

GROWTH AND WATER:

Review Of Subdivision Water Adequacy Requirements In Arizona

**ARIZONA DEPARTMENT OF WATER RESOURCES
STATEWIDE ADVISORY GROUP (SWAG)
(Morning committee meeting)**

I. LEGAL REQUIREMENTS FOR PUBLIC WATER SYSTEMS

A. Arizona Corporation Commission (ACC) Requirements for Public Water Systems

A new public water system must file an application for a certificate of convenience and necessity (CC&N) with the ACC prior to commencing construction of facilities or operation of the system.

Before filing with the ACC, the applicant needs to have begun the assured/adequate water supply process with ADWR because the ACC will rely on ADWR to make a water adequacy determination.

When the ACC concludes that the CC&N application is complete, it will schedule hearings to consider it. Generally, the ACC will grant a conditional CC&N pending ADWR's determination of the adequacy of the water supply. A conditional CC&N is usually granted for a period of 12 to 24 months. During that time period, the applicant must fulfill certain conditions (e.g., obtain a certificate or letter of assured or adequate water supply) or the CC&N becomes null and void. (Note: The Corporation Commission has announced plans to begin issuing orders interim instead of conditional CC&Ns, possibly as early as the fall of 2006. Orders interim, unlike conditional CC&Ns, will not permit construction of the water system facilities to begin until the applicant has received an assured/adequate water supply determination from ADWR.)

If the ACC finds that the equipment, facilities or service of any public water system, or the methods of distribution, storage or supply by it are unsafe, improper, inadequate or insufficient, the ACC must determine what is safe, proper, adequate or sufficient, and may revoke or deny a CC&N for failure to comply with its determination.

B. Arizona Department of Environmental Quality (ADEQ) Requirements for Public Water Systems

1. Elementary Business Plan

a. The owner of a proposed new public water system must file an elementary business plan for review and approval by ADEQ and cannot commence operation of a public

water system without ADEQ approval. The plan must demonstrate that the applicant has the technical, managerial and financial capacity to construct and operate a water system.

b. an owner of a new public water system must provide, among other items, the following information in its business plan to demonstrate technical capacity:

1. Documentation of a drinking water source that can provide a minimum of 50 gallons of water per person per day for a period of 100 years, an analysis or report of Adequate Water Supply from the Arizona Department of Water Resources (ADWR), or a Certificate of Assured Water Supply from ADWR;
2. Documentation that the drinking water will meet ADEQ's safe drinking water standards;
3. Documentation of infrastructure, treatment, and storage design that meets ADEQ's requirements;
4. Documentation that the public water system is operated by a certified operator of sufficient grade and type; and
- 5 Projections of Day 1 to final build-out technical and engineering needs

R18-4-603

c. An owner of a new public water system must also demonstrate managerial capacity.

R18-4-604

d. An owner of a new public water system must submit a five-year financial capacity plan, or a financial capacity plan to the end of the build-out phase, whichever is longer.

R18-4-605

2. ADEQ Review, Approval, and Denial Process

a. ADEQ must review and evaluate technical and managerial capacity,

b. If a new CWS or new NTNCWS is under the jurisdiction of the ACC ADEQ must accept a financial determination made by the Arizona Corporation Commission (ACC) as meeting the financial capacity requirements contained in this Article for.

c. If the new public water system has a certificate of assured water supply (CAWS) from the Arizona Department of Water Resources, Active Management Area Program (ADWR), the ADEQ must accept the financial determination as set forth in the CAWS as meeting the financial capacity requirements contained in this Article.

d. If a new public water system does not fall under financial review jurisdiction of the ACC or ADWR, the new CWS or new NTNCWS must submit a completed financial capacity portion of the elementary business plan. ADEQ shall review and evaluate financial capacity, based upon the requirements in R18-4-605 and Appendices A, C, and D.

e. ADEQ has 90 days to notify an owner of a new public water system in writing of deficiencies in the elementary business plan or approve or deny the elementary business plan. The owner shall have 60 days from the date of a notice of deficiency to

submit to ADEQ the information necessary to correct the deficiency in the elementary business plan. If the owner of the new public water system fails to send the requested information so that it is received by ADEQ within 60 days of the date of the notice of deficiency, ADEQ must deny the elementary business plan and return it to the owner with a written explanation for the denial and information on the appeal process.
R18-4-606

C. Arizona Department Of Water Resources Requirements for Public Water Systems and Wells

1. Public Water Systems

Active Management Areas

(a) There are five Active Management Areas (AMA) in the major metropolitan and farming areas within Maricopa, Pinal, Pima, Santa Cruz and Yavapai counties. Each AMA has a specific goal tailored to its particular requirements.

(b) Management goals of AMAs:

- Phoenix, Tucson and Prescott goal: "safe-yield " or the long-term balancing of groundwater withdrawals with the amount of water naturally and artificially recharged to AMA aquifers
- Pinal AMA goal: Preserve existing agricultural economies, while protecting future water supplies for non-irrigation uses
- Santa Cruz: Maintain safe-yield and prevent long-term water declines

(c) To help the AMAs achieve these goals, the Groundwater Act mandates that new subdivisions be approved only upon a demonstration that there is sufficient water of adequate quality available for at least 100 years consistent with the management goal.

(d) A water provider may obtain a Designation of Assured Water Supply. A designation signifies that a water provider has a water supply sufficient to serve its current, committed and future demands for 100 years and meet the five criteria listed below.

(e) In order to obtain a Designation of Assured Water Supply, five criteria must be met:

1. The water supply must be physically, legally, and continuously available for the entire service area of the provider for the next 100 years. If groundwater is a proposed source, it must meet maximum 100 year, depth-to-static water level of 1000 feet below land surface (1100 feet in the Pinal AMA)
2. The water must meet water quality standards or be of sufficient quality.

3. The proposed water use must be consistent with the management goal of the AMA. This can be demonstrated through use of CAP or other surface water, effluent, recharge credits, extinguished grandfathered water rights, water exchange agreements or membership in the Central Arizona Groundwater Replenishment District.
4. The proposed water use must be consistent with the current management plan of the AMA.
5. The provider must demonstrate the financial capability to construct any necessary water storage, treatment, and delivery systems.

Areas Outside of Active Management Areas

(a) Outside of the Active Management Areas, the Adequate Water Supply Program, which was created in 1973, governs.

(b) Designation of Adequate Water Supply

1. The water supply must be physically, legally, and continuously available for the entire service area of the provider for the next 100 years.
2. The water must meet water quality standards or be of sufficient quality.
3. The provider must demonstrate the financial capability to construct any necessary water storage, treatment, and delivery systems.

2. ADWR Regulation Of Wells

(a) Notices of Intent to Drill and Permits

- **Outside of AMAs**, a landowner must file a notice of intent to drill (NOI) form before drilling any well (except certain recovery wells, which require a permit)
- **Within AMAs**, a landowner must file a NOI before drilling exempt wells, a replacement well in approximately in the same location, or any other well for which a permit is not required. (Exempt wells are defined as those that have a maximum pump capacity of less than 35 gallons per minute and are used only for non-irrigation purposes.)
- **Within AMAs**, a landowner must obtain a permit before drilling new, non-exempt wells and nonexempt replacement wells in new locations
- **Within AMAs**, the land upon which an exempt well is to be drilled cannot be within 100 feet of a designated water provider's operating water distribution system unless certain exceptions apply. (A designated water provider is one that has an assured water supply designation from ADWR)
- **All wells** must be at least 100 feet from septic tanks or sewage disposal areas and domestic wells on a parcel of land of five or fewer acres must receive approval from the governing health authority

- **All proposed wells** that are within one mile of a contaminant plume administered under the WQARF or Superfund programs may be subject to certain site-specific requirements established by the Director to prevent vertical cross-contamination.

(b). **Well spacing rules**

(1) **Requirements**

ADWR's well spacing rules list criteria that landowners must comply with to construct or use certain wells in the state. The rules are designed to prevent unreasonably increasing damage to surrounding land or other water users from the concentration of wells. The well spacing criteria address three types of unreasonably increasing damage:

- (a) Additional drawdown of water levels at neighboring wells of record;
- (b) Additional regional land subsidence; and
- (c) Migration of contaminated groundwater to a well of record.

(2) **Exemptions from Well Spacing Rules**

The well spacing rules **do not apply** to the construction or use of the following types of wells:

- (a) **Wells drilled outside of AMAs**, except certain recovery wells and certain wells used to withdraw groundwater for transportation away from a groundwater basin;
- (b) **Exempt wells within AMAs**;
- (c) Wells within AMAs drilled pursuant to **groundwater withdrawal permits other than general industrial use permits** (e.g., mineral extraction and metallurgical processing permits, drainage permits, dewatering permits and poor quality groundwater permits); and
- (d) Wells that withdraw **only surface water**.

II. SUBDIVISION REGULATIONS

A. ADWR Subdivision Requirements

1. Subdivisions Within AMAs

- If a provider with a Designation of Assured Water Supply will serve the proposed subdivision, then the developer only has to provide a written commitment of service from the designated provider
- If the subdivision is not served by a designated provider, the applicant must obtain a Certificate of Assured Water Supply
- Certificates of Assured Water Supply comprise the majority of applications processed within the Assured Water Supply program. (Other types, such as Physical Availability Demonstration or Analyses of AWS (but not Designations) usually lead to the issuance of one or more Certificates for a subdivision or master planned community, but do not demonstrate an assured water supply in and of themselves.)
- In order to obtain a Certificate of Assured Water Supply, five criteria must be met:
 1. The water supply must be physically, legally, and continuously available for the next 100 years.
 2. The water must meet water quality standards or be of sufficient quality.
 3. The proposed water use must be consistent with the management goal of the AMA.
 4. The proposed water use must be consistent with the current management plan of the AMA.
 5. The developer must demonstrate the financial capability to construct any necessary water storage, treatment, and delivery systems.
- To meet the management goals of the Phoenix, Tucson and Prescott AMAs, one must show the use of renewable water supplies rather than groundwater. Renewable supplies include surface water, CAP water and effluent or enrollment in the Central Arizona Groundwater Development (CAGRD). In the Pinal AMA, the current assured water supply rules allow the use of groundwater for most, if not all, of the demand.
- Developers of unplatted development plans can obtain an Analysis of Assured Water Supply to determine whether the development is likely to meet the adequate water supply requirements. If the development can satisfy one or more of the assured water supply requirements, DWR will issue an analysis of assured water supply. Once issued, the analysis remains effective unless a change in evidence occurs.
- The Department reviews each application under a 210-day time frame. Incomplete or incorrect applications or lack of supporting documentation lengthen the actual review period.

2. Subdivisions Outside Of AMAs

- The Adequate Water Supply Program, which was created in 1973, operates outside of the Active Management Areas as a consumer protection program.
- It requires developers to obtain a determination from the Department concerning the quantity and quality of water available before the Arizona Department of Real Estate (ADRE) will allow any lot sales.
- If the application for a Water Adequacy Report successfully demonstrates that water of sufficient quality will be physically, legally, and continuously available for the next 100 years, then the Department will determine the water supply to be adequate and will issue a determination of adequate water supply
- If the water supply is determined to be inadequate, the developer may still sell lots, but the inadequate determination must be disclosed to potential buyers in the public report approved by ADRE and in all promotional materials.
- If a provider with a Designation of Adequate Water Supply will serve the proposed subdivision, then the developer only has to provide a written commitment of service from the designated provider.
- Developers of unplatted development plans can obtain an Analysis of Adequate Water Supply to determine whether the development is likely to meet the adequate water supply requirements. If the development can satisfy one or more of the adequate water supply requirements, DWR will issue an analysis of adequate water supply. Once issued, the analysis remains effective unless a change in evidence occurs.

B. Arizona Department of Real Estate (ADRE) Subdivision Requirements

ADRE regulates the offer and sale of subdivided lots to the public and requires subdividers to submit detailed information regarding the proposed development. After examining a subdivision, ADRE issues a public report authorizing sales or leases that contains certain information required by statute. Selling lots prior to issuance of public report or failure to deliver a report to the buyer will render transaction rescindable

- A subdivision is defined **as 6 or more lots or parcels** at least one of which is less than 36 acres.
- Before offering subdivided lands for sale or lease within an AMA, the subdivider must provide ADRE, among other items, the following information:
 1. Provisions for permanent access, approved sewage facilities and public utilities
 2. If land is within an AMA, a certificate of assured water supply (CAWS) or written commitment of service by a designated water provider. (If the

subdivider has submitted a CAWS to a local government prior to approval of the plat by that local government, the submission constitutes compliance with this requirement (provided all fees pd)

3. If subdivision is outside an AMA, the subdivider must submit a water adequacy report from ADWR. If ADWR reports an inadequate water supply or if no water is available, all promotional materials and contracts for sale of the lots must display the ADWR report or a summary of the report
 4. If a private well is to be used, the requirements and costs of installation, and a statement as to whether purchase price will be refunded if domestic water cannot be obtained from the well
 5. If water is to be hauled, the name of the water provider and estimated cost to install an operational water system
 6. If the water provider is a public service corporation, a CC&N from the ACC or an explanation as to why a CC&N has not been issued.
- Advertising, promotional or sales material cannot represent that lots are suitable as home sites unless
 1. Potable water is available from a certificated public utility or municipal corporation and either a septic tank or a sewer system is available; or
 2. The sales materials clearly and conspicuously state that a potable water supply from a public utility and a septic tank or sewer system is **unavailable**
 - ADRE must deny issuance of public report or exemption from the notice requirements if these requirements are not met.
 - State law prohibits a person or group of persons acting in concert to attempt to avoid the subdivision requirements to divide a parcel of land

C. Arizona Department of Environmental Quality (ADEQ) Subdivision Requirements

- No subdivision can be offered for sale or lease and no permanent buildings can be erected until ADEQ approves plans for the water supply, sewage disposal and method of garbage disposal R18-5-402
- ADEQ approves minimum lot size based on the area necessary for the safe accommodation of individual well and/or sewage systems. Where both water and sewage systems are developed on the same lot, the minimum size is one acre. R18-5-405

- If public water systems or sewage systems are contemplated, the subdivider is responsible for providing the facilities prior to anyone moving on the land. R18-5-406
- A subdivider that proposes to use an existing public water system must submit a letter from the water system's officials indicating that they have agreed to supply water to each individual lot.
- If the subdivider plans to develop a water supply source and distribution system, the subdivider must submit detailed specifications and plans for the system, which are subject to the approval of ADEQ
- ADEQ will issue a Certificate of Approval for Sanitary Facilities for a Subdivision where water from a public system is to be used if the system complies with water quality standards of ADEQ (A.A.C. title 18, chap. 4, article 2.)

D. AUTHORITY OF LOCAL GOVERNMENTS TO REGULATE SUBDIVISIONS

1. Cities and Towns

A. Subdivisions

- Subdivisions are defined as lands divided into 4 or more lots, or if a new street is involved, land divided into two or more lots, tracts or parcels. A.R.S. section A.R.S. § 9-463.02
- Municipalities **must, by ordinance, either determine that certain lands may not be subdivided because of lack of water** or impose other regulations deemed reasonable and necessary for public health, safety and welfare on lands affected by lack of water. A.R.S. § 9-463.01
- Approval of every preliminary and final plat by municipality is conditioned upon the subdivider's compliance with Department of Health Services or the county health department relating to the domestic water supply and sanitary sewage disposal. A.R.S. § 9-463.01
- If a proposed subdivision contains six or more lots or parcels and the subdivision is within an AMA, the final plat cannot be approved unless accompanied by a certificate of assured water supply issued by ADWR or a written commitment for water service from a designated water provider. A.R.S. § 9-463.01

B. Moratoriums

- A city or town may adopt a moratorium on construction or development of urban or urbanizable land if the city or town can demonstrate that it is necessary to prevent a shortage of essential public facilities (i.e., water, sewer and street improvements to the extent these improvements and water resources are provided by the city, town or private utility.)
- In the case of water resources, in active management areas, the municipality must demonstrate an assured water supply cannot be provided or,
- Outside an active management area, a sufficient water supply cannot be provided.
- "Urban or urbanizable land" means all property in the incorporated area of a city or town with a population of more than 2900 persons. A.R.S. § 9-463.06

2. Counties

A. General Planning Authority:

The county board of supervisors must plan and provide for the future growth and improvement of the county in order to conserve and promote the public health safety, convenience and general welfare. A.R.S. § 11-802

B. Comprehensive Plans

- Must be developed by the planning and zoning commission,
- Must be approved by the board of supervisors
- Shall be designed to, among other things, **conserve the natural resources of the county** and to promote the health, safety, convenience, and general welfare of the public. A.R.S. § 11-806
- In counties with a population of more than 125,000 persons, the plan **shall** include, and for other counties the plan **may** include, planning for water resources that addresses:
 1. The known legally and physically available surface water, groundwater and effluent supplies
 2. The demand for water that will result from future growth projected in the county plan, added to existing uses.
 3. An analysis of how current water supplies will meet the water demand that results from projected future growth or a plan to obtain additional necessary water supplies. A.R.S. § 11-821(C)

C. Subdivision plats

- Must be approved by the board of supervisors before it can be recorded.
- If the subdivision is within a groundwater active management area, the plat cannot be approved unless it is accompanied by a certificate of assured water supply issued by ADWR or a written commitment of water service by a designated assured water supply provider. A.R.S. § 11-806.01

- If the plat is not approved, the Board must cite the rule or regulation violated by the plat.
- The regulations must include provisions as to the extent to which water, sewer or other utility mains, piping or other facilities must be installed or provided for on the plat as a condition precedent to the approval of the final plat. A.R.S. § 11-806.01

D. Moratoriums

- A county may adopt a moratorium on construction or development of urban or urbanizable land if the county can demonstrate that it is necessary to prevent a shortage of essential public facilities (i.e., water, sewer and street improvements to the extent these improvements and water resources are provided by the county or private utility.)
- In the case of water resources, in active management areas, the county must demonstrate an assured water supply cannot be provided or,
- Outside an active management area, a sufficient water supply cannot be provided.
- Because "urban or urbanizable land" refers only to property in the incorporated area of a city or town with a population of more than 2900 persons, a county's authority to impose a moratorium is very limited. A county has no jurisdiction to deny approval of a subdivision within city limits, although it may have authority to deny a building permit in such areas if the city does not itself issue building permits. The county's authority to act is further limited by the requirement that the municipal land in question be served by a county or private water provider. . A.R.S. § 11-833.

E. Lot splits

Counties may adopt ordinances and regulations governing land divisions or lot splits if there are **5 or fewer lots, parcels or fractional interests, any of which is 10 acres or smaller in size,**

- The county **must approve** the lot split application provided that
 - Each lot meets the minimum county zoning requirements of the applicable zoning designation.
 - The application is accompanied by a standard preliminary title report that demonstrates legal access to the lots.
 - Provides a statement from a licensed surveyor or engineer stating whether each lot has physical access that is traversable by a two-wheel drive vehicle.
 - The applicant reserves the necessary and appropriate utility easements to serve each lot.

- An approval of a lot split may include **conditions for the issuance of a building or use permit on the land** including
 - The minimum statutory requirements for legal and physical on-site access that must be met
 - Any **hydrologic constraints, requirements or other limitations** that must be addressed prior to issuance of a building or prior use permit.

- A county may adopt ordinances governing lot splits of 5 or fewer lots, where each of the lots or parcels is **more than 10 acres** in size. The ordinance or regulation may only require staff review to determine compliance with legal access and minimum applicable county zoning requirements, although the county may grant waivers from these requirements. The county **may not deny approval** of an application where the application meets these requirements, or **where the compliance deficiencies are noticed in the deed**

According to these statutes, the board of supervisors has no authority to deny a lot split if it meets applicable zoning requirements, indicates whether there is physical access to the lots, and identifies the utility easements that are available. Note that the law does not require that physical access be provided; the applicant simply needs to state whether it exists. Similarly, the statute does not require that utilities be provided; the applicant must simply identify utility easements on the property.

The statute does allow the board of supervisors to place conditions regarding requirements for water supply on the subsequent issuance of a building or use permit. Therefore, the county does have some authority to limit development of lot splits. However, if not otherwise prohibited, a purchaser of the property could simply place a mobile home on the property and thus avoid obtaining a building permit. In that case, the county would be powerless to prevent occupancy of the lot.

WATER SUPPLY DEVELOPMENT AND MANAGEMENT:

Creation of Regional Water Management Tools

**ARIZONA DEPARTMENT OF WATER RESOURCES
STATEWIDE ADVISORY GROUP (SWAG)
(Afternoon committee meeting)**

I. SUMMARY OF DISTRICT AND AUTHORITY ENABLING LEGISLATION

Districts created under Title 48 of the Arizona Revised Statutes (A.R.S.) have taxing authority. As a result, state law generally requires some level of public participation in the creation of such entities, either through election or petition to the governing body. Water authorities, which are found in Title 45, generally do not have a taxing power and, thus, may be formed by the consent of the governing bodies of the participating entities. The following bullet points reflect the variety of provisions applicable to existing districts and authorities.

- Boundaries of Districts/ Authorities
 1. May be limited to unincorporated areas of a county.
 2. Lands need not be contiguous.
 3. May include areas in a city or town if the city or town consents.
 4. A district or authority's boundaries may be limited to areas within an AMA
 5. May limit the population of counties within a district or authority
 6. May require that members of an authority receive water from specified sources
 7. May require that the boundaries of the authority be coterminous with certain other boundaries (e.g., the boundaries of an AMA.)
 8. May base boundaries on the service area of water providers within the district or hydrologic boundaries

- Formation
 1. The county board of supervisors may initiate proceedings to establish a district; or
 2. A majority of persons owning real property in the proposed district may petition the board of supervisors to form a district.
 3. Some statutes require that a district adopt a preliminary general plan
 4. In the case of districts, the governing bodies generally must hold a hearing on a proposal to form a district or authority
 5. Formation of a taxing districts requires an election in which all residents within the proposed district are eligible to vote
 6. Some statues require that the district promote the public convenience, necessity or welfare

7. Generally, any city, town or irrigation district can request to be excluded from the district or authority
8. In the case of some authorities, formation can be effective as soon as a majority of municipal corporations in the county adopt resolutions approving it.

- Governance

1. If the district is within a single county, either the county board of supervisors or a board of directors may govern. If multiple counties participate, a board of directors governs. Members of a board may be appointed or elected
2. In single county districts, the board of supervisors may appoint all members;
3. In some cases, the governing bodies of each city or town within an authority may appoint one or more members
4. Irrigation districts have the power to appoint board members for certain authorities
5. Statute may require that certain board members represent the interests of certain entities or groups, e.g., water providers within the authority.
6. Some authorities' statutes provide that members serve at the pleasure of the governing body that appoints them

- Powers and Duties

State legislation currently grants districts or authorities the power to do one or more of the following:

1. Acquire, construct, maintain or repair waterworks for the delivery of water for domestic purposes.
2. Join with other persons or entities to create a multijurisdictional entity to further the acquisition, construction, operation or maintenance of water systems
3. Levy and collect taxes upon the real and personal property in the district to pay for general obligations of the district.
4. Enter into loan repayment agreement with WIFA
5. Impose fees, including user fees, hookup fees and lateral fees
6. File liens on property for nonpayment of user fees
7. Issue improvement bonds
8. Designate assessment districts that will benefit from, and be charged with the expense of improvements
9. Cooperate with other government agencies and political subdivisions, the federal government and Indian tribes to augment and conserve the authority's and its members' water
10. Act as a bargaining, negotiating or contracting agency at the request of an authority member
11. Acquire, hold, assign or otherwise dispose of water storage credits

12. Act as agent of any authority member for the acquisition, transportation, delivery, treatment or recharge of water
13. Acquire electricity or other forms of energy to transport water or operate the projects of the authority
14. Make grants to its members to fund water acquisition, reuse or conservation programs
15. Plan, construct operate, maintain and dismantle water augmentation projects (e.g., treatment, recharge, underground storage and recovery)
16. Acquire, hold, assign or otherwise dispose of water storage credit
17. Act as agent of any political subdivision for the acquisition, transportation, delivery, treatment or recharge of water
18. Negotiate, execute and perform contracts, including contracts for water exchanges and deliveries
19. Negotiate to acquire water and water rights to augment the water supply
20. Sell, lease, exchange, hold, sever, transfer or retire water rights
21. Negotiate and enter into agreements to use existing facilities to transport water to and within the county
22. Institute condemnation proceedings in accordance with state eminent domain law within the county in which it is authorized

- Financing

1. For general obligations, the governing body may levy and collect taxes upon the real and personal property in the district
2. An authority can assess fees, including development impact fees, extraction fees, connection fees, user fees, replenishment fees and administrative fees against any operating unit or other person with which the authority has contracted to provide service
3. Districts established under title 48 can assess taxes upon the real and personal property in the district

II. SPECIFIC WATER AUTHORITIES AND DISTRICTS

A. Domestic Water Improvement District (DWID)

A.R.S. § 48-901 et seq.

1. Boundaries

- The county board of supervisors may establish a DWID in any unincorporated area of a county, and
- The lands in the district need not be contiguous.
- The DWID may include areas in an unincorporated city or town if the city or town consents.
- If a noncontiguous DWID is within 6 miles of an incorporated city or town, the city or town must consent to formation

2. Formation

- The county board of supervisors establishes the DWID
- A majority of person owning real property in the proposed district or the owners of 51 percent or more of the real property must petition the board of supervisors
- If a valid petition is received, the board of supervisors must hold a hearing. (If the petition is signed by the owners of all real property in the proposed district, the board of supervisors may summarily order formation of the district and a hearing is not required.)
- At the hearing board will determine whether establishment of the district will promote the public convenience, necessity or welfare

3. Governance

- Either the county board of supervisors or an elected board of directors may govern the DWID

4. Powers of DWID

- Acquire, construct, maintain or repair waterworks for the delivery of water for domestic purposes.
- May join with other persons or entities to create a multijurisdictional entity to further the acquisition, construction, operation or maintenance of water systems
- Levy and collect taxes upon the real and personal property in the district to pay for general obligations of the district.
- May enter into loan repayment agreement with WIFA

- May impose fees, including user fees, hookup fees and lateral fees (cost of constructing a water line from the property line of the user to the middle of the easement in which the water system is located)
- May file liens on property for nonpayment of user fees
- Issue improvement bonds
- Designate assessment districts that will benefit from, and be charged with the expense of improvements
- A majority of property owners may petition to apportion the tax among the lots in the district according the square footage of each lot unless domestic water usage may be determined by metering In the latter case, the assessment shall be apportioned on the basis of metering.

5. Financing

- For general obligations of the DWID, the governing body may levy and collect taxes upon the real and personal property in the district
- May impose fees, including user fees
- May issue improvement bonds

B. Community Facilities District

A.R.S. § 48-701 through 48-708

1. Boundaries

- Board of county supervisors may establish a community facilities district (CFD) in an unincorporated area of the county
- The governing body of a city or town may establish a CFD within the incorporated boundaries of the city or town

2. Formation

- The governing body may initiate proceedings to form a CFD upon receipt of a petition by landowners of at least 25% of the land within the proposed district
- Must also file a general plan for the district
- If the governing body determines that the public convenience and necessity require, it may adopt a resolution declaring its intention to form the CFD and hold a hearing
- After the hearing the governing body may adopt a resolution ordering formation of the district
- If the governing body approves formation of the district, it must hold an election of the owners of land in the district and an election of the qualified electors within the district
- If the district is approved by a majority of the votes cast at the elections, the governing body must order formation of the district and set the district boundaries

3. Governance

- May be governed by a district board comprised of members of the governing body, ex officio, or
- If the district is larger than 600 acres, the CFD may be governed by a district board composed of five directors appointed by the governing body
- The district board must administer the implementation of the general plan for the public infrastructure of the district and any development plan entered into with district landowners

4. Powers and Duties

- Enter into contracts and expend monies for any public infrastructure purpose with respect to the district.
- Enter into intergovernmental agreements for the planning, design, inspection, ownership, control, maintenance, operation or repair of public infrastructure or the provision of enhanced municipal services.
- May issue general obligation and revenue bonds (the amount of indebtedness may not exceed the estimated cost of the public infrastructure improvements and related costs).
- Sell, lease or otherwise dispose of district property
- Operate, maintain and repair public infrastructure
- Establish, charge and collect user fees, rates or charges for the use of any public infrastructure
- Employ staff, counsel and consultants
- Accept gifts or grants and incur or repay loans for any public infrastructure purpose.
- Enter into with contracts with landowners and the city or county for the collection of fees and charges from landowners for public infrastructure purposes, the advance of monies or the granting of real property by the landowners for public infrastructure purposes.
- By resolution, levy and assess the costs of any public infrastructure purpose on any land benefited in the district
- Pay the financial, legal and administrative costs of the district.
- Enter into contracts, agreements, and trust indentures to obtain credit enhancement or liquidity support for its bonds and process the issuance, registration, transfer and payment of its bonds and the disbursement and investment of proceeds of the bonds.
- Exercise the same power of eminent domain as a public service corporation for any public infrastructure purpose.

5. Financing

- May charge user fees, rates or charges for the use of public infrastructure
- May levy and assess costs of any public infrastructure purpose on any land benefited in the district
- May issue general obligation and revenue bonds

C. Multijurisdictional Water Facilities District

A.R.S. § 48-5901 through 48-5931

1. Boundaries

- May include all or any portion of the service area boundaries of a participating municipal water provider
- Shall not include any portion of the service area of a municipal water provider that is not participating in the district
- The geographical area does not have to be contiguous

2. Formation

- May be formed by two or more municipal water providers for the construction, operation and maintenance of water related facilities
- The participating municipal water providers must prepare a preliminary general plan describing
 - The specific project the district will undertake
 - The district's geographical area;
 - The water resources to be used by the district;
 - The governance of the district
 - Financing methods for the district
- After completion of the general plan, the governing body of each participating municipal water provider must consider a resolution of intent to form the district and hold a hearing to decide whether to hold an election on the issue of the district formation.
- The election must be held not earlier than 6 months after the formal approval of the election by the governing bodies.
- A majority of the voters in the participating service area of each municipal provider must approve the formation of the district. If a majority of those voting in one of the participating service areas fails to approve the formation, the district cannot be formed.

3. Governance

- The district board of directors must have at least three members
- Initial board of directors has staggered terms; other members are to be elected to a four-year term.
- Elections for members of the board of directors are held without party designation
- All registered voters in the district are eligible to vote for board members
- The board of directors must adopt a general plan within 60 days after formation of the district

4. Powers and Duties (in furtherance and in accordance with the general plan)

- Enter into contracts and expend money for any water related facilities

- Enter into intergovernmental agreements for the planning, design, inspection, ownership, control, maintenance, operation or repair of water related facilities.
- Sell, lease or dispose of district property
- Construct, operate, maintain and repair water related facilities except for facilities that customarily used to serve individual customers of municipal water providers
- Establish, charge and collect user fees, rates, or charger for the use of water related facilities or services
- Employ staff, counsel and consultants
- Accept gifts, grants and donations and incur and repay loans for any water related facilities purpose.
- Enter into agreements with the counties and landowners for the collection of fees and charges, the advance of money, or the granting of real property from landowners for water related facilities
- Pay the financial, legal and administrative costs of the district (including district formation and feasibility studies costs)
- Enter into contracts, agreements and trust indentures to obtain credit enhancement or liquidity support for its bonds
- Use public easements and rights-of-way in or across public property
- Enter into grants and loans with any federal, state or local entity

5. Finances

The projects outlined in the general plan may be financed from the following sources of revenue:

- Proceeds from the sale of revenue bonds (must have one of the four highest investment grade ratings)
- State or federal grants, loans or contributions
- Private gifts, grants or donations
- User, landowner and other fees and charges
- Proceeds of loans or advances
- WIFA financial assistance
- Greater Arizona Development Authority assistance

D. County Water Augmentation Authority

A.R.S. § 45-1901 et seq.

1. Boundaries

- May be established in an AMA
- Over 50% of the AMA area must be within a single county
- The county population must be less than 150,000 persons

- A political subdivision within the AMA must directly receive Colorado River water according to contracts with a multi-county water conservation district and the Secretary of the US Department of the Interior.
- The boundaries of the authority must be coterminous with the boundaries of the AMA.

2. Formation

- Upon receipt of a petition to form the authority, the board of supervisors must hold a hearing and then vote on the petition (any interested person may file the petition)
- The board of supervisors must order establishment of the authority if it finds the public convenience and welfare will be served
- At or before the hearing, any city, town or irrigation district, can request to be excluded from the district

3. Governance

- The county water augmentation authority is governed by a board of directors
- The county board of supervisors appoints three members, two of which are to represent the interests of certain water companies,
- The governing body of each city or town located entirely within the boundaries of the authority as of January 1, 1993 can appoint a member
- Each irrigation district partially or totally located within the authorities' boundaries may appoint a board member
- The governing body of cities or towns established after January 1, 1993, any title 48 taxing district of any Indian tribe located within the authority's boundaries can also petition the board to appoint a member
- Each member serves at the pleasure of the governing body that appoints him

4. Powers

- Acquire, hold, assign or otherwise dispose of water storage credits
- Act as agent of any operating unit for the acquisition, transportation, delivery, treatment or recharge of water
- "Operating unit" essentially includes any entity with which the authority has contracted to acquire, deliver, exchange, treat, store or recharge water (includes counties, cities, towns water companies or political subdivisions, the state, the United States, Indian tribes).
- Issue bonds
- Negotiate, execute and perform contracts, including contracts for water exchanges and deliveries.
- Acquire electricity or other forms of energy to transport water or operate the projects of the authority
- Plan, construct operate, maintain and dismantle water augmentation projects (e.g., treatment, recharge. underground storage and recovery)

- Negotiate to acquire water and water rights to augment the county water supply
- Sell or exchange any water it acquires
- Sell, lease, exchange, hold, sever, transfer or retire water rights
- Negotiate and enter into agreements to use existing facilities to transport water to and within the county
- Institute condemnation proceedings in accordance with state eminent domain law within the county in which it is authorized
- Cannot institute condemnation proceedings to condemn water rights or existing water production or to acquire electrical facilities
- Also cannot institute condemnation proceedings within the service area of any city or irrigation district

5. Financing

- A county water augmentation authority can assess fees, including development impact fees, extraction fees, connection fees, user fees, replenishment fees and administrative fees against any operating unit or other person with which the authority has contracted to provide service.
- Issue bonds

A county water augmentation authority has broad powers shared by few other authorities. It can issue bonds; assess fees; enter into contracts for water exchanges and deliveries; construct and operate water augmentation projects; and condemn property in certain circumstances. The current statute, however, limits formation of these authorities to counties within AMAs that have a political subdivision that directly receives Colorado River water.

E. County Water Authority

A.R.S. § 45-2201 et seq.

1. Boundaries

- A county water authority may be formed in any county with a population of more than 90,000, but less than 120,000 persons
- Members include municipal corporations in the county that had Colorado River water delivery contract as of January 1, 1983, and adopted resolutions approving the authority's formation

2. Formation

- Formation of the authority is effective as soon as a majority of municipal corporations in the county adopt resolutions approving it and at least one of the county's municipal corporations has transferred the right to the delivery of 18,500 acre feet per year of Colorado River water to the authority within 730 days of the resolutions' adoption

3. Governance

- Governed by a board of directors
- Directors are appointed by resolutions of the municipal corporations that are authority members,
- Each director serves at the pleasure of the authority member that appointed him.
- The supervisors of the county in which the authority is formed may appoint a director to the board from among the members of the board of supervisors.

4. Powers And Duties

- The authority must cooperate with other government agencies and political subdivisions, the federal government and Indian tribes to augment and conserve the authority's and its members' water supplies and to acquire construct and operate diversion, withdrawal, transportation, delivery treatment, storage or recharge facilities
- The authority may act as a bargaining, negotiating or contracting agency at the request of an authority member and as a supervising instrumentality for the development of Colorado River water conservation plans
- Acquire, hold, assign or otherwise dispose of water storage credits
- Act as agent of any authority member for the acquisition, transportation, delivery, treatment or recharge of water
- Acquire electricity or other forms of energy to transport water or operate the projects of the authority
- Make grants to its members to fund water acquisition, reuse or conservation programs
- Plan, construct operate, maintain and dismantle water augmentation projects (e.g., treatment, recharge. underground storage and recovery

5. Limitations On Powers 45- 2243

The authority is not authorized to

- Exercise eminent domain
- Levy any ad valorem or excise tax
- Engage in water distribution within the service area of a city, town, private water company or irrigation district without its consent

- Regulate the acquisition, use or disposal of water or water rights (unless expressly authorized by statute)
- Sell resell, deliver or distribute electricity
- Acquire in its own name Colorado river water that is subject to a pending or executed contract between, or has been tentatively allocated by, the US and a member without the member's consent

F. Multi-County Water Conservation Districts

Chapter 22 of title 48 is the enabling legislation for the Central Arizona Water Conservation District or CAWCD. The CAWCD is a tax-levying public improvement district with the powers and privileges of a municipal corporation. It was formed for the purposes of

- Levying an ad valorem tax against all taxable property within the counties to pay administrative costs of the district and to assist in repayment of CAP costs
- Contracting with the Secretary of the US Department of the Interior for repayment of CAP cost and delivery of water supply and to subcontract for the water supply

The CAWCD also operates a water replenishment system throughout its three-county service area. This replenishment authority of CAWCD is commonly referred to as the Central Arizona Groundwater Replenishment District ("CAGRDR"). The purpose of the CAGRDR is to allow landowners and water providers to demonstrate an assured water supply under the new Assured Water Supply Rules ("AWS Rules").

Membership in the CAGRDR provides a means by which an AWS applicant can satisfy the Assured Water Supply program requirement that a proposed water use be consistent with the water management goals of the particular AMA. The consistency with management goals section of the AWS Rules limits the quantity of mined groundwater that an applicant may use to demonstrate an AWS. A water provider whose service area has been enrolled as a Member Service Area of the CAGRDR and has been granted "Water Availability Status" by the CAWCD Board also can obtain a designation of assured water supply from ADWR.

If a water provider or a landowner wishes to rely exclusively on groundwater to demonstrate a 100-year water supply, it must join the CAGRDR. As a member of the CAGRDR, the landowner or provider must pay the CAGRDR to replenish any groundwater pumped by the member that exceeds the pumping limitations imposed by the AWS Rules.

In each AMA the CAGRDR must recharge the amount of groundwater pumped by or delivered to its members that exceeds the pumping limitations of the AWS Rules.

Recharge may occur through underground storage facilities or groundwater savings facilities. Water used for replenishment may be CAP water or water from any other lawfully available source, except groundwater withdrawn from within an AMA. For the foreseeable future, the water that the CAGRDR will use for replenishment will likely be excess CAP water.

CAGRDR has two types of members:

- a. Member Service Areas: The service area of a city, town or private water company, including any additions to or extensions of the service area.
- b. Member Lands: An individual subdivision with a defined legal description.

Members pay a replenishment tax or assessment to cover the costs of the CAGRDR. The replenishment tax/assessment compensates the CAGRDR for the total cost per acre-foot of recharging groundwater, including: recharge facilities construction costs, water acquisition costs, operation and maintenance costs and administrative costs.

PROCEDURES FOR ESTABLISHING A SUBSEQUENT AMA AND PROCEDURES FOR MODIFYING THE BOUNDARIES OF A SUBSEQUENT AMA

I. Establishment of AMA by Order of Director

A. General

The Director may designate one or more groundwater basins that are not included within an initial AMA as a subsequent AMA if the director determines, after holding a public hearing, that certain criteria exist.

B. Criteria

In order to designate a groundwater basin or basins as a subsequent AMA, the director must determine that one of the following criteria exists:

- Active management area practices are necessary to preserve the existing supply of groundwater for future needs; or
- Land subsidence or fissuring is endangering property or potential groundwater storage capacity; or
- Use of groundwater is resulting in actual or threatened water quality degradation.

C. Public Hearing

If the director proposes to designate a subsequent AMA, the director must hold a public hearing under the following procedures:

- The director must hold a public hearing to consider: (1) whether to issue an order declaring the area as an AMA; and (2) the

boundaries of the AMA and the boundaries of any subbasins within the AMA.

- The director must publish notice of the public hearing once a week for two consecutive weeks in a newspaper of general circulation in each county in which the proposed AMA is located. The notice must include the legal description and a map showing and describing all lands to be included in the AMA and any subbasins in the AMA.
- The hearing must be held at a location within the proposed AMA.
- At the public hearing, the director must present factual data in support of designating the basin or basins as a subsequent AMA. Any person may submit oral or written evidence for or against the proposed subsequent AMA.

D. Findings and Order of the Director

Within thirty days after the hearing, the director must issue written findings with respect to the matters considered during the hearing. If the director decides to declare an area an AMA, the director must make and file an order designating the AMA. Notice of the findings and order must be published once a week for two consecutive weeks in a newspaper of general circulation in each county in which the AMA is located. The order is effective when published for the final time. The director's findings and order are subject to rehearing and review and to judicial review.

E. Irrigation of New Acres Prohibited Pending Director's Decision

If the director initiates the procedure for designating a subsequent AMA, an irrigation user may irrigate within the proposed AMA only acres of land that were legally irrigated at any time during the five years preceding the date of the notice of the initiation of designation procedures. This restriction continues in effect until the director makes a final determination on whether to designate the area as a subsequent AMA.

II. Establishment of AMA by Local Initiative

A. General

A groundwater basin that is not included within an initial AMA may be designated as a subsequent AMA by petition and election of the residents within the basin. There is no requirement that specific criteria must exist in order to designate a subsequent AMA by petition and election.

B. Petition

A petition to designate a groundwater basin as an AMA must be signed by registered voters within the basin as follows:

- If the groundwater basin is located entirely within one county, at least 10 percent of the registered voters residing within the boundaries of the groundwater basin must sign a petition for designation of the area as an AMA.
- If the groundwater basin is located in two or more counties, the petition must be signed by 10 percent of the registered voters residing within the boundaries of the groundwater basin within the county in which the plurality of the registered voters in the basin resides. The petition must be filed with the board of supervisors of that county.
- The form of the petition must be the same as for initiative petitions, and the person applying for the petition must comply with the provisions in A.R.S. § 19-111 (application must include a description of no more than 100 words of the principal provisions of the proposed measure and the text of the measure).
- When a petition is requested, the director must transmit a map of the groundwater basin to the county recorder of each county in which the proposed AMA is located.

C. Election

When a valid petition is filed, an election must be held as follows:

- An election must be called by the board of supervisors of the county in which the petition is filed, and the board must immediately notify the board of supervisors of any other county included in the groundwater basin of the date of the election. The board of supervisors so notified must then call the election in that county for the same date.
- The election must follow the same procedures as a general election in the state. Only registered voters residing within the groundwater basin may vote at the election.
- All election expenses are the responsibility of the counties involved on a proportional basis considering the number of registered voters of each county that are residents of the groundwater basin.
- The ballot shall be worded “Shall the (name of groundwater basin) be designated an active management area?” followed by the words “yes” and “no.”

D. Irrigation of New Acres Prohibited During Election Process

If the board of supervisors of a county calls an election to establish an AMA, an irrigation user may irrigate within the proposed AMA only acres of land that were legally irrigated at any time during the five years preceding the date of the call for the election. This restriction continues in effect until the final results of the election are certified by the board of supervisors of the county or counties in which the proposed subsequent AMA is located.

III. Adoption of Management Goal and Management Plan

A. Management Goal

Within 30 days after the designation of a subsequent AMA, the director must establish a management goal for the AMA and the number of years within which the goal shall be achieved. The director must hold a public hearing on the management goal before final adoption.

B. Management Plan

Within two years after designation of a subsequent AMA, the director must promulgate an initial management plan for the AMA and may provide for subsequent management plans to be promulgated during the time set for achieving the management goal.

IV. Area Director and GUAC

A. Area Director

After a subsequent AMA is designated, the director must appoint an area director for the AMA. One person may be the area director for more than one AMA.

B. Groundwater Users Advisory Council

The governor must appoint a groundwater users advisory council ("GUAC") for a subsequent AMA consisting of five members. Members of the GUAC must be appointed on the basis of their knowledge of, interest in and experience with problems relating to the development, use and conservation of water. The GUAC must:

- Advise the area director for the AMA.
- Make recommendations on groundwater management programs and policies for the AMA.

- Comment to the area director on draft management plans for the AMA before they are promulgated.

V. Modification of Boundaries of a Subsequent AMA

The director may review and modify the boundaries of a subsequent AMA or any of its subbasins as conditions require and factual data justify. The director is required to review the boundaries of a subsequent AMA or any of its subbasins upon receipt of a petition signed by persons withdrawing at least one-fourth of the groundwater in the AMA or by request of the GUAC. Before modifying the boundaries of a subsequent AMA or any of its subbasins, the director must give notice and hold a public hearing pursuant to the procedures required to designate a subsequent AMA by initiative of the director. After the hearing, the director must prepare written findings in the same manner as required for designating a subsequent AMA by initiative of the director.

**MANDATORY REGULATIONS IN A SUBSEQUENT AMA
ESTABLISHED BY ORDER OF THE DIRECTOR**

Irrigation of New Agricultural Lands Prohibited

Lands not irrigated during the five years preceding the call for the election to create the AMA may not be irrigated with any water (groundwater, surface water or effluent), with limited exceptions. “Irrigation” is defined as the irrigation of two or more acres of land to grow crops. Exceptions include the following:

- New lands may be irrigated with surface water if the surface water right was established prior to the call for the election or if severed and transferred from another location.
- New lands may be irrigated if substantial capital investment was made for the irrigation of the lands during the five years preceding the call for the election.

Groundwater Right or Permit Required to Withdraw Groundwater From a Non-Exempt Well

Groundwater may be withdrawn from a non-exempt well (a non-irrigation well with a pump capacity greater than 35 gpm or an irrigation well of any size) only pursuant to a grandfathered right, a service area right or a groundwater withdrawal permit.

Grandfathered rights are issued to persons who withdrew groundwater in the basin at any time during the five years preceding the call for the election to create the AMA. A grandfathered right is a permanent right that can be conveyed or leased to persons within the AMA. The annual volume for an irrigation grandfathered right may be limited by a management plan water duty. The annual volume for a non-irrigation right is by limited by statute to the largest volume of groundwater withdrawn in any one year during the 5-year period. There are two types of non-irrigation grandfathered rights: (1) a type 1 non-irrigation grandfathered right, which is created by retiring an irrigation grandfathered right for a non-irrigation use and is appurtenant to the retired irrigated land; and (2) a type 2 non-irrigation grandfathered right, which is based on withdrawals of groundwater for a non-irrigation use during the five years preceding the call for the election to create the AMA.

Service area rights are issued to municipal water providers and irrigation districts for withdrawal of groundwater for delivery to customers. A service area right is a permanent right that is not capped, allowing the right holder to withdraw more groundwater as the number of its customers increase. A water provider may drill a well pursuant to its service area right only within its service area.

Groundwater withdrawal permits are issued for the following purposes if certain conditions are met: dewatering; mineral extraction and metallurgical processing; general industrial use outside of a municipal service area; poor quality groundwater withdrawals; drainage water withdrawals; and hydrologic testing. The permit is for a limited period of time and for a limited annual volume.

Restrictions on Exempt Wells

Groundwater may be withdrawn from an **exempt well** (a non-irrigation well with a pump capacity not greater than 35 gpm) without a groundwater right or permit. However, the following restrictions apply to exempt wells:

- A person may not drill more than one exempt well to serve the same use at the same location (more than one exempt well is allowed if the wells were drilled before the AMA was created and the aggregate volume of groundwater withdrawn does not exceed 56 afa).
- An exempt well used for a purpose other than domestic or stock watering may not withdraw more than ten acre-feet per year.

With certain exceptions, an exempt well may not be drilled on property that is within 100 feet of the water distribution system of a municipal water provider with a designation of assured water supply.

Drilling of Most New Non-Exempt Wells Subject to Well Spacing Requirements

A person may not drill a new non-exempt well if the director determines that withdrawals from the proposed well will cause one of the following impacts:

- An additional drawdown of more than ten feet in five years at a neighboring well of record (unless the impacted well owner consents to the withdrawals).
- The migration of contaminated groundwater to a neighboring well of record resulting in damage to the well owner (unless the impacted well owner consents to the withdrawals).
- Unreasonably increasing damage from additional regional land subsidence.

These requirements do not apply to replacement wells drilled within 660 feet of the original well nor to wells drilled pursuant to groundwater withdrawal permits, except general industrial use permits.

Withdrawals from Most Non-Exempt Wells Must be Measured and Reported

Persons withdrawing groundwater from a non-exempt well must use an approved measuring device. This requirement does not apply to a person who hold a groundwater withdrawal permit or a type 2 non-irrigation grandfathered right in the amount of ten or fewer acre-feet per year or to a person who uses groundwater pursuant to an irrigation grandfathered right appurtenant to ten or fewer acres.

Persons who own or lease a right to withdraw groundwater must file an annual groundwater withdrawal and use report with the Department. An irrigation district can file a report on behalf of persons receiving groundwater from the district. The requirement to file an annual report does not apply to a person who uses groundwater pursuant to an irrigation grandfathered right that is appurtenant to ten or fewer acres.

Assured Water Supply Requirements

A person proposing to offer subdivided lands (lands subdivided into six or more lots) for sale or lease must first obtain a certificate of assured water supply from the director or obtain a written commitment of water service from a municipal water provider designated by the director as having an assured water supply. An assured water supply means a water supply that meets all of the following requirements:

- The water supply will be physically, continuously and legally available for 100 years.
- The water supply will be of adequate quality.
- The projected groundwater use is consistent with the management plan and achievement of the management goal for the AMA.
- Financial capability has been demonstrated to construct the water facilities necessary to make the supply of water available for the proposed use.

Holders of Non-Irrigation Grandfathered Rights and Groundwater Withdrawal Permits Must Pay Water Quality Assurance Fee of \$2.12 Per Acre-Foot

Persons holding a non-irrigation grandfathered right or a groundwater withdrawal permit for beneficial use must pay an annual water quality assurance fee of \$2.12 per acre-foot of groundwater withdrawn during the year. The holder of a groundwater withdrawal permit or a type 2 non-irrigation grandfathered right in the amount of ten or fewer acre-feet per year must pay \$2.12 per acre-foot multiplied by the number of acre-feet of the right or permit. The fees are used to fund the cleanup of hazardous substances.

Restrictions on Filling and Refilling Bodies of Water

A person may not fill or refill a body of water that has a surface area greater than 12,320 square feet and that is used for landscape, scenic or recreational purposes unless an exception applies. Exceptions include the following:

- The body of water was filled before January 1, 1987.
- The body of water is in a recreational facility open to the public and owned or operated by a governmental entity.
- The body of water is filled with effluent or poor quality groundwater.
- The body of water is an integral part of a golf course that complies with any applicable conservation requirements in the management plan adopted for the AMA.

Groundwater Transportation Laws

Transportation of groundwater within a subbasin of the subsequent AMA

- Groundwater may be transported within a subbasin of the AMA without payment of damages.

Transportation of groundwater between subbasins of the subsequent AMA

- Groundwater withdrawn pursuant to an irrigation grandfathered right or a type 1 non-irrigation grandfathered right may be transported between subbasins of the AMA without payment of damages (some restrictions apply).
- Groundwater withdrawn from an exempt well or pursuant to a type 2 non-irrigation grandfathered right or a groundwater withdrawal permit may be transported between subbasins of the AMA, subject to payment of damages (damages are payable only if a person proves in court that he or she was damaged as a result of the transportation).
- A city, town, private water company or irrigation district whose service area is located within two subbasins of the AMA may transport groundwater between the subbasins for use within its service area, subject to payment of damages.

Transportation of groundwater out of the subsequent AMA

- Groundwater withdrawn pursuant to a type 1 non-irrigation grandfathered right may be transported out of the AMA without payment of damages (some restrictions apply).
- Groundwater withdrawn from an exempt well or pursuant to a type 2 non-irrigation grandfathered right or a groundwater withdrawal permit may be transported out of the AMA, subject to payment of damages.
- A city, town, private water company or irrigation district whose service area is located both within and outside of the AMA may transport groundwater out of the AMA for use within its service area, subject to payment of damages.

Transportation of groundwater into the subsequent AMA

Groundwater may be transported away from a non-AMA groundwater basin into the subsequent AMA only if specifically allowed by A.R.S. § 45-544, including as follows:

- A city, town or private water company whose service area is located in two adjacent groundwater basins and provides water utility service to residents in both basins as of July 1, 1993 may transport groundwater between those adjacent groundwater basins (e.g., Arizona Water Company serving Bisbee).
- If a person was transporting groundwater away from a groundwater basin before September 1, 1993, that person and its successors may continue and expand the transportation of groundwater for the same purpose.
- Groundwater may be transported away from a groundwater basin for mineral extraction and processing (except for the Parker groundwater basin and the Little Colorado river plateau groundwater basin).

Groundwater may be withdrawn and transported from another AMA basin into the subsequent AMA under the same restrictions discussed above for transportation out of the subsequent AMA.

Persons Withdrawing or Using Groundwater Must Comply With any Applicable Requirements Established by the Director in the Management Plan for the AMA

The director must establish a management goal for the subsequent AMA within thirty days after the AMA is designated, with final adoption following a public hearing.

The director is required to promulgate a management plan for the AMA within two years after designation of the AMA, with final adoption following a public hearing. The management plan must include the following, as applicable:

- If the director determines that active management is necessary to preserve the existing supply of groundwater for future needs or that land subsidence or fissuring is endangering property or potential groundwater storage capacity, the plan must include measures for reducing groundwater withdrawals which follow as closely as practicable the management plan programs required for initial AMAs.
- If the director determines that active management is necessary because the use of groundwater is resulting in actual or threatened groundwater quality degradation, the plan must include a program for prevention or amelioration of groundwater quality problems and a schedule for implementation of the proposed solutions. The director must consult with ADEQ in developing the program.

MANDATORY REGULATIONS IN A SUBSEQUENT AMA ESTABLISHED BY PETITION AND ELECTION

Irrigation of New Agricultural Lands Prohibited

Lands not irrigated during the five years preceding the call for the election to create the AMA may not be irrigated with any water (groundwater, surface water or effluent), with limited exceptions. "Irrigation" is defined as the irrigation of two or more acres of land to grow crops. Exceptions include the following:

- New lands may be irrigated with surface water if the surface water right was established prior to the call for the election or if severed and transferred from another location.
- New lands may be irrigated if substantial capital investment was made for the irrigation of the lands during the five years preceding the call for the election.

Groundwater Right or Permit Required to Withdraw Groundwater From a Non-Exempt Well

Groundwater may be withdrawn from a non-exempt well (a non-irrigation well with a pump capacity greater than 35 gpm or an irrigation well of any size) only pursuant to a grandfathered right, a service area right or a groundwater withdrawal permit.

Grandfathered rights are issued to persons who withdrew groundwater in the basin at any time during the five years preceding the call for the election to create the AMA. A grandfathered right is a permanent right that can be conveyed or leased to persons within the AMA. The annual volume for an irrigation grandfathered right may be limited by a management plan water duty. The annual volume for a non-irrigation right is by limited by statute to the largest volume of groundwater withdrawn in any one year during the 5-year period. There are two types of non-irrigation grandfathered rights: (1) a type 1 non-irrigation grandfathered right, which is created by retiring an irrigation grandfathered right for a non-irrigation use and is appurtenant to the retired irrigated land; and (2) a type 2 non-irrigation grandfathered right, which is based on withdrawals of groundwater for a non-irrigation use during the five years preceding the call for the election to create the AMA.

Service area rights are issued to municipal water providers and irrigation districts for withdrawal of groundwater for delivery to customers. A service area right is a permanent right that is not capped, allowing the right holder to withdraw more groundwater as the number of its customers increase. A water provider may drill a well pursuant to its service area right only within its service area.

Groundwater withdrawal permits are issued for the following purposes if certain conditions are met: dewatering; mineral extraction and metallurgical processing; general industrial use outside of a municipal service area; poor quality groundwater withdrawals; drainage water withdrawals; and hydrologic testing. The permit is for a limited period of time and for a limited annual volume.

Restrictions on Exempt Wells

Groundwater may be withdrawn from an **exempt well** (a non-irrigation well with a pump capacity not greater than 35 gpm) without a groundwater right or permit. However, the following restrictions apply to exempt wells:

- A person may not drill more than one exempt well to serve the same use at the same location (more than one exempt well is allowed if the wells were drilled before the AMA was created and the aggregate volume of groundwater withdrawn does not exceed 56 afa).
- An exempt well used for a purpose other than domestic or stock watering may not withdraw more than ten acre-feet per year.

With certain exceptions, an exempt well may not be drilled on property that is within 100 feet of the water distribution system of a municipal water provider with a designation of assured water supply.

Drilling of Most New Non-Exempt Wells Subject to Well Spacing Requirements

A person may not drill a new non-exempt well if the director determines that withdrawals from the proposed well will cause one of the following impacts:

- An additional drawdown of more than ten feet in five years at a neighboring well of record (unless the impacted well owner consents to the withdrawals).
- The migration of contaminated groundwater to a neighboring well of record resulting in damage to the well owner (unless the impacted well owner consents to the withdrawals).
- Unreasonably increasing damage from additional regional land subsidence.

These requirements do not apply to replacement wells drilled within 660 feet of the original well nor to wells drilled pursuant to groundwater withdrawal permits, except general industrial use permits.

Withdrawals from Most Non-Exempt Wells Must be Measured and Reported

Persons withdrawing groundwater from a non-exempt well must use an approved measuring device. This requirement does not apply to a person who hold a groundwater withdrawal permit or a type 2 non-irrigation grandfathered right in the amount of ten or fewer acre-feet per year or to a person who uses groundwater pursuant to an irrigation grandfathered right appurtenant to ten or fewer acres.

Persons who own or lease a right to withdraw groundwater must file an annual groundwater withdrawal and use report with the Department. An irrigation district can file a report on behalf of persons receiving groundwater from the district. The requirement to file an annual report does not apply to a person who uses groundwater pursuant to an irrigation grandfathered right that is appurtenant to ten or fewer acres.

Assured Water Supply Requirements

A person proposing to offer subdivided lands (lands subdivided into six or more lots) for sale or lease must first obtain a certificate of assured water supply from the director or obtain a written commitment of water service from a municipal water provider designated by the director as having an assured water supply. An assured water supply means a water supply that meets all of the following requirements:

- The water supply will be physically, continuously and legally available for 100 years.
- The water supply will be of adequate quality.
- The projected groundwater use is consistent with the management plan and achievement of the management goal for the AMA.
- Financial capability has been demonstrated to construct the water facilities necessary to make the supply of water available for the proposed use.

Holders of Non-Irrigation Grandfathered Rights and Groundwater Withdrawal Permits Must Pay Water Quality Assurance Fee of \$2.12 Per Acre-Foot

Persons holding a non-irrigation grandfathered right or a groundwater withdrawal permit for beneficial use must pay an annual water quality assurance fee of \$2.12 per acre-foot of groundwater withdrawn during the year. The holder of a groundwater withdrawal permit or a type 2 non-irrigation grandfathered right in the amount of ten or fewer acre-feet per year must pay \$2.12 per acre-foot multiplied by the number of acre-feet of the right or permit. The fees are used to fund the cleanup of hazardous substances.

Restrictions on Filling and Refilling Bodies of Water

A person may not fill or refill a body of water that has a surface area greater than 12,320 square feet and that is used for landscape, scenic or recreational purposes unless an exception applies. Exceptions include the following:

- The body of water was filled before January 1, 1987.
- The body of water is in a recreational facility open to the public and owned or operated by a governmental entity.
- The body of water is filled with effluent or poor quality groundwater.
- The body of water is an integral part of a golf course that complies with any applicable conservation requirements in the management plan adopted for the AMA.

Groundwater Transportation Laws

Transportation of groundwater within a subbasin of the subsequent AMA

- Groundwater may be transported within a subbasin of the AMA without payment of damages.

Transportation of groundwater between subbasins of the subsequent AMA

- Groundwater withdrawn pursuant to an irrigation grandfathered right or a type 1 non-irrigation grandfathered right may be transported between subbasins of the AMA without payment of damages (some restrictions apply).
- Groundwater withdrawn from an exempt well or pursuant to a type 2 non-irrigation grandfathered right or a groundwater withdrawal permit may be transported between subbasins of the AMA, subject to payment of damages (damages are payable only if a person proves in court that he or she was damaged as a result of the transportation).
- A city, town, private water company or irrigation district whose service area is located within two subbasins of the AMA may transport groundwater between the subbasins for use within its service area, subject to payment of damages.

Transportation of groundwater out of the subsequent AMA

- Groundwater withdrawn pursuant to a type 1 non-irrigation grandfathered right may be transported out of the AMA without payment of damages (some restrictions apply).
- Groundwater withdrawn from an exempt well or pursuant to a type 2 non-irrigation grandfathered right or a groundwater withdrawal permit may be transported out of the AMA, subject to payment of damages.
- A city, town, private water company or irrigation district whose service area is located both within and outside of the AMA may transport groundwater out of the AMA for use within its service area, subject to payment of damages.

Transportation of groundwater into the subsequent AMA

Groundwater may be transported away from a non-AMA groundwater basin into the subsequent AMA only if specifically allowed by A.R.S. § 45-544, including as follows:

- A city, town or private water company whose service area is located in two adjacent groundwater basins and provides water utility service to residents in both basins as of July 1, 1993 may transport groundwater between those adjacent groundwater basins (e.g., Arizona Water Company serving Bisbee).
- If a person was transporting groundwater away from a groundwater basin before September 1, 1993, that person and its successors may continue and expand the transportation of groundwater for the same purpose.
- Groundwater may be transported away from a groundwater basin for mineral extraction and processing (except for the Parker groundwater basin and the Little Colorado river plateau groundwater basin).

Groundwater may be withdrawn and transported from another AMA basin into the subsequent AMA under the same restrictions discussed above for transportation out of the subsequent AMA.

Persons Withdrawing or Using Groundwater Must Comply With any Applicable Requirements Established by the Director in the Management Plan for the AMA

The director must establish a management goal for the subsequent AMA within thirty days after the AMA is designated, with final adoption following a public hearing.

The director is required to promulgate a management plan for the AMA within two years after designation of the AMA, with final adoption following a public hearing. The management plan may contain requirements for persons withdrawing or using groundwater designed to assist in the achievement of the management goal (e.g., conservation requirements).

Summary of Arizona Groundwater Transportation Laws

Transportation of Groundwater Withdrawn Within an AMA

Transportation of groundwater within a subbasin of an AMA

Groundwater may be transported within a subbasin of an AMA without payment of damages. A.R.S. § 45-541. (Note that the Groundwater Code imposes restrictions on location of use for groundwater withdrawn pursuant to an irrigation grandfathered right and, in some cases, groundwater withdrawn pursuant to a type 1 non-irrigation grandfathered right. Also note that under the Groundwater Code, groundwater withdrawn by a city, town, private water company or irrigation district within its service area must be used within that service area, except that a city, town or private water company may transport groundwater to another city, town or private water company pursuant to a delivery contract approved by the director.)

Transportation of groundwater between subbasins of an AMA

- Groundwater withdrawn pursuant to an irrigation grandfathered right or a type 1 non-irrigation grandfathered right may be transported between subbasins of an AMA. A.R.S. § 45-542(A) and (B). The transportation is subject to payment of damages only to the extent that the amount of groundwater withdrawn from retired irrigated land exceeds three acre-feet per year. A.R.S. § 45-542(C). (Note that the Groundwater Code imposes restrictions on location of use for groundwater withdrawn pursuant to an irrigation grandfathered right and, in some cases, groundwater withdrawn pursuant to a type 1 right.)
- Groundwater withdrawn pursuant to a type 2 non-irrigation grandfathered right or a groundwater withdrawal permit may be transported between subbasins of an AMA, subject to payment of damages. A.R.S. § 45-543(A)(1) and (4).
- Groundwater withdrawn from an exempt well may be transported between subbasins of an AMA, subject to payment of damages. A.R.S. § 45-543(A)(5).
- A city, town, private water company or irrigation district whose service area is located in two subbasins of the same AMA may withdraw groundwater within its service area and transport the groundwater between the subbasins for use in its service area, subject to payment of damages. A.R.S. § 45-543(A)(2).
- A city, town or private water company may withdraw groundwater within its service area and transport the water between subbasins of an AMA for use by another city, town or private water company pursuant to a delivery contract approved by the director. The transportation is subject to payment of damages unless the groundwater is withdrawn pursuant to a type 1 non-irrigation grandfathered right. A.R.S. § 45-543(B).

Transportation of groundwater away from an AMA

- Groundwater withdrawn pursuant to an irrigation grandfathered right may be transported away from an AMA. A.R.S. § 45-542(A). The transportation is subject to payment of damages only to the extent that the amount of groundwater withdrawn from retired irrigated land exceeds three acre-feet per acre per year. A.R.S. § 45-542(C). (Note that the

Groundwater Code imposes restrictions on location of use for groundwater withdrawn pursuant to an irrigation grandfathered right.)

- Groundwater withdrawn pursuant to a type 1 non-irrigation grandfathered right may not be transported away from an initial AMA, with limited exceptions applicable to: (1) type 1 rights owned by the City of Mesa in the Pinal AMA; and (2) type 1 rights appurtenant to lands in the Tucson AMA that were retired prior to June 12, 1980 and that are used to withdraw groundwater for the extraction or processing of minerals in an adjacent AMA or groundwater basin. A.R.S. 45-542(B). (Note that in a subsequent AMA, groundwater withdrawn pursuant to a type 1 right may be transported away from the AMA, subject to the restrictions on location of use for type 1 rights imposed by the Groundwater Code.)
- Groundwater withdrawn pursuant to a type 2 non-irrigation grandfathered right may be transported away from an AMA, subject to payment of damages. A.R.S. § 45-543(A)(1). However, groundwater withdrawn pursuant to a type 2 non-irrigation grandfathered right may not be transported away from the Pinal AMA to another initial AMA for the purpose of demonstrating an assured water supply. A.R.S. § 45-543(A)(1).
- Groundwater withdrawn pursuant to a groundwater withdrawal permit may be transported away from an AMA, subject to payment of damages. A.R.S. § 45-543(A)(4).
- Groundwater withdrawn from an exempt well may be transported away from an AMA, subject to payment of damages. A.R.S. § 45-543(A)(5).
- A city, town or private water company whose service area is located both within and outside of an AMA may withdraw groundwater from the portion of its service area located within the AMA and transport the groundwater to the portion of its service area located outside of the AMA, subject to payment of damages. A.R.S. § 45-543(A)(2). However, groundwater withdrawn by a city, town or private water company within its service area may not be transported away from the Pinal AMA. A.R.S. § 45-543(A)(2).
- An irrigation district whose service area is located both within and outside of an AMA may withdraw groundwater from the portion of its service area located within the AMA and transport the groundwater to the portion of its service area located outside of the AMA, subject to payment of damages. A.R.S. § 45-543(A)(3).

Transportation of Groundwater Withdrawn in a Groundwater Basin Outside of an AMA

Transportation of groundwater within subbasins of a groundwater basin

- Groundwater may be transported within a subbasin of a groundwater basin without payment of damages. A.R.S. § 45-544(A)(1)(a).
- Groundwater may be transported between subbasins of a groundwater basin, subject to payment of damages. A.R.S. § 45-544(A)(1)(b).

Transportation of groundwater within a groundwater basin that does not have subbasins

Groundwater may be transported within a groundwater basin that does not have subbasins without payment of damages. A.R.S. § 45-544(A)(1)(a).

Transportation of groundwater away from a groundwater basin to another groundwater basin outside of an AMA

Outside of AMAs, groundwater may not be transported away from a groundwater basin to another groundwater basin unless authorized by statute. A.R.S. § 45-544(A)(2). The following transportations are authorized by statute:

- If a person was transporting groundwater away from a groundwater basin before September 1, 1993, that person and its successors may continue and expand the transportation of groundwater for the same purpose, subject to payment of damages. A.R.S. § 45-544(B)(5).
- A city, town or private water company whose service area is located in two adjacent groundwater basins and that was providing water utility service to residents in both basins as of July 1, 1993 may transport groundwater between those adjacent groundwater basins, subject to payment of damages. A.R.S. § 45-544(B)(4).
- Groundwater may be transported away from a groundwater basin for mineral extraction and processing (except for the Little Colorado river plateau groundwater basin and the Parker groundwater basin), subject to payment of damages. A.R.S. § 45-544(B)(6).
- Groundwater withdrawn in the Little Colorado river plateau groundwater basin or the Parker groundwater basin may be transported to another groundwater basin under certain circumstances set forth in statute, subject to payment of damages. A.R.S. § 45-544(B)(1), (2) and (3).
- A person who has the legal right to divert and use Colorado river water may apply for a permit to withdraw groundwater in the Yuma basin for transportation outside of the basin. The director may grant the permit only if certain criteria are met, including: (1) the water to be withdrawn was originally Colorado river water applied for irrigation purposes; (2) the water to be pumped is groundwater under Arizona law that is causing waterlogging; and (3) issuance of the permit will result in water being returned to the Colorado river that otherwise would not have returned. A.R.S. § 45-547.

Transportation of groundwater into an AMA

Groundwater withdrawn in a groundwater basin outside of an initial AMA may not be transported into an initial AMA unless authorized by statute. A.R.S. § 45-551(B). The following transportations are authorized by statute:

- A city that purchased land before January 1, 1988 in the McMullen Valley groundwater basin, or a person who purchased land before January 1, 1998 that was in that basin and that was in the same county as an adjacent initial AMA, may transport groundwater from that land to an adjacent AMA for use by a city, town, private water company. A city, town or private water company that purchases any of the land from the qualifying city or person may also transport groundwater from the land to the adjacent initial AMA for use by a city, town or private water company. Transportation of groundwater under this provision is subject to certain limitations and is subject to payment of damages. A.R.S. § 45-552.
- Groundwater may be withdrawn from land owned by the State of Arizona or by a political subdivision in the Butler Valley groundwater basin and transported to an

initial AMA, subject to payment of damages. A.R.S. § 45-553.

- A political subdivision, and in some cases the State of Arizona, that owns land eligible to be irrigated in the Harquahala Irrigation Non-Expansion Area may withdraw groundwater from the land for transportation to an initial AMA, subject to certain limitations and subject to payment of damages. A.R.S. § 45-554.
- A city or town that owns land consisting of historically irrigated acres in the Big Chino subbasin of the Verde River groundwater basin, or that has the consent of the owner of the land, may withdraw groundwater from the land for transportation to the Prescott AMA, subject to certain limitations and subject to payment of damages. A.R.S. § 45-555(A), (B), (C) and (D).
- The City of Prescott, or the United States in cooperation with the City of Prescott, may withdraw up to 14,000 acre-feet of groundwater per year from the Big Chino subbasin of the Verde River groundwater basin for transportation into the Prescott AMA if the groundwater is withdrawn and transported either: (1) in exchange for or replacement or substitution of supplies of water from the CAP allocated to Indian tribes, cities, towns or private water companies in the Prescott AMA or in the Verde River groundwater basin; or (2) for the purpose of facilitating the settlement of the water rights claims of the Yavapai-Prescott Tribe and the Camp Verde Yavapai-Apache Indian Community. The transportation is subject to payment of damages. A.R.S. § 45-555(E).
- A person who has the legal right to divert and use Colorado river water may apply for a permit to withdraw groundwater in the Yuma basin for transportation to an initial AMA. The director may grant the permit only if certain criteria are met, including: (1) the water to be pumped was originally Colorado river water applied for irrigation purposes; (2) the water to be pumped is groundwater under Arizona law that is causing waterlogging; and (3) issuance of the permit will result in water being returned to the Colorado river that otherwise would not have returned. A.R.S. § 45-547.

Damage Provisions Applicable to Transportation of Groundwater

A.R.S. § 45-545 provides that if an authorized transportation of groundwater is subject to payment of damages, the following provisions apply:

- In any action to recover damages, neither injury to nor impairment of the water supply of any landowner shall be presumed from the fact of transportation.
- In determining whether there has been injury and the extent of any injury, the court shall consider all acts of the person transporting groundwater toward the mitigation of injury including the following:
 - Retirement of land from irrigation.
 - Discontinuance of other preexisting uses of groundwater.
 - Water conservation techniques.
 - Procurement of additional sources of water which benefit the AMA, subbasin or landowners within the AMA or subbasin.

Well Spacing Requirements for Transportation of Groundwater into an AMA

A person may not use a well constructed after September 21, 1991 for the purpose of withdrawing groundwater for transportation into an AMA unless the person applies to the director for approval and the director determines that the withdrawals for that purpose will not unreasonably increase damage to surrounding land or other water users from the concentration of wells. In making such a determination, the director must follow the criteria in the well spacing rules adopted for non-exempt well in AMAs. A.R.S. § 45-559.

Transportation Fee for Groundwater Transported into an AMA from Another County

A person who withdraws groundwater from outside of an AMA or from the Pinal AMA and transports the groundwater into an initial AMA and away from the county from which the groundwater was withdrawn must pay an annual groundwater transportation fee to the county. A.R.S. § 45-556. The director is required to set the fee pursuant to a formula set forth in A.R.S. § 45-556.