

REFERENCE TITLE: adjudication statutes; unconstitutional provisions; repeal

State of Arizona  
House of Representatives  
Fifty-fourth Legislature  
First Regular Session  
2019

## **HB 2477**

Introduced by  
Representative Bowers

### **AN ACT**

AMENDING SECTIONS 37-321.01, 45-141, 45-151, 45-153, 45-156, 45-162, 45-164, 45-187, 45-188, 45-189, 45-251, 45-256, 45-257 AND 45-261, ARIZONA REVISED STATUTES; REPEALING SECTION 45-262, ARIZONA REVISED STATUTES; AMENDING SECTION 45-263, ARIZONA REVISED STATUTES; RELATING TO WATERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 37-321.01, Arizona Revised Statutes, is amended  
3 to read:

4 37-321.01. Rights to water used on state land; definition

5 A. A permit or certificate for the right to use water on state land  
6 for stock watering or stockpond purposes, or for domestic use on a ranch  
7 or farm, shall be issued in the name of the state of Arizona except as  
8 follows:

9 1. If the place of use is located on state land, but the point of  
10 diversion is located on patented land, the certificate or permit shall be  
11 issued to the owner of the patented land.

12 2. If the place of use is located on state land, but the point of  
13 diversion is located on land owned by the United States, the permit or  
14 certificate shall be issued to the lessee of the state land.

15 3. If the water right was perfected under the law applicable at the  
16 time that the right was initiated by the lessee or its predecessors in  
17 interest for use on land that was owned by the United States before that  
18 land was designated for transfer to the state of Arizona, the certificate  
19 or permit shall be issued to the lessee of the state land.

20 B. The commissioner and the person or persons asserting that a  
21 permit or certificate should be issued as prescribed by this section may  
22 stipulate as to the ownership of a water right. The stipulation or  
23 agreement shall be accepted by the department of water resources.

24 C. An application for a certificate to appropriate water for use on  
25 state land as provided in subsection A of this section shall not be  
26 approved nor shall a permit or certificate be issued pursuant to this  
27 section by the director of the department of water resources, until the  
28 commissioner has been given the opportunity to review and object to the  
29 permit or certificate. Section 45-164, subsection C applies to any  
30 objections made pursuant to this subsection.

31 D. No person shall have any legal interest in or the right to lease  
32 state land based solely upon ownership of a water right acquired or  
33 confirmed under this section or section 45-257, subsection ~~D~~ C.

34 E. No water right for stock watering or stockpond purposes, or for  
35 domestic uses on a ranch or farm that is acquired by a lessee pursuant to  
36 subsection A, paragraph 3 of this section, may be severed from its place  
37 of use on state land and transferred for use on other land without prior  
38 written consent of the commissioner. The commissioner may withhold  
39 consent if the commissioner finds that the use of state land for grazing  
40 purposes is dependent upon the water right that is proposed to be  
41 transferred. A lessee's successor in interest or the state shall pay  
42 compensation to a lessee of state land who is entitled to a domestic,  
43 stock watering or stockpond water right pursuant to subsection A,  
44 paragraph 3 of this section, if the lessee is denied reasonable use of the  
45 water right because of a refusal by the commissioner to consent to the

1 severance and transfer of the right from its place of use on state  
2 land. Compensation shall be determined by appraisal and may be reviewed  
3 by the state board of appeals by the procedure for appraising improvements  
4 on state land. On payment of the compensation, the department of water  
5 resources shall reissue the water right in the name of the person or  
6 entity making the payment.

7 F. For THE purposes of this section, "certificate" includes  
8 certificates issued pursuant to title 45, chapter 1, article 5 or ~~article~~  
9 10.

10 Sec. 2. Section 45-141, Arizona Revised Statutes, is amended to  
11 read:

12 45-141. Public nature of waters of the state; beneficial use;  
13 reversion to state; actions not constituting  
14 abandonment or forfeiture

15 A. The waters of all sources, flowing in streams, canyons, ravines  
16 or other natural channels, or in definite underground channels, whether  
17 perennial or intermittent, flood, waste or surplus water, and of lakes,  
18 ponds and springs on the surface, belong to the public and are subject to  
19 appropriation and beneficial use as provided in this chapter.

20 B. Beneficial use shall be the basis, measure and limit to the use  
21 of water. ~~An appropriator of water is entitled to beneficially use all of~~  
22 ~~the water appropriated on less than all of the land to which the water~~  
23 ~~right is appurtenant, and this beneficial use of the water appropriated~~  
24 ~~does not result in the abandonment or forfeiture of all or any portion of~~  
25 ~~the right.~~

26 C. Except as otherwise provided in this title or in title 48, when  
27 the owner of a right to the use of water ceases or fails to use the water  
28 appropriated for five successive years, the right to the use shall cease,  
29 and the water shall revert to the public and shall again be subject to  
30 appropriation. ~~This subsection or any other statutory forfeiture by~~  
31 ~~nonuse shall not apply to a water right initiated before June 12, 1919.~~

32 D. Underground water storage, pursuant to chapter 3.1 of this  
33 title, for future beneficial use of waters appropriated pursuant to this  
34 chapter does not constitute an abandonment or forfeiture.

35 E. The following water exchange arrangements or substitutions do  
36 not constitute an abandonment or forfeiture of all or any portion of a  
37 right to use surface water:

38 1. Exchanging surface water for groundwater, effluent, Colorado  
39 river water, including water delivered through the central Arizona  
40 project, or another source of surface water pursuant to chapter 4 of this  
41 title.

42 2. Substituting groundwater, effluent, Colorado river water,  
43 including water delivered through the central Arizona project, or another  
44 source of surface water for surface water.

1           Sec. 3. Section 45-151, Arizona Revised Statutes, is amended to  
2 read:

3           45-151. Right of appropriation; permitted uses; water rights  
4                           in stockponds; federal lands

5           A. Any person, the state of Arizona or a political subdivision  
6 thereof may appropriate unappropriated water for domestic, municipal,  
7 irrigation, stock watering, water power, recreation, wildlife, including  
8 fish, nonrecoverable water storage pursuant to section 45-833.01 or mining  
9 uses, for his personal use or for delivery to consumers. The person, the  
10 state of Arizona or a political subdivision thereof first appropriating  
11 the water shall have the better right.

12           B. To effect the beneficial use, the person, the state of Arizona  
13 or a political subdivision thereof appropriating the water may construct  
14 and maintain reservoirs, storage facilities pursuant to chapter 3.1 of  
15 this title, dams, canals, ditches, flumes and other necessary waterways.

16           C. A water right in a stockpond, certified pursuant to article 10  
17 of this chapter, shall be recognized as if such water had been  
18 appropriated pursuant to this article.

19           ~~D. The validity of and the right to exercise a water right obtained~~  
20 ~~in accordance with state law shall not be diminished, impaired or~~  
21 ~~otherwise affected because other water is or may be available to the~~  
22 ~~appropriator from an alternative right or source to satisfy the same use.~~

23           ~~E. The right to water appropriated on lands owned by the United~~  
24 ~~States shall be held by the person who first effects the beneficial use of~~  
25 ~~the water appropriated and by the person's successor. This subsection~~  
26 ~~shall not be construed to preclude the United States from being the holder~~  
27 ~~of a right if the United States first effects the beneficial use.~~

28           ~~F. A water source that is located on land owned by the United~~  
29 ~~States and that has been or may be appropriated under state law may be~~  
30 ~~beneficially used on any land whether or not owned by the United States.~~

31           Sec. 4. Section 45-153, Arizona Revised Statutes, is amended to  
32 read:

33           45-153. Criteria for approval or rejection of applications;  
34                           restrictions on approval

35           A. The director shall approve applications made in proper form for  
36 the appropriation of water for a beneficial use, but when the application  
37 or the proposed use conflicts with vested rights, is a menace to public  
38 safety, or is against the interests and welfare of the public, the  
39 application shall be rejected. An administrative hearing may be held  
40 before the director's decision on the application if the director deems a  
41 hearing necessary.

42           B. An application may be approved for less water than applied for  
43 if substantial reasons exist but shall not be approved for more water than  
44 may be put to a beneficial use. Applications for municipal uses may be  
45 approved to the exclusion of all subsequent appropriations if the

1 estimated needs of the municipality so demand after consideration by and  
2 upon order of the director.

3 C. If the director approves an application for the appropriation of  
4 water for use on land owned by the state of Arizona, a permit or  
5 certificate shall be issued as prescribed by section 37-321.01. ~~If the  
6 director approves an application for the appropriation of water for use on  
7 land owned by the United States, a permit or certificate shall be issued  
8 as prescribed by section 45-151, subsection E.~~

9 D. Section 45-114, subsections A and B govern administrative  
10 proceedings, rehearing or review and judicial review of final decisions of  
11 the director under this section.

12 Sec. 5. Section 45-156, Arizona Revised Statutes, is amended to  
13 read:

14 45-156. Legislative authorization for appropriation of water  
15 to generate power; change in use

16 A. An application for appropriation of waters of a stream within  
17 the state for generating electric energy in excess of twenty-five thousand  
18 horsepower, or an application for a permit to build a dam for generating  
19 hydroelectric energy on a stream within the state in excess of twenty-five  
20 thousand horsepower, shall not be approved or granted unless authorized by  
21 an act of the legislature.

22 B. Except as otherwise prescribed by this section, a change in the  
23 use of water appropriated for domestic, municipal or irrigation uses shall  
24 not be made without approval of the director, and if the change  
25 contemplates generating hydroelectric energy or power of over twenty-five  
26 thousand horsepower, approval shall not be granted unless authorized by an  
27 act of the legislature.

28 C. The provisions of subsections A and B **OF THIS SECTION** requiring  
29 legislative authorization for the appropriation or use of water to  
30 generate electric energy in excess of twenty-five thousand horsepower and  
31 for the building of a dam for generating hydroelectric energy in excess of  
32 twenty-five thousand horsepower shall not apply to the generation of  
33 electricity by facilities constructed prior to January 1, 1985 as part of  
34 a federally authorized reclamation project or by an agricultural  
35 improvement district organized pursuant to title 48, chapter 17.

36 D. Subsection C **OF THIS SECTION** shall not affect the priority dates  
37 for facilities constructed prior to January 1, 1985, or the following  
38 components and appurtenant works:

- 39 1. New Waddell dam.
- 40 2. Cliff dam.
- 41 3. Increase in storage capacity of Roosevelt dam.
- 42 4. Modification of Stewart mountain dam.

43 ~~E. The failure to obtain the approval of the director as prescribed  
44 by subsection B is not grounds for enjoining a previously effected change  
45 in use, does not result in the abandonment or forfeiture of the associated~~

~~1 water right and does not result in the assignment of a later date of  
2 priority for that right, provided that a change in use shall not be  
3 recognized if the director has denied an application for such change prior  
4 to January 1, 1995. If there is no application pending or if the director  
5 has taken no final action with respect to a change in use effected without  
6 the director's approval, a court of competent jurisdiction may approve,  
7 modify or deny the change in use in order to complete an adjudication of  
8 water rights pursuant to article 9 of this chapter.~~

9 Sec. 6. Section 45-162, Arizona Revised Statutes, is amended to  
10 read:

11 45-162. Certificate of water right; time limitation on use of  
12 water for power purposes

13 A. When it appears to the satisfaction of the director that an  
14 appropriation has been perfected and a beneficial use completed in  
15 accordance with the provisions of this article, the director shall issue  
16 to the applicant a certificate signed by the director and attested by the  
17 seal of the department. The certificate shall set forth the name and  
18 address of the owner of the right, the priority of date and the extent and  
19 purpose of the right and, if the water is for irrigation purposes, a  
20 description of the legal subdivisions of land to which the water is  
21 appurtenant. On receiving the certificate, the owner may transmit the  
22 certificate and the recording fee to the county recorder of the county in  
23 which such right is located, who shall record the certificate in a book  
24 kept for that purpose and immediately transmit the certificate to the  
25 owner.

26 B. Certificates for rights to the use of water for power  
27 development shall limit the right or franchise to a period of forty years  
28 from the date of application, subject to a preferred right of renewal  
29 under the laws existing at the date of expiration of the franchise or  
30 right. The right acquired by the appropriation shall date from filing the  
31 application with the director, ~~and delays in the processing or granting of  
32 an application to appropriate or an application for a permit to construct  
33 or enlarge a reservoir do not affect the validity of the appropriation or  
34 the date of priority assigned to the appropriative right.~~

35 Sec. 7. Section 45-164, Arizona Revised Statutes, is amended to  
36 read:

37 45-164. Registry; reporting

38 A. The director shall establish and maintain a registry of  
39 applications, permits and certificates of water right filed or issued  
40 pursuant to this chapter and statements of claim filed pursuant to article  
41 7 of this chapter.

42 B. A person who has filed an application or a statement of claim or  
43 a person to whom the director has issued a permit or a certificate of  
44 water right shall notify the director of a change in name or mailing  
45 address or an assignment pursuant to section 45-163. A person to whom an

1 application, permit, certificate of water right or statement of claim is  
 2 assigned shall notify the director of the assignment and shall furnish  
 3 information as required by the director to keep the registry current and  
 4 accurate. The director shall have continuing jurisdiction and shall issue  
 5 revised permits and certificates as necessary.

6 C. If an appropriator of water filed an application for a permit to  
 7 appropriate water pursuant to this article or an application for  
 8 certification under article 10 of this chapter but the permit or  
 9 certificate was issued or subsequently reissued to the United States or  
 10 the state of Arizona, an appropriator of water may file a written  
 11 application with the department to request that a permit or certificate be  
 12 reissued in accordance with ~~either~~ section 37-321.01, subsection A ~~or~~  
 13 ~~section 45-151, subsection E~~. Within thirty days after receiving the  
 14 application, the department shall provide notice of the application to the  
 15 state or federal agency that owns the land on which the water is used and,  
 16 if applicable, to the owner of patented land from which the water is  
 17 diverted or on which the water is stored. A person who is entitled to  
 18 this notice from the department may file written objections to the  
 19 application within forty-five days after the department mails the notice.  
 20 If no timely objection is received by the department, the director shall  
 21 approve or deny the application within ninety days from the date of filing  
 22 of the application. If an objection is received, and on written request  
 23 of either the applicant or the objector, an administrative hearing shall  
 24 be held on the application and objections. If a request for a hearing is  
 25 not received, the director shall grant or deny the relief sought in the  
 26 application based upon the application and objections filed. A final  
 27 decision of the director is subject to judicial review as provided in  
 28 section 45-114, subsection B in the superior court in the county that has  
 29 jurisdiction over the water right as part of a general adjudication  
 30 conducted pursuant to article 9 of this chapter, or if the right is not  
 31 subject to a general adjudication in the superior court pursuant to title  
 32 12, chapter 7, article 6. The form of the application and objection shall  
 33 be prescribed by the director, but the department shall not charge a fee  
 34 for processing an application.

35 D. Section 45-114, subsections A and B govern administrative  
 36 proceedings, rehearing or review and judicial review of final decisions of  
 37 the director under this section.

38 Sec. 8. Section 45-187, Arizona Revised Statutes, is amended to  
 39 read:

40 45-187. No rights acquired by adverse use or adverse  
 41 possession

42 ~~Beginning on May 21, 1974,~~ No rights to the use of public waters of  
 43 the state may be acquired by adverse use or adverse possession as between  
 44 the person and the state, or as between one or more persons asserting the  
 45 water right, but nothing contained herein ~~affects~~ **SHALL BE DEEMED TO**

1 DIMINISH OR ENHANCE the validity of a claim filed under this article ~~based~~  
2 ~~on prior adverse use or adverse possession~~ ORIGINATING PRIOR TO THE  
3 EFFECTIVE DATE OF CHAPTER 164 OF THE LAWS OF 1919.

4 Sec. 9. Section 45-188, Arizona Revised Statutes, is amended to  
5 read:

6 45-188. Future rights acquired through appropriation; rights  
7 within service area of agricultural or municipal  
8 provider

9 A. Any person who is entitled to divert or withdraw public waters  
10 of the state through an appropriation ~~initiated on or after June 12, 1919~~  
11 and evidenced by a certificate of water right issued under article 5 of  
12 this chapter, a court decree, or previous possession or continued  
13 beneficial use and who intentionally abandons the use thereof or who  
14 voluntarily fails, without sufficient cause, to beneficially use all or  
15 any part of the right to withdraw for any period of five successive years  
16 shall relinquish such right or portion thereof. The rights relinquished  
17 shall revert to the state, and the waters affected by such rights shall  
18 become available for appropriation to the extent they are not lawfully  
19 claimed or used by existing appropriators.

20 ~~B. Any person who is entitled to divert or withdraw public waters~~  
21 ~~of the state through an appropriation initiated before June 12, 1919 and~~  
22 ~~evidenced by a notice of appropriation, a court decree, previous~~  
23 ~~possession or continued beneficial use or any other action taken in~~  
24 ~~accordance with federal, state or territorial law existing at the time of~~  
25 ~~the appropriation and who intentionally abandons its use relinquishes that~~  
26 ~~right. The rights relinquished revert to the state, and the waters~~  
27 ~~affected by those rights become available for appropriation to the extent~~  
28 ~~they are not lawfully claimed or used by existing appropriators.~~

29 ~~C. Water rights appurtenant to lands within the exterior boundaries~~  
30 ~~of an irrigation district, water users' association, ditch company or~~  
31 ~~similar provider of water for agricultural and municipal uses, or within~~  
32 ~~the service area of a municipal provider or a private water company, are~~  
33 ~~not subject to abandonment or forfeiture if the water provider and its~~  
34 ~~agents maintain an operable water delivery system within that district or~~  
35 ~~service area with the total capacity to deliver the amount of water~~  
36 ~~appropriated.~~

37 ~~⊖~~ B. If a use or claim is subject to forfeiture by nonuse,  
38 failure by the appropriator to use water within a five year period does  
39 not result in a forfeiture of the associated water right if water use is  
40 resumed before the occurrence of the earlier of any of the following:

41 1. The initiation of proceedings pursuant to section 45-189 to  
42 determine whether the right has been forfeited or abandoned.

43 2. The filing by a third party of a statement of claimant in a  
44 general adjudication instituted pursuant to article 9 of this chapter that



1 asserts the right to use water from the stream in which the subject nonuse  
2 has occurred.

3 3. The assertion by a third party of written objections in response  
4 to an application by the appropriator to sever and transfer the right  
5 pursuant to section 45-172.

6 Sec. 10. Section 45-189, Arizona Revised Statutes, is amended to  
7 read:

8 45-189. Reversion of rights due to nonuse; notice; hearing;  
9 order; exception

10 A. When it appears to the director that a person entitled to the  
11 use of water has not beneficially used all or a portion of the water right  
12 for a period of five or more consecutive years, and it appears that the  
13 right has or may have reverted to the state because of such nonuse, as  
14 provided by section 45-141 and section 45-188, subsection A, the director  
15 shall notify such person to show cause at an administrative hearing why  
16 the right or portion of the right should not be declared relinquished.

17 B. The notice shall contain:

18 1. The time and place of the hearing.

19 2. A description of the water right, including the approximate  
20 location of the point of diversion, the general description of the lands  
21 or places where such waters were used, the water source, the amount  
22 involved, the purpose of use, the apparent authority upon which the right  
23 is based and the factual basis for the notice to show cause.

24 3. A statement that unless sufficient cause is shown the water  
25 right will be declared relinquished.

26 C. The notice shall be served at least thirty days before the  
27 hearing.

28 D. The director shall make an order determining whether such water  
29 right has been relinquished and give notice to each party of the order by  
30 serving such persons at their last known addresses.

31 E. For the purposes of this section, section 45-141, subsection C  
32 and section 45-188, subsection A, the following reasons shall be  
33 sufficient cause for nonuse:

34 1. Drought, or other unavailability of water.

35 2. Active service in the armed forces of the United States during  
36 military crisis.

37 3. Nonvoluntary service in the armed forces of the United States.

38 4. The operation of legal proceedings.

39 5. Federal, state or local laws imposing land or water use  
40 restrictions, or acreage limitations, or production quotas.

41 6. Compliance with an applicable conservation requirement  
42 established by the director pursuant to chapter 2, article 9 of this  
43 title.

44 7. With respect to a water right appropriated for an irrigation  
45 use, either of the following:

1 (a) Pendency of a proceeding before a court or the director to  
2 change the permitted use from irrigation to municipal or other uses  
3 pursuant to a court decree or section 45-156 or to sever the right from  
4 the land to which it is appurtenant and transfer it for municipal use  
5 pursuant to section 45-172.

6 (b) After a change in the permitted use from irrigation to  
7 municipal pursuant to a court decree or section 45-156 or 45-172,  
8 insufficient demand for the water by the municipal users.

9 ~~8. The reconstruction, replacement, reconfiguration or maintenance~~  
10 ~~of water storage or distribution facilities, using reasonable diligence~~  
11 ~~including the failure to divert or store water as a result of those~~  
12 ~~activities.~~

13 ~~9. An agreement between the holder of a reservoir right and the~~  
14 ~~United States, this state or any city, county or other municipal or~~  
15 ~~governmental entity to leave a minimum pool of water in the reservoir for~~  
16 ~~the benefit of the public for recreation, fish and wildlife purposes.~~

17 ~~10. Use of the water appropriated on less than all of the land to~~  
18 ~~which the right is appurtenant.~~

19 ~~11. An agreement between the operator of a reservoir and a person~~  
20 ~~entitled to the use of water stored in the reservoir allowing the water to~~  
21 ~~be withdrawn over a period of time exceeding five years.~~

22 ~~12. A written agreement between two or more appropriators of water~~  
23 ~~pursuant to which one or more of the appropriators agrees to forbear the~~  
24 ~~exercise of its water right, in whole or in part, for the benefit of one~~  
25 ~~or more appropriators within the same river system and source if the~~  
26 ~~appropriator who forbears exercise of the right continues the beneficial~~  
27 ~~use associated with the right.~~

28 ~~13.~~ 8. Any other reason that a court of competent jurisdiction  
29 deems would warrant nonuse.

30 F. Section 45-114, subsections A and B govern administrative  
31 proceedings, rehearing or review and judicial review of final decisions of  
32 the director under this section.

33 Sec. 11. Section 45-251, Arizona Revised Statutes, is amended to  
34 read:

35 45-251. Definitions

36 In this article, unless the context otherwise requires:

37 1. "Domestic use" means a single appropriative water right serving  
38 a residence, or multiple residences up to a maximum of three residential  
39 connections, for household purposes with associated irrigation of lawns,  
40 gardens or landscape in an amount of not more than one-half acre per  
41 residence. Domestic use does not include the use of water delivered to a  
42 residence or multiple residences by a city, town, private water company,  
43 irrigation provider or special taxing district established pursuant to  
44 title 48.

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

4           3. "Person" means an individual, a partnership, a corporation, a  
5 municipal corporation, the state of Arizona or any political subdivision,  
6 the United States of America, an Indian tribe or a community or any other  
7 legal entity, public or private.

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

10          5. "Prior decree" means any judgment or decree that is entered by a  
11 court of competent jurisdiction and that applies to the water right claim  
12 or use that is subject to adjudication.

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

19          7. "River system and source" means all water appropriable under  
20 section 45-141 and all water subject to claims based on federal law.

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

25          ~~9.~~ 8. "Small water use claim" means any claim for a stockpond,  
26 stock watering use or water well that is identified in a statement of  
27 claimant filed in the adjudication pursuant to section 45-254 and the  
28 claim is for any of the following specific conditions:

29           (a) A stockpond having a capacity of not more than fifteen acre  
30 feet that is used solely for watering livestock or wildlife and that  
31 contains water that is appropriable under section 45-141, subsection A.

32           (b) Any well that is equipped so that it has a maximum pumping  
33 capacity of not more than thirty-five gallons per minute.

34           (c) A stock watering use by livestock and wildlife where the place  
35 of stock watering use is either directly from a naturally occurring body  
36 of water, such as an undeveloped spring, cienega, seep, bog, lake,  
37 depression, sink or stream, or from a developed facility that is not a  
38 stockpond or reservoir and that is served by a diversion of water that is  
39 appropriable under section 45-141, subsection A, including a drinker,  
40 trough, pipeline, spring box or other developed facility.

41          ~~10.~~ 9. "Stockpond" means an on-channel or off-channel impoundment  
42 of any size that stores water that is appropriable under section 45-141,  
43 subsection A and that is for the sole purpose of watering livestock and  
44 wildlife.

1           ~~11~~ 10. "Stock watering use" means the consumption of water by  
2 livestock and wildlife, either:

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

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

8           Sec. 12. Section 45-256, Arizona Revised Statutes, is amended to  
9 read:

10           45-256. Technical assistance of director; report

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

15           1. Identify the hydrological boundaries of the river system and  
16 source and the names and addresses of all reasonably identifiable  
17 potential claimants. In identifying potential claimants, the director, at  
18 a minimum, shall identify as far as reasonably possible the current record  
19 owners of all real property within the geographical scope of the  
20 adjudication.

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

23           3. Conduct a general investigation or examination of the river  
24 system and source.

25           4. Investigate or examine the facts pertaining to the claim or  
26 claims asserted by each claimant.

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

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

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

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

41 ~~Transportation losses from the point of diversion to the field shall be in  
42 addition to the on-farm water duty determined pursuant to this  
43 paragraph. Irrigation water quantities that are assigned by the director  
44 as prescribed by this paragraph shall be presumed correct by the master  
45 and the court and shall be incorporated in the decree, unless rebutted by~~

1 ~~a preponderance of the evidence offered by a claimant who has made a~~  
2 ~~proper objection under subsection B of this section.~~

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

13 ~~7.~~ 6. Take such other steps and gather such other information as  
14 may be necessary or desirable for a proper determination of the relative  
15 rights of the parties.

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

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

1 right. If admitted into evidence over an objection, those portions of the  
2 report shall not be given any presumption of correctness.

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

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

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

22 G. On request of any party, the director shall present evidence  
23 concerning the facts stated in the report. This section shall not be  
24 construed to prevent the court or the master from issuing a protective  
25 order on a showing of good cause.

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

40 Sec. 13. Section 45-257, Arizona Revised Statutes, is amended to  
41 read:

42 45-257. Hearings; report of master; final judgment by court;  
43 administration and enforcement of decree

44 A. The master shall:

1           1. After due notice, conduct such hearings and take such testimony  
2 as shall be necessary to determine the relative water rights of each  
3 claimant. The determination of water rights of all small water use claims  
4 in any specific subwatershed shall be deferred until all other claims in  
5 that subwatershed are determined by the superior court in the course of  
6 the adjudication, except that for a claimant who asserted a small water  
7 use claim and who asserted other water use claims in the same subwatershed  
8 that are not small water use claims, the claimant's small water use claim  
9 shall be determined in conjunction with the determination of that  
10 claimant's other claims. This paragraph does not preclude the superior  
11 court or the master from approving settlements of small water use claims  
12 at any time during the course of the adjudication.

13           2. Subject to paragraph 1 of this subsection, for all  
14 determinations, recommendations, findings of fact or conclusions of law  
15 issued, prepare and file with the court a report in accordance with rule  
16 53(g) of the Arizona rules of civil procedure, which shall contain those  
17 determinations, recommendations, findings of fact and conclusions of law.  
18 Each claimant may file written objections with the court to any rule 53(g)  
19 report within the later of sixty days after the report is filed with the  
20 court or before May 17, 1995. If the report covers an entire subwatershed  
21 or federal reservation, each claimant may file with the court written  
22 objections to the report within one hundred eighty days of the date on  
23 which the report was filed with the court.

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

26           B. The court, on review of the report and in accordance with  
27 subsection A, paragraph 1 of this section and rule 53 of the Arizona rules  
28 of civil procedure, shall:

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

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

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

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

3           5. Record a certified copy of the final judgment or decree in each  
4 county within the geographical scope of the general adjudication which  
5 shall constitute constructive notice of the contents of the judgment or  
6 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.~~ C. 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. 14. Section 45-261, Arizona Revised Statutes, is amended to  
37 read:

38           45-261. Presumption in favor of prior filings and decrees

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

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



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

3 ~~3.~~ 2. If information in a prior decree conflicts with information  
4 in one or more applicable prior filings, the court shall accept the  
5 information in the prior decree as prescribed by section 45-257,  
6 subsection B, paragraph 1.

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

10 ~~5.~~ 3. If there is no information in any applicable prior filing or  
11 decree or if the court finds that information contained in an applicable  
12 prior filing regarding a water right attribute is clearly erroneous, the  
13 court shall determine the attribute. In making a determination pursuant  
14 to this subsection, the court may use the director's report, statement of  
15 claimant information, information obtained in claimant interviews, aerial  
16 photographs, satellite technology, historical records, maps, technical  
17 data or other relevant information in evidence.

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

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

29 ~~7.~~ C. Section 45-256, subsections D and E apply to the evidentiary  
30 weight given to the following determinations made by the director:

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

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

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

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

39 Sec. 15. Repeal

40 Section 45-262, Arizona Revised Statutes, is repealed.

1           Sec. 16. Section 45-263, Arizona Revised Statutes, is amended to  
2 read:

3           45-263. State law applicable

4           ~~A.~~ State law, including all defenses available under state law,  
5 applies to the adjudication of all water rights initiated or perfected  
6 pursuant to state law.

7           ~~B. The public trust is not an element of a water right in an  
8 adjudication proceeding held pursuant to this article. In adjudicating  
9 the attributes of water rights pursuant to this article, the court shall  
10 not make a determination as to whether public trust values are associated  
11 with any or all of the river system or source.~~