

APPLICATION GUIDELINES

Retire an Irrigation Grandfathered Right to a Type 1 Non-Irrigation Grandfathered Right Pursuant to A.R.S. § 45-469

In accordance with A.R.S. §§ 41-1008 and 1079, the Department of Water Resources (Department) provides the following information regarding the application review process to assist applicants to Retire an Irrigation Grandfathered Right for a Non-Irrigation (Type 1) Use.

The initial fee for an Application to Retire an Irrigation Grandfathered Right for a Type 1 Non-Irrigation Grandfathered Right Pursuant to A.R.S. § 45-469 is \$1,000. Total fees for this application are based upon an hourly billable rate, which can be found on the ADWR web site at www.new.azwater.gov. If the total costs of reviewing your application exceed \$1,000, you will be invoiced for the difference, up to a maximum total fee of \$10,000. If the total costs of reviewing your application are less than \$1,000, you will be refunded the difference. Payment of the initial fee may be made by cash, check, or credit card (if you wish to pay by credit card, please contact the Active Management Area at 602-771-8585). Checks should be made payable to the Arizona Department of Water Resources. Failure to enclose the initial application fee of \$1,000 will cause the application to be returned. In addition to the hourly application fee, the applicant must pay the actual cost of mailing or publishing any legal notice of the application or any notice of a pre-decision administrative hearing on the application and the mileage expenses for any site visit conducted before issuing a decision on the application. These fees are authorized by A.R.S. § 45-113 and A.A.C. R12-15-103.

Steps for Processing Your Application and Obtaining Approval

Before filing your application, the Department encourages you to contact one of the Department personnel indicated at the end of these guidelines to discuss the application process and review criteria. If you wish, a meeting may be scheduled to facilitate this process. To assist you in understanding the substantive requirements for this application, a copy of A.R.S. § 45-469 is attached. Also, please note the following:

- ❑ Only the current owner of an Irrigation Grandfathered Right (IGFR) may apply to retire the land for a Type 1 Non-Irrigation Grandfathered Right.
- ❑ The current owner of the land must have irrigated the land or must hold the land under the same ownership as the last person who irrigated the land in order to retire the IGFR to a non-irrigation use pursuant to A.R.S. § 45-469. "Same ownership" means ownership by the same person or entity or by successor persons or entities as a result of succession to heirs and personal representatives, corporate and partnership reorganizations, mergers, dissolutions, divestitures, partnerships, partitions, joint ventures, foreclosures, receivership or bankruptcy, purchase of capital stock, sale pursuant to United States Code, title 11, or similar succession, but not by outright sale to a bona fide purchaser for value where no portion of or beneficial interest in the successor in interest is retained by the original owner, its shareholders, partners, limited partners or beneficiaries.
- ❑ An approved development that has not expired must be on file with the Department. Attach a copy of the approved development plan.

It is imperative that you complete the application form in its entirety. An incomplete or incorrect application may result in a delay in processing your application. Please send the application to the address indicated on the form, along with any required fees and supporting documentation. The Department suggests that you retain a copy of all documents which are submitted for review.

Time Frames for Review of Your Application.

Within one-hundred twenty (120) days after receipt of your application, the Department will determine whether your application should be granted or denied, unless this time is extended as described below. In processing your application, the Department will first determine whether the application is administratively complete (administrative completeness review), and then whether the application meets the substantive criteria established by statute or rule (substantive review). Each of these reviews will be completed within the times stated below. The time for the administrative completeness review plus the time for the substantive review is referred to as the overall time frame.

1) Administrative Completeness Review Time Frame

Within thirty (30) days after receipt of your application, the Department will determine whether your application is complete, and will issue a written notice of administrative completeness or deficiencies. After your application is complete, the Department will proceed with substantive review.

If the Department sends you a letter that your application is incomplete, the Department will include a comprehensive list of specific deficiencies. Until the missing information is received, both the administrative completeness review and the overall time frames will be suspended. When the Department receives the missing information, the administrative completeness review and overall time frames will resume. Your application will not be complete until all the requested information is received. If you do not supply the missing information within sixty (60) days, your application may be denied.

2) Substantive Review Time Frame

Within ninety (90) days after the application is complete, the Department will review your application to determine whether it meets the substantive criteria required by statute or rule. By mutual written agreement between you and the Department, the time for substantive review may be extended by up to 30 days.

During the substantive review, the Department may make one written request for additional information. You may also agree in writing to allow the Department to submit supplemental requests for additional information. If additional information is requested by the Department, both the substantive review and overall time frames will be suspended. When the additional information is received, the substantive review and overall time frames will resume.

At the end of the Department's substantive review, the Department will send you a written notice either granting or denying your application. If your application is denied, the notice will include the justification for the denial and an explanation of your right to appeal the denial.

Agency Contact

Please direct any questions, comments or requests for further assistance to the Active Management Area at 602-771-8585.

A.R.S. § 45-469 Right to retire irrigation grandfathered right for non-irrigation use; development plan approval; amendment of plan; approval of plan prior to retirement; amount withdrawn; service area determined; restoration of retired irrigation grandfathered right

A. Except as provided in section 45-480, subsection F and subsection P of this section, except as provided in subsection I of this section, a person who owns land that is legally entitled to be irrigated with groundwater pursuant to an irrigation grandfathered right and that is located within an active management area and outside of the exterior boundaries of the service area of a city, town or private water company has the right to retire such land from irrigation in anticipation of a future non-irrigation use and shall not forfeit or abandon the right to withdraw from or receive for such land the amount of groundwater calculated pursuant to subsection F of this section for a non-irrigation use if all of the following apply:

1. The land is held in the same ownership.
2. A development plan for the proposed non-irrigation use exists and is approved by the director within a reasonable time before or after the land is retired.
3. Either one of the following applies:
 - (a) The land has never been designated by the director as protected farmland pursuant to section 45-483, subsection A.
 - (b) The director designated the land as protected farmland pursuant to section 45-483, subsection A, the director subsequently revoked the designation pursuant to section 45-483, subsection C, paragraph 1 and the director determined at the time the designation was revoked that the conservation easement in the land was terminated because a partial or full condemnation of the land made farming impracticable.

B. Except as provided in subsection P of this section, the director shall approve the development plan required

by subsection A of this section if it appears that the land:

1. Has been or will be retired for the bona fide purpose of conserving or using water for a non-irrigation use that would otherwise continue to be used for irrigation of such land.
2. Has not been sold or taken out of production primarily because it would have been uneconomical to continue to withdraw water for irrigation.

C. The director shall not investigate the legality, other than pursuant to this chapter, feasibility or other factors involved in the proposed development plan and shall not disapprove a development plan on such grounds.

D. A development plan may be amended, and the director shall approve amendments if the criteria of this section are met.

E. A person proposing to retire irrigated land that is located inside or outside of an active management area may apply to the director for approval of a proposed development plan prior to the retirement of such land.

F. The amount of groundwater that may be withdrawn or received annually per acre pursuant to this section is the lesser of:

1. The current maximum amount of groundwater that may be used pursuant to the irrigation grandfathered right for the acre at the time it is retired, as calculated pursuant to section 45-465, subsection B.

2. Three acre-feet multiplied by the water duty acres in the farm in which the acre to which the right is appurtenant is located divided by the number of irrigation acres in the farm.

G. The right to withdraw or receive groundwater pursuant to this section is a non-irrigation grandfathered right

associated with retired irrigated land, or a type 1 non-irrigation grandfathered right as described in section 45-463.

H. Whether the land to which an irrigation grandfathered right is appurtenant is within the exterior boundaries of the service area of a city, town or private water company shall be determined as of the date the development plan is filed with the director.

I. A city or town in an initial active management area that holds a certificate of irrigation grandfathered right for acres of land that were acquired before January 1, 1989 in another initial active management area, and a groundwater replenishment district established under title 48, chapter 27 that purchases any of that land from the city or town, has the right, subject to subsections J, K, L and M of this section, to retire the land in anticipation of a future non-irrigation use and withdraw from any location on the land groundwater for non-irrigation use on the land or for transportation to another initial active management area for the purpose of demonstrating and providing an assured water supply if all of the following apply:

1. Before January 1, 1989, the city or town filed with the director a development plan pursuant to this section for all or a portion of the land.

2. Any withdrawals pursuant to this subsection from a new well, as defined in section 45-591, will comply with the rules adopted pursuant to section 45-598, subsection A to prevent unreasonably increasing damage to surrounding land or other water users from the concentration of wells.

3. Any withdrawals for transportation to another initial active management area for the purpose of demonstrating and providing an assured water supply are made from a depth to one thousand two hundred feet at the site or sites of the withdrawals, except that the wells may be drilled to any depth.

J. The amount of groundwater that may be withdrawn and used annually pursuant to subsection I of this section shall be determined pursuant to subsection F of this section. The maximum amount of such groundwater that may be included by the director in determining whether to designate or redesignate the city or town as having an assured water supply pursuant to section 45-576 equals one hundred times the total amount that may be withdrawn annually from the land.

K. A city or town that is eligible for a type 1 non-irrigation grandfathered right under subsection I of this section may:

1. Before retiring the land under subsection I of this section, substitute for the acres of land described in subsection I of this section the same number of acres owned by the city or town to which irrigation grandfathered rights are appurtenant and located in the same subbasin as the acres described in subsection I of this section.

2. At any time, elect to convert a type 1 non-irrigation grandfathered right appurtenant to land in the same subbasin and acquired by the city or town before January 1, 1989 under subsection A of this section to a type 1 non-irrigation grandfathered right under subsection I of this section.

L. In determining whether to designate or redesignate the city or town as having an assured water supply pursuant to section 45-576, based in whole or in part on groundwater transported from the active management area under subsection I of this section, the director shall include the amount of

groundwater that may be included under subsection J of this section and can be withdrawn from a depth to one thousand two hundred feet at the site or sites of the proposed withdrawals at a rate that, when added to the existing rate of withdrawals in the area, is not expected to cause the groundwater table at the site or sites of the proposed withdrawals to decline more than an average of ten feet per year during the one hundred year evaluation period.

M. In any designation or redesignation of an assured water supply pursuant to section 45-576, the projected use of the groundwater that is demonstrated to be available for assured water supply purposes under subsection L of this section is deemed to be consistent with achieving the management goal for the active management area. In any such designation or redesignation, the director shall determine whether the projected use is consistent with the management plan for the active management area by determining whether the projected use is consistent with the management plan of the active management area in which the city or town to be designated or redesignated is located.

N. Subsections A, B and H of this section do not apply to type 1 non-irrigation grandfathered rights acquired under subsection I of this section.

O. The director may restore retired irrigation grandfathered rights to land that was retired from irrigation under this section according to the following conditions and procedures:

1. Title to the retired land has reverted involuntarily, or voluntarily in lieu of foreclosure or forfeiture, from the person who retired it from irrigation, or a successor in title, to a previous owner.
2. The current owner of the retired land must apply to the director in writing stating:
 - (a) The history of the original retirement from irrigation under this section.
 - (b) The circumstances regarding the reversion of title to the current owner.
 - (c) Why restoring the irrigation grandfathered rights is necessary.
3. The director shall enter the application in the registry under section 45-479 and review the application. An administrative hearing shall be held in the active management area in which the use is located on whether to restore the irrigation grandfathered rights to the land.
4. The director must find that restoring the irrigation grandfathered rights:
 - (a) Will not adversely impact the management of the active management area.
 - (b) Is necessary to prevent unreasonable hardship to the current owner of the retired land.
5. If the director decides to restore the retired irrigation grandfathered rights to the land:
 - (a) The retired irrigation land regains its original irrigation grandfathered rights, with the debits and credits in its flexibility account at the time of retirement.
 - (b) The type 1 non-irrigation grandfathered right under this section is terminated.
 - (c) The development plan required by this section is terminated for purposes of this section.

P. Beginning January 1 of the calendar year following the year in which a groundwater replenishment district is required to submit its preliminary plan pursuant to section 45-576.02, subsection A, paragraph 1, the director shall withhold approval of a development plan that is submitted under this section by a person who seeks to obtain a non-irrigation grandfathered right associated with retired irrigated land located in the district unless at the time the plan is submitted:

1. The director has determined that the district's plan for operation is consistent with achieving the management goal, according to section 45-576.03, subsection E, and the designation has not expired.

2. The master replenishment account, as established in section 45-858.01, does not have a debit balance in an amount in excess of the amount allowed under section 45-576.01, subsection A, paragraph 3.

Q. 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.