

Amendment of Pinal Active Management Area Assured Water Supply Rules to Temporarily Delay Reduction in Extinguishment Credits

I. Background

Developers of new subdivisions within Active Management Areas (“AMA”) must obtain a determination of assured water supply (“AWS”) from the Arizona Department of Water Resources (“Department”) prior to the sale of any lots. A.R.S. § 45-576(A). One of several requirements to obtain a determination of AWS is to demonstrate that any groundwater use is consistent with the AMA’s management goal. One method for making this demonstration is through a mechanism for the extinguishment of grandfathered groundwater rights. Under the Department’s AWS rules, when a grandfathered groundwater right is extinguished, the Department issues credits that can be used by a developer to meet the consistency with the management goal requirement for an AWS determination.

Prior to 2007, the amount of credits issued for the extinguishment of grandfathered groundwater rights in the Pinal AMA remained the same each year, with no reduction over time. In 2007, the Department amended the rule governing the calculation of extinguishment credits in the Pinal AMA, Rule R12-15-725, to provide for a gradual reduction in the amount of credits given for the extinguishment of grandfathered groundwater rights, with the first reduction scheduled to take effect on January 1, 2010. One of the major reasons for this amendment was that residential development in the AMA was increasing rapidly, and the rate of development was projected to continue for the foreseeable future. Some of this development was anticipated to result in the extinguishment of Irrigation Grandfathered Rights (“IGFRs”) for extinguishment credits. Extinguishment of IGFRs under the extinguishment credit rule in effect at that time, combined with rapid development, would lead to over-allocation of unreplenished groundwater supplies. The 2007 amendment was designed to preserve sufficient groundwater supplies to meet the demands of agricultural irrigation, approved AWS determinations and possible future AWS determinations, consistent with the Pinal AMA’s management goal.

Shortly after the 2007 rule amendment, the Arizona real estate market began experiencing a significant downturn, and residential development in the Pinal AMA slowed dramatically. In 2009, landowners and irrigation districts in the AMA expressed concerns that implementation of the reduction in extinguishment credits as scheduled could result in owners of farm land in the AMA prematurely extinguishing their irrigation grandfathered rights before the first reduction in credits was to take effect on January 1, 2010. It was feared that this would exacerbate the effects of the economic recession in the area by taking more lands out of agricultural production and increasing the water and power costs for those lands that continued to be farmed.

Consistent with the Pinal AMA’s management goal of preserving the agricultural economy for as long as feasible while ensuring water supply availability for future municipal and industrial water uses, the Department amended rule R12-15-725 in 2009 to delay the effective date of the first reduction of the allocation factor for calculating extinguishment credits in the Pinal AMA until 2014. It was felt that by 2014, economic conditions in the AMA would improve sufficiently so that implementation of the reduction in extinguishment credits at that time would not have a significant negative impact on the local economy.

In 2013, a number of landowners in the Pinal AMA requested the Department to again delay the reduction in the allocation factors used to calculate extinguishment credits in the Pinal AMA because economic conditions in the area have not improved as much as expected when rule R12-15-725 was amended in 2009. After considering this request, the Department has determined that it is appropriate to adopt a rule temporarily delaying by five years each annual reduction in the allocation factor. The new rule will automatically repeal effective September 15, 2014, at which time the current reduction schedule will become effective again. This temporary delay in the reduction schedule will allow water users and other interested parties in the Pinal AMA to work together to examine conditions within the AMA and offer alternatives for meeting the Pinal AMA's management goal, which could include making the 5-year delay permanent, or another alternate solution, through another rulemaking proceeding.

II. Rulemaking Proceeding and Public Comment Period

The Department has filed a Notice of Proposed Rulemaking with the Secretary of State for a rulemaking designed to temporarily delay implementation of the annual reduction of extinguishment credits in the Pinal AMA, which is currently set to begin on January 1, 2014. The Department is proposing to adopt a new rule, R12-15-725.01, temporarily delaying, by five years, each annual reduction in the allocation factor. The new rule will automatically repeal effective September 15, 2014, at which time the current reduction schedule will become effective again. Click [here](#) to view a copy of the Notice of Proposed Rulemaking.

An oral proceeding on the proposed rules will be held on **Tuesday, October 15, 2013 at 10:00 a.m.** at the following location:

Central Arizona College
Signal Peak Campus
8470 N. Overfield Road, Room T116
Coolidge, AZ 85128

Written comments on the proposed rules may be submitted to the Department until October 15, 2013 at 5:00 p.m. Written comments not submitted at the oral proceeding should be submitted to:

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Please contact Jeff Tannler, Statewide AMA Director, at (602) 771-8424 or jmtannler@azwater.gov with any questions regarding this proposed rulemaking.