

NOTICE OF PROPOSED RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

PREAMBLE

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

<u>Section numbers</u>	<u>Action</u>
R12-15-105	Amend
R12-15-401	Amend

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

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

Implementing statute: A.R.S. §§ 41-1073, 45-113 and 45-1212(A).

3. A list of all previous notices appearing in the *Register* addressing the proposed rule:

Notice of Rulemaking Docket Opening: ___A.A.R.___, ___, 2017.

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

Name: Kelly Brown
Deputy Counsel

Address: Arizona Department of Water Resources
1110 W. Washington Street, Suite 310
Phoenix, AZ 85007

Telephone: (602) 771-8472

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

Reasons for Initiating the Rulemaking

Executive Order 2015-01 (“Executive Order”) required most state agencies, including the Arizona Department of Water Resources (“Department”) to evaluate their rules and provide the Governor’s Office with recommendations for which rules could be amended or repealed consistent with the priorities and principles set forth in the Executive Order. Those priorities and principles included reducing the regulatory burden, administrative delay and legal uncertainty associated with government regulation. The Executive Order required the evaluation to include a summary of the agency’s licensing time-frames and whether any of those licensing time-frames could be reduced.

The Department conducted an evaluation of its rules in accordance with the Executive Order and on August 31, 2015, provided the evaluation to the Governor’s Office in a report entitled “Evaluation of Rules and Licensing Time Frames” (“August 31, 2015 Report”). The August 31, 2015 Report recommended several rule amendments consistent with the priorities and principles in the Executive Order. The purpose of this rulemaking is to make several of those rule amendments.

Explanation of the Rules

A. R12-15-105(B) and (D)

The Department conducts a dam safety inspection of each dam classified as a low or very low hazard potential dam once every five years. In place of the Department

conducting the inspection, the dam owner may have its own engineer conduct the inspection and submit a dam safety inspection report to the Department. The Department is proposing to amend Rule R12-15-105(B) to reduce the fee an owner of a low or very low hazard potential dam must pay to the Department for a dam safety inspection from \$1,000.00 to \$250.00. The Department is also proposing to amend Rule R12-15-105(D) to reduce the fee an owner of a low or very low hazard potential dam must pay to submit a dam safety inspection report from \$750.00 to \$250.00.

The Department is proposing these rule amendments in response to negative feedback from owners of low and very low hazard dams regarding the current dam safety inspection fees and to increase compliance with the low and very low hazard dam inspection requirements. The rule amendments proposed by the Department would not change the fees for high or significant hazard potential dams or the frequency of inspection for either high or significant hazard potential dams or low or very low hazard potential dams.

B. R12-15-401, Table A

In its August 31, 2015 Report, the Department identified eight applications for which the licensing time-frames could be reduced without substantially impacting the mission and goals of the Department.

The Department proposes to amend its licensing time frame rule, R12-15-401, Table A, to reduce the existing licensing time-frames for those applications. The following is a list of the applications and the proposed reduction in the licensing time-frames:

- Application for type 1 non-irrigation grandfathered right associated with irrigation land retired 1965-1980 (reduce substantive review time-frame from 90 days to 60 days and overall time-frame from 120 days to 90 days).

- Application for type 2 non-irrigation grandfathered right (reduce substantive review time-frame from 90 days to 60 days and overall time-frame from 120 days to 90 days).
- Application for irrigation grandfathered right (reduce substantive review time-frame from 90 days to 60 days and overall time-frame from 120 days to 90 days).
- Application for revised certificate for new or additional points of withdrawal for a Type 2 right (reduce substantive review time-frame from 135 days to 45 days and overall time-frame from 180 days to 90 days).
- Application for issuance/renewal/modification of a hydrologic testing permit (reduce the substantive review time-frame from 30 days to 15 days and the overall time-frame from 60 days to 45 days),
- Request for variance from well construction requirements (reduce the substantive review time-frame from 35 days to 30 days and the overall time-frame from 50 days to 45 days).
- Application for well driller license (reduce substantive review time-frame from 105 days to 65 days and overall time-frame from 130 days to 90 days).
- Application for single well license (reduce substantive review time-frame from 105 days to 65 days and overall time-frame from 130 days to 90 days).

These amendments are based on the actual time the Department requires to process these permits.

The Department also proposes to amend its licensing time-frame rule, R12-15-401, Table A, to repeal the licensing time-frames established for the application for an assured water supply determination for State lands and the application for an adequate water supply determination for State lands. These time-frames are antiquated and no longer pertinent to the Department's administration of state water laws. There is no longer a license associated with either time-frame because the licenses no longer exist. The rules establishing the licenses were repealed effective September 12, 2006. The Department recommended repealing these licensing time-frames in its August 31, 2015 Report.

Additionally, the Department proposes to amend its licensing time-frame rule to correct the legal authorities cited for several applications and licenses in the rule and to

correct the names of several applications and licenses that are not correctly stated in the rule. The Department recommended these corrections in its August 31, 2015 Report.

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

None.

7. 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.

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

A. B. R12-15-105(B) and (D):

The low and very low hazard potential dams under the jurisdiction of the Department are typically owned by farmers and ranchers, many of whom have provided negative feedback in response to the current inspection fee of \$1,000.00 for low and very low hazard potential dams. These dam owners will directly benefit from the proposed fee reductions. The Department does not foresee a negative impact to dam owners, or the public in general resulting, resulting from the proposed reduction in inspection fees.

Although the reduction in dam safety inspection fees for low and very low hazard potential dams will result in reduced revenue for the Department, the reduction is not significant.

For example, in 2013, the Department inspected 124 dams. Of this total, 101 dams were high and significant hazard potential dams, and 23 were low and very low hazard potential dams. The dam inspection fees for 2013 were \$252,726.00, but only \$21,000.00 of this amount was attributed to low and very low hazard potential dams. Assuming the same collection rate for low and very low hazard potential dams at the next inspection date, a \$250.00 inspection fee would reduce the amount collected by the Department by \$15,250.00. This is the most current data on file with the Department. The Department has not inspected low or very low hazard dams since 2013. Low and very low hazard potential dams are to be inspected once every five years pursuant to A.A.C. R12-15-1219(A).

Although the amount of fees collected by the Department will be reduced, the reduction is not significant and will be outweighed by the benefits to the dam owners. Additionally, it is probable the lower fee will result in increased compliance with inspection requirements by low and very low hazard dam owners which could result in additional fees to the Department. Further, the Department anticipates no additional costs to the Department or any other State agencies because of the proposed modifications.

The Department believes that the proposed rule modifications are the most direct way to reduce the financial burden related to dam safety inspection fees on the owners of low and very low hazard potential dams. While the same reduction in costs could be achieved over the long-term by reducing the frequency of inspections for low and very low hazard potential dams, such reduction may have an adverse impact of the safety of these dams.

B. R12-15-401, Table A

The proposed amendments to these rules have no economic impact as they are not associated with any fees or costs. The amendments can, however, impact small businesses and consumers. The Department identified eight licensing time-frame that could be reduced without substantially impacting the mission and goals of the Department's water resources management and allow the regulated community to obtain the permit or license requested in less time. Further, the proposed amendments repealing two licensing time-frames will have no economic impact because the licenses to which the time-frames applied were repealed in 2006.

9. The name and address of the agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Ravi Murthy
Telephone: (602) 771-8656
Fax: (602) 771-8686
E-mail: rmurthy@azwater.gov

10. The time, place, and nature of the proceedings for the making, amendment, or receipt of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

The Department will hold an oral proceeding on the proposed rulemaking on May 15, 2017, at 9:00 A.M. at the following location:

Arizona Department of Water Resources
1110 W. Washington Street, Suite 310
Phoenix, AZ 85007

Written comments may be submitted at any time prior to the close of the public record on May 15, 2017, at 5:00 P.M. Written comments not submitted at the oral proceeding described above should be submitted to:

Name: Sharon Scantlebury
Docket Supervisor
Address: Arizona Department of Water Resources
1110 W. Washington Street, Suite 310
Phoenix, AZ 85007
Telephone: (602) 771-8472
Fax: (602) 771-8686
E-mail: sscantlebury@azwater.gov

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

None.

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

None.

13. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

ARTICLE 1. FEES

Section

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

- A. No Change
- B. The owner of a low or very low hazard potential dam shall pay a fee for the Department's dam safety inspection report pursuant to R12-15-1219(A). The fee shall be ~~\$1,000.00~~ \$250.00.
- C. No Change
- 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 if the dam is a high or significant hazard potential dam or a fee of \$250 if the dam is a low or very low hazard potential dam. The Department shall not accept a dam safety inspection report unless the fee is submitted with the report.

ARTICLE 4. LICENSING TIME-FRAMES

R12-15-401. Licensing Time-frames

The following time-frames apply to licenses issued by the Department. In this Article, "license" has the meaning prescribed in A.R.S. § 41-1001. The licensing time-frames consist of an administrative completeness review time-frame, a substantive review timeframe, and an

overall time-frame.

1. No Change
2. No Change
3. No Change
4. No Change
5. No Change
6. No Change
7. No Change

Table A. Licensing Time-frames

No.	License	Legal Authority	Completeness Review (Days)*	Substantive Review (Days)*	Overall Time-frame (Days)*
1	Filling a body of water with poor quality water	A.R.S. § 45-132(C)	30	60	90
2	Interim water use in body of water	A.R.S. § 45-133	30	60	90
3	Temporary emergency permit for use of surface water or groundwater in body of water	A.R.S. § 45-134	10	20	30
4	Permit to appropriate water (non-instream flow)	A.R.S. §§ 45-151, and 45-152 and 45-153	30	420	450
5	Permit to appropriate water (instream flow)	A.R.S. §§ 45-151, <u>45-151-.01</u> and 45-153	50	530	580
6	Change in use of water	A.R.S. § 45-156(B)	30	375	405
7	Exception to limitation on time of completion of construction	A.R.S. § 45-160	5	15	20
8	Primary reservoir permit	A.R.S. § 45-161	30	420	450
9	Secondary reservoir permit	A.R.S. § 45-161	30	420	450
10	Certificate of water right (non-instream flow)	A.R.S. § 45-162	20	100	120
11	Certificate of water right (instream flow)	A.R.S. § 45-162	20	190	210
12	Reissuance of permit or certificate held by the United States or State of Arizona	A.R.S. § 45-164(C)	10	80	90

No.	License	Legal Authority	Completeness Review (Days)*	Substantive Review (Days)*	Overall Time-frame (Days)*
13	Severance and transfer	A.R.S. § 45-172 (excluding 172(A)6)	30	390	420
14	Stockpond certificate	A.R.S. § 45-273	30	190	220
15	Transporting water from this state **	A.R.S. § 45-292	120	300	420
16	Waiver of water conserving plumbing fixture requirement	A.R.S. § 45-315	10	3	13
17	Irrigated acreage in an irrigation non-expansion area	A.R.S. § 45-437	30	90	120
18	Substitution of acres in an irrigation non-expansion area/ flood damage	A.R.S. § 45-437.02	30	90	120
19	Substitution of acres in an irrigation non-expansion area/ impediments to efficient irrigation	A.R.S. § 45-437.03	30	90	120
20	Reversal of substitution of acres irrigated with Central Arizona Project water	A.R.S. § 45-452(G) and (F)	30	90	120
21	Type 1 non-irrigation grandfathered right associated with irrigation land retired 1965-1980	A.R.S. §§ 45-463, 45-476.01, and 45- 476	30	90 <u>60</u>	120 <u>90</u>
22	Type 2 non-irrigation grandfathered right	A.R.S. §§ 45-464, 45-476.01, and 45- 476	30	90 60	120 90
23	Irrigation grandfathered right	A.R.S. §§ 45-465, 45-476.01, and 45- 476	30	90 <u>60</u>	120 <u>90</u>
24	Substitution of acres in an active management area/flood damaged acres	A.R.S. § 45-465.01	30	90	120
25	Substitution of acres in an active management area/ impediments to efficient irrigation	A.R.S. § 45-465.02	30	90	120
26	Type 1 non-irrigation right retired after 6/12/80	A.R.S. § 45-469	30	90	120
27	Restoration of retired irrigation grandfathered right	A.R.S. § 45-469(O)	30	90	120
28	Revised certificate for new or additional points of withdrawal for a Type 2 right	A.R.S. § 45-471(C)	45	135 <u>45</u>	180 <u>90</u>
29	Conveyance of irrigation grandfathered right for electrical energy generation	A.R.S. § 45-472(B)(2)	30	90	120

No.	License	Legal Authority	Completeness Review (Days)*	Substantive Review (Days)*	Overall Time-frame (Days)*
30	Conveyance of irrigation grandfathered right for non-irrigation use within service area	A.R.S. § 45-472(C)	30	90	120
31	Contract to supply groundwater	A.R.S. § 45-492(C)	15	90	105
32	Extension of service area to provide disproportionately large amount of water to large user	A.R.S. § 45-493(A)(2)	15	90	105
33	Addition/exclusion of acres by irrigation district	A.R.S. § 45-494.01(A)	30	90	120
34	Delivery of groundwater from an irrigation district to a general industrial use permit holder	A.R.S. § 45-497(B)	15	60	75
35	Issuance/renewal/modification of dewatering permit	A.R.S. §§ 45-513 and 45-527	30	70	100
36	Issuance/renewal/modification of mineral extraction and metallurgical processing permit	A.R.S. §§ 45-514 and 45-527	30	70	100
37	Issuance/renewal/modification of general industrial use permit	A.R.S. §§ 45-515, 45-521, 45-522, 45-523, 45-524, and 45-527	30	70	100
38	Issuance/renewal/modification of poor quality groundwater withdrawal permit	A.R.S. §§ 45-516 and 45-527	30	70	100
39	Issuance/renewal/modification of temporary permit for electrical energy generation	A.R.S. §§ 45-517 and 45-527	30	70	100
40	Issuance/extension/modification of temporary dewatering permit	A.R.S. §§ 45-518 and 45-527	30	70	100
41	Emergency temporary dewatering permit	A.R.S. § 45-518(D)	3	7	10
42	Issuance/renewal/modification of drainage water withdrawal permit	A.R.S. §§ 45-519 and 45-527	30	70	100
43	Issuance/renewal/modification of hydrologic testing permit	A.R.S. §§ 45-519.01, 45-521, 45-522, 45-524, and 45-527	30	30 15	60 45
44	Change of location of use	A.R.S. §§ 45-520(A), 45-521, and 45-527	30	30	60
45	Conveyance of a groundwater withdrawal permit	A.R.S. § 45-520(B)	30	30	60

No.	License	Legal Authority	Completeness Review (Days)*	Substantive Review (Days)*	Overall Time-frame (Days)*
46	Transportation of groundwater withdrawn in McMullen Valley Basin to an active management area	A.R.S. § 45-552(B)	45	105	150
47	Transportation of groundwater withdrawn in Harquahala irrigation non-expansion area to an initial active management area	A.R.S. § 45-554(B)	45	105	150
48	Transportation of groundwater withdrawn in Big Chino subbasin to an initial active management area	A.R.S. § 45-555(B)	45	105	150
49	Well spacing requirements for withdrawing groundwater for transportation to an active management area	A.R.S. § 45-559	45	105	150
50	Groundwater replenishment district's preliminary or long-term replenishment plan **	A.R.S. § 45-576.03	As prescribed by A.R.S. § 45-576.03(A)	As prescribed by A.R.S. § 45-576.03 (B), (C), (D), and (E)	As prescribed by A.R.S. § 45-576.03
51	Conservation district or water district long-term replenishment plan **	A.R.S. §§ 45-576.03, 45-576.02(C), and 45-576.02(E)	As prescribed by A.R.S. § 45-576.03(I)	As prescribed by A.R.S. § 45-576.03(J), (K), (L), and (M)	As prescribed by A.R.S. § 45-576.03
52	Notice of intent to abandon a well	A.R.S. § 45-594 and A.A.C. R12-15-816	15	15	30
53	Well construction request for variance	A.R.S. §§ 45-594, 45-596(D), and A.A.C. R12-15-820	15	35 <u>30</u>	50 <u>45</u>
54	Well driller license	A.R.S. § 45-595(C)	25	105 <u>65</u>	130 <u>90</u>
55	Single well license	A.R.S. § 45-595(D)	25	105 <u>65</u>	130 <u>90</u>
56	Renewal or reactivation of well drilling license	A.R.S. § 45-595(C) A.A.C. R12-15-806	25	15	40
57	Notice of intent to drill	A.R.S. § 45-596, and A.A.C. R12-15-810	15	0	15
58	Well construction permit	A.R.S. § 45-599	30	60	90
59	Alternative water measuring devices	A.R.S. § 45-604 and A.A.C. R12-15-909	15	60	75
60	Underground storage facility permit	A.R.S. §§ 45-811.01 and 45-871.01	As prescribed by A.R.S. § 45-871.01(B)	As prescribed by A.R.S. § 45-871.01(D), (G), and (H)	As prescribed by A.R.S. § 45-871.01
61	Groundwater savings facility permit	A.R.S. §§ 45-812.01 and 45-871.01	As prescribed by A.R.S. § 45-871.01(B)	As prescribed by A.R.S. § 45-871.01(D), (G), and (H)	As prescribed by A.R.S. § 45-871.01
62	Storage facility permit renewal/conveyance/modification	A.R.S. §§ 45-814.01 and 45-871.01	As prescribed by A.R.S. § 45-871.01(B)	As prescribed by A.R.S. § 45-871.01(D), (G), and (H)	As prescribed by A.R.S. § 45-871.01

No.	License	Legal Authority	Completeness Review (Days)*	Substantive Review (Days)*	Overall Time-frame (Days)*
63	Water storage permit modification/conveyance	A.R.S. §§ 45-831.01 and 45-871.01	As prescribed by A.R.S. §§ 45-831.01(G) and 45-871.01(B) and (E)	As prescribed by A.R.S. §§ 45-831.01(G) and 45-871.01(D), (E), (G), and (H)	As prescribed by A.R.S. §§ 45-831.01(G) and 45-871.01
64	Recovery well permit	A.R.S. §§ 45-834.01 and 45-871.01	As prescribed by A.R.S. § 45-871.01(B)	As prescribed by A.R.S. § 45-871.01(F), (G), and (H)	As prescribed by A.R.S. § 45-871.01
65	Emergency temporary recovery well permit	A.R.S. § 45-834.01(D)	5	10	15
66	Issuance/renewal/modification of water exchange permit	A.R.S. §§ 45-1041, 45-1042, and 45-1045	As prescribed by A.R.S. § 45-1042(A)	As prescribed by A.R.S. § 45-1042(B), (C), and (D)	As prescribed by A.R.S. § 45-1042
67	Modification of previously enrolled or permitted water exchange/non-Colorado River	A.R.S. § 45-1041(B)	60	90	150
68	Construction, enlargement, repair, alteration, or removal of a dam	A.R.S. §§ 45-1203, 45-1206, and 45-1207	120	60	180
69	Weather modification license	A.R.S. § 45-1601	15	60	75
70	Certificate of Assured Water Supply (<u>CAWS</u>)	A.A.C. R12-15- 702 704, A.R.S. §§ 45-576 and 45-578	150	60	210
71	Designation or Modification of Designation of Assured Water Supply (<u>DAWS</u>)	A.A.C. R12-15- 702 710 and R12-15-714; A.R.S. § 45-576	150	60	210
72	Analysis of Assured Water Supply/ unplatted development plan	A.A.C. R12-15- 712 703, A.R.S. § 45-576(H)	150	30	180
73	Assured Water Supply for State lands	A.A.C. R12-15-713, A.R.S. § 37-334(F)	30	60	90
73 74	Water adequacy Report	A.A.C. R12-15- 716 713, A.R.S. § 45-108	60	60	120
74 75	Designation or Modification of Designation of Adequate Water Supply	A.A.C. R12-15- 716 714, A.A.C. R12-15- 725 715 A.R.S. § 45-108	150	60	210
75 76	Analysis of Adequate Water Supply water adequacy/unplatted	A.R.S. § 45-108 A.A.C. R12-15- 723 712	60	60	120

No.	License	Legal Authority	Completeness Review (Days)*	Substantive Review (Days)*	Overall Time-frame (Days)*
77	Adequate Water Supply for State lands	A.R.S. § 45-108 A.A.C. R12-15-724	30	60	90

* The computation of days is prescribed by subsection (4).

** Hearing is required.