

NOTICE OF FINAL RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

PREAMBLE

1. Article, Part, or Section Affected (as applicable) Rulemaking Action

<u>Sections Affected</u>	<u>Rulemaking Action</u>
R12-15-722	Amend
R12-15-723	Amend
R12-15-725	Amend
R12-15-725.01	Repeal

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

Authorizing statutes: A.R.S. §§ 45-105(B)(1) and 45-576(H)

Implementing statute: A.R.S. § 45-576

3. The effective date of the rule:

a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

Pursuant to A.R.S. § 41-1032(A)(4), the rule amendments to R12-15-722, R12-15-723, and R12-15-725 as well as repeal of R12-15-725.01 become effective on January 1, 2019. A.R.S. § 41-1032(A)(4) provides that a rule may be effective immediately if the rule provides a benefit to the public and a penalty is not associated with a

violation of the rule. The rule amendments and repeal provide a benefit to the public by (1) eliminating the pressure on irrigation grandfathered right (“IGFR”) holders to prematurely extinguish their grandfathered groundwater rights before the first allocation factor reduction on January 1, 2019 contained in the existing R12-15-725.01, (2) potentially reducing future unreplenished groundwater use in the Pinal Active Management Area (“AMA”), and (3) reducing the possibility that future certificate of Assured Water Supply (“AWS”) subdivision homeowners will experience an abrupt Central Arizona Groundwater Replenishment District (“CAGR”) replenishment fee increase. Additionally, no penalty is associated with a violation of the rules. Lastly, the January 1, 2019 effective date will allow the rule amendments and repeal to take effect before the first allocation factor reduction is scheduled to occur under the current R12-15-725.01.

4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: 26 A.A.R. 2503, September 7, 2018.

Notice of Proposed Rulemaking: 26 A.A.R. 2459, September 7, 2018.

5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

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6. An agency’s justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

Reasons for Initiating the Rulemaking

Developers of new subdivisions within an AMA must either obtain a certificate of AWS from the Arizona Department of Water Resources (“Department”) or obtain a commitment of water service from a municipal water provider designated by the Department as having an AWS prior to the sale of any lots. A.R.S. § 45-576(A). One of several requirements to obtain a certificate or designation of AWS is to demonstrate that

any groundwater use is consistent with the management goal of the AMA. The management goal of the Pinal AMA, where a predominately agricultural economy exists, is to allow development of non-irrigation uses and to preserve existing agricultural economies for as long as feasible, consistent with the necessity to preserve future water supplies for non-irrigation uses. A.R.S. § 45-562(B).

One of the methods for demonstrating consistency with the management goal for groundwater use in the Pinal AMA is through the use of extinguishment credits. Under the Department's AWS Rules, when a grandfathered groundwater right is extinguished, the Department issues extinguishment credits that can be used by a developer or municipal water provider to demonstrate that a specified volume of groundwater use by the development or water provider will be consistent with the management goal of the AMA.

Another method of demonstrating that groundwater use is consistent with the management goal of the AMA is through the use of a groundwater allowance established in the Department's AWS rules. Currently, under the Department's rules, an applicant for a certificate of AWS receives a certain volume of groundwater allowance. Like extinguishment credits, a groundwater allowance represents a volume of groundwater that can be used to serve a subdivision consistent with the management goal.

Prior to 2007, the amount of extinguishment credits issued for the extinguishment of grandfathered groundwater rights in the Pinal AMA was an annual volume that remained

the same each year, regardless of when the right was extinguished. In 2007, the Department amended the rule governing the calculation of extinguishment credits in the Pinal AMA, R12-15-725, to provide for a gradual reduction in the amount of credits given for the extinguishment of grandfathered groundwater rights, depending on when the extinguishment occurs. Under the rule as amended, the first reduction in the allocation factor for calculating extinguishment credits was to take effect on January 1, 2010, with additional reductions each year thereafter until 2054, when no credits would be given for the extinguishment of a grandfathered right.

One of the major reasons for the 2007 amendment was that residential development in the Pinal 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 IGFRs for extinguishment credits. Extinguishment of IGFRs under the extinguishment credit rule in effect at that time, combined with rapid development, could have led to a sharp increase in unreplenished groundwater pumping. The 2007 amendment was designed to reduce potential unreplenished groundwater pumping.

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 Pinal AMA expressed concerns to the Department that implementation of the reduction in extinguishment credits as scheduled could result in owners of farm land in the AMA prematurely extinguishing their IGFRs 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 prematurely 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 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. Through the 2009 amendment, the allocation factors for calendar years 2010 through 2013 were increased to 100, and the allocation factors for calendar years 2014 through 2016 were increased to 94, 88 and 82, respectively. No changes were made to the allocation factors for calendar years 2017 and thereafter.

In 2013, a group of stakeholders in the Pinal AMA requested that the Department again delay the reduction in the allocation factor used to calculate extinguishment credits in the Pinal AMA because economic conditions in the area had not improved as much as expected when rule R12-15-725 was amended in 2009. In response to this request, the Department again amended the Pinal AMA AWS rules to temporarily delay the first

reduction in the allocation factor until September 15, 2014. This was accomplished through the adoption of two new rules, R12-15-725.01 and R12-15-725.02.

The combined effect of the adoption of R12-15-725.01 and R12-15-725.02 was that the first reduction in the allocation factor was delayed until September 15, 2014, when the reduction schedule adopted in 2009 was to become effective again. The temporary delay in the reduction schedule was designed to allow water users and other interested parties in the Pinal AMA to work together to examine conditions within the AMA and consider alternatives for meeting the Pinal AMA's management goal.

Again in 2014, a group of stakeholders in the Pinal AMA requested that the Department delay the first reduction in the Pinal AMA extinguishment credit calculation allocation factor. The stakeholders requested a delay until January 1, 2019 so that they could explore alternative solutions to extinguishment credit reductions in the AMA and make recommendations before the first extinguishment credit reduction would become effective in 2019. In response, the Department again amended the Pinal AMA AWS rules in 2014 to postpone the first allocation factor reduction until January 1, 2019.

Following the Department's amendment of the Pinal AMA AWS rules in 2014, a group of stakeholders in the Pinal AMA held several meetings to consider changes to both the extinguishment credit rule and the rule providing for a groundwater allowance for new certificates of AWS. Earlier this year, Stephen Q. Miller, Chairman of the Pinal AMA stakeholders group, requested that the Department amend the Pinal AMA AWS rules to:

(1) modify the method of calculating extinguishment credits in the Pinal AMA, (2) limit the amount of groundwater that may be made consistent with the Pinal AMA management goal with the use of extinguishment credits for new certificates of AWS, and (3) eliminate the groundwater allowance for new certificates of AWS. After considering this request, the Department agreed that the requested rule changes should be made. These amendments will serve to both eliminate the concerns of IGFR holders that the current rule may result in IGFR holders extinguishing their grandfathered groundwater rights prematurely as well as potentially reduce the amount of future unreplenished groundwater use by new subdivisions.

Explanation of the Rules

1. Amendments relating to extinguishment credit calculation and use of credits

The Department is repealing rule R12-15-725.01, which contains the extinguishment credit calculation for the Pinal AMA, and adding a new subsection (B) to rule R12-15-725 that contains the new extinguishment credit calculation. This will combine the Pinal AMA groundwater allowance calculation and extinguishment credit calculation into one rule. The Department's new extinguishment credit calculation in rule R12-15-725(B) no longer includes a declining allocation factor. Under the new calculation, all new extinguishments, regardless of when they occur, would be calculated in the same manner. For all new extinguishments, the initial amount of extinguishment credits given for the extinguishment would be calculated using the same formula that is currently used to calculate extinguishment credits. However, once extinguished, if 25 percent of the extinguishment credits are not used in each five-year period after extinguishment, the

total amount of extinguishment credits will be reduced so that in the fifth year only 75 percent of the original amount of extinguishment credits remain, 50 percent in the 10th year, 25 percent in the 15th year, and zero percent in the 20th year.

The Department is amending rule R12-15-722(C) to limit, for certificates of AWS, the volume of groundwater use that can be made consistent with the management goal with the use of extinguishment credits created after January 1, 2019. Under the amendment, for certificates, in years six through 10 only 75 percent of total groundwater use may be made consistent with the management goal through the use of those extinguishment credits. The percentage declines over time as follows: 50 percent for years 11 through 15, 25 percent for years 16 through 20, and zero percent for years 21 and after.

This amendment is designed to avoid CAGRDR replenishment fee rate shock to future homeowners in subdivisions with a certificate of AWS issued based on a combination of extinguishment credits issued after January 1, 2019 and CAGRDR membership. Under the amendments to the extinguishment credit calculation in rule R12-15-725, unused extinguishment credits created in the Pinal AMA after January 1, 2019 will decline to zero after 20 years. With the declining extinguishment credits, the Department anticipated that a steep increase in CAGRDR fees likely would be experienced by homeowners in subdivisions with certificates relying on new extinguishment credits. The amendment ensures that subdivisions with certificates relying on new extinguishment credits will be required to gradually "ramp down" annual extinguishment credit use and

gradually "ramp up" annual CAGRDR replenishment to make subdivision groundwater use consistent with the Pinal AMA management goal.

The Department is amending R12-15-723(D)(5) to make a conforming change by deleting the language in subsection (D)(5) that states that grandfathered rights cannot be extinguished in the Pinal AMA in the first calendar year in which the allocation factor for the extinguishment of a grandfathered right is zero. Because the Department is eliminating the current declining allocation factor, under the rule changes, grandfathered rights can be extinguished in perpetuity.

2. Amendments relating to the groundwater allowance

The Department is amending the groundwater allowance calculation for certificates of AWS in R12-15-725 by eliminating the groundwater allowance for certificate applications filed on or after January 1, 2019. Currently, the rule provides for a groundwater allowance for certificate applications until January 1, 2025. The Department is amending this rule by deleting the table containing allocation factors used to calculate the groundwater allowance for applications filed during the first through fifth management periods and replacing the table with two new subsections. New subsection (A)(1)(a) provides that for certificate applications in the Pinal AMA filed before January 1, 2019, the groundwater allowance is calculated by multiplying the annual estimated water demand of the subdivision by 10 (this is the current formula). New subsection (A)(1)(b) provides that for certificate applications filed on or after January 1, 2019, the groundwater allowance is zero.

7. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes not to 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.

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

Not applicable.

9. A summary of the economic, small business, and consumer impact:

The rule amendments related to extinguishment credits will have potential positive economic impacts on IGFR holders who would have prematurely extinguished their IGFRs under the existing rules, but who will retain their IGFRs until it is most advantageous to extinguish. These IGFR holders may benefit in the following ways: (1) by continuing farming operations so that they can receive an income from the land, and (2) by maintaining the lower tax rates applicable to agricultural land uses. The rule amendment will likely have positive economic impacts on businesses within the Pinal AMA that sell farming materials, such as seed and equipment.

The rule changes related to extinguishment credits may result in reduced CAGR fees for future homeowners within the Pinal AMA who purchase homes in subdivisions with AWS determinations based wholly or in part on extinguishment credits created in the later years of the existing rule allocation factor table. Additionally, the rule changes may also have a positive economic impact on future homeowners in the Pinal AMA in subdivisions with certificates issued after January 1, 2019 based in part on extinguishment credits due to the proposed extinguishment credit use limitations in R12-15-722(C) designed to avoid abrupt increases in CAGR replenishment fees.

The rule amendment will likely have no economic impact on the Department. The Department does not believe that any new full-time employees would be necessary to implement the proposed rule amendments. The rule amendments related to extinguishment credits may have a negative economic impact on governmental entities that receive tax revenues from the real estate taxes assessed on lands within the Pinal AMA, such as Pinal County, Maricopa County, and Pima County. Some lands within the AMA that otherwise would have been taken out of agricultural production may remain in agricultural production for a longer period of time. These lands would retain their lower agricultural tax status during that period. However, the loss in real estate tax revenue may be offset by more revenues from other taxes paid by the persons farming the lands, such as income taxes and sales taxes.

The rule amendment related to extinguishment credits may result in more IGFR groundwater withdrawals within the Pinal AMA, as some IGFR holders will likely

continue irrigating their lands with groundwater longer under the proposed rule modification than under the current extinguishment credit rules. However, because under the proposed rule amendments, extinguishment credits created on or after January 2, 2019 decline by 25 percent every five years unless used, the rule amendments may reduce the amount of unreplenished groundwater that would have been pumped to support future AWS determinations under the current rule. This may have a positive economic impact on all water users and businesses in the Pinal AMA by reducing the mining of unreplenished groundwater in the AMA. The amendment could result in higher CAGR fees for some future homeowners in the Pinal AMA.

The rule amendment eliminating the groundwater allowance for certificate applications filed on or after January 1, 2019 may also reduce the amount of unreplenished groundwater that would have been pumped to support future AWS determinations under the current rules. This likely will have a positive economic impact on all water users and businesses in the Pinal AMA by reducing the mining of unreplenished groundwater in the AMA. The amendment could result in higher CAGR fees for some future homeowners in the Pinal AMA.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

There are no changes between the proposed rules and the final rules.

11. A summary of the public or stakeholder comments made about the rulemaking and

the agency response to the comments:

Comment from Representative David L. Cook, Legislative District 8:

Pinal county has been working to solve these problems for years. Its citizens deserve to have government work for them and not to continuously have “the can” kicked down the road. The proposed rule changes should be moved through the process expeditiously. I am in support of this rule.

Response:

The Department appreciates the support and is requesting an immediate effective date for the rule amendment and repeal pursuant to A.R.S. § 45-1032(A)(4).

Comment from Representative David L. Cook, Legislative District 8:

These proposed rule changes should help the water modeling methods of the Department. The Department has not issued an application approval in over 18 months for this county, while there are still 16 applications waiting. Will this rule help the Department in their modeling system to approve these applications that have been pending?

Response:

Groundwater modeling relates to the demonstration of physical availability of groundwater. Applicants for assured water supply determinations are required to demonstrate the following for all proposed water supplies: physical availability, continuous availability, financial capability and adequate water quality. Applicants that include groundwater as a proposed source of supply are also required to demonstrate that the projected groundwater use is consistent with the management plan and achievement

of the management goal of the active management area. While extinguishment credits and groundwater allowance are methods for demonstrating that pumped groundwater is consistent with the management goal, they do not eliminate the requirement that an applicant for an assured water supply determination demonstrate that the groundwater will be physically available for 100 years using a method of analysis approved by the Department. This rulemaking does not address the requirements for demonstrating the physical availability of groundwater nor is its purpose to aid in the demonstration of physical availability of groundwater for pending assured water supply applications in the Pinal AMA.

Comment from Pinal County Supervisor Stephen Q. Miller:

The people of Pinal County have been working for a solution for several years that has now been found. This rule proposal is supported by diverse group of industry and business interests. As the Pinal County Supervisor, District 3 and Chairman of the Adhoc Committee I support the proposed rule amendment. This rule amendment provides a balance between equity to farmers and maintaining future water supplies for Pinal County. I want to thank everybody who participated in the committee.

Response:

The Department appreciates the support.

Comment from Casa Grande Council Member Dick Powell:

The rule proposal is the best option and meets the most needs of the people involved. The rule proposal allows farmers to save credits for a later time and makes credits

available to developers. The rule should be adopted. I commend everybody that worked on this rule proposal.

Response:

The Department appreciates the support.

Comment from Mike Malano, Managing Director of Greenstone:

The proposed amendment impairs the value of farmland in the Pinal AMA by greatly diminishing the value of Extinguishment Credits created when a farmland owner retires farmland.

The proposed rule amendment is very similar to Senate Bill 1511 proposed in the most recent legislative session. Greenstone provided testimony in opposition to Senate Bill 1511, including an analysis of the financial implications to irrigation grandfathered right owners.

Response:

The proposed rule amendments change the extinguishment credit calculation for extinguishments of grandfathered groundwater rights in the Pinal AMA taking place after January 1, 2019. Extinguishment credits were developed by rule to provide a method, aside from CAGRDR replenishment or groundwater allowance, for groundwater to meet the consistency with management goal requirement for AWS purposes. Extinguishment credits were not created with the intention of impacting the value of farmland and the Department is not aware of any evidence indicating that the proposed rule amendment will have such an impact. The rule amendments are intended to eliminate the concerns of

grandfathered rightholders in the Pinal AMA that the current extinguishment credit rule may result in premature extinguishment of grandfathered rights.

Comment from Mike Malano, Managing Director of Greenstone:

Greenstone suggests that the rule amendment should provide farmland owners the option to choose from the following two options when extinguishing grandfathered groundwater rights:

1. Creating extinguishment credits consistent with the proposed rule change contained in the Department's current Notice of Proposed Rulemaking, or
2. Creating extinguishment credits consistent with the original Pinal AMA guidelines established in 2010 per R12-15-722(C) and attached to Greenstone's comment.

Response:

The rulemaking referenced by Mr. Malano and attached to the comment, is a Notice of Final Rulemaking published in the Arizona Administrative Register on April 20, 2007. This 2007 extinguishment credit calculation rulemaking is discussed in the Notice of Proposed Rulemaking and Notice of Final Rulemaking filed in this rulemaking proceeding.

Providing two optional methods for the calculation of extinguishment credits would further complicate the administration of the Assured Water Supply Program in the Pinal AMA. If the current proposed rule amendment is approved, the Department will have three types of extinguishment credits to manage and administer in the Assured Water Supply Program; the original extinguishment credit type, the extinguishment credit type

created after the 2007 rule change, and the extinguishment credit type created with this current rulemaking. The alternative method proposed by Greenstone would further complicate the administration of the program by requiring the Department to simultaneously administer two completely different extinguishment credit calculation methodologies for extinguishments in the Pinal AMA beginning in 2019.

The Department instituted this rule amendment at the recommendation of the Pinal AMA Stakeholders Group chaired by Stephen Miller. The recommendation included only one methodology for calculating extinguishment credits in the Pinal AMA, which the Department included in the rule amendment package contained in the Notice of Proposed Rulemaking. The Department agrees with the recommendation of the Pinal AMA Stakeholders Group that only one extinguishment credit calculation methodology should be used.

Comment from Warren Tenney, Executive Director of the Arizona Municipal Water Users Association regarding paragraph four of the Preliminary Summary of the Economic, Small Business, and Consumer Impact Statement in the Notice of Proposed Rulemaking filed for this rule amendment and repeal:

“The rule amendment related to extinguishment credits may result in more IGFR groundwater withdrawals within the Pinal AMA, as some IGFR holders will likely continue irrigating their lands with groundwater longer under the proposed rule modification than under the current extinguishment credit rules. However, because under the proposed rule amendments, extinguishment credits created on or after January 2, 2019 decline by 25 percent every five years unless used, the rule amendments may reduce the

amount of unreplenished groundwater that would have been pumped to support future AWS determinations under the current rule.”

Can the Department provide any quantitative estimates demonstrating that these changes would not increase unreplenished groundwater withdrawals in the Pinal AMA, regardless of sector? Overall, can you provide any additional demonstration of how these rule changes would result in an increase or decrease in the physical availability of groundwater in the Pinal AMA?

Response:

The Department does not have any quantitative estimates of the impact of this rule change on unreplenished groundwater withdrawals or physical availability of groundwater in the Pinal AMA. However, the Department believes that the statement quoted above from the Preliminary Summary of the Economic, Small Business, and Consumer Impact Statement is a reasonable statement of potential impact.

Comment from Warren Tenney, Executive Director of the Arizona Municipal Water Users Association regarding paragraph five of the Preliminary Summary of the Economic, Small Business, and Consumer Impact Statement in the Notice of

Proposed Rulemaking filed for this rule amendment and repeal:

“The rule amendment eliminating the groundwater allowance for certificate applications filed on or after January 1, 2019 may also reduce the amount of unreplenished groundwater that would have been pumped to support future AWS determinations under the current rules. This likely will have a positive economic impact on all water users and business in the Pinal AMA by reducing the mining of groundwater in the AMA.”

Under the current AWS rules, the groundwater allowance for certificate applications would decline to 0 after 2025, the end of the fifth management period. The proposed rule change eliminates six years of groundwater allowance, while removing an incentive to discontinue the use [sic] of unreplenished IGFR groundwater withdrawals. Can the Department provide any quantitative estimates that illustrate whether this tradeoff will result in increased or decreased physical availability of groundwater in the Pinal AMA?

Response:

The Department does not have any quantitative estimates of the impact of this rule change on physical availability of groundwater in the Pinal AMA. However, the Department believes that the statement quoted above from the Preliminary Summary of the Economic, Small Business, and Consumer Impact Statement is a reasonable statement of potential impact.

Comment from Warren Tenney, Executive Director of the Arizona Municipal Water Users Association regarding paragraph two of the Preliminary Summary of the Economic, Small Business, and Consumer Impact Statement in the Notice of Proposed Rulemaking filed for this rule amendment and repeal:

“The rule changes related to extinguishment credits may result in reduced CAGR fees for future homeowners within the Pinal AMA who purchase homes in subdivisions with AWS determinations based wholly or in part on extinguishment credits created in the later years of the current rule allocation factor table.”

Can the Department offer any reasonable numerical estimates on the cumulative cost impact to future homeowners in the Pinal AMA due to these changes? Can the

Department also provide estimates as to how these rule changes would impact CAGR D's future replenishment obligations in the Pinal AMA?

Response:

The Department does not have any numerical estimates on the cumulative cost impact to future homeowners in the Pinal AMA due to these changes. Likewise, the Department does not have quantitative estimates as to how the rule changes would impact future CAGR D replenishment obligations in the Pinal AMA. However, the Department believes that the statement above contained in the Preliminary Summary of the Economic, Small Business, and Consumer Impact Statement is a reasonable statement of potential impact.

12. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

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

The rules do not require a permit. The rules provide guidance in the issuance of assured water supply determinations.

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:

Federal law is not applicable to the subject of the rules because the rules are based on state law.

c. Whether a person submitted an analysis to the agency that compares the rules'

**impact of the competitiveness of business in this state to the impact on business
in another state:**

No analysis was submitted.

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

None.

14. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY

Section

R12-15-722. Consistency with Management Goal

R12-15-723. Extinguishment Credits

R12-15-725. Pinal AMA — ~~Groundwater Allowance~~ Calculation of Groundwater Allowance
and Extinguishment Credits

R12-15-725.01. ~~Pinal AMA — Extinguishment Credits Calculation~~ Repealed

ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY

R12-15-722. Consistency with Management Goal

A. No change

1. No change

2. No change

3. No change

B. No change

C. For a certificate in the Pinal AMA, the Director shall calculate the volume of groundwater that may be used consistent with the management goal of the AMA for at least 100 years by adding the following:

1. No change

2. The amount of any extinguishment credits pledged to the certificate for a grandfathered right that was extinguished on or after January 1, 2019, according to R12-15-725(B), except that annual reported use of such extinguishment credits to make groundwater use consistent with the management goal is limited to the following percentages of groundwater use from the sixth year after certificate issuance:

<u>Years After Certificate</u>	<u>Percentage of Total</u>
<u>Issuance</u>	<u>Groundwater Use that May Be</u>
	<u>Made Consistent with the Pinal</u>
	<u>AMA Management Goal with</u>
	<u>Extinguishment Credits</u>
	<u>Pledged to Certificate</u>

<u>Years Six through Ten</u>	<u>75%</u>
<u>Years Eleven through Fifteen</u>	<u>50%</u>
<u>Years Sixteen through Twenty</u>	<u>25%</u>
<u>Years Twenty-one and After</u>	<u>0%</u>

23. The amount of any extinguishment credits pledged to the certificate for a grandfathered right that was extinguished on or after October 1, 2007, ~~according to R12-15-725(B)~~ and before January 1, 2019.

34. The amount of any extinguishment credits pledged to the certificate for a grandfathered right that was extinguished before October 1, 2007. The Director shall calculate the amount of the extinguishment credits by multiplying the annual amount of the credits by 100.

45. Any groundwater that is consistent with achievement of the management goal pursuant to A.R.S. Title 45, Chapter 2.

D. No change

E. For a designation in the Pinal AMA, the Director shall calculate the volume of groundwater that may be used consistent with the management goal of the Pinal AMA on an annual basis for at least 100 years by adding the following for each year during the 100-year period:

1. No change

2. The amount of any extinguishment credits pledged to the designation for a grandfathered right that was extinguished on or after January 1, 2019, divided by the number of years remaining in which the credits may be used pursuant to R12-15-725(B). These credits shall be included in the calculation only for those years in which the credits may be used. If any of the extinguishment credits were originally pledged to a certificate and are being used to support the municipal provider's designation pursuant to R12-15-723(G)(2), the extinguishment credits shall not be limited by the percentages in subsection (C)(2) of this section.
23. The amount of any extinguishment credits pledged to the designation for a grandfathered right that was extinguished on or after October 1, 2007 and before January 1, 2019, according to R12-15-725(B), divided by 100. Extinguishment credits for a grandfathered right that was extinguished on or after October 1, 2007 and before January 1, 2019 may be used in any year.
34. The annual amount of any extinguishment credits pledged to the designation for a grandfathered right that was extinguished before October 1, 2007. The following shall apply if any of the extinguishment credits are not used during a calendar year:
- a. If the extinguishment credits were pledged to the designation before October 1, 2007, any extinguishment credits not used during a calendar year shall be added to the volume calculated under this subsection for the following calendar year.
 - b. If the extinguishment credits are pledged to the designation on or after October 1, 2007, any of the extinguishment credits not used during a calendar year shall not be added to the volume calculated under this subsection for the following calendar year, except that if the extinguishment credits were originally pledged to a

certificate before October 1, 2007 and are used to support the municipal provider's designation pursuant to R12-15-723(G)(2), any of the extinguishment credits not used during a calendar year shall be added to the volume calculated under this subsection for the following calendar year.

45. Any groundwater that is consistent with the achievement of the management goal pursuant to A.R.S. Title 45, Chapter 2.

F. For a designation in the Pinal AMA, the Director shall determine that the proposed groundwater use is consistent with the management goal of the Pinal AMA if the ~~annual~~ volume calculated in subsection (E) of this Section for each year during the 100-year period is equal to or greater than the portion of the applicant's annual estimated water demand to be met with groundwater.

G. No Change

1. No Change
2. No Change
3. No Change

H. No Change

R12-15-723. Extinguishment Credits

A. No change

1. No change
2. No change
3. No change
4. No change

- a. No change
- b. No change
- 5. No change
- 6. No change
- B.** No change
- C.** No change
- D.** The following rights may not be extinguished in exchange for extinguishment credits:
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - ~~5. Any grandfathered right in the Pinal AMA beginning in the first calendar year in which the allocation factor for the extinguishment of a grandfathered right is zero, pursuant to R12-15-725(B)(3) or (4).~~
 - 65. A Type 1 non-irrigation grandfathered right that was requested to be included by a city or town in the Tucson AMA in the determination made under A.R.S. § 45-463(F).
- E.** No change
- F.** No change
- G.** No change
 - 1. No change
 - 2. No change
- H.** No change
- I.** No change

1. No change
2. No change
3. No change
 - a. No change
 - b. No change

J. No change

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change

K. No change

1. No change
2. No change
3. No change
4. No change

L. No change

R12-15-725. Pinal AMA — ~~Groundwater Allowance~~ Calculation of Groundwater Allowance and Extinguishment Credits

A. The Director shall calculate the groundwater allowance for a certificate or designation in the Pinal AMA as follows:

1. If the application is for a certificate: ~~multiply the applicable allocation factor in the table below for the management period in effect on the date of application by the annual estimated water demand for the proposed subdivision.~~

MANAGEMENT PERIOD/DATE OF APPLICATION	ALLOCATION FACTOR
Third	10
Fourth	10
Fifth	5
After Fifth	0

- a. If the certificate application is filed before January 1, 2019, multiply the annual estimated water demand for the proposed subdivision by 10.
- b. If the certificate application is filed on or after January 1, 2019, the groundwater allowance shall be zero.

2. If the application is for a designation:
- a. No Change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change

- b. If the applicant provided water to its customers before October 1, 2007 but was not designated as having an assured water supply as of that date, and a complete and correct application for designation ~~is~~was filed before January 1, 2012, multiply the applicant's service area population as of October 1, 2007 by 125 gallons per capita per day and multiply the product by 365 days. The service area population shall be determined using the methodology in Section 5-103(D) of the Third Management Plan for the Pinal AMA.
- c. If the applicant provided water to its customers before October 1, 2007 but was not designated as having an assured water supply as of that date, and a complete and correct application for designation ~~is~~was filed on or after January 1, 2012, the applicant's groundwater allowance is zero acre-feet.
- d. No change

3. No change

B. The Director shall calculate the extinguishment credits for extinguishing a grandfathered right in the Pinal AMA as follows.

1. The Director shall calculate the initial volume of extinguishment credits for the extinguishment of a grandfathered right in the Pinal AMA as follows:

a. For the extinguishment of a type 2 non-irrigation grandfathered right, multiply the number of acre-feet indicated on the certificate of grandfathered right by 100.

b. For the extinguishment of all or part of an irrigation grandfathered right, or all or part of a type 1 non-irrigation grandfathered right, multiply 1.5 acre-feet by the number of irrigation acres associated with the extinguished irrigation grandfathered right or the number of acres to which the extinguished type 1 non-irrigation

grandfathered right is appurtenant, and then multiply that product by 100, except that:

i. If only a portion of an irrigation grandfathered right or a type 1 non-irrigation grandfathered right is extinguished, only those acres associated with the portion of the right that is extinguished shall be included in the calculation; and

ii. If an extinguished irrigation grandfathered right has a debit balance in the corresponding flexibility account established under A.R.S. § 45-467, the amount of the debit shall be subtracted from the amount of the extinguishment credits.

2. For grandfathered rights extinguished in the Pinal AMA on or after January 1, 2019, if the amount of the extinguishment credits remaining unused in the fifth, tenth, fifteenth, and twentieth year after the year of extinguishment is greater than an amount calculated by multiplying the initial volume of extinguishment credits by the applicable percentage shown in the table below, the amount of unused credits shall be reduced to an amount calculated by multiplying the initial volume of extinguishment credits by the applicable percentage:

<u>Year</u>	<u>After</u>	<u>Percentage</u>
<u>Extinguishment</u>		
<u>Fifth</u>		<u>75 %</u>
<u>Tenth</u>		<u>50 %</u>
<u>Fifteenth</u>		<u>25 %</u>
<u>Twentieth</u>		<u>0 %</u>

3. For purposes of subsection (B)(2) of this section, the amount of extinguishment credits remaining unused shall be the initial volume of extinguishment credits issued for the extinguishment of the right, less:

a. The amount of any of the extinguishment credits previously pledged to a certificate of assured water supply or designation of assured water supply pursuant to R12-15-723, subsections E or F and reported to the department as having been used; and

b. The amount of any previous reductions made to the extinguishment credits pursuant to subsection B(2) of this section.

R12-15-725.01. ~~Pinal AMA – Extinguishment Credits Calculation~~ Repealed.

~~The Director shall calculate the extinguishment credits for the extinguishment of a grandfathered right in the Pinal AMA as follows:~~

~~1. For the extinguishment of a type 2 non-irrigation grandfathered right, multiply the number of acre feet indicated on the certificate by the applicable allocation factor as determined under subsection (A)(3) or (A)(4) of this Section.~~

~~2. For the extinguishment of all or part of an irrigation grandfathered right, or all or part of a type 1 non-irrigation grandfathered right, an amount calculated by multiplying 1.5 acre feet by the number of irrigation acres associated with the extinguished irrigation grandfathered right or the number of acres to which the extinguished type 1 non-irrigation grandfathered right is appurtenant, and then multiply that product by the applicable allocation factor as determined under subsection (A)(3) or (A)(4) of this Section, except that:~~

- ~~a. If only a portion of an irrigation grandfathered right or a type 1 non-irrigation grandfathered right is extinguished, the Director shall include in the calculation only those acres associated with the portion of the right that is extinguished; and~~
- ~~b. If an extinguished irrigation grandfathered right has a debit balance in the corresponding flexibility account established under A.R.S. § 45-467, the Director shall subtract the amount of the debit from the amount of the extinguishment credits.~~
- ~~3. Except as provided in subsection (A)(4) of this Section, in calculating the extinguishment credits for the extinguishment of a grandfathered right under subsection (A)(1) or (A)(2) of this Section, the Director shall use the allocation factor associated with the year in which the grandfathered right is extinguished, as shown in the table below.~~

Year	Allocation Factor
2010	100
2011	100
2012	100
2013	100
2014	100
2015	100
2016	100
2017	100
2018	100

2019	94
2020	88
2021	82
2022	76
2023	74
2024	72
2025	70
2026	68
2027	66
2028	64
2029	62
2030	60
2031	58
2032	56
2033	54
2034	52
2035	50
2036	48
2037	46
2038	44
2039	42
2040	40

2041	38
2042	36
2043	34
2044	32
2045	30
2046	28
2047	26
2048	24
2049	22
2050	20
2051	18
2052	16
2053	14
2054	12
2055	10
2056	8
2057	6
2058	4
2059	2
After 2059	0

~~4. If, before January 1, 2060, there is a moratorium on adding new member lands and member service areas in the Pinal AMA pursuant to A.R.S. § 45-576.06(A), in~~

~~calculating the extinguishment credits for the extinguishment of a grandfathered right under subsection (A)(1) or (A)(2) of this Section, the Director shall use an allocation factor determined as follows:~~

~~a. If the grandfathered right is extinguished while the moratorium is in effect, the Director shall use the allocation factor associated with the year in which the moratorium first became effective, as shown in the table in subsection (A)(3) of this Section.~~

~~b. If the grandfathered right is extinguished when the moratorium is no longer in effect, the Director shall use the allocation factor associated with the year determined pursuant to this subsection, as shown in the table in subsection (A)(3) of this Section. The Director shall determine the year as follows:~~

~~i. Subtract the year in which the moratorium first became effective from the year in which the moratorium ended.~~

~~ii. Subtract the difference in subsection (A)(4)(b)(i) of this Section from the year in which the grandfathered right was extinguished.~~