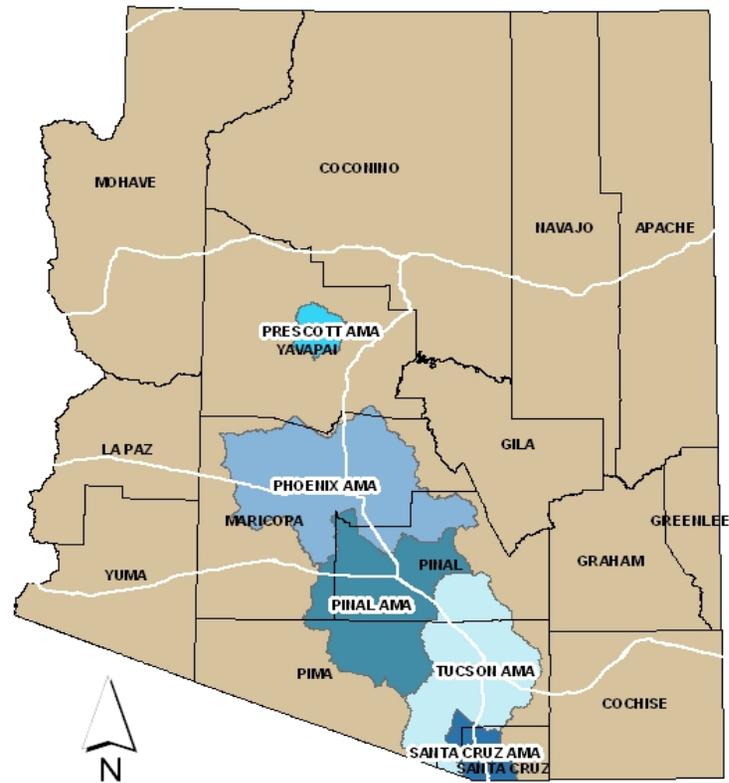


# Arizona Department of Water Resources

## Water Adequacy Amendments

Senate Bill 1575

**ACTIVE MANAGEMENT AREAS AND COUNTIES  
IN ARIZONA**



# ADWR's Assured and Adequate Water Supply Programs were created to address the problem of limited water supplies in Arizona:

- The Assured Water Supply Program established in 1980 (Rules adopted in 1995) functions to protect and preserve limited groundwater supplies within Arizona's five Active Management Areas (AMAs).
  - Subdivisions inside AMA's.
  - Plats cannot be approved without demonstrating a 100-year AWS
- Outside the AMAs the Adequate Water Supply Program, established in 1973, while not as protective as the Assured Water Supply Program, acts as a consumer advisory program, ensuring that potential real estate buyers are informed about any water supply limitations.
  - Subdivisions outside AMA's.
  - Plats can be approved if the determination is inadequate, however the inadequate water supply must be disclosed to the first buyer.

# Applicability

- The Assured and Adequate Water Supply Programs apply to subdivisions as defined by the Arizona Department of Real Estate, A.R.S. § 32-2101:
  - “Subdivision” means six or more parcels with at least one parcel having an area less than 36 acres. This includes residential or commercial subdivisions, stock cooperatives, condominiums, and all lands subdivided as part of a common promotional plan (including golf courses, parks, schools, and other amenities).
  - Short-term leases (12 months or less) and subdivisions where all parcels are greater than 36 acres in size do not fall under this definition.

# 5 Criteria Requirements for Water Adequacy Program

- 1) Physical availability of water for 100 years.
  - Currently, the depth-to-water cannot exceed 1,200 feet after 100 years of pumping for the subdivision served by a water provider
- 2) Legal availability of water for 100 years.
  - For all sources of water, legal rights must exist
- 3) Continuous availability of water for 100 years.
  - Adequate delivery, storage and treatment works must be either in place or financed
- 4) Financial capability to construct any necessary water storage, treatment and delivery system
  - The final plat must be submitted to a qualified platting authority or service must be available to each lot
- 5) Sufficient quality of water supply.
  - The applicant is regulated by ADEQ and the public water system is not in significant noncompliance.

# Existing Adequacy Program Issues

- If the supply is determined to be inadequate, lots may still be sold.
- A determination of inadequacy of the water supply must be disclosed in all promotional materials and in sales documents.
- Disclosure only applies to the first buyer of the property, not subsequent owners.

# Senate Bill 1575

The modification is only for subdivisions located  
*outside of Active Management Areas*  
(Adequacy Program)

- Authorizes cities, towns and counties to require an adequate water supply determination from ADWR for approval of new subdivisions.
- If adopted, the Department of Real Estate can't approve a public report without an adequate water supply determination.

# Senate Bill 1575

## Title 11: Counties

- Allows counties to require new subdivisions to have a determination of adequate water supply from ADWR (certain exemptions are allowed).
- A unanimous vote of the board of supervisors is required to adopt authority.
- Provides that the adoption of the Adequacy provision cannot be rescinded by the County at any time – although does allow for amendments if consistent with the statute.
- Requires counties that adopt adequacy requirements to notify ADWR and ADRE.
- Requires notification of adequacy on each plat.
- Automatically applies to all incorporated areas within the county.

# Senate Bill 1575

## Title 9: Cities & Towns

- Prohibits a municipality within a County that has adopted the Adequacy provision to approve a subdivision plat without a determination of adequate water supply from ADWR (certain exemptions are allowed).
- Allows a municipality that is in a County that does not adopt the Adequacy provision to provide by ordinance that new subdivisions in that municipality must have a determination of adequate water supply from ADWR (certain exemptions are allowed).
- Requires notification of adequacy on each plat.

# Senate Bill 1575

## Title 32: Professions & Occupations (Real Estate)

- Requires subdividers located within a County or a municipality that has adopted regulations or ordinances that requires an Adequacy determination to notify ADRE that it has an adequate water supply.
- Provides that if the subdivision or timeshare property is located within a County or a municipality that has adopted regulations or ordinances that requires an Adequacy determination, ADRE must deny issuance of a public report unless ADWR has determined an adequate water supply exists or an exemption applies.
- ADRE will continue to issue public reports with inadequacy determinations for those subdivisions within areas that have not adopted this requirement.

# Senate Bill 1575

## Title 45: Waters

- Requires ADWR to forward a copy of its water adequacy report for a new subdivision to ADRE and the local platting entity.
- Requires ADWR to notify all cities and towns in a county if the County has adopted the Adequacy provisions, outlined for Title 11.
- Defines Adequate Water Supply as groundwater, surface water or effluent that is continuously, legally and physically available and that the applicant has the financial capability to make the supply of water available for the proposed use.
- Provides for public notice, objections and administrative hearings of ADWR adequate or inadequate determinations that have been issued in counties or municipalities that have adopted the adequacy provision.

# Exemptions

- If a county or municipality adopts the adequacy provision, there are exemptions that can be adopted.
- Exemptions apply to subdivisions that received final plats before the requirement, if the plats have not been materially changed since it received final plat approval.

# County/Municipality Exemptions

- Allows a city, town or county to provide an exemption for a subdivision if the water supply will be delivered by motor vehicle or train (hailed water).
- Requires written notice and certified copy of approval of the hailed water exemption to be provided to the Director of ADWR, ADEQ and the State Real Estate Commissioner.
- If a county or municipality rescinds the exemption, they cannot readopt the exemption for at least 5 years after the rescission becomes effective.

# ADWR Exemptions

- Provides an exemption for subdividers who have made a “substantial capital investment” toward construction of the project.
- Provides an exemption from the adequacy requirement if the subdivision will be served by a water supply project that is under construction which will be completed within 20 years.

# SB 1575

## Session Law

- ADWR shall amend the AWS rules to include:
  - Exemption from the adequacy requirement if the subdivision will be served by a water supply project that is under construction and which will be completed within 20 years.
  - Criteria for determination of adequacy to include depth-to-static water level limits or limits based on other physical aquifer characteristics that affect physical availability which are appropriate for specific aquifer systems and groundwater basins and sub basins.
  - When developing rule amendments, ADWR shall consult with cities, towns, and counties (Stakeholder Process).

# Public Process

- The Department will conduct informational workshops around the State starting in August 2007 and completing them in October 2007/ November 2007
- The Department will prepare concept papers, draft proposed rules, and start a stakeholders process in an October 2007/ November 2007 timeframe
- It is anticipated that the stakeholders process will end in July 2008 and the Department will submit draft rules to the Secretary of State shortly thereafter, which will include another required public process.

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