



Natalie Mast <nlmast@azwater.gov>

Fwd: New ag-to-urban comment

Tom Buschatzke <tbuschatzke@azwater.gov>

Thu, Mar 13, 2025 at 2:33 PM

To: Natalie Mast <nlmast@azwater.gov>, Carol Ward <cward@azwater.gov>, Emily Petrick <epetrick@azwater.gov>, "Nicole D. Klobas" <ndklobas@azwater.gov>

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From: **Pongrace, Don** <[REDACTED]>

Date: Thu, Mar 13, 2025 at 1:55 PM

Subject: New ag-to-urban comment

To: Thomas Buschatzke (tbuschatzke@azwater.gov) <tbuschatzke@azwater.gov>

Tom,

I wanted to bring to your attention for additional discussion a new potential issue to address as to eligibility of IGFRs for the new A2U program. As you know, the Community has already identified as an issue the fact that a large number of acres east of the Community in the floodplain of the Gila River are not eligible for the program because they are pumping subflow of the Gila River and not groundwater as required to be eligible for an IGFR. As a corollary to this comment, we recommend you include a process in the regulation for a party to object to the issuance of an A2U credit for any parcel that is pumping subflow. We don't think there needs to be an objection process overall, though there could be, but we do think there could be one for this as it relates directly to the impact on other parties' water rights and they should have an opportunity to protect those rights before a certificate is determined. (We are also taking a look at whether there are similar areas of subflow/IGFR overlap in the Phoenix and Pinal AMAs and will keep you posted on that).

A second, separate comment is that you need to ensure that there is no "double-dipping" on water pumping authorizations. By that I mean, a party having both an IGFR and a claim pending (or even an adjudicated right if along the Gila system and source) within the AMAs. A party that seeks to have an IGFR changed to an A2U credit that also has a claim pending (or an adjudicated right) must withdraw the claim with prejudice (or forfeit the adjudicated right if there is one). This is the only legal and logical result. Water cannot be non-appropriable groundwater and appropriable subflow at the same time. It is likely that there are only a few already adjudicated rights that might fall into this category of IGFRs, but there could be a large number of claims for appropriable subflow that overlap existing IGFRs (the classic Arizona farmer position). While we understand trying to have alternative arguments as to why they can continue pumping (most times illegally), we would strongly be of the view that a consequence of actually getting an A2U credit for a parcel has to be the relinquishment of any pending claims to water for the parcel to which the IGFR is appurtenant.

I know that this is an amplification of our previously submitted comments, but hopefully you can take this all into account as you continue to develop your regulation draft.

Don

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