

NOTICE OF PROPOSED EXPEDITED RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 15. ARIZONA DEPARTMENT OF WATER RESOURCES

PREAMBLE

<u>1. Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
R12-15-102	Amend
R12-15-103	Amend
R12-15-104	Amend

2. Citations to the agency’s statutory authority to include the authorizing statute (general) and the implementing statute (specific):

Authorizing statutes: A.R.S. § 45-105(B)(1), 45-113(A)-(C)

Implementing statute: A.R.S. § 45-113(A)-(C)

3. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:

Notice of Rulemaking Docket Opening: ____ A.A.R. ____, _____, 2023.

4. The agency’s contact person who can answer questions about the rulemaking:

Name: Karen Nielsen, Deputy Counsel
Address: Arizona Department of Water Resources
1110 West Washington Street, Suite 310
Phoenix, AZ 85007
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5. An agency’s justification and reason why the rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:

In late 2022, both a subsequent active management area (AMA) and a subsequent irrigation non-expansion area (INA) were established in Arizona. Voters established the Douglas AMA in an election, and the Director of the Arizona Department of Water Resources (the Department) established the Hualapai Valley INA. Following these designations, the Department has received significant public comment from existing groundwater users

expressing substantial concerns at the existing fees set for the applications they now must file to keep using water they were already using prior to the designations. The current fees use an hourly rate system. This system requires applicants for a certificate of grandfathered right or a notice of authority to irrigate in an irrigation non-expansion area to pay an initial fee of \$500-\$1000 in order to file the application. The Department then accepts the application and tracks the time spent reviewing it at a rate of \$118/hour. Depending on how many hours Department staff spend reviewing the application, a refund might be issued to the applicant or a bill of up to \$10,000. Based on the comments shared by impacted groundwater users, the Department is concerned that communities may not want to establish an AMA or INA because of the fees associated with the process to keep using water they have already been using. Thus, the Department is seeking to amend the rules to make the fees associated with the main applications filed in new AMAs and INAs more nominal.

The proposed expedited rule amendments are justified under A.R.S. § 41-1027(A)(5) because they reduce or consolidate steps, procedures, or processes in the rules. Specifically, the Department seeks to make the applications for an initial certificate of a grandfathered right in a subsequent AMA or an initial notice of irrigation authority in a subsequent INA subject to a fixed fee, rather than an hourly fee. By doing so, steps are reduced for the applicants and Department staff. If adopted, applicants will pay one flat fee when submitting their application, rather than an initial deposit with the possibility of additional payments made or refunds issued. Department staff will no longer need to spend their time tracking their hours on each individual application and logging them into the Department time tracking software. Those in charge of Department finances will not need to convert these hours to bills and process the associated paperwork.

Additionally, the proposed amendments are eligible for approval because they will reduce or ameliorate a regulatory burden on the public, while achieving the same regulatory objective. Reducing the required fees for applicants in a new AMA or INA achieves the same regulatory objective – to collect monies for the water resources fund established by A.R.S. § 45-117 – while reducing the burden of a higher payment. Furthermore, the rule changes establish equity between applicants in a subsequent AMA or INA and those who applied when the initial areas were established. The current fees require applicants to pay an initial amount of \$500-\$1,000 and up to \$10,000 by billing them for the work done by staff in the Department at a rate of \$118/hour. However, applicants in the original AMAs and INAs paid only \$20 for the same applications. The proposed reduced fee of \$75 matches the original \$20 fee, when adjusted for inflation.

Finally, the proposed amendments do not increase the cost of regulatory compliance, increase a fee, or reduce procedural rights of persons regulated. Indeed, they reduce the cost of regulatory compliance, decrease fees, and make no changes to the procedural rights of persons regulated.

The Department received written approval from the Governor's Office to make all the included rule amendments through an expedited rulemaking on April 24, 2023.

The following is an explanation of each proposed rule amendment:

Fees for Applications and Filings R12-15-102

The Department is proposing amendments to R12-15-102 to add specificity to the rule. The first proposed amendment alerts individuals that application fees for an initial certificate of grandfathered right in a subsequent AMA or an initial notice of irrigation authority in a subsequent INA fall under a fixed application or filing fee structure. The second proposed amendment makes clear the refund process for any applicant who filed for either of the aforementioned applications prior to the rule change taking effect.

Applications Subject to Hourly Fee; Amount of Fee; Initial Fee; Billing and Payment; Request for Reconsideration of Fee; Past Due Fee R12-15-103

The Department is proposing an amendment to R12-15-103 to delete the “Issuance of notice of authority to irrigate in an irrigation non-expansion area” from the initial fee and billing per hour fee structure to move it to the fixed application or filing fee subsection.

Applications and Filings Subject to a Fixed Fee; Fixed Fee Schedule; Mileage Expenses; Costs for Legal Notices R12-15-104

The Department is proposing amendments to R12-15-104 to establish the reduced fixed fees for the aforementioned applications. Specifically, the amendments would: 1) set a \$75 fixed fee for an “Issuance of notice of authority to irrigate in a subsequent irrigation non-expansion area”; 2) set a \$75 fixed fee for an “Application for certificate of grandfathered right following the designation of a subsequent Active Management Area”; and 3) remove the obligation to repay mileage expenses associated with these applications.

Additionally, to clarify a rule already in place, the Department is proposing an amendment to R12-15-104(A)(3)(a) to specify that it only applies in initial AMAs. This rule sets a fee for a late application for a certificate of grandfathered right, which can only be filed in initial AMAs under A.R.S. §45-476.01. The statute governing an application for a certificate of grandfather right in a subsequent AMA is found in A.R.S. §45-478(B), which does not allow for late applications to be filed.

- 6. A reference to any study relevant to the rule that the agency reviewed and proposes to either rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None.

- 7. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable.

8. The preliminary summary of the economic, small business, and consumer impact:

Not applicable. The Department is exempt from the requirements to prepare and file an economic, small business, and consumer impact statement under A.R.S. § 41-1055(D)(2).

9. The agency's contact person who can answer questions about the economic, small business, and consumer impact statement:

Not applicable.

10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

Close of record: June 26, 2023, at 5:00pm

Written comments may be sent to: Sharon Scantlebury, Docket Supervisor, Arizona Department of Water Resources, 1110 W. Washington Street, Suite 310, Phoenix, AZ 85007 or electronically to sscantlebury@azwater.gov.

An oral proceeding is scheduled for June 26, 2023, at 1:00pm at the Arizona Department of Water Resources and virtually using the link below. Oral comments may be made at the oral proceeding.

To join virtually:

<https://adwr.info/43S8UVm>

Meeting number: 2596 497 0011

Password: x8tYJ5ghSV7

To join by phone only:

+1-415-655-0001 US Toll

Access code: 2596 497 0011

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

a. Whether the rule requires a permit, whether a general permit is used, and if not, the reason why a general permit is not used:

The proposed rule amendments do not require the issuance of a regulatory permit, license, or agency authorization. For that reason, A.R.S. § 41-1037 does not apply to the proposed rule amendments.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law, and if so, citation to the statutory authority to exceed the requirements of federal law:

There is no federal law applicable to the subject of the rule.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No analysis was submitted.

12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

None.

13. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

ARTICLE 1. FEES

Section

R12-15-102. Fees for Applications and Filings

R12-15-103. Applications Subject to Hourly Fee; Amount of Fee; Initial Fee; Billing and Payment; Request for Reconsideration of Fee; Past Due Fee

R12-15-104. Applications and Filings Subject to Fixed Fee; Fixed Fee Schedule; Mileage Expenses; Costs for Legal Notices

R12-15-102. Fees for Applications and Filings

- A. A person submitting an application or filing to the Department on or after the effective date of this Section shall pay an hourly application fee as provided in R12-15-103 or a fixed application or filing fee as provided in R12-15-104, whichever applies. Application fees for an initial certificate of grandfathered right following the designation of a subsequent active management area or an initial notice of irrigation authority in a subsequent irrigation non-expansion area fall under a fixed application or filing fee structure, as outlined in R12-15-104. Fees for applications and filings shall be paid in U.S. dollars by cash, check, cashier’s check, money order, or any other method acceptable to the Department.
- B. A person with an application or filing pending before the Department prior to the effective date of this Section shall pay the application or filing fees and costs in effect when the application or filing was submitted to the Department.
- C. For an application for an initial certificate of grandfathered right in a subsequent active management area or a notice of irrigation authority in a subsequent irrigation non-expansion area submitted prior to the effective date of this Section the applicant shall only be responsible for the fees and costs in effect on the effective date of this Section. The Department shall refund the difference in the fees and costs paid when the application was submitted to the applicant within 60 days of the effective date of this Section.

R12-15-103. Applications Subject to Hourly Fee; Amount of Fee; Initial Fee; Billing and Payment; Request for Reconsideration of Fee; Past Due Fee

- A. No change.
- B. A person submitting an application listed below shall pay an hourly fee for the application, not to exceed the maximum fee shown for the application:
 1. No change.

2. Groundwater:

Type of Application	Maximum Fee
a. Issuance, renewal or modification of groundwater withdrawal permit	\$10,000.00

b. Issuance of notice of authority to irrigate in an irrigation non-expansion area	\$10,000.00
e. <u>b.</u> Approval of contract by a city, town or private water company to supply groundwater to another city, town or private water company pursuant to A.R.S. § 45-492(C)	\$10,000.00
d. <u>c.</u> Notice of intent to establish new service area right by a city, town or private water company	\$10,000.00
e. <u>d.</u> Final petition to establish new service area right by a city, town or private water company	\$10,000.00
f. <u>e.</u> Extension of the service area of a city, town or private water company to furnish disproportionately large amounts of water to an industrial or other large water user pursuant to A.R.S. § 45-493(A)(2)	\$10,000.00
g. <u>f.</u> Addition and exclusion of area by an irrigation district pursuant to A.R.S. § 45-494.01	\$10,000.00
h. <u>g.</u> Delivery of groundwater by an irrigation district to an industrial user with a general industrial use permit pursuant to A.R.S. § 45-497(B)	\$10,000.00
i. <u>h.</u> Determination of historically irrigated acres or annual transportation allotment for lands in McMullen valley groundwater basin pursuant to A.R.S. § 45-552	\$10,000.00

j. <u>i.</u> Determination of volume of groundwater that can be transported from lands in Harquahala irrigation non-expansion area to an initial active management area pursuant to A.R.S. § 45-554	\$10,000.00
k. <u>j.</u> Determination of historically irrigated acres or annual transportation allotment for lands in the Big Chino sub-basin of the Verde River groundwater basin pursuant to A.R.S. § 45-555	\$10,000.00
l. <u>k.</u> Permit to transport groundwater away from the Yuma groundwater basin pursuant to A.R.S. § 45-547	\$10,000.00
m. <u>l.</u> Drought emergency groundwater transfer away from a groundwater basin outside of an active management area	\$10,000.00

3. No change.

4. No change.

5. No change.

6. No change.

7. No change.

8. No change.

9. No change.

10. No change.

C. No change.

D. No change.

E. No change.

F. No change.

G. No change.

H. No change.

R12-15-104. Applications and Filings Subject to Fixed Fee; Fixed Fee Schedule; Mileage Expenses; Costs for Legal Notices

A. The Department shall not accept or take action on the following applications and filings unless the fee shown for the application or filing is paid at the time the application or filing is submitted:

1. No change.

2. Groundwater:

Type of Application or Filing	Fee
a. Conveyance of farm's flexibility account balance	\$250.00
b. Conveyance of notice of authority to irrigate in an irrigation non-expansion area	\$500.00
c. Conveyance of groundwater withdrawal permit	\$500.00
d. <u>Issuance of notice of authority to irrigate in an irrigation non-expansion area</u>	<u>\$75.00</u>

3. Grandfathered rights:

Type of Application	Fee
a. Late application for certificate of grandfathered right in <u>an initial Active Management Area</u>	\$100.00
b. Conveyance of certificate of grandfathered right	\$500.00
c. Issuance of revised certificate of grandfathered right following partial extinguishment of grandfathered right for assured water supply extinguishment credits	\$120.00
d. Revised certificate of Type 2 non-irrigation grandfathered right to reflect new or additional points of	\$250.00

withdrawal or the deletion of a point of withdrawal	
e. Approval of development plan to retire irrigation grandfathered right for a Type 1 non-irrigation grandfathered right	\$500.00
f. Re-issuance of certificate of grandfathered right to reflect a change in family circumstances or a transfer of the right from the rightholder to a trust in which the rightholder is a beneficiary or from a trust to a beneficiary of the trust	\$120.00
g. <u>Application for certificate of grandfathered right following the designation of a subsequent Active Management Area</u>	<u>\$75.00</u>

4. No change.
5. No change.
6. No change.
7. No change.
8. No change.
9. No change.

B. In addition to the application or filing fee listed in subsection (A) of this Section, an applicant shall pay any mileage expenses and the actual cost of mailing or publishing any legal notice of the application. This subsection shall not apply to applications listed in subsection (A)(2)(d) or (A)(3)(g) of this Section.