of water to be severed and transferred and the quantity of water to be retained, together with a legal description of the land to which any retained portion of the water right is appurtenant, including the county assessor's parcel number. The land to which any retained water right is appurtenant shall be cross hatched on the accompanying map.
 - vii. Evidence of ownership of the land on which the existing and proposed water of use will be located as provided in paragraph 1(f) above.

6. Applications Accepted for Filing and Priority Date

- a. To be accepted for filing, applications must be on the correct form, accompanied by the appropriate fee and signed. Otherwise, the application will be returned
- b. These requirements apply to applications filed pursuant to A.R.S. §§ 45-152, 161, 172, and 273.
- c. An application to sever and transfer a water right must also satisfy the requirements of A.R.S. § 45-172.

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- d. An application for certification of a claim for a water right for a stockpond must also satisfy the requirements of A.R.S. § 45-273 and include the material facts stated in A.R.S. § 45-274(D).
 - e. Except for an application for certification of a claim for a water right for a stockpond filed pursuant to A.R.S. § 45-272, the priority date is the date the application is accepted for filing.
 - f. Under A.R.S. § 45-272, if a claim of water right for a stockpond was received by the Department prior to March 17, 1996, any certificate of water right will have a priority date as of the date of construction of the stockpond. If the claim of water right for a stockpond was received by the Department on or after March 17, 1996, any certificate of water right will have a priority date as of the date the claim was accepted for filing.
7. Posting Applications Accepted for Filing
- a. Applications accepted for filing will be posted on the Department's web site every two weeks, beginning on the first business day of each month.
 - b. Applications will remain posted on the Department's web site for at least 90 days.
8. Administrative Review of Applications
- a. After an application has been accepted for filing, the Department will conduct an administrative review. If the application is incomplete or incorrect, the Department will return the application. In order to retain its priority date, the corrected application must be returned to the Department within 60 days, or within such additional time allowed by the Director.
 - b. If the applicant fails to return a corrected application within the time allowed, the application may be denied.
9. Application Amendments
- a. An application may be amended by the applicant at any time prior to noticing, and not lose its priority date unless the amendment is substantive.
 - b. A substantive amendment to an application shall be treated as a new application.
10. Noticing Applications to Appropriate and Sever and Transfer Applications
- a. After the Department receives a correct and complete application to appropriate or an application to sever and transfer, the Department will prepare a notice and provide a copy to the applicant.
 - b. The applicant shall publish notice once a week for three consecutive weeks in a newspaper of general circulation in the county where the proposed point of diversion will be located. The newspaper selected for publication shall be subject to the prior approval of the Department.

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- c. The applicant shall return an affidavit of publication to the Department within 30 days after the last publication date with a copy of the published notice.

11. Objections to Applications to Appropriate and Sever and Transfer Applications.

- a. Objections shall be filed in writing within 30 days after the last publication date of the notice with a copy to the applicant.
- b. Objections may be filed by any person who uses water or holds a water right within the watershed where the point of diversion will be located, or within the watershed where the place of use is located if the application is filed for a non-diversionary right.
- c. The grounds for an objection are limited to criteria set forth in A.R.S. § 45-153 and A.R.S. § 45-172, as applicable.
- d. The applicant may respond to an objection within 30 days of its filing date, or at the request of the Department.

12. Substantive Review of Applications.

- a. During substantive review of applications, the Department may request additional information pursuant to A.R.S. § 41-1075 and § 45-155, and conduct field inspections.
- b. As part of the substantive review, the Director may determine that a hearing should be conducted prior to making a decision on the application. If such a hearing is conducted, it shall be subject to the requirements of Title 41, Chapter 6, Article 10.

13. Permits to Appropriate

- a. Upon approval of an application to appropriate water, the Director will issue a permit to appropriate, which may contain conditions that assure compliance with applicable law. If the applicant is a federal lessee or permittee, the permit shall state that the issuance of the permit shall not be construed to be a determination by the Department that the lessee or permittee is entitled to a water right as a matter of law.
- b. Except for municipal uses, any construction of necessary works must be commenced within two years after approval of the application, and must be completed within 5 years after approval of the application unless this time is extended by the Director due to the magnitude, physical difficulties and cost of the work.

14. Certificates of Water Right

- a. In order to obtain a certificate of water right, a permit holder must provide evidence that the water right has been perfected and must file a proof of appropriation that establishes that the applicant has complied with the terms of the permit and has put water to beneficial use in an amount that does not

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exceed the quantity stated in the permit. The Department may conduct a field inspection or request additional information to determine the validity of a proof of appropriation.

- b. For a non-diversionary right for recreation and wildlife, including fish, the applicant also must file a minimum of four years of streamflow data together with an analysis of the data that supports the beneficial uses described in the permit.
- c. If the Department determines that the proof of appropriation is valid, the Department will issue a certificate of water right that conforms to the permit and includes the quantity of water established by the proof of appropriation, which may not exceed the quantity stated in the permit.

15. Amendments to Permits and Certificates of Water Right

- a. A permit or certificate of water right may be amended on the Director's own initiative or at the written request of the permit or certificate holder to correct ministerial errors.
- b. A permit or certificate of water right may not be amended to make substantive changes unless an application is filed for that purpose with the Department. Any application to substantively amend a permit or certificate of water right must be filed on an amendment form and will be subject to the same requirements as a new application. Any substantive amendment to a permit or certificate of water right may result in a new priority date, unless the substantive amendment is limited to changing the type of use from domestic, irrigation or municipal use to another use pursuant to A.R.S. § 45-156.

16. Failure to Comply with Permit or Certificate Conditions and Misrepresentations

- a. By written notice, the Director may cancel a permit or certificate of water right for failure to comply with applicable statutes or rules, or any permit conditions, or if there is reason to believe that the permit or certificate of water right was obtained through fraud, deceit, willful misrepresentation, or concealment of facts.
- b. The holder of the permit or the certificate of water right will be given 30 days to respond to the written notice, after which the Director shall issue a written decision and order.
- c. Cancellation of a permit or certificate of water right is an appealable agency action subject to Title 41, Chapter 6, Article 10, Arizona Revised Statutes.

17. Statements of Claim

- a. A statement of claim may be filed pursuant to A.R.S. § 45-182 and shall contain the information required by A.R.S. § 45-183.
- b. A statement of claim shall comply with the general application requirements set forth in paragraph 1 above.

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- c. An amendment of a statement of claim must be filed on a form provided by the Department.

18. Assignments

- a. In order to assign an application, permit, certificate or statement of claim, a request for assignment form must be submitted the Department. The Department will not accept a request for assignment unless it is submitted on the correct form, accompanied by the appropriate fee, is signed, and includes all required information. A request for assignment that does not comply with these requirements will be returned to the person submitting the request.
- b. A request for assignment must include the following information:
 - i. The name, address and phone number of both the assignor and the assignee.
 - ii. The registry number of the application, permit, certificate or water right or statement of claim.
 - iii. The legal description of the place of use, which shall be depicted on a USGS Topographic 7.5 minute quadrangle map by cross hatching, and which shall include the county assessor's parcel number and the township, range and quarter, quarter, quarter section.
 - iv. The points of diversion identified by longitude and latitude coordinates; the township, range and quarter, quarter, quarter section; and the county assessor's map and parcel number.
 - v. The signature of the assignor, or an authorized agent. If signed by an authorized agent, evidence of authorization must be provided.
 - vi. If the assignor is unavailable, the signature of the assignee together with a chain of title from the assignor to the assignee.
 - vii. Evidence of ownership of the land on which the existing place of use is located as set forth in paragraph 1(f).
- c. For assignments from a single assignor to a single assignee, more than one application, permit, certificate or statement of claim may be included in the same request for assignment form.
- d. For partial assignments from a single assignor to more than one assignee, a separate request for assignment form must be filed for each partial assignment. Each request for a partial assignment shall include a description of the water right or water use to be assigned and the water right or water use to be reserved by the assignor together with a legal description of the place of uses before and after the assignment, which shall be depicted on a USGS Topographic 7.5 minute quadrangle map by cross-hatching, and which shall include county assessor's parcel numbers, and the township, range and quarter, quarter, quarter section.
- e. If the assignor and the assignee are permittees or lessees on federal land, the assignment shall not be construed as a determination by the Department

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that the assignor and assignee are entitled to the water right or water use as a matter of law.

19. Sever and Transfer Applications

- a. Water rights that have been lawfully perfected may be severed and transferred. These water rights include decreed rights and certificated rights.
- b. A water right for which a statement of claim has been filed under Title 45, Chapter 1, Article 7 may be severed and transferred if the applicant presents evidence satisfactory to the Director that demonstrates the water right claimed has been perfected. This evidence may include historic records of the quantity and type of water use, irrigated acreage, crops grown, points of diversion and conveyance systems, aerial photographs and any other appropriate information.
- c. At least 30 days prior to filing an application to sever and transfer a water right, the applicant shall meet with the Department for a pre-application conference.
- d. A sever and transfer application shall not be granted if vested or existing rights to the use of water will be affected, infringed upon or interfered with.
- e. A water right may not be severed and transferred to the extent it has been forfeited or abandoned.
- f. If a sever and transfer application is granted, the Director shall issue a decision and order that shall define and limit the amount of water to be diverted or used annually subsequent to the transfer, which shall not exceed the water right or historic use existing prior to the sever and transfer. The Director may also include conditions in the decision and order that must be satisfied before the decision and order becomes effective, or which the applicant must satisfy after the decision and order becomes effective. If the water right severed and transferred was a certificated right, the Director will issue a new certificate.
- g. If the new or existing holder of the water right to be severed and transferred is a lessee or permittee on federal land, the decision and order of the Director shall state that the approval of the sever and transfer application is not a determination by the Department that the federal lessee or permittee is entitled hold the water right as a matter of law.

20. Applications for Certification of Claims of Water Right for a Stockpond

- a. Notice of application for a certification of a claim of water right for a stockpond shall be provided pursuant to paragraph 5 above.
- b. Any person adversely affected by the claim may file a written objection pursuant to paragraph 6 above on a form provided by the Department. The objection must contain the information required by A.R.S. § 45-274(C), and be based on one of the grounds listed in A.R.S. § 45-274(D).

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- c. Pursuant to A.R.S. § 45-275, the Director may conduct a field inspection of the stockpond for which the claim is filed, and conduct an administrative hearing before making a decision on the application for a certificate. The Director shall issue a certificate of water right for stockpond if the requirements of A.R.S. § 45-275 have been satisfied. The certificate shall state that it is subject to all prior rights.
- d. Under A.R.S. § 45-276, at least once every five years, the Director may require a certificate holder to submit a statement of continuing use on a form provided by the Department.
- e. Under the conditions set forth in A.R.S. § 45-276, the Director may revoke a certificate of water right for a stockpond.