

Dear Interested Party:

The Department has been working with the stakeholder group and preparing draft rule modifications for the water adequacy program outside of the AMA's as required by the passage of SB 1575 in 2007. The Department prepared and distributed a draft rule package and requested that the public comment by August 2008.

The Department completed its review of the public comments, and has made several changes to the draft rule as originally proposed as a result. The Department is preparing to initiate the formal rule making process and submit the amended draft rules to the Secretary of State. As a final step before the initiation of the formal process, the Department is providing for public review and comment two documents on its website: (www.azwater.gov) **1) Informal Public Comments and Department Responses**, and **2) Rule Submittal Preamble and Amended Draft Rule Language**. These documents will be available on the website for a 10-day review and comment period. The Department will accept comments until November 15, 2008. During this final informal public review and comment period anyone wishing to provide comments may do so via:

Email: Doug Dunham dwdunham@azwater.gov Re: SB 1575 Comments or,

Regular Mail: SB 1575 Comments, Attn: Doug Dunham, Deputy Assistant Director, Water Management Division, Arizona Department of Water Resources, 3550 North Central Avenue, Phoenix Arizona 85012.

The Department will also make available soon, a new draft copy of the related Substantive Policy Statement "Hydrologic Guidelines for Determining Assured and Adequate Water Supplies." Notice of this will be distributed via this same email list.

This will conclude the informal public stakeholder process for the modification of the water adequacy rules. Following this 10-day review period which ends on November 15, 2008, the Department will begin the final preparations for the formal submittal of the rule making package to the Secretary of State. This submittal will initiate the formal public rule making process. Questions on this process may also be directed to the contact above.

Sincerely,

Michelle Moreno

Arizona Department of Water Resources

mamoreno@azwater.gov

October 30, 2008
SB 1575 Water Adequacy Rule Modification
Informal Public Comments and
Department Responses

I. Introduction

The Department initiated a series of workshops around the state beginning in the spring of 2007 to explain to interested parties (cities, towns, counties, the development community, and the general public) the scope and impact of SB 1575 as enacted by the Arizona State Legislature.

Beginning in February 2008, the Department initiated a series of stakeholder meetings to present draft rule concepts and language as mandated by SB 1575. A total of 23 informal public meetings were held presenting the draft rules and seeking public comment. Included in the stakeholder meetings were three that were technical in nature and attended primarily by hydrologic professionals representing municipal water system operators, hydrologic consultants, and representatives of the United States Geological Survey (USGS). The focus of the technical meetings was to review the current known status of hydrologic conditions within the state and formulate recommendations on standards for determining physical availability of groundwater. While the remainder of the public stakeholder meetings included hydrologic discussions, they focused primarily on the administrative and legal aspects of the proposed rule package.

The Department requested that written comments on the draft rules be submitted by the stakeholder group in August of 2008. The Department received multiple comments from various parties involved in the stakeholder process. Of the 8 comments received, four, which were strictly technical in nature, were received in May and August of 2008 as part of the technical hydrologic review of the conditions of the C and R aquifer of the Coconino Plateau area of northern Arizona (Small, Ploughe, Hoffman, McGavock). These comments have been included since some relate to the draft rules, as well as the related Substantive Policy Statement “Hydrologic Guidelines for Determining Assured and Adequate Water Supplies.”

Including the four technical responses outlined above, the Department received a total of 8 responses from various interested parties: Deb Hill, Chair, Coconino County Board of Supervisors (county staff comments were also included as an attached memo); Chip Davis, Supervisor, Yavapai County Board of Supervisors; Mike Ploughe, Town of Payson; John Hoffmann, USGS; Brad Hill, City of Flagstaff; Ed McGavock, Consultant; Gary Small, Consultant; and Maureen George, Law Offices of Maureen Rose George, P.C. All comments were made available on the Department website, and are on file for public review.

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The original draft of the proposed rules included specific requirements on conducting hydrologic studies demonstrating physical availability within the C and R aquifers of Northern Arizona. A majority of the technical comments on the hydrologic study requirements agreed on three points: 1) that there was a general lack of detailed hydrologic information for most of the C and R aquifers; 2) as a result, the standards originally proposed in the draft rules were too onerous and cost prohibitive to be met by even the largest water providers in the region; and 3) the Department should allow more flexibility for site-specific conditions, allowing for the modification of the standards as the general detailed scientific knowledge of the C and R aquifers grows. The Department agreed with these observations. As such, the Department removed the specific hydrologic study requirements from the draft rule. This will allow for greater flexibility to accommodate site specific conditions, and incorporate new data as scientific knowledge of the aquifers increases. This also conforms to the current structure of the assured and adequate water supply rules. The rules provide the standard that must be met for the 100-year physical availability demonstration, and the policy statement (Substantive Policy Statement, “Hydrologic Guidelines for Determining Assured and Adequate Water Supplies”) and application forms provide the detail on how the supporting documentation and information is submitted to the Department.

All comments received have been reviewed by the Department and addressed; either changes were made or the Department responded as to why the suggested changes should not or could not be made. The comments and responses are grouped by those that deal directly with the draft rules as currently proposed, and those that are related to the detailed hydrologic study requirements, which will be dealt with in the new Substantive Policy Statement, “Hydrologic Guidelines for Determining Assured and Adequate Water Supplies.”

II. Comments related to modification of the water adequacy rules under SB 1575

Comment: Why is the state not demanding more funding for long-term monitoring and research on hydrologic conditions? (Supervisor Chip Davis, Yavapai County Board of Directors, Deb Hill, Chair, Coconino County Board of Supervisors)

Response: This is a legislative funding priority question beyond the scope of this rule package.

Comment: Other than the initial adoption of SB 1575 are there any other provisions that require a unanimous vote? (Supervisor Chip Davis, Yavapai County Board of Directors)

Response: This is a provision of the statute and beyond the scope of this rule package. However, the Department’s interpretation of the statute is that only the adoption of SB 1575 by a county requires a unanimous vote. Adoption of the optional

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hailed water exemption or adoption of SB 1575 by a city or town requires a simple majority

Comment: Hauled water sources are not regulated. Could the rules require identifying and quantifying the source and require a 100-year supply? (Supervisor Chip Davis, Yavapai County Board of Directors)

Response: The Rules do not need to be modified to require identifying and quantifying a 100-year supply for hauled water. The statute (A.R.S. § 45-108), and the Rules require the demonstration of a 100-year adequate water supply for ALL water supplies associated with a proposed subdivision, regardless of source. However, SB 1575 specifically gave the local platting authorities (cities, towns and counties) the option of allowing the approval of subdivisions with an inadequate hauled water supply. Allowing such hauled water subdivisions is a choice the local platting entity has; it is not mandatory under the statute to allow such developments. In addition, when creating local ordinances that may allow for the hauled water developments, the local entities may place additional restrictions on the exemption as they see fit.

Comment: The issue of proliferation of exempt wells and lot splits are not addressed in the rule package. (Supervisor Chip Davis, Yavapai County Board of Directors, Deb Hill, Chair, Coconino County Board of Supervisors)

Response: These are statutory issues and are beyond the scope of this rule package.

Comment: Question the management of aquifers when they cross political boundaries, where one county may adopt and the adjoining may not. (Supervisor Chip Davis, Yavapai County Board of Directors)

Response: SB 1575 and the draft rules (R12-15-716(B)(3)(d) and (E)(2)(e)) require an applicant to estimate the projected demands and account for those demands that are likely to occur in an adjoining jurisdiction that does not adopt the adequacy requirement when determining physical availability.

Comment: Can we assign surface water dedicated rights to protect natural surface flows? (Supervisor Chip Davis, Yavapai County Board of Directors)

Response: This is a statutory provision and is beyond the scope of this rule package.

Comment: Long-term regional planning is needed in rural areas similar to the process currently done in the AMAs; long term regional monitoring should also be required, in support of regional modeling in rural areas, as is currently done in the AMAs. (Supervisor Chip Davis, Yavapai County Board of Directors, Deb Hill, Chair, Coconino County Board of Supervisors; Gary Small, Consultant)

Response: The Department agrees that long-term regional planning is needed and the Legislature has created the Rural Watershed Initiative to assist rural communities and

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regions on long-term water supply planning. However, regional planning is a voluntary measure that regional communities can also implement on their own. Imposing the same reporting and monitoring requirements that exist in the AMAs to support regional modeling would require a statutory modification and is beyond the scope of this rule package. The Department does pursue regional modeling in rural areas; however, budgetary constraints hamper these efforts. This is a legislative funding priority issue and is beyond the scope of this rule package.

Comment: Generally supportive of rule modification proposal. (Supervisor Chip Davis, Yavapai County Board of Directors; Deb Hill, Chair, Coconino County Board of Supervisors; Gary Small, Consultant; John Hoffmann, USGS; Brad Hill, City of Flagstaff; Ed McGavock, Consultant)

Response: The Department appreciates the support.

Comment: Draft rule R12-15-713(M)(2)(d) refers to “municipal physical works” while the introductory paragraph in (M) does not require the project to be a municipal project. The discussions at SWAG and the existing language in A.R.S § 45-108.03 (as modified by SB 1575) indicate the intent was to permit the continuation of the development while the project neared completion. Suggest adding “Municipal” before “water supply project” in (M)(2)(d). (Maureen George, Law Offices of Maureen Rose George, P.C.)

Response: The word “municipal” was inadvertently included before “physical works.” The Department has deleted “municipal” from draft rule R12-15-713(M)(2)(d).

Comment: Generally supportive of the concept of percent remaining in the aquifer instead of an absolute maximum depth limit in the C and R aquifers. (Brad Hill, City of Flagstaff; Gary Small, Consultant; John Hoffmann, USGS; Ed McGavock, Consultant)

Response: The Department appreciates the support.

Comment: The statutory exemption that allows approval of a subdivision which will have a supplemental water supply provided by a water infrastructure project that will be completed within 20 years lacks sufficient criteria to guarantee completion of such a project and lack sufficient enforcement provisions if it is not completed; ADWR needs additional enforcement authority. (Deb Hill, Chair, Coconino County Board of Supervisors)

Response: This is a statutory exemption and is therefore beyond the scope of this rule package. However, the Department disagrees. Specific financial and other requirements are in place in both the statute and rule as to require sufficient proof that the required criteria are met

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Comments: Rules do not take into account local conditions; they should be modified to expressly state local conditions will be taken into account. (Deb Hill, Chair, Coconino County Board of Supervisors)

Response: The Department does not agree. The physical availability requirements, information used to determine the demands of the proposed application, and the potential supply to support the application, are completely reliant upon the site-specific information provided by the applicant. All site-specific information, such as the source of supply, site-specific geology, conservation measures, projected population, and high demand uses within the proposed project design, is unique to the specific application, and taken into account by the Department. No additional change to the rule language is warranted.

Comment: It is unclear what is meant by the terms “use,” “study area,” and “area of impact” found in R12-15-716(C)(3) and (F)(2). Definitions should be provided for these terms. (Deb Hill, Chair, Coconino County Board of Supervisors) (Note that the terms “study area” and “area of impact” are not used in the referenced subsections; however, those subsections refer to the “affected area,” which the Department assumes is the phrase the commenter intended to reference.) How large does a study area have to be? (Gary Small, Consultant)

Response: The Department does not agree that these terms require definitions in the rules. Taken in full context under R12-15-716, an applicant must demonstrate that sufficient physical availability exists for the demands associated with the pending application, taking into account all existing uses on the same water source in the affected area. Because of the need to take into account the project specific design as well the site specific conditions of an area (see response above), it would be near impossible to define the affected area or study area universally for all applications. The Department always recommends that an applicant meet with the Department prior to initiating the hydrologic study to verify the methodology as well as the study area to be used in an application.

Comment: There is no clear-cut method for a developer to estimate the costs associated with proving an adequate water supply early in their planning and decision-making process. (Deb Hill, Chair, Coconino County Board of Supervisors)

Response: The Department agrees that assessing potential costs early in the planning process is difficult. However, the Department believes that the difficulty assessing costs before the planning process is complete, which arises from the wide variety of options in creating the water supply plan and demonstrating that it meets the adequacy criteria, is outweighed by the flexibility for the applicant. Given the multiple variables and tools available to a developer to bring a water portfolio together, the complete freedom to design a development as they see fit, and other site-specific variables such as local geology, a single, simple cost estimation is difficult to bring together. The program is intentionally designed to be open-ended to give potential developers the maximum flexibility to design their development to obtain a water adequacy determination. Given

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the variability of water supplies across the state, a single, one-size-fits-all approach would not work.

Comment: Current online Subdivision Demand Calculator is not user friendly. (Deb Hill, Chair, Coconino County Board of Supervisors)

Response: This is an optional tool provided to assist the public in supplying the needed demand information to the Department and is not a part of the proposed rule package modification. The Department appreciates the observation and as a result has updated the tool to increase ease of use, and provided more detailed directions and definitions of terms to make the tool more user-friendly.

Comment: The draft rules do not address the future phases of existing subdivisions; suggest specifically addressing this in the rules. (Deb Hill, Chair, Coconino County Board of Supervisors)

Response: The Department does not agree. The existing statutory framework currently defines this process for future subdivisions and thus modification of the rules is not warranted. A new plat, regardless of whether it is a new phase of a development with a previously recorded plat, must apply for a water report, if it will not be served by a water provider designated as having an adequate water supply, prior to recordation and prior to seeking a public report. If the local jurisdiction adopts the adequacy requirement, then the new plat must obtain an adequacy finding on the water report prior to recordation and prior to seeking a public report with the Arizona Department of Real Estate.

Comment: Concern over potential “banking” or “locking up” of water supplies associated with the issuance of an Analysis of Water Adequacy for subdivisions that are never built; suggest inclusion of provision similar to designations for an initial timeframe for adequacy determinations. (Deb Hill, Chair, Coconino County Board of Supervisors)

Response: The Department disagrees with the comment. The existing rules limit the term of an analysis (assured or adequate) to 10 years. While the rules also allow for possible extensions for the applicant, which are only granted if the applicant can demonstrate progress toward completion of the subdivision, once the term of the analysis expires the Department no longer considers the supply to be “locked up” and it then is free to be used by other applicants in the area. The Department has worked with the development community on previous rule modifications in the past (12 A.A.R. 3475, 3494, September 29, 2006) and came to a consensus. The Department believes the rule as it currently exists balances the need for long-range financial planning by the development community with the Department’s desire not to unduly restrict access to water supplies for other applicants in the same area.

Due to site specific variables including site specific hydro-geology, specific demand in the application, volume of existing uses relying upon the same water supply, the number of existing lots and previous adequate determinations made by the Department, the exact

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size and scope of the study area will vary greatly. The study area must be large enough to encompass the hydrologic impact of the applicant's demands also taking into account all existing demands on the same water source. Determining the exact areal extent of these compounding influences is a standard practice with hydrologic consulting professionals. The details of such studies are laid out in the Substantive Policy Statement "Hydrologic Guidelines for Determining Assured and Adequate Water Supplies."

Comment: Section F refers to anticipated demands in an adjoining basin but not in a mandatory adequacy area but the rule is not clear how those demands are to be assessed by the Department. (Deb Hill, Chair, Coconino County Board of Supervisors)

Response: SB 1575 and the proposed rule R12-15-716(B)(3)(d) and (E)(2)(e) require the applicant in a mandatory adequacy area, when demonstrating physical availability, to take into account demands of anticipated future uses that may rely upon the same water supply in other jurisdictions not requiring adequacy. While no prediction will always accurately capture all of the potential development in an area, a reasonable attempt must be made to try and predict such future demands. The applicant may rely upon any government planning entity, local planning authority or association of authorities for such predicted information. Examples of such entities include county planning and zoning divisions, a county association of governments, the Arizona Department of Economic Security, universities, etc. The Department has worked with such entities in the past and often relies on them for growth projection data. Directions for gathering acceptable information will be included in the Substantive Policy Statement "Hydrologic Guidelines for Determining Assured and Adequate Water Supplies" and on the application forms used by the Department. Contact information for such entities will also be provided in the application materials.

Comment: It may be impractical to determine physical availability for 100 years. Could long-term monitoring substitute to show trends instead? (Gary Small, Consultant)

Response: This would require a statutory change and is beyond the scope of this rule package. A.R.S. § 45-108 requires a determination of the adequacy of the water supply for 100 years.

Comment: Are domestic water improvement districts (DWID's) and water co-operatives (Co-Op's) considered municipal water providers under the water adequacy program? A.R.S. § 45-561- (10) defines "municipal provider" as "a city, town, private water company, or irrigation district that supplies water for non-irrigation use." Rules should be modified to include DWIDs and Co-Ops as municipal water providers. (Deb Hill, Chair, Coconino County Board of Supervisors)

Response: The Department disagrees. The issue raised by commenter relates to whether DWIDs are included in the definition of "municipal provider." The statutes that provide the framework for DWIDs also provide that for purposes of Title 45, DWIDS shall be treated as private water companies (and therefore as municipal providers under

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the AWS rules). The Department addressed a similar comment in the September 2006 AWS rulemaking (12 A.A.R. 3475, 3494, September 29, 2006), as follows:

Comment:

Proposed rule R12-15-701(49) defines "municipal water provider" by referencing A.R.S. § 45-561. The statutory definition defines the term to include a city, town, private water company or irrigation district that provides water for non-irrigation use. Does this definition include community facilities districts? (Sheryl A. Sweeney, Ryley Carlock & Applewhite.)

Response:

Yes. A community facilities district established pursuant to A.R.S. §§ 48-701, et seq., "that distributes or sells groundwater is a private water company only for purposes of title 45, chapters 2 and 3.1." A.R.S. § 48-708(B). Additionally, the definition includes county improvement districts established pursuant to A.R.S. §§ 48-901, et seq., because such districts "shall have the same authority and responsibility as an incorporated city or town pursuant to the provisions of title 45." A.R.S. § 48-909(C).

The issue of defining both DWIDs and community facilities districts is clearly addressed in statute and does not need to address in the proposed rules. The issue of Co-Ops is also addressed. Co-Ops are adjudicated by the Arizona Corporation Commission to be for public service or not for public service. Since the Commission has original jurisdiction, the Department considers such water systems to be private water companies for the purposes of the assured and adequate water supply rules.

Comment: The Coconino Plateau lacks a regional groundwater flow model with which to start the program. While the USGS is developing its regional model, ADWR should develop other models in Northern Arizona. (Deb Hill, Chair, Coconino County Board of Supervisors)

Response: It is unclear if the commentator intended "start the program" to mean adoption of the draft rules, implementation of the adequacy program under A.R.S. §45-108, or adoption of the adequacy requirement by a local jurisdiction. The Department does not agree that adoption of the draft rules is reliant upon the model being developed by the USGS. The draft rules do not mandate use of such a model, and the development of such a model is beyond the scope of these rules. While such a model may assist applicants, it is not the only option available to applicants. If the Commentator intended "program" to mean the adequacy program in general, again the Department disagrees, because the program has existed under A.R.S. §45-108 and has been successfully implemented since 1973 without the existence of such a model. If the Commentator is

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referring to the adoption of the water adequacy requirement, the Department disagrees. This is a local legislative decision, and beyond the scope of these rules.

Comment: Costs associated with proving water adequacy in an existing service area could be onerous for one subdivider who may end up having to prove adequacy for the existing system.

Response: The Department does not agree. Costs associated with proving water adequacy in an area that has adopted the adequacy requirement are beyond the scope of this rulemaking. The presumption of greater costs associated with a specific development within an existing service area vs. being located outside of an existing service area is incorrect. The applicant need only demonstrate the additional supply needed for its subdivision. The applicant does not need to re-prove all of the adequate water supply criteria (physical, legal, continuous, financial capability and adequate water quality) for existing connections within a providers service area. The applicant simply needs to take the existing demands into account when determining the next incremental supply needed for his application. This would be the same if the applicant were not in the service area but were proposing to draw water from the same source. In fact, the costs for an applicant outside an existing service area may be greater than the costs for an application within an existing service area due to the need for new infrastructure as well as data acquisition.

Comment: Use of multiple percentage of aquifer saturation to determine pumping test requirements, and use of multiple percentage of aquifer saturation remaining standards is too cumbersome. (Mike Ploughe, Town of Payson; Brad Hill, City of Flagstaff)

Response: The Department agrees. The new rule proposal now has a single percentage requirement for the remaining groundwater in storage criterion. The applicant must demonstrate that at least 50 percent of the groundwater in storage will remain after 100 years of groundwater withdrawals. The aquifer test requirements will be determined based upon the general guidelines found in the Substantive Policy Statement “Hydrologic Guidelines for Determining Assured and Adequate Water Supplies” and upon site-specific information, which will provide applicants with greater flexibility.

Comment: ADWR should adopt locally relevant well spacing rules and require groundwater management to minimize demands within an area’s sub-regional “safe-yield.” ADWR should consider establishing an initial estimate of safe-yield based upon existing data and then refine it as new wells and test results warrant. A link of supply and demand should be recognized via adequate water supply policy. Demands used for 100-year projections could be reined in through per capita usage targets and limits on out-door water use. Provisions for recharge of reclaimed water would be helpful. (Mike Ploughe, Town of Payson)

Response: This would require a statutory change and is beyond the scope of this rule package.

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Comment: Concerns were raised regarding requiring 30-day aquifer test where such testing is not always warranted. Other concerns raised included costs associated with such long-term pumping in remote locations and public perception of wasting water where pumped water could not be used in an existing system (Brad Hill, City of Flagstaff; Mike Plough, Town of Payson; Deb Hill, Chair, Coconino County Board of Supervisors; Gary Small, Consultant)

Response: The Department agrees. The rules have been modified to remove the requirement for a minimum 30-day aquifer test. The method for determining pumping test requirements will be determined based upon the general guidelines found in the Substantive Policy Statement, "Hydrologic Guidelines for Determining Assured and Adequate Water Supplies," and upon site-specific information, which will provide applicants with greater flexibility. The policy statement allows for shorter duration aquifer testing and/or alternative data to be submitted in some cases.

Comment: ADWR should acknowledge the existence of deep aquifers in the Pine and Williams areas and that chronic water shortages in these areas occurred because of high costs for deep drilling, forcing the reliance on shallow, low yield wells that are sensitive to drought. (Mike Ploughe, Town of Payson)

Response: The Department recognizes the existence of deep aquifers in northern Arizona. As the commentator pointed out, the existence of such aquifers does not guarantee that a water provider or a subdivision has an adequate water supply. This is one reason the Department is proposing to modify the physical availability requirements for the C and R aquifers. However, it should be reiterated that the statute requires that all five criteria must be met, including financial capability to construct necessary infrastructure (including deep wells), legal availability of the supply, demonstration that the supply is of adequate quality, and demonstration that the supply is continuously available in addition to the supply being physically available.

Comment: Several comments were received concerning the remaining saturated thickness physical availability criteria. These included: original saturated thickness measured when (current conditions, pre-development, at the time of application)? If aquifer continues to decline would percent remaining continue to decline? How does percent of saturated thickness remaining relate to storage capacity? How would this relate to artesian conditions? (Brad Hill, City of Flagstaff; Mike Plough, Town of Payson; Deb Hill, Chair, Coconino County Board of Supervisors; Gary Small, Consultant, John Hoffmann, USGS; Ed McGavock, Consultant)

Response: The physical availability criteria for the C and R aquifers is based on 50% of the projected remaining groundwater in storage at the proposed location(s) of withdrawals as estimated by the projected remaining saturated thickness at the proposed location(s) of withdrawals that is numerically "weighted" for variations in storage properties of aquifer sub-units or sub-layers. The one-time calculation of the groundwater in storage in the aquifer will be based on the groundwater in storage as of effective date of these rules. The Department will not continue to recalculate the percentage remaining

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of groundwater in storage for each application, essentially allowing the dewatering of the aquifer.

Comment: The Department should consider using an incremental approach of implementing the rules similar to the enactment of the assured water supply rules in the AMA's after the enactment of the groundwater code in 1980. (Brad Hill, City of Flagstaff)

Response: The Department disagrees. The modification of the existing water adequacy rules to accommodate the new provisions of SB 1575 is not comparable to the adoption of new rules requiring consistency with the AMA's management goal, which required (among other things) the shift of reliance from using groundwater to the use of renewable supplies. In 1980, the legislature established as a management goal for most AMAs that within 45 years, over-drafting of groundwater in the AMAs be stopped (safe-yield by 2025). No such comparable requirements are contained within SB 1575. However, the Department has proposed a new methodology for demonstrating physical availability in the Flagstaff area (Coconino Plateau) under the new rule proposal (percentage of remaining groundwater in storage) in addition to retaining the existing maximum depth criterion as an alternative. The availability of the current standard plus the ability to use the new criteria will allow a transition for applicants under the new rules, giving them maximum flexibility for their unique circumstances.

Comment: The draft rules appear to be written more for single subdivisions seeking a water report than for a municipality seeking a designation of water adequacy. (Brad Hill, City of Flagstaff)

Response: The Department disagrees. Although the majority of questions and examples of the application process were from and responses geared toward individual developers during our public meetings, the criteria for demonstrating physical availability are exactly the same for single subdivisions and for designated providers. In some instances the requirements for a provider seeking a designation of water adequacy to demonstrate continuous availability and the financial capability to construct future infrastructure are more flexible than for a single subdivision.

Comment: What are the financial implications of not considering financial capability as a factor to issue variances? (Gary Small, Consultant)

Response: A.R.S. 45-108 and existing rules require the demonstration of sufficient financial capability to complete all necessary water infrastructure to obtain a determination of adequate water supply. The draft rule amendments in question (R12-15-716(C)) allow the Director to grant an exemption from the maximum depth to water limit for an adequacy applicant in an area other than the C and R aquifers after considering whether the groundwater is available at the greater depth, whether withdrawal of the groundwater from the lower depth will impact existing users, and whether wells have been drilled to obtain the groundwater at the greater depth. The financial capability

criterion has been replaced with a consideration of whether wells have been drilled to obtain the groundwater.

Comment: Our understanding is that part of the review process for the new rules involves an evaluation of costs and benefits associated with the new rules. There are significant costs associated with the proposed rules and it is still unclear to us how a developer could estimate an approximate amount for proving adequacy. (Deb Hill, Chair, Coconino County Board of Supervisors)

Response: The Department disagrees that the draft rule amendments impose significant costs. The commentator is correct that the Department must evaluate the costs associated with the adoption of this rule package. However, the rule modifications themselves will have minimal economic impacts. The Department recognizes, however, that legislative action on a local level (city, town or county) where the local legislative body may act to require an adequacy determination may increase costs for developers who are used to simply obtaining an inadequate determination from the Department. If this adequacy requirement should be adopted, the potential applicant may experience increased costs associated with proving the adequacy of the water supply if the developer anticipated not demonstrating an adequate supply, but the basic standards for an adequate water supply determination currently in place (i.e. without the rule modification) remain the same. It should be noted that the new hydrologic standard proposed for the C and R aquifers is optional, and the applicant may choose to use the current standard without the rule modification. The Department anticipates the new standard would be easier to meet, and thus less costly than the current standard in most areas of the C & R aquifers. The local legislative body in making this decision will undoubtedly weigh this potential impact to the development community against the economic benefit of protecting the long-term water supplies of their current and future residents.

Comment: Is a one-hour well test sufficient to determine whether the water supply it produces will meet the five elements of the mandatory water adequacy program? A comment was made by a local utilities director during a county work session on the proposed adequacy rules that in 99% of the cases a one-hour test on a new well is sufficient to determine the well's productivity. (Deb Hill, Chair, Coconino County Board of Supervisors)

Response: No. Regardless of whether the local legislative body adopts the adequacy requirement, the five criteria of the water adequacy program will remain the same: physical, legal, and continuous availability, adequate quality, and the applicant must have sufficient financial capability to complete the needed infrastructure. The local legislative body's decision to adopt or not adopt the water adequacy requirement does not modify these five standards. Test-pumping a well (or aquifer testing) is only part of the information needed to address physical availability; it does nothing to meet the other four criteria. As to the one-hour duration of said aquifer test, the Department observes that a one-hour test would hardly remove a sufficient volume of water to adequately stress the aquifer some distance from the well. A one-hour-duration test certainly is not enough to determine aquifer performance characteristics to predict available 100-year water

supplies. A review of comments submitted in response to this rule package proposal indicate that representatives of two cities in Northern Arizona (Brad Hill, City of Flagstaff; Mike Ploughe, Town of Payson), as well as Coconino County, all recommend at least a 7-day test. The Department believes that the longer an aquifer test is run the more likely the test is to reveal unknown characteristics of the aquifer. However, the Department also recognizes the balance needed in seeking aquifer data vs. costs associated with such testing. The method for determining pumping test requirements will be determined based upon the general guidelines found in the Substantive Policy Statement, "Hydrologic Guidelines for Determining Assured and Adequate Water Supplies," and upon site-specific information, which will provide applicants with greater flexibility. The policy statement allows for shorter duration aquifer testing and/or alternative data to be submitted in some cases.

III. Technical Hydrologic Comments

The remainder of the comments received are not directly commenting upon the draft rule language, but are related to the technical requirements of hydrologic studies submitted in support of physical availability demonstrations for 100-year adequate water supply applications in the C and R aquifers of northern Arizona. Details of the study requirements will be addressed in the Substantive Policy Statement "Hydrologic Guidelines for Determining Assured and Adequate Water Supplies."

Comment: Commentator is concerned that the hydrologic complexity, sparseness of data, and the Department's lack of experience in northern regional aquifers has led to a far too conservative position at ADWR. It also appears that ADWR has very little confidence in the presence of regionally extensive or viable aquifers in northern Arizona. (Mike Ploughe, Town of Payson)

Response: The Department agrees that hydrologic complexity and data sparseness are significant issues in the regional aquifer systems of northern Arizona. However, the Department disagrees that its policies are far too conservative. The Department believes the policies formulated are commensurate with the level of knowledge and the importance of the determinations being made. The Department must make a determination that the proposed water is physically and continuously available for 100 years. Once the determination is made and a lot has been sold, the Department may not revoke the decision. The Department does recognize the existence of large regional aquifers in northern Arizona.

Comment: Several comments were received concerning the proposal to require large-scale geophysics in addition to aquifer testing. Most commentators considered the blanket requirement too costly for all applications; certain situations would warrant such explorations, but not all. (Brad Hill, City of Flagstaff; Mike Plough, Town of Payson; Deb Hill, Chair, Coconino County Board of Supervisors; Gary Small, Consultant, John Hoffmann, USGS; Ed McGavock, Consultant)

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Response: The Department agrees. In the Substantive Policy Statement, “Hydrologic Guidelines for Determining Assured and Adequate Water Supplies,” the Department will recommend using such geophysics only in those cases where it is warranted and will not require it in all cases. The applicants will be encouraged to discuss data needs with the Department prior to application and the conducting of field work. Depending on existing data and local complexity, the use of such geophysics may not be needed.

Comment: Several comments were received concerning the potential requirement of the use of specific down-hole logging techniques when installing wells. It was observed that in a great many cases the use of these techniques would provide valuable data. (Ed McGavock, Consultant; Deb Hill, Chair, Coconino County Board of Supervisors)

Response: The Department agrees that borehole logging techniques provide valuable data, both for the most efficient design and completion of the well and also for providing important information on local hydrogeologic conditions. In the Substantive Policy Statement, “Hydrologic Guidelines for Determining Assured and Adequate Water Supplies,” the Department will recommend, but not require, the use of borehole geophysical and video logging techniques. Applicants are encouraged to discuss data needs with the Department prior to conducting field work or submitting an application.

Comment: Process for determining saturated thickness in areas with little data needs to be further explained; strict use of remaining saturated thickness may have issues related to the variability of storage capacity across the aquifer. (Deb Hill, Chair, Coconino County Board of Supervisors; John Hoffman USGS; Ed McGavock, Consultant)

Response: The total thickness of the C & R aquifer system may be estimated using regional data, if site-specific data or other local geophysical or drilling data are not available, or a combination of all the above. In recognition of the variability of storage capacity, the Department proposes the use of a numerically “weighted” saturated thickness to account for variations in the local aquifer units or sub-units. This will be accomplished by using a combination of saturated thickness and specific yield data for each geologic unit in the local aquifer system.

Comment: Need confirmation of an analytical model/water use criteria and “model” example. Conversations with ADWR staff indicated that smaller subdivisions (with demands of 100 acre-feet per year or less) will be allowed to use analytical models. (Deb Hill, Chair, Coconino County Board of Supervisors)

Response: Generally speaking, applications with demands of 100 acre-feet per year or less will likely be allowed to demonstrate physical availability using analytical models. However, in certain circumstances, conditions may warrant the use of numerical models in geologically complex areas or where the committed and current demands in an area approach 50% of the remaining weighted saturated thickness. All models (numerical and analytical) submitted to the Department are public information. Applicants may use that public information as an example or to expand upon where applicable.

Comment: Need an “example” numerical model and more clarity on model parameters. Need more detailed guidance on constructing a numerical model such as what cell size to use, number of model layers, and how a new model may be nested in a larger existing model.

Response: In the Substantive Policy Statement, “Hydrologic Guidelines for Determining Assured and Adequate Water Supplies,” the Department will provide general guidelines in constructing an acceptable model. Generally speaking, widely accepted modeling techniques are expected. Specifics such as cell size, model layers, nesting, and aquifer parameters are all site-specific variables. The Department recommends pre-application meetings with its Hydrology staff to discuss the known parameters of the area and acceptable model construction. All models (numerical and analytical) submitted to the Department are public information. Applicants may use that public information as an example or to expand upon where applicable.

Comment: Account for recharge in modeling.

Response: The existing Substantive Policy Statement, “Hydrologic Guidelines for Determining Assured and Adequate Water Supplies,” currently has a provision for inclusion of recharge in characterizing an aquifer. The Department has retained this item in the new revised the Substantive Policy Statement, “Hydrologic Guidelines for Determining Assured and Adequate Water Supplies.”

Comment: Lack of specifics regarding ADWR’s hydrologic study assistance for small subdivisions. Please clarify. (Deb Hill, Chair, Coconino County Board of Supervisors)

Response: When requested the Department currently conducts an initial hydrologic physical availability review for subdivisions of 20 lots or less. This review is based upon existing data the Department has on file. This is not a guarantee that in all cases the Department will have sufficient information to issue an adequate determination or a guarantee that existing information would support an adequate determination. The Department will expand this review for areas that adopt the adequacy requirement to include subdivisions of up to 30 lots. Again, this review is based upon existing data the Department has on file, and will not guarantee that sufficient information exists to demonstrate physical availability.

Comment: Please clarify that existing production wells may be used as observation/monitoring wells. (Deb Hill, Chair, Coconino County Board of Supervisors, Brad Hill, City of Flagstaff)

Response: The Department has stated previously and has clarified in the Substantive Policy Statement, “Hydrologic Guidelines for Determining Assured and Adequate Water Supplies,” that existing production wells may be used as observation/monitoring wells when conducting aquifer tests or conducting long-term monitoring.

Comment: Proposed guidelines recommend one test well per square mile. While the reasoning is technically sound, the cost would be prohibitive for a large provider such as Flagstaff. This requirement if applied to the Red Gap Ranch owned by the City of Flagstaff would require 13 production wells be installed, at an estimated cost of over \$15 million. (Brad Hill, City of Flagstaff)

Response: The Department will clarify in the Substantive Policy Statement, “Hydrologic Guidelines for Determining Assured and Adequate Water Supplies,” that at least one well per square mile of pumping center (the actual area where production wells are to be located) should be installed. The Department does not intend to require one well per square mile of total service area, or one well per square mile of provider-owned property, such as the Red Gap Ranch area. Areas where sufficient data already exists may also reduce the number of new wells needed.

Comment: Commentator observes that several areas in the C and R aquifers contain poor water quality where the groundwater may contain high total dissolved solids and other naturally occurring elements, such as arsenic. It is also recommended that water quality testing be conducted as part of a hydrologic testing program, but what standards would be used? (Ed McGavock, Consultant)

Response: The Department agrees that water quality testing is a useful tool in a hydrologic testing program, but such sampling and testing is not required in the Substantive Policy Statement, “Hydrologic Guidelines for Determining Assured and Adequate Water Supplies.” Under the assured and adequate water supply rules, water quality sampling and testing is only required for applications where the water service will not be provided by a water provider regulated by the Arizona Department of Environmental Quality (ADEQ) as a Public Drinking Water System (PDWS). ADEQ uses the United States Environmental Protection Agency’s (EPA) definition of PDWS, which is systems that serve at least 15 connections or 25 people. For water providers who are regulated by ADEQ, the Department defers to ADEQ’s on-going enforcement of the Safe Drinking Water Act (SDWA) as administered by the EPA. If the subdivision will not be served by a provider that qualifies as a PDWS (i.e., less than 15 lots or dry lot subdivisions) the Department requires a water quality test, and the standards used are the same SDWA standards used by ADEQ and the EPA.

NOTICE OF PROPOSED RULEMAKING

TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

PREAMBLE

1. Sections Affected

Rulemaking Action

R12-15-701	Amend
R12-15-712	Amend
R12-15-713	Amend
R12-15-714	Amend
R12-15-715	Amend
R12-15-716	Amend

2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):

Authorizing statutes: Laws of 2007, Ch. 240, § 10(B); A.R.S. § 45-105(B)(1).

Implementing statutes: Laws of 2007, Ch. 240, § 10; A.R.S. §§ 45-108, 45-108.01, 45-108.02 and 45-108.03.

3. A list of all previous notices appearing in the *Register* addressing the final rules:

Notice of Rulemaking Docket Opening: 13 A.A.R. 4146, November 23, 2007

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Doug Dunham, Deputy Assistant Director

Address: Arizona Department of Water Resources

3550 North Central Avenue

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Phoenix, AZ 85012

Telephone: (602) 771-8590

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Name: Nicole D. Swindle, Deputy Counsel

Address: Arizona Department of Water Resources

3550 North Central Avenue

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5. An explanation of the rules, including the agency's reasons for initiating the rules:

Background

In 1973, the Arizona Legislature enacted the state's first statute addressing water availability disclosures by subdivision developers. The statute, A.R.S. § 45-108, required developers to obtain a determination of the availability of the water supply for a new subdivision from the Arizona Water Commission ("Commission") prior to recording the plat for the subdivision and marketing lots. If the Commission determined there was an adequate water supply, notice of that determination was required be included in the public report for the subdivision. If the Commission determined there was an inadequate water supply, lots could still be sold, but the developer was required to provide information regarding the determination in the public report and in any advertising materials associated with promoting the subdivision to potential buyers. Because the public report is required to be given only to the initial purchasers

of lots within the subdivision, any subsequent purchaser of the property would not receive the information about the availability of the water supply.

In 1980, the Arizona Legislature enacted the Arizona Groundwater Code. The Groundwater Code created the Arizona Department of Water Resources (“Department”) and transferred the responsibilities of the Commission to the Department, including the requirement to administer the water adequacy statute. The Groundwater Code established active management areas (“AMA”) in designated parts of the State where groundwater withdrawal and use is strictly regulated.

Among other things, the Groundwater Code changed the water adequacy requirements for new subdivisions within AMAs by requiring a developer of subdivided land in an AMA to obtain a determination of assured water supply from the Department before the plat for the subdivision can be recorded or a public report can be issued by the Arizona Department of Real Estate (“ADRE”). A.R.S. § 45-576. In order to obtain a determination of assured water supply, the developer must demonstrate that a water supply of adequate quality is physically, continuously and legally available for 100 years, that the developer has financial capability to construct any necessary delivery and treatment facilities, and that any groundwater use is consistent with the management goal of the AMA. Areas outside AMAs are not subject to the assured water supply requirements, but remain subject to the adequacy provisions of A.R.S. § 45-108.

The minimal requirements of A.R.S. § 45-108 continued to be the sole adequacy requirement outside AMAs until 2007, when the Arizona Legislature enacted SB 1575. SB 1575 was enacted in response to recommendations from the Statewide Water Advisory Group (“SWAG”). SWAG is a large committee hosted by the Department to assess the growth and

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water supply issues facing Arizona, particularly in rural areas of the state. SWAG is made up of individuals from across the state representing diverse stakeholders, including developers, water resource planners, land use planners, state agencies, local governments, tribal communities and elected officials. The SWAG began meeting in 2006 and continues to meet today.

Very early in the SWAG process, SWAG members recognized the need to give cities, towns and counties outside AMAs authority to require developers within their jurisdictions to demonstrate a 100-year adequate water supply before moving forward through the platting and lot sale process. The SWAG members recognized that without such authority, communities outside AMAs have limited ability to protect their water supplies from being over-allocated. In addition to the risk of insufficient water supplies, such communities are facing increasing difficulty in obtaining funding for water augmentation projects because the source of the augmented supply could be over-allocated. SWAG recommended addressing this problem through legislation that was ultimately enacted in 2007 as SB 1575.

SB 1575 amended the statutes governing subdivision regulation by cities, towns and counties to give those jurisdictions authority to adopt a provision or ordinance requiring developers of new subdivisions located outside AMAs to obtain one of the following before recording their plats or obtaining a public report from ADRE: (1) a water report from the Department determining that the subdivision has a 100-year adequate water supply (“adequate water report”); or (2) a commitment of water service from a water provider that has been designated by the Department as having an adequate water supply (“designated provider”). A.R.S. §§ 9-463.01(J) and 11-806.01(F). (Such a provision or ordinance is referred to herein as a “mandatory adequacy provision,” and the requirement to obtain an adequate water report or a

commitment of service from a designated provider is referred to herein as a “mandatory adequacy requirement.”)

A county may adopt a mandatory adequacy provision only by unanimous vote of the board of supervisors, and if a mandatory adequacy provision is adopted by a county, the county cannot later rescind the provision. A.R.S. § 11-806.01(F) and (G)(3). In addition, if a county adopts a mandatory adequacy provision, all cities and towns within that county may not approve a new subdivision located outside an AMA unless the subdivider obtains an adequate water report from the Department or a commitment of water service from a designated provider. A.R.S. § 9-463.01(J). A city or town may adopt its own mandatory adequacy provision. A.R.S. § 9-463.01(O). (A jurisdiction (city, town, or county) that adopts a mandatory adequacy provision, and a city or town located within a county that adopts a mandatory adequacy provision, is referred to herein as a “mandatory adequacy jurisdiction.”)

SB 1575 contains three exemptions from the requirement that a subdivider in a mandatory adequacy jurisdiction obtain either an adequate water report from the Department or a commitment of water service from a designated provider. Two of the exemptions require approval by the Department: (1) an exemption upon a demonstration that the subdivider made substantial capital investment toward construction of the development before the mandatory adequacy provision became effective; and (2) an exemption upon a demonstration that the development will be served by a water supply project that either is under construction and will be completed within 20 years or will serve Colorado river water to the development within 20 years, that the water supply project or Colorado river water will meet the water adequacy requirements when completed, and that the interim water supply meets all the criteria for an adequate water supply except that it will not be available for 100 years (referred to herein as a “20-year water

supply project exemption”). A.R.S. §§ 45-108.02 and 45-108.03. In addition to those exemptions, a mandatory adequacy jurisdiction may adopt a provision allowing a developer to obtain an exemption from a mandatory adequacy requirement if water will be hauled to the subdivision by motor vehicle or train, the city, town or county determines there is no feasible alternative water supply for the subdivision and other conditions are met (referred to herein as “water hauling exemption”). A.R.S. §§ 9-463.01(K) and 11-806.01(G)(1). However, the water hauling exemption described in the statutes is administered by the city, town or county, and therefore does not require a rule change. The proposed rule changes do not reference the potential water hauling exemption

SB 1575 also contains a session law (“SB 1575 Session Law”) requiring the Department to make certain amendments to its Assured and Adequate Water Supply Rules, A.A.C. R12-15-701, *et seq.* (“AAWS Rules”). Laws 2007, ch. 240, § 10. The amendments required by the session law relate only to the water adequacy program outside AMAs, and not to the assured water supply program within AMAs. The primary purpose of this rulemaking is to make the amendments required by the session law. In addition, the Department is proposing to make several other amendments to its AAWS rules to conform the rules to certain statutory amendments in SB 1575 and to change the date when municipal providers with a designation of adequate water supply must submit their annual reports. Those rule amendments also relate only to the water adequacy program outside AMAs. The amendments proposed in this rulemaking are described in the next two sections.

Amendments Required by SB 1575 Session Law

The following is a description of the amendments required by the SB 1575 session law and an explanation of how the Department is proposing to amend its AAWS Rules to comply with the session law requirements.

1. Requirement: In determining whether an adequate water supply exists in a mandatory adequacy jurisdiction outside an AMA, the Department shall include in the calculation of the projected 100-year depth-to-static water level under A.A.C. R12-15-716(B)(3) the estimated water demand of any projected use in the same groundwater basin that is not in a mandatory adequacy jurisdiction and that is not included in a submitted application for a water report or a designation of adequate water supply. Laws 2007, Ch. 240, § 10(A).

Proposed amendment: The Department is proposing to amend R12-15-716(B)(3) to add language as required by the session law.

2. Requirement: The Director shall amend the AAWS Rules to include criteria for making determinations pursuant to A.R.S. § 45-108.03 – the statute that allows a developer of subdivided land outside an AMA to apply to the Director for a 20-year water supply project exemption. Laws 2007, Ch. 240, § 10(B)(1).

Proposed amendment: The Department is proposing to amend R12-15-713 by adding two new subsections, subsections (L) and (M), containing procedures for applying for an exemption from a water adequacy requirement pursuant to A.R.S. § 45-108.03 and the criteria under which the Director will determine whether to grant such an application.

3. Requirement: The Director shall amend the AAWS Rules to include criteria for demonstrating a physically available 100-year supply of groundwater or stored water recovered outside the area of impact of the stored water in specific aquifer systems and groundwater basins and sub-basins outside AMAs. The criteria may include depth-to-

static water level limits or limits based on other physical aquifer characteristics that affect the physical availability of water for a proposed use and shall be appropriate for the groundwater basin or sub-basin. Laws 2007, Ch. 240, § 10(B)(2).

Proposed amendment: Currently, R12-15-716 provides that, except for dry lot developments, the Director shall determine that groundwater or stored water to be recovered outside the area of impact of the storage will be physically available for a proposed use outside an AMA if: (1) the groundwater or stored water will be withdrawn from wells owned by the applicant or likely to be constructed by the applicant; and (2) the groundwater or stored water will be withdrawn from depths that do not exceed a maximum depth-to-static water level of 1,200 feet below land surface (“BLS”) over a period of 100 years. To comply with the session law requirement, the Department’s Hydrology Division conducted an analysis of relevant hydrologic data to determine whether the physical availability criteria in R12-15-716 is appropriate for all areas outside AMAs, or whether different criteria should be used for specific aquifer systems or groundwater basins or sub-basins. Following that analysis, the Hydrology Division issued a report entitled: “Hydrologic Data and Recommendations Related to the Review of 100 Year Physical Availability Depth Criteria for Demonstrating Adequate Water Supplies (Study in support of requirements of SB 1575)” F. Corkhill, et al., October 1, 2008 (referred to herein as the “Hydrology Report”).

The Hydrology Report reviewed the depth-to-static water levels and aquifer conditions in areas outside AMAs and found that depth-to-static water levels currently approach or exceed the maximum 100-year depth-to-static water level of 1,200 feet BLS over large portions of the C and R aquifer systems in northern Arizona and in portions of

the alluvial basin-fill aquifer systems of northwestern Arizona. The Hydrology Report also found that when the existing and approved groundwater demands in the areas are taken into account, the estimated groundwater in storage in the C and R aquifer systems is significant, while the estimated groundwater in storage in the basin-fill aquifer systems of northwestern Arizona is far less. Based on that information, the Hydrology Report made the following conclusions and recommendations:

- The current physical availability criterion imposing a maximum 100-year depth-to-static water level of 1,200 feet BLS for adequacy determinations is appropriate for most areas outside AMAs, and therefore that criterion should not be changed for most areas.
- For the C and R aquifers, the rules should be changed to allow groundwater below the 1,200 feet BLS limit to be considered physically available if the applicant can demonstrate through a hydrologic study that after 100 years of withdrawals, at least 50 per cent of the groundwater estimated to have been in storage in the area of the proposed withdrawals at the time the rule amendments became effective will remain. Because the hydrologic data needed to make such a demonstration could require an applicant for an analysis of adequate water supply to drill several exploration and production wells long before the wells are needed to produce water for the development, it may be appropriate for an applicant for an analysis of adequate water supply in the C Aquifer or R Aquifer to obtain an analysis by submitting a regional hydrologic study that indicates groundwater is likely to be physically available for the development. The applicant would be required to submit a site-specific hydrologic study demonstrating that the groundwater

reserved in the analysis is physically available in order to obtain a water report. This would allow the applicant to obtain water reports in phases, using exploration wells to demonstrate the physical availability of groundwater for the first phase, and then, beginning with the second phase, using the hydrologic information obtained from the wells used to serve the previously approved phase to demonstrate the physical availability of groundwater for the next phase. This type of an analysis is referred to as a “phased analysis.”

- No changes should be made to the existing physical availability criterion of 1,200 feet BLS for adequacy determinations in the basin-fill aquifers of northwestern Arizona. Although depth-to-static water levels approach or exceed 1,200 feet BLS in portions of those aquifers, retaining the 1,200 feet BLS limit is appropriate for those aquifers because the estimated groundwater in storage below 1,200 feet BLS has not been demonstrated to represent a reliable, long-term water supply that would be capable of sustaining the existing and approved developments in the area after 100 years of withdrawals.

Based on the information and recommendations contained in the Hydrology Report, the Department is proposing the following amendments to the AAWS Rules:

(1) Amend R12-15-712 to allow developers in the C and R aquifers to obtain a phased analysis based on a regional hydrologic study, with a requirement that site-specific hydrologic information must be submitted to obtain a water report for each phase of the development.

(2) Amend R12-15-716 to provide that in the C and R aquifers, the Director shall consider groundwater and stored water recovered outside the area of impact to be

physically available if the applicant submits a hydrologic study demonstrating either that the depth-to-static water level will not exceed 1,200 feet BLS over a 100-year period or that after 100 years of withdrawals, at least 50 per cent of the estimated groundwater in storage within the area will remain.

(3) Amend R12-15-701 to add definitions of the following terms used in the amendments described above: “C Aquifer,” “R Aquifer,” “groundwater in storage” and “phased analysis.”

The term “groundwater in storage” is defined as the volume of groundwater in a particular location within an aquifer as of the effective date of the rule amendments. The definition provides that the volume of groundwater in storage may be estimated by an evaluation “of the aquifer’s saturated thickness that accounts for potential vertical variations in aquifer storage properties for various aquifer units or sub-units.” It is important to note that groundwater in storage must be estimated as of the effective date of the rule amendments. If little or no groundwater use has occurred within the area of the proposed groundwater withdrawals between the date the rule amendments become effective and the date the application for an adequacy determination is filed, the applicant may assume that the estimated volume of groundwater in storage as of the effective date of the rule amendments is the same as the estimated volume of groundwater in storage at the time the application is filed. Otherwise, when determining the estimated volume of groundwater in storage, the applicant must take into account the estimated groundwater withdrawals that have occurred within the area of the proposed groundwater withdrawals between the date the rule amendments become effective and the date of the application.

After reviewing the rule containing criteria for demonstrating physical availability of groundwater and stored water to be recovered outside the area of impact, the Department determined that one additional amendment to the rule is appropriate. Currently, R12-15-716(C) requires the Director to lower the maximum 100-year depth-to-static water level requirement for an applicant for an adequacy determination if the applicant demonstrates that groundwater is available at the lower depth and the applicant has the financial capability to obtain the groundwater at the lower depth. The Department believes this rule should be changed to give the Director discretion to determine whether to lower the maximum 100-year depth-to-static water level requirement if requested by an applicant. In certain situations, it may not be appropriate to lower the requirement even though there is groundwater at the lower depth and the applicant has the financial capability to obtain the groundwater. The Director should consider impacts on other uses in the area and any other site-specific hydrologic or geologic conditions that may be appropriate. Therefore, the Department is proposing to amend R12-15-716(C) to provide that the Director *may* lower the maximum depth-to-static water level, and to list the factors the Director must consider when determining whether to do so. Additionally, the Department is clarifying the requirement that the applicant must have the financial capability to obtain the groundwater. The Department has historically required applicants to demonstrate financial capability by demonstrating that the applicant has drilled the necessary wells. Therefore, the Department is proposing to amend R12-716(C) to list as a factor for the Director's consideration whether the applicant has drilled wells to the lower depth.

Other Amendments

In addition to the amendments required by the SB 1575 session law described above, the Department is proposing several other amendments to the AAWS Rules for the purpose of making conforming changes to the Rules in response to statutory amendments in SB 1575 and to change the date when municipal providers with a designation of adequate water supply must submit their annual reports. Those amendments, which relate only to the water adequacy program outside AMAS, are described below.

1. Public notice requirements. SB 1575 added section 45-108.01 to title 45, chapter 1, Arizona Revised Statutes. This statute provides that upon receipt of an application for a water report or an application for a designation of adequate water supply for a proposed use within a mandatory adequacy jurisdiction, the Department must publish notice of the application once a week for two consecutive weeks in a newspaper of general circulation within the groundwater basin in which the proposed use is located. The statute specifies who may file an objection to the application, the deadline for filing an objection and the grounds for which an objection may be filed. The Department is proposing to amend R12-15-713 (“Water Report”) and R12-15-714 (“Designation of Adequate Water Supply”) to add a new subsection (D) to each rule providing that if the subdivision or water provider is located within a mandatory adequacy jurisdiction, the Director shall give public notice of the application as provided in A.R.S. § 45-108.01.
2. Exemption based on substantial capital investment. SB 1575 added section 45-108.02 to title 45, chapter 1, Arizona Revised Statutes. This statute allows a developer in a mandatory adequacy jurisdiction to apply to the Director for an exemption from a mandatory adequacy requirement if the developer made a substantial capital investment toward construction of the subdivision before the date the mandatory adequacy

requirement became effective. The statute sets forth the criteria under which an application may be granted and the expiration date of an exemption. The Department is proposing to amend R12-15-713 to add a new subsection (N) setting forth the procedure a developer must follow to apply for an exemption under the statute and the process the Director will follow after receiving an application for an exemption. The Department is also proposing to add a new subsection (O) to the rule setting forth the procedure for applying for an extension of an exemption granted under the statute and the process the Director will follow after receiving an application for an extension.

3. *Date for filing annual reports by providers with a designation of adequate water supply.*

R12-15-715(A) currently provides that a municipal provider with a designation of adequate water supply must annually submit certain information to the Department by March 31 of each year. The Department is proposing to change the date when the information must be submitted to the Department to June 1 of each year to allow a designated provider to submit the information with the community water system annual report that is required by A.R.S. § 45-343. The community water system annual report is due by June 1 of each year. A.A.C. R12-15-1017.

Stakeholders' Process

As part of the Department's process to explain the rulemaking process and the legislative mandate behind the Department's proposed adequacy rules, as well as to seek input from public officials, stakeholders and the public about the proposed adequacy rules, the Department held more than twenty adequacy rule workshops at various locations throughout the state, including regular meetings in Flagstaff, Parker and Tucson.

Effective Date of Rules

The Department proposes that the amendments to the Department's AAWS Rules contained in this Notice of Proposed Rulemaking become effective immediately upon filing with the office of the Secretary of State pursuant to A.R.S. § 41-1032(A)(1) because the amendments will preserve the public peace, health or safety. Requiring new subdivisions to have a 100-year adequate water supply before plat approval and lot sales protects new homebuyers by ensuring that they have a long-term water supply. It also protects existing homeowners by preventing an over-allocation of groundwater supplies relied on by those homeowners. To date, two counties and two municipalities have adopted mandatory adequacy ordinances pursuant to the authority granted by SB 1575. In order to provide certainty to both the platting entities and the developers within these mandatory adequacy jurisdictions as to the requirement to obtain an adequate water supply determination, the Department believes an immediate effective date is warranted. The Department believes that more counties and municipalities will adopt a mandatory adequacy ordinance after the amendments in this rulemaking become effective. For that reason, the Department believes that an immediate effective date for the amendments will preserve the public health and safety.

Rule by Rule Summary

R12-15-701. Definitions - Assured and Adequate Water Supply Programs

Five new definitions are being added. The term "mandatory adequacy jurisdiction," is used throughout the amended rules and is defined as a municipality or county that has adopted a mandatory adequacy provision or ordinance, or a municipality located within a county that has adopted such a provision or ordinance and that has received notice of the provision or ordinance from the Director. Definitions of "C Aquifer" and "R Aquifer" are added to describe those

aquifer systems in northern Arizona. A definition of “groundwater in storage” is added because that term is used in the new criteria for demonstrating physical availability of groundwater in the C and R aquifers. The term is defined as the volume of groundwater in a particular location within an aquifer as of the effective date of the rule amendments. A definition of “phased analysis” is added to describe an analysis of adequate water supply issued for groundwater in the C Aquifer or R Aquifer based on a regional hydrologic study indicating that groundwater is likely to be physically available.

R12-15-712. Analysis of Adequate Water Supply

A new subsection (F) is being added to R12-15-712 to allow a developer of land in the C Aquifer or R Aquifer to obtain a new type of analysis of water supply – a phased analysis. This subsection provides that the Director shall issue a phased analysis for a development proposing to use groundwater from the C Aquifer or R Aquifer if the developer submits a regional hydrologic study demonstrating that groundwater is likely to be physically available to meet all or a portion of the estimated water demand of the development for 100 years according to the physical availability criteria in R12-15-716. The subsection further provides that if the Director issues a phased analysis for a development, groundwater reserved in the analysis based on the regional model may not be included in a water report unless the analysis holder submits a site-specific hydrologic study demonstrating that the groundwater is physically available. Conforming amendments are being made to other subsections in the rule.

R12-15-713. Water Report

Five subsections are being added. The first, subsection (D), provides that if a subdivision is located within a mandatory adequacy jurisdiction, the Director will give public notice of the application, according to the procedures for public notice described in A.R.S. § 45-108.01. New

subsections (L) and (M) set forth the procedures for applying for an exemption from a mandatory adequacy requirement under A.R.S. § 45-108.03 (the 20-year water supply project exemption), and the criteria under which the Director will determine whether to grant an exemption. Subsection (N) sets forth the procedures for applying for an exemption from a mandatory adequacy requirement under A.R.S. § 45-108.02 (the substantial capital investment exemption), and the criteria under which the Director will determine whether to grant an exemption. New subsection (O) sets forth application procedures, as well as criteria, for an extension of an exemption based on substantial capital investment.

The procedures are similar for all four types of applications. The applicant for an exemption or an extension must submit an application on a form prescribed by the Director and demonstrate that the applicable criteria are met. The Department will review each application within the licensing time frame rule. If the Director determines that the criteria are met, the Director will issue a letter to the applicant, as well as to the platting authority and the Arizona Department of Real Estate, stating that the owner is exempt from the requirement to obtain a water report determining that the subdivision has an adequate water supply or a commitment of water service from a designated provider.

The criteria that must be met for each type of application mirrors the criteria in the applicable statute authorizing the exemption. Subsection (L) provides that for a 20-year water supply project exemption based on the availability of a Colorado river water supply within 20-years, the applicant must demonstrate that: (1) the development will be served by a municipal provider that currently has an entitlement to Colorado river water, but the provider does not currently have the legal right to serve the water to the subdivision; (2) the provider will have the legal right to serve the Colorado river water to the development within 20 years; (3) an interim water supply

meeting all the criteria for an adequate water supply under the Department's rules will be used to serve the development until the provider has the legal right to serve the Colorado river water to the development; and (4) when the provider has the legal right to serve the Colorado river water to the development, the water supply will meet all the criteria for an adequate water supply for the remainder of the 100-year period. These are the same criteria set forth in A.R.S. § 45-108.03(A).

Subsection (M) provides that for a 20-year water supply project exemption based on the completion of construction of the necessary physical works within 20 years, the applicant must demonstrate that: (1) the physical works for delivering water through the water supply project to the development are under construction and will be completed within 20 years; (2) an interim water supply meeting all the criteria for an adequate water supply under the Department's rules will be used to serve the development until the physical works are fully constructed; and (3) when the physical works are fully constructed, the water supply for the development will meet all the criteria for an adequate water supply. These are the same criteria set forth in A.R.S. § 45-108.03(A).

Subsection (N) provides that for an exemption based on substantial capital investment, the applicant must demonstrate the criteria for an exemption set forth in A.R.S. § 45-108.02. Those criteria are as follows: (1) the developer made substantial capital investment toward construction of the proposed development before the date the mandatory adequacy requirement first became effective (substantial capital investment does not include the original cost of acquiring the property); (2) the developer was not aware of the proposed mandatory adequacy requirement at the time the investment was made; and (3) the proposed subdivision complied in all other

respects with existing state laws on the date the mandatory adequacy requirement became effective. A.R.S. § 45-108.02(A)

Subsection (O) provides that an applicant for an extension of an exemption based on substantial capital investment must demonstrate the criteria for an extension set forth in A.R.S. § 45-108.02. That statute provides that an exemption based on substantial capital investment expires five years after it is granted unless before that date at least one parcel in the development is sold to a bona fide purchaser or the Director grants an application to extend the exemption. The Director may extend the period of an exemption for no more than two successive 5-year periods if the developer demonstrates that it has made material progress in developing the development, but that sales of parcels have been delayed for reasons outside the control of the developer. A.R.S. § 45-108.02(B).

R12-15-714. Designation of Adequate Water Supply

One new subsection, subsection (D) is being added. This subsection provides that if a designated provider's service area is located within a mandatory adequacy jurisdiction, the Director will give public notice of the application according to the procedures for public notice described in A.R.S. § 45-108.01.

R12-15-715. Designation of Adequate Water Supply; Annual Report Requirements, Review, Modification, Revocation

R12-15-715(A) is being amended to change the date when a municipal provider with a designation of adequate water supply must submit its annual report to the Department. The rule currently provides that the report is due on March 31 of each year. The date is being changed to June 1 of each year to allow designated providers to submit the report with their community water system annual report, which is due on June 1 of each year.

R12-15-716. Physical Availability

R12-15-716 is being amended in three respects. First, R12-15-716(B) is being amended to add new subsection R12-15-716(B)(3)(d). This subsection incorporates the requirements of the SB 1575 session law that when determining whether an adequate water supply exists in a mandatory adequacy jurisdiction outside an AMA, the Director must include in the calculation of the projected 100-year depth-to-static water level under A.A.C. R12-15-716(B)(3) the estimated water demand of any projected use in the same groundwater basin to which both of the following apply: (1) the use is not in a mandatory adequacy jurisdiction; and (2) the use is not included in a submitted application for a water report or a designation of adequate water supply.

Second, R12-15-716(C) is being amended to give the Director discretion to determine whether to grant a request by an applicant for an adequate water supply to lower the depth-to-static water requirement below 1,200 feet BLS for a proposed use outside an AMA. Currently, this subsection requires the Director to lower the depth-to-static water level requirement if the applicant demonstrates that groundwater is available at the lower depth and that the applicant has the financial capability to obtain the groundwater at the lower depth. Under the amendment, the Director *may* lower the depth-to-static water level requirement after considering: (1) whether groundwater is available at the lower depth; (2) whether the applicant has drilled wells to obtain the groundwater at the lower depth; (3) whether the decline in the depth-to-static water level that will result from the applicant's use will adversely impact other uses in the area; and (4) any other site-specific hydrologic or geologic factors that may be appropriate.

Third, a new subsection (E) is being added to R12-15-716 to provide the criteria for demonstrating physical availability of groundwater or stored water to be recovered outside the area of impact of the storage in the C and R aquifer systems in Northern Arizona. This subsection requires an applicant for a water adequacy determination in the C Aquifer or R

Aquifer to meet with the Department before filing an application to discuss the hydrologic study required by the subsection. The subsection further provides that the Director shall determine that the proposed volume of groundwater included in the application will be physically available for the proposed use if all of the following apply:

1. The groundwater will be withdrawn either from wells owned by the applicant or the proposed municipal provider that are located within the service area of the applicant or the proposed municipal provider, or from wells that are likely to be constructed for future uses of the applicant or the proposed municipal provider.
2. The applicant has submitted a site specific hydrologic study, using a method of analysis approved by the Director, that accurately takes into account the hydrology of the area and that incorporates the following demands that rely on the same water supply: (1) the demand of existing uses; (2) the estimated demand of issued certificates and water reports; (3) the estimated demand of designations; (4) the demand of developments for which the Department has issued an analysis of assured or adequate water supply; (4) if the proposed groundwater withdrawals will occur in a mandatory adequacy jurisdiction, the demand of anticipated future uses that will be located in a non-mandatory adequacy jurisdiction; and (5) the demand of the applicant's proposed use.
3. If the subdivision is a dry lot development, the applicant has demonstrated that after 100 years of withdrawing groundwater to meet all the demands listed in paragraph 2 above, the projected depth-to-static water level will not exceed 400 feet BLS.
4. If the subdivision is not a dry lot subdivision, the applicant has demonstrated either:
 - (1) that after 100 years of withdrawing groundwater to meet all the demands listed in

paragraph 2 above, the projected depth-to-static water level will not exceed 1,200 feet BLS; or (2) that after 100 years of withdrawing groundwater to meet all the demands listed in paragraph 2 above, at least 50 per cent of the estimated groundwater in storage in the area of the proposed withdrawals will remain.

6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The Department reviewed and proposes to rely on a report issued by the Department's Hydrology Division entitled, "Hydrologic Data and Recommendations Related to the Review of 100-Year Physical Availability Depth Criteria for Demonstrating Adequate Water Supplies (Study in support of the requirements of SB 1575)," F. Corkhill, et al., October [REDACTED], 2008. The public may obtain a copy of the report by contacting:

Name: Frank Corkhill
Address: Arizona Department of Water Resources
3500 North Central Avenue
Phoenix, Arizona 85012
Telephone: (602) 771-8535
Fax: (602) 771-8680
E-mail: efcorkhill@azwater.gov

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this:

Not applicable.

8. The preliminary summary of the economic, small business, and economic impact:

9. The name and address of the agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: _____

Address: Arizona Department of Water Resource
3550 North Central Avenue
Phoenix, AZ 85012

Telephone: (602) 771-

Fax: (602) 771-

E-mail: ___@azwater.gov

10. The time, place, and nature of the proceedings for the making, amendment, or receipt of the rule, or if no proceeding is scheduled, where, when, and how persons may request a oral proceeding on the proposed rule:

The Department will accept public comment on the proposed rules at the following date and place:

Date and Time: January ___, 2009 at _____

Place: Arizona Department of Water Resources

3500 North Central Avenue

Second Floor, Verde River Conference Rooms

November 5, 2008
Informal Public Review

Phoenix, Arizona 85012

Written comments will be accepted until January ____, 2009 at 5:00 p.m. Written comments should be addressed to:

Name: Kathleen Donoghue, Docket Supervisor

Address: Arizona Department of Water Resources

3550 North Central Avenue

Phoenix, AZ 85012

Telephone: (602) 771-8472

Fax: (602) 771-8683

E-mail: kadonoghue@azwater.gov

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None.

12. Incorporations by reference and their location in the rules:

None.

13. The full text of the rules follows:

TITLE 12. NATURAL RESOURCES

CHAPTER 15. DEPARTMENT OF WATER RESOURCES

ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY

Section

R12-15-701. Definitions - Assured and Adequate Water Supply Programs

R12-15-712. Analysis of Adequate Water Supply

R12-15-713. Water Report

R12-15-714. Designation of Adequate Water Supply

R12-15-715. Designation of Adequate Water Supply; Annual Report Requirements, Review,
Modification, Revocation

R12-15-716. Physical Availability

ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY

R12-15-701. Definitions - Assured and Adequate Water Supply Programs

In addition to any other definitions in A.R.S. Title 45 and the management plans in effect at the time of application, the following words and phrases in this Article shall have the following meanings, unless the context otherwise requires:

1. “Abandoned plat” means a plat for which a certificate or water report has been issued and that will not be developed because of one of the following:
 - a. The land has been developed for another use; or
 - b. Legal restrictions will preclude approval of the plat.
2. “ADEQ” means the Arizona Department of Environmental Quality.
3. “Adequate delivery, storage, and treatment works” means:
 - a. A water delivery system with sufficient capacity to deliver enough water to meet the needs of the proposed use;
 - b. Any necessary storage facilities with sufficient capacity to store enough water to meet the needs of the proposed use; and
 - c. Any necessary treatment facilities with sufficient capacity to treat enough water to meet the needs of the proposed use.
4. “Adequate storage facilities” means facilities that can store enough water to meet the needs of the proposed use.

5. “Affiliate” means a person who, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the person specified.
6. “AMA” means an active management area as defined in A.R.S. § 45-402.
7. “Analysis” means an analysis of assured water supply or an analysis of adequate water supply.
8. “Analysis holder” means a person to whom an analysis of assured water supply or an analysis of adequate water supply is issued and any current owner of land included in the analysis.
9. “Analysis of adequate water supply” means a determination issued by the Director stating that one or more criteria required for a water report pursuant to R12-15-713 have been demonstrated for a development.
10. “Analysis of assured water supply” means a determination issued by the Director stating that one or more criteria required for a certificate of assured water supply pursuant to R12-15-704 have been demonstrated for a development.
11. “Annual authorized volume” means, for an approved remedial action project, the annual authorized volume specified in a consent decree or other document approved by ADEQ or the EPA, except that:
 - a. If no annual authorized amount is specified in a consent decree or other document approved by ADEQ or the EPA, the annual authorized volume is the largest volume of groundwater withdrawn pursuant to the approved remedial action project in any year prior to January 1, 1999.
 - b. If the Director increases the annual authorized volume pursuant to R12-15-729(C),

the annual authorized volume is the amount approved by the Director.

12. “Annual estimated water demand” means the estimated water demand divided by 100.
13. “Approved remedial action project” means a remedial action project approved by ADEQ under A.R.S. Title 49, or by the EPA under CERCLA.
14. “Authorized remedial groundwater use” means, for any year, the amount of remedial groundwater withdrawn pursuant to an approved remedial action project and used by a municipal provider during the year, not to exceed the annual authorized volume of the project.
15. “Build-out” means a condition in which all water delivery mains are in place and active water service connections exist for all lots.
16. “C aquifer” means a multiple aquifer system that is a part of the regional aquifer system of Northern Arizona and that is comprised of the sequence of rock units between the Kaibab Formation and the Supai Group, inclusive.
- ~~16.~~ 17. “CAP water” means:
 - a. All water from the Colorado River or from the Central Arizona Project works authorized in P.L. 90-537, excluding enlarged Roosevelt reservoir, which is made available pursuant to a subcontract with a multi-county water conservation district.
 - b. Any additional water not included in subsection 16(a) of this Section that is delivered by the United States Secretary of the Interior pursuant to an Indian water rights settlement through the Central Arizona Project.
- ~~17.~~ 18. “Central Arizona Groundwater Replenishment District” or “CAGRD” means a multi-county water conservation district acting in its capacity as the entity established pursuant to A.R.S. § 48-3771, et seq., and responsible for replenishing excess groundwater.

~~18-19.~~ 19. “Central distribution system” means a water system that qualifies as a public water system pursuant to A.R.S. § 49-352.

~~19-20.~~ 20. “CERCLA” or “Comprehensive Environmental Response, Compensation, and Liability Act of 1980” has the same meaning as prescribed in A.R.S. § 49-201.

~~20-21.~~ 21. “Certificate” means a certificate of assured water supply issued by the Director for a subdivision pursuant to A.R.S. § 45-576 et seq. and this Article.

~~21-22.~~ 22. “Certificate holder” means any person included on a certificate, except the following:

- a. Any person who no longer owns any portion of the property included in the certificate, and
- b. Any potential purchaser for whom the purchase contract has been terminated or has expired.

~~22-23.~~ 23. “Certificate of convenience and necessity” means a certificate required by the Arizona Corporation Commission, pursuant to A.R.S. § 40-281, which allows a private water company to serve water to customers within its certificated area.

~~23-24.~~ 24. “Colorado River water” means water from the main stream of the Colorado River. For purposes of this Article, Colorado River water does not include CAP water.

~~24-25.~~ 25. “Committed demand” means the 100-year water demand at build-out of all recorded lots that are not yet served water within the service area of a designation applicant or a designated provider.

~~25-26.~~ 26. “County water augmentation authority” means an authority formed pursuant to A.R.S. Title 45, Chapter 11.

~~26-27.~~ 27. “Current demand” means the 100-year water demand for existing uses within the service area of a designation applicant or designated provider, based on the annual report

for the previous calendar year.

~~27-28.~~ 27-28. “Depth-to-static water level” means the level at which water stands in a well when no water is withdrawn by pumping or by free flow.

~~28-29.~~ 28-29. “Designated provider” means:

- a. A municipal provider that has obtained a designation of assured or adequate water supply; or
- b. A city or town that has obtained a designation of adequate water supply pursuant to A.R.S. § 45-108(D).

~~29-30.~~ 29-30. “Designation means a decision and order issued by the director designating a municipal provider as having an assured water supply or an adequate water supply.

~~30-31.~~ 30-31. “Determination of adequate water supply” means a water report, a designation of adequate water supply, or an analysis of adequate water supply.

~~31-32.~~ 31-32. “Determination of assured water supply” means a certificate, a designation of assured water supply, or an analysis of assured water supply.

~~32-33.~~ 32-33. “Development” means either a subdivision or an unplatted development plan.

~~33-34.~~ 33-34. “Diversion works” means a structure or well that allows or enhances diversion of surface water from its natural course for other uses.

~~34-35.~~ 34-35. “Drought response plan” means a plan describing a variety of conservation and augmentation measures, especially the use of backup water supplies, that a municipal provider will utilize in operating its water supply system in times of a water supply shortage. The plan may include the following:

- a. An identification of priority water uses consistent with applicable public policies.
- b. A description of sources of emergency water supplies.

- c. An analysis of the potential use of water pressure reduction.
- d. Plans for public education and voluntary water use reduction.
- e. Plans for water use bans, restrictions, and rationing.
- f. Plans for water pricing and penalties for excess water use.
- g. Plans for coordination with other cities, towns, and private water companies.

~~35.~~ 36. “Drought volume” means 80% of the volume of a surface water supply, determined by the director under R12-15-716 to be physically available on an annual basis to a certificate holder or a designated provider.

~~36.~~ 37. “Dry lot development” means a development or subdivision without a central water distribution system.

~~37.~~ 38. “EPA” means the United States Environmental Protection Agency.

~~38.~~ 39. “Estimated water demand” means:

- a. For a certificate or water report, the Director’s determination of the 100-year water demand for all uses included in the subdivision;
- b. For a designation, the sum of the following:
 - i. The Director’s determination of the current demand;
 - ii. The Director’s determination of the committed demand; and
 - iii. The Director’s determination of the projected demand during the term of the designation; or
- c. For an analysis, the Director’s determination of the water demand for all uses included in the development.

~~39.~~ 40. “Existing municipal provider” means a municipal provider that was in operation and serving water for non-irrigation use on or before January 1, 1990.

~~40.~~41. “Extinguish” means to cause a grandfathered right to cease to exist through a process established by the director pursuant to R12-15-723.

~~41.~~42. “Extinguishment credit” means a credit that is issued by the Director in exchange for the extinguishment of a grandfathered right and that may be used to make groundwater use consistent with the management goal of an AMA.

~~42.~~43. “Firm yield” means the minimum annual diversion for the period of record which may include runoff releases from storage reservoirs, and surface water withdrawn from a well.

44. “Groundwater in storage” means the volume of groundwater in a particular location within an aquifer as of the effective date of this Section. The volume of groundwater in storage may be estimated by an evaluation of the aquifer’s saturated thickness that accounts for potential vertical variations in aquifer storage properties for various aquifer units or sub-units.

~~43.~~45. “Management plan” means a water management plan adopted by the director pursuant to A.R.S. § 45-561 et seq.

46. “Mandatory adequacy jurisdiction” means:

a. A municipality or county that has adopted a provision or ordinance pursuant to A.R.S. § 9-463.01 or A.R.S. § 11-806.01 providing that the final plat for a subdivision shall not be approved unless the Director has determined that the subdivision has an adequate water supply, the subdivision has obtained a commitment of water service from a designated provider, or a statutorily authorized exemption applies; or

b. A municipality that:

i. Is located within a county that has adopted a provision or ordinance described in

paragraph (46)(a) of this Section; and

ii. Has received written notice of the provision or ordinance from the Director.

~~44-47.~~ “Master-planned community” has the same meaning as provided in A.R.S. § 32-2101.

~~45-48.~~ “Median flow” means the flow which is represented by the middle value of a set of flow data that are ranked in order of magnitude.

~~46-49.~~ “Member land” has the same meaning as provided in A.R.S. § 48-3701.

~~47-50.~~ “Member service area” has the same meaning as provided in A.R.S. § 48-3701.

~~48-51.~~ “Multi-county water conservation district” means a district established pursuant to A.R.S. Title 48, Chapter 22.

~~49-52.~~ “Municipal provider” has the same meaning as provided in A.R.S. § 45-561.

~~50-53.~~ “New municipal provider” means a municipal provider that began serving water for non-irrigation use after January 1, 1990.

~~51-54.~~ “Owner” means:

- a. For an analysis, certificate, or water report applicant, a person who holds fee title to the land described in the application; or
- b. For a designation applicant, the person who will be providing water service pursuant to the designation.

~~52-55.~~ “Perennial” means a stream that flows continuously.

~~53-56.~~ “Persons per household” means a measure obtained by dividing the number of persons residing in housing units by the number of housing units.

57. “Phased analysis” means an analysis of adequate water supply for a development for which the source of supply is groundwater withdrawn from the C aquifer or the R aquifer, and for which the applicant has demonstrated, based on a regional hydrologic study, that

sufficient supplies of groundwater are likely to be physically available to meet all or part of the estimated water demand of the development for 100 years.

~~54-58.~~ “Physical availability determination” means a letter issued by the Director stating that an applicant has demonstrated all of the criteria in R12-15-702(C).

~~55-59.~~ “Plat” means a preliminary or final map of a subdivision in a format typically acceptable to a platting entity.

~~56-60.~~ “Potential purchaser” means a person who has entered into a purchase agreement for land that is the subject of an application for a certificate or an assignment of a certificate.

~~57-61.~~ “Projected demand” means the 100-year water demand at build-out, not including committed or current demand, of customers reasonably projected to be added and plats reasonably projected to be approved within the designated provider’s service area and reasonably anticipated expansions of the designated provider’s service area.

~~58-62.~~ “Proposed municipal provider” means a municipal provider that has agreed to serve a proposed subdivision.

~~59-63.~~ “Purchase agreement” means a contract to purchase or acquire an interest in real property, such as a contract for purchase and sale, an option agreement, a deed of trust, or a subdivision trust agreement.

64. “R aquifer” means a multiple aquifer system that is a part of the regional aquifer system of Northern Arizona and that is comprised of the sequence of rock units between the Redwall Limestone and the Tapeats Sandstone, inclusive.

~~60-65.~~ “Remedial groundwater” means groundwater withdrawn pursuant to an approved remedial action project, but does not include groundwater withdrawn to provide an alternative water supply pursuant to A.R.S. § 49-282.03.

~~61-66.~~ “Service area” means:

- a. For an application for an analysis of adequate water supply, a water report, or a designation of adequate water supply, the area of land actually being served water for a non-irrigation use by the municipal provider and additions to the area that contain the municipal provider’s operating distribution system for the delivery of water for a non-irrigation use;
- b. For an application for a designation of adequate water supply pursuant to A.R.S. § 45-108(D), the area of land actually being served water for a non-irrigation use by each municipal provider that serves water within the city or town, and additions to the area that contain each municipal provider’s operating distribution system for the delivery of water for a non-irrigation use; or
- c. For an application for a certificate or designation of assured water supply, “service area” has the same meaning as prescribed in A.R.S. § 45-402.

~~62-67.~~ “Subdivision” has the same meaning as prescribed in A.R.S. § 32-2101.

~~63-68.~~ “Superfund site” means the site of a remedial action undertaken pursuant to CERCLA.

~~64-69.~~ “Surface water” means any surface water as defined in A.R.S. § 45-101, including CAP water and Colorado River water.

~~65-70.~~ “Water Quality Assurance Revolving Fund site” or “WQARF site” means a site of a remedial action undertaken pursuant to A.R.S. Title 49, Chapter 2, Article 5.

~~66-71.~~ “Water report” means a letter issued to the Arizona Department of Real Estate by the Director for a subdivision stating whether an adequate water supply exists pursuant to A.R.S. § 45-108 and this Article.

R12-15-712. Analysis of Adequate Water Supply

- A.** A person proposing to develop land outside an AMA that will not be served by a designated provider may apply for an analysis of adequate water supply before applying for a water report. An applicant for an analysis must be the owner of the land that is the subject of the application or have the written consent of the owner. The commissioner of the Arizona State Land Department may apply for an analysis for land owned by the state of Arizona outside an AMA or may consent to the inclusion of such land in an application.
- B.** An applicant for an analysis shall submit an application on a form prescribed by the Director with the fee required by R12-15-730, and attach the following:
1. A title report, condition of title report, limited search title report, or recorded deed, dated within 90 days of the date the application is submitted to the Director, demonstrating the ownership of the land that is the subject of the application;
 2. A description of the development, including:
 - a. A map of the land uses included in the development,
 - b. A list of water supplies proposed to be used by the development,
 - c. A summary of land use types included in the development, and
 - d. An estimate of the water demand for the land uses included in the development; and
 3. Evidence that the applicant has complied with subsection (E) or subsection (F) of this Section.
- C.** An applicant shall sign the application for an analysis. If an applicant is not a natural person, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant shall sign the

application. If the applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land that is the subject of the water report, the authorized representative may sign the application on the applicant's behalf.

- D.** After a complete application is submitted, the Director shall determine the estimated water demand of the development.
- E.** The Director shall issue an analysis if an applicant demonstrates one or more of the following:
1. Sufficient supplies of water are physically available to meet all or part of the estimated water demand of the development for 100 years, according to the criteria in R12-15-716;
 2. Sufficient supplies of water are continuously available to meet the estimated water demand of the development for 100 years, according to the criteria in R12-15-717;
 3. Sufficient supplies of water are legally available to meet the estimated water demand of the development for 100 years, according to the criteria in R12-15-718;
 4. The proposed sources of water are of adequate quality, according to the criteria in R12-15-719.
- F.** The Director shall issue a phased analysis for a development for which the proposed source is groundwater to be withdrawn from the C aquifer or the R aquifer outside an AMA if the applicant submits with the application a regional hydrologic study that demonstrates that sufficient supplies of groundwater are likely to be physically available to meet all or part of the estimated water demand of the development for 100 years, according to the criteria in R12-15-716. The applicant may also submit with the application a site-specific hydrologic study that demonstrates that groundwater is physically available to meet part of the estimated

water demand of the development for 100 years, according to the criteria in R12-15-716. If the Director issues a phased analysis for a development:

1. The Director shall specify the volume of groundwater that the applicant has demonstrated is likely to be physically available based on the regional hydrologic study and any volume of groundwater that the applicant has demonstrated is physically available based on a site-specific hydrologic study.
2. The Director shall not include in a water report the volume of groundwater included in the phased analysis that the Director has determined, based on a regional hydrologic study, is likely to be physically available unless the analysis holder submits additional information, including a site-specific hydrologic study, to demonstrate that the groundwater is physically available.
3. The phased analysis shall be subject to all of the provisions in this Section and in R12-15-716.

~~F.~~ G. For 10 years after the Director issues an analysis, or a longer period allowed under subsections ~~(H)~~ or (I) or (J) of this Section:

1. If groundwater is a source of supply in the analysis and the applicant demonstrates that groundwater is physically available under subsection (E)(1) or is likely to be physically available under subsection (F), the Director shall consider that supply of groundwater reserved for the use of the proposed development in subsequent determinations of physical availability pursuant to R12-15-716(B) and R12-15-716(E).
2. Except as provided in subsection (G)(4) of this Section, if ~~If~~ an analysis holder applies for a water report for a subdivision located on land included in the analysis, the Director shall presume that a criterion demonstrated in the analysis remains satisfied with respect to the

subdivision, unless the Director has received new evidence demonstrating that the criterion is not satisfied.

3. If the Director issues the water report, the Director shall reduce the volume of groundwater reserved pursuant to subsection ~~(F)(1)~~ (G)(1) of this Section by the amount of the estimated water demand for the water report that will be met with groundwater.

4. Subsection (G)(2) of this Section shall not apply to the volume of groundwater included in a phased analysis that the Director has determined, based on a regional hydrologic study, is likely to be physically available unless the analysis holder submits additional information, including a site-specific hydrologic study, to demonstrate that the groundwater is physically available.

G. ~~**H.**~~ The Director shall reduce the amount of water considered reserved for use of the development upon request by the analysis holder. If the analysis holder requesting a reduction is not the person to whom the analysis was issued, the Director shall reduce the amount of reserved groundwater only if the person to whom the analysis was issued or that person's designee consents to the request for reduction. The person to whom the analysis was issued shall notify the Director in writing of the person's designee for purposes of this subsection.

H. ~~**I.**~~ The analysis holder may apply to the Director for a five-year extension of the time period in subsection ~~(F)~~ (G) of this Section by submitting an application on a form prescribed by the Director no earlier than 36 months before the end of the time period and no later than 30 days before the end of the time period. If an extension is granted, the analysis holder may apply to the Director for an additional five-year extension by submitting an application on a form prescribed by the Director no earlier than 36 months before the end of the extended time

period and no later than 30 days before the end of the extended time period. The Director shall extend the time period for no more than two successive five-year periods under this subsection if the analysis holder demonstrates one of the following:

1. The analysis holder has made a substantial capital investment in developing the land included in the analysis.
2. The analysis holder has made material progress in developing the land included in the analysis.
3. Progress in developing the land included in the analysis has been delayed for reasons outside the control of the analysis holder.

~~I.~~ J. After the Director grants two five-year extensions pursuant to subsection ~~(H)~~ (I) of this Section, the Director may extend the time period for additional five-year periods if the analysis holder files a timely application pursuant to subsection ~~(H)~~ (I) of this Section and demonstrates one of the criteria in subsections ~~(H)(1), (H)(2), or (H)(3)~~ (I)(1), (I)(2), or (I)(3) of this Section.

~~J.~~ K. The Director shall review an application for an analysis or an application for an extension pursuant to subsections ~~(H) or (I)~~ (J) of this Section pursuant to the licensing time-frame provisions in R12-15-401.

R12-15-713. Water Report

- A. An application for a water report shall be filed by the current owner of the land that is the subject of the application.
- B. An applicant for a water report shall submit an application on a form prescribed by the Director with the fee required by R12-15-730 and provide the following:

1. A title report, condition of title report, limited search title report, or recorded deed, dated within 90 days of the date the application is filed and demonstrating that the applicant is the owner of the land that is the subject of the application;
2. A plat of the subdivision;
3. An estimate of the 100-year water demand for the subdivision;
4. A list of all proposed sources of water that will be used by the subdivision;
5. If the applicant is seeking a finding that the subdivision has an adequate water supply, evidence that the criteria in subsection ~~(E)~~ (F) of this Section are met; and
6. Any other information that the Director reasonably determines is necessary to decide whether an adequate water supply exists for the subdivision.

C. Each applicant shall sign the application for a water report. If an applicant is not a natural person, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant shall sign the application. If an applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land to be included in the water report, the authorized representative may sign the application on the applicant's behalf.

D. If the subdivision is located within a mandatory adequacy jurisdiction, the Director shall give public notice of the application as provided in A.R.S. § 45-108.01.

~~D.~~ E. After a complete application is submitted, the Director shall review the application and associated evidence to determine:

1. The estimated water demand of the subdivision;
2. Whether the applicant has demonstrated all of the requirements in subsection (E) of this

Section.

E.-F. The Director shall determine that the subdivision has an adequate water supply if the applicant demonstrates all of the following:

1. Sufficient supplies of water are physically available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-716;
2. Sufficient supplies of water are continuously available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-717;
3. Sufficient supplies of water are legally available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-718;
4. The proposed sources of water will be of adequate quality, according to the criteria in R12-15-719;
5. The applicant has the financial capability to construct adequate delivery, storage, and treatment works for the subdivision according to the criteria in R12-15-720.

F.-G. The Director shall issue a water report to the applicant that states whether the applicant has complied with the requirements in subsection ~~(E)~~ (F) of this Section.

G.-H. The Director shall review an application for a water report pursuant to the licensing time-frame provisions in R12-15-401.

H.-I. The Director may review or modify a water report if the Director receives new evidence regarding the criteria in subsection ~~(E)~~ (F) of this Section. The Director shall not modify a water report pursuant to this subsection if any of the residential lots included in the plat have been sold. To determine whether a water report should be modified pursuant to this subsection, the Director shall use the standards in place at the time the original application was submitted for the water report. If the Director modifies a water report, the Director shall:

1. Provide for an administrative hearing pursuant to A.R.S. Title 41, Chapter 6, Article 10;
and
2. Notify the Arizona Department of Real Estate.

~~I.~~ **J.** An owner of land that is the subject of a water report may request a modification of the water report at any time by submitting an application in accordance with subsection (B) of this Section. To determine whether a water report should be modified pursuant to this Section, the Director shall use the standards in place at the time of review.

~~J.~~ **K.** A water report is subject to the provisions of R12-15-708.

L. An owner of a subdivision that will be served Colorado River water by a municipal provider and that is located within a mandatory adequacy jurisdiction may apply for an exemption from the requirement to obtain a water report finding that the subdivision has an adequate water supply or a commitment of water service from a designated provider by submitting an application on a form prescribed by the director and demonstrating that the criteria in subsection (L)(2) of this Section are met. Upon receiving an application pursuant to this subsection, the Director shall:

1. Review the application pursuant to the licensing time frame provisions in R12-15-401.
2. Determine whether the applicant has demonstrated that all of the following apply:
 - a. Sufficient supplies of water will not be legally available to meet the estimated water demand of the subdivision in a timely manner because the municipal provider does not currently have the legal right to serve Colorado River water to the subdivision;
 - b. The municipal provider currently has an entitlement to Colorado River water, according to the criteria in R12-15-718(G);
 - c. The municipal provider will have the legal right to serve Colorado River water to the

subdivision within twenty years;

d. An interim water supply will be used to serve the subdivision until the municipal provider has the legal right to serve Colorado River water to the subdivision and the interim water supply meets all of the criteria in subsection (F) of this Section, except that the supply will be available for the interim period and not for 100 years; and

e. When the municipal provider has the legal right to serve Colorado River water to the subdivision, the Colorado River water supply will meet all of the criteria in subsection (F) of this Section for the remainder of the 100-year period.

3. If the Director determines that the criteria of subsection (L)(2) are met, issue a letter to the applicant, the platting authority, and the Arizona Department of Real Estate stating that the owner is exempt from the requirement to obtain a water report finding that the subdivision has an adequate water supply or a commitment of water service from a designated provider.

M. An owner of a subdivision that will be served by a water supply project under construction and that is located within a mandatory adequacy jurisdiction may apply for an exemption from the requirement to obtain a water report finding that the subdivision has an adequate water supply or a commitment of water service from a designated provider by submitting an application on a form prescribed by the director and demonstrating that the criteria in subsection (M)(2) of this Section are met. Upon receiving an application pursuant to this subsection, the Director shall:

1. Review the application pursuant to the licensing time frame provisions in R12-15-401.

2. Determine whether the applicant has demonstrated that all of the following apply:

a. Sufficient supplies of water will not be available to meet the estimated water demand

- of the subdivision in a timely manner because the physical works for delivering water to the subdivision are not complete;
- b. The physical works for delivering water to the subdivision are under construction and will be completed within twenty years;
 - c. An interim water supply will be used to serve the subdivision until the physical works for delivering water to the subdivision are fully constructed and the interim water supply meets all of the criteria in subsection (F) of this Section, except that supply will be available for the interim period and not for 100 years; and
 - d. When the physical works for delivering water to the subdivision are fully constructed, the water supply will meet all of the criteria in subsection (F) of this Section **for the remainder of the 100-year period.**
3. If the Director determines that the criteria of subsection (M)(2) of this Section are met, issue a letter to the applicant, the platting authority, and the Arizona Department of Real Estate stating that the owner is exempt from the requirement to obtain a water report finding that the subdivision has an adequate water supply or a commitment of water service from a designated provider.
- N. An owner of a subdivision located within a mandatory adequacy jurisdiction may request an exemption from the requirement to obtain a water report finding that the subdivision has an adequate water supply or a commitment of water service from a designated provider **based on substantial capital investment** pursuant to A.R.S. § 45-108.02 by submitting an application on a form prescribed by the Director and demonstrating that the criteria of A.R.S. § 45-108.02 are met. Upon receiving an application pursuant to this subsection, the Director shall:
- 1. Review the application pursuant to the licensing time frame provisions in R12-15-401.

2. Determine whether the criteria for an exemption in A.R.S. § 45-108.02 are met.

3. If the Director determines that the criteria of A.R.S. § 45-108.02 are met, issue a letter to the applicant, the platting authority, and the Arizona Department of Real Estate stating that the owner is exempt from the requirement to obtain a water report finding that the subdivision has an adequate water supply or a commitment of water service from a designated provider, and that the exemption expires five years after the date of the letter, unless prior to that date at least one lot in the subdivision is sold to a bona fide purchaser or the Director extends the time period.

O. If the Director grants an exemption from the requirement to obtain a water report finding that the subdivision has an adequate water supply or a commitment of water service from a designated provider pursuant to A.R.S. § 45-108.02, the owner of the subdivision may apply to the director for an extension of the exemption before the exemption expires by submitting an application on a form prescribed by the Director demonstrating that the criteria in A.R.S. § 45-108.02 for an extension of the exemption are met. The Director shall not grant more than two successive five-year extensions. Upon receiving an application pursuant to this subsection, the Director shall:

1. Review the application pursuant to the licensing time frame provisions in R12-15-401.

2. Determine whether the criteria in § 45-108.02 for an extension of the exemption are met.

3. If the Director determines that the criteria for an extension pursuant to A.R.S. § 45-108.02 are met, the Director shall issue a letter to the applicant, the platting authority, and the Arizona Department of Real Estate, stating that the exemption is extended for an additional five years from the previous expiration.

R12-15-714. Designation of Adequate Water Supply

A. A municipal provider applying for a designation of adequate water supply shall submit an application on a form prescribed by the Director with the fee required by R12-15-730 and the following:

1. The applicant's current demand;
2. The applicant's committed demand;
3. The applicant's projected demand for the proposed term of the designation;
4. The proposed term of the designation, which shall not be less than two years;
5. Evidence that the criteria in subsection ~~(E)~~ (F) of this Section are met; and
6. Any other information that the Director determines is necessary to decide whether an adequate water supply exists for the municipal provider.

B. A city or town, other than a municipal provider, that is applying for a designation shall submit an application on a form prescribed by the Director with the fee required in R12-15-730, and provide the following:

1. The current demand of the applicant's service area;
2. The committed demand of the applicant's service area;
3. The projected demand of the applicant's service area for the proposed term of the designation;
4. The proposed term of the designation, which shall not be less than two years; and
5. Evidence that the requirements in A.R.S. § 45-108(D) are met.

C. An application for a designation shall be signed by:

1. If the applicant is a city or town, the city or town manager or a person employed in an equivalent position. The application shall also include a resolution of the governing body

of the city or town, authorizing that person to sign the application; or

2. If the applicant is a private water company, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant.

D. If the municipal provider is located within a mandatory adequacy jurisdiction, the Director shall give public notice of the application as provided in A.R.S. § 45-108.01.

D.-E. After a complete application is submitted, the Director shall review the application and associated evidence to determine:

1. The annual volume of water that is physically, continuously, and legally available for at least 100 years;
2. The term of the designation, which shall not be less than two years;
3. The estimated water demand for the applicant's service area for 100 years; and
4. Whether the applicant has demonstrated compliance with all requirements in subsection ~~(E)~~ (F) or ~~(F)~~ (G) of this Section.

E.-F. The Director shall designate the applicant has having an adequate water supply pursuant to subsection (A) of this Section if the applicant demonstrates all of the following:

1. Sufficient supplies of water are physically available to meet the applicant's estimated water demand, according to the criteria in R12-15-716;
2. Sufficient supplies of water are continuously available to meet the applicant's estimated water demand, according to the criteria in R12-15-717;
3. Sufficient supplies of water are legally available to meet the applicant's estimated water demand, according to the criteria in R12-15-718;
4. The proposed sources of water are of adequate quality, according to the criteria in R12-

15-719; and

5. The applicant has the financial capability to construct adequate delivery, storage, and treatment works in a timely manner according to the criteria in R12-15-720.

F.–G. The Director shall issue a designation pursuant to subsection (B) of this Section if the applicant demonstrates that the requirements of A.R.S. § 45-108(D) are met.

G.–H. The Director shall review an application for a designation of adequate water supply pursuant to the licensing time-frame provisions in R12-15-401.

R12-15-715. Designation of Adequate Water Supply; Annual Report Requirements, Review, Modification, Revocation

A. By ~~March 31~~ **June 1** of each calendar year, a designated provider shall submit the following information for the preceding calendar year on a form provided by the Director:

1. The designated provider's committed demand;
2. The demand at build-out for customers with which the designated provider has entered into an agreement to serve water, other than committed demand;
3. A report regarding the designated provider's compliance with water quality requirements;
4. The depth-to static water level of all wells from which the designated provider withdrew water;
5. A report regarding volume of water withdrawn, diverted, or received from each source for delivery to customers;
6. Any other information the Director may reasonably require to determine whether the designated provider continues to meet the criteria for a designation of adequate water supply.

- B.** If there is a change of ownership, the subsequent owner of a designated provider shall notify the Director in writing of the change in ownership within 90 days.
- C.** The Director shall review a designation at least every 15 years following issuance of the designation to determine whether the designation should be modified or revoked.
- D.** The Director may modify a designation for good cause, including a merger, division of the designated provider, or a change in ownership of the designated provider. A designated provider may request a modification of the designation at any time pursuant to R12-15-714. To determine whether the designation should be modified, the Director shall use the standards in place at the time of review.
- E.** The Director may revoke a designation if:
1. After notifying the designated provider and initiating a review of the designated provider's status, the Director ~~deter mines~~ determines that the designated provider has less water, according to the criteria in ~~R12-15-714(E)~~ R12-15-714(F), than the amount required for a 100-year supply for the provider's:
 - a. Current demand,
 - b. Committed demand, and
 - c. Projected demand for the next two calendar years;
 2. The designated provider fails to construct adequate delivery, storage, and treatment works in a timely manner; or
 3. ADEQ or another governmental entity with equivalent jurisdiction has determined, after notice and an opportunity for a hearing, that the designated provider is in significant noncompliance with A.A.C. Title 18, Chapter 4 and is not taking action to resolve the noncompliance.

- F. To determine whether the designation should be revoked, the Director shall use the standards in place at the time of review. If the Director determines that a designation of adequate water supply should be revoked, the Director shall provide for an administrative hearing, in accordance with A.R.S. Title 41, Chapter 6, Article 10.
- G. If a designated provider's designated status terminates, the provider may apply for re-designation at anytime after termination.
- H. Notwithstanding any other provision in this Article, a decision and order of the Director designating a city, town, or private water company as having an assured water supply is not affected by this Article solely because the rule numbers cited in the decision and order may have changed after the effective date of the decision and order.

R12-15-716. Physical Availability

- A. The volume of a proposed source of water that is physically available to an applicant for a determination of assured water supply or a determination of adequate water supply is the amount determined by the Director to be physically available pursuant to subsections (B) through ~~(L)~~ (M) of this Section.
- B. If the proposed source is groundwater that will not be withdrawn from the C aquifer or the R aquifer outside an AMA, the applicant shall submit a hydrologic study, using a method of analysis approved by the Director, that accurately describes the hydrology of the affected area. Except as provided in subsection (D) of this Section, the Director shall determine that the proposed volume of groundwater will be physically available for the proposed use if both of the following apply:
 - 1. The groundwater will be withdrawn as follows:

- a. Except as provided in subsection (B)(1)(b) of this Section, from wells owned by the applicant or the proposed municipal provider that are located within the service area of the applicant or the proposed municipal provider or from proposed wells that the Director determines are likely to be constructed for future uses of the applicant or the proposed municipal provider.
 - b. If the application is for a dry lot development, from wells that the Director determines are likely to be constructed on individual lots.
2. Except as provided in subsection (C) of this Section, the groundwater will be withdrawn from depths that do not exceed the applicable maximum 100-year depth-to-static water level according to the following:

Type and location of development	Maximum 100-year depth-to-static water level
a. Developments in Phoenix, Tucson, or Prescott AMAs, except dry lot developments	1000 feet below land surface
b. Developments in Pinal AMA, except dry lot developments	1100 feet below land surface
c. Developments outside AMAs, except dry lot	1200 feet below land

developments	surface
d. Dry lot developments	400 feet below land surface

3. The Director shall calculate the projected 100-year depth-to-static water level by adding the following for the area where groundwater withdrawals are proposed to occur:
 - a. The depth-to-static water level on the date of application.
 - b. The projected declines caused by existing uses, using the projected decline in the 100-year depth-to-static water level during the 100-year period after the date of application, calculated using records of declines for the maximum period of time for which records are available up to 25 calendar years before the date of application. If evidence is provided to the Director of likely changes in pumpage patterns and aquifer conditions, as opposed to those patterns and conditions occurring historically, the Director may determine projected declines using a model rather than evidence of past declines.
 - c. The projected decline in the depth-to-static water level during the 100-year period after the date of application, calculated by adding the projected decline from each of the following that are not accounted for in subsection (B)(3)(b) of this Section:
 - i. The estimated water demand of issued certificates and water reports that will be met with groundwater or stored water recovered outside the area of impact of the stored water, not including the demand of subdivided lots included in abandoned

plats;

- ii. The estimated water demand of designations that will be met with groundwater or stored water recovered outside the area of impact of the stored water; and
 - iii. The groundwater reserved for developments for which the Director has issued an analysis pursuant to R12-15-703 or R12-15-712.
- d. If the groundwater withdrawals will occur within a mandatory adequacy jurisdiction, the projected decline in the depth-to-static water level caused by anticipated future uses, if both of the following apply:
- i. The anticipated future use will not be located within a mandatory adequacy jurisdiction; and
 - ii. The anticipated future use is not accounted for in subsections (B)(3)(b) or (B)(3)(c) of this Section.
- ~~d.—e.~~ The projected decline in depth-to-static water level that the Director projects will result from the applicant's proposed use over a 100-year period.

- C. The Director ~~shall~~ may lower the maximum 100-year depth-to-static water level requirement specified in subsection ~~(B)(2)~~ (B)(2)(c) of this Section for an applicant seeking a determination of adequate water supply ~~if the applicant demonstrates both of the following:~~
When determining whether to lower the maximum 100-year depth-to-static water level requirement, the Director shall consider the following factors:
1. ~~Groundwater~~ Whether groundwater is available at the lower depth; ~~and~~
 2. ~~The~~ Whether the applicant has ~~the financial capability to obtain the groundwater at drilled wells to~~ the lower depth, according to the criteria in R12-15-720;:
 3. Whether the decline in depth-to-static water level that the Director projects will result

from the applicant's proposed groundwater use over a 100-year period will adversely impact other uses in the area; and

4. Any other site-specific hydrologic or geologic factors that may be appropriate.

D. If the proposed source is groundwater that will be withdrawn from a groundwater basin outside an AMA and transported into an AMA, the Director shall determine that the proposed volume of groundwater will be physically available if both of the following apply:

1. The groundwater will be withdrawn from wells owned by the applicant or the proposed municipal provider or from proposed wells that the Director determines are likely to be constructed for the future uses of the applicant or the proposed municipal provider.
2. Withdrawal of the groundwater will comply with any depth-to-static water level criteria, decline rate criteria, and volume limitation criteria prescribed by statute. If there are no applicable depth-to-static water level criteria prescribed by statute, withdrawal of the groundwater shall comply with the depth-to-static water level criteria in subsection (B)(2) of this Section.

E. If the proposed source is groundwater that will be withdrawn from the C aquifer or the R aquifer outside an AMA, the applicant shall meet with the Department before filing the application to discuss the hydrologic study required by this subsection. The Director shall determine that the proposed volume of groundwater will be physically available for the proposed use if all of the following apply:

1. The groundwater will be withdrawn from wells owned by the applicant or the proposed municipal provider that are located within the service area of the applicant or the proposed municipal provider or from proposed wells that the Director determines are likely to be constructed for future uses of the applicant or the proposed

municipal provider.

2. The applicant has submitted a site-specific hydrologic study, using a method of analysis approved by the Director, that accurately describes the hydrology of the affected area. The hydrologic study shall incorporate all of the following demands that rely on the same water supply:

a. The demand of existing uses;

b. The estimated water demand of issued certificates and water reports, not including the demand of subdivided lots included in abandoned plats;

c. The estimated water demand of designations;

d. The demand of developments for which the Director has issued an analysis pursuant to R12-15-703 or R12-15-712;

e. If the groundwater withdrawals will occur within a mandatory adequacy jurisdiction, the demand of anticipated future uses that will not be located within a mandatory adequacy jurisdiction and that are not accounted for in subsection (E)(2)(a) through (E)(2)(d) of this Section; and

f. The demand of the applicant's proposed use.

3. One of the following applies:

a. The subdivision will be a dry lot development and the applicant demonstrates that after 100 years of withdrawing groundwater to meet all of the demands described in subsection (E)(2) of this Section, the projected depth-to-static water level will not exceed 400 feet below land surface.

b. The subdivision will not be a dry lot development and the applicant demonstrates that after 100 years of withdrawing groundwater to meet all of the demands

described in subsection (E)(2) of this Section, the projected depth-to-static water level will not exceed 1200 feet below land surface.

c. The subdivision will not be a dry lot development and the applicant demonstrates that after 100 years of withdrawing groundwater to meet all of the demands described in subsection (E)(2) of this Section, at least 50% of the estimated groundwater in storage in the area of proposed withdrawals will remain.

~~E.~~F. Subject to subsection ~~(L)~~(M) of this Section, if the proposed source of water is surface water, other than CAP water, or Colorado River water, the Director shall determine the annual volume of water that is physically available for the proposed use, taking into consideration the priority date of the right or claim, by calculating 120% of the firm yield of the proposed source at the point of diversion as limited by the capacity of the diversion works; except that if the applicant demonstrates that an alternative source of water will be physically available during times of shortage in the proposed surface water supply, the Director shall determine the annual volume of water available by calculating 100% of the median flow of the proposed source at the point of diversion as limited by the capacity of the diversion works. The Director shall determine the firm yield or median flow as follows:

1. By calculating the firm yield or median flow at the point of diversion based on at least 20 calendar years of flow records from the point of diversion, unless 20 calendar years of records are unavailable and the Director determines that a shorter period of record provides information necessary to determine the firm yield or median flow; or
2. By calculating the firm yield or median flow at the point of diversion using a hydrologic model that projects the firm yield or median flow, taking into account at least 20 calendar years of historic river flows, changes in reservoir storage facilities, and projected changes

in water demand. The yield available to any applicant may be composed of rights to stored water, direct diversion, or normal flow rights. If the permit for the water right was issued less than five years before the date of application, the Director shall require the applicant to submit evidence, as applicable, in accordance with this subsection.

F. ~~G.~~ Subject to subsection ~~(L)~~ (M) of this Section, if the proposed source of water is CAP water, the Director shall determine the annual volume of water that is physically available for the proposed use as follows:

1. If the applicant or the proposed municipal provider has a non-declining, long-term municipal and industrial subcontract for CAP water, calculate 100% of the annual amount of water established in the subcontract.
2. If the applicant has a lease for Indian priority CAP water, calculate 100% of the annual amount of water established in the lease.
3. If the applicant has a subcontract for CAP water other than a non-declining, long-term municipal and industrial subcontract or a lease for Indian priority CAP water:
 - a. If the applicant submits evidence of sufficient backup water supplies, calculate 100% of the annual amount of water established in the subcontract. The applicant may establish backup water supplies by one or more of the following:
 - i. A drought response plan;
 - ii. Long-term storage credits;
 - iii. A contract for water with a multi-county water conservation district; or
 - iv. Evidence of other backup supplies that are physically, continuously, and legally available.
 - b. If the applicant does not submit evidence of sufficient backup water supplies pursuant

to subsection ~~(F)(3)(a)~~ (G)(3)(a) of this Section, calculate the percentage of the annual amount of water established in the subcontract that reasonably reflects the reliability of the applicant's CAP water supply.

G-H. Subject to subsection ~~(L)~~ (M) of this Section, if the proposed source of water is Colorado River water, the Director shall determine the annual volume of water that is physically available for the proposed use as follows:

1. If the priority of the contract for Colorado River water provides reliability equal to or better than CAP municipal and industrial water, calculate 100% of the annual amount of water established in the contract.
2. If the contract for Colorado River water provides reliability that is less than CAP municipal and industrial water:
 - a. If the applicant submits evidence of sufficient backup water supplies, calculate 100% of the annual amount of water in the contract. The applicant may establish backup water supplies by one or more of the following:
 - i. A drought response plan;
 - ii. Long-term storage credits;
 - iii. A contract for water with a multi-county water conservation district; or
 - iv. Evidence of other backup supplies that are physically, continuously, and legally available.
 - b. If the applicant does not submit evidence of sufficient backup water supplies pursuant to subsection ~~(G)(2)(a)~~ (H)(2)(a) of this Section, calculate the percentage of the annual amount of water established in the contract that reasonably reflects the reliability of the applicant's Colorado River water supply.

~~H.~~ I. Subject to subsection ~~(I)-(J)~~ of this Section, if the proposed source of water is effluent, the Director shall determine the annual volume of water that will be physically available by evaluating the current, metered production or the projected production of effluent. The volume of effluent that is physically available shall not include the following:

1. If the effluent will be delivered directly from a wastewater treatment plant, the volume of effluent that exceeds the applicant's estimated water demand that will be met with effluent; and
2. The volume of effluent that does not comply with any applicable water quality requirements for the proposed use of the effluent.

~~I.~~ J. If the proposed source of water is stored water to be recovered from recovery wells, the Director shall determine the volume of water that is physically available for the proposed use as follows:

1. If the stored water is represented by long-term storage credits in existence on the date of application, the amount that is physically available is the amount that may be recovered pursuant to the credits in a manner consistent with A.R.S. Title 45, Chapter 3.1, subject to subsection ~~(I)(3)-(J)(3)~~ of this Section.
2. If the applicant proposes to use long-term storage credits that do not exist on the date of application or recover stored water on an annual basis pursuant to A.R.S. § 45-851.01, the Director shall evaluate the following in determining whether to include the proposed credits or the water proposed to be stored and recovered annually in the amount of water that is physically available for the applicant's proposed use:
 - a. The terms of a contract to obtain water to store in a storage facility;
 - b. The physical, continuous, and legal availability of the water proposed to be stored;

- c. The presence of an existing storage facility that will be available for use for the proposed storage;
 - d. The existence of all required permits of an adequate duration; and
 - e. Whether recovery of the stored water will comply with subsection ~~(I)(3)~~ (J)(3) of this Section.
3. If the applicant proposes to recover the stored water from recovery wells located outside the area of impact of storage, the stored water will be considered physically available only if sufficient water exists for the withdrawals consistent with both of the following:
- a. The maximum 100-year depth-to-static water level requirements established in subsection (B)(2) of this Section; and
 - b. Any criteria for the withdrawals prescribed in the management plan in effect at the time of the application.
- ~~J.~~ K.** If the applicant will obtain the source of water through a water exchange agreement, the Director shall determine that the water is physically available for the proposed use if the applicant submits evidence that the source of water the applicant or the applicant's customers will use will be physically available in accordance with the terms of this Section.
- ~~K.~~ L.** In the case of two or more pending, conflicting, complete and correct applications for determinations of assured water supply or determinations of adequate water supply, the Director shall give priority to the application with the earliest priority date. The priority date of an application for a determination of assured water supply or determination of adequate water supply shall be the date that a complete and correct application is filed with the Director. The Director shall consider an application complete and correct if it contains all the information required and the Director verifies that the information is accurate.

~~L.~~ M. For a certificate applicant that proposes to use surface water, the Director shall determine that the proposed source is physically available only if the applicant demonstrates one of the following:

1. The land that is the subject of the application is a member land of the CAGRD.
2. The applicant has independently obtained the surface water supply.
3. The proposed municipal provider would satisfy the criteria in R12-15-722 if the municipal provider were subject to those requirements.

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