

45-258. Summary adjudication of de minimis water uses

1. A. A stockpond with an applicable prior filing or decree and with a claimed capacity of fifteen acre-feet or less set forth in the filing or decree shall be deemed a de minimis use of the river system or source, and its water right attributes are not subject to objection other than by the claimant of that stockpond use as prescribed in section 45-256, subsection B or section 45-257, subsection A, paragraph 2. Unless the claimant of the stockpond right files an objection requesting an adjudication of the right in the ordinary course of the proceedings, the water right attributes of a stockpond that complies with this subsection shall be summarily adjudicated and incorporated into the final decree as follows:

1. For each stockpond subject to summary adjudication, the decree shall describe the water right ownership, capacity in acre-feet, priority date, place of use or point of diversion, source of water and those other attributes deemed necessary by the court.

2. The decreed attributes of each summarily adjudicated stockpond shall be separately determined pursuant to section 45-261, subsections A, C and D. A summarily adjudicated stockpond shall not be decreed to have an unsilted capacity greater than that existing on the effective date of this section and shall not be decreed to have a capacity of more than fifteen acre-feet. The decreed capacity of a summarily adjudicated stockpond includes the right to continuous filling and refilling throughout the year and the right to remove silt.

B. A domestic use with an applicable prior filing or decree and with a claimed annual quantity of use of three acre-feet or less for each residential connection set forth in the filing or decree shall be deemed a de minimis use of the river system and source and its water right attributes are not subject to objection other than by the claimant of that use as prescribed in section 45-256, subsection B or section 45-257, subsection A, paragraph 2. Unless the claimant of the domestic use files an objection requesting an adjudication of the right in the ordinary course of the proceedings, the water right attributes of a domestic use that complies with this subsection shall be summarily adjudicated and incorporated in the final decree as follows:

1. For each domestic use subject to summary adjudication, the decree shall describe the water right ownership, quantity, annual volume or rate of diversion, priority date, place of use, point of diversion and source of water and those other attributes deemed necessary by the court.

2. For each domestic use subject to summary adjudication with no quantity of use determined in a prior decree, an annual quantity of three acre-feet or less per residential connection is presumed correct and shall be reported in the decree. If a prior decree provides a quantity of use, that quantity shall be accepted by the court and reported in the decree, except that a summarily adjudicated domestic use shall not be decreed to have an annual quantity of more than three acre-feet per residential connection.

C. A small business use with an applicable prior filing or decree shall be deemed a de minimis use of the river system and source and its water right attributes are not subject to objection other than by the claimant of that small business use as prescribed in section 45-256, subsection B or section 45-257, subsection A, paragraph 2. Unless the claimant of the small business use files an objection requesting an adjudication of the right in the ordinary course of the proceedings, the

water right attributes of a small business use that complies with this subsection shall be summarily adjudicated and incorporated into the final decree as follows:

1. For each small business use subject to summary adjudication, the decree shall describe the water right ownership, quantity of use in annual volume or rate of diversion, priority date, place of use or point of diversion and source of water and those other attributes deemed necessary by the court.

2. For each small business use subject to summary adjudication with no quantity of use determined in a prior decree, an annual quantity of three acre-feet or less will be presumed correct and shall be reported in the decree. If a prior decree provides a quantity of use, that quantity shall be accepted by the court and reported in the decree, except that a summarily adjudicated small business use shall not be decreed to have an annual quantity of use of more than three acre-feet.

D. A stock watering use with an applicable prior filing or decree shall be deemed a de minimis use of the river system and source, and its water right attributes are not subject to objection other than by the claimant of that stock watering use as prescribed in section 45-256, subsection B or section 45-257, subsection A, paragraph 2. Unless the claimant of the stock watering use files an objection requesting an adjudication of the right in the ordinary course of the proceedings, the water right attributes of a stock watering use that complies with this subsection shall be summarily adjudicated and incorporated into the final decree as follows:

1. For each stock watering use subject to summary adjudication, the decree shall describe the water right ownership, quantity of use in acre-feet, priority date, place of use or point of diversion and source of water and those other attributes deemed necessary by the court. A summarily adjudicated right for stock watering use does not include the right to require a minimum rate of flow on the reach of the stream where the right is located, and summarily adjudicated stock watering rights are not subject to enforcement actions to satisfy other water rights adjudicated by the court.

2. For each stock watering use subject to summary adjudication with no quantity of use determined in a prior decree, an annual quantity of reasonable use of not more than one acre-foot shall be presumed correct and reported in the decree. If a prior decree provides a quantity of use, that quantity shall be accepted by the court and reported in the decree, except that a summarily adjudicated stock watering use shall not be decreed to have an annual quantity of use of more than one acre-foot.

E. Except as otherwise provided in this section, section 45-261, subsections A, C and D apply to the summary adjudication of water right attributes for de minimis uses.

F. In any post-decree severance and transfer or change of use proceeding involving any de minimis use summarily adjudicated pursuant to this section or in a post-decree enforcement action involving a stockpond, a domestic use or a small business use summarily adjudicated pursuant to this section, the parties may introduce evidence to rebut the water right attributes decreed to the de minimis use. This subsection does not apply to any attributes of a de minimis use that were determined in a prior decree and accepted by the court pursuant to section 45-257,

subsection B, paragraph 1. A person who claims that one or more de minimis uses interfere with that person's water right has the burden of proving that the water diverted or withdrawn by the de minimis use would otherwise be available to satisfy the person's water right.