

An Introduction to Surface Water Rights in Arizona, and for the Verde Valley



The right to use water has often been a source of misunderstanding and conflict between cities, agricultural users, mining interests, and even neighbors throughout the Western U.S. However, out of these conflicts emerged the core principles that guide Western U.S. water laws today.

This flyer is a resource to help water users understand the basic concepts of water law that determine one's right to surface water in Arizona.

The Doctrine of Prior Appropriation

Early in its history, Arizona adopted the doctrine of Prior Appropriation to govern the use of surface water. In the western United States, water was a scarce and unpredictable resource. Western settlers quickly realized the limits of the water supply and the need for a system of allocation to ensure those first diverting water were not adversely impacted by future water users. To ensure those who diverted water first were able to meet their water needs the Prior Appropriation Doctrine was developed based on who used the water the earliest.

Prior Appropriation, commonly known as "first-in-time, first-in-right," means that the person who put the water to beneficial use first is entitled to their entire share before the next person in the watershed receives any. With few exceptions, whether the water user is upstream or downstream from other water users, adjacent to the river or far away, is irrelevant when determining the "priority," or the place-in-line, for water.

The Prior Appropriation doctrine also states that **water is "appurtenant to" or belongs to the land.** This means that lands where water was first applied retain a priority for use and are senior to others that use water at a later date than the senior user. This system of priority extends to all water users within each watershed. Senior users have first right to continue application of water on that specific parcel of land. Only under special conditions can surface water rights be transferred from one parcel of land to another.

Establishment of a Legal Right to Surface Water

Prior to June 12, 1919, a person could acquire a surface water right simply by applying the water for a beneficial purpose and posting a notice of the appropriation at the point of diversion. Many of these notices were also posted at the county courthouse. On June 12, 1919, the Arizona surface water code was enacted providing a formal process to establish a water right and provide legal notice. Now known as the Public Water Code, this law provides that a person must apply for and obtain a permit in order to appropriate surface water prior to using water.

Water uses that began prior to the State Water code are recognized by the state as having historic, senior priority over those that were granted later. After 1919, the waters of the Verde River and Salt River watersheds were viewed by most to be "over appropriated", meaning that all normal and flood flows of the river had already been claimed or appropriated for use.

Evidence Used to Determine an Historic Water Use

Historic documents such as land patents, irrigation survey maps, and government reports are key pieces of evidence that help identify lands of “historic water use,” those lands irrigated before the 1919 Water Code.

Verde Valley

Throughout the last 100 years in the Verde Valley, there have been several efforts to describe and quantify the extent of irrigation and other water uses. A few examples follow which describe these survey and reporting efforts:

Hancock Survey (1914): Harry L. Hancock, Court Water Commissioner, completed a survey of the Verde River and its tributaries to identify irrigation in the Verde Valley. This survey provided evidence of what lands were irrigated prior to enactment of the 1919 Arizona Water Code.

Phelps Survey (1920): The H.D. Phelps survey mapped areas of cultivation in the Middle and Upper Verde Valley in conjunction with a lawsuit concerning smelter smoke damage to crops. This survey is particularly valuable since it represents a picture of land-use at the time of the 1919 water code.

Holmquist Survey & Fairchild Aerial Photography (1934): In the 1930’s, the U.S. Bureau of Reclamation requested a survey of lands in the Verde Valley as part of a dam site study; this became known as the Holmquist Survey. This survey included 1934 aerial photographs of the Verde Valley. The combination of the irrigation survey and the photographs make this a good source for identifying irrigation and other water use types.

How Water Rights are Determined: Adjudicating Water Rights

General stream adjudications are judicial proceedings to determine the extent and priority of all water rights within an entire river system, and their source.

Arizona is undertaking a general stream adjudication of both the Gila River and the Little Colorado River systems. All water uses in the Verde River Watershed are the subject of the Gila River General Stream Adjudication currently pending in the Superior Court of Maricopa County. This case will ultimately decide the nature, extent, and relative priority of all water uses in the Gila River Basin.

The Arizona Department of Water Resources (ADWR) serves as the technical advisor to the adjudication courts to investigate all water claims and uses. Unfortunately, funding for this effort has been reduced substantially with no known date when funding may be reinstated. Consequently, some individual parties to the adjudication have taken an active role in working together with claimants in an attempt to resolve water claims and potential conflicts outside of litigation.

As growth and expansion of water users have occurred in the Verde Valley, conflicts have arisen over who has legal access to water. Even though Arizona had established a legal mechanism to stake one's claim for water, there has been no enforceable procedure in place to protect senior water right holders, or those that were legally using Verde River water for a beneficial purpose. In order to resolve those conflicts and develop an enforceable system, SRP filed a case in 1974 that led to an action to "adjudicate" the waters of the Gila River system, of which the Verde is a tributary watershed, to resolve these longstanding conflicts.

Conclusion

Water will always be an important issue for all Arizona residents. While it has long been the source of debate and disagreement, water issues also provide an opportunity for human ingenuity and people working together to solve problems. **Understanding the guiding rules of water rights will help us create solutions to these issues and provide greater certainty to all water users.**