

NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* first as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council or the Attorney General. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Register* after the final rules have been submitted for filing and publication.

NOTICE OF FINAL RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 5. DEPARTMENT OF ADMINISTRATION PERSONNEL ADMINISTRATION

Editor's Note: The following Notice of Final Rulemaking was reviewed per Laws 2009, 3rd Special Session, Ch. 7, § 28. (See the text of § 28 at 15 A.A.R. 1942, November 20, 2009.) The Governor's Office authorized the notice to proceed through the rulemaking process on December 8, 2009.

[R11-33]

PREAMBLE

- 1. Sections Affected**

R2-5-417	<u>Rulemaking Action</u>
R2-5-903	Amend
	Repeal
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 41-763(2) and (6)
Implementing statute: A.R.S. § 41-783(17)
- 3. The effective date of the rules:**

June 4, 2011
- 4. A list of all previous notices appearing in the Register addressing the final rules:**

Notice of Rulemaking Docket Opening: 16 A.A.R. 12, January 1, 2010
Notice of Proposed Rulemaking: 16 A.A.R. 7, January 1, 2010
Notice of Supplemental Proposed Rulemaking: 16 A.A.R. 2343, December 3, 2010
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Christine Bronson, Employee Relations Manager
Address:	100 N. 15th Ave., Suite 261 Phoenix, AZ 85007
Telephone:	(602) 542-1423
Fax:	(602) 542-1980
E-mail:	Christine.Bronson@azdoa.gov
- 6. An explanation of the rules, including the agency's reasons for initiating the rules:**

This rulemaking amends the Personnel Rules in order to allow agencies to require covered employees to work reduced hours in the event of a reduction in appropriations for personnel expenses and related benefit costs. The Department received an exception from the rulemaking moratorium from the Governor's Office on December 8, 2009.

Session laws during two special sessions in 2009 (Laws 2009, 1st Special Session, Ch. 3 and Laws 2009, 3rd Special Session, Ch. 7) permitted agency directors to implement reductions in covered employees' work hours to comply with mandated appropriation reductions for fiscal year 2009-2010 and authorized the Director of the Department of Administration (ADOA) to prescribe procedures to implement the reductions. These procedures were exempt from the rulemaking requirements. In accordance with this authority, the ADOA Director implemented a furlough program effective October 17, 2009. Initially, the furlough program would have expired at the end of fiscal year 2010.

Notices of Final Rulemaking

Laws 2010, 7th Special Session, Ch. 3 implemented mandatory furloughs through fiscal year 2012 for most state employees and further extended the authority for the ADOA Director to prescribe the procedures by which an agency director could require a reduction in work hours for fiscal year 2010-2011 and continued the exemption from rule-making. Adoption of a furlough rule would allow agencies to use furloughs as a means of addressing budget reductions beyond the current fiscal year or if funding to pay employees is temporarily suspended, for example, due to the lack of an established federal or state budget.

As the exemption from rulemaking contained in session law has expired, the Department is prescribing furlough procedures in rule. Adoption of a furlough rule would eliminate the need for R2-5-903, Temporary Reduction in Force, thus, the Department is proposing to repeal this rule. R2-5-903 was adopted in June 1996 as a result of a temporary shutdown of the federal government due to the lack of an established federal budget. However, the need for the rule never materialized and the rule has never been used. The rule requires an agency to calculate retention points for every impacted employee, which requires considerable lead time to implement. There are also a number of other issues that make R2-5-903 problematic to implement, such as requiring employees affected by a temporary reduction in force to be separated instead of being placed on unpaid leave status, and allowing employees to use compensatory leave when in reality, agencies would not have the funding to pay employees for leave taken.

Because a furlough is an involuntary leave of absence without pay rather than a separation, the new rule is being added under Article 4, Leave.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did 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:

The agency did not review or rely on any study for this rulemaking.

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

Not applicable

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

These rules affect only state agencies and state service employees and will not have a direct impact on small businesses or consumers. Any financial impact or administrative expenses to an agency will be covered by the agency's ordinary operating funds.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

One minor, non-substantive change was made to the supplemental proposed rules in response to comments received, as described in #11, below. Minor grammatical changes were also made to increase clarity.

11. A summary of the comments made regarding the rules and the agency response to them:

The Department received both written and oral comments regarding the rules.

Following publication of the Notice of Supplemental Proposed Rulemaking and during the 30-day public comment period, 25 written comments were received.

The following comment was received from Glenn Russell, Arizona Department of Environmental Quality:

Comment: [The Supplemental Proposed Rulemaking] references R2-5-417 as currently repealed and to become the furlough rule. Isn't R2-5-417 still effective as the "Life Insurance and Disability Income Insurance Plans" Section?

Response: *Arizona Administrative Code* (A.A.C.) R2-5-417 was repealed effective March 7, 2009. The *Arizona Administrative Code* posted on the Secretary of State's web site is not the official version and at the time the comment was received, the rules posted online had been updated through quarterly Supplement 08-4. Supplement 08-4 included rulemakings effective between October 1, 2008 and December 31, 2008.

(Note: Supplement 09-1 has since been posted to the Secretary of State's web site, which properly reflects R2-5-417 as repealed.)

The following comment was received from Todd Schwarz, representing himself:

Comment: I was informed that ADOA would be meeting tomorrow to discuss a change in rules that would allow agency directors to furlough employees at the director's discretion. This does not sound like rulemaking. This sounds more like an attempt to remove a key budgetary responsibility from the legislature. Such a change would allow the legislature to absolve itself of the truly difficult decisions between cutting needed services to the citizens of Arizona or forcing administrative cuts that render the service marginal or useless. Supposedly this is all open for public comment but I cannot find any more than the mention of a "future agenda item" at the G.R.R.C. web site. Please send me a copy of the proposed rule so I can submit a reasoned response.

Response: This rulemaking does not remove or modify the legislature's budgetary responsibilities. Instead, the legislature's decisions on state agency budgets could result in the implementation of furloughs authorized by this rulemaking. A link to the Notice of Supplemental Proposed Rulemaking was provided to the commenter. The Notice as published on December 3, 2010 included all previous notices on the rulemaking; authority for the rulemaking; an

Notices of Final Rulemaking

explanation of the rules, including the Department's reasons for initiating the rulemaking; the date, time, and location of the oral proceeding; and the full text of the rule.

Beginning at approximately 6:00 p.m. on the day before the oral proceeding, and during the day of the oral proceeding, the Department received 23 e-mails from various individuals, most of whom identified themselves as state employees, expressing opposition to furloughs in general. The Department also received two additional e-mails after the close of record. None of the 25 comments were specific to the rule and are summarized below:

Comment: Some of the commenters indicated that it had been rumored that additional furlough days would soon be implemented and the rumors were creating additional stress for state employees. Almost all of the commenters expressed opposition to "allow additional furlough days," citing reasons such as: the effect reduced work schedules created by mandatory furloughs have already had on clients and the financial hardships the employees would encounter if additional furlough days were implemented.

Response: The Department is not implementing nor is it proposing to implement additional furlough days for state employees and it is unfortunate that such a rumor was created and circulated. The rulemaking was initiated to add furlough, which is the involuntary placement of an employee on leave of absence without pay for budgetary reasons, to the leave categories already provided in rule. Session laws during two special sessions in 2009 permitted agency directors to implement reductions in covered employees' work hours to comply with mandated appropriation reductions and authorized the Department to prescribe the procedures to implement the reductions. In October 2009, the Department established an agency furlough program similar to programs being established in other states experiencing budgetary reductions. During a special session in 2010, statewide mandatory furloughs were implemented, the authorization for agency furloughs was extended through the end of fiscal year 2011, and the Legislature stipulated that the mandatory furloughs were to be "in addition to any other furlough program implemented by the agency." The Department is essentially incorporating in rule what has been the agency furlough program that has been in effect since its implementation in October 2009.

Comment: In the group of the 25 e-mails received by the Department, several of the state employees identified themselves as Child Protective Service (CPS) workers in the Arizona Department of Economic Security, and expressed that reductions to their work hours compromised their ability to protect children and additional furlough days could potentially result in children being left in unsafe situations.

Response: The Department understands that certain services provided by state employees are critical to preserving the public peace, health, or safety. The rulemaking provides flexibility to an agency head to determine the means by which a budget or funding crisis, such as a reduction or suspension of funding, can be addressed by the agency while still maintaining critical services.

An oral proceeding on the Notice of Supplemental Proposed Rulemaking published December 3, 2010, was held on January 5, 2011, and two individuals appeared to speak.

Peggy Guichard-Watters, a state employee representing herself, expressed appreciation to the Department for issuing the Notice of Supplemental Proposed Rulemaking, and provided the following oral comments:

Comment: When is the close of record?

Response: At the time of the oral proceeding, the close of record (which is the last day the agency will take public comment) had not been determined, but the commenter was advised the close of record would likely be by the end of the week and also advised of the additional 60-day comment period with the Governor's Regulatory Review Council (G.R.R.C.) after the rule is filed with G.R.R.C. The Department closed the record on Friday, January 7, 2011.

Comment: The commenter expressed disagreement with the Department's response on the Notice of Supplemental Proposed Rulemaking, item #8, the preliminary summary of the economic, small business, and consumer impact, as small businesses have been impacted by furloughs and specifically cited restaurants and dry cleaners in the area as having been directly, not indirectly, affected.

Response: Only state agencies and state employees are directly impacted by the furloughs, and any impact on businesses would be indirect as a result of the impact to employees. It would be anticipated that businesses in areas of large concentration of state employees, such as in and around the Capitol Mall area, would experience greater impact; however, such impact is still indirect.

Comment: Although the Temporary RIF rule may be cumbersome, it does spell out a systematic process, which is fair and equitable. These rules are arbitrary and capricious and provide agency heads with a huge amount of power.

Response: The rulemaking is substantially similar to the agency furlough program that has been in effect since October 2009, which has allowed an agency to conduct a furlough agency-wide, by unit, geographic location, fund and/or classification or classification series. The reasoning for granting an agency head the discretion and flexibility to develop a furlough plan is because the Department believes that the agency head, not the Department, is in the best position to determine the method(s) to address the agency's budgetary situations while still maintaining essential services. As with the agency furlough program, unless the furlough is due to failure to pass a state budget, the rulemaking still requires an agency head to submit a furlough program to ADOA for approval before implementation and ADOA has the authority to approve, modify or deny an agency's furlough plan.

Notices of Final Rulemaking

Comment: The rules should be altered to state that covered employees will not be furloughed unless uncovered employees are also furloughed.

Response: Uncovered employees are not subject to the ADOA Personnel Rules, serve at the pleasure of the appointing authorities, and can be separated without the right of appeal. Agency directors have had, and continue to have, the authority to place uncovered employees on furlough; however, a stipulation that uncovered employees be impacted either before or jointly with covered employees does not exist in any other rule.

Comment: R2-5-417(D)(1): second sentence that states, "An agency head is not required to implement or exhaust other cost-savings measures prior to initiating a furlough plan" should be stricken or clarified.

Response: This statement is intended to permit flexibility to an agency head to explore any other cost-savings measure(s) simultaneously with a furlough plan to address particular budgetary situations that may be unique to the agency. Each agency head is responsible for determining when a furlough is appropriate as applicable to his or her agency. The Department believes the agency head is in the best position to make this determination.

Comment: R2-5-417(D)(3)(a): scope of a furlough should be agency-wide or not at all, or statewide or not at all; as currently written, an agency could identify a scope which would impact a single employee in the agency, for example, if there is only one employee in a job classification in the agency.

Response: As previously stated, the rulemaking is substantially similar to the agency furlough program that has been in effect since October 2009, which has allowed an agency to conduct a furlough by a single classification. The Department believes an agency head should have as much flexibility as possible in structuring its furlough plan to address any unique needs of the agency. This includes the discretion to conduct a furlough by single classification if that will address the agency's budgetary situation while still maintaining essential services. The rulemaking still requires an agency head to provide detailed information on the proposed furlough and obtain approval of its furlough plan from ADOA prior to implementation.

Comment: R2-5-417(D)(3), pertaining to the items that must be included in an agency furlough plan: the plan should also include a calculation of the cost savings for the agency for providing transparency.

Response: After consideration of the comment and for various reasons, the rule was changed to include the anticipated cost savings to the agency due to the furlough.

Comment: R2-5-417(E): the entire Section should be deleted; it is unfair as written and inequitable; would permit an indefinite furlough at the request of an agency head; scope of a furlough should be statewide or not at all; basing a furlough on funding source or particular funds is not fair to the individual who happens to occupy the position; instead, any suspension of funding should not be limited to the individual(s) occupying the impacted positions, but should be shared equally among employees (i.e., all or none).

Response: As previously stated, the rulemaking is substantially similar to the agency furlough program that has been in effect since October 2009, which has allowed an agency to conduct a furlough by funding source. The Department believes an agency head should have as much flexibility as possible in structuring its furlough plan to address any unique needs of the agency. This includes the discretion to conduct a furlough by funding source if that will address the agency's budgetary situation while still maintaining essential services. The rulemaking still requires an agency head to provide detailed information on the proposed furlough and obtain approval of its furlough plan from ADOA prior to implementation.

Comment: R2-5-417(E)(3), pertaining to the items that must be included in an agency furlough plan: the plan should also include a calculation of the cost savings to show how much money the furlough is expected to save.

Response: Subsection (E) pertains to a suspension of funding furlough - agency head request. If funding is temporarily suspended, for example, due to the lack of an established federal budget, this would likely require either full or limited cessation of certain state government operations. In this situation, the furlough would be due to the suspension of funding to pay employees rather than an effort to generate cost savings. Thus, the anticipated cost savings would not be necessary.

Comment: R2-5-417(E)(5)(b): the ability to place employees on furlough "indefinitely" leaves employees hanging; an employee should know how long he or she will be on furlough; this needs to be more specific.

Response: Subsection (E) pertains to a suspension of funding furlough - agency head request. The rulemaking allows an agency head to submit a request to conduct a furlough due to a suspension of funding to pay employees. In these situations, it is unlikely that the length or duration of the furlough can be specified or even projected. However, the rule specifies that the furlough continues only until "the reason for the furlough is abated."

Comment: R2-5-417(F): although not palatable, it is the only subsection that is equitable because all employees are placed on furlough; the requirement to furlough all employees in the same manner should be applied to subsections (D) and (E).

Response: The Department has already addressed why the requirement to furlough all employees in the same manner is not being applied to subsections (D) and (E) in responses to previous comments specific to subsections (D) and (E).

Notices of Final Rulemaking

Lisa McAllister, Organizing Coordinator for the Service Employees International Union (SEIU), did not have comments specific to the substance and form of the proposed rule, but provided the following general comments:

Comment: In addition to the specific comments already provided by Ms. Guichard-Watters, the notification process was done obscurely and was a disregard for best practices in Human Resources; employees should have an opportunity to respond; there's been no effort to collaborate with state employees; and, the notion of shared sacrifices - that point has been made - there should be much more uniformity in how furloughs are administered instead of allowing an agency to have so much independence.

Response: As required under the Administrative Procedure Act, the Department properly noticed the rulemaking, held oral proceedings on the rulemaking and allowed for periods of public comment. Oral proceedings are open to the public and any employee or member of the public could have attended the oral proceeding; however, only two individuals appeared to speak. Written comments were accepted during the public comment period, and the Department considered the oral and written comments in the rulemaking process. The Department has already addressed why an agency head should have as much flexibility as possible in structuring its furlough plan in responses to previous comments.

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

None

13. Incorporations by reference and their location in the rules:

None

14. Were these rules previously made as emergency rules?

No

15. The full text of the rules follows:

TITLE 2. ADMINISTRATION

CHAPTER 5. DEPARTMENT OF ADMINISTRATION
PERSONNEL ADMINISTRATION

ARTICLE 4. LEAVE

Section

R2-5-417. ~~Repealed~~ Furlough

ARTICLE 9. SEPARATIONS

Section

R2-5-903. ~~Temporary Reduction in Force~~ Repealed

ARTICLE 4. LEAVE

R2-5-417. ~~Repealed~~ Furlough

A. Definition. A furlough is the involuntary placement of an employee on leave of absence without pay for budgetary reasons.

B. Types of furloughs. A furlough may be authorized by legislative action. In addition, the Director may approve:

1. A reduction of funding furlough that allows an agency head to place employees on furlough for any combination of consecutive or non-consecutive days. There is no maximum number of days an employee may be placed on furlough, but consecutive furlough days shall not exceed five consecutive days or more than one-half the employee's regularly scheduled hours in a pay period, whichever is less; and
2. A suspension of funding furlough that allows an agency head to place employees on furlough indefinitely until funding is restored.

C. General.

1. The total number of days an employee is placed on furlough may vary based on the amount of the reduction or length of suspension of funding.
2. A furlough day equals eight hours for full-time employees and is pro-rated for part-time employees. Furlough hours for part-time employees are calculated by multiplying the number of hours the employee is scheduled to work in a week by 0.2. If the calculation results in a fraction, the furlough hours shall be rounded to the nearest whole hour, as follows:
 - a. 0.5 or above is rounded up, and
 - b. Less than 0.5 is rounded down.

Notices of Final Rulemaking

3. A furlough is unpaid.
 4. Unless a work emergency occurs under subsection (D)(6), while on furlough, an employee shall not conduct state work or volunteer to conduct state work, either with or without compensation.
 5. Paid leave shall not be substituted for furlough days.
 6. All state service employees within the scope of the furlough shall be subject to the furlough in the same manner. Exceptions may be granted when an agency head determines certain employees within the scope of the furlough have unique knowledge or skills or are considered mission critical and need to be excluded from the furlough.
 7. Unless the employee is in a physician or attorney position, an employee who is in a position that has been determined to be exempt from the provisions of the Fair Labor Standards Act (FLSA) will lose the exemption for any work week in which the employee is furloughed for less than the full work week.
 8. A furlough shall not adversely affect an employee's service anniversary date or create a break in service.
 9. Upon conclusion of the furlough period, an agency head shall return an employee to the employee's status and position held prior to the furlough, unless a personnel action taken in accordance with state service personnel rules authorizes a change to the employee's record.
 10. An employee's failure or inability to return to work upon conclusion of the furlough period may, in accordance with applicable state service personnel rules:
 - a. Result in the employee being placed on leave.
 - b. Be considered a resignation.
 - c. Result in separation without prejudice, or
 - d. Be cause for dismissal.
- D. Reduction of funding furlough.**
1. An agency head shall submit to the Director a furlough plan for approval if the agency head determines a furlough is necessary due to a reduction of funding. An agency head is not required to implement or exhaust other cost-savings measures prior to initiating a furlough plan.
 2. The agency head shall submit the furlough plan for approval at least 30 working days prior to the proposed implementation date of the furlough. If circumstances beyond the agency head's control do not permit at least 30 working days' notice, the agency head shall submit the furlough plan as soon as the agency head is aware of the necessity for the furlough and provide a written explanation of why the 30 working day requirement was not met.
 3. An agency head shall include all of the following in the furlough plan:
 - a. The proposed scope of the furlough plan, which shall be either agency-wide or limited to:
 - i. Agency operations in one or more geographic areas.
 - ii. One or more organizational units of the agency.
 - iii. One or more funding sources.
 - iv. One or more job classes.
 - v. One or more class series, or
 - vi. Any combination of the above.
 - b. If the furlough will not be conducted on an agency-wide basis, each affected:
 - i. Geographic location.
 - ii. Organizational unit.
 - iii. Funding source.
 - iv. Job class, and
 - v. Class series.
 - c. For each affected geographical location, organizational unit, funding source, job class, and class series specified in the furlough plan, the total number of employees scheduled for furlough;
 - d. If requesting any exceptions within the scope of the furlough under subsection (C)(6), the total number of employees within the scope of the furlough, the number of employees for whom an exception is requested, and the reason for the request;
 - e. The number of days and date ranges for the furlough;
 - f. The anticipated cost savings due to the furlough;
 - g. The agency's procedures for scheduling furloughs; and
 - h. The procedures for notifying employees of the furlough.
 4. The Director shall review and provide written notification of approval, modification, or denial of an agency's furlough plan within 20 working days of receipt.
 5. Upon approval of the Director to conduct a reduction of funding furlough, an agency head:
 - a. May place an employee on furlough for any combination of consecutive or non-consecutive days, subject to the limits in subsection (B)(1);
 - b. Shall determine the scheduling of furloughs that provide for the continuation of any agency operations required by law;
 - c. May cancel or rescind any approved paid or unpaid leave in progress or scheduled for an employee who is desig-

Notices of Final Rulemaking

nated for furlough and shall notify the affected employee in writing of the cancellation of the approved leave for the duration of the furlough. If the previously approved leave was scheduled to extend beyond the furlough, the employee may return to paid leave status, if available, following the furlough period. If the agency head cancels an employee's paid leave and:

- i. The employee is on leave pursuant to the provisions of the federal Family and Medical Leave Act (FMLA) during a scheduled furlough day, the furlough day shall not count against the employee's FMLA entitlement and the employee's leave balance shall not be charged for the furlough day; or
- ii. The employee is on military leave during a scheduled furlough day, the furlough day shall not count against the employee's military leave and the employee's leave balance shall not be charged for the furlough day; and
- d. Shall prohibit an employee from working during the period of the furlough, unless a work emergency arises. In the event of a work emergency, an agency head may revoke the furlough for an employee in an individual case. An employee whose furlough is revoked due to an emergency shall be paid for time required to work and shall be required to take the furlough on another day, unless otherwise exempted.

E. Suspension of funding furlough - agency head request.

- 1. An agency head shall submit to the Director for approval a furlough plan if the agency head determines a furlough is required due to a suspension of funding to pay employees.
- 2. The agency head shall submit the furlough plan for approval at least 15 working days prior to the proposed implementation date of the furlough. If circumstances beyond the agency head's control do not permit at least 15 working days' notice, the agency head shall submit the furlough plan as soon as the agency head is aware of the necessity for the furlough and provide a written explanation of why the 15 working day requirement was not met.
- 3. An agency head shall include all of the following in the furlough plan:
 - a. The proposed scope of the furlough plan, which shall be either agency-wide or limited to:
 - i. Agency operations in one or more geographic areas.
 - ii. One or more organizational units of the agency.
 - iii. One or more funding sources.
 - iv. One or more job classes.
 - v. One or more class series, or
 - vi. Any combination of the above.
 - b. If the furlough will not be conducted on an agency-wide basis, each affected:
 - i. Geographic location.
 - ii. Organizational unit.
 - iii. Funding source.
 - iv. Job class, and
 - v. Class series.
 - c. For each affected geographical location, organizational unit, funding source, job class, and class series specified in the furlough plan, the total number of employees scheduled for furlough;
 - d. If requesting any exceptions within the scope of the furlough under subsection (C)(6), the total number of employees within the scope of the furlough, the number of employees for whom an exception is requested, and the reason for the request;
 - e. The procedures for notifying employees of the furlough; and
 - f. The procedures for notifying employees of restoration of funding and when to return to work.
- 4. The Director shall review and provide written notification of approval, modification, or denial of an agency's furlough plan within 10 working days of receipt.
- 5. Upon approval of the Director to conduct a suspension of funding furlough, an agency head:
 - a. Shall freeze all personnel actions except for those actions that would accomplish, or assist in accomplishing the purpose of the furlough;
 - b. May place employees on furlough indefinitely until the reason for the furlough is abated;
 - c. Shall notify affected employees of the furlough and that while on furlough, an employee:
 - i. Shall not report to work or work from any location until notified to return to work; and
 - ii. Will not receive pay for any unused and unforfeited annual leave, should the employee resign or be terminated, until funding is restored;
 - d. May cancel or rescind any approved paid or unpaid leave in progress or scheduled for an employee who is designated for furlough and shall notify the affected employee in writing of the cancellation of the approved leave for the duration of the furlough. If the previously approved leave was scheduled to extend beyond the furlough, the employee may return to paid leave status, if available, following the furlough period; and
 - e. Shall notify employees upon restoration of funding and when to return to work.

E. Suspension of funding furlough - failure to pass state budget. If the state fails to pass a budget and funds are not appropriated for the following fiscal year, the Director may authorize an agency head to implement a suspension of funding fur-

Notices of Final Rulemaking

lough. Upon such notification by the Director, an agency head:

1. Shall freeze all personnel actions except for those actions that would accomplish, or assist in accomplishing the purpose of the furlough;
2. Unless an exception has been authorized as provided in subsection (F)(4), shall place all employees on furlough indefinitely until the reason for the furlough is abated;
3. Shall require all employees to be subject to the furlough in the same manner;
4. May establish exceptions when only a portion of the employees in a particular class are necessary to perform mission critical services;
5. Shall notify affected employees of the furlough and that while on furlough, an employee:
 - a. Shall not report to work or work from any location until notified to return to work; and
 - b. Will not receive pay for any unused and unforfeited annual leave, should the employee resign or be terminated, until funding is restored;
6. Shall cancel or rescind any approved paid or unpaid leave in progress or scheduled for an employee who is designated for furlough and shall notify the affected employee in writing of the cancellation of the approved leave for the duration of the furlough. If the previously approved leave was scheduled to extend beyond the furlough, the employee may return to paid leave status, if available, following the furlough period; and
7. Shall notify employees upon restoration of funding and when to return to work.

G. Employee request for review.

1. An employee may submit a request for review of the employee's placement on furlough. The employee shall make the request for review in writing to the agency head no later than three working days after the employee's receipt of a furlough notice. The employee shall limit the request for review to the determination resulting in the employee's furlough and include a proposed resolution.
2. The agency head shall provide a written response to the employee with a final decision within:
 - a. Five working days after receipt of the request if a reduction of funding furlough, or
 - b. Fifteen working days after the employee returns to work if a suspension of funding furlough.
3. A request for review shall not delay implementation of the furlough.

ARTICLE 9. SEPARATIONS

R2-5-903. Temporary Reduction in Force Repealed

A. General

- ~~1. When funding necessary to pay employees is suspended or reduced, a temporary reduction in force may be conducted and shall be processed in accordance with the provisions of this Section.~~
- ~~2. If funding to pay employees is suspended or reduced, an agency head may request approval from the Director to conduct a temporary reduction in force. The agency head shall submit to the Director the plan and procedure the agency proposes to follow. The plan and procedure shall state:
 - ~~a. The reason for the temporary reduction in force;~~
 - ~~b. Each budget program affected;~~
 - ~~e. The classes affected;~~
 - ~~d. The amount of shortfall, total number of employees affected, and name and Fair Labor Standards Act status of each affected employee;~~
 - ~~e. The unit, for example, budget program, class, class series or agency, subject to or affected by the temporary reduction in force and number of employees in the affected unit;~~
 - ~~f. When the agency was notified of the funding suspension or reduction;~~
 - ~~g. Assessment of the impact of a temporary reduction in force on the agency's ability to deliver essential services;~~
 - ~~h. What alternatives have been considered and why they were rejected;~~
 - ~~i. The number of funded, vacant positions within the agency, what efforts the agency has made to place employees in other positions within the agency or other state agencies;~~
 - ~~j. Expected outcome of the proposed action; and~~
 - ~~k. A summary of funding discussions with the Department of Administration Finance Division.~~~~
- ~~3. An agency head shall not initiate or implement a personnel action that will affect the temporary reduction in force after the date of the agency head's request to the Director for a temporary reduction in force except to process a personnel action to accomplish, or to assist in accomplishing, the purpose of the temporary reduction in force. The agency head shall give employees subject to a temporary reduction in force preference for placement in any funded vacant positions within the agency for which they qualify. Preference for placement shall be based upon retention points.~~
- ~~4. A temporary reduction in force shall not exceed 30 working days from the date of implementation of the plan. If the agency is advised at any time during the temporary reduction in force is in effect that funding for affected positions will be terminated or permanently reduced, an agency head shall plan and conduct a reduction in force as prescribed by R2-5-902, unless the agency makes other arrangements to delay a reduction in force.~~

Notices of Final Rulemaking

5. ~~An agency head shall not approve the use of any paid leave except compensatory leave for an employee who is designated for temporary reduction in force. An approved paid or unpaid leave in progress for an employee who is designated for temporary reduction in force shall be cancelled effective the day that the temporary reduction in force begins. The agency head shall notify the affected employee in writing of the cancellation of the approved leave.~~
 6. ~~Pay for time on temporary reduction in force may only be restored to an employee if, and to the extent which, federal or state law specifically authorizes payment.~~
 7. ~~An employee affected by a temporary reduction in force pursuant to this Section shall return to work in the same position occupied at the start of the temporary reduction in force if funding is fully restored, sufficient attrition has occurred, or an alternate source of funding becomes available.~~
 8. ~~Failure or inability to return to work on the effective date of return may be considered a resignation, result in separation without prejudice, or be cause for dismissal as determined by the agency head consistent with the agency policies, procedures, and guidelines. An employee who is unable to return to work due to a non job related medical condition shall provide to the agency head a written statement from a licensed health care practitioner substantiating the employee's inability to return to work.~~
- B.** Administration. The Director shall administer a temporary reduction in force in the following manner:
1. ~~In an agency affected by a temporary reduction in force, employees shall be separated in the order listed below before any action is taken that affects permanent status employees, providing the separation of these employees will accomplish, or assist in accomplishing, the purpose of the temporary reduction in force:~~
 - a. ~~Permanent status employees who volunteer for a temporary reduction in force;~~
 - b. ~~Provisional employees;~~
 - c. ~~Clerical pool employees;~~
 - d. ~~Temporary employees;~~
 - e. ~~Seasonal employees;~~
 - f. ~~Original probationary employees;~~
 - g. ~~Limited employees.~~
 2. ~~Retention points shall be used to identify full-time or part-time permanent status employees to be placed on temporary reduction in force based on the employee's relative standing on the retention list. Identification of employees to be placed first on temporary reduction in force shall begin with the employee with the lowest number of retention points.~~
 3. ~~Retention points shall be based on length of state service and performance, calculated in accordance with subsections (C), (D), and (E) below.~~
 4. ~~Employees on promotional probation, detail to special duty, or underfilling a position shall compete for retention in their promotional probation, detail to special duty, or underfill classes.~~
- C.** Calculation of retention points for length of service:
1. ~~Each permanent status employee shall be awarded 1 retention point for each year of state service. Service of more than six months shall be counted as one year. Service of six months or less shall not be counted.~~
 2. ~~Periods of service as a state service employee prior to a resignation or dismissal shall not be counted.~~
 3. ~~Periods of state service as a provisional, seasonal, temporary, limited, or clerical pool employee shall not be counted.~~
 4. ~~Periods of military leave with or without pay shall be counted.~~
 5. ~~Periods of service on mobility assignment shall be counted.~~
 6. ~~Continuous uninterrupted service in a position prior to its transfer to state service by legislative action or otherwise from a budget unit of the state shall be counted.~~
- D.** Calculation of retention points for performance. The most recent performance evaluation concluded prior to the date of the request for temporary reduction in force shall be used in determining retention points. If any employee has not had a performance evaluation in the past 12 months, the employee shall be awarded 12 retention points. Retention points for performance shall be awarded as follows:
1. ~~Each employee having an overall performance evaluation of standard or above shall be awarded 12 retention points;~~
 2. ~~Each employee having an overall performance evaluation of less than standard shall be awarded 0 retention points.~~
- E.** Resolution of ties. Ties in total retention points shall be broken in the following manner and order:
1. ~~Tie shall be broken by the employee with the highest overall performance rating in the class currently held by the employee;~~
 2. ~~If a tie continues to exist, the tie shall be broken by the employee with the earlier initial state service hire date of record;~~
 3. ~~If a tie continues to exist, it shall be broken by lot.~~
- F.** Notice of separation due to temporary reduction in force. ~~The agency shall provide the employee with a written notice of separation as soon as practical after the plan is approved. The notice shall include, at a minimum, the effective date of the separation and the right to request a review of the separation.~~
- G.** ~~When funding necessary to pay the employee is restored, the temporary reduction in force expires, or the agency head otherwise determines that an employee may be recalled, the agency shall provide the employee written notice.~~

Notices of Final Rulemaking

H. Employee request for review. An accelerated review process shall be established for temporary reduction in force. No later than three working days after receipt of a temporary reduction in force notice, an employee may submit to the agency head a written request for a review of the determination resulting in the employee's temporary reduction in force and a proposed resolution. The agency head shall respond to the employee with a final decision within three working days after receipt of the request for a review. The request for review shall not delay implementation of the temporary reduction in force.

NOTICE OF FINAL RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

Editor's Note: The following Notice of Final Rulemaking was reviewed per Laws 2010, Ch. 287, § 18. (See the text of § 18 on page 703.) The Governor's Office authorized the notice to proceed through the rulemaking process on December 6, 2010.

[R11-34]

PREAMBLE

1. Sections Affected

Rulemaking Action

Table with 2 columns: Rulemaking ID and Rulemaking Action. Rows include R12-15-101 (New Section), R12-15-102 (New Section), R12-15-103 (New Section), R12-15-104 (New Section), R12-15-105 (New Section), R12-15-106 (New Section), R12-15-151 (Repeal), R12-15-702 (Amend), R12-15-703 (Amend), R12-15-704 (Amend), R12-15-705 (Amend), R12-15-706 (Amend), R12-15-707 (Amend), R12-15-708 (Amend), R12-15-710 (Amend), R12-15-712 (Amend), R12-15-713 (Amend), R12-15-714 (Amend), R12-15-730 (Repeal), R12-15-806 (Amend), R12-15-1208 (Amend), R12-15-1210 (Amend), R12-15-1211 (Amend), R12-15-1213 (Amend), R12-15-1219 (Amend).

2. The statutory authority for the rulemaking, including both the authorizing statutes (general) and the implementing statutes (specific):

Authorizing statutes: A.R.S. §§ 45-113(A) and (B), 45-183(C), 45-273(E), 45-292(B), 45-476.01(B), 45-595(C), 45-596(L), 45-599(J), 45-1041(E) 45-1204(B), 45-1603(A) and 45-1605(A)

Implementing statutes: A.R.S. §§ 45-108, 45-132 through 45-134, 45-152, 45-156(B), 45-160, 45-161 through 45-164, 45-172, 45-181 through 45-183, 45-186, 45-271 through 45-275, 45-292, 45-437, 45-437.02, 45-437.03, 45-452(B), 45-465.01, 45-465.02, 45-467(O) through (R), 45-469, 45-471(C), 45-472, 45-476.01, 45-482(B), 45-492(A) and (C), 45-493(A)(2), 45-494.01(A), 45-497(B), 45-513 through 45-521, 45-527, 45-547, 45-552, 45-554(B), 45-555(A) through (D), 45-576, 45-579, 45-593 through 45-596, 45-599, 45-811.01, 45-812.01, 45-814.01(E), 45-831.01, 45-834.01, 45-854.01, 45-871.01, 45-1041, 45-1045, 45-1052, 45-1203, 45-1206, 45-1212, 45-1602, 45-1605 and Laws 2010, Ch. 252, § 2

3. The effective date of the rules:

June 4, 2011

4. A list of all previous notices appearing in the Register addressing the final rule:

Notice of Rulemaking Docket Opening: 16 A.A.R. 2519, December 31, 2010

Notices of Final Rulemaking

Notice of Proposed Rulemaking: 16 A.A.R. 2486, December 31, 2010

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

Name: Ken Slowinski, Chief Counsel
Address: Department of Water Resources
3550 N. Central Ave.
Phoenix, AZ 85012
Telephone: (602) 771-8472
Fax: (602) 771-8686
E-mail: kcslowinski@azwater.gov

or

Name: Sandra Fabritz-Whitney, Acting Director of Water Resources
Address: Department of Water Resources
3550 N. Central Ave.
Phoenix, AZ 85012
Telephone: (602) 771-8586
Fax: (602) 771-8689
E-mail: safabritz@azwater.gov

6. An explanation of the rule, including the agency's reasons for initiating the rule:

A. Purpose of Rulemaking and Background

As a result of state revenue shortfalls, the amount of money appropriated to the Arizona Department of Water Resources ("Department") from the state general fund for fiscal year 2010-2011 was significantly less than the amount appropriated for prior fiscal years. The Department's appropriation from the state general fund for fiscal year 2011-2012 is not expected to increase significantly, if at all. After fiscal year 2011-2012, the Governor has proposed that the Department receive no money from the state general fund, but instead become fully self-funded.

The decision to reduce the Department's annual appropriations from the state general fund was based, in part, on the expectation that the Department would increase the fees it charges for permitting and inspection services to cover the Department's costs in performing those services (for purposes of this preamble, "permitting services" includes applications and filings). To facilitate this, the Legislature enacted two bills during 2010 relating to the Department's fees. HB 2007, passed during the 7th special session in 2010, authorized the Department to increase fees in fiscal year 2010-2011 for services in that fiscal year. HB 2007 also exempted the Department from the formal rulemaking requirements in A.R.S. Title 41, Chapter 6 for the purpose of establishing the increased fees. SB 1359, passed during the 2010 regular session, created a Water Resources Fund to be used exclusively by the Department to carry out the purposes of A.R.S. Title 45, subject to legislative appropriations. The bill redirected many of the permitting fees collected by the Department from the state general fund to the Water Resources Fund and authorized the use of the Dam Repair Fund in support of dam safety program activities.

Prior to the enactment of the two bills described above, the Department began a review of the fees it charges for processing applications and filings and conducting inspections to determine whether the fees were sufficient to cover the Department's costs in performing those services and whether the Department's fee rules included all the fees it is authorized by statute to establish. Most of the fees had been in place without revision since at least 1994. Through this review, the Department determined that its fees did not cover its permitting and inspection costs and that its fee rules did not include fees for several services for which it has statutory authority to establish a fee.

In early 2010, the Department held a series of stakeholder meetings to discuss fee increases with stakeholders. During these meetings, the Department proposed charging an hourly fee of \$118.00 per hour for the time spent by Department staff in reviewing those applications that it estimates takes five or more hours to process. The Department proposed continuing to charge a fixed fee for all other applications, filings and inspections, but proposed increasing the amount of those fees, except for the fees set in statute. Additionally, the Department proposed establishing new hourly or fixed fees for several services for which it has specific statutory authority to establish a fee by rule, but for which it was not currently charging a fee.

After considering stakeholder comments on the proposed new and increased fees, the Department decided to go forward with its proposal to charge an hourly fee of \$118.00 for applications that it estimates takes an average of five or more hours to review, and higher fixed fees for all other applications, filings and inspections for which a fee is not set in statute. However, in response to stakeholder comments, the Department made several adjustments to the fixed fees and to its proposed language setting forth the process for billing hourly fees. With these adjustments, the Department determined that all of the new and increased fees were reasonable, and that they would cover the Department's costs in processing applications and filings and conducting inspections.

With the passage of HB 2007, the Department was authorized to adopt the new and increased fees for fiscal year 2010-2011 without going through the formal rulemaking requirements in A.R.S. Title 41, Chapter 6. In order to do so, HB 2007 required the Department to submit its fee plan to the Legislature by April 1, 2010. The Department submitted its fee plan on April 1, 2010 and subsequently filed a Notice of Exempt Rulemaking with the Arizona Secretary of State on June 15, 2010 to make the fees effective. The Notice of Exempt Rulemaking was published in the *Arizona Administrative Register* on July 9, 2010 (See 16 A.A.R. 1205, July 9, 2010) and amended on October 1, 2011 (See 16 A.A.R. 1950). The fees became effective on June 15, 2010 and will repeal automatically effective July 1, 2011. The fee rules established through the Notice of Exempt Rulemaking are referred to in this Preamble as the "FY 2010-2011 Fee Rules."

The purpose of this rulemaking is to make the FY 2010-2011 Fee Rules permanent through a rulemaking proceeding under A.R.S. Title 41, Chapter 6. Prior to filing the Notice of Proposed Rulemaking, the Department provided stakeholders an opportunity to submit comments on the FY 2010-2011 Fee Rules so that the Department could determine whether any changes should be made to the rules before initiating the formal rulemaking proceeding. Based on the stakeholder comments, as well as the Department's own review of the rules, the Department decided to make a number of changes to the FY 2010-2011 Fee Rules before making the rules permanent through this proceeding. Additionally, after the Department submitted the rules to the Governor's Regulatory Review Council, the Department received comments from Brown & Brown Law Offices, P.C., representing a number of small cities and towns, ranches and irrigation districts in rural northeastern and southeastern Arizona and the Arizona Cattle Growers Association. The Department made additional changes in response to those comments. The following is a description of the differences between the FY2010-2011 Fee Rules and the rules adopted through this rulemaking (referred to in this Preamble as the "New Fee Rules"):

1. The New Fee Rules include three new fees that were inadvertently omitted from the FY 2010-2011 Fee Rules: (a) a fixed fee of \$120.00 for the issuance of a revised certificate of grandfathered right following the extinguishment of a portion of the right for assured water supply extinguishment credits (R12-15-104(A)(3)(c)); (b) an hourly fee of \$118.00 per hour for an application to transport groundwater away from the Yuma groundwater basin pursuant to A.R.S. § 45-547 (R12-15-103(B)(2)(l)); and (c) an hourly fee of \$118.00 per hour for an application for a drought emergency groundwater transfer away from a groundwater basin outside of an active management area (R12-15-103(B)(2)(m)).
2. The definitions of "review hours" and "site inspection time" in Section R12-15-101 of the New Fee Rules have been changed to exclude from the hourly fees any time spent by Department employees traveling to and from an inspection. With this change, only the time spent by Department employees in conducting the inspection and preparing an inspection report will be subject to an hourly fee. Mileage expenses at the rate set by the Arizona Department of Administration for state travel will continue to be charged for travel to and from an inspection. Additionally, a definition of "site inspection" has been added to clarify that a site inspection includes an inspection conducted before issuing a decision on an application, as well as an inspection conducted to determine whether water may be stored at an underground storage facility.
3. The definition of "review hours" in R12-15-101 of the New Fee Rules has been changed to exclude from the hourly fees any time spent by Department employees on a pre-decision administrative hearing. Additionally, the definition of "review-related costs" has been deleted and replaced with a definition of "mileage expenses." In R12-15-103 and R12-15-104, the term "review-related costs" has been replaced with "mileage expenses." With these changes, an applicant will not be charged for any time spent by Department staff on either a pre-decision administrative hearing or an administrative hearing following an appeal of the Department's decision, or any costs incurred by the Department in conducting such hearings.
4. The FY2010-2011 Fee Rules contained a provision (12-15-102(C)) allowing a person with an application pending before the Department on the effective date of the rules to request an expedited review of the application if the person agrees to pay an hourly application fee and if certain other criteria are met. After the FY2010-2011 Fee Rules were adopted, the Legislature amended A.R.S. § 45-104 to add a new subsection (H) authorizing the Department to contract with private consultants for the purpose of reviewing applications and providing that if the Department contracts with a consultant for that purpose, an applicant may request that the Department expedite the application review by using the services of the consultant and by agreeing to pay the Department the costs of the consultant's services. The Department has determined that any requests for an expedited review of an application should be made pursuant to that statutory provision. For that reason, the New Fee Rules do not include a provision allowing an expedited review of an application.
5. Under both the FY2010-2011 Fee Rules and the New Fee Rules, a person filing an application that is subject to an hourly fee under R12-15-103 must pay an initial fee at the time the application is filed. In the FY 2010-2011 Fee Rules, the initial fee for all applications was \$2,000.00. In the New Fee Rules, the initial fee for all applications is \$1,000.00, except for the following applications which continue to have an initial fee of \$2,000.00: (a) an application for the issuance or modification of a designation of assured or adequate water supply; (b) an application for a permit to transport water from this state; (c) an application for the issuance, renewal or modification of an underground storage facility permit; and (d) an application for the severance and transfer of a surface water right to land that is not within the same parcel or farm unit as the current use, or that includes a change in the water source, use or ownership.

Notices of Final Rulemaking

6. Under both the FY2010-2011 Fee Rules and the New Fee Rules, the total fee for an application that is subject to an hourly fee is capped by a maximum fee set forth in R12-15-103(B). In the FY2010-2011 Fee rules, applications determined by the Department to be non-complex were assigned a maximum fee of \$10,000.00 and applications determined to be complex were assigned a maximum fee of \$65,000.00. In the New Fee Rules, all applications have a maximum fee of \$10,000.00, with the following exceptions: (a) an application for the issuance or modification of a designation of assured water supply has a maximum fee of \$35,000.00; (b) an application for a permit to transport water from this state has a maximum fee of \$25,000.00; (c) an application for the issuance or modification of a designation of adequate water supply has a maximum fee of \$25,000.00; (d) an application for the issuance, renewal or modification of an underground storage facility permit has a maximum fee of \$25,000.00; (e) an application to sever and transfer a surface water right to land that is not within the same parcel or farm unit as the current use, or that includes a change in the water source, use or ownership, has a maximum fee of \$25,000.00; (f) an application to sever and transfer a surface water right to land that is within the same parcel or farm unit as the current use, and that does not include a change in the water source, use or ownership, has a maximum fee of \$2,500.00; and (g) an application for the assignment of a Type A or Type B certificate of assured water supply has a maximum fee of \$5,000.00.
7. R12-15-103(A) has been modified by deleting the language providing that the Department will adjust the \$118.00 hourly rate every July 1 based on changes to the Consumer Price Index. As a result, the hourly rate will remain at \$118.00 unless the Department changes the rate through a formal rulemaking proceeding. The Department will periodically conduct an assessment of the costs incurred by it in processing applications to determine whether the hourly rate is still appropriate or whether the hourly rate should be adjusted through a formal rulemaking proceeding.
8. R12-15-103(B)(1), which imposes an hourly fee for applications for variances from the well construction requirements, has been changed to exclude applications for variances that have been pre-approved by the Department. No fee will be charged for applications for pre-approved variances.
9. In the 2010-2011 Fee Rules, the fee for an application for a revised certificate of Type 2 non-irrigation grandfathered right to reflect new or additional points of withdrawal was an hourly fee of \$118.00 if the application includes a well drilled after June 12, 1980. If the application does not include a well drilled after June 12, 1980, the fee is a fixed fee of \$250.00. In the New Fee Rules, the fee for a revised certificate of Type 2 non-irrigation grandfathered right to reflect new or additional points of withdrawal is a fixed fee of \$250.00, regardless of when the well or wells sought to be added to the certificate were drilled. The New Fee rules also provide that the fee applies to the revision of a Type 2 non-irrigation grandfathered right to reflect the deletion of a point of withdrawal. *See* R12-15-104(A)(3)(d).
10. R12-15-103(D)(1) has been modified by deleting the language that required the Department to include in a bill for hourly fees the number of review hours accrued by employee position type. A stakeholder comment on this language indicated that it gave the erroneous impression that there were different hourly fee rates for different employee position types. With this change, a bill will include the number of review hours accrued by activity and subactivity code during the billing period without indicating the employee position type.
11. R12-15-103(D)(4) and (F)(1) have been modified to provide that a bill for hourly fees must provide that the fees are payable on a date that is at least 60 days after the date of the bill. In the 2010-2011 Fee Rules, the time period was 35 days after the date of the bill.
12. A fee of \$120.00 is established for the re-issuance of a certificate of grandfathered right to reflect a change in family circumstances (e.g., the death of a spouse, marriage or divorce) or a transfer of the right from the rightholder to a trust in which the rightholder is a beneficiary or from a trust to the beneficiary of the trust. (R12-15-104(A)(3)(f)). In the past, the Department has considered the re-issuance of a certificate of grandfathered right to reflect these changes to be a conveyance of the right, and it charged the fee established for the conveyance of a certificate of grandfathered right. By establishing a separate fee of \$120.00 for these changes, the applicant will pay a lower fee than the fee charged for a conveyance of a certificate of grandfathered right (currently \$500.00).
13. In R12-15-104(A)(1)(a), the fee for late registration of a well has been reduced from \$120.00 to \$60.00.
14. In R12-15-104(A)(1)(e), the fee for a well assignment has been reduced from \$120.00 per well to \$30.00 per well.
15. In R12-15-104(A)(6)(d), the fee for an assignment of a surface water application, permit, certificate or statement of claim, has been reduced from \$500.00 to \$75.00.
16. The FY2010-2011 Fee Rules contain a rule (R12-15-105) that imposes a fee of \$250.00 for a request for an extension of time to submit information in response to a written notification of deficiencies within the administrative completeness time-frame or a written request for additional information within the substantive review time-frame. This rule has been deleted in the New Fee Rules. Requests for extensions of time to submit additional information are typically associated with applications subject to an hourly fee. Instead of charging a separate fee for such a request, the time spent by Department staff in processing the request will be billed at the hourly rate.

Notices of Final Rulemaking

17. In the New Fee Rules, the dam safety inspection fees for low and very low hazard potential dams have been reduced. The FY 2010-2011 Fee Rules do not differentiate the dam safety inspection fees for dams based on their downstream hazard potential. Under those fee rules, all dams are subject to an inspection fee varying from \$2,000.00 to \$4,200.00, depending on the length of the dam. The Department has reduced the inspection fee for low and very low hazard potential dams to a fixed fee of \$1,000.00 because the time required to inspect such dams is less than the time required to inspect high and significant hazard potential dams. See R12-15-105(A) and (B).

B. Explanation of Rules

The FY 2010-2011 Fee Rules provide that they will repeal automatically effective July 1, 2011. At that time, the fee rules that were in effect before the FY 2010-2011 Fee Rules were adopted (R12-15-151 and R12-15-730, referred to in this Preamble as the "Existing Fee Rules") will become effective again, absent further action by the Department. The purpose of this rulemaking is to repeal the Existing Fee Rules and replace them with the New Fee Rules. Through an exempt rulemaking, the Department will repeal the FY 2010-2011 Fee Rules on the date the New Fee Rules become effective in order to avoid an over-lap between the New Fee Rules and the FY2010-2011 Fee Rules. The New Fee Rules are explained below.

Under the New Fee Rules, a person submitting an application or filing to the Department will be charged either an hourly fee or a fixed fee. Applications that are subject to an hourly fee are listed in R12-15-103(B). Applications and filings that are subject to a fixed fee are listed in R12-15-104(A).

The process the Department will use for billing hourly fees is set forth in R12-15-103. The Department will calculate the fee for an application that is subject to an hourly fee by multiplying the number of review hours spent by Department employees in reviewing the application by an hourly rate of \$118.00, subject to a total maximum fee. The maximum fee for each application is set forth in R12-15-103(B). Review hours include the time spent by Department employees in reviewing the application and making a decision thereon, including pre-application consultation time in excess of 60 minutes and site inspection time. Review hours do not include the first 60 minutes of pre-application consultation time, the time spent travelling to and from a site inspection, the time spent on a pre-decision administrative hearing and any time spent on the application following an appeal of the Department's decision on the application. Only the time spent by Department technical staff, management/supervisory staff and support staff responsible for processing an application is included in review hours.

A person filing an application that is subject to an hourly fee must submit an initial fee at the time the application is filed. The initial fee for the following applications is \$2,000.00: (a) an application for the issuance or modification of a designation of assured or adequate water supply; (b) an application for a permit to transport water from this state; (c) an application for the issuance, renewal or modification of an underground storage facility permit; and (d) an application for the severance and transfer of a surface water right to land that is not within the same parcel or farm unit as the current use, or that includes a change in the water source, use or ownership. The initial fee for all other applications is \$1,000.00. The Department will lower the initial fee upon request by an applicant if the Department estimates that the total application fee will be less than the initial fee specified in the rule. R12-15-103(C).

The Department will bill an applicant for hourly application fees no more than monthly, but at least quarterly. R12-15-103(D). The billing statement will specify when the bill is due, which will be at least 60 days after the date of the statement. If a bill for hourly fees becomes past due while the Department is reviewing the application, the Department will suspend its review and send a written notice to the applicant that bill is past due. If the applicant does not pay the outstanding bill by the date specified in the notice, which must be at least 35 days from the date of the notice, the Department will deny the application. The applicable review time-frame will be suspended from the date the bill becomes past due until the applicant pays the bill in full or the application is denied. R12-15-103(E). The rules provide a process for requesting reconsideration of a bill for hourly fees. R12-15-103(G).

When the Department makes a determination whether to grant or deny an application that is subject to an hourly fee, it will send the applicant a final bill for the application fee. If the Department decides to issue a permit, the final bill will include the fee for preparation of the permit, charged at the applicable hourly rate (a separate fee will not be charged for issuance of the permit). If the amount already paid by the applicant exceeds the amount of the final bill, the Department will issue a refund to the applicant for the difference. If the amount of the final bill exceeds the amount already paid by the applicant, the applicant must pay the balance before the Department will release the final permit or approval to the applicant. R12-15-103(F). If a person receives a bill for hourly fees and the bill becomes past due, the Department will not accept any other application by that person until the person pays the past due amount in full. R12-15-103(H).

In addition to paying either a fixed fee or an hourly fee, the New Fee Rules require an applicant to pay any mileage expenses associated with the application and the actual cost of mailing or publishing any legal notice of the application. Mileage expenses are the Department's mileage expenses for travelling to and from a site inspection conducted before issuing a decision on the application or before determining whether water may be stored at an underground storage facility, charged at the rate set by the Arizona Department of Administration for state travel by motor vehicle.

R12-15-105 sets forth fees for dam safety inspections and for the Department's review of dam safety inspection reports. The fee for an inspection of a high or significant hazard potential dam varies from \$2,000.00 to \$4,200.00,

depending on the size of the dam. The fee for an inspection of a low or very low hazard potential dam is \$1,000.00. The fee for reviewing a dam safety inspection report is \$750.00.

The New Fee Rules establish the following new fees not included in the Existing Fee Rules:

1. An hourly fee for an application for a variance from the well construction requirements, except for a variance that has been pre-approved by the Department. (R12-15-103(B)(1)).
2. An hourly fee for an application for approval of a contract by a city, town or private water company to supply groundwater to another city, town or private water company. (R12-15-103(B)(2)(c)).
3. An hourly fee for a notice of intention to establish a new service area right. (R12-15-103(B)(2)(d)).
4. An hourly fee for a final petition to establish a new service area right. (R12-15-103(B)(2)(e)).
5. An hourly fee for an application for extension of a service area to furnish disproportionately large amounts of water to an industrial or other large water user. (R12-15-103(B)(2)(f)).
6. An hourly fee for an application for the addition or exclusion of an area by an irrigation district. (R12-15-103(B)(2)(g)).
7. An hourly fee for an application by an irrigation district for delivery of groundwater to an industrial user with a general industrial use permit. (R12-15-103(B)(2)(h)).
8. An hourly fee for an application for determination of historically irrigated acres or an annual transportation allotment for lands in the McMullen Valley groundwater basin. (R12-15-103(B)(2)(i)).
9. An hourly fee for an application for determination of the volume of groundwater that can be transported for lands in the Harquahala irrigation non-expansion area to an initial active management area. (R12-15-103(B)(2)(j)).
10. An hourly fee for an application for determination of historically irrigated acres or an annual transportation allotment for lands in the Big Chino sub-basin of the Verde River groundwater basin. (R12-15-103(B)(2)(k)).
11. An hourly fee for an application for a permit to transport groundwater away from the Yuma groundwater basin. (R12-15-103(B)(2)(l)).
12. An hourly fee for an application for a drought emergency groundwater transfer away from a groundwater basin outside of an active management area. (R12-15-103(B)(2)(m)).
13. An hourly fee for an application to renew an analysis of assured or adequate water supply. (R12-15-103(B)(9)(c)).
14. An hourly fee for an assignment of a certificate of assured water supply issued after September 12, 2006. (R12-15-103(B)(9)(h) and (i)).
15. An hourly fee for an application for a new certificate of assured water supply for a subdivision for which a certificate was previously issued after September 12, 2006. (R12-15-103(B)(9)(l)).
16. An hourly fee for an application for a letter stating that a landowner is not required to obtain a certificate of assured water supply. (R12-15-103(B)(9)(m)).
17. An hourly fee for an application for change in use of a surface water right. (R12-15-103(B)(10)(d)).
18. An hourly fee for a request for an extension of time to complete construction for a surface water right. (R12-15-103(B)(10)(g)).
19. A fee of \$150.00 for a notice of intention to abandon a well. (R12-15-104(A)(1)(f)).
20. A fee of \$120.00 for an application for issuance of a revised certificate of grandfathered right following the partial extinguishment of a grandfathered right for assured water supply extinguishment credits. (R12-15-104(A)(3)(c)).
21. A fee of \$500.00 for an application for approval of a development plan to retire an irrigation grandfathered right for a Type 1 non-irrigation grandfathered right. (R12-15-104(A)(3)(e)).
22. A fee of \$250.00 for an application for assignment of long-term storage credits. (R12-15-104(A)(4)(c)).
23. A fee of \$250.00 for an application for extinguishment of a grandfathered right for assured water supply extinguishment credits. (R12-15-104(A)(5)(a)).
24. A fee of \$250.00 for the conveyance of assured water supply extinguishment credits. (R12-15-104(A)(5)(b)).
25. A fee of \$120.00 for the reissuance of a surface water permit or certificate. (R12-15-104(A)(6)(a)).
26. A fee of \$750.00 for the Department's review of a dam safety inspection report submitted by the owner. (R12-15-105(D)).

Unlike the Existing Fee rules, the New Fee Rules do not contain fees for copying public records. This is because the Department has determined that it has authority to charge reasonable copying charges under A.R.S. § 39-

Notices of Final Rulemaking

121.01(D)(1) without the need to adopt a rule. The Department's current copying charges can be found on its web site at www.azwater.gov/AzDWR/IT/Fees.htm.

The New Fee Rules will apply to applications and filings submitted to the Department on and after the effective date of the rules. An application or filing submitted prior to the effective date of the rules will be subject to the application or filing fees and costs in effect when the application was submitted.

In addition to repealing the Existing Fee Rules and replacing them with the New Fee Rules, the Department is proposing to make conforming amendments to several Sections within 12 A.A.C. 15, Article 7 (Assured and Adequate Water Supply), Article 8 (Well Construction and Licensing of Well Drillers) and Article 12 (Dam Safety Procedures). Those amendments delete references to the Existing Fee Rules and replace them with references to the New Fee Rules.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did 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

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

This rulemaking revises existing fees and establishes several new fees for persons submitting applications and filings in the groundwater, surface water, dam safety, recharge, assured and adequate water supply, water exchange, bodies of water, water exportation and well drilling permit programs and the dam safety inspections program, under Title 45, Arizona Revised Statutes (for purposes of this summary, "permitting programs" refers to programs administered by the Department to process applications and filings). This economic, small business and consumer impact statement contains an identification of the increased fees that political subdivisions and businesses that may be impacted will pay for permits and inspections, as well as the specific impacts to the Department and other state agencies from the new fees.

Since 1980, most of the Department's permit programs and dam safety inspection program have operated from general fund revenues – with few changes to the fees since that time. Since 2003, the well administration and enforcement fund was initiated by the legislature for operation of the well permitting program. In 2005, the legislature authorized the assured and adequate water supply administration fund to partially fund the operation of that permitting program. In 2010, the legislature authorized the dam repair fund to partially fund the operation of the dam safety program. The Department has implemented permit efficiencies and process improvements that will significantly improve the processing times for all of its permitting functions. The Department estimates that the changes to its fees, if implemented based on the average permit actions issued in FY2008 and FY2009, would have recovered approximately \$3,148,003 for permits using the \$118.00 per hour rate and increased fixed fees. The actual estimated revenue under the Existing Fee Rules for the average number of applications in FY 2008 and FY 2009 was \$1,158,660, a difference of \$1,989,343.

The purpose of this rulemaking is not to change any specific conduct of the regulated community. The purpose of this rulemaking is to increase most of the Department's fees and establish several new fees to allow the Department to come closer to recovering the costs to the Department for permitting and dam safety inspection services by charging \$118 per hour for permit applications estimated to take an average of five or more hours to process, charging increased or new fixed rate fees for all other permit applications and filings for which the fees are not set in statute, and charging increased fees for dam safety permits and inspections. No changes are being made to fees that are set in statute.

The \$118.00 hourly fee rate has been calculated in the manner explained below. The expenses are based on all current permit staffing positions. Additionally, the Department has established annual performance measures relating to all of its permitting functions.

The Department estimated the hourly rate for water permitting staff based on the permitting work of a full-time employee (FTE) and makes the following assumptions:

HOURS

- Assumes an FTE works 2080 hours annually.
- NON-PROGRAM HOURS include:
 - hours related to employee SVHL (sick, vacation, holiday), calculated at the maximum available of 296 hours;
 - hours related to training, meetings and minor tasks estimated at 331 hours;
 - hours lost due to employee turnover – use a relatively low rate of 5% - 104 hours.
 - TOTAL NON-PROGRAM HOURS estimated at 731 hours annually.

Notices of Final Rulemaking

- PROGRAM HOURS include both review hours of specific applications and making decisions thereon, and those not related to review hours of specific applications. Some of the Program Hours are therefore not billable.
- TOTAL PROGRAM HOURS = 2080 – 731 = 1349 hours
- Non-billable Program Hours include customer service time, inter-division and inter-agency coordination, permit administration, program development (rules and policies) and travel. This is estimated at 440 hours annually.
- BILLABLE PROGRAM HOURS = 1349 – 440 = 909 hours

COSTS

- Salaries + employee related expenses (ERE) related to Billable Program Hours performed by an FTE.
 - ERE benefits rate of 40% is used.
 - Non-Program Hours in support of Billable Program Hours are included in costs. This is estimated at 493 hours.
 - Program staff includes Engineers, Hydrologists and the WRS Series at an average hour rate of \$24.68.
Cost = (909 + 493 hours) × \$24.68/hour × 1.4 = \$48,442
 - Management/ Supervisory hours in support of the FTE's work are included in costs, estimated at 200 hours. This includes working Assistant Directors, Managers, and Legal at an average hourly rate of \$40.00.
Cost = (200 hours) × \$40.00/hour × 1.4 = \$11,200
 - Administration Support hours in support of the FTE's work are included in costs, estimated at 200 hours. This includes Water Resource Technicians and Administrative Assistants at an average hourly rate of \$17.94.
Cost = (200 hours) × \$17.94/hour × 1.4 = \$5,023
- Add Indirect expenses (56.35% of personal services and ERE by federal formula) for rent, utilities, etc., estimated at \$36,464.
- Add Other Expenses such as travel, equipment, operating expenses (supplies, etc.) and professional services, estimated at \$6,250.
- Total Costs Related to Permit Process for 1 FTE= \$107,379

HOURLY RATE

- Divide the total costs related to the permitting work of an FTE (\$107,379) by Billable Program Hours (909). This provides the Hourly Rate for Permit Processing (\$118.00).

The fixed fees are based on either: (1) statutorily required fees (no changes to these fees are being made in this rule-making), or (2) fees based on the estimated average hours assumed to process the application, up to a maximum of five hours. Any applications assumed to take five or more hours to process were captured in the hourly fee proposal.

Under the Existing Fee Rules, dam safety inspection fees are based on dam height and do not differentiate based on a dam's downstream hazard potential. In the New Fee Rules, the dam safety inspection fees for high and significant hazard potential dams are a graduated scale based on the length of the dam. Dam length is a better indicator of time necessary to conduct the inspection and complete the inspection report. The new dam safety inspection fees for low and very low hazard potential dams are a fixed value lower than those for high and significant hazard potential dams due to less time required for review of engineering standards and analyses, operational and maintenance plans and emergency action plans.

The Department estimates that the number of pending permit applications and projections for incoming work equates to more work hours than can be accomplished by the current staffing levels. Therefore, this analysis is based on the amount of work that can be accomplished based on the current number of authorized staff positions for water permitting services -19 technical staff (water resource specialists, engineers and hydrologists), seven management /supervisor staff, and 4.5 support staff. The Department anticipates that the number of positions will not be increased for water permitting staff. Positions and activities related to permit-related inspections are included in this analysis although these hours and revenues are only a small percentage of the total.

Table I below compares the estimated fees for permit actions and dam safety inspections under the Existing Fee Rules to the estimated fees in the New Fee Rules. The table uses the assumptions for estimated review hours based on permitting staff estimates. These are only estimates as the Department has not historically tracked the hours for each permit type. With these changes, the Department is now tracking in detail the billable hours for each permit type including permits that are identified under the fixed fee rates in order to continue evaluating the necessity of an hourly rate or fixed rate. The estimated review hours and fees under the Existing Fee Rules are based on the estimated average number of review hours to complete a project for permits issued under the permitting programs during calendar years 2008 and 2009 using the Existing Fee Rules. The information in Table I further assumes that the applications

Notices of Final Rulemaking

are fairly complete. Note that a previously permitted facility will not necessarily experience any impact due to this rulemaking. This rulemaking impacts the costs associated with review and processing of applications and filings submitted after the New Fee Rules become effective, including applications for the renewal or modification of a permit issued prior to the effective date of the New Fee Rules.

Table I. Comparison of Estimated Review Hours and Fees under Existing Fee Rules and New Fee Rules

Category/Permit Type	Est. Review Hours for Hourly Fees	2008 – 2009 Average Number of Applications or Requests	Fee under Existing Fee Rules	Fixed Fee under New Fee Rules	Est. Total Hourly Fee under New Fee Rules (\$118/hr)	% Change In Cost
WELLS						
Variance from Well Construction Requirements	5	556	\$0		\$590	***
Late Registration of Well		12	\$10	\$60		500%
Well Drillers License*		31	\$50	\$50		0%
Reissue or Renewal of Well Drillers License		286	\$10	\$50		400%
Amendment of Well Driller's License		6	\$0	\$50		***
Reactivation of Expired Well Drillers License		2	\$20	\$50		150%
Well Assignments - per well cost		52	\$10	\$30/well		Variable**
Well Capping*		20	\$300	\$300		0%
Notice of Intent to Abandon a Well (45-594)*		1,008	\$0	\$150		***
NOI to Drill Non-Exempt Well in same location in AMA, all wells in INA, wells >35gpm outside AMA/INA - (45-596, 597)*		50	\$150	\$150		0%
Notice of Intent to Drill Outside AMA or INA w/pump capacity <35 gpm for domestic use only (45-596)*		2,718	\$100	\$100		0%
Reissuance of Drill Card		30	\$10	\$120		1100%
Application for Permit to Drill Non-Exempt Well - Inside AMA (45-598 & 599)*		43	\$180	\$180		0%
GROUNDWATER RIGHTS & PERMITTING						
GW Withdrawal Permit (45-513, 514, 515, 516, 517, 518, 519, 519.01, 520, 527) Issuance, Renewal, Modification, change in location	20	59	\$200		\$2,360	1080%
Notice of Authority of Irrigate in an INA (45-437)	10	0	\$100		\$1,180	1080%

Arizona Administrative Register / Secretary of State

Notices of Final Rulemaking

Restoration of Retired IGFR (45-469(O))	5	0	\$50		\$590	1080%
Contract by city, town or private water company to Supply Groundwater to another city, town or private water company (45-492(C))	5	1	\$0		\$590	***
Initial Notice of Intent to Establish New Service Area Right	5	2	\$0		\$590	***
Final Petition to Establishment New Service Area	5	2	\$0		\$590	***
Extension of Service Area to provide Disproportionate amount of Water to an Industrial or other large water user (45-493(A)(2))	5	0	\$0		\$590	***
Addition/Exclusion of Acres by Irrigation District (45-494.01)	8	0	\$0		\$944	***
Delivery of GW from an ID to a GIU permit holder (45-497(B))	5	0	\$0		\$590	***
Transp. of GW Withdrawn in McMullen Valley GW Basin to an AMA (45-552)	5	0	\$0		\$590	***
Transp. of GW Withdrawn in Harquahala INA to an initial AMA (45-554)	5	0	\$0		\$590	***
Transp. of GW Withdrawn in Big Chino Sub-Basin to an initial AMA (45-555)	5	0	\$0		\$590	***
Transp. Of GW away from the Yuma GW Basin (45-547)	5	1	\$0		\$590	***
Application for Emergency Transfer of GW from a GW Basin	5	0	\$0		\$590	***
Type 1 GFR associated w/ irrigation land retired after 6/12/1980 (45-469, 472) (Conveyance of IGFR to Type 1)	10	5	\$100		\$1,180	1080%
Ag Flex Account Transfer		15	\$100	\$250		150%
Conveyance of Notice of Irrigation Authority in an INA		11	\$35	\$500		1328%
Conveyances of GW Withdrawal permits		10	\$35	\$500		1328%
Late Application for Certificate of Grandfathered Right (45-463, 464, 465, 476.01 & 476)*		25	\$100	\$100		0%

Arizona Administrative Register / Secretary of State

Notices of Final Rulemaking

Conveyances/Re-issuance of Certificate of Grandfathered Right		9	\$35	\$500		1328%
Reissuance of a Certificate of Grandfathered Right to reflect change in family circumstances or transfer to or from a trust		10	\$35	\$120		243%
Re-issuance of a Certificate Grandfathered Right after a partial extinguishment of the Grandfathered Right		10	\$35	\$120		243%
Revised Certificated for new or additional points of withdrawal for T2 or deletion of point of withdrawal		34	\$35	\$250		614%
Approval of Development Plan for Retirement of IGFR (45-469)		6	\$0	\$500		***
Substitution of Flood Damaged Acres (INA 45-437.02 & AMA 45-465.01)	5	0	\$100		\$590	490%
Substitution for Impediments to Efficient Irrigation (INA 45-437.03 & AMA 45-465.02)	5	3	\$50		\$590	1080%
Substitution of Acres to be Irrigated w/ CAP water (45-452)	6	0	\$100		\$708	608%
UNDERGROUND STORAGE & RECOVERY						
Issuance, Renewal or Modification of an Underground Storage Facility Permit	334	13	\$1,250		\$25,000	1900%
Issuance, Renewal or Modification of a Groundwater Savings Facility Permit	94	1	\$850		\$11,092	1205%
Issuance, Renewal or Modification of a Water Storage Permit	25	28	\$350		\$2,950	743%
Recovery Well Application, including Emergency temporary recovery well permit	71	13	\$50 for first 10 wells + \$10 for each add. well		\$8,378	variable
Conveyance of Storage Facility Permit		1	\$300	\$500		67%
Conveyance of a Water Storage Permit		1	\$300	\$500		67%
Assignment of Long-term Storage Credits		7	\$0	\$250		***
ASSURED & ADEQUATE WATER SUPPLY						
Physical Availability Determination	211	4	\$5,000		\$10,000	100%

Arizona Administrative Register / Secretary of State

Notices of Final Rulemaking

Analysis of Assured or Adequate Water Supply	211	15	\$7,500		\$10,000	33%
Renewal of a Analysis of Assured or Adequate Water Supply	32	1	\$0		\$3,776	***
Issuance of a Certificate of Assured Water Supply	211	22	\$5,000		\$10,000	100%
Issuance or Modification of Designation of Assured Water Supply	300	8	\$10,000		\$35,000	250%
Issuance or Modification of Designation Adequate Water Supply	200	8	\$10,000		\$23,600	136%
Issuance of a Water Report	211	14	\$2,000		\$10,000	400%
Assignment of Type A CAWS	12	16	\$0		\$1,416	***
Assignment of Type B CAWS	18	9	\$1000		\$2,124	112%
Classification of Type A CAWS	10	3	\$1000		\$1,180	18%
Material Plat Change Review	8	1	\$250		\$944	277%
Re-Issuance of CAWS - 704G	24	38	\$0		\$2,832	***
Exemption from requirement to obtain CAWS - 704M	24	9	\$0		\$2,832	***
Extinguishment of GFR (45-576: AAWS Rule)		25	\$0	\$250		***
Conveyance of Extinguishment Credits		10	\$0	\$250		***
SURFACE WATER						
Application to Appropriate Public Water (45-152)	56	25	\$75 - \$125		\$6,608	5186%
Application for Certificate of Water Right (45-152)	32	6	\$50		\$3,776	7452%
Reservoir Permit, Primary or Secondary (45-161)	48	2	\$75 - \$125		\$5,664	4431%
Application for Change in Use of Water (45-156)	36	1	\$0		\$4,248	***
Application for Severance and Transfer – same farm unit/parcel	21	0	\$500		\$2,478	396%
Application for Severance and Transfer – different farm unit/parcel (45-172)	72	2	\$500		\$8,496	1599%
Exception to Limitation on Time of Completion of Construction (45-160)	8	3	\$0		\$944	***

Arizona Administrative Register / Secretary of State

Notices of Final Rulemaking

Reissuance of Surface Water Permit or Certificate		0	\$10 - \$25	\$120		380%
Claim of Water Right for a Stockpond (45-273)*		7	\$10	\$10		0%
Filing Fee for Statement of Claim of Water Right*		0	\$5	\$5		0%
Assignment for application, permit, certificate or statement of claim		615	\$10	\$75		650%
Certification of water right for stockpond		7	\$30	\$120		300%
DAM SAFETY						
Approval of Plans for Construction, Enlargement, Repair, alteration or removal of Dam		12	Graduated fee based on project cost (0.5% to 2.0%)	2.0% of project cost		0% to 200%
Review of Dam Safety Inspection Report		10	\$0	\$750		***
Dam Safety Inspection Fee		100	\$100 + \$2 per foot of dam height	\$1,000 for LHP and VLHP; \$2000 to \$4200 for HHP and SHP, based on dam length		450% to 2000%
OTHER						
Filling a Body of Water w/ Poor Quality Water (45-132.C)	5	3	\$225		\$590	162%
Interim Water Use in a Body of Water (45-133)	5	1	\$80		\$590	638%
Temporary emergency permit to use sw or gw in a body of water (45-134)	5	0	\$50		\$590	1080%
Application for issuance of Water Exchange Permit (45-1041, 1045)	5	0	\$150		\$590	293%
Application for renewal/modification of Water Exchange Permit (45-1041, 1045)	5	0	\$100		\$500	400%
Notice of Water Exchange requiring Director Approval - disproportionate volumes	5	0	\$150		\$590	293%
Notice of Water Exchange - non-disproportionate volume – does not require approval pursuant to 45-1052(6)(b)			\$150	\$500		233%
Application to Transport Water Out of State (45-292)	200	1	\$500		\$23,600	4620%

Notices of Final Rulemaking

License for Weather Control or Cloud Modification*		0	\$100	\$100		0%
Equipment License for Weather Control or Cloud Modification*		0	\$10	\$10		0%

* These fees were limited by fee caps in the current statutes.

** Variable increase based on number of wells which were not previously tracked

*** Cost did not increase; simply a cost for service is now being assessed

A. An Identification of the Persons who will be Directly Affected by, Bear the Costs of or Directly Benefit from the Rulemaking.

This rulemaking will directly affect persons who submit applications and other filings to the Department and who own dams regulated by the Department, including individuals, governmental entities and small and large businesses that drill or use wells, divert surface water, use or transport groundwater, develop subdivisions, operate recharge facilities, conduct water exchanges, own bodies of water, or own or operate dams.

B. Estimated Costs and Benefits to the Arizona Department of Water Resources and other state agencies.

This rulemaking will increase the Department’s water permitting and dam safety inspection service revenues to more closely match the budgeted costs for those services. For the current staffing levels for permitting staff, the Department estimates that approximately 30,195 hours will be associated with billable services for any one year. No additional increases in staffing will be required as a result of this rulemaking.

The Department estimates that the changes to the fees, if implemented for the average number of permit actions issued during calendar years 2008 and 2009, would have recovered approximately \$3,148,003 for permits using the \$118.00 per hour rate and increased fixed fees. The actual estimated annual revenue under the Existing Fee Rules for the average number of applications issued during calendar years 2008 and 2009 was \$1,158,660. If the Department does not adopt the New Fee Rules, there is an estimated annual loss of revenue of approximately \$1,989,343 beginning with fiscal year 2011-2012. It should be noted that the monies collected for well permitting will continue to be deposited in the well administration and enforcement fund established by A.R.S. § 45-606; the monies collected for assured and adequate water supply applications will continue to be deposited in the assured and adequate water supply administration fund established by A.R.S. § 45-580; monies collected from dam safety permits and dam safety inspections will continue to be deposited in the dam repair fund established by A.R.S. § 45-1212.01; and all other permit fees will be deposited in the water resources fund established by A.R.S. § 45-117.

The benefits of this rulemaking to the Department are that the funds listed above will more fully realize their legislative purpose, which is to fund the actual costs of the permitting and dam safety inspection programs previously funded in whole or in part by the state general fund. The estimated additional revenues may be earned if the fee increases in this rulemaking are adopted and the following assumptions are true:

1. The estimated number of applications are received for processing;
2. The estimated number of applications are processed and take the average number of hours to process;
3. The estimated number of dam safety inspections are performed;
4. All positions are staffed for the entire year (no vacancy savings, no turnover); and
5. Fees are paid on time for all billable hours and dam safety inspections performed.

A more probable scenario over the next few years is that the Department will experience some turnover, fewer applications will be received, and some portion of the fees will not be paid. Because of the uncertainty involved with estimating potential impacts, the Department used assumptions that provide the most favorable situation for the regulated community.

The Department derives additional benefits because fixed rate fees will be paid up front and hourly permit applications must pay an up-front cost of \$1,000 or \$2,000. Also, the Department anticipates improved cash flow through monthly billing. Expenses for implementation of monthly billing are minimal, and include increased postage and paper, although the Department is developing computerized improvements to its invoicing program that will reduce costs associated with staff time to develop and process invoices. Based on the improvements, the Department expects no increase in staffing time and therefore will significantly benefit from implementing a monthly billing process.

Other state agencies that are required to obtain permits for which the new fees will apply or that must comply with dam safety requirements include the Arizona Department of Transportation (ADOT), the Arizona State Land Department (AzSLD), the Arizona Department of Environmental Quality (ADEQ) and the Arizona Game and Fish Department (AzG&F). The ADOT obtains well permits, well abandonment authorizations, and groundwater withdrawal permits. The AzSLD obtains groundwater rights, surface water rights, and assured or adequate water supply determinations. The ADEQ obtains groundwater withdrawal permits. The AzG&F obtains surface water rights and is responsible for 29 dams. These agencies will experience increased fees in the same manner as other consumers and businesses. There are no exemptions for other state agencies from obtaining these permits or paying the application or

Notices of Final Rulemaking

filing fees. The Department does not believe that there will be significant impacts on public employment in Agencies of this state directly affected by this rulemaking.

The increased fees will allow the Department to process applications and filings and conduct dam safety inspections in a more timely manner, which benefits those state agencies seeking water permits and dam safety approvals and protects public health and safety.

C. *Estimated Costs and Benefits to Political Subdivisions.*

Table II below provides an overview of categories of permits that apply to the different political subdivisions. Political subdivisions in Arizona will experience increases in the permitting fees (see Table I for specific permits and the associated increased costs). The Department believes that the fees reflect the reasonable and fair cost of providing water permitting and dam safety inspection services and that the fixed rate fees for the less complex permits coupled with the simplified permitting process should reduce the impact to many applicants. The Department does not believe that there will be significant impacts on public employment in political subdivisions of this state directly affected by this rulemaking.

Table II – Permits issued to Political Subdivisions – FY 2010

PERMIT CATEGORY	POLITICAL SUBDIVISIONS
Wells	Cities, towns, irrigation districts, domestic water improvement districts, community facilities districts
Groundwater Rights & Permits	Cities, towns, irrigation districts, domestic water improvement districts, community facilities districts
Underground Storage & Recovery	Cities, towns, irrigation districts, domestic water improvement districts, community facilities districts, multi-county water conservation districts, groundwater replenishment districts
Assured & Adequate Water Supply	Cities, towns, domestic water improvement districts, community facilities districts
Surface Water	Cities, towns, irrigation districts, domestic water improvement districts, community facilities districts, multi-county water conservation districts
Dam Safety	Cities, towns, irrigation districts, domestic water improvement districts, community facilities districts, county flood control districts, multi-county water conservation districts
Other (Lakes, Water Exchanges, Water Exportation)	Cities, towns, irrigation districts, domestic water improvement districts, community facilities districts, multi-county water conservation districts

The increased fees will allow the Department to process applications and filings and conduct dam safety inspections in a more timely manner, which benefits those political subdivisions seeking water permits and dam safety approvals and protects public health and safety. Without these increases, the Department will not be able to retain its current staffing levels, which will increase processing times and result in significant delays in issuing permits and certificates.

D. *Businesses Directly Affected By the Rulemaking.*

Evaluation of the impacts to businesses depends on the category of permitting that is necessary to carry out their activities. Table III below provides a generalized overview of the types of businesses that typically require each category of permit issued by the Department.

Table III – Permits Necessary for Business Activities in Arizona

PERMIT CATEGORY	BUSINESS TYPE
Wells	Private Water Companies, Agricultural, Ranching/Animal Industry, Golf Courses, Power Plants, Rock Product Industries, Mining, Developers, Well Drillers
Groundwater Rights & Permits	Agricultural, Ranching/Animal Industry, Golf Courses, Power Plants, Rock Product Industries, Mining, Developers
Underground Storage & Recovery	Private Water Companies, Developers, Mining, Power Plants
Assured & Adequate Water Supply	Private Water Companies, Developers
Surface Water	Agricultural, Ranching, Golf Courses, Power Plants, Rock Product Industries, Mining, Developers

Notices of Final Rulemaking

Dam Safety	Agricultural, Ranching, Mining, Power Plants
Other (Lakes, Water Exchanges, Water Exportation)	Developers, Mining, Power Plants

Businesses in Arizona will experience increases in the permitting and dam safety inspection fees (see Table I for specific permits and the associated increased costs). The Department believes that the fees reflect the reasonable and fair cost of providing water permitting and dam safety inspection services and that the fixed rate fees for the less complex permits coupled with the simplified permitting process should reduce the impact to many applicants. However, the Department does not believe that there will be significant impacts on private employment in businesses of this state directly affected by this rulemaking.

The increased fees will allow the Department to process applications and filings and conduct dam safety inspections in a more timely manner, which benefits those businesses seeking water permits and dam safety approvals and protects public health and safety. Without these increases, the Department will not be able to retain its current staffing levels, which will increase processing times and result in significant delays in issuing permits and certificates.

E. *Impacts to Small Businesses.*

Small businesses that are subject to this rulemaking include: well drillers and small ranches, farms, and small commercial businesses that are not served water by water utilities and require their own wells. The impacts to these businesses will be negligible in most cases. There are small fee increases for the licensing of well drillers; however, these increases will improve the Department’s ability to protect public health and safety by providing for enforcement of properly drilled wells within the state. The small ranches, farms, and small commercial businesses that are not served water by water utilities and require their own wells will not see significant impacts as the well permitting fees are not being increased. There is however, an increase in the fee for transfer of ownership of these wells that may have a small impact on these small businesses.

The Department reviewed each of the proposed methods for reducing the impact on small businesses described in A.R.S. § 41-1055(B)(5)(c), below:

(i) Establish less costly compliance requirements for small businesses.

Individuals and small businesses in rural Arizona are disproportionate owners of low and very low hazard potential dams. The fee increases for low and very low hazard dams are less than those for high and significant hazard dams, thereby reducing their impact on small businesses. Efficiencies enacted in the permitting programs provide the primary means for reducing the impact of those fee increases on small businesses.

In conjunction with efficiency improvements and in response to comments received from the small business community, the Department has lowered its initial proposed fees for assignments for surface water applications, certificates, permits and claims. The fee is for \$75 per assignment, which will reduce the impact on small businesses and individual landowners. The Department has also lowered its initial proposed fees for sever and transfer of a surface water right to land that is within the same parcel or farm unit as the current use and that does not include a change in the water source, use or ownership. The new proposal reduces the proposed maximum fee from \$25,000 to \$2,500, thereby lessening the impact to small business farming operations that after flood damage or some other event may need to move the place of beneficial use to another location on the same farm.

While the new fees do increase the costs to individuals and small businesses, without these increases, the Department will not be able to retain its current staffing levels, which will pose possible public health and safety risks. With further reductions in staffing the Department will not have resources to continue annual inspections of high and triennial inspections of significant hazard dams.

(ii) Establish less costly schedules or less stringent deadlines for compliance in the rulemaking for small businesses.

Not applicable

(iii) Exempt small businesses from any or all requirements of the rule.

The Department is not authorized by statute to exempt small businesses from permit and inspection fees. Additionally, exemptions for small businesses could cause a significant hardship on the Department. Because small businesses make up a significant percentage of the facilities for which the Department provides the services, it would not be feasible for the Department to make exemptions from fees for small businesses and still generate sufficient revenues to cover the reasonable and necessary costs of the programs. For certain water use activities, small businesses pay fewer fees than large businesses because they do not require the same permits that are required for large businesses. For example, a small business in an active management area may be adequately served by an exempt well (a well with a pump capacity of 35 gallons per minute or less), which does not require the business to obtain a grandfathered groundwater right or groundwater withdrawal permit.

F. *Estimated Costs and Benefits to Consumers and the Public.*

From the consumer’s perspective, if permitted entities bear additional costs or realize savings, these entities may pass the costs or savings on to the consumer and the public through products, services or water rates. There is no way to predict whether these costs or benefits will be passed on or what the costs or benefits may be for each permit.

Notices of Final Rulemaking

For individual home owners that maintain their own well on their property, little or no impact will be felt as the fees for well permitting for small domestic wells is not changing. Private dam owners will experience increases in dam safety permitting and inspection fees. However, the Department believes that the fees reflect the reasonable and fair cost of providing dam safety permitting and inspection services.

The increased fees will allow the Department to process applications and dam safety inspections in a more timely manner, which benefits those persons seeking water permits and dam safety approvals and protects public health and safety. Without the increased fees these benefits will not be realized.

G. Estimated Costs and Benefits to State Revenues.

This rulemaking will have no impact on state general funding revenues. The estimated revenue generated from these fees will be directed to the four funds previously identified (the well administration and enforcement fund; the assured and adequate water supply administration fund; the dam repair fund; and the water resources fund) for the purpose of funding the Department's permitting programs. With the downturn in the economy, the expected income from these new fees will be far less than the estimated \$3,148,003 that could have been recovered by the Department during prior years, based on the average permitting activity during calendar years 2008 and 2009. However, by making these new fees permanent, the Department will be better positioned to recover permitting program costs in FY 2011-2012 and beyond and be better prepared to staff at appropriate levels when the permitting activity inevitably increases. Without the increase in fees, staffing levels will be lower than what is needed to perform the existing permitting activity and there will be no ability to increase staffing to meet any increases in permitting activities.

H. A Description of any less intrusive or less costly alternative methods of achieving the purpose of the rulemaking.

No other less intrusive or less costly methods are available to the Department to achieve the purpose of the rulemaking. The Department's appropriation from the state general fund has been significantly reduced with the understanding that the Department would seek to recoup the cost of its services directly from the entities that require the permits and dam safety inspections. Making no changes to the Department's fees will have significant affects on the ability to meet the permitting needs of entities in Arizona and may pose additional public health and safety risks, as described above.

10. A description of the changes between the proposed rules, including supplemental notices, and the final rules (if applicable):

Minor technical, grammatical, formatting and clarifying changes were made at the request of Governor's Regulatory Review Council staff. In addition, as more fully described in item 11, the Department reduced the initial and maximum fee for many applications subject to an hourly fee under R12-15-103, and reduced the fixed fees for three applications and filings subject to fixed fees under R12-15-104. The Department has concluded that, on the whole, the final rules are not substantially different from the proposed rule for the following reasons:

1. The persons affected by the reduction in fees in the final rules understood that the proposed rules would affect their interests.
2. The subject matter of and the issues involved in the final rules are identical to the subject matter of and the issues involved in the proposed rules.
3. The effect of the final rules differs from the effect of the proposed rules only in the amount of fees charged by the Department for certain applications and filings. However, the reduction in fees will provide both a significant positive effect for the regulated community and will also not affect the Department's ability to provide the same level of services on behalf of the regulated community and the public.

11. A summary of the comments made regarding the rule and the agency response to them:

No oral or written comments were received from the public regarding the rules prior to the close of the Department's rulemaking record. After the rules were filed with the Governor's Regulatory Review Council, comments were received from Brown & Brown Law Offices, P.C., representing a number of small cities and towns, ranches and irrigation districts in rural northeastern and southeastern Arizona and the Arizona Cattle Growers Association. The following is a summary of those comments and the Department's responses:

Notices of Final Rulemaking

Comments on Notice of Proposed Rulemaking		
Section	Comment	Department's Response
R12-15-103	<p>We generally object to the hourly fees in R12-15-103 because there is no review or appeals mechanism. The legislature should create a review board for members of the public who wish to challenge the rates charged to them under R12-15-103.</p>	<p>The Department has streamlined its permitting processes to ensure that the time spent by Department staff in processing applications is as efficient as possible. In the event that an applicant objects to the amount of time spent by Department staff in processing an application, R12-15-103(G) provides a mechanism for the applicant to seek reconsideration of the bill by the Director. The Department believes these measures are sufficient to ensure that applicants will be billed only for the time reasonably necessary to process their applications. The statement regarding the creation of an appeals board is directed to the legislature and not to the Department. No changes have been made in response to this comment.</p>
	<p>The maximum fees for many of the applications subject to hourly fees are excessive. The Department should reduce the maximum fees for the following applications related to adequate water supply:</p> <ul style="list-style-type: none"> • <i>Physical availability determination, analysis of adequate water supply, issuance or modification of a designation of adequate water supply and issuance of a water report</i> – reduce the maximum fee to \$17,500.00. • <i>Renewal of analysis of adequate water supply</i> – reduce the maximum fee to \$2,500.00. <p>The Department should lower the maximum fees for the following surface water applications that are subject to hourly fees:</p> <ul style="list-style-type: none"> • <i>Permit to appropriate public water (up to 50 acre-feet per year)</i> – establish a minimum fee of \$500.00 and reduce the maximum fee to \$2,000.00. • <i>Permit to appropriate public water (more than 50 acre-feet per year)</i> – establish a minimum fee of \$1,000.00 and reduce the maximum fee to \$10,000.00. • <i>Change in beneficial use</i> – establish a minimum fee of \$500.00 and reduce the maximum fee to \$10,000.00. • <i>Severance and transfer of a surface water right</i> – establish a fixed fee of \$500 for applications to sever and transfer a right within the same farm parcel or to implement an Indian water rights settlement; for all other sever and transfer applications, establish a minimum fee of \$1,500.00 and reduce the maximum fee to \$5,000.00. 	<p>The Department has had time to re-evaluate the initial fees and maximum fees for all applications subject to hourly fees using the Department's newly initiated billing tracking system. Based on that re-evaluation, the Department has reduced all maximum fees that were proposed to be higher than \$10,000.00 to \$10,000.00, and has reduced all initial fees to \$1,000.00, with the following exceptions:</p> <ul style="list-style-type: none"> • <i>Applications for issuance or modification of a designation of assured water supply.</i> These applications typically require more staff time than other types of applications due to issues related to consistency with the active management area's management goal, physical availability of groundwater supplies and impacts of groundwater withdrawals on other assured water supply determinations. The Department has determined that the maximum fee for these applications should be \$35,000.00 and that the initial fee should remain at \$2,000.00. • <i>Applications for issuance or modification of a designation of adequate water supply.</i> Although these applications generally are not as complex as applications for the issuance or modification of an assured water supply designation, they can require extensive staff time, depending on factors such as the location of the use, the sources of water supply, and whether the applicant is in a jurisdiction that has adopted a mandatory adequacy requirement (which requires public notice and an opportunity for objections). The Department has determined that the maximum fee for these applications should be \$25,000.00 and that the initial fee should remain at \$2,000.00.

Notices of Final Rulemaking

R12-15-103
continued

- *Application for a permit to transport water from this state.* Applications to transport water from this state for use in another state are complex because of the factors the director must consider in determining whether to grant the application, including potential harm to the public welfare of the citizens of the state. If the water proposed to be transported is groundwater, a review of hydrologic modeling studies will be required. The Department has determined that a maximum fee of \$25,000.00 is appropriate for these applications and that the initial fee should remain at \$2,000.00.
- *Applications for issuance, renewal or modification of an underground storage facility permit.* These applications are more complex than most other applications subject to hourly fees because of the necessity to review hydrologic modeling studies and make determinations regarding the hydrologic feasibility and impacts of the water storage. The Department has determined that a maximum fee of \$25,000.00 is appropriate for these applications and that the initial fee should remain at \$2,000.00.
- *Applications for the severance and transfer of a surface water right.* The Department agrees that an application to sever and transfer a surface water right within the same parcel or farm unit generally requires less staff time to review than other types of sever and transfer applications – provided that the application does not include a change in the water source, use or owner. However, the Department does not agree that a fixed fee should be charged for such applications because the amount of staff time spent reviewing these application can vary significantly from one application to another, depending on factors such as whether there is a change in point of diversion, whether the use is pursuant to a permit or a statement of claim, and whether an objection is filed. The Department has determined that these applications should remain subject to an hourly fee, but it reduced the maximum fee to \$2,500.00 and reduced the initial fee to \$1,000.00. The Department reduced the maximum fee for all other applications for severance and transfer of a surface water right to \$25,000.00, but kept the initial fee at \$2,000.00.

The Department does not agree that applications to appropriate 50 acre-feet or less of surface water per year should have a lower maximum fee than applications to appropriate more than 50 acre-feet per year. The amount of water sought to be appropriated by an applicant generally does not affect the amount of time spent by Department staff in processing the application. An application to appropriate 50 acre-feet or less per year can take as much time to process as an application to appropriate more than 50 acre-feet per year. The Department

Arizona Administrative Register / Secretary of State

Notices of Final Rulemaking

<p>R12-15-103 <i>continued</i></p>		<p>believes that a maximum fee of \$10,000.00 and an initial fee of \$1,000.00 are reasonable for all applications to appropriate surface water.</p>
	<p>The maximum fee for instream flow applications should be increased to \$100,000.00, with a minimum fee of \$50,000.00. In addition, the Department should adopt a rule requiring that instream flow applications cannot be filed until a study concerning how the application will affect vested rights is completed and attached to the application.</p>	<p>The Department is committed to undertaking a comprehensive review of the instream flow application process, including an evaluation of the fee that should be charged for such applications. The Department believes that until the review is completed, the initial and maximum fees for an instream flow application should be the same as the initial and maximum fees for other applications to appropriate surface water. The Department has lowered the maximum fee for all applications to appropriate surface water, including instream flow applications, to \$10,000.00 and has lowered the initial fee to \$1,000.00. The comment requesting the Department to adopt a rule requiring an application for an instream flow permit to include a study on how the application will affect vested rights is beyond the scope of this rulemaking. However, the Department will consider this comment when it conducts its review of the instream flow application process.</p>
	<p>The Department should not charge an hourly fee for a certificate of water right, but should instead charge a fixed fee of \$120.00.</p>	<p>The Department disagrees with this comment. Department staff typically spends a significant amount of time processing an application for a certificate of water right. This is in addition to the time spent on processing the application for a permit to appropriate the surface water. The time spent on an application for a certificate of water right includes verifying that the surface water was in fact put to a beneficial use as allowed by the permit to appropriate and that the diversion works described in the permit were actually constructed as permitted. The time spent processing these applications can vary significantly from one application to another, making an hourly fee appropriate. No change has been made in response to this comment.</p>
<p>R12-15-104</p>	<p>The Department should lower the following fixed fees related to wells: late registration of a well (lower to \$50.00), assignment of well ownership (lower to \$20.00) and notice of intent to abandon a well (lower to \$50.00).</p>	<p>The Department agrees that the fees for late registration of a well and well assignments should be reduced. The fee for late registration of a well has been reduced to \$60.00 and the fee for a well assignment has been reduced to \$30.00. The Department has not reduced the fee for a Notice of Intent to Abandon a Well because it believes that a fee of \$150.00 is appropriate given the time required to verify well ownership, review the proposed abandonment design and ensure that the well drilling contractor has a valid license from the Department and the Registrar of Contractors.</p>

Notices of Final Rulemaking

R12-15-104 <i>continued</i>	The Department should lower the fee for certification of water right for a stockpond from \$120.00 to \$45.00 or \$50.00.	The Department disagrees with this comment. The time spent processing an application for certification of a water right for a stockpond includes verifying ownership of the land on which the stockpond is located; conducting an inspection of the stockpond to determine if the material facts stated on the claim are accurate; and making a decision on the claim based on the Department's inspection. The Department believes that a fee of \$120.00 is appropriate for this time. No change has been made in response to this comment.
	It is unclear whether the fee for assignment of a surface water application, permit, certificate or statement of claim in R12-15-104(A)(6)(d) includes an assignment of a certificate of water right for a stockpond.	The fee for assignment of a surface water application, permit, certificate or statement of claim includes an assignment of a certificate of water right for stockpond. As explained below, the fee has been reduced to \$75.00.
	The fee for assignment of a surface water application, permit, certificate or statement of claim should be reduced from \$500.00 to \$50.00.	The Department agrees that the fee for an application to assign a surface water application, permit, certificate or statement of claim should be lowered. The Department has reduced the fee to \$75.00 per assignment. Because the Department has lowered the fee per assignment from \$500 to \$75, the Department has removed the maximum fee of \$5,000 for a single application with multiple assignments.
	The Department should not charge a fee for re-issuance of a surface water permit or certificate when the reissuance is associated with an assignment of the permit or certificate.	The fee for re-issuance of a surface water permit or certificate does not apply to an assignment of a surface water right. The fee for an assignment of a permit or certificate includes re-issuance of the permit or certificate to the new holder. The Department has clarified this in R12-15-104(6)(a).
R12-15-105	The Department should consider risk factors in setting its dam safety inspection fees.	The dam safety inspection fees set forth in R12-15-105 are based on risk factors. The fee for a low or very low hazard potential dam is a fixed fee of \$1,000.00 and the fee for a high or significant hazard potential dam is between \$2,000.00 and \$4,200.00, depending on the length of the dam. No change has been made in response to this comment.
General	The regulatory program in Arizona was designed and developed with the idea that the public benefited from the protection and regulation of water in the state. The funding for this regulation should come from the state's general funds and not shouldered by targeted segments of the private sector.	The Department's budget has been reduced based in part on an assumption that the Department will increase its fees for services to levels that will allow it to recover its costs in providing those services. The Department believes that the fees set forth in this Notice of Final Rulemaking are reasonable for the time spent by Department staff in performing the services that are subject to the fees. The Department will continue to review the time it spends in processing applications and filings and in conducting inspections. If the Department determines that a fee is not appropriate for the time spent by Department staff in processing the application or filing, or in conducting the inspection, the Department will adjust the fee through another formal rulemaking proceeding.

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

None

Notices of Final Rulemaking

13. Incorporations by reference and their location in the rules:

None

14. Was this rule previously made as an emergency rule?

No

15. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

ARTICLE 1. FEES

Section

- R12-15-101. ~~Repealed~~ Definitions
R12-15-102. ~~Repealed~~ Fees for Applications and Filings
R12-15-103. ~~Repealed~~ Applications Subject to Hourly Fee; Amount of Fee; Initial Fee; Billing and Payment; Request for Reconsideration of Fee; Past Due Fee
R12-15-104. ~~Repealed~~ Applications and Filings Subject to Fixed Fee; Fixed Fee Schedule; Mileage Expenses; Costs for Legal Notices
R12-15-105. ~~Repealed~~ Fee for Dam Safety Inspection; Fee for Review of Dam Safety Inspection Report
R12-15-106. ~~Repealed~~ Fee for Well Capping
R12-15-151. ~~Fee Schedule Effective July 1, 2011~~ Repealed

ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY

Section

- R12-15-702. Physical Availability Determination
R12-15-703. Analysis of Assured Water Supply
R12-15-704. Certificate of Assured Water Supply
R12-15-705. Assignment of Type A Certificate of Assured Water Supply
R12-15-706. Assignment of Type B Certificate of Assured Water Supply
R12-15-707. Application for Classification of Type A Certificate
R12-15-708. Material Plat Change; Application for Review
R12-15-710. Designation of Assured Water Supply
R12-15-712. Analysis of Adequate Water Supply
R12-15-713. Water Report
R12-15-714. Designation of Adequate Water Supply
R12-15-730. ~~Assured and Adequate Water Supply Fees Effective July 1, 2011~~ Repealed

ARTICLE 8. WELL CONSTRUCTION AND LICENSING OF WELL DRILLERS

Section

- R12-15-806. License Fee; Issuance and Term of Licenses; Renewal; Display of License

ARTICLE 12. DAM SAFETY PROCEDURES

Section

- R12-15-1208. Application to Construct, Reconstruct, Repair, Enlarge, or Alter a High or Significant Hazard Potential Dam
R12-15-1210. Application to Construct, Reconstruct, Repair, Enlarge, Alter, Breach, or Remove a Low Hazard Potential Dam
R12-15-1211. Application to Construct, Reconstruct, Repair, Enlarge, Alter, Breach, or Remove a Very Low Hazard Potential Dam
R12-15-1213. Completion Documents for a Significant or High Hazard Potential Dam
R12-15-1219. Safety Inspections; Fees

ARTICLE 1. FEES

R12-15-101. ~~Repealed~~ Definitions

In addition to the definitions in A.R.S. §§ 45-101, 45-271, 45-402, 45-511, 45-561, 45-802.01, 45-1001, 45-1201 and R12-15-701, the following definitions apply to this Article:

1. "Application" means a written request submitted by an applicant to the Department for the purpose of obtaining a permit, license or other legal authorization issued by the Department.

Notices of Final Rulemaking

2. “Mileage expenses” means the Department’s mileage expenses for travelling to and from a site inspection calculated at the rate set by the Arizona Department of Administration for state travel by motor vehicle.
3. “Pre-decision administrative hearing” means an administrative hearing held on an application before the Department makes any decision on the application.
4. “Review hours” means the hours or portions of hours spent by Department employees in reviewing an application and making a decision thereon, including pre-application consultation time in excess of 60 minutes and site inspection time. Only time spent by the program staff members and technical review team members responsible for processing the application shall be included as review hours. Review hours do not include the first 60 minutes of pre-application consultation time, the time spent traveling to and from a site inspection, any time spent on a pre-decision administrative hearing and any time spent on the application after a party appeals the Director’s decision on the application pursuant to A.R.S. § 41-1092.03(B).
5. “Site inspection” means an inspection conducted by the Department before issuing a decision on an application or before issuing a decision on whether water may be stored at an underground storage facility.
6. “Site inspection time” means time spent on a site inspection. Site inspection time includes the time spent conducting the inspection and the time spent preparing an inspection report following the inspection, but does not include the time spent traveling to and from the inspection.

R12-15-102. ~~Repealed 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. 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.

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

- A.** The Department shall calculate the fee for an application listed in subsection (B) of this Section by multiplying the number of review hours for the application by an hourly rate of \$118.00, plus any mileage expenses and the actual cost of mailing or publishing any legal notice of the application.
- 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. Wells:

<u>Type of Application</u>	<u>Maximum Fee</u>
<u>Variance from well construction requirements that has not been pre-approved by the Department</u>	<u>\$10,000.00</u>

2. Groundwater:

<u>Type of Application</u>	<u>Maximum Fee</u>
<u>a. Issuance, renewal or modification of groundwater withdrawal permit</u>	<u>\$10,000.00</u>
<u>b. Issuance of notice of authority to irrigate in an irrigation non-expansion area</u>	<u>\$10,000.00</u>
<u>c. 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)</u>	<u>\$10,000.00</u>
<u>d. Notice of intent to establish new service area right by a city, town or private water company</u>	<u>\$10,000.00</u>
<u>e. Final petition to establish new service area right by a city, town or private water company</u>	<u>\$10,000.00</u>
<u>f. 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)</u>	<u>\$10,000.00</u>
<u>g. Addition and exclusion of area by an irrigation district pursuant to A.R.S. § 45-494.01</u>	<u>\$10,000.00</u>
<u>h. 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)</u>	<u>\$10,000.00</u>
<u>i. Determination of historically irrigated acres or annual transportation allotment for lands in McMullen valley groundwater basin pursuant to A.R.S. § 45-552</u>	<u>\$10,000.00</u>

Arizona Administrative Register / Secretary of State

Notices of Final Rulemaking

j. 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. 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. Permit to transport groundwater away from the Yuma groundwater basin pursuant to A.R.S. § 45-547	\$10,000.00
m. Drought emergency groundwater transfer away from a groundwater basin outside of an active management area	\$10,000.00

3. Grandfathered Rights:

<u>Type of Application</u>	<u>Maximum Fee</u>
a. Type I non-irrigation grandfathered right for land retired from irrigation after date of designation of active management area pursuant to A.R.S. § 45-469 or 45-472	\$10,000.00
b. Restoration of retired irrigation grandfathered right pursuant to A.R.S. § 45-469(O)	\$10,000.00

4. Substitution of Acres:

<u>Type of Application</u>	<u>Maximum Fee</u>
a. Substitution of flood damaged acres in an active management area or an irrigation non-expansion area	\$10,000.00
b. Substitution of acres to eliminate limiting condition impeding efficient irrigation in an active management area or an irrigation non-expansion area	\$10,000.00
c. Substitution of acres to allow irrigation with Central Arizona Project water in an active management area	\$10,000.00

5. Lakes:

<u>Type of Application</u>	<u>Maximum Fee</u>
a. Permit to fill body of water with poor quality water pursuant to A.R.S. § 45-132(C)	\$10,000.00
b. Permit for interim water use in a body of water	\$10,000.00
c. Temporary emergency permit for use of surface water or groundwater in a body of water	\$10,000.00

6. Water Exchange:

<u>Type of Application</u>	<u>Maximum Fee</u>
a. Issuance, renewal or modification of water exchange permit	\$10,000.00
b. Notice of water exchange for which approval is required pursuant to A.R.S. § 45-1052(6)(b)	\$10,000.00

7. Water Exportation:

<u>Type of Application</u>	<u>Maximum Fee</u>
Permit to transport water from this state	\$25,000.00

8. Underground Water Storage, Savings and Replenishment:

<u>Type of Application</u>	<u>Maximum Fee</u>
a. Issuance, renewal or modification of an underground storage facility permit	\$25,000.00
b. Issuance, renewal or modification of a groundwater savings facility permit	\$10,000.00
c. Issuance, renewal or modification of a water storage permit	\$10,000.00
d. Recovery well permit, including an emergency temporary recovery well permit	\$10,000.00

9. Assured and Adequate Water Supply:

<u>Type of Application</u>	<u>Maximum Fee</u>
a. Physical availability determination	\$10,000.00
b. Analysis of assured or adequate water supply	\$10,000.00
c. Renewal of analysis of assured or adequate water supply	\$10,000.00

Notices of Final Rulemaking

d. <u>Certificate of assured water supply</u>	\$10,000.00
e. <u>Issuance or modification of designation of assured water supply</u>	\$35,000.00
f. <u>Issuance or modification of designation of adequate water supply</u>	\$25,000.00
g. <u>Water report (outside an AMA)</u>	\$10,000.00
h. <u>Assignment of Type A certificate of assured water supply</u>	\$5,000.00
i. <u>Assignment of Type B certificate of assured water supply</u>	\$5,000.00
j. <u>Classification of Type A certificate of assured water supply pursuant to R12-15-707</u>	\$10,000.00
k. <u>Review of revised plat to determine whether changes are material</u>	\$10,000.00
l. <u>New certificate of assured water supply pursuant to R12-15-704(G)</u>	\$10,000.00
m. <u>Letter stating that owner is not required to obtain a certificate of assured water supply pursuant to R12-15-704(M)</u>	\$10,000.00

10. Surface Water:

<u>Type of Application</u>	<u>Maximum Fee</u>
a. <u>Permit to appropriate public water</u>	\$10,000.00
b. <u>Certificate of water right</u>	\$10,000.00
c. <u>Primary reservoir permit or secondary reservoir permit</u>	\$10,000.00
d. <u>Change in use of water</u>	\$10,000.00
e. <u>Severance and transfer of water right to land that is not within the same parcel or farm unit as the current use, or that includes a change in water source, use or ownership</u>	\$25,000.00
f. <u>Severance and transfer of water right to land that is within the same parcel or farm unit as the current use and that does not include a change in water source, use or ownership</u>	\$2,500.00
g. <u>Request for extension of time to complete construction</u>	\$10,000.00

- C.** A person filing an application that is subject to an hourly fee shall submit an initial fee at the time the application is submitted to the Department. The initial fee for applications described in subsections (B)(7), (B)(8)(a), (B)(9)(e), (B)(9)(f) and (B)(10)(e) of this Section shall be \$2,000.00. The initial fee for all other applications shall be \$1,000.00. If requested by the applicant, the Department may set a lower initial fee if the Department estimates that the total application fee will be less than the initial fee specified in this subsection. The Department shall not accept an application for which an initial fee is required under this subsection unless the initial fee is included with the application.
- D.** The Department shall bill the applicant for processing the application no more than monthly, but at least quarterly. Each bill shall contain the following information for the billing period:
1. The number of review hours accrued by activity and subactivity code during the billing period, the date of each activity, a description of each activity and the effective hourly rate for all activities;
 2. A description and amount of any mileage expenses charged for the application;
 3. A description and amount of the cost of mailing or publishing any legal notice of the application or notice of a pre-decision administrative hearing on the application; and
 4. The total fees paid to date, the total fees due for the billing period, the date when the fees are payable, which shall be at least 60 days after the date of the bill, and the maximum fee for the application.
- E.** A bill for hourly fees becomes past due if the applicant does not pay the bill in full by the due date specified in the bill, unless the applicant submits a timely request for reconsideration of the bill pursuant to subsection (G) of this Section. If the applicant submits a timely request for reconsideration of the bill, the bill becomes past due if the applicant does not pay the amount due under the Director's decision on the request by the date specified in the decision. If a bill for hourly fees becomes past due, the following shall apply:
1. The applicable review time-frame shall be suspended from the date the bill became past due until the applicant pays the bill in full or the application is denied under subsection (E)(2) of this Section, whichever applies.
 2. The Department shall suspend its review of the application and send a written notice to the applicant that the bill is past due. If the applicant does not pay the outstanding bill by the date specified in the notice, which shall be at least 35 days from the date of the notice, the application shall be denied.
- F.** After the Department makes a determination whether to grant or deny the application, or when an applicant withdraws the application, the Department shall prepare and send to the applicant a final itemized billing statement for the application fee.
1. If the total fee exceeds the amount of the initial fee paid plus all other payments made to date, the applicant shall pay the balance, up to the maximum fee for the application, plus any mileage expenses and the actual cost of mailing or publishing any legal notice of the application or notice of a pre-decision administrative hearing on the application, by the date specified in the statement, unless the applicant submits a timely request for reconsideration of the bill pursu-

Notices of Final Rulemaking

ant to subsection (G) of this Section. The statement shall specify a date, at least 60 days from the date of the statement, by which the applicant must pay the bill. If the applicant submits a timely request for reconsideration of the bill, the applicant shall pay the amount due under the Director's decision on the request by the date specified in the decision. The Department shall not release the final permit or approval until the final bill is paid in full.

2. If the total fee is less than the initial fee plus all other payments made to date, the Department shall refund the difference to the applicant within 35 days of the date of the statement.

G. An applicant may seek reconsideration of a bill for hourly fees by filing a written request for reconsideration with the Director. The request shall specify, in detail, why the bill is in dispute and shall include any supporting documentation. The written request for reconsideration shall be delivered to the Director in person, by mail, or by facsimile on or before the payment due date. The Director shall make a final decision on the request for reconsideration of the bill and mail a final written decision to the person within 20 business days after the date the Director receives the written request. The decision shall specify a date, at least 35 days from the date of the decision, by which the applicant must pay the bill. The Director may reduce the amount of any fees billed under this Section if the Director determines that the number of review hours or mileage expenses billed to the applicant was incorrect or that time spent by the Department to review the application and make a decision thereon was not necessary or advisable.

H. If a person receives a bill under this Section and the bill becomes past due under subsection (E) or (F) of this Section, the Department shall not accept for filing any other application by that person until the person pays the past due amount in full.

R12-15-104. ~~Repeated 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. Wells:

<u>Type of Application or Filing</u>	<u>Fee</u>
a. <u>Late registration of well</u>	<u>\$60.00</u>
b. <u>Well driller's license</u>	<u>\$50.00</u>
c. <u>Re-issuance, renewal, or amendment of well driller's license</u>	<u>\$50.00</u>
d. <u>Re-activation of expired well driller's license</u>	<u>\$50.00</u>
e. <u>Well assignment</u>	<u>\$30.00 per well</u>
f. <u>Notice of intention to abandon a well</u>	<u>\$150.00</u>
g. <u>Notice of intention to drill a well other than a well described in subsection (A)(1)(h) of this Section</u>	<u>\$150.00</u>
h. <u>Notice of intention to drill a well that will not be located in an active management area or irrigation non-expansion area, that will be used solely for domestic purposes and that will have a pump with a maximum capacity of not more than 35 gallons per minute</u>	<u>\$100.00</u>
i. <u>Re-issuance of drill card</u>	<u>\$120.00</u>
j. <u>Permit to drill non-exempt well in an active management area</u>	<u>\$150.00 application fee plus \$30.00 permit fee</u>

2. Groundwater:

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

3. Grandfathered rights:

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

Arizona Administrative Register / Secretary of State

Notices of Final Rulemaking

e. <u>Approval of development plan to retire irrigation grandfathered right for a Type 1 non-irrigation grandfathered right</u>	\$500.00
f. <u>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</u>	\$120.00

4. Underground Water Storage, Savings and Replenishment:

Type of Application or Filing	Fee
a. <u>Conveyance of storage facility permit</u>	\$500.00
b. <u>Conveyance of water storage permit</u>	\$500.00
c. <u>Assignment of long-term storage credits</u>	\$250.00

5. Assured water supply:

Type of Application or Filing	Fee
a. <u>Extinguishment of grandfathered right for extinguishment credits</u>	\$250.00
b. <u>Conveyance of extinguishment credits</u>	\$250.00

6. Surface Water:

Type of Application or Filing	Fee
a. <u>Re-issuance of a surface water permit or certificate (not associated with an assignment of the permit or certificate)</u>	\$120.00
b. <u>Claim of water right for a stockpond pursuant to A.R.S. § 45-273</u>	\$10.00
c. <u>Statement of claim for a water right pursuant to A.R.S. § 45-183</u>	\$5.00
d. <u>Assignment of application, permit, certificate or statement of claim</u>	\$75.00
e. <u>Certification of water right for a stockpond pursuant to A.R.S. § 45-275</u>	\$120.00

7. Dams:

Type of Application	Fee
<u>Approval of plans for construction, enlargement, repair, alteration or removal of dam</u>	2 percent of the total project cost

8. Water Exchange:

Type of Filing	Fee
<u>Notice of water exchange that does not require approval pursuant to A.R.S. § 45-1052(6)(b)</u>	\$500.00

9. Weather Modification:

Type of Application	Fee
a. <u>License for weather control or cloud modification</u>	\$100.00
b. <u>Equipment license for weather control or cloud modification</u>	\$10.00

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.

R12-15-105. ~~Repealed~~ Fee for Dam Safety Inspection; Fee for Review of Dam Safety Inspection Report

A. The owner of a high or significant hazard potential dam shall pay a fee for the Department's dam safety inspection pursuant to R12-15-1219(A). The fee shall be based on the total crest length of the dam plus appurtenant embankments and saddle dikes, as follows:

<u>Length (feet)</u>	<u>Fee</u>
<u>0 up to and including 500</u>	<u>\$2,000.00</u>
<u>More than 500 up to and including 1,000</u>	<u>\$2,200.00</u>
<u>More than 1,000 up to and including 2,000</u>	<u>\$2,400.00</u>
<u>More than 2,000 up to and including 4,000</u>	<u>\$2,600.00</u>
<u>More than 4,000 up to and including 8,000</u>	<u>\$3,000.00</u>
<u>More than 8,000 up to and including 16,000</u>	<u>\$3,400.00</u>

Arizona Administrative Register / Secretary of State

Notices of Final Rulemaking

More than 16,000 up to and including 32,000	\$3,800.00
More than 32,000	\$4,200.00

- B.** The owner of a low or very low hazard potential dam shall pay a fee for the Department's dam safety inspection pursuant to R12-15-1219(A). The fee shall be \$1,000.00.
- C.** After conducting a dam safety inspection pursuant to R12-15-1219(A), the Director shall send to the dam owner a bill for the fee required by subsection (A) or (B) of this Section. The dam owner shall pay the fee by the date specified in the bill, which shall be at least 35 days from the date of the bill. Failure by a dam owner to pay a fee required by subsection (A) or (B) of this Section shall be considered a violation of R12-15-1219.
- D.** The owner of a dam who submits a dam safety inspection report pursuant to R12-15-1219(E) shall pay a fee of \$750.00. The Department shall not accept a dam safety inspection report unless the fee is submitted with the report.

R12-15-106. ~~Repealed Fee for Well Capping~~

The owner of a well that is capped by the Department pursuant to A.R.S. § 45-594(C) shall pay to the Department a fee of \$300.00, plus actual expenses over \$300.00. After capping an open well, the Department shall send the owner of the well a bill for the fee under this Section. The owner of the well shall pay the fee by the date specified in the bill, which shall be at least 35 days after the date of the bill.

R12-15-151. ~~Fee Schedule Effective July 1, 2011 Repealed~~

A. Beginning July 1, 2011, the Department shall only accept or take action on an application or filing upon payment of the appropriate fee as listed below. Payment may be made by cash, check, or by entry in an existing Department fee credit account established pursuant to R12-15-152.

B. The following fees shall be paid:

- 1. Surface water:

Type of Application	Fee
a. Application for permit to appropriate	
i. Less than 50 acre-feet	\$50.00
ii. 50 acre-feet or more	\$75.00
b. Permit to appropriate	
i. Less than 50 acre-feet	\$25.00
ii. 50 acre-feet or more	\$50.00
c. Claim of water right for a stockpond and application for certificate	\$10.00
d. Certificate of water right for stockpond	\$30.00
e. Issue certificate of water right (except stockpond)	\$50.00
f. Application for severance and transfer of water right	\$500.00
g. Application to transport water out of state	\$500.00
h. Assignment	
i. Assignment of application for permit to appropriate, statement of claim or claim of water right for a stockpond	\$10.00
ii. Assignment and reissuance of permit to appropriate	\$20.00
iii. Assignment and reissuance of certificate of water right (except stockpond)	\$35.00
iv. Assignment and reissuance of certificate of water right for a stockpond	\$20.00

- 2. Groundwater:

Type of Application	Fee
a. Application for groundwater withdrawal permit, modifications and renewals (except applications for hydrologic testing and temporary dewatering permits)	\$150.00
b. Application for permit for hydrologic testing and temporary dewatering, modifications and renewals	\$50.00
c. Groundwater withdrawal permit	\$50.00
d. Convey groundwater withdrawal permit (except for permits for temporary electrical energy generation, temporary dewatering, hydrologic testing, and groundwater replenishment district withdrawals)	\$35.00
e. Application for notice of authority to irrigate in an irrigation non-expansion area	\$50.00
f. Convey or reissue notice of authority to irrigate in an irrigation non-expansion area	\$35.00

Arizona Administrative Register / Secretary of State

Notices of Final Rulemaking

3- Water Exchanges:

Type of Application	Fee
a. Statement of water exchange contract	\$100.00
b. Application for water exchange permit	\$150.00
e. Water exchange permit	\$100.00
d. Renew or modify water exchange permit	\$100.00
e. Notice of water exchange	\$150.00

4- Wells:

Type of Application	Fee
a. Reissue drilling card	\$10.00
b. Permit to drill new or replacement well	\$30.00
e. Registration of exempt well	No charge
d. Registration of non-exempt well	\$10.00
e. Late registration of any well (post 7/16/82)	\$10.00
f. Well assignments (single or group of wells by same owner)	\$10.00
g. Well driller's licenses (except single well license)	\$50.00
h. Reissue or renew unexpired well driller's license	\$10.00
i. Reactivate expired well driller's license	\$20.00
j. Single well license	No charge
k. Well capping	\$300.00 minimum plus actual expenses over \$300.00

5- Grandfathered Rights:

Type of Application	Fee
a. Application for certificate of grandfathered right	\$75.00
b. Late application for certificate of grandfathered right	\$100.00
e. Convey or reissue certificate of grandfathered right	\$35.00
d. Application for Type 1 non-irrigation grandfathered right associated with retired irrigation land	\$50.00
e. Application to retire an irrigation grandfathered right from irrigation to non-irrigation	\$100.00
f. Application for restoration of retired irrigation grandfathered right	\$50.00
g. Purchase of flexibility account credit balance	\$100.00

6- Substitution of Acres:

Type of Application or filing	Fee
a. Application to substitute irregularly shaped acres in an irrigation non-expansion area or an active management area	\$50.00
b. Application to substitute flood damaged acres in an irrigation non-expansion area or an active management area	\$100.00
e. Application to substitute CAP acres in an irrigation non-expansion area	\$50.00
d. Application to substitute, or to reverse substitution of, CAP acres in an active management area	\$100.00

Arizona Administrative Register / Secretary of State

Notices of Final Rulemaking

7. Assured and Adequate Water Supply:

Type of Application	Fee
Applications, certificates, licenses, reports, and permits relating to assured and adequate water supply	The applicable fee prescribed in Article 7 of this Chapter

8. Underground Water Storage, Savings and Replenishment Program:

Type of Application	Fee
a. Application for underground storage facility permit	\$750.00
b. Underground storage facility permit	\$500.00
e. Convey underground storage facility permit	\$300.00
d. Application for groundwater savings facility permit	\$500.00
e. Groundwater savings facility permit	\$350.00
f. Convey groundwater savings facility permit	\$300.00
g. Application for water storage permit	\$250.00
h. Water storage permit	\$100.00
i. Convey water storage permit	\$300.00
j. Application for recovery well permit	
i. First 10 wells	\$50.00 per well
ii. Over 10 wells	\$10.00 per well
k. Recovery well permit	
i. First 10 wells	\$50.00 per well
ii. Over 10 wells	\$10.00 per well

9. Certificate of Groundwater Oversupply:

Type of Application	Fee
a. Application for certificate of groundwater oversupply	\$150.00
b. Certificate of groundwater oversupply	\$50.00

10. Lakes:

Type of Application	Fee
a. Application for permit to fill or refill a body of water	
i. Poor quality groundwater	\$150.00
ii. Interim	\$50.00
b. Permit to fill or refill a body of water	
i. Poor quality groundwater	\$75.00
ii. Interim	\$30.00
e. Application for determination of substantial capital investment to fill or refill a body of water	\$50.00
d. Application and permit for temporary emergency use of water to fill a body of water	\$50.00

11. Safety of Dams:

Type of Application	Fee
a. Application for review	No charge
b. Application filing fee review of plans and studies based upon dam cost	
i. First \$100,000.00	2.0%
ii. Next \$400,000.00	1.5%
iii. Next \$500,000.00	1.0%
iv. Remainder over \$1,000,000.00	0.5%
e. Safety inspections	
i. Per inspection	\$100.00
ii. Plus, per foot of height	\$2.00

Notices of Final Rulemaking

12. Weather Modification:

Type of Application	Fee
a. Application for weather modification license	\$100.00
b. License to manufacture or sell weather modification equipment	\$10.00

13. Copies:

Type of Copies	Fee
a. Photocopies	\$0.25 per page
b. Microfiche copies	\$0.30 per page
e. Computer reports	
i. First page of report	\$15.00
ii. Additional pages	\$0.25 each
d. Certified copies	\$2.75 per page

C. In addition to the fees listed in subsection (B) of this Section, the applicant shall pay the Department the actual cost of mailing and/or publishing any legal notice required by statute.

ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY

R12-15-702. Physical Availability Determination

- A. A person may apply for a physical availability determination by submitting an application on a form prescribed by the Director with the initial fee required by R12-15-103(C) or R12-15-730, whichever applies, and providing the following information with the application:
1. No change
 2. No change
 3. No change
- B.** No change
- C.** No change
1. No change
 2. No change
- D.** No change
- E.** No change
- F.** No change

R12-15-703. Analysis of Assured Water Supply

- A.** No change
- B.** An applicant for an analysis shall submit an application on a form prescribed by the Director with the initial fee required by R12-15-103(C) or R12-15-730, whichever applies, and attach the following:
1. No change
 2. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 3. No change
- C.** No change
- D.** No change
- E.** No change
1. No change
 2. No change
 3. No change
 4. No change
 5. No change
 6. No change
- F.** No change
1. No change
 2. No change
- G.** No change
- H.** No change

Notices of Final Rulemaking

- 1. No change
- 2. No change
- 3. No change
- I. No change
- J. No change
- R12-15-704. Certificate of Assured Water Supply**
- A. No change
- B. An applicant for a certificate shall submit an application on a form prescribed by the Director with the initial fee required by R12-15-103(C) or ~~R12-15-730~~, whichever applies, and provide the following:
 - 1. No change
 - a. No change
 - i. No change
 - ii. No change
 - b. No change
 - c. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - 6. No change
- C. No change
- D. No change
- E. No change
 - 1. No change
 - 2. No change
 - 3. No change
- F. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - 6. No change
 - 7. No change
- G. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - 6. No change
- H. No change
 - 1. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - 2. No change
- I. No change
- J. No change
 - 1. No change
 - a. No change
 - b. No change
 - 2. No change
 - 3. No change
- K. No change
 - 1. No change

Notices of Final Rulemaking

- 2. No change
- 3. No change

L. No change

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

M. No change

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

R12-15-705. Assignment of Type A Certificate of Assured Water Supply

A. The certificate holder of a Type A certificate and the assignee may apply for approval of an assignment of the Type A certificate within the time allowed by A.R.S. § 45-579(A). The assignee may file the application if there is no certificate holder. The application shall be submitted on a form prescribed by the Director with the initial fee required by R12-15-103(C) or R12-15-730, whichever applies, and the applicant shall provide the following:

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

B. No change

C. No change

D. No change

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

E. No change

F. No change

R12-15-706. Assignment of Type B Certificate of Assured Water Supply

A. The certificate holder of a Type B certificate or a certificate issued before the effective date of this Section that has not been classified pursuant to R12-15-707 and the assignee may apply for approval of an assignment of the certificate to another person within the time allowed by A.R.S. § 45-579(A). The assignee may file the application if there is no certificate holder. The application shall be submitted on a form prescribed by the Director with the initial fee required by R12-15-103(C) or R12-15-730, whichever applies, and the applicant shall provide the following:

- 1. No change
 - a. No change
 - b. No change
- 2. No change
- 3. No change
- 4. No change
- 5. No change
- 6. No change
- 7. No change
- 8. No change
- 9. No change

B. No change

C. No change

D. No change

- 1. No change
- 2. No change
- 3. No change

Notices of Final Rulemaking

- 4. No change
- 5. No change
- 6. No change
- 7. No change
- 8. No change
- E. No change
- F. No change
- G. No change

R12-15-707. Application for Classification of a Type A Certificate

- A. A holder of a Type B certificate or a certificate issued before the effective date of this Section may apply to the Director to classify the certificate as a Type A certificate by submitting an application on a form prescribed by the Director with the initial fee prescribed in R12-15-103(C) ~~or R12-15-730, whichever applies~~, and attaching evidence that the certificate meets the requirements of R12-15-704(H)(1).
- B. No change
- C. No change

R-12-15-708. Material Plat Change; Application for Review

- A. No change
- B. No change
 - 1. No change
 - 2. No change
 - 3. No change
- C. No change
 - 1. No change
 - a. No change
 - b. No change
 - c. No change
 - 2. No change
 - a. No change
 - b. No change
 - c. No change
 - i. No change
 - ii. No change
 - iii. No change
 - 3. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
- D. No change
 - 1. No change
 - 2. No change
 - 3. No change
- E. A person may apply for a review of a revised plat to determine whether any changes to the plat are material as follows:
 - 1. The applicant shall submit an application on a form prescribed by the Director with the initial fee required by R12-15-103(C) ~~or R12-15-730, whichever applies~~, and shall attach the revised plat.
 - 2. No change
 - 3. No change

R12-15-710. Designation of Assured Water Supply

- A. A municipal provider applying for a designation of assured water supply shall submit an application on a form prescribed by the Director with the initial fee required by R12-15-103(C) ~~or R12-15-730, whichever applies~~, and provide the following:
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - 6. No change
- B. No change

Notices of Final Rulemaking

- 1. No change
- 2. No change
- C. No change
- D. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
- E. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - 6. No change
 - 7. No change
- F. No change

R12-15-712. Analysis of Adequate Water Supply

- A. No change
- B. An applicant for an analysis shall submit an application on a form prescribed by the Director with the initial fee required by R12-15-103(C) or ~~R12-15-730, whichever applies~~, and attach the following:
 - 1. No change
 - 2. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - 3. No change
- C. No change
- D. No change
- E. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
- F. No change
 - 1. No change
 - 2. No change
- G. No change
- H. No change
 - 1. No change
 - 2. No change
 - 3. No change
- I. No change
- J. No change

R12-15-713. Water Report

- A. No change
- B. An applicant for a water report shall submit an application on a form prescribed by the Director with the initial fee required by R12-15-103(C) or ~~R12-15-730, whichever applies~~, and provide the following:
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - 6. No change
- C. No change
- D. No change

Notices of Final Rulemaking

- 1. No change
- 2. No change
- E.** No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
- F.** No change
- G.** No change
- H.** No change
 - 1. No change
 - 2. No change
- I.** No change
- J.** No change

R12-15-714. Designation of Adequate Water Supply

- A.** A municipal provider applying for a designation of adequate water supply shall submit an application on a form prescribed by the Director with the initial fee required by R12-15-103(C) ~~or R12-15-730, whichever applies~~, and the following:
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - 6. No change
- B.** A city or town, other than a municipal provider, that is applying for a designation shall submit an application on a form prescribed by the Director with the initial fee required in R12-15-103(C) ~~or R12-15-730, whichever applies~~, and provide the following:
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
- C.** No change
 - 1. No change
 - 2. No change
- D.** No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
- E.** No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
- F.** No change
- G.** No change

R12-15-730. ~~Assured and Adequate Water Supply Fees Effective July 1, 2011~~ Repealed

- A.** ~~With respect to an application listed in subsection (B) of this Section, beginning July 1, 2011, the Director shall accept or take action on the application only upon payment of the applicable fee as listed in subsection (B).~~
- B.** ~~An applicant shall pay the following fees, as applicable:~~

APPLICATION	FEE
1. Certificate	\$3,000.00 for the first 20 lots; \$3.00 for each additional lot; maximum \$5,000.00

Notices of Final Rulemaking

2. Assignment of certificate issued after September 12, 2006	None
3. Reissuance of certificate issued after September 12, 2006, pursuant to R12-15-704(G)	None
4. Assignment of certificate issued before September 12, 2006, with or without request for classification as Type A certificate	\$250.00 for the first 20 lots; \$0.50 for each additional lot; maximum \$1,000.00
5. Reissuance of certificate issued before September 12, 2006, pursuant to R12-15-704(G)	\$250.00 for the first 20 lots; \$0.50 for each additional lot; maximum \$1,000.00
6. Classification as Type A, for certificate issued before September 12, 2006 (not included in assignment application)	\$250.00 for the first 20 lots; \$0.50 for each additional lot; maximum \$1,000.00
7. Material plat change review	\$250.00
8. Designation or modification of designation that includes evaluation of physical, legal, and continuous availability or consistency with management goal	\$1,000.00 for the first 1,000 acre feet; \$0.50 for each additional acre-foot; maximum \$10,000.00
9. Modification of designation that does not include evaluation of physical, legal, and continuous availability or consistency with management goal	\$500.00
10. Water report	\$900.00 for the first 20 lots; \$2.00 for each additional lot; maximum \$2,000.00
11. Analysis	\$7,500.00
12. Physical availability determination	\$5,000.00

ARTICLE 8. WELL CONSTRUCTION AND LICENSING OF WELL DRILLERS

R12-15-806. License Fee; Issuance and Term of Licenses; Renewal; Display of License

- A. ~~Except as provided in subsection (B) of this subsection, the~~ The fee for a well driller's license shall be \$50.00.
- B. Upon submittal of the license fee and satisfactory completion of an examination, the Director shall issue the applicant a well drilling license. The license shall be numbered and shall state the specialized classifications of drilling activities for which the applicant is qualified and licensed. The applicant shall be licensed in only those classifications for which the qualifying party has passed the specialized sections of the examination. If the qualifying party subsequently passes other specialized sections, the applicant's license shall be amended. ~~Beginning July 1, 2010 through June 30, 2011, the~~ The applicant shall pay a fee of \$50.00 for the amendment of a well driller's license. ~~Beginning July 1, 2011, no fee shall be charged for an amendment to a well driller's license.~~
- C. No change
- D. No change
- E. A person may renew a well drilling license by submitting an application for renewal on forms prescribed and furnished by the Director and a fee of \$50.00. ~~Beginning July 1, 2010 through June 30, 2011, the renewal fee shall be \$50.00. Beginning July 1, 2011, the renewal fee shall be \$10.00.~~ If the application and renewal fee are postmarked on or before June 30, the well drilling contractor may operate as a licensee until actual issuance of the renewal license. A license which has expired may be reactivated and renewed within one year of its expiration by filing the required application and a reactivation fee of \$50.00. ~~Beginning July 1, 2010 through June 30, 2011, the reactivation fee shall be \$50.00. Beginning July 1, 2011, the reactivation fee shall be \$20.00.~~ If a license has been expired for one or more years for failure to renew, the well drilling contractor shall apply for a new license and repeat the examination.
- F. No change

ARTICLE 12. DAM SAFETY PROCEDURES

R12-15-1208. Application to Construct, Reconstruct, Repair, Enlarge, or Alter a High or Significant Hazard Potential Dam

- A. An application package to construct, reconstruct, repair, enlarge, or alter a high or significant hazard potential dam shall include the following prepared by or under the supervision of an engineer as defined in R12-15-1202(11):
 - 1. No change
 - 2. No change
 - 3. An initial application fee based on the total estimated project cost and computed in accordance with A.R.S. § 45-1204 and either R12-15-104(A)(7) or R12-15-151(B)(11), whichever applies.
 - 4. No change

Notices of Final Rulemaking

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

B. No change

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

R12-15-1210. Application to Construct, Reconstruct, Repair, Enlarge, Alter, Breach, or Remove a Low Hazard Potential Dam

A. An application package to construct, reconstruct, repair, enlarge, or alter a low hazard potential dam shall include the following prepared by or under the supervision of an engineer as defined in R12-15-1202(11):

1. No change
2. An initial application fee based on the total estimated project cost, computed in accordance with A.R.S. § 45-1204 and either R12-15-104(A)(7) or ~~R12-15-151(B)(11)~~, whichever applies.
3. No change
4. No change
5. No change
 - a. No change
 - b. No change
 - c. No change
6. No change
7. No change
8. No change
9. No change
10. No change
11. No change

B. An application package for the breach or removal of a low hazard potential dam shall include the following:

1. No change
 - a. No change
 - b. No change
 - c. No change
2. An initial application fee based on the total estimated project cost and computed in accordance with A.R.S. § 45-1204 and either R12-15-104(A)(7) or ~~R12-15-151(B)(11)~~, whichever applies.
3. No change
 - a. No change
 - b. No change
 - i. No change
 - ii. No change
 - iii. No change
 - c. No change
4. No change

C. No change

D. No change

1. No change
2. No change

E. No change

F. No change

G. Within 90 days after completing construction, reconstruction, repair, enlargement, or alteration of a low hazard potential dam, the owner shall file the following:

1. No change
2. An additional fee or refund request computed in accordance with A.R.S. § 45-1209 and either R12-15-104(A)(7) or ~~R12-15-151(B)(11)~~, whichever applies, based on the actual cost of construction, reconstruction, repair, enlargement, or alteration.
3. No change
 - a. No change
 - b. No change

Notices of Final Rulemaking

- c. No change
- 4. No change
- H. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
- I. Within 90 days after completing removal of a low hazard potential dam, the owner shall file the following. The Director shall remove the dam from jurisdiction upon approval of the submittal.
 - 1. No change
 - 2. An additional fee or refund request computed in accordance with A.R.S. § 45-1204 and either R12-15-104(A)(7) or R12-15-151(B)(11), whichever applies, based on the actual cost of removal.
 - 3. No change
 - 4. No change
- J. No change

R12-15-1211. Application to Construct, Reconstruct, Repair, Enlarge, Alter, Breach, or Remove a Very Low Hazard Potential Dam

- A. An application package to construct, reconstruct, repair, enlarge, or alter a very low hazard potential dam shall include the following prepared by an engineer or a person under the supervision of an engineer as defined in R12-15-1202(11):
 - 1. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - 2. No change
 - 3. No change
 - 4. An initial application fee based on the total estimated project cost and computed in accordance with A.R.S. § 45-1204 and either R12-15-104(A)(7) or R12-15-151(B)(11), whichever applies.
 - 5. No change
 - 6. No change
 - a. No change
 - b. No change
 - c. No change
 - 7. No change
 - 8. No change
 - 9. No change
- B. No change
- C. No change
- D. No change
 - 1. No change
 - 2. No change
- E. No change
- F. No change
- G. Within 90 days after completion of the construction, reconstruction, repair, enlargement, or alteration of a very low hazard potential dam, the owner shall file the following:
 - 1. No change
 - 2. An additional fee or refund request computed in accordance with A.R.S. § 45-1209 and either R12-15-104(A)(7) or R12-15-151(B)(11), whichever applies, based on the actual cost of construction, reconstruction, repair, enlargement, or alteration.
 - 3. No change
 - a. No change
 - b. No change
 - c. No change
 - 4. No change
- H. No change
 - 1. No change
 - 2. No change
 - 3. No change

- I. No change
- J. No change
- K. No change

R12-15-1213. Completion Documents for a Significant or High Hazard Potential Dam

Within 90 days after completion of the construction or removal work for a significant or high hazard potential dam and final inspection by the Department, the owner shall file the following:

1. No change
2. An additional fee or refund request based on the actual cost of the construction, computed in accordance with A.R.S. § 45-1209 and either R12-15-104(A)(7) or R12-15-151(B)(11), whichever applies.
3. No change
4. No change
5. No change
6. No change
7. No change
8. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change

R12-15-1219. Safety Inspections; Fees

- A. Except as provided in subsection (E), the Director shall conduct a dam safety inspection annually or more frequently for each high hazard potential dam, triennially for each significant hazard potential dam, and once every five years for each low and very low hazard potential dam. An owner of a dam shall pay the inspection fee required by ~~R12-15-106 or R12-15-151(B)(11)(c), whichever applies,~~ R12-15-105 for each inspection of the dam pursuant to this subsection.
- B. No change
 1. No change
 2. No change
 3. No change
- C. No change
 1. No change
 2. No change
 3. No change
 4. No change
 5. No change
- D. No change
- E. Inspections by the Owner
 1. No change
 2. No change
 3. ~~Beginning July 1, 2010 through June 30, 2011, a~~ A safety inspection report submitted pursuant to this subsection shall include the fee required by ~~R12-15-106(C)~~ R12-15-105(D). ~~Beginning July 1, 2011, a person submitting a safety inspection report pursuant to this subsection is not required to include a fee with the report.~~
- F. No change
 1. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 2. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 3. No change
 4. No change