

APPLICATION GUIDELINES

Convey an Irrigation Grandfathered Right for a Non-Irrigation Use and Receive a Type 1 Non-Irrigation Grandfathered Right Pursuant to A.R.S § 45-472

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

The initial fee for an Application to Convey an Irrigation Grandfathered Right for a Type 1 Non-Irrigation Use and Receive a Type 1 Non-Irrigation Grandfathered Right Pursuant to A.R.S. § 45-472 is \$1,000. Total fees for this application are based upon an hourly billable rate, which can be found on the ADWR web site at www.new.azwater.gov. If the total costs of reviewing your application exceed \$1,000, you will be invoiced for the difference, up to a maximum total fee of \$10,000. If the total costs of reviewing your application are less than \$1,000, you will be refunded the difference. Payment of the initial fee may be made by cash, check, or credit card (if you wish to pay by credit card, please contact the Active Management Area at 602-771-8585). Checks should be made payable to the Arizona Department of Water Resources. Failure to enclose the initial application fee of \$1,000 will cause the application to be returned. In addition to the hourly application fee, the applicant must pay the actual cost of mailing or publishing any legal notice of the application or any notice of a pre-decision administrative hearing on the application and the mileage expenses for any site visit conducted before issuing a decision on the application. These fees are authorized by A.R.S. § 45-113 and A.A.C. R12-15-103.

Steps for Processing Your Application and Obtaining Approval

Before submitting your application, the Department encourages you to contact one of the Department personnel indicated at the end of these guidelines to discuss the application process and review criteria. If you wish, a meeting may be scheduled to facilitate this process. To assist you in understanding the substantive requirements for this application, a copy of A.R.S. § 45-472 is attached. Also, please note the following:

- A copy of the deed must be submitted as proof of land ownership. A map of the land must also be submitted.
- An irrigation grandfathered right may not be conveyed for a non-irrigation use if one of the following applies:
 - The irrigation grandfathered right has not been retired in anticipation of a future non-irrigation use and has not been exercised for five consecutive years.
 - The land to which the irrigation grandfathered right is appurtenant was previously designated by the director as protected farmland pursuant to section 45-483, subsection A. See attached statute for more information.
- If the land conveyed or the land to be conveyed is within the service area of a city, town, or private water company additional documentation may need to be included with the application:
 - If conveying to a non-irrigation use for electrical energy generation by an industry not subject to title 40, article 6.2, Arizona Revised Statutes, and the land is not within the service area of a private water company, please provide written approval of the conveyance of the irrigation grandfathered right by the city or town in the form of a written letter.
 - The irrigation grandfathered right may be conveyed for a non-irrigation use other than expanded animal industry use only if the land was included within the exterior boundaries of the service area of a city, town or private water company after June 12, 1980, and only upon showing that adequate water service is unavailable at rates comparable to rates charged similar classes of water users within that service area. If this applies, you must enclose documentation from the city, town or private water company demonstrating that adequate water service is not available at rates comparable to rates charged by the city, town or private water company for similar classes of water users.
- Important definitions:

- "Expanded animal industry use" means increased water use by an animal industrial enterprise on the land in use by the enterprise on June 12, 1980 or on immediately adjoining land, excluding irrigation uses.
- "Convey" means to transfer the ownership of a grandfathered right from one person to another.
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- "Protected Farmland" means land that has been designated by the Director of Water Resources as protected farmland pursuant to A.R.S. § 45-483(A) and for which the designation has not been revoked pursuant to A.R.S. § 45-483(C).
- "Type 1 non-irrigation grandfathered right" means a non-irrigation grandfathered right associated with retired irrigated land and determined pursuant to section 45-463, 45-469 or 45-472.
- "Non-irrigation use" means:
 - (a) With respect to areas outside an active management area and with respect to an active management area other than the Santa Cruz active management area, a use of groundwater other than an irrigation use.
 - (b) With respect to the Santa Cruz active management area, a use of water, other than stored water, withdrawn from a well, other than an irrigation use.

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

Time Frames for Review of Your Application.

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

1) Administrative Completeness Review Time Frame

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

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

2) Substantive Review Time Frame

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

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

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

Agency Contact

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

45-472. Conveyance of irrigation grandfathered right; within service area; outside service area; change to non-irrigation grandfathered right; forfeiture of right to convey to non-irrigation use; definition

A. The owner of an irrigation grandfathered right may convey the right only with the land to which the right is appurtenant.

B. If the land to which an irrigation grandfathered right is appurtenant is within the exterior boundaries of the service area of a city, town or private water company:

1. The irrigation grandfathered right may be conveyed only for an irrigation use, except for expanded animal industry use or as provided in paragraphs 2 and 3 of this subsection. If an irrigation grandfathered right is conveyed for an irrigation or expanded animal industry use, the full amount of the right is conveyed. The amount of groundwater conveyed pursuant to the right:

(a) For an irrigation use may be withdrawn from the land to which the right is appurtenant or any other land and may be used only on the land to which the right is appurtenant or on contiguous irrigation acres under common ownership within the service area of the city, town or private water company subject to the provisions of articles 8 and 8.1 of this chapter relating to transportation of groundwater. For purposes of this subdivision, irrigation acres that are separated by a road, highway, easement or right-of-way from the land to which the irrigation grandfathered right is appurtenant are deemed to be contiguous.

(b) For an expanded animal industry use may be withdrawn by the new owner of the right only from the land to which the right is appurtenant and used on that land or on any other land, subject to the provisions of articles 8 and 8.1 of this chapter relating to transportation of groundwater. If the groundwater was delivered by an irrigation district to the previous owner of the right, the irrigation district may continue to deliver groundwater to the new owner pursuant to the right. If any portion of the amount of groundwater conveyed is withdrawn by the new owner and used on other land, no additional groundwater may be withdrawn for use on the land to which the right is appurtenant.

2. The irrigation grandfathered right may be conveyed to an industry engaged in the generation of electrical energy for the purpose of electrical energy generation, except that, if the facility for the generation of electrical energy is not subject to title 40, chapter 2, article 6.2, the conveyance is subject to the approval of:

(a) The appropriate city or town, if the irrigation grandfathered right to be conveyed is appurtenant to land within the exterior boundaries of the service area of a city or town.

(b) The director, if the irrigation grandfathered right to be conveyed is appurtenant to land within the corporate limits of a city or town and within the exterior boundaries of the service area of a private water company.

3. If an irrigation grandfathered right is conveyed for a non-irrigation use pursuant to paragraph 2 of this subsection, the amount of the right that is conveyed is the lesser of:

(a) The current maximum amount of groundwater that may be used pursuant to the right, as calculated pursuant to section 45-465, subsection B.

(b) Three acre-feet per year multiplied by the number of water duty acres in the farm in which the acre to which the right is appurtenant is located divided by the number of irrigation acres in the farm.

4. The new owner of an irrigation grandfathered right conveyed pursuant to paragraph 2 of this subsection may withdraw the amount of groundwater conveyed pursuant to that right, as determined in paragraph 3 of this subsection, only from the land to which the right is appurtenant and use the groundwater on that land, but may not use the groundwater on other land, except that, if the groundwater was delivered by an irrigation district to the previous owner of the right, the irrigation district may continue to deliver groundwater to the new owner pursuant to the right for use on the land to which the right is appurtenant.

5. All withdrawal or use of groundwater pursuant to this subsection is subject to subsection H of this section.

C. If the land to which an irrigation grandfathered right is appurtenant is included within the exterior boundaries of the service area of a city, town or private water company subsequent to the date of the designation of an active management area, the owner of the right may, with the approval of the director and consistent with the provisions of this chapter, convey the grandfathered right for a non-irrigation use, other than an expanded animal industry use, on the land to which the right is appurtenant, upon a showing that adequate water service is unavailable at rates comparable to rates charged similar classes of water users within such service area. The amount of the right conveyed is determined pursuant to subsection B, paragraph 3 of this section. All withdrawal or use of groundwater pursuant to this subsection is subject to subsection H of this section.

D. If the land to which an irrigation grandfathered right is appurtenant is outside of the exterior boundaries of the service area of a city, town or private water company:

1. The irrigation grandfathered right may be conveyed for an irrigation use or a non-irrigation use. If an irrigation grandfathered right is conveyed for an irrigation or an expanded animal industry use, the full amount of the right is conveyed. If an irrigation

grandfathered right is conveyed for a non-irrigation use, other than an expanded animal industry use, the amount of the right that is conveyed is the lesser of:

(a) The current maximum amount of groundwater that may be used pursuant to the right as calculated pursuant to section 45-465, subsection B.

(b) Three acre-feet per year multiplied by the number of water duty acres in the farm in which the acre to which the right is appurtenant is located and divided by the number of irrigation acres in the farm.

2. The amount of groundwater conveyed pursuant to the right for a non-irrigation use, as determined in paragraph 1 of this subsection, may be withdrawn by the new owner of the right only from the land to which the right is appurtenant and used on that land or on any other land, subject to section 45-473.01 and to the provisions of articles 8 and 8.1 of this chapter relating to transportation of groundwater, except that, if the groundwater was delivered by an irrigation district to the previous owner of the right, the irrigation district may continue to deliver groundwater to the new owner pursuant to the right. If any portion of the amount of groundwater conveyed is withdrawn by the new owner and used on other land, no additional groundwater may be withdrawn for use on the land to which the right is appurtenant, except that, if the new owner is an industry, it may withdraw a portion of the amount of groundwater conveyed for use on other land and withdraw the remainder of the amount of groundwater conveyed for municipal and industrial use on the land to which the right is appurtenant for purposes directly related to the industry's industrial operation.

3. The amount of groundwater conveyed pursuant to the right for an irrigation use, as determined in paragraph 1 of this subsection, may be withdrawn from the land to which the right is appurtenant or from any other land and may be used only on the land to which the right is appurtenant or on contiguous irrigation acres under common ownership, subject to the provisions of articles 8 and 8.1 of this chapter relating to transportation of groundwater. For purposes of this paragraph, irrigation acres that are separated by a road, highway, easement or right-of-way from the land to which the irrigation grandfathered right is appurtenant are deemed to be contiguous.

4. All withdrawal or use of groundwater pursuant to this subsection is subject to subsection H of this section.

E. If an irrigation grandfathered right is conveyed for a non-irrigation use, the new owner's right to withdraw or receive groundwater is a non-irrigation grandfathered right associated with retired irrigated land, or a type 1 non-irrigation grandfathered right. All subsequent conveyances of that right are governed by section 45-473.

F. The amount of a type 1 non-irrigation grandfathered right shall be determined at the time it is established and shall remain fixed at that amount.

G. An irrigation grandfathered right may not be conveyed for a non-irrigation use if one of the following applies:

1. The irrigation grandfathered right has not been retired in anticipation of a future non-irrigation use and has not been exercised for five consecutive years.

2. The land to which the irrigation grandfathered right is appurtenant was previously designated by the director as protected farmland pursuant to section 45-483, subsection A. This paragraph shall not apply to land that was designated by the director as protected farmland if the director revoked the designation pursuant to section 45-483, subsection C, paragraph 1 and the director determined at that time that the conservation easement in the land was terminated because a partial or full condemnation of the land made farming impracticable.

H. A person who owns a type 1 non-irrigation grandfathered right under this section shall not withdraw or use groundwater pursuant to the portion of the type 1 non-irrigation grandfathered right that is appurtenant to land that the owner may irrigate with effluent pursuant to section 45-452, subsection J.

I. For the purposes of this section, "land to which the right is appurtenant" means the acre or group of contiguous acres conveyed with an irrigation grandfathered right.