
Extinguishment Credits in the Pinal Active Management Area

A r i z o n a D e p a r t m e n t o f W a t e r R e s o u r c e s

Background Information

The Arizona Department of Water Resources (ADWR) was created by state statute as part of the **1980 Groundwater Management Act** (Act) to ensure that all Arizonans have equitable access to the state's water resources. The 1980 Act was adopted in response to severe groundwater declines in parts of our state due to over-reliance on groundwater supplies, including in Pinal County. Through the Act, the Legislature directed ADWR to manage our state's water resources to ensure a viable and stable economy. The Act created Active Management Areas with statutory water management goals to direct ADWR in how to manage water supplies to protect local economies. The water management goal of the Pinal Active Management Area is to protect the agricultural economy for as long as feasible, while maintaining sufficient groundwater supplies for future municipal and industrial development. This water management goal recognizes the importance of the agricultural economy to this area while also considering the need for water supplies for future development. Much of that development has, and will, occur as a result of urbanization of farmland which provides an economic benefit to those farmers who freely choose to sell their land to developers, as is their right.

The **Assured Water Supply Rules** were adopted to implement the portion of the 1980 Act requiring new development to demonstrate a 100-year water supply, providing consumers the peace of mind and protection that the investments they make in their homes are secure. As part of the Assured Water Supply Program, developers and water providers have to meet specific criteria in order to satisfy this 100-year assurance, including that they will acquire non-groundwater sources to reduce the impact on the groundwater systems already being stretched. In order to provide an incentive to develop on farmland, a farmer can retire his farmland at a time of his own choosing and depending on a date specified in the Assured Water Supply Rules can create a groundwater credit that can be used by the developer to allow an orderly transition over time to non-groundwater supplies. In the Phoenix and Tucson Active Management Areas (which have a water management goal of achieving a safe-yield or balanced aquifer condition by 2025), the credits given for the permanent retirement of farm land are systematically reduced from 100 percent in 1995 (the year the Assured Water Supply Rules were finally adopted) to zero in 2025 (12 years from now). Under the original Assured Water Supply Rules for the Pinal Active Management Area, the groundwater credits were not reduced over time, meaning that there was no incentive to develop new renewable water supplies, and the physically available groundwater could potentially be exhausted at some point in the future.

Assured Water Supply Rule Modification: In the mid-2000's, following careful analysis led by the local water leaders in the Pinal Active Management Area (cities, water providers, irrigation districts and individual agricultural interests), ADWR was asked to modify the Assured Water Supply Rules to provide better protection to this area to ensure that groundwater would actually be available for future development. Specifically, the leaders requested that the Rules be modified to gradually reduce the amount of groundwater credits given for the retirement of farmland in the Pinal Active Management Area – similar to what the Rules provide for in the Phoenix and Tucson Active Management Areas, but over a longer period of time. The water leaders in the Pinal Active Management Area recognized that continued groundwater use in the amounts allowed under the original Rule was unsustainable and sought a modification to the Rule. The Rule revision process was conducted in a very open and extensive public process in the Pinal Active Management Area, and was further publically vetted, as required by statute, through the Governor's Regulatory Review Council.

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Frequently Asked Questions

Do the Assured Water Supply Rules take away my irrigation rights?

No – there is nothing in the rules that will force an agricultural water right holder to give up their irrigation grandfathered water right. The policies of the State of Arizona are in no way aimed at stripping farmers, or any other water user, of their rights to our most vital public resource. ADWR has no desire or intent to eliminate agricultural water use and recognizes that without the agricultural community, much of what we enjoy today as Arizonans would not be possible.

Does my irrigation right automatically become extinguished in 2054?

No – after 2054, farmers who wish to continue farming do not lose their water rights. The water right is tied to the land, and as long as that land is farmed the property does not lose its water right. The irrigation grandfathered right is perpetual.

What is an extinguishment credit?

The owner of an irrigation grandfathered groundwater right has the option of permanently retiring his farmland, in full or in part at a time of his own choosing, and depending on a date specified in the Assured Water Supply Rules can create a groundwater credit that can be used by the developer to allow an orderly transition over time to non-groundwater supplies. Groundwater credits, also known as extinguishment credits, may be sold to another party and transferred to be used anywhere within the same Active Management Area, provided those credits have not already been pledged toward an Assured Water Supply certificate or designation and that the applicant has demonstrated that the water will be physically available for 100 years at the location of withdrawal.

What changes take effect on January 1, 2014?

Beginning in 2014, the allocation factor used to calculate Assured Water Supply groundwater credits begins to be reduced from 100% to 94%. While it is true that, under the current Rule, the distribution of groundwater credits for agriculture to urban conversion declines over time through 2054, it is not true that this takes away the entitlements of farmers to exercise their water rights to continue to farm. If a farmer chooses to keep farming, the farmer's water right is not reduced by this Rule in any way. The farm can stay in production in perpetuity - so long as there is water physically available to meet the farm's needs.

Why can't the Assured Water Supply rules go back to the way they were?

Without this Rule modification, there was a genuine threat to the long-term viability of water supplies in the area. It was recognized that if groundwater use were to continue at rates exceeding natural recharge from rainfall and streambed infiltration, water levels could drop to levels that would make it economically infeasible to continue farming, which certainly would negatively impact not only the farmers but the community reliant on this industry. Additionally, as groundwater levels decline, the ability for new development in the area would be reduced further, if not eliminated entirely, impacting not only the agricultural economy but the future viability of the region. Eliminating the gradual reduction in groundwater credits may increase immediate economic yields for those farmers who wish to sell their land for development in the near term, but it harms those who wish to continue farming and reduces the ability to develop farmland in the future, as groundwater is depleted by all the water users (not just farmers).

Can developers only build on farmland that has a water right?

No – as part of the Assured Water Supply Program, developers and water providers have to meet specific criteria in order to prove a 100-year water supply. One of these criteria is that they will acquire non-groundwater sources to reduce the impact on the groundwater systems already being stretched. In some cases a limited groundwater supply, which can be in the form of groundwater credits, can be used by the developer to allow an orderly transition over time to non-groundwater supplies. Groundwater credits may be sold to another party and transferred to be used anywhere within the same Active Management Area, provided those credits have not already been pledged toward an Assured Water Supply certificate or designation and that the applicant has demonstrated that the water will be physically available for 100 years at the location of withdrawal.

There is concern that the extinguishment conversion factor under current Rules may prompt farmers to extinguish their irrigation grandfathered rights sooner in order to receive the full value of extinguishment credits; their alternative would be extinguishing at a later date and receiving a reduction in the amount of credits, which could make the value of their property significantly less.

The stated intent of the 1980 Groundwater Management Act was to reduce reliance on groundwater. The Act was passed in by the Arizona Legislature in response to significant groundwater declines, which were endangering the economic viability of farming as well as future municipal and industrial development. The Arizona Department of Water Resources was required by the 1980 Act to adopt the Assured Water Supply Rules. The Rules do not by themselves reduce groundwater dependence – State Law does. That law does not grant “full value of water credits.” Consistent with State Law, the Rules require developers to find renewable water supplies to supplement any groundwater that they utilize. Although not required by the 1980 Act, the Rules provide groundwater credits for the extinguishment of irrigation grandfathered rights for a limited period of time to allow developers a means to transition to renewable supplies. Allowing the credits to exist permanently would be inconsistent with the 1980 Act and would threaten the economic viability of farming as well as future municipal and industrial development.