

FACT SHEET – Water Adequacy DRAFT 1-05-07

Current Law

Outside of the State's five Active Management Areas, developers of subdivisions must submit plans for the water supply for the subdivision to the Arizona Department of Water Resources (ADWR) prior to recording the plat, unless the developer has a written commitment of service from a city, town, or private water company that has been Designated as having an Adequate Water Supply by ADWR. If the developer is unable to demonstrate that an Adequate Water Supply is available, the final plat for the subdivision can still be approved by the platting authority, however, the State Real Estate Commissioner (ADRE) requires that all promotional material and contracts for sale of lots within the subdivision must note that the subdivision does not have an adequate water supply. This allows for homes located in subdivisions without adequate water supplies to be sold to homeowners. Additionally, although the first person to purchase the property has to be notified of the inadequate water supply, subsequent purchasers are not required to be notified.

Proposed Modifications

The proposed modification is for subdivisions *outside of Active Management Areas.*

Title 11: Counties

- Allows counties to require new subdivisions to have a determination of adequate water supply from ADWR. Exemptions are allowed in three cases: (1) where subdivider has a vested right under the prior law; (2) where subdivision will be served by a water supply project that will be completed within 20 years and certain conditions are met; (3) where water will be transported to subdivision by motor vehicle or train and certain conditions are met).
- Requires counties that adopt adequacy requirements to notify ADWR and ADRE.
- Provides that the adoption of the Adequacy provision cannot be rescinded by the County at any time – although does allow for amendments if consistent with the statute.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 notification of adequacy on each plat.

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. Exemptions are allowed in three cases: (1) where subdivider has a vested right under the prior law; (2) where subdivision will be served by a water supply project that will be completed within 20 years and certain conditions are met; (3) where water will be transported to subdivision by motor vehicle or train and certain conditions are met).
- 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.

Title 32: Professions & Occupations (specifically, Chapter 20 – 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.

Title 33: Property

- Requires a seller of real property to disclose to buyer if plat for property was approved by city, town or county pursuant to exemption for transportation of water by motor vehicle or train. Disclosure must be made before execution of sales contract and in the deed.

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 above.
- Defines Adequate Water Supply as groundwater, surface water or effluent that is continuously, legally and physically available and that subdivider has the financial capability to make the supply of water available for the proposed use.
- Provides for public notice, objections and administrative hearings of applications that have been issued in counties or municipalities that have adopted the adequacy provision.

Session Law:

- Requires director to include the projected demands of new developments projected to be built in cities, towns and counties that do not have mandatory adequacy requirements when determining physical availability for a subdivision in a city, town or county that requires adequacy.
- Requires director to amend Adequate Water Supply Rules to include criteria for making determinations pursuant to the exemption authorized for water projects that will be completed within 20 years.
- Requires director to amend Adequate Water Supply rules to include criteria for demonstrating a physically available water supply in specific aquifer systems and groundwater basins and sub-basins outside of active management areas.
- Requires director to consult with cities and towns that have an adequacy requirement when making the rule amendments.