

TECHNICAL AND FINANCIAL CAPABILITY

A.R.S. § 45-811.01(C)(1)

I. INTRODUCTION

Under the Underground Water Storage, Savings, and Replenishment Program¹, applicants for Underground Storage Facility (USF) permits,² in addition to other requirements, must demonstrate to the Director's satisfaction the "technical and financial capability to construct and operate the facility."³ The purpose of this paper is to assist applicants with the identification of appropriate evidence that may be submitted to establish that the applicant possesses the necessary "technical and financial capability" for the issuance of a USF permit.

The design, construction, and operation of a USF are complex activities. Geologic and hydrologic conditions vary significantly across Arizona and within AMA boundaries. Appropriate siting of a proposed facility requires examination of a number of factors, including the hydrologic feasibility of recharging at the site, proximity to the source of water to be stored, potential impacts to third parties, and contaminants that may already be present in the soil and water in the vicinity.

An applicant must have available to it the technical expertise to be able to study these conditions and to determine the appropriate site and method for its USF. For this reason, the statutes require that the applicant demonstrate that it has the "technical capability" to construct and operate the USF.

The applicant must also have the financial resources to adequately support operation of the facility. A thorough analysis of "financial capability" requires: (1) an estimation of the total costs associated with the completion of all stages of construction and operation of the proposed facility and (2) an evaluation of each individual applicant's ability to meet those estimated costs.

In addition, technical and financial capability encompasses the applicant's ability to access the site where it proposes to construct and operate the facility. To establish technical capability for the USF as designed, the applicant must demonstrate that it can access the site for which the facility is designed. Similarly, if the applicant does not yet have legal access to the site, the costs of acquiring that access may impact the applicant's financial capability to undertake the project.

II. DETERMINATION OF TECHNICAL CAPABILITY

In order for an applicant for a USF permit to establish that it has the technical expertise to construct and operate a USF, the applicant shall submit with its USF application the following items:

- A. The name and address of the person or persons who will be principally responsible for overseeing the construction and operation of the USF.
- B. Proof of any pertinent licenses or certifications held by that person.
- C. A narrative, resume, biography, or related information describing the person's professional training and work experience that is relevant to the construction or operation of the USF.

¹ See A.R.S. § 45-801.01 *et seq.* (establishing and defining program).

² See A.R.S., Title 45, Chapter 3.1, Article 2 (detailing Storage Facility Permits).

³ See A.R.S. § 45-811.01(C)(1).

The Director shall determine the applicant to have the technical expertise to construct and operate the USF if the information provided by the applicant demonstrates that the person or persons who will be principally responsible for overseeing the construction and operation of the USF has the experience and training necessary to construct and operate the USF. In making this determination, the Director may consider the applicant's and the responsible person's history in the UWS Program and whether any USF for which the applicant was permitted or for which the person was principally responsible has failed to comply with UWS statutes, rules, or permits. In considering past failures to comply with UWS statutes, rules, or permits, the Director shall consider the frequency and substance of any such failure.

III. DETERMINATION OF FINANCIAL CAPABILITY

A. Estimation of Costs

In order for a USF permit applicant to establish that it has the "financial capability" to construct and operate a USF, the applicant shall submit with its USF application a statement establishing the total estimated costs for the USF. The statement shall include:

1. An estimate of all construction costs associated with building the USF; and
2. An estimate of the annual operational costs for the USF for each year of the permit term requested, including all costs for regulatory compliance and proper maintenance of the facility.
3. Explanations, summaries, or accountings of information or data relied upon to form the reasonable basis of any assumptions or projections used to calculate the estimated costs.
4. A statement of verification by a person the applicant has identified on the application as being principally responsible for overseeing the construction and operation of the USF that the statement of estimated costs is a true and best estimate of the total costs associated with construction and operation of the USF.

The Director shall accept the statement of estimated costs unless the statement is not supported by the information on which the estimates are based or is an unreasonable or unrealistic estimation of the total costs.

B. Ability to Meet Total Estimated Costs

In order for a USF permit applicant that is an agency of the United States, an agency of the State of Arizona, a city, town, county, irrigation district, multi-county water conservation district, or other public entity with taxing or public bonding authority, to establish that it has the ability to meet the total estimated costs for construction and operation of the facility, the applicant shall submit with its USF application a sworn statement from the chief financial officer of the applicant certifying that to the best knowledge and belief of the chief financial officer the applicant possesses existing financial resources or adequate taxing or bonding authority to pay the estimated construction and operation costs for the USF, as indicated on the applicant's total statement of estimated costs.

The Director shall determine that an applicant that is an agency of the United States, an agency of the State of Arizona, a city, town, county, irrigation district, multi-county water conservation district, or other public entity with taxing or public bonding authority has the ability to meet the total estimated costs for the facility, and therefore has established the "financial capability" to construct and operate the USF, if the applicant submits the statement specified above.

In order for a USF permit applicant that is not an agency of the United States, an agency of the State of Arizona, a city, town, county, irrigation district, multi-county water conservation district, or other public entity with taxing or public bonding authority, to establish that it has the ability to meet the total estimated costs for the construction and operation of the facility, the applicant shall submit at least one of the following:

- a. A sworn statement from the chief financial officer of the applicant certifying that to the best knowledge and belief of the chief financial officer the applicant possesses financial ability to pay the estimated construction and operation costs for the USF, as indicated on the applicant's statement of total estimated costs.
- b. A loan commitment letter or a revolving credit agreement from a recognized financial institution establishing that the applicant possesses the ability to finance the payment of estimated construction and operation costs for the USF, as indicated on the applicant's statement of total estimated costs.
- c. Evidence of posting a bond sufficient to meet the estimated construction and operation costs for the USF, as indicated on the applicant's statement of total estimated costs.

The Director shall determine that an applicant that is not an agency of the United States, an agency of the State of Arizona, a city, town, county, irrigation district, multi-county water conservation district, or other local government entity has the ability to meet the total estimated costs for the facility, and therefore has established the "financial capability" to construct and operate the USF, if the applicant submits the information specified above.

IV. ACCESS TO USF SITE

In order for an applicant for a USF permit to establish that it has or can obtain access to the site of the proposed USF, the applicant shall submit with its USF application one of the following items:

- a. A copy of a deed, easement, lease, judgement, license, or other proof that demonstrates that the applicant has legal access to the proposed site for the purposes of constructing and operating a USF.
- b. Evidence that the applicant is in the process of obtaining a deed, easement, lease, license, or other proof that allows the applicant legal access to the proposed site for the purposes of constructing and operating a USF.
- c. If the project will be located in part or in whole within the natural channel of a stream, the application shall note that access to the stream channel is granted under A.R.S. § 45-173.⁴

The Director shall determine the applicant has legal access to the site if the applicant submits the information specified above.

If the applicant submits evidence that it is in the process of obtaining legal access to the site, the Director may issue the permit conditioned upon the applicant obtaining that access. If it is demonstrated that the applicant cannot obtain legal access to the site, the Director may deny the permit.

⁴ Note that even if access to the site is granted under A.R.S. § 45-173, the applicant must submit land ownership information for the stream channel to satisfy requirements under the unreasonable harm review.