

for fiscal year 2011-2012 (“FY 2011-2012 Municipality Fee Rule”). The FY 2011-2012 Municipality Fee Rule will repeal automatically effective July 1, 2012. An effective date of July 1, 2012 for this rule will allow the rule to become effective immediately upon the expiration of the FY 2011-2012 Municipality Fee Rule. The public will not be harmed by the later effective date because the effective date will coincide with the beginning of the first fiscal year in which the fees will apply.

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

Notice of Rulemaking Docket Opening: 17 A.A.R. 1882, September 23, 2011

Notice of Proposed Rulemaking: 17 A.A.R. 1846, September 23, 2011

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

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 An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

Reasons for initiating the rule

During the 2011 regular legislative session, the legislature passed and the Governor signed into law Senate Bill (“S.B.”) 1624, the Environment Budget Reconciliation Bill (Laws 2011, Ch. 36, § 2, effective July 20, 2011). Section 2 of S.B. 1624 amended the Arizona Revised Statutes by adding section 45-118. A.R.S. § 45-118 authorizes the Department to assess and collect a fee from each municipality in the state (“municipality fee”). Section 7(C) of S.B. 1624 provides that the Department is exempt from the rulemaking requirements in A.R.S. Title 41, Chapter 6 for the purposes of establishing the municipality fee until July 1, 2012. As explained in section 3 above, the Department adopted the FY 2011-2012 Municipality Fee Rule through a Notice of Exempt Rulemaking filed with the Secretary of State on August 10, 2011. The FY 2011-2012 Municipality Fee Rule will repeal automatically effective July 1, 2012. The purpose of this rulemaking is to adopt a rule establishing the municipality fee for fiscal years beginning with fiscal year 2012-2013.

A.R.S. § 45-118 provides that the municipality fee shall be assessed proportionately, based on the population of each municipality. A.R.S. § 45-118 further provides that the Director of

the Department (“Director”) shall deposit all municipality fees in the water resources fund established by A.R.S. § 45-117. The water resources fund was established in 2010 and, in addition to the municipality fee authorized by A.R.S. § 45-118, the fund consists of certain application and filing fees paid to the Department. A.R.S. § 45-117(A). Monies in the water resources fund are to be used by the Department to carry out the purposes of title 45, Arizona Revised Statutes. A.R.S. § 45-117(C). Monies in the fund are subject to legislative appropriation, and any monies remaining in the fund at the end of a fiscal year remain in the fund and are exempt from lapsing. A.R.S. § 45-117(B).

Because A.R.S. § 45-118 requires the Director to assess the municipality fee proportionately based on each municipality’s population, the only thing the Director must determine in establishing the fee for a fiscal year is the total amount of fees to be assessed and collected from all municipalities during the fiscal year. After the total amount of municipality fees is determined, the amount to be assessed and collected from each municipality is arrived at by performing a simple mathematical calculation based on each municipality’s population. A.R.S. § 45-118 does not provide any guidance to the Director on how to determine the total amount of municipality fees to be assessed and collected during a fiscal year. However, Section 7 of S.B. 1624 does contain language expressing the legislature’s intent regarding the maximum amount of municipality fees the Department may assess and collect during a fiscal year. Section 7(B) of S.B. 1624 (as applied to the years following fiscal year 2011-2012) provides that it is the intent of the legislature that the revenue generated by the municipality fees collected pursuant to A.R.S. § 45-118 shall not exceed \$7,000,000.

The proposed rule contains a methodology for determining the total amount of fees the Director will assess and collect from all municipalities during a fiscal year. The first step is to determine the maximum total amount of fees the Director may assess and collect from all municipalities during the fiscal year pursuant to A.R.S. § 45-118. While the legislature expressed its intent in S.B. 1624 that the total amount of municipality fees not exceed \$7,000,000, the Department recognizes that the legislature may choose in the future to express a different intent. For that reason, the proposed rule provides that the total maximum amount of municipality fees the Director may assess and collect during a fiscal year is \$7,000,000, unless the legislature expresses a contrary intent in either statute or session law.

Although the Department may assess and collect the maximum amount of municipality fees allowed in a fiscal year, the Department recognizes that its authority to use the fees in the water resources fund during a fiscal year is restrained by the amount of money the legislature appropriates to it from the fund for that fiscal year. Based on the amount of monies appropriated to the Department from the fund for fiscal year 2011-2012, the Department has determined that if it were to assess and collect the maximum amount of municipality fees allowed in a fiscal year, the amount of money in the water resources fund during a fiscal year likely would greatly exceed the amount of money appropriated to the Department from the fund for the year. For that reason, the proposed rule provides that after the Director determines the maximum amount of fees the Department may assess and collect in the fiscal

year, the Director shall reduce that amount by the amount of monies carried over in the water resources fund from the prior fiscal year.

Because the amount of money appropriated to the Department from the water resources fund in any given year in the future could be significantly different than the amount appropriated to it from the fund in fiscal year 2011-2012, the proposed rule also includes provisions allowing the Director to adjust the amount of the reduction if necessary to allow the Department to use all of the money appropriated to it from the water resources fund in the fiscal year or to prevent the over-accumulation of unobligated monies in the fund at the end of the fiscal year. It is important to note that in no event can the total amount of municipality fees assessed by the Department for a fiscal year exceed the maximum amount intended by the legislature, which currently is \$7,000,000.

An explanation of the rule

R12-15-101 sets forth the definitions applicable to Title 12, Article 1. The Department is proposing to amend R12-15-101 to add new subsections and renumber other subsections. Specifically, the Department is adding definitions to R12-15-101 for the terms, “fiscal year,” “municipality,” “population,” and “water resources fund.”

Subsection (A) of R12-15-107 requires each municipality in the state to pay a fee to the Department for each fiscal year beginning with fiscal year 2012-2013 in the amount calculated pursuant to subsection (B) and by the dates specified in subsection (E).

Subsection (B) provides that a municipality's fee will be calculated in the following manner:

1. Determine the total amount of fees the Director will assess and collect from all municipalities during the fiscal year. The Director will determine that amount by first determining the maximum total amount of fees the Director may assess and collect from all municipalities during the fiscal year pursuant to A.R.S. § 45-118. Unless the legislature expresses a contrary intent in statute or session law, this amount will be \$7,000,000. The Director will then subtract from that amount the amount of unobligated monies in the water resources fund at the beginning of the fiscal year. The Director may decrease this reduction if necessary to allow the Department to use all the money appropriated to it from the water resources fund for the fiscal year, or increase the reduction if necessary to avoid an excessive accumulation of unobligated monies in the fund at the end of the fiscal year.
2. Divide the municipality's population by the total population of all municipalities in the state. The population numbers will all be based on the most recent United States decennial census.
3. Multiply the dollar amount obtained in step 1 with the result obtained in step 2. This number will be the municipality's fee for a fiscal year.

Subsection (C) states that the Director shall mail each municipality a notice of its municipality fee by July 15 of each fiscal year. Such notice shall be mailed to the municipality's city or town manager or city or town attorney. Although not provided in the

rule, the Department will issue an unofficial estimate of each municipality's fee for a fiscal year before the start of the fiscal year so that municipalities may include the estimated fees within their budgetary planning. The Department intends to post the estimated fees on its website by December 31 for the following fiscal year.

Subsection (D) allows each municipality to seek review of the calculation of its fee. Review shall be limited only to whether the Director's calculation of the fee contained a mathematical, clerical or typographical error.

Subsection (E) establishes the timing of payment of the municipality fee. A municipality shall pay at least one-half of its fee by August 15 of that fiscal year and any remaining portion of the fee by January 15 of the fiscal year. If the due date for a payment falls on a weekend, the payment is due on the next business day.

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 rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

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

1. Identification of the proposed rulemaking.

The purpose of this proposed rulemaking is not to change any specific conduct of the regulated community. Rather, the purpose of this rulemaking is to establish a new fee to be assessed and collected from municipalities, as authorized by A.R.S. § 45-118. These fees will be deposited in the water resources fund established by A.R.S. § 45-117 and used by the Arizona Department of Water Resources (“Department”) to carry out the purposes of Title 45, Arizona Revised Statutes.

As a result of state revenue shortfalls, the amount of money appropriated to the Department from the state general fund in fiscal years 2010-2011 and 2011-2012 was significantly less than the amounts appropriated to the Department in prior fiscal years. This has required the Department to lay off employees, close its offices outside of Phoenix, and curtail certain functions it has historically performed, including state-wide water monitoring and planning, data collection, protection of Arizona’s Colorado River entitlements, preparation of hydrologic studies and support for streamflow and flood warning monitoring. To provide the Department with alternative funding, the legislature enacted legislation during the 2011 regular session that added section 45-118 to the Arizona Revised Statutes. Laws 2011, Ch. 36, § 2. A.R.S. § 45-118 authorizes the Department to assess and collect fees from each municipality in the State (“municipality fees”) and deposit the fees into the water resources fund. A session law included in the legislation limits the total amount of municipality fees the Department may collect during a fiscal year to \$7,000,000. Laws 2011, ch. 36, § 7(B).

Through this rulemaking, the Department is proposing to adopt a rule establishing the municipality fees. These fees will allow the Department to acquire alternative revenues and allow the Department to better perform the activities necessary for it to accomplish its mission of securing long-term dependable water supplies for Arizona's communities.

2. Persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rulemaking.

Incorporated municipalities in the State will be directly affected by and bear the costs of the proposed rulemaking. This is because the municipality fees will be assessed directly on and collected from municipalities.

The Department will directly benefit from the proposed rulemaking because the municipality fees will be deposited in the water resources fund and will be used by the Department to carry out the purposes of Title 45, Arizona Revised Statutes, subject to appropriation by the legislature.

3. Cost-benefit analysis.
 - a. Probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking

including the number of new full-time employees necessary to implement and enforce the proposed rule

Probable costs to the Department of the proposed rulemaking include costs associated with submitting bills to each municipality on an annual basis. The Department would not be required to hire new full time employees to implement and enforce this proposed rule. Current staff resources will be used to prepare and send bills to municipalities. A.R.S. § 45-118 does not provide the Department with authority to enforce the rule.

The proposed rulemaking will benefit the Department by allowing the Department to increase funding for its programs.

No other state agency will be affected by the implementation of the proposed rulemaking.

- b. Probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking

Incorporated municipalities within the State of Arizona will directly bear the costs associated with the new municipality fees. The Department believes that the method of determining each municipality's fee represents the most reasonable and fair calculation of those fees. The actual cost to each municipality will vary year-to-year,

depending on the total amount of municipality fees the Department assesses each year.

The municipality fees for fiscal year 2011-2102 were established by a rule adopted pursuant to a rulemaking exempt from the rulemaking requirements in Title 41, Chapter 6, Arizona Revised Statutes. Under that rule, the total amount of municipality fees assessed during the fiscal year were calculated by subtracting the amount of unobligated monies carried over in the water resources fund from the prior fiscal year (\$743,312.46) from \$7,000,000 (the maximum total amount of municipality fees the Department was authorized to assess and collect during the fiscal year). The result, \$6,256,687.54, amounts to approximately \$1.25 per person for each city and town. The individual municipality fees ranged from \$439.77 for the Town of Winkelman to \$1,800,995.14 for the City of Phoenix.

Under the proposed rule, the Department would calculate the total amount of municipality fees to be assessed during a fiscal year in the same manner as was done for fiscal year 2011-2012, with two possible deviations. First, should the legislature express its intent that the maximum total amount of municipality fees the Department may assess and collect during a fiscal year is an amount different than \$7,000,000, the Department would calculate the total amount of municipality fees to be assessed during the fiscal year using the maximum total amount expressed by the legislature instead of \$7,000,000. Second, the Director has the option of modifying the amount of the reduction of the unobligated monies in the water resources fund. The Director

may do this in either of the following two ways: (1) the Director may decrease the amount of the reduction if the Director determines that the reduction would prevent the Department from using all the monies appropriated to it from the water resources fund for the fiscal year; or (2) the Director may increase the amount of the reduction if the Director determines that the reduction is insufficient to avoid the accumulation of an excessive amount of unobligated monies in the water resources fund at the end of the fiscal year.

These possible deviations from the manner in which the municipality fees were calculated for fiscal year 2011-2012 should not result in a significantly different impact to cities and towns than the impact for fiscal year 2011-2012 because a \$1,000,000 increase or decrease in the total municipality fees would result in an increase or decrease for each municipality of only approximately \$.20 per person included in their 2010 decennial census population number. Using the 2010 decennial census population numbers, if the Department were to assess \$7,000,000 of municipality fees in a fiscal year, each municipality would be required to pay a fee of approximately \$1.39 per person included in their census population. The individual municipality fees would range from \$492.02 for the Town of Winkelman to \$2,014,958.53 for the City of Phoenix. A \$1,000,000 increase or decrease would result in an increase or decrease of the municipality fee in a range of \$70.29 for the Town of Winkelman to \$287,851.22 for the City of Phoenix.

The proposed rulemaking will benefit incorporated municipalities within the State of Arizona by providing additional funding for the Department's programs that are essential for ensuring long-term dependable water supplies for Arizona's communities and for providing water supply information that is necessary for municipalities to plan future development.

- c. Probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking.

The Department does not believe that businesses will be directly affected by this proposed rulemaking. However, it is expected that many municipalities will pass their municipality fees on to residents and businesses within their municipal boundaries through increased water rates, taxes or fees. If that occurs, the proposed rulemaking would have an indirect impact on those businesses required to pay the higher water rates, taxes or fees. However, the Department does not believe that this would result in a significant impact to any individual business class because, as stated in section 3(b) above, if the Department were to assess a total of \$7,000,000 in municipality fees in a fiscal year, this would amount to approximately \$1.39 per person included in each municipality's census population. A \$1,000,000 increase or decrease the total amount of municipality fees in the fiscal year would result in an increase or decrease of only approximately \$.20 per person included in the municipality's census population.

While the proposed rulemaking will not directly affect businesses, the Department believes that businesses will see benefits from the proposed rulemaking. Specifically, by providing additional funding to the Department, the proposed rulemaking will allow the Department to better meet its mission of securing long-term dependable water supplies for Arizona's communities. This will provide greater clarity to businesses regarding the availability of water for their current uses and any expansion of those uses. It also will allow existing businesses to remain in the State and new business to locate here.

4. Probable impact on private and public employment in business, agencies, and political subdivisions of this state directly affected by the proposed rulemaking.

The Department does not believe that private or public employment in business, agencies and political subdivisions of this State will be directly affected by this rulemaking. Accordingly, the probable impact on private and public employment will be minimal or nonexistent.

Although the proposed rulemaking will require municipalities to pay additional fees to the Department, the Department does not believe this will impact employment within municipalities because it is expected that most municipalities will pass their fees on to residents and businesses within their municipal boundaries. As explained in section 3(c)

above, the Department does not believe this will result in a significant economic impact to businesses, including employment by businesses.

5. Probable impact of the proposed rulemaking on small business.

a. Identification of the small businesses subject to the proposed rulemaking.

The Department believes that, in most cases, the impacts on small businesses as a result of this proposed rulemaking will be negligible. It is expected that many municipalities will pass their fees on to residents and businesses within their municipal boundaries. In that case, small businesses of all types would be affected as a result of this proposed rulemaking. However, the Department anticipates that, even in those cases, the probable impact on small businesses will be minimal because if the Department were to assess \$7,000,000 of municipality fees in a fiscal year, an individual municipality's fee would amount to approximately \$1.39 per person included in the municipality's census population. A \$1,000,000 increase or decrease the total amount of municipality fees in the fiscal year would result in an increase or decrease of only approximately \$.20 per person included in the municipality's census population.

b. Administrative and other costs required for compliance with the proposed rulemaking.

None

- c. A description of the methods that the agency may use to reduce the impact on small business.

Not applicable

- d. Probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.

The Department believes that this proposed rulemaking significantly benefits all private persons and consumers located within the State of Arizona. Particularly, the proposed rulemaking will provide the Department with additional funding that will allow it to perform activities that will benefit communities throughout the entire State of Arizona, including private persons and consumers who live in those communities, by securing long-term dependable water supplies. Such activities include state-wide water monitoring and planning, data collection, protection of Arizona's Colorado River entitlements, preparation of hydrologic studies and support for streamflow and flood warning monitoring.

There will be no direct costs to private persons and consumers. As mentioned above, it is expected that many municipalities will pass their fees on to residents and businesses within their municipal boundaries through increased water rates, taxes or fees. However, the costs to private persons and consumers in such cases will be

minimal. If the Department were to assess \$7,000,000 of municipality fees in a fiscal year, an individual municipality's fee would amount to approximately \$1.39 per person included in the municipality's census population. A \$1,000,000 increase or decrease the total amount of municipality fees in the fiscal year would result in an increase or decrease of only approximately \$.20 per person included in the municipality's census population.

6. Probable effect on state revenues.

This rulemaking will have no direct impact on state general funding revenues. The revenues generated from this fee will be directed to the water resources fund. Monies in the water resources fund are used by the Department to carry out the purposes of Title 45, Arizona Revised Statutes, subject to appropriation by the legislature. With the possible deviations discussed in section 3(b) above, the revenues generated from this fee in a fiscal year will be \$7,000,000 minus the amount of monies carried over in the water resources fund from the prior fiscal year.

7. Less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking, including the monetizing of the costs and benefits for each option and providing the rationale for not using non-selected alternatives.

No other less intrusive or less costly methods are available to the Department to achieve the purpose of this rulemaking. The Department's appropriation from the state general

fund has been significantly reduced and the legislature enacted A.R.S. § 45-118 in order to allow the Department to continue providing services to communities in the State of Arizona. Without the implementation of the municipality fee, the Department's ability to meet its mission would be significantly affected and could pose health and safety risks.

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

None

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

Comment from the City of Surprise: The proposed rule provides that the Director shall reduce the maximum total amount of municipality fees the Department may assess and collect from all municipalities in a fiscal year by the amount of any unobligated monies in the Water Resources Fund at the beginning of the fiscal year. However, the proposed rule also contains a provision that allows the Director to increase or decrease the amount of the reduction under certain circumstances. If the reduction were decreased, could the fee exceed \$7,000,000?

Response: In no event could the total amount of fees assessed by the Department in a fiscal year exceed the maximum total amount intended by the legislature. Currently, that amount is \$7,000,000. Therefore, unless the legislature expresses its intent in the future that the Department may assess and collect a total of more than \$7,000,000 in municipality fees in a fiscal year, any decrease in the reduction could not result in the total fees exceeding \$7,000,000.

Comment from the City of Surprise: In what cases could the Director decrease the reduction?

Response: The Director may decrease the reduction if the Director determines that doing so is necessary to allow the Department to use all the monies appropriated to it from the Water Resources Fund in a fiscal year. This is most likely to happen if the legislature were to appropriate significantly more money to the Department from the fund than it has in the past two fiscal years.

Comment from the League of Arizona Cities and Towns: We take issue with the philosophy of asking only local government and local residents to subsidize the operation of State agencies.

Response: The legislature has authorized the Department to assess the fee only on municipalities. The Department does not currently have legislative authority to assess such a fee on other entities. For that reason, no changes have been made to the rule in response to this comment.

Comment from the League of Arizona Cities and Towns: We disagree with the idea of making this an ongoing, permanent fee to be assessed on municipalities.

Response: As enacted by the legislature, this is a permanent fee to be assessed on municipalities. *See* A.R.S. § 45-118. For that reason, it is appropriate for the Department to adopt a permanent rule providing a methodology for calculating the fee for each fiscal

year and establishing the dates when the fees are payable. No changes have been made to the rule in response to this comment.

Comment from the League of Arizona Cities and Towns: Notification of the amount of the municipality fee goes out on July 15. However, municipalities produce and adopt their budgets on July 1. Notice of the fee prior to adoption of the budget would be helpful in allowing municipalities to accurately predict their budgets.

Response: The Department will issue an unofficial estimate of each municipality's fee for a fiscal year before the start of the fiscal year so that municipalities may include the estimated fees within their budgetary planning. The Department intends to post the estimated fees on its website by December 31 for the following fiscal year. However, it is important to keep in mind that the estimated fees will be posted prior to the legislative session, and actions taken by the legislature during the legislative session could result in the actual fees being significantly different than the estimated fees. No changes have been made to the rule in response to this comment.

Comment from the Northern Arizona Municipal Water Users Association, the City of Page, the League of Arizona Cities and Towns, the City of Casa Grande, the City of Mesa, the City of Peoria, the Town of Fountain Hills and the City of Bisbee: The fee is not equitable to all water users because the fee does not apply to all private parties. For example, agricultural, private, and industrial water stakeholders do not have to pay the fee.

Response: The legislature has authorized the Department to assess the fee only on municipalities. The Department does not have legislative authority to assess such a fee on entities such as agricultural, private, and industrial water stakeholders. Therefore, no changes have been made to the rule in response to this comment.

Comment from the Northern Arizona Municipal Water Users Association, the City of Yuma, the City of Safford, the City of Page, the League of Arizona Cities and Town, the City of Casa Grande, the Town of Fountain Hills and the City of Bisbee:

The proposed fee is a discriminatory tax on cities and only applies to a portion of Arizona residents and water users. The Department should work with the legislature to fix the fee structure so that it applies to all water users, public and private, cities and counties.

Response: The legislature has authorized the Department to assess the fee only on municipalities. The Department does not have legislative authority to assess such a fee on other entities. Therefore, no changes have been made to the rule in response to this comment. With respect to the comment that the Department should work with the legislature to change the fee so that it applies to all water users, this comment is beyond the scope of this rulemaking.

Comment from the City of Yuma: The Department and the State of Arizona do not have the authority to impose the fee on priority federal allocation of water.

Response: The fee is population based and is not assessed on a municipality's water supplies or allocations. Municipalities are free to recover the cost as they see fit.

Municipalities that serve water may elect to pass the fee on to their water customers, or they may choose to pay the fee from revenues unrelated to water service. No changes have been made to the rule in response to this comment.

Comment from the Northern Arizona Municipal Water Users Association, the City of Mesa, the League of Arizona Cities and Towns, the City of Page, the City of Peoria and the City of Casa Grande: The fee is not equitable and fair because it targets municipalities and ignores the hundreds of private water companies, water improvement districts and agricultural districts. This statute should be modified so that collection of the fee is the responsibility of the counties, which have the authority and mechanism to collect the fees and taxes that are tied with the land.

Response: The legislature has authorized the Department to assess the fee only on municipalities. The Department does not have legislative authority to assess such a fee on other entities. Therefore, no changes have been made to the rule in response to this comment. The comment stating that the statute should be modified so that the collection of the fee is the responsibility of the counties is beyond the scope of this rulemaking.

Comment from the City of Mesa: The fee is arbitrary and capricious because it is based on population and the fee is not tied to water supply or water use.

Response: The statute authorizing the fee, A.R.S. § 45-118, requires the fee to be based on population and not water supply or water use. The Department must presume the statute is constitutional. Therefore, review of the constitutionality of the statute is beyond

the authority of the Department. Moreover, municipalities are free to recover the cost of the fee as they see fit and those municipalities that serve water may choose to pass the fee on to their water customers. No changes have been made to the rule in response to this comment.

Comment from the City of Mesa: The Department's fees are traditionally tied to receipt of water resource benefits. The fee may result in distrust and conflict between various water users depending on whether the Department does or does not grant greater benefits to the fee-paying municipalities.

Response: A.R.S. § 45-118 requires the Department to assess the fee on all municipalities, regardless of whether they serve water. Whether this is wise legislative policy is beyond the scope of this rulemaking. No changes have been made to the rule in response to this comment.

Comment from the City of Peoria: The city is concerned that the only limitation on the amount of fees that may be charged to municipalities is the intent of the legislature and that, should the legislature express a different intent, the fees could grow to well in excess of the current \$7,000,000 limitation. Having divorced the Department from the General Fund, the legislature no longer has any financial stake in setting limits to the Department's fees. The City suggests that either the \$7,000,000 total be expressed as a maximum amount that the Department may collect in the rule or that the Department

must seek approval from all municipalities in Arizona to increase the limitation above \$7,000,000.

Response: The Department disagrees with the statement that the Department has been divorced from the General Fund. The Department received an appropriation from the General Fund for fiscal year 2011-2012. In response to the remainder of this comment, the Department believes the rule properly allows the Department to assess municipality fees up to the limit imposed by the legislature even if the legislature raises that limit in the future. If the rule did not provide the Department with that flexibility, the Department would not be able to assess the full amount of fees intended by the legislature in a timely manner if the legislature were to increase the limit in the future. No changes have been made to the rule in response to this comment.

Comment from the City of Peoria: The City disagrees with the Department on the definition of “population” as being solely the population “according to the most recent United States decennial census,” as defined in A.R.S. § 1-215(31). That statute states in the first line that these definitions are made “unless the context otherwise requires.” The City believes that the word “population” in A.R.S. § 45-118 was intended to relate the water services provided by a municipality to the term “population,” and therefore the best interpretation of the term “population” is the service area population of the municipality, which is the number of people actually receiving water delivery service from the municipality.

Response: The Department disagrees with this comment. A.R.S. § 45-118 provides that the Department shall assess the municipality fee “proportionally, based on the population of each municipality.” The term “population” is not defined in A.R.S. § 45-118, nor is it defined in A.R.S. § 45-101, which contains definitions applicable to all sections in Title 45, Arizona Revised Statutes. Therefore, the definition of “population” in A.R.S. § 1-215(31) applies to A.R.S. § 45-118 because the definitions in A.R.S. § 1-215 apply to “the statutes and laws in this state, unless the context otherwise requires.” A.R.S. § 1-215(31) defines “population” as “the population according to the most recent United States decennial census.”

The Department does not accept the City’s argument that the context in which the term “population” is used in A.R.S. § 45-118 requires a different definition than the definition in A.R.S. § 1-215(31). The City states that the word “population” in A.R.S. § 45-118 was intended to relate the water services provided by a municipality to the term “population.” However, there is no mention of water service in A.R.S. § 45-118. Additionally, there is nothing in A.R.S. § 45-118 to support the City’s statement that the best interpretation of the term “population” is the service area population of a municipality. In fact, such an interpretation is inconsistent with the language in A.R.S. § 45-118 because it would mean that municipalities that do not serve water are exempt from the municipality fee, yet the statute does not exclude any municipalities from the fee. If the legislature had intended the phrase “population of each municipality” in A.R.S. § 45-118 to mean the service area population of each municipality, it would have used the words “service area population” instead of “population.” Because it did not do

so, the term “population” should have the meaning prescribed in A.R.S. § 1-215(31). No changes have been made to the rule in response to this comment.

Comment from the City of Peoria: Restricting review of the assessed fee to a mathematical error is unduly restraining. Any municipality should be free to question the fee on any grounds that may seem relevant, including calculation of the population.

Response: Review of the assessed fee may be requested for mathematical, clerical or typographical errors. As the calculation of a municipality’s “population” is determined by the United State Census Bureau, the Department is not the proper forum to seek review of the calculation of a municipality’s population.

Comment from the City of Peoria: The city recognizes that revision of A.R.S. § 45-118 will require additional legislation and expects the Department to support such future legislation.

Response: This comment is beyond the scope of this rulemaking.

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

None

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

reasons why a general permit is not used:

Not applicable

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

Not applicable

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

Not applicable

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

None

14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

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. Definitions

R12-15-107. Municipality Fee

ARTICLE 1. FEES

R12-15-101. 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. No change
2. “Fiscal year” means the year beginning July 1 and ending June 30.
- 2 3. No change
4. “Municipality” means an incorporated city or town.
5. “Population” means the population according to the most recent United States decennial census.
- 3 6. No change
- 4 7. No change
- 5 8. No change
- 6 9. No change
10. “Water resources fund” means the water resources fund established by A.R.S. § 45-117.

R12-15-107. Municipality Fee

A. Each municipality in this state shall pay a fee to the Department each fiscal year in the amount calculated by the Director pursuant to subsection (B). The fee shall be paid by the dates specified in subsection (E).

B. The Director shall calculate a municipality's fee for a fiscal year as follows:

1. Determine the total amount of fees the Director will assess and collect from all municipalities during the fiscal year as follows:

a. Determine the maximum total amount of fees the Director may assess and collect from all municipalities during the fiscal year pursuant to A.R.S. § 45-118 consistent with legislative intent. Unless the legislature expresses its intent otherwise in statute or session law, this amount shall be \$7,000,000.

b. Reduce the amount determined in subsection (B)(1)(a) by the amount of unobligated monies in the water resources fund at the beginning of the fiscal year, except that:

i. If the Director determines that such a reduction likely would prevent the Department from using all the monies appropriated to it from the water resources fund for the fiscal year, the Director may decrease the amount of the reduction or make no reduction, as appropriate, to allow the Department to use all the monies appropriated to it from the fund.

E. A municipality shall pay at least one-half of its fee for a fiscal year by August 15 of that fiscal year and any remaining portion of the fee by January 15 of the fiscal year. If the due date for a payment falls on a weekend, the payment is due on the next business day.