

# Arizona

## WATER RIGHTS FACT SHEET

August 15, 2001

### **Water Rights System:**

Arizona's water law is based on the doctrine of prior appropriation, but it is administered based on a bifurcated system where surface water is regulated separately from ground water. There are basically four categories of water supplies available in Arizona: Colorado River water, surface water other than Colorado River water, ground water, and effluent. Each water supply is managed in a different manner. Colorado River water is allocated through the law of the river and Arizona's water banking program, surface water rights are based on "first in time, first in right," and groundwater rights vary depending on location. The Arizona water code is located in Title 45 of the Arizona Revised Statutes.

### *Responsible Agency:*

The Arizona Department of Water Resources (ADWR) is responsible for ensuring that dependable, long-term water supplies are available for Arizona. The ADWR oversees the use of surface and groundwater resources, administers state water laws (except those related to water quality), explores methods of augmenting water supplies to meet future demands, and works to develop public policies that promote conservation and distribution of water.

### **Application Process:**

In order to appropriate surface water, one must file an application with the Department of Water Resources (The types of applications available can be found in Appendix One.). The application must describe the source of the water, the location of the proposed diversion, the proposed place of use, the beneficial use, and the proposed quantity and periods of use. Upon confirmation of completeness and correctness, the ADWR provides a public notice and there is an opportunity for public protest. Protests must allege that the proposed allocation will impair a prior water right, will be contrary to public interest, or will pose a threat to public safety. If the application is protested the ADWR can, but is not required to, hold a public hearing. After the protest period and any hearing, the ADWR may either grant or reject the application. If the application is approved, a permit is granted. In general a permit is granted if the application does not conflict with vested rights, is not a threat to public safety, and is not contrary to the interests and welfare of the public. The issuance of a permit allows the permittee five years to complete the necessary construction and to put the water to beneficial use. Upon putting the water to beneficial use, the water right is perfected and the permittee is granted a Certificate of Water Right.

In order to withdrawal groundwater inside an active management area (see below ground water discussion), an application must be filed with the ADWR. The permit process is the same for groundwater as it is for surface water. Once a permit is issued, the permittee can withdraw a specific amount of water, from a specific location, for a specified purpose. The groundwater withdrawal permit is limited in the duration of use, but the applicant may apply to renew the permit.

*Point of Diversion and Change of Use Procedures:*

A point of diversion is required for all consumptive uses in Arizona, but may be changed through an application to the ADWR. A water right holder may also change the use of surface water, and this can be done in two ways. A new use may be added to the certificate while retaining the existing use, or the existing use can be changed to a new use. In order to add a new use, a permit must be applied for and obtained to appropriate the water for the new use. The application will be processed in the same manner as any other permit to appropriate surface water and the priority date of the new water right will be the date the application was filed. In order to change the existing use to a new use, the requirements depend upon on the use. If the existing use is for irrigation, domestic, or municipal use, the use may not be changed without the approval of the ADWR. If the existing use is for any other use, the ADWR must be notified of the change in use, but approval is not required. When a change in use has been effected, the new use retains the same priority date as the original use.

*State Recognized Beneficial Uses:*

The following beneficial uses are recognized in Arizona:

Domestic Municipal Irrigation Stockwatering Power	Mining Recreation Wildlife and Fish Ground Water Recharge
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**Groundwater:**

The separate administration of surface water and groundwater is a defining characteristic of water management in Arizona. The legal separation of these two types of waters requires a water manager to determine what type of water is at issue before determining which law is applicable. Historically, Arizonans have been pumping ground water faster than it is replaced naturally - a situation called overdraft. Because of the significant problems due to overdraft, the Arizona Ground Water Management Code (Code) was passed in 1980. The Code has three primary goals. The first is to control the severe overdraft currently occurring in many parts of the state. The second goal is to provide a means to allocate the state's limited ground water resources. The third goal is to augment Arizona's groundwater through water supply development.

To accomplish these goals, a comprehensive management framework was established within the Arizona Department of Water Resources. This management framework consists of three levels of water management to respond to different groundwater conditions. The lowest level of management includes general provisions that apply statewide. The next level applies to Irrigation Non-Expansion Areas (INAs). The highest level of management, with the most extensive provisions, is applied to Active Management Areas (AMAs) where groundwater overdraft is most severe. The boundaries of AMAs and INAs are generally defined by groundwater basins. There are currently five designated AMAs in Arizona and they are the areas surrounding Phoenix, Tucson, Pinal, Santa Cruz, and Prescott. INAs were established in rural farming areas where the groundwater overdraft problems are less severe. There are currently three INAs: Douglas, Joseph City, and the Harquahala INA. New AMAs and INAs can be designated by the ADWR, if necessary, to protect the water supply or on the basis of a public vote held by local residents of an area.

Outside of AMAs and INAs, groundwater may be withdrawn and used for reasonable and beneficial use without a permit. Use of this groundwater, however, does require the filing of a notice of intent to drill with ADWR. Within AMAs, groundwater use requires a permit. Groundwater withdrawal permits (which allow for new use of water) are limited to certain specified activities. Arizona groundwater law requires certain criteria to be met for each type of withdrawal

before a permit can be issued. In addition to rights granted through permits, three other types of groundwater withdrawal rights exist within AMAs. The first is grandfathered ground water rights. These rights are based on historic use of groundwater for five years prior to the designation of the AMA. Most grandfathered rights are appurtenant to the land, but some are not and may be purchased or leased from the owner. Withdrawal rights can also be granted to municipal water providers, private water companies, and irrigation districts within AMAs, enabling them to provide service to their customers. Finally, small domestic wells are exempt from the regulations within an AMA. Users of small domestic wells may withdraw ground water for non-irrigation purposes without a permit.

Groundwater use and management in each AMA is coordinated by a Ground Water Users Advisory Council appointed by the governor. These councils develop water conservation strategies within the AMA. The requirement of each AMA is to achieve a "safe yield" which occurs when the amount water consumed from the aquifer equals the amount of water recharged to the aquifer.

### **Water Rights:**

Water rights in Arizona can be held by any legal entity. There are no restrictions on who can hold water rights, thus the owner can be an individual, group of individuals (related or not), corporations, government agencies, etc. A surface water right is considered to be attached to the land, and therefore, may not be transferred without approval. The owner of a right must apply to the ADWR to sever and transfer the use of a water right to a new location. If the water right was granted for domestic, municipal, or irrigation use, the holder must be granted approval from the ADWR before changing the use of the water.

An owner of a water right may voluntarily abandon the right, or the right may be found to have been forfeited if no use is made of the water for five consecutive years. Water that is abandoned or forfeited reverts to the public and becomes available for new appropriation.

### **Adjudications:**

General stream adjudications in Arizona are State Superior Court determinations of the status of all rights to surface water. These determinations are based upon state law and federal claims to water within the river system. The Department of Water Resources serves as the technical advisor to the State Superior Court and provides administrative assistance. Adjudications quantify and prioritize surface water rights within the watersheds. The goals of the adjudications are to assess all uses in priority and quantity for improved water management and to integrate federal reserved rights in the state allocation system.

#### *Ongoing Adjudications:*

There are currently two adjudications pending in Arizona, the Gila River and the Little Colorado River.

### **Instream Flows:**

The Arizona Legislature amended its water codes to add wildlife and fish in 1941 and recreation in 1962 as uses for which "any person" could appropriate water. In 1976, the Arizona Court of Appeals, in *McClellan v. Jantzen* found that these amendments constituted instream appropriation and these rights could be held without a diversion.

Rights for instream flow can be obtained through new appropriation. The State has developed a process for instream flow appropriation that requires an applicant to collect at least one year of flow data in order to submit an application. In addition, the applicant must submit a report of the flow measurements and conclusions of expected benefits. Upon submitting this data, a temporary

permit is issued with the requirement that an additional four years of flow data be collected. Once this data is collected, an instream flow right may be issued. The filing date of the application establishes the priority date as it does for other appropriation applications.

It is still unclear whether existing water rights can be transferred to instream flow rights. The law states that water rights may be "transferred for use for ... wildlife purposes, including fish" (ARS 45-172), but no instream flow transfers have been attempted. There have been several temporary leases of stored water to augment stream flows, but these leases occurred outside of the transfer process.

*Recognized Beneficial Uses for Instream Flow:*

Arizona recognizes stream flow maintenance to support wildlife, fish, and recreation as appropriate beneficial uses for instream flow.

*Holdership of Instream Flow Water Rights:*

Both public agencies and private organizations may hold instream flow rights. Although not legislatively bound to do so, the Arizona Department of Water Resources has so far limited the ownership of instream flow rights in the private sector to public interest groups such as the Nature Conservancy.

*Quantification Requirements and Procedures:*

For a more detailed description of Arizona's instream flow program as well as the quantification and monitoring methods and procedures, see "A Guide to Filing Applications for Instream Flow Water Rights in Arizona", Arizona Department of Water Resources, November, 1997.

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**Appendix One: Types of Applications**

- \* Flex Transfer Form - (In District)
- \* Flex Transfer Form - (Out of District)
- \* Arizona Department of Water Resources Report on the Final Decision and Order That the Prescott Active Management Area Is No Longer at Safe-Yield
- \* Arizona Water Banking Authority Study Commission Interim Report
- \* Application for a certificate of assured water supply. (Revised 04/20/2001).
- \* Notification of change of ownership of an irrigation grandfathered right
- \* Notification of change of ownership of a type 1 non-irrigation grandfathered right
- \* Notification of change of ownership or point of withdrawal for a type 2 non-irrigation grandfathered right
- \* Notification of lease of a type 2 non-irrigation grandfathered right
- \* Notification of change of ownership of an irrigation authority
- \* Notification of extinguishment of a grandfathered Ground water right for assured water supply credits
- \* Notification of purchase or sale of flexibility account credit