

APPLICATION GUIDELINES

Water Exchange Permit

In accordance with A.R.S. §§ 41-1008 and 41-1079, the Department of Water Resources (Department) provides the following information regarding the application review process to assist applicants for a Water Exchange Permit.

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, copies of A.R.S. §§ 45-1041, 45-1042, 45-1043, 45-1044, 45-1045, and 45-1046 are attached.

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. **The initial fee for an Application for a Water Exchange Permit is \$1,000. Total fees for this application are based upon an hourly billable rate of \$118.00. If the costs of reviewing your application exceed \$1,000, you will be invoiced for the difference, up to a maximum total fee of \$10,000.** Payment may be made by cash, check, or credit card (if you wish to pay by credit card, please contact our Active Management Areas (AMA) division at 602-771-8585). Checks should be made payable to the Arizona Department of Water Resources. In addition to the hourly application fee, the applicant must pay any review-related costs associated with the application and 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. Review-related costs are: (1) costs associated with a pre-decision hearing on the application, such as court reporter services and facility rentals for the hearing, and (2) mileage expenses for a site visit conducted before issuing a decision on the application. Failure to enclose the initial application fee will cause the application to be returned. Fees for a Water Exchange Permit are authorized by A.R.S. § 45-1041 and A.A.C. R12-15-103.

Time Frames for Review of Your Application

As prescribed by A.R.S. §§ 45-1042(A), 45-1042(B) and 45-1042(C), 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

As prescribed by A.R.S. § 45-1042(A), within 105 days after receipt of your application, the Department will determine whether your application is administratively 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 of the requested information is received. If you do not supply the missing information within 60 days, the Department may deny your application.

2) **Substantive Review Time Frame**

As prescribed by A.R.S. §§ 45-1042(B) and 45-1042(C), within 195 days after your application is found to be administratively complete, the Department will 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 up to an additional 75 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 our AMA division at 602-771-8585.

Relevant Statutes

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; and
 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; or
 - (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; or
 - (d) surface water that is captured in the additional storage capacity created by modified Roosevelt dam after April 9, 1986; and
 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; and
 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; and
 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; or
 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.