

State of Arizona
Senate
Fifty-third Legislature
First Regular Session
2017

CHAPTER 189
SENATE BILL 1412

AN ACT

AMENDING SECTIONS 45-182, 45-251, 45-254, 45-256 AND 45-257, ARIZONA REVISED STATUTES; REPEALING SECTION 45-258, ARIZONA REVISED STATUTES; AMENDING SECTION 45-261, ARIZONA REVISED STATUTES; RELATING TO GENERAL ADJUDICATION OF WATER RIGHTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 45-182, Arizona Revised Statutes, is amended to
3 read:

4 45-182. Claim of right to withdraw, divert or use public
5 waters; exception; administration by director of
6 water resources

7 A. Except as provided by subsections B and E of this section, all
8 persons who before ~~the effective date of this amendment to this section~~
9 MARCH 17, 1995 were using and claiming the right to withdraw or divert and
10 make beneficial use of public waters of the state based on state law shall
11 file not later than ninety days before the date of the filing of the
12 director's final report pursuant to section 45-256 for the subwatershed in
13 which the claimed right is located a statement of claim for each water
14 right asserted, on a prescribed form. The filing by any person on behalf
15 of its members or users shall constitute the required filing of the
16 individual users under this section.

17 B. The requirement of the filing of a statement of claim shall not
18 apply to any of the following:

19 1. Any water rights issued pursuant to a permit or certificate
20 issued pursuant to law.

21 2. Rights acquired to the use of the mainstream waters of the
22 Colorado river.

23 3. Rights acquired or validated by contract with the United States
24 of America, court decree or other adjudication.

25 ~~4. Rights to the use of public waters of the state that are~~
26 ~~determined to be de minimis pursuant to section 45-258.~~

27 C. The director succeeds to the administration of this article and
28 may adopt such rules as may be necessary to do so. Such rules supersede
29 those previously adopted by the state land department and the Arizona
30 water commission relating to this article.

31 D. A person who before ~~the effective date of this amendment to this~~
32 ~~section~~ MARCH 17, 1995 was using and claimed the right to withdraw or
33 divert and make beneficial use of public waters of the state based on
34 state law and who is exempt from filing pursuant to subsection B of this
35 section is permitted to file a statement of claim of right under this
36 article for each water right asserted not later than ninety days before
37 the date of filing of the director's final report pursuant to section
38 45-256 for the subwatershed or federal reservation in which the claimed
39 right is located. Any statement of claim of right filed pursuant to this
40 section may be amended at any time ~~prior to~~ BEFORE ninety days before the
41 filing of the director's final report pursuant to section 45-256 for the
42 subwatershed or federal reservation in which the claimed right is located.

43 E. Water right claims may be asserted under this article for uses,
44 diversions or withdrawals of public waters of the state based on state law
45 and initiated at any time before ~~the effective date of this amendment to~~

1 ~~this section~~ MARCH 17, 1995. A claim may not be asserted under this
2 article for uses, diversions or withdrawals of public waters of the state
3 initiated on or after ~~the effective date of this amendment to this section~~
4 MARCH 17, 1995. Any person who before ~~the effective date of this~~
5 ~~amendment to this section~~ MARCH 17, 1995 filed a statement of claim for a
6 water right under this article is not required to file another statement
7 of claim for the same water right after ~~the effective date of this~~
8 ~~amendment to this section~~ MARCH 17, 1995.

9 Sec. 2. Section 45-251, Arizona Revised Statutes, is amended to
10 read:

11 45-251. Definitions

12 In this article, unless the context otherwise requires:

13 1. "Domestic use" means a single appropriative water right serving
14 a residence, or multiple residences up to a maximum of three residential
15 connections, for household purposes with associated irrigation of lawns,
16 gardens or landscape in an amount of not more than one-half acre per
17 residence. Domestic use does not include the use of water delivered to a
18 residence or multiple residences by a city, town, private water company,
19 irrigation provider or ~~a~~ special taxing district established pursuant to
20 title 48.

21 2. "General adjudication" means an action for the judicial
22 determination or establishment of the extent and priority of the rights of
23 all persons to use water in any river system and source.

24 3. "Person" means an individual, a partnership, a corporation, a
25 municipal corporation, the state of Arizona or any political subdivision,
26 the United States of America, an Indian tribe or a community or any other
27 legal entity, public or private.

28 4. "Potential claimant" means all persons claiming water rights or
29 on whose behalf claims to water rights are asserted.

30 5. "Prior decree" means any judgment or decree **THAT IS** entered by a
31 court of competent jurisdiction **AND** that applies to the water right claim
32 or use that is subject to adjudication.

33 6. "Prior filing" means a notice of appropriation recorded with the
34 county recorder or the recorder's predecessor, an application to
35 appropriate filed pursuant to section 45-152, a statement of claim filed
36 pursuant to article 7 of this chapter or a claim of water right filed
37 pursuant to article 10 of this chapter, any or all of which reasonably
38 relate to the water right claim or use that is subject to adjudication.

39 ~~For purposes of the summary adjudication of de minimis uses prescribed by~~
40 ~~section 45-258, prior filing includes a statement of claimant filed~~
41 ~~pursuant to this article.~~

42 7. "River system and source" means all water appropriable under
43 section 45-141 and all water subject to claims based ~~upon~~ **ON** federal law.

1 8. "Small business use" means a single appropriative water right
2 serving one business, with associated irrigated acreage, if any, in an
3 amount of not more than one-half acre and a total quantity of use of not
4 more than three acre-feet per year.

5 9. "SMALL WATER USE CLAIM" MEANS ANY CLAIM FOR A STOCKPOND, STOCK
6 WATERING USE OR WATER WELL THAT IS IDENTIFIED IN A STATEMENT OF CLAIMANT
7 FILED IN THE ADJUDICATION PURSUANT TO SECTION 45-254 AND THE CLAIM IS FOR
8 ANY OF THE FOLLOWING SPECIFIC CONDITIONS:

9 (a) A STOCKPOND HAVING A CAPACITY OF NOT MORE THAN FIFTEEN ACRE
10 FEET THAT IS USED SOLELY FOR WATERING LIVESTOCK OR WILDLIFE AND THAT
11 CONTAINS WATER THAT IS APPROPRIABLE UNDER SECTION 45-141, SUBSECTION A.

12 (b) ANY WELL THAT IS EQUIPPED SO THAT IT HAS A MAXIMUM PUMPING
13 CAPACITY OF NOT MORE THAN THIRTY-FIVE GALLONS PER MINUTE.

14 (c) A STOCK WATERING USE BY LIVESTOCK AND WILDLIFE WHERE THE PLACE
15 OF STOCK WATERING USE IS EITHER DIRECTLY FROM A NATURALLY OCCURRING BODY
16 OF WATER, SUCH AS AN UNDEVELOPED SPRING, CIENEGA, SEEP, BOG, LAKE,
17 DEPRESSION, SINK OR STREAM, OR FROM A DEVELOPED FACILITY THAT IS NOT A
18 STOCKPOND OR RESERVOIR AND THAT IS SERVED BY A DIVERSION OF WATER THAT IS
19 APPROPRIABLE UNDER SECTION 45-141, SUBSECTION A, INCLUDING A DRINKER,
20 TROUGH, PIPELINE, SPRING BOX OR OTHER DEVELOPED FACILITY.

21 ~~9.~~ 10. "Stockpond" means an on-channel or off-channel impoundment
22 of any size that stores water that is appropriable under section 45-141,
23 subsection A and that is for the sole purpose of watering livestock and
24 wildlife.

25 ~~10.~~ 11. "Stock watering use" means the consumption of water by
26 livestock and wildlife, either:

27 (a) Directly from a naturally occurring body of water, such as an
28 undeveloped spring, cienega, seep, bog, lake, depression, sink or stream.

29 (b) From small facilities, other than a stockpond, that are served
30 by a diversion of water that is appropriable under section 45-141,
31 subsection A.

32 Sec. 3. Section 45-254, Arizona Revised Statutes, is amended to
33 read:

34 45-254. Statement of claimant; filing; information to be
35 included; verification; failure to file; fees

36 A. Each potential claimant who is served shall present in writing
37 the particulars of his claim on the court-approved statement of claimant
38 form and shall file the statement of claimant form with the court within
39 ninety days of the date of service, unless otherwise ordered by the court.
40 The court may extend the time for good cause. A duplicate of each
41 statement of claimant shall be made available by the clerk of the court to
42 the director.

43 B. The statement of claimant form may be filed by a person on
44 behalf of its members or users and shall constitute the required filing of
45 its members or users.

1 C. The statements of claimant shall include the following
2 information, where appropriate:

3 1. The name and mailing address of the potential claimant.

4 2. The name of the specific river, stream, tributary, wash or other
5 source from which the right to divert or make use of water is claimed.

6 3. The quantities of water and the periods of time during the year
7 for which use is claimed.

8 4. If distributing works are used or required, the date of
9 beginning and completion of construction or of enlargements and the
10 dimensions of the ditch as originally constructed and as enlarged.

11 5. If the use is for irrigation, the amount of land reclaimed the
12 first year and in subsequent years, and the amount and general location of
13 the land, the character of the soil and the kind of crops cultivated.

14 6. The legal description of the point or points of diversion and
15 place of use of the waters to the nearest forty-acre tract or by other
16 appropriate description and such map or plat showing the relative points
17 of diversion and place of use as may be required.

18 7. The purpose and extent of use.

19 8. The time of the initiation of the right and the date when water
20 was first used for beneficial purposes for the various amounts and times
21 claimed in paragraph 3 of this subsection.

22 9. The legal basis for the claim.

23 D. The statement of claimant shall be verified by the claimant or
24 the person authorized to file as provided in subsection B of this section.

25 E. After the date by which statements of claimant are required to
26 be filed as set forth in the summons or in an order of the court, the
27 filing of a statement of claimant or an amendment is permitted under the
28 following circumstances:

29 1. At any time up to ninety days before the publication of the
30 director's final report pursuant to section 45-256, subsection B for a
31 subwatershed or federal reservation within the river system and source, a
32 person may file a statement of claimant or an amendment to a statement of
33 claimant with the director without leave of the court.

34 2. After the expiration of the ninety day period prescribed by
35 paragraph 1 of this subsection and before the conclusion of hearings by
36 the master for a subwatershed or federal reservation within the river
37 system and source, a person may assert a claim for a water use within the
38 subwatershed or federal reservation without leave of the court by filing
39 the original of the statement of claimant or amended statement of claimant
40 with the director and a notice of filing with the court. After the
41 conclusion of hearings on an existing claim, an amendment to that existing
42 statement of claimant may only be permitted as prescribed by paragraph 3
43 of this subsection. If a statement of claimant or an amendment to a
44 statement of claimant is filed after the expiration of the ninety day

1 period ~~and except as provided in section 45-258~~, other parties may object
2 to the elements of the claim or amended claim.

3 3. After the master has completed hearings on a subwatershed or
4 federal reservation within the river system and source and has filed a
5 report with the court for the entire subwatershed or federal reservation
6 pursuant to section 45-257, a person may not assert a late claim for a
7 water right within that subwatershed or reservation as a matter of right.
8 A person may request the court's permission to intervene in the
9 adjudication and file a statement of claimant with the director. The
10 court may grant the motion if it finds that the intervention would not
11 unduly delay or prejudice the adjudication of the rights of the original
12 parties. An amendment to an existing statement of claimant after the
13 filing of the master's report for the entire subwatershed or federal
14 reservation is permitted only by leave of the court in its discretion and
15 on motion of the party seeking an amendment. ~~Except as provided in~~
16 ~~section 45-258~~, Other parties may object to the elements of a claim or an
17 amended claim filed pursuant to this paragraph.

18 F. On entry of the final decree pursuant to section 45-257, any
19 potential claimant who is properly served and who failed to file a
20 statement of claimant as prescribed by this article for any water right or
21 whose motion for permissive intervention was finally denied by the court
22 is barred and estopped from subsequently asserting any right that was
23 previously acquired on the river system and source and that was not
24 included in a statement of claimant and forfeits any rights to the use of
25 water in the river system and source that were not included in a properly
26 filed statement of claimant.

27 G. On ~~the effective date of this amendment to this section~~ MARCH
28 17, 1995, all statements of claimant previously filed in an adjudication
29 pending under this article are deemed to be timely filed. An objection to
30 the timeliness of any statement of claimant that was filed before ~~the~~
31 ~~effective date of this section~~ MARCH 17, 1995 in an adjudication pending
32 under this article is not permitted.

33 H. The fee for filing a statement of claimant by an individual is
34 twenty dollars and by a corporation, municipal corporation, the state or
35 any political subdivision, an association or partnership is two cents for
36 every acre-foot of water claimed, or twenty dollars, whichever is greater.
37 The director shall review the statements of claimant and the amount of
38 fees paid as to each and report to the court or master the sufficiency of
39 the fees paid with respect to each statement of claimant. A claim shall
40 not be considered by the court or the master unless all fees with respect
41 to such claim have been fully paid in accordance with the provisions of
42 this article. Fees shall not be imposed ~~उपरा~~ ON any Indian tribe,
43 community or allottee personally appearing in the general adjudication to
44 assert claims to water.

1 Sec. 4. Section 45-256, Arizona Revised Statutes, is amended to
2 read:

3 45-256. Technical assistance of director; report

4 A. The court or the master shall request technical assistance from
5 the director in all aspects of the general adjudication with respect to
6 which the director possesses hydrological or other expertise. In
7 rendering such technical assistance, the director shall expeditiously:

8 1. Identify the hydrological boundaries of the river system and
9 source and the names and addresses of all reasonably identifiable
10 potential claimants. In identifying potential claimants, the director
11 ~~shall~~, at a minimum, SHALL identify as far as reasonably possible the
12 current record owners of all real property within the geographical scope
13 of the adjudication.

14 2. Locate, procure and make available all public and other records
15 relevant to determination of any factual or legal issues.

16 3. Conduct a general investigation or examination of the river
17 system and source.

18 4. Investigate or examine the facts pertaining to the claim or
19 claims asserted by each claimant.

20 ~~5. Identify those water right claims or uses within the river~~
21 ~~system and source that are de minimis uses as prescribed by section~~
22 ~~45-258.~~

23 ~~6.~~ 5. Make a map or plat on a scale not less than one inch to the
24 mile adequate to show with substantial accuracy the course of the river
25 system and source, the location of the ditch or canal diverting water from
26 such river system and source, and the legal subdivisions of lands ~~which~~
27 THAT have been irrigated or are susceptible to irrigation from the ditches
28 and canals already constructed. Unless a prior decree provides otherwise,
29 irrigation water quantities shall be assigned in the director's report
30 based on the following on-farm water duties:

31 (a) A water duty of six acre-feet per acre per year for lands
32 located below three thousand feet in elevation.

33 (b) A water duty of five acre-feet per acre per year for lands
34 located from three thousand feet through five thousand feet in elevation.

35 (c) A water duty of four acre-feet per acre per year for lands
36 located above five thousand feet in elevation.

37 Transportation losses from the point of diversion to the field shall be in
38 addition to the on-farm water duty determined pursuant to this
39 paragraph. Irrigation water quantities that are assigned by the director
40 as prescribed by this paragraph shall be presumed correct by the master
41 and the court and shall be incorporated in the decree, unless rebutted by
42 a preponderance of the evidence offered by a claimant who has made a
43 proper objection under subsection B of this section.

1 ~~7.~~ 6. Identify water quantities for diversions and reservoir
2 facilities. Unless a prior decree provides otherwise, the rate of water
3 diversions shall be measured by the maximum theoretical capacity of the
4 diversion facilities, and reservoir storage quantities shall be identified
5 based on the maximum controlled capacity of the reservoir. Water
6 quantities for diversions and reservoir facilities that are assigned by
7 the director as prescribed by this paragraph shall be presumed correct by
8 the master and the court and incorporated in the decree, unless rebutted
9 by a preponderance of the evidence offered by a claimant who has made a
10 proper objection under subsection B of this section.

11 ~~8.~~ 7. Take such other steps and gather such other information as
12 may be necessary or desirable for a proper determination of the relative
13 rights of the parties.

14 B. The technical assistance rendered by the director shall be set
15 forth in summary form on a claim by claim basis in a report prepared by
16 the director and filed with the court or the master, which shall then be
17 available for inspection by any claimant. The report shall list all
18 information that is obtained by the director and that reasonably relates
19 to the water right claim or use investigated. The report shall also
20 include the director's proposed water right attributes for each individual
21 water right claim or use investigated as prescribed by this article. If
22 no water right is proposed in connection with an individual water right
23 claim or use, the director's recommendations shall so indicate. Any
24 claimant may file with the court or the master written objections to the
25 report or any part of the report within one hundred eighty days of the
26 date on which the report was filed. An objection shall specifically
27 address the director's recommendations regarding the particular water
28 right claim or use investigated. The court or master shall summarily
29 dismiss with prejudice objections that do not comply with this subsection.
30 Each claimant who has filed timely written objections that comply with
31 this subsection shall have a fair and reasonable opportunity to present
32 evidence in support of or in opposition to those recommendations of the
33 director. Any claimant may present evidence in support of the claimant's
34 claim.

35 C. Those portions of the report that do not contain the director's
36 recommendations for the water rights claims and uses investigated shall
37 not be summarily admitted into evidence but may be offered into evidence
38 for any purpose relevant to the determination of a water right claim or
39 use that is subject to adjudication. The appropriator and any other
40 claimant who has filed an objection to the water right as prescribed by
41 subsection B of this section shall have a fair and reasonable opportunity
42 to present evidence in support of or in opposition to those portions of
43 the director's report before the conclusion of hearings on the water
44 right. If admitted into evidence over an objection, those portions of the
45 report shall not be given any presumption of correctness.

1 D. Information that is included in the director's report and that
2 describes a water right claim or use of five hundred acre-feet or less per
3 year for any type of use claimed shall be summarily admitted into
4 evidence. If no conflicting evidence is offered, the director's proposed
5 attributes of the water right shall be deemed correct and incorporated
6 into the decree. If conflicting evidence is presented, the director's
7 proposed attributes of the water right shall be given the weight deemed
8 appropriate by the master and the court consistent with this article.

9 E. Information that is included in the director's report and that
10 describes a water right claim or use of more than five hundred acre-feet
11 per year shall not be summarily admitted into evidence. If offered into
12 evidence and if admitted over objection, it shall be given no presumption
13 of correctness.

14 F. Claimants who are in agreement with those parts of the report
15 that describe the claimants' water right claims or uses are not required
16 to file objections to the report and may rely on the report as evidence of
17 their water right. If the owner of a water right claim or use provides
18 evidence in support of the report, that evidence shall be presented after
19 all evidence has been introduced by the objectors.

20 G. On request of any party, the director shall present evidence
21 concerning the facts stated in the report. ~~Nothing in~~ This section shall
22 NOT be construed to prevent the court or the master from issuing a
23 protective order on a showing of good cause.

24 H. ~~Prior to~~ BEFORE filing the report with the court or the master
25 as provided in subsection B of this section, the director shall prepare a
26 preliminary report. The director shall give notice to each water claimant
27 that the preliminary report is available for inspection and comment. Upon
28 expiration of the period provided for timely comment, the director shall
29 revise the preliminary report as may be appropriate and shall file the
30 report with the court or the master in accordance with subsection B of
31 this section. At least one hundred twenty days before the final report is
32 to be filed, the director shall file with the court a notice stating the
33 date on which the final report is to be filed. The director shall adopt
34 such rules as may be necessary to ensure that adequate notice is given,
35 that the preliminary report is sufficiently available for inspection by
36 the water claimants and that provisions are made for adequate time and
37 procedure for comment on the preliminary report.

38 Sec. 5. Section 45-257, Arizona Revised Statutes, is amended to
39 read:

40 45-257. Hearings; report of master; final judgment by court;
41 administration and enforcement of decree

42 A. The master shall:

43 1. After due notice, conduct such hearings and take such testimony
44 as shall be necessary to determine the relative water rights of each
45 claimant. THE DETERMINATION OF WATER RIGHTS OF ALL SMALL WATER USE CLAIMS

1 IN ANY SPECIFIC SUBWATERSHED SHALL BE DEFERRED UNTIL ALL OTHER CLAIMS IN
2 THAT SUBWATERSHED ARE DETERMINED BY THE SUPERIOR COURT IN THE COURSE OF
3 THE ADJUDICATION, EXCEPT THAT FOR A CLAIMANT WHO ASSERTED A SMALL WATER
4 USE CLAIM AND WHO ASSERTED OTHER WATER USE CLAIMS IN THE SAME SUBWATERSHED
5 THAT ARE NOT SMALL WATER USE CLAIMS, THE CLAIMANT'S SMALL WATER USE CLAIM
6 SHALL BE DETERMINED IN CONJUNCTION WITH THE DETERMINATION OF THAT
7 CLAIMANT'S OTHER CLAIMS. THIS PARAGRAPH DOES NOT PRECLUDE THE SUPERIOR
8 COURT OR THE MASTER FROM APPROVING SETTLEMENTS OF SMALL WATER USE CLAIMS
9 AT ANY TIME DURING THE COURSE OF THE ADJUDICATION.

10 2. SUBJECT TO PARAGRAPH 1 OF THIS SUBSECTION, for all
11 determinations, recommendations, findings of fact or conclusions of law
12 issued, prepare and file with the court a report in accordance with rule
13 53(g) of the Arizona rules of civil procedure, which shall contain those
14 determinations, recommendations, findings of fact and conclusions of law.
15 Each claimant may file written objections with the court to any rule 53(g)
16 report within the later of sixty days after the report is filed with the
17 court or ~~within sixty days after the effective date of this amendment to~~
18 ~~this section~~ BEFORE MAY 17, 1995. If the report covers an entire
19 subwatershed or federal reservation, each claimant may file with the court
20 written objections to the report within one hundred eighty days of the
21 date on which the report was filed with the court.

22 3. Maintain under his control all records and documents at such
23 locations as may be designated by the court.

24 B. The court, ~~upon~~ ON review of the report and in accordance with
25 SUBSECTION A, PARAGRAPH 1 OF THIS SECTION AND rule 53 of the Arizona rules
26 of civil procedure, shall:

27 1. Determine the extent and priority date of and adjudicate any
28 interest in or right to use the water of the river system and source,
29 provided that when rights to the use of water or dates of appropriation
30 have previously been determined in a prior decree of a court, the court
31 shall accept the determination of such rights and dates of appropriation
32 as found in the prior decree unless such rights have been abandoned.
33 Except if otherwise provided in an applicable prior filing, certificate of
34 water right or prior decree, the decreed capacity of a reservoir includes
35 the right to continuous filling and refilling in priority throughout the
36 year.

37 2. Establish, in whatever form determined to be most appropriate by
38 the court, one or more tabulations or lists of all water rights and their
39 relative priorities on the river system and source.

40 ~~3. Identify all claims and uses determined to be de minimis uses~~
41 ~~within the river system and source as prescribed by section 45-258.~~

42 ~~4.~~ 3. Refer the final judgment or decree to the director for
43 administration and enforcement under the continuing jurisdiction of the
44 court.

1 ~~5.~~ 4. Make appropriate orders to ensure that the entire record of
2 the general adjudication is preserved in an accessible and usable form.

3 ~~6.~~ 5. Record a certified copy of the final judgment or decree in
4 each county within the geographical scope of the general adjudication
5 which shall constitute constructive notice of the contents of the judgment
6 or decree.

7 C. Claimants may enter into agreements regarding the attributes,
8 satisfaction or enforcement of their water rights in relation to each
9 other. An agreement shall be binding only among the parties to that
10 agreement. On request of all parties to the agreement, an agreement shall
11 be incorporated by reference into the final judgment or decree without
12 modification. Any modification to an agreement is valid only if agreed to
13 by all parties to the agreement and is binding only among the parties to
14 that agreement.

15 D. If ownership of a right to use water for stock watering or
16 stockpond purposes or for domestic use on a ranch or farm on state land is
17 disputed in a general adjudication of the rights to use the waters of a
18 river system and source, the water right shall be adjudicated in the name
19 of a claimant other than the state if both of the following apply:

20 1. The point of diversion and the place of use, or the perfection
21 of the water right by the appropriator, comply with section 37-321.01,
22 subsection A.

23 2. The state land commissioner has been afforded the opportunity to
24 resolve the claim.

25 E. In the event that the state and a private claimant that claims
26 ownership of the water right under subsection D of this section dispute
27 the ownership of the right to use water on state land, the evidentiary
28 presumptions of section 45-261 shall not apply to the resolution of the
29 dispute. Following the determination of ownership by the master or court,
30 the evidentiary presumptions of section 45-261 shall apply to the
31 determination of the remaining attributes of the water right.

32 F. If ownership of a right to use water on land owned by the United
33 States is disputed in a general adjudication of the rights to use the
34 waters of a river system and source, that water right shall be adjudicated
35 in accordance with section 45-151, subsections E and F.

36 Sec. 6. Repeal

37 Section ~~45-258~~, Arizona Revised Statutes, is repealed.

38 Sec. 7. Section 45-261, Arizona Revised Statutes, is amended to
39 read:

40 ~~45-261.~~ Presumption in favor of prior filings and decrees

41 A. Except as otherwise specifically provided in this article and to
42 the extent that water rights have not been forfeited or abandoned, the
43 director, the master and the court shall apply the following evidentiary
44 rules in determining the attributes of water rights claimed pursuant to
45 this article:

1 1. The court shall accept information in an applicable prior decree
2 as prescribed by section 45-257, subsection B, paragraph 1.

3 2. Information in an applicable prior filing shall be presumed
4 correct unless reported by the director to be clearly erroneous.

5 3. If information in a prior decree conflicts with information in
6 one or more applicable prior filings, the court shall accept the
7 information in the prior decree as prescribed by section 45-257,
8 subsection B, paragraph 1.

9 4. If information in applicable prior filings conflicts, the
10 information most favorable to the claimant shall be presumed correct
11 unless reported by the director to be clearly erroneous.

12 5. If there is no information in any applicable prior filing or
13 decree or if the court finds that information contained in an applicable
14 prior filing regarding a water right attribute is clearly erroneous, the
15 court shall determine the attribute. In making a determination pursuant
16 to this subsection, the court may use the director's report, statement of
17 claimant information, information obtained in claimant interviews, aerial
18 photographs, satellite technology, historical records, maps, technical
19 data or other relevant information in evidence.

20 B. ~~Except as provided in section 45-258,~~ The presumption in favor
21 of information contained in an applicable prior filing may be rebutted by
22 any party who has filed a proper objection pursuant to section 45-256,
23 subsection B and on a showing of clear and convincing evidence.

24 C. If there is a conflict in applicable prior filings regarding the
25 ownership of a water right and multiple parties have filed applicable
26 statements of claimant, the presumption in favor of information in
27 applicable prior filings does not apply to the determination of ownership.
28 Any claimant may offer that information to support or refute a claim of
29 water right ownership. All other attributes of the water right shall be
30 determined pursuant to the presumptions in this section.

31 D. Section 45-256, subsections D and E apply to the evidentiary
32 weight given to the following determinations made by the director:

33 1. That information contained in a prior filing is clearly
34 erroneous as it relates to the water right claim or use being
35 investigated.

36 2. That no water right was initiated or perfected under the
37 applicable federal, state or territorial law.

38 3. That a water right was forfeited or abandoned.

39 E. The director's report shall contain the basis for determinations
40 made pursuant to subsection D of this section.

APPROVED BY THE GOVERNOR APRIL 24, 2017.

S.B. 1412

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 24, 2017.