

REGULATORY PROCESS FOR TRANSFERS OF COLORADO RIVER ENTITLEMENTS

*Transfers of Colorado River entitlements held under Section 5 contracts are subject to the dual jurisdiction of the state (ADWR) and the United States (USBR). The consent of both ADWR and USBR is required, and each agency has its own policies governing such transfers.

I. ADWR Substantive Policy Statement – Policy and Procedure for Transferring an Entitlement of Colorado River Water, 2014.

ADWR requires the following process for any proposed transfer of a Colorado River entitlement, not including assignments (i.e., a transfer to another entity that will serve the same type of use, within same service area):

- Request for consultation must be submitted to ADWR by entity desiring to transfer entitlement. Each request must:
 - Include a water use management plan demonstrating, among other things, the ability to divert and consumptively use the water in a reasonable period of time;
 - Include copies of any proposed contracts or agreements including all exhibits;
 - Be submitted to ADWR at least 150 days before contract execution; and
 - Demonstrate the proposed transfer is not for speculative purposes.
- ADWR advertises the proposed transfer for two weeks, and provides notice to the county planning and zoning department of county of origin.
- Public comments accepted for 30 days.
- If objections or claims of negative impacts are filed, ADWR will give the parties (transferor, transferee and objector) 90 days to resolve or mitigate the claimed impacts. An extension may be granted if more time is required.
- ADWR makes a recommendation to the Secretary of the Interior.

II. USBR, Reclamation Manual Policy, *Transfers and Conversions of Project Water*, PEC P09, July 24, 2013.

USBR requires the following for any proposed transfer of a Colorado River entitlement:

- Submission of a transfer application including the details of the proposed change, and maps illustrating both the current and proposed diversion points and places of use.
- Demonstration that the proposed transfer does not impair the Secretary's trust obligation to Native Americans.
- Demonstration that the proposed transfer complies with Reclamation law and all other federal laws, including NEPA.
 - Level of environmental review is uncertain – anywhere from a categorical exclusion, to the preparation of an Environmental Impact Statement (concluding with a decision allowing the transfer with or without mitigation, or disallowing the transfer.)
- If transfer approved, USBR will offer a new section 5 contract to the transferee. (Public review process may be required.)

**REGULATORY REVIEW PROCESS FOR
GROUNDWATER TRANSFERS FROM BUTLER VALLEY
McMULLEN VALLEY AND HARQUAHALA INA**

*Other than the specific statutory provisions governing transfers from these three groundwater basins, the State of Arizona has not implemented any rules or regulations governing groundwater transfers, like it has for transfers of Colorado River entitlements or CAP entitlements.

I. McMullen Valley – A.R.S. § 45-552

- A city that purchased historically irrigated lands within the McMullen Valley Groundwater Basin before January 1, 1998, may transport groundwater to an adjacent initial AMA.
- Transported groundwater may be used by: a city, town, private water company or a groundwater replenishment district established pursuant to title 48, chapter 27 (this does not include the CAGR.D.)
- Subsequent sale of acquired land is authorized to a city, town, private water company or title 48, chapter 27 groundwater replenishment district to develop a groundwater transportation project for use only by a city, town, private water company, title 48, chapter 27 groundwater replenishment district or the AWBA for Indian firming pursuant to A.R.S. §45-2491.
- Annual volume is three AF per historically irrigated acre. The statute allows withdrawals of six AF per acre in a year, provided the total withdrawals over a 10-year period do not exceed 30 AF per acre.
- Total volume limited to six million AF.
- For assured water supply purposes, the depth to groundwater is limited to 1,200 feet below land surface, or 40% of the groundwater that can be withdrawn from the basin. The rate of decline cannot exceed an average of 10 feet per year when added to existing rate of decline over a 100-year period.

II. Butler Valley – A.R.S. § 45-553

- The state or a political subdivision of the state that owns land in Butler Valley may transport groundwater to an initial AMA.
- No statutory limit on annual or total transportation volumes.
- No statutory limit on withdrawals from historically irrigated acres.

III. Harquahala INA – A.R.S. § 45-554

- The state or a political subdivision of the state that owns land eligible to be irrigated in the Harquahala INA may withdraw groundwater from the land for transportation to an initial AMA for its own use or use by the AWBA for Indian firming pursuant to A.R.S. § 45-2491.
- Annual volume is three AF per eligible acre. The statute allows withdrawals of six AF per acre in a year, provided the total withdrawals over a 10-year period do not exceed 30 AF per acre.
- Withdrawals are limited to 1,000 feet below land surface, and the rate of decline cannot exceed an average of 10 feet per year when added to the existing rate of decline over a 100-year period.