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May 7, 2010

Via electronic mail

Mr. Doug Dunham
Arizona Department of Water Resources
3550 North Central Avenue
Phoenix, Arizona 85012

Re: Comments on the Draft Proposed Changes to the Assured and Adequate Water Supply Physical Availability Rules and Substantive Policy Statement regarding Hydrologic Studies Demonstrating Physical Availability of Groundwater for AAWS Supply Applications

Dear Doug:

We appreciate the opportunity to comment on the Draft Proposed Changes to the Arizona Department of Water Resources (“ADWR” or “Department”) Assured and Adequate Water Supply (“AAWS”) Physical Availability Rules and Substantive Policy Statement regarding Hydrologic Studies Demonstrating Physical Availability of Groundwater for AAWS Supply Applications, dated March 24, 1020 (“Draft Proposal”). We are deeply concerned about the Draft Proposal which, if implemented, represents a drastic change in the approach to AAWS and will inevitably result in substantial conflicts among and between land owners and municipal providers over water supplies. The Draft Proposal also fundamentally fails in its stated goal of improving efficiency.

Single well/negative impact standard

Our single greatest concern with the Draft Proposal is the adoption of the “negative impacts” standard for approval of physical availability. According to the Draft Proposal, “a new AAWS application’s existing demand cannot cause the 100-year depth-to-static water level to drop below the maximum allowable 100-year depth-to-static water level or known depth of the source aquifer.” Draft Proposal at p. 31. The document further clarifies that this negative impact can be measured *at a single well*: “If the 100-year drawdown analysis for an AAWS application indicates that a well associated with a municipal provider that serves a use that is included in a determination of AAWS is impacted such that the water level at the well exceeds the maximum

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allowable 100-year depth-to-static water level or that the water level reaches the bottom of the aquifer (goes dry) during the 100-year period, the applicant must reduce its own projected groundwater demands or move its wells to mitigate the impacts to the provider's well. If the applicant is unable to mitigate its impacts on the well, the applicant must seek an alternative water supply." *Id.* at 32.

Under the current AAWS rules, depth to water is measured at the wells included in the application, *i.e.*, wells that will be relied upon by the certificate or designation applicant to serve the proposed uses. A.A.C. R12-15-716. Existing demands (including existing AAWS approvals) *do* have to be taken into account when issuing new AAWS approvals and this is supposed to be done (current practice notwithstanding) through incorporation of existing demands in regional drawdown trends. Other than this consideration, there is no separate provision (again, current practice notwithstanding) requiring an analysis of depth to water and aquifer capabilities at any wells other than those proposed for use to supply the pending application.

This approach has worked well. It requires an applicant to show that supplies are available at its site to supply the proposed uses for 100-years, while simultaneously recognizing and protecting existing approvals through incorporation of existing demands in regional groundwater decline trends.

By contrast, the Department's Draft Proposal presents a myriad of problems that will inevitably lead to conflict over sharing common supplies in regional aquifers:

- ADWR's existing practice of applying the single well/negative impact standard is now governed by policy. Placing it in rule will remove the Director's discretion to respond to complex and evolving factors and situations.

- The single well/negative impact standard is an incredibly low trigger point for refusing to issue a new AAWS and it is likely to mean that most groundwater basins are fully allocated today. This will hasten litigation over the appropriate scope of the AAWS program and the authority of ADWR to allocate water supplies in this manner.

- The single well/negative impact standard equates protection of an existing AAWS approval with protection of a single well that served as the basis for that approval. This fails to consider the original role of the well in the existing approval, *i.e.*, whether a 100-year supply of groundwater is still available even with the loss of a well, and the role of the well in the municipal provider service area where the existing use is located. Because a municipal provider is generally free to serve new uses in its service area through its entire well system and is not limited to wells projected to be used in the certificate or designation application, the wells in question (particularly the most vulnerable wells) may never be drilled or used. Similarly, the

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provider is not limited by the depth to water criteria in the AAWS rules and can freely pump below that depth if necessary to meet the needs of its customers. Thus, the fact that a model indicates that sometime within 100 years, a single well will hit bedrock or AAWS depth limits does *not* mean that an existing assured water supply is compromised.

- The single well/negative impact standard effectively makes the availability of groundwater in a particular basin dependent on the most vulnerable wells in the basin. These are typically those located at the periphery of the basin where depth to bedrock becomes an issue. Landowners in the middle of a basin, overlying the most productive portion of the aquifer, will be prevented from demonstrating an assured water supply even if projections of groundwater decline on the applicant's property come nowhere near bedrock or AAWS depth-to-water limits. This will place a huge amount of groundwater off limits.

- It is not clear exactly which wells would need to be addressed by the standard and it will be a challenge to define this with more specificity. The Draft Proposal says that the standard applies to "a well associated with a municipal provider that serves a use that is included in a determination of AAWS" Draft Proposal at p. 32. We are assuming that this applies to wells included in the existing AAWS application, but the phrase is open to interpretation. Does it include *all* wells of a municipal provider that serves an existing AAWS use, whether or not those wells were on the application? Does it extend to new wells drilled in alternative locations not included in the AAWS application? Does it include wells identified in an application but never drilled?

These questions underscore the fundamental shift that is going on here. Under the current rules (again, current practices notwithstanding), regional groundwater declines are included in the model, but there is not a requirement to evaluate impacts to specific offsite wells. Frankly, an applicant for an AAWS approval cannot reasonably be expected to evaluate the status of the well and its relationship to the existing AAWS approval (has it been drilled or not; will it ever be drilled; does the provider have alternative supplies, etc.) These are questions that are answered over the life of a municipal system, beyond the purview of ADWR. Yet if the Department is going to deny an AAWS approval on this basis, it is going to inevitably drawn into answering (or at least attempting to answer) these questions.

That is not all that will have to be investigated and evaluated. If the Department is going to implement such a drastic change in the AAWS rules, then many of the underlying assumptions that result in over estimation of water demand and under estimation of groundwater supply must be revisited. For example, as a matter of practice the Department generally restricted applicants from including effluent supplies on certificates and designations, unless the wastewater treatment plant was fully constructed and operational. This resulted in numerous historical AAWS approvals that essentially ignore effluent supplies, when in reality these developments rely on those supplies. Similarly, AAWS demand projections have been proven to overstate

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groundwater demand. For built-out subdivisions, ADWR should rely on actual demands and not projected demands in the AAWS approval. Other assumptions that must be revisited include:

- Addition of any water supplies used by a designated provider, but not expressly placed on its designation;
- more realistic natural recharge factors;
- future recharge activities of the Central Arizona Groundwater Replenishment District ("CAGRDR") (as a matter of reasonable future physical availability, not present day legal availability);
- establishment of background decline rates based on irrigation grandfathered rights or other existing uses, when those uses are included separately in modeling.

Continuing to operate under the existing assumptions, which systemically overstate demand and understate supply will inevitably lead to findings that groundwater basins have been fully allocated even when substantial supplies remain.

Efficiency

The Department's stated goal in issuing the Draft Proposal and pursuing rulemaking is to increase efficiency by providing a policy document that applicants can rely on to explain program requirements, without the need for repeated pre-application interaction with staff. The guidance does not accomplish this. Rather, it repeatedly directs applicants to consult with the Department staff and obtain determinations on many application requirements *before* an applicant can finalize an application. It has been our experience that much time is lost in repeated pre-application meetings and discussions with the Department on what will be required to process an application. If it intends to achieve increased efficiencies through this effort, the Department needs to re-evaluate the Draft Proposal and reduce the number of such requirements in the document.

Additional Comments

We have the following additional questions and comments:

1. Please explain why the proposed policy requires that imaged wells sites in a hydrologic study must be owned by the applicant or water provider. We understand that the policy refers to proving only physical availability, rather than legal availability.
2. The policy needs to make clear that requirements to include both the water demands of existing uses as well as regional decline rates does not result in double counting of

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demands. If some uses are represented in the decline rate assumption, please specifically identify those uses. Similarly, we would appreciate an explanation of how the decline rate assumptions take into account future pumping of irrigation districts and irrigation grandfathered rights. In other words, does the decline rate include any pumping that could be attributable to these types of uses?

3. We recommend that the policy state how applicants will be able to determine the extent of the study area, *i.e.* the 1 foot or projected area of drawdown after 100 years.

4. Please clarify in the policy whether the Department will require all General Industrial Use (GIU) Permits to take into account approved AWS determinations when the Department reviews GIU permit applications.

5. Please confirm that exempt wells that are *not* part of an AAWS approval will *not* need to be evaluated under the proposed new negative impacts standard.

6. Please clarify that applicants can use approved past assured water supply studies when preparing a new AAWS applications in the same region. If the Department will place any limitations on the use of past approved studies, we request that the policy specifically state those limitations.

7. Please explain why the proposed policy requires proof of legal availability for artificial recharge assumptions in modeling physical availability. (Page 14)

8. Please provide examples in the Phoenix Active Management Area (“AMA”) and the Pinal AMA where a small (200 lot/100 AF) development could reasonably rely on ability to use analytical model without the need to obtain pre-approval from ADWR.

9. Please explain how ADWR will regulate a recovery schedule for long term storage credits submitted by a storer. (Page 25) In other words, will this requirement function like a legal condition requiring the storer to comply with the submitted schedule when implementing recovery?

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We appreciate the opportunity to comment on this proposal. We believe that the fundamental changes being proposed here go well beyond how the AAWS program has been administered in the past and will hasten and exacerbate conflicts over common supplies of groundwater. We urge the Department to reconsider.

Sincerely,

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Robert D. Anderson
Shilpa Hunter-Patel

RDA/sjf