ADWR RESPONSES TO COMMENTS ON PROPOSED ASSURED AND ADEQUATE WATER SUPPLY RULES

On October 6, 2005, the Arizona Department of Water Resources (ADWR) distributed a draft of the proposed Assured and Adequate Water Supply rules (AWS rules) and requested public comments. On November 3, 2005, in response to some of the comments received, ADWR distributed a second draft of the AWS rules, and requested further comments. The following table summarizes comments received on both drafts of the AWS rules and ADWR's responses. Where possible, the responses include specific language that will be included in the next draft of the AWS rules.

COMMENTING PARTY	RULE	COMMENT	RESPONSE
Anderson,[1] Gallogly,[2] Sweeney,[3] Pearce[4]	701	"Adequate delivery system;" and "adequate treatment facilities" are new and are not used consistently in the draft rules. Should define the term "adequate delivery, storage and treatment works" as used in 716(A). Note that not all sources will require storage and/or treatment facilities.	Will use and define the term as follows: "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.
AMWUA,[5] Chandler,[6] Pearce	701	"Adequate storage facilities" appears to require (in 716) that applicant have adequate storage facilities for 100-year supply.	Will revise as follows: "Adequate storage facilities" means facilities that can store enough water to meet the needs of the proposed use for the duration of an anticipated shortage.
Gallogly	701	"affiliate" should be added and defined.	Will include and define as follows: "a person who, directly or indirectly through one or more

[1] "Anderson" indicates comments received from Robert D. Anderson and Shilpa Hunter-Patel, Withey Anderson & Morris, PLC, on behalf of Diamond Ventures, Inc., DMB Associates Inc., Pivotal Group and Robson Communities, Inc.
[2] "Gallogly" indicates comments received from Margaret R. Gallogly, Fennemore Craig, P.C., on behalf of 10,000 West LLC and Douglas Ranch El Dorado LLC.
[3] "Sweeney" indicates comments received from Sheryl A. Sweeney, Ryley Carlock & Applewhite.
[4] "Pearce" indicates comments received from Michael J. Pearce, Fennemore Craig, P.C., on behalf of the Home Builders Association of Central Arizona.
[5] "AMWUA" indicates comments received from the Arizona Municipal Water Users Association. Please note that the Town of Gilbert, the City of Mesa and the City of Phoenix adopted all comments submitted by AMWUA.
[6] "Chandler" indicates comments received from the City of Chandler.

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			intermediaries, controls, is controlled by or is under common control with the person specified."
Gallogly	701	"analysis holder" should be revised. Not all landowners who give notice to ADWR should be analysis holders.	Will delete requirement that landowner give notice to ADWR; will define as: "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."
Gallogly	701	"analysis of adequate water supply" should be defined	Will define as "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."
Gallogly	701	"analysis of assured water supply" should be defined	Will define as "a determination issued by the director stating that one or more criteria required for a certificate of assured water supply pursuant to R12-15-703 have been demonstrated for a development."
Gallogly	701	"annual authorized volume" add "approved" to subsection (a).	Will correct. "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."
Pearce	701	"Certificate holder" definition should be revised to include multiple parties.	Will revise definition: "“Certificate holder” means all persons included on a certificate, except any such person that no longer owns the property included in the certificate."
Gallogly	701	"certificate" add to definition	Will define as: "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."
Gallogly	701	"certificated area" should be defined	Rather than define "certificated area," will replace "certificated area" in 717(B)(3) with recommended language ("the geographic area described in a

COMMENTING PARTY	RULE	COMMENT	RESPONSE
			certificate of convenience and necessity"). Defining "certificated area" may be confused with the area included in a certificate of assured water supply.
Pearce, Sweeney	701	"Colorado River water" def'n should be revised to include present perfected rights and secretarial reservations.	Will revise to state: "'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." See ARS 45-2201(5). This definition stays as close as possible to the statutory definition, but clarifies that CAP water is not included for purposes of this Article.
Gallogly	701	"determination of assured and adequate water supply" should be defined or use "determination of assured water supply or determination of adequate water supply"	Will use "determination of assured water supply" and "determination of adequate water supply."
Marana,[7] Metro[8]	701	"Determined water demand": Stakeholders expressed concern that the definition places an analysis "on coequal footing" with certificates and designations, although less planning is required for an analysis.	ADWR will replace "determined water demand" with "estimated water demand." Regardless, the terms do not make analyses equivalent to designations or certificates. Designations and certificates are final determinations that allow approval of subdivision plats and issuance of public reports. Analyses are not final determinations and do not allow development to move forward.
Anderson, CAWCD,[9] Gallogly, Pearce, Sweeney	701	"Determined water demand": Stakeholders expressed concern that the term suggests that the director's determination of demand is a "permitted volume" that could be used to restrict otherwise legal use of water within the subdivision; also expressed concern that the term suggests a "correct" water demand, rather than an	Will replace "determined water demand" with "estimated water demand." Where "estimated water demand" is used, it will be replaced with "an estimate of the water demand." Will re-define "estimated water demand" to clarify that it is limited to the water demand of uses *included in* the subdivision.

[7] "Marana" indicates comments received from the Town of Marana.
[8] "Metro" indicates comments received from Metropolitan Domestic Water Improvement District.
[9] "CAWCD" indicates comments received from the Central Arizona Water Conservation District.

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		estimate. Additionally, the definition of the term (and the definition of "estimated water demand") may be too broad by referencing all uses "associated with" the subdivision.	
Dishlip,[10] Tucson[11]	701	"Drought volume" definition references R12-15-7xx; cite specific rule number.	Will correct citation to R12-15-716.
Anderson, Gallogly, Pearce, Sweeney	701	"dry lot development" revise definition so that the term does not require that a well be drilled on each lot.	Will revise definition and return to definition in existing rules (delete the phrase "and in which wells will be drilled on individual lots").
AMWUA, Anderson, CAWCD, Gallogly, Marana, Pearce, Sweeney	701	"Excess groundwater" Stakeholders expressed concern that the definition of "excess groundwater" may conflict with the statutory definition (ARS 48-3701), particularly by requiring replenishment of groundwater uses that may not be required or authorized to be replenished by statute. Stakeholders requested that ADWR identify its intent with respect to replenishment of groundwater use.	Will revise the rules to delete references to "excess groundwater" and will delete definition of term. Revisions will include revisions of R12-15-721 to acknowledge groundwater use that is consistent with management goal according to statute (including CAGRD, imported groundwater, ARS 45-463(F), etc.). ADWR will continue its current practices regarding replenishment.
Gallogly	701	"extinguish" delete "groundwater" from "grandfathered groundwater right" per ARS 45-402.	Will correct.
Gallogly	701	"Master planned community" is not included in the draft rules; suggest deleting.	This term is used in R12-15-708(C)(3)(a).
CAWCD, Gallogly	701	"Member land" and "member service area" change statute reference to Title 48 (from Title 45)	Will correct.
Sweeney	701	"multi-county water conservation district" deleted from definitions but the term still appears in proposed rules.	Will define as: "a district established pursuant to A.R.S. Title 48, Chapter 22."
Anderson, Sweeney	701	"municipal provider" is not defined in the rules but has multiple definitions in Title 45.	Will define as "'Municipal provider' has the same meaning as provided in A.R.S. § 45-561."
Sweeney	701	"optionee" should be defined.	Will use "potential purchaser" and will define as "a

[10] "Dishlip" indicates comments received from Herb Dishlip on behalf of himself and the City of Prescott.
[11] "Tucson" indicates comments received from Tucson Water.

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			person who has entered into a purchase agreement for the land that is the subject of an application for a certificate, an assignment of a certificate or a water report."
Marana, Metro	701	"Owner" definition may give a leaseholder the same standing as a fee simple owner.	Will use recommended definition above, which requires fee title.
Gallogly	701	"owner" recommend changes to definition	Will define as: "For an analysis, certificate or water report applicant, a person who holds fee title to the land described in the application."
Anderson, Pearce, Sweeney	701	"persons per household" definition has changed; Why? What is the impact? Pearce recommended defining as "a measure reasonably calculated to project the number of persons residing in a housing unit of a proposed development.	No intended substantive change; will return to original definition. ("“Persons per household” means a measure obtained by dividing the total number of persons residing in all housing units by the number of housing units.")
Gallogly	701	"physical availability determination" should be defined	Will define as: "“Physical availability determination” means a letter issued by the director stating that an applicant has demonstrated all of the criteria set forth in R12-15-702(C)."
Tucson	701	"Plat" may not be used consistently throughout the rules.	After review, ADWR has not found any inconsistencies.
Anderson, Gallogly, Pearce, Sweeney	701	"Plat" Plats depict land uses, not water uses. Continue to use the existing definition or delete "indicating all proposed water uses."	Will define as "a preliminary or final map of a proposed subdivision in the form required by the applicable platting entity.")
Gallogly	701	"potential purchaser" should be defined and used in place of "optionee" because "potential purchaser" is more accurate.	ADWR will use and define the term "potential purchaser" as "a person who has entered into a purchase agreement for the land that is the subject of an application for a certificate, an assignment of a certificate or a water report."
Gallogly	701	"projected demand" add "during the term of the designation."	After review, ADWR has determined that the proposed addition would conflict with the intended meaning in R12-15-711(F)(1)(c). Including "during the term of the

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			designation" in the definition of "projected demand" would lead to revocation if the provider did not have enough water to meet projected demand through the term of the designation, even if the provider had enough water to meet projected demands through the next 5 years, for example. Current rules (and ADWR intent in the draft rules) only require the provider to have sufficient water to meet projected demands through the next two years. (Also note that "during the term of the designation" will be included in the definition of "estimated water demand" as it applies to designations.)
Anderson	701	"Projected demand" definition could be used by municipalities to reserve water outside the municipality.	After review, ADWR has determined that a designation is limited to the provider's service area, and so is projected demand (by definition). In some cases it may be appropriate for designated providers to include demands that it will serve, even if those demands are located outside the incorporated limits.
Gallogly	701	"purchase agreement" should be defined	Will define as: "a contract to purchase real property, such as a contract for purchase and sale, an option agreement, a trust agreement or a deed of trust."
Anderson	701	"Service area" Applies the concept outside AMAs. What is the authority for this additional regulation?	The definition for "service area" outside AMAs is not a "regulatory" definition but is intended to provide a geographic reference for the term. (The term is currently used in the Adequate Water Supply Rules. See current R12-15-716(A)(2)(h)(i); R12-15-717(B)(1)(a)(i) and (ii)).
Chandler	701	"Service area" is defined differently for new well drilling permits. This will cause confusion with other on-going ADWR permit applications.	The definition only applies to this article and will not apply to well drilling permits.
Anderson, Pearce	701	"Service Area" Should include additions to the area as	Will revise (a) as follows: "For an application for a

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		recognized in ARS 45-402(31)	water report, an analysis of adequate water supply 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 any additions to the area that contain the municipal provider's operating distribution system for the delivery of water for a non-irrigation use"
Pearce	701	"Service area" Subsection (b) should be revised to include potential municipal service area.	Subsection (b) only applies to designation applications sought under ARS 45-108(D), which applies to municipalities that *do not*serve water.
Anderson, Gallogly, Pearce, Sweeney	701	"Subdivision" deleted references to A.R.S. 32-2101 should be replaced.	Will define as: "“Subdivision” has the same meaning as prescribed in A.R.S. § 32-2101."
Chandler	701	"Term of Designation" should be defined.	The term is explained in the rules (see R12-15-711(C) and R12-15-710(A)(2)) and the term may vary based on the provider's ability to meet the criteria, so long as the 2-year minimum period is met.
Gallogly, Pearce	701	"Water report" def'n should be revised (grammatical correction)	Will correct.
Gallogly	702	(A)(3): add "reasonably"	Will add.
Anderson	702	(D): Phrase "after a complete application is submitted" conflicts with licensing timeframe requirements under Title 41 and ADWR substantive policy which suggests that review begins with signed application and fees are submitted.	The rule language is consistent with Title 41 licensing timeframe requirements. Also, please note that the language of the rule does not preclude ADWR staff from beginning to review the application before the application is "administratively complete."
Dishlip	702	(E) refers to time frame rules for PADs in R12-15-401, which does not list a time frame for PADs.	Will delete timeframe language from PAD rule.
Sweeney	702	(F) allows ADWR to disregard a PAD; this reduces its value.	This language is no different than current practice. A PAD is not a final determination *and* does not reserve any water. ADWR will continue to reserve the right to consider new information regarding physical availability.

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Gallogly	702	(F): refer to 716, rather than 716(B).	Will correct.
Sweeney	702	702: Water quality seems irrelevant to a PAD. ADWR does not require this in practice.	ADWR currently requires evidence of water quality for a PAD. See R12-15-702(C).
Anderson, Gallogly, Sweeney, Pearce	702	Stakeholders request that the requirement to demonstrate continuous availability be eliminated from the PAD requirements.	Will separate R12-15-716 into two rules (one rule for physical availability and one rule for continuous availability). Only physical availability will be required for PAD.
Pearce	703	(B)(2) add "development" before "plan".	Will revise language to state "A description of the development, including:"
Gallogly, Pearce	703	(A) Add sentence to insure that existing analyses will be deemed to comply with the rule.	Will explain impact of rule changes on all existing determinations in the preamble to the rulemaking. Analyses will continue to be recognized on the current terms, but will be subject to the renewal provisions of the new rule.
Sweeney	703	(A) ownership of land may change after the analysis application is filed. Subsequent ownership changes should not affect the validity of the analysis.	Definition of "analysis holder" ("a person to whom an analysis of assured or adequate water supply is issued or the current owner or owners of the land included in the analysis") will address this issue.
Anderson, Gallogly	703	(A): Should allow an owner to consent to application rather than require owner to apply.	Will add.
Anderson	703	(B)(2) should clarify that estimated water demand may be calculated according to other, reasonable, methods.	Will revise (B)(2)(d) to require "An estimate of the water demand for the proposed land uses included in the development."
Anderson, Gallogly, Pearce, Sweeney	703	(B)(4) and (E) revise to allow an analysis of one or more of the AWS criteria (consistent with existing policy). Any criteria proven for analysis should be considered "met" for certificate application.	Will revise language to permit current practice of demonstrating one or more requirements. Water will only be reserved if applicant demonstrates physical availability. Any requirements demonstrated for analysis will be presumed to be met for certificate application. (Note that, as stated above, physical and continuous availability will be two separate requirements.)

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Anderson, Gallogly, Pearce	703	(C) authority to act should not require the authority to execute real estate contracts. (Apply to other sections, as well)	Will delete the phrase; will apply to all application sections.
Anderson	703	(D) Conflicts with licensing timeframe requirements; see 702 comments.	Disagree; see response to 702.
Sweeney	703	(D) suggest deleting "of all uses"	Will replace "associated with" with "included in," rather than deleting.
Anderson	703	(E)(3) should be consistent with statutory authority (only groundwater uses must be consistent with plan).	Will revise to reference criteria set forth in R12-15-720.
Sweeney	703	(F)(2) suggest removing "unless the director has received new evidence demonstrating that the criterion is not satisfied."	Analysis is not a final determination and is subject to new evidence, including objections pursuant to ARS 45-578.
Anderson, Gallogly	703	(G) ADWR must provide notice and opportunity for hearing (due process) (to current owner and analysis holder) re: possible reduction in amount of water reserved under analysis.	Will revise to only allow reduction pursuant to request of analysis holder.
Anderson, Gallogly	703	(G) Stakeholders submitted comments regarding the criteria for a reduction of the groundwater reservation in subsection (G).	Only allowing reduction pursuant to request of analysis holder will address those comments.
Marana, Metro	703	(H) Allowing a reservation for up to 20 years based on ownership and development plan alone will invite speculation. Should at least require specific approval from zoning authority. Should also require rolling 20-year reservation for any designated providers in the same sub-basin before analysis reservation.	A designation is a permanent reservation of the 100-year supply (subject to review to ensure sufficient supplies are available to meet demand). An analysis is a reservation for 10-20 years, and must be "converted" to a certificate (in which all assured supply criteria must be met) to become a permanent reservation. No change necessary.
Anderson, Gallogly, Pearce	703	(H) criteria should include substantial capital investment and material progress. Should delete "any other factors the director deems relevant.	Will revise.
Anderson, Gallogly	703	(H) does not require the director to extend.	Will revise.
Anderson, Gallogly	703	(H) May need 25-30 year term for analysis. There	Even a designation order must be reviewed at least

COMMENTING PARTY	RULE	COMMENT	RESPONSE
		should be no maximum limit. Gallogly: should be 30-year limit.	every 15 years. No change necessary.
Gallogly	703	(H) recommend using "implementation" rather than "development" because "development" is a defined term.	Will revise to reference "development" as defined in AWS definitions.
Anderson, Gallogly	703	(H) Should allow application for renewal earlier than 6 months before end of analysis term. (Anderson: at any time; Gallogly: 3 years before end of term)	Will revise to allow to apply for renewal starting 3 years before end of term until 6 months before end of term.
Gallogly	703	(H) should refer to "holder" rather than owner of land.	Will revise.
Anderson	703	(H) should track ARS 41-1092.11 and provide that analysis is effective until end of administrative appeal process.	Will delete language that conflicts with the statute; ARS 41-1092.11 will control.
Sweeney	703	Clarify that "complete" means that only criteria required in 703 are needed because the application form may be complete even if some elements are not included.	Will address in revisions.
Tucson	703	Is it appropriate to reserve groundwater for up to 20 years without a demonstration of consistency with management goal?	This is consistent with current rule language and practice.
Sweeney	703	Proposed rule does not require the applicant to have an existing municipal provider or an NOI, correct? If so, this is good.	This is true; will be true with revised rule, as well.
Anderson	703	Should allow water reserved under Analysis to be transferred to designated provider. Should allow developer to transfer all or part of water reservation, so that if designation terminates, unused reservation is still reserved for the developer.	The analysis concept was developed in the original rules to allow master plan developers to reserve groundwater for future uses (not yet ready to be certificated) as a substitute where the provider was not designated. Because the designation includes projected demand from such future uses, the analysis is unnecessary where the provider is designated. No change required.
Pearce	704	(A) revise to clarify meaning of optionees ("persons or	Will add definition of "potential purchaser" ("a person

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		entities having options to purchase all or part of the land.")	who has entered into a purchase agreement for the land that is the subject of an application for a certificate, an assignment of a certificate or a water report"); the definition will clarify the meaning.
Anderson, Gallogly	704	(B) "optionee" should be replaced with "potential purchaser."	Will revise.
Gallogly	704	(B) should allow owner to list one affiliate as an applicant without demonstrating a contractual relationship.	Will allow owner to list any number of affiliates.
Gallogly	704	(B)(1)(a): recommend accepting deeds as proof of ownership, and extending to 6 months the time period for a title report.	Will add deed; will extend time period for title reports (and deeds) to 90 days.
CAWCD, Gallogly	704	(B)(1)(b) may create a "chicken and egg" problem. CAGRD does not determine ownership until after CAWS application is submitted. CAGRD requires copy of CAWS application to be included in CAGRD enrollment application.	Rule language must specify requirements for a "complete" application pursuant to Title 41. In practice, the language will not preclude applicants from relying on CAGRD determination of ownership, but application will be "incomplete" until CAGRD determination is submitted (as in current practice).
Pearce	704	(B)(1)(c) clarify optionee provision	Language is clear as is; rule language requires "one of the following . . . for each applicant."
Sweeney	704	(B)(1)(c) suggest "If the applicant is an optionee, evidence of the optionee's interest in the land that is the subject of the application."	Proposed language is not clear enough. Will continue to require "evidence of a purchase agreement."
CAWCD	704	(B)(4), (E)(1) and(F)(6) See comments to definition of "excess groundwater."	See response to comments re: "excess groundwater."
Gallogly	704	(B)(6): insert "reasonably"	Will add.
Anderson, Pearce	704	(C) ADWR should review policies of other agencies for signatory authority; should be revised to allow letter of authority to submit application (without authority to bind applicant in real estate contracts). There should be no time limit.	Will delete requirement of authority to bind in real estate contracts and will change time limit to 1 year.

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Sweeney	704	(D): suggest adding "The director may give public notice immediately after the director verifies the elements to be included in the notice are correct."	This change is unnecessary because the rule cites ARS 45-578(A), which allows public notice "within fifteen days after the application is determined complete and correct or at any earlier time as the applicant may request *after the application is determined complete.*" ADWR currently publishes notice as soon as the application is complete, and will continue to do so.
Anderson	704	(E) Conflicts with licensing timeframe requirements; see 702 comments.	Language does not conflict with timeframe requirements; see response to 702.
Anderson	704	(E) Should clarify that the director will determine the water demand for the subdivision as indicated on the plat submitted by the applicant.	Other comments pointed out that plat only includes land uses; will revise to "included in" rather than "associated with."
Anderson	704	(F) Rule language should track the statute ("consistent with *the achievement of* the management goal").	Will change.
Gallogly	704	(F)(2): insert "as provided in R12-15-723 through R12-15-727"	Will add.
Anderson	704	(F)(4) Clarify that financial capability is required for delivery system and any necessary storage facilities and/or treatment works, as is supported by ARS 45-576(I)(3).	Will change "all" to "any."
Gallogly	704	(F)(4) language assumes that storage and treatment facilities will be needed for all certificates and water reports; this is not the case.	Does not require storage and treatment facilities for all certificates/water reports because it only refers to "necessary," but will change "all" to "any."
Anderson	704	(F)(5) & (6) clarify that it applies to proposed uses of groundwater "for the subdivision"	This language is unnecessary; only uses in the subdivision would be included for a certificate application.
Gallogly	704	(F)(5) and (6): insert "within the proposed subdivision" ("the proposed uses within the proposed subdivision of groundwater withdrawn . . .")	This would be redundant. ADWR would not (and could not) include uses outside the subdivision.
Anderson, Gallogly	704	(G) in second draft includes material plat change restriction, which is not effective in the current rule.	Material plat change concept has always applied to certificates; policy was adopted after assignment

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		Object. Material plat change concept was developed in response to the assignment statute.	statute. ADWR will continue to apply material plat change restrictictions to changes of ownership. No change necessary.
Pearce	704	(G) Suggest revisions to show past tense for previous determinations that will not be reviewed again (consistency with goal)	Will revise.
Sweeney	704	(G)(3): Requires evidence that non-groundwater supplies are physically and continuously available. If already demonstrated, does this require a new showing? If the sources are new (original CAWS relied on groundwater, which is still available) does the demonstration need to be made?	If the source(s) of supply supporting the original certificate are still available and the new certificate application relies on the same source of supply, the original demonstration may be referenced in the application. If a new source will be added to the certificate, a new demonstration must be made.
Anderson, Pearce, Sweeney	704	(H) Stakeholders expressed concern that the inclusion of this information would create a term or condition subject to enforcement.	Will delete this provision from the rule, although for administrative purposes (information tracking rather than regulatory conditions) ADWR will list the information on certificates.
Gallogly, Pearce, Sweeney	704	(I)(1)(a): will an applicant establishing a satellite service area qualify for a Type A certificate? Will other sources (Type 1, Type 2, effluent) qualify?	Will add pending service area right, effluent owned by the municipal provider and Type 1 right (used on appurtenant land and held by the municipal provider) as Type A-eligible. Type 2 right will not qualify as a Type A certificate because the right does not automatically transfer to a new landowner.
Gallogly	704	(I): please clarify that a Type A and a Type B certificate are equivalent except for the assignment process.	Will add "for purposes of R12-15-705 and R12-15-706."
Anderson, Sweeney	704	(K) Draft rules eliminate the priority rule under existing 702(H) for previously certificated plats and plats recorded before 1980. The priority rule should be added back in.	Unnecessary. The demand for those plats will be included as current or committed demand or as existing demand (see 716(B)).
Sweeney	704	(K): Does not go far enough; use language proposed by developers earlier in stakeholder process. Incorporate	This comment should be addressed by the addition of subsection (L) in the second draft, allowing an "end of

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		material plat change concept.	process" exemption.
Anderson	704	(L) Should not require separate review by ADWR to reclassify an issued CAWS from Type B to Type A. Recommend that a formal application and review be optional, rather than necessary.	ADWR must reclassify a certificate in order for a certificate to qualify as a Type A. Although this requires ADWR review, it will reduce the need for future reviews.
Pearce	704	Clarify reference to groundwater allowance ("*the amount of the*groundwater allowance")	Will revise.
Tucson	704	Difference in how growth occurs for certificates and designations. Designations carry all demands forward; certificated developments do not revisit existing demands. This should be considered in future stakeholder processes.	ADWR appreciates the suggestion and may take this into consideration in the future, but will not make any changes in this rulemaking. ADWR would like to note that existing demands are taken into account for all determinations of assured water supply, including certificates.
Gallogly, Sweeney	704	Should include change of ownership (Current R12-15-708)	Addressed in second draft (subsection (G)).
Anderson, Pearce	705	(A)(3) Changes in source of supply should not be limited to non-groundwater; should be revised to require certification in accordance with 708; should clarify that use of alternative methods of demonstrating consistency with goal after CAWS is issued is not prohibited.	ADWR will clarify to expressly state what the applicant must certify, rather than general certification that requirements of ARS 45-579(A) are met. Will not require certification re: plat change (because plat will be submitted and ADWR can review), transfer of water rights (because Type A certificate would not require transfer) or management goal (because management goal will not change--extinguishment credits are pledged permanently, CAGRD enrollment is permanent and groundwater allowance does not change). Will clarify in 705(D) that the app meets the requirements of 579(A) if applicant certifies as required in (A)(3), no material plat change per 708, and still consistent with goal.
Anderson	705	(A)(3) Who signs the certification?	Each applicant.
Gallogly, Pearce	705	(B) and 706(B) should say "except as provided in	Will add.

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		subsection (A)" to incorporate changes to 705(A) and 706(A) (presumably, allowing an assignee to apply).	
Gallogly	705	If the assignee is the potential purchaser, the certificate issued should list the current holder and the assignee.	In this case, ADWR views the current holder as an assignor *and* an assignee. The current holder will continue to be listed on the CAWS.
Gallogly	705	Recommend that a Type A certificate holder be permitted to use the Type B assignment process.	ADWR believes that the Type A/Type B assignment process is critical to achieving program efficiencies. No change required.
Sweeney	706	(A)(4): suggest adding in language "or will be"	Will revise to state: "Evidence of assignment to the assignee of all necessary water rights, permits, licenses, contracts and easements upon transfer of ownership of the land."
Anderson, Pearce	706	(A)(6) See comments to 705(A)(3) regarding consistency with management goal.	ADWR will delete requirement of certification that manner in which consistency with management goal requirements will be met has not changed. Manner of meeting consistency with goal requirements will not change (extinguishment credits are pledged permanently, CAGRD enrollment is permanent and groundwater allowance does not change).
Gallogly	706	(A)(6): substitute "evidence" for "certification by the applicant"	Will revise.
Southwest,[12] Hargis[13]	706	(A)(7) reference to 500 lots should be 50%	The assignment statute (ARS 45-579(A)) provides that "An application may be filed under this section more than ten years after the original certificate was issued if a minimum of five hundred lots within the subdivision covered by the certificate have been sold to individual home buyers by the holder of the certificate and any previous holders of the certificate." No change is necessary.

[12] "Southwest" indicates comments received from Southwest Water and Mineral Resources, LLC.

COMMENTING PARTY	RULE	COMMENT	RESPONSE
Gallogly	707	(C): Insert "or holders, including those holders that did not submit the application."	Will revise to state that the director shall issue "to each holder."
Anderson	708	(A) suggests that it will be necessary to seek a determination from ADWR before CAWS is applicable to a plat. Suggest deleting this section.	Nothing in 708(A) requires a certificate or water report holder to submit a revised plat to ADWR for review. The review is an optional service. The language in 708(A) provides that although plats may be revised, the certificate or water report only applies if the changes are not material according to 708(C). No change required. (ADWR will consider alternative language if suggested.)
Gallogly	708	(B)(3): insert "original" before "plat"	It is unnecessary, because the developer may revise either plat as long as the resulting changes are not material as compared to the plat for which the certificate was issued.
Anderson, Gallogly, Pearce, Sweeney	708	(C) Should be expanded to include non-CAGRD plats based on groundwater so that the potential class of plats in the Pinal AMA are not excluded. Stakeholders recommended language. Gallogly recommended language: "For those certificates to which extinguishment credits were pledged according to this Article prior to the issuance of the certificate, additional extinguishment credits are pledged to the certificate equal to any increase in the estimated water demand for the subdivision." Pearce recommended language: allow increase in water demand if "100-year estimated demand does not exceed the groundwater allowance or amount of extinguishment credits available to the subdivision when the certificate was issued."	Because the Pinal AMA is subject to a different management goal, ADWR will add subsection (C)(2)(c)(iii): "The subdivision is located in the Pinal AMA and the 100-year water demand for the revised plat will not exceed the sum of the amount of the groundwater allowance and the amount of any extinguishment credits pledged to the subdivision when the certificate was issued." ADWR will not consider additional extinguishment credits pledged after a certificate is issued (for purposes of material plat changes). Pledging new extinguishment credits to a certificate/subdivision requires an additional review to determine whether management goal requirements are met. If a new review is required, the change is material. ADWR concurs with the language recommended by

[13] "Hargis" indicates comments received from Hargis & Associates, Inc.

COMMENTING PARTY	RULE	COMMENT	RESPONSE
			Pearce.
Gallogly	708	(C): insert "original" before "plat"	This change would be redundant. The current language reads “Changes to the plat for which a certificate or a water report has been issued . . .” No change required.
Gallogly	708	(D)(3): recommend adding sentence: "If the director determines that the changes to the revised plat are not material, the director's letter shall state that the certificate or water report is applicable to the revised plat."	Will add.
Anderson, Gallogly	708	Disagree with applying material plat change to water reports.	This is current procedure. A water report is issued based on the plans submitted with the application, including the plat. If material changes are made to the plat, then the water report is no longer accurate for that subdivision. ADWR will limit the plat change restrictions regarding water reports to (C)(1) and (C)(2) (water demand and number of lots).
Sweeney	708	It is our understanding that a material plat change must be the result of a plat change, rather than a change in demand calculation. Is this correct?	Yes.
Anderson	708	Should include a provision for determining whether changes are material with respect to a portion of a subdivision. Suggest a "ledger" system: as long as total number of lots of portion of plat combined with total number of lots on recorded plats under same certificate do not exceed allowable increase in lots, then not material. Similar for water demand increase.	ADWR has explored this concept with stakeholders but has not yet found an appropriate way to handle portions of plats that will not decrease efficiency and effectiveness. ADWR will continue to work with stakeholders on this issue.
Anderson, Sweeney	709	(A) Proposed language allows revocation if an assured water supply "does not exist" rather than "no longer exists." Suggests that the director can re-evaluate the decision to issue a certificate even if circumstances	It may be that circumstances have not changed, but that information was not available to the director at the time the certificate was issued (either because the information was inadvertently or intentionally

COMMENTING PARTY	RULE	COMMENT	RESPONSE
		have not changed. What is ADWR's intent?	withheld). In such a case, the interest of consumer protection would require that the certificate be revoked (although ADWR could use its discretion not to revoke if the holder corrected the problem).
Tucson	709	(B) Does this subsection allow the director to modify the CAWS to allow the existing sold lots to continue but prevent build out of the remainder if there is sufficient cause?	No; ADWR cannot revoke a certificate after a lot has been sold. Revocation after lots are sold would unfairly burden the few homeowners who remain.
Anderson, Gallogly, Mesa,[14] Pearce, Sweeney	709	(B) enforcement action. Stakeholders object to the inclusion of this language in the rules. A certificate is not a permit with conditions that can be violated. The Department should at least specify potential violations.	ADWR will delete the language. However, ADWR will have the statutory authority to pursue enforcement actions for violations of the Groundwater Code (including ARS 45-576 et seq.) and rules adopted pursuant thereto (even if a lot has been sold).
Gallogly	709	recommend deleting "if the holder of the certificate fails to construct any necessary delivery, treatment or storage facilities in a timely manner." Standard is vague and difficult to enforce.	Deleted in second draft.
AMWUA	710	(E) "the director shall issue a designation of assured water supply if the applicant has demonstrated" it meets several criteria. This language implies that ADWR is issuing a license that allows ADWR to police the use of water supplies that a designated provider has a right to use. Language should conform to ARS 45-576 ("shall designate").	Will revise language to conform to statutory language (The director shall designate the applicant as having an assured water supply if the applicant has demonstrated . . .")
Dishlip	710	(E)(2) references "term of the designation, which shall not be less than two years." A DAWS is based on excess capacity in a water portfolio, rather than on time. Referencing a term rather than a volume is misleading and could suggest that the DAWS is good	A DAWS is based on a combination of the capacity in the water portfolio and time. The designated provider must apply for a modification before the year provided in the designation order, but may be required to modify (or may be subject to revocation) if the designated

[14] "Mesa" indicates comments received from the City of Mesa.

COMMENTING PARTY	RULE	COMMENT	RESPONSE
		for the term of years even if the volume is fully pledged to developments.	provider exceeds the capacity earlier than the year provided in the designation order.
CAWCD	710	(E)(5) Raises same questions as the definition of "excess groundwater"	See response to comments re: definition of "excess groundwater."
Sweeney	710	Should allow early public notice upon issuance of a favorable staff report.	This is unnecessary; the draft language clarifies that ADWR will continue to follow ARS 45-578 for public notice purposes.
Marana, Metro	710	Should provide for reservation of groundwater for 20 years of future growth for designated provider. Should be a rolling reservation.	A designation creates a 100-year reservation of the future growth included in projected demands. That volume of future growth is limited to the term of the designation. Designation terms must be at least two years, but are usually limited by the provider's water portfolio. Note that while a "rolling reservation" would be almost impossible to administer (for tracking purposes), a designated provider may submit an application to modify its designation (thereby incorporating additional future demands) at any time.
Sweeney	710	The applicant must demonstrate that "any proposed uses of groundwater withdrawn within an AMA are consistent with the management goal." Does this require designated providers to account for and replenish groundwater uses within the service area that are served by Type 1/Type 2 rights? If not, this is discriminatory (against certificates); if so, this is a significant policy change.	"Proposed uses" clearly means the uses proposed by the applicant, which, in the case of an application for a designation or modification, would be limited to water to be served by the applicant. If a provider will serve groundwater pursuant to a Type 1 or Type 2 right, it must be consistent with the management goal.
Tucson	711	(A)(1) "The demand of platted undeveloped lots" could be interpreted to be 0 since the lots are not yet developed. Should this be "committed demand"?	Will revise (A)(1) to state "Committed demand" and will revise (A)(2) by adding ", other than committed demand."
Sweeney	711	(D): change of ownership should not trigger a modification of a designation.	This is included in the current rules. It is intended to address potential issues related to change of ownership, which may involve ACC regulation or financial

COMMENTING PARTY	RULE	COMMENT	RESPONSE
			capability. Note that the language is permissive ("may") and the director has not yet revoked a designation solely because of a change of ownership.
AMWUA, Tucson	711	(F)(1) Proposed language eliminates requirement to initiate a review of designated status, which provides flexibility to address such circumstances without revocation.	Although ADWR had determined the language was unnecessary (because ADWR would not seek to revoke a designation without a review and discussions with the provider, and revocation proceedings require notice to the provider and a hearing), ADWR will add the language for clarity.
Tucson	711	(F)(3) Please clarify this language so that not any water quality violation would trigger a revocation action. The phrase used in meetings has been "significant noncompliance."	Will revise. (Also note that this language is permissive.)
AMWUA	711	Two new grounds for revocation: if the designated provider "has failed to satisfy any applicable state water quality requirements for the applicant's use" (unclear and overbroad); and if the designated provider has violated its management plan requirements for 2 or more years and failed to amend its water use plan or sign a stipulated agreement to remedy the violation.	These are not new grounds for revocation. These are included in the current rules as R12-15-704(C) and R12-15-706(G).
Anderson, Gallogly, Pearce, Sweeney	712	[See comments to 703]	[See corresponding responses; ADWR will make corresponding revisions to 712]
Anderson	712	What will be the standard for water demand determinations outside AMAs? Historically, ADWR has relied on applicant projections as suggested by ARS 45-108.	ADWR will continue to use as a "default" demand the closest AMA model use rates ("closest AMA" means closest in terms of climate and development patterns). ADWR will also continue to use an applicant's estimate of demand if the applicant can show reasonable support for that estimate.
Anderson, Gallogly, Pearce	713	Modification of a water report not allowed under current rules; stakeholders are opposed to this inclusion. Could "objectors" submit new evidence that	The modification is intended to allow flexibility for the developer (to change subdivision plans even though it may affect water supplies) and to protect consumers (if

COMMENTING PARTY	RULE	COMMENT	RESPONSE
		would subject the report to review?	the availability of the water supply changes, consumers should have the information available). ADWR will revise to prohibit modification after one lot is sold (similar to revocation of certificates). Note that modification would be subject to Title 41, Chapter 6, Article 10, providing an opportunity for notice and a hearing.
Pearce	713	(C) should be revised to allow letter of authority to submit application (without authority to bind applicant in real estate contracts).	Will revise.
Anderson, Gallogly	713	(E)(4) Financial capability is a new requirement. What is the authority to add this requirement?	Financial capability is a new requirement, but creates no additional burden because the applicant must demonstrate financial capability to obtain plat approval or a public report. This requirement should be added to ensure consumer protection: if the developer is not financially capable of constructing the necessary delivery system, an adequate water supply will not exist because the water supply will not be available to meet the proposed uses of the subdivision. Note that financial capability has already been an element of adequate water supply regarding depth-to-static water level exemptions. *See* current R12-15-717(B)(1)(e).
Anderson	713	(K) Applying material plat change policy to water reports is a change from the current rules and program	This is not a change; ADWR has applied the material plat change requirements to subdivisions in the adequacy program.
Wene[15]	713	New rules should not apply to previously platted and approved developments.	ADWR will include a "grandfathering" provision to clarify that the new requirements will not apply to existing determinations.
Wene	713	No legislative intent to change adequate water supply	The draft rules combine the assured water supply and

[15] "Wene" indicates comments received from Steve Wene, Moyes Storey Law Offices.

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		criteria. Requiring developers to meet assured supply criteria increases burden on developers and on ADWR.	adequate water supply rules because the majority of the requirements are identical, so it is easier and efficient to combine them. ADWR is not requiring adequate water supply applicants to meet AMA-based depth-to-static water level criteria, or requirements related to management plan or management goal. Financial capability is a new requirement that will aid in consumer protection. The financial capability requirement creates no additional burden because the applicant must demonstrate financial capability to obtain plat approval or a public report. Note that financial capability has already been an element of adequate water supply regarding depth-to-static water level exemptions. *See* current R12-15-717(B)(1)(e).
Gallogly	715	Allows revocation of designation, which is not allowed under current rules.	The current rules allow for revocation of a designation of adequate water supply. See current rule R12-15-721(C).
Sweeney	716	"adequate storage facilities" standard for designations seems to have changed.	Rather than requiring designated providers to demonstrate that facilities are available to "exceed current and committed demand" ADWR has revised the language to use a better explanation of what ADWR requires in reality: a demonstration that facilities are available to meet/satisfy current demand, committed demand, and projected demand (during the term of the designation).
Anderson, Sweeney	716	(A) How will an applicant prove adequate delivery, storage and treatment works? Should this be 701(1), (2), and (3)?	Yes; ADWR has revised the definitions to define "adequate delivery, storage and treatment works" (see definition above) and ADWR will accept the same demonstration it accepts now.

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Janecek[16]	716	(B) Adjust depth-to-water standards to minimize subsidence. Current standards are not consistent with the management goal.	The assured water supply rules already include requirements to demonstrate that new development will be consistent with the achievement of the management goal. Additionally, issues related to subsidence may be better addressed in well spacing rules.
Gallogly	716	(B)(1)(a) change "and" to "or"	Addressed in second draft.
Gallogly	716	(B)(2)(b): substitute "demands" for "uses"	Will revise (ADWR views this as a non-substantive change.)
Gallogly, Pearce	716	(B)(2)(c)(i) change "and" to "or" (would only consider certificates *or* water reports)	In some cases, the physical availability review must take into account the demands associated with both certificates and water reports: inside AMA's, some developments were subject to the water report requirement before 1980; a session law subjects certain developments within AMA's to 45-108 rather than 45-576; if the area in question borders an AMA boundary, both certificates and water reports may affect physical availability. No change required.
Gallogly	716	(B)(2)(c)(i) will result in double counting of demand. As homes are built on land with certificates, groundwater deliveries will be included in existing demand. Should reinstate committed demand for certificates and water reports included in current rules.	Addressed in second draft.
Southwest, Hargis	716	(B)(2)(c)(i): define term "abandoned plats."	Will define as "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."
Southwest, Hargis	716	(B)(2): 400-foot depth-to-static water level for dry lot developments outside AMAs is too restrictive; 800 feet	At this time, ADWR has received no evidence of the economic feasibility of drilling a well to depths

[16] "Janecek" indicates comments received from Ken Janecek.

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		is economically feasible for an individual homeowner.	exceeding 400 feet. ADWR is willing to consider changes to this rule in the future if such evidence is provided.
Hargis	716	(B)(3)(c): Financial capability requirements in 719 only relate to subdivisions with central water distributions systems. Recommend "The applicant demonstrates the financial capability to obtain the groundwater a proposed lower depth, according to the criteria set forth in R12-15-719 or in the case of a dry lot subdivision the applicant can demonstrate that drilling, equipping, and operating a well at the proposed lower depth-to-static water level is economically feasible for an individual homeowner."	A developer cannot demonstrate the financial capability of unknown future homeowners.
Gallogly	716	(D)(2) correct typos ("perennial" and "continuously")	Will correct.
Gallogly, Pearce	716	(D)(2) Should allow waiver of depth-to-static for imported groundwater	ADWR defers to statutes; in the absence of statutory provision, ADWR has decided to use AMA requirements, so a waiver would not be appropriate.
Sweeney	716	(G)(1) and (2) suggest adding ", reservation or right" to first line.	*Any* use of Colorado river water requires a contract with the Secretary of the Interior, so ADWR will continue to require evidence of the contract.
Gallogly, Sweeney	716	(H) limits the use of effluent to the amount directly available from a treatment plant. Recommend clarifying that annual storage and recovery is direct use. Also change references to "wastewater treatment plant."	Will revise subsection (H) to provide: "Subject to subsection (I) 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 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

COMMENTING PARTY	RULE	COMMENT	RESPONSE
			volume of effluent that is not in accordance with any applicable water quality requirement."
Dishlip	716	(I)(3) should list the 10-year projection of future effluent volume included in designations.	The volume of future effluent is limited to the volume to be produced. The volume produced is based on the demand. For a designation, the volume is limited by the demand in the designation, which is limited by the term of the designation. There is no specific "10-year" limit.
Sweeney	716	(I)(3)(d) suggest adding "underground storage facility and water storage"	In some cases recovery well permits may be required. ADWR will use current language.
Sweeney	716	(I): how would an applicant demonstrate that recovery wells of sufficient capacity will be constructed in a timely manner?	This would be identical to the requirement for groundwater wells under subsection (B).
Marana, Metro	716	(K) "Complete and correct" standard for priority date invites challenge to ADWR management decisions re: workflow and staffing. Better to resolve through 20-year rolling reservation for designated providers and suggested requirements for analysis.	This language is from the current rule. The only change is the last sentence, which clarifies the meaning of "complete and correct." At this time, ADWR has not had problems administering the rule.
Anderson	716	(K) Reference to determination of complete and correct appears to conflict with Title 41 licensing time fram requiremetns for when an application may be determined complete.	No conflict with Title 41.
Sweeney	716	(K): Will an intervening analysis application "bump" a request for an analysis extension?	No. An application/request for an extension is not an application for a "determination of assured water supply." Instead, it is an extension of the priority date/reservation associated with the previous determination.
Sweeney	716	Deleted physical availability of stored credits that do not exist at the date of application. (Current R12-15-703(B)(7))	Current rule R12-15-703(B)(7) relates to future credits from an AMA water district or a county water augmentation authority. Currently, no such entity exists, so the rule language is unnecessary. If such an

COMMENTING PARTY	RULE	COMMENT	RESPONSE
			entity is organized, ADWR will revise the rules at that time to develop relevant rule language. In the draft rules, future long-term storage credits or annual storage and recovery would fall under draft rule R12-15-716(I)(3).
Janecek	716	Physical and legal availability: consider all vacant land as having rights of up to 0.35 acre-feet per year for every 2-acre parcel (including 36- or 160-acre parcels with 2-acre lot splits)	The demand of existing lots is considered for physical availability purposes under draft rule R12-15-716(B). The Groundwater Code (ARS Title 45, Chapter 2) does not provide for a "future" right to the physical availability of groundwater, and it would not be appropriate to create such a right in the Assured Water Supply rules.
Anderson, Gallogly, Pearce, Sweeney	717	(D)(3) Should allow existing storage credits instead of recovery well permit.	The draft language requires both existing storage credits and the recovery well permit because the storage credits cannot be used without the recovery well permit. As stated above, the rule language is drafted to ensure that the provider will have the legal right to withdraw the groundwater.
Sweeney	717	(A): lead-in language inappropriately changes the meaning of the existing rule.	Rather than requiring designated providers to demonstrate that supplies "exceed current and committed demand" ADWR has revised the language to use a better explanation of what ADWR requires in reality: a demonstration that supplies meet/satisfy current demand, committed demand, and projected demand (during the term of the designation).
Anderson	717	(B) and (D) Should delete "authorizing the proposed water use."	Will revise to "authorizing the municipal provider to serve the proposed use"
Anderson	717	(B) and (D) Should only require evidence of CCN for legal availability, rather than also requiring service area right.	CCN is one element of legal availability; must also demonstrate that the provider has the legal right to use the water, which may be a service area right or other water right.

COMMENTING PARTY	RULE	COMMENT	RESPONSE
Anderson, Gallogly, Pearce, Sweeney	717	(B) The rule should refer to the NOI form for clarity. If multiple owners of land within a certificate after change of ownership, will NOI be required for all owners? Language should also allow for instances where municipal provider does not provide all water (multiple providers or multiple sources of supply).	Will reference NOI form for clarity. If the previous NOI is applicable to all subsequent owners, then future owners will not be required to obtain a new NOI. If multiple owners are not "covered" by an existing NOI, then all owners must obtain an NOI. Will revise language to allow multiple providers or multiple sources of supply.
Sweeney	717	(B)(2) suggested language change (from "evidence of the legal right of the city or town to serve" to "evidence that the city or town has agreed to serve")	Must demonstrate that the city or town may legally serve water to the customers. No change required.
ACC[17]	717	(B)(3) "b" should be changed to "c" and a new "b" inserted that states – "Evidence that the municipal provider has an order preliminary issued by the Arizona Corporation Commission for a certificate of convenience and necessity and the proposed subdivision is located within the area described in the order preliminary, or"	Will revise.
ACC	717	(C) should be modified by adding "or has been issued an order preliminary by the Arizona Corporation Commission for a certificate of convenience and necessity."	Will revise
Sweeney	717	(C) suggest deleting "authorizing the proposed water use" because CC&Ns authorize the provider to serve.	Will revise to "authorizing the municipal provider to serve the proposed use"
Sweeney	717	(D) requirement of well permit and notice of intent to establish service area requires more than the existing requirements. It is not necessary to use the AWS rules to regulate service areas. Should accept description of how a service area will be established.	ADWR currently requires the same items included in draft R12-15-717(D), including a well permit for the provider and notice of intent to establish a service area. The requirements are not intended to regulate service areas, but to ensure that the provider will have a legal right to withdraw and serve the groundwater to the

[17] "ACC" indicates comments received from the Arizona Corporation Commission.

COMMENTING PARTY	RULE	COMMENT	RESPONSE
			subdivision.
Anderson, Gallogly, Pearce, Sweeney	717	(D)(3) Typically well permit is held by the developer as a non-exempt, non-service area well, then convey well to provider and convert to service area well. No need to require that water provider hold the well permit.	As stated above, draft R12-15-717(D)(3) is the current Department practice for pending service area rights used to support a certificate. In order to be classified as a Type A (and proceed through the streamlined Type A assignment process), the certificate cannot depend on a water right or permit that must be transferred when ownership of the subdivision changes. Because ADWR will revise to classify certificates based on pending service area rights as Type A's, the seed right and the well permit must be in the name of the provider rather than the developer. No change required.
Anderson, Gallogly, Pearce, Sweeney	717	(D)(3) Clarify that only need volume for period until service area right is established.	The draft language requires that: "The water right is of sufficient volume and duration to meet the [estimated water demand] of the proposed subdivision until the anticipated date of issuance of a service area right." R12-15-717(D)(3)(d). The language clearly requires that the right be of sufficient duration to meet the demand until the service area right is established.
Anderson, Gallogly, Pearce, Sweeney	717	(D)(3) May not always use a new well to establish a service area; should allow use of existing well.	The draft language does not require a new well.
Gallogly	717	(D)(3)(c) "obtained" suggests purchase of water right; change language to clarify.	Language change is unnecessary. "Obtained" would include the lease of a water right. Nothing in the language prohibits the lease of the water right, and subsection (D)(3)(d) makes clear that the right only need be of "sufficient duration" to serve until the service area right is established. The language clearly anticipates that the water right will not be permanent.
Anderson	717	(D): Revise to only apply to cities and towns; only require legal availability for private water companies based on CCN. Recommend revised language.	ADWR will continue to require evidence that the provider has the legal right to withdraw groundwater in addition to the legal authority to serve it to their

COMMENTING PARTY	RULE	COMMENT	RESPONSE
			customers. A CCN grants the provider the authority to serve the water, but the provider must have a right to withdraw groundwater, independent of the CCN.
Sweeney	717	(G) suggest adding "or otherwise has the right to use Colorado River water."	Any use of Colorado river water requires a contract with the Secretary of the Interior, so ADWR will continue to require evidence of the contract. **NOTE**: ADWR will also revise subsection (G) to allow evidence that the subdivision is within the contracted service area of an entity that holds a contract with the Secretary and provides water to the municipal provider, and the entity has allocated a sufficient volume of water to the subdivision. (This provision will accommodate situations like that of the MVIDD.)
Sweeney	717	(K): if this means underground storage facilities, it needs clarification.	The language is intended to include any type of storage facilities, which could include underground storage facilities, water tanks, a lake, etc.
Sweeney	717	(M)(2): suggest adding "if such supplemental water supply is groundwater"	Will add.
Sweeney	717	(M): suggest additional subsection to allow flexibility for assignment or CAWS changes without revisiting the term of the Indian lease.	If a new certificate is required, the application is subject to the same standards as any other new application. (Note that the assignment statute does not provide for a review of the lease or lease term.) No change required.
Sweeney	717	(N) language changes the meaning of the current rule.	Will revise.
Sweeney	717	(N)(2)(b): suggest adding "or underground storage"	Will revise.
Anderson, Gallogly, Sweeney	718	(A) Appears to shift requirement to a showing that the supply meets standards at time of application, rather than after necessary treatment.	Will revise to clarify that ADWR will approve under (A)(2) if treatment will be required by law and will correct the water quality issue.
Anderson, Pearce, Sweeney	718	(A) implies that CAWS will be delayed if the provider is temporarily out of compliance. Should allow to show water quality will be adequate after treatment and	Will reference "substantial non-compliance." Please note that this language would only be effective in a situation where ADEQ voluntarily notifies ADWR of a

COMMENTING PARTY	RULE	COMMENT	RESPONSE
		specifically define meaning of "out of compliance." Minor deficiencies or "undetermined" should not qualify. Even serious non-compliance status may have nothing to do with pending application. Reference "substantial non-compliance" standard.	substantial noncompliance status; ADWR will not be initiating a review of compliance status for each provider.
Gallogly	718	(A)(1) if out of compliance, should allow applicant to show that required treatment will ensure water quality.	If ADEQ notifies ADWR of a provider's substantial non-compliance status, then ADWR will not issue a certificate/designation until the noncompliance is resolved.
Pearce	718	(A)(1) should refer to public water system, per ADEQ statute	Will revise.
Gallogly	718	(A)(1): Can a new water provider qualify? Must the service area be established?	Yes, a new or future water provider will qualify. No, the service area right is not required to be established.
Anderson, Gallogly, Hargis, Southwest	718	(A)(2) 60 days is too short.	No change will be made. This is the current ADWR standard.
Southwest	718	(A)(2)(a): AAC Title 18, Chapter 4 is geared toward monitoring of public supply systems. Why collect a sample for asbestos or disinfection byproducts from a steel-cased well that is not connected to a treatment/distribution system? Sometimes a coli form-negative result is not possible without disinfecting the well and pumping equipment. ADEQ waives the requirements for pesticides, herbicides and PCBs if the applicant demonstrates that the compounds are not likely to be present based on historical use.	Will revise rule language to state that ADWR will accept such waivers from ADEQ.
Southwest	718	(A)(2)(a): Lab analysis should be from a well in aquifer units that are representative of the units that will be tapped for the proposed subdivision's water supply	Will revise to clarify that the sample must be taken from a representative well.
Southwest	718	(A)(2): If recent data is on file at ADEQ, applicant should be able to submit that data. (I.e., a dry lot	The language in (A)(2)(a) requires the sample to be taken from a well "within the vicinity of the proposed

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		subdivision applicant could submit data from a well pumped by a municipal provider)	subdivision." The sample may be from any well in the vicinity that is representative of the water quality and may include an existing well.
AMWUA	718	No rational reason for the distinction between CAWS applicants (defer to ADEQ if regulated by ADEQ) and designated providers (required to submit compliance status report). Also a change from existing rules.	Will revise to use the same standards for certificate applicants and designation applicants.
Anderson	718	Only references ADEQ, but often jurisdiction lies with the county.	Will revise references to ADEQ to "ADEQ, or another agency with equivalent jurisdiction."
Marana	718	Should allow providers to submit routine water quality reports as alternative in case ADEQ does not issue compliance reports in timely manner.	Because designation applicants will be subject to the same standards as for certificate applicants, designated providers will not be submitting compliance reports from ADEQ.
Anderson, Gallogly, Pearce, Sweeney	719	(A) allow CAF as well.	This is unnecessary. ADWR intends to eliminate unnecessary paperwork with the "qualified platting entity" procedure. If a platting entity cannot be "qualified" because it does not have procedures in place pursuant to Title 9 or Title 11, then it does not make sense for ADWR to accept a CAF, which merely states that construction assurances will be required in accordance with Title 9 or Title 11. The language allows ADWR to accept evidence of the platting entity's standards, and ADWR intends to accept evidence in the form of a local ordinance, a rule, a written policy, or other written statement of the standards.
Sweeney	719	(A)(2) adds "and water service is available to each lot." How does this change the existing rule?	This is current practice. The language was modified to be consistent with current practice and will not change current practice.
Sweeney	719	(C)(3) and (4): suggest adding "necessary"	Will revise, and will add to (C)(1) and (C)(2) as well.
AMWUA, Chandler	719	(C)(3) The new language changes "envisions" to	"Includes" is a term more appropriate for rule

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		"includes;" this language requires that the CIP include construction within 5 years, rather than "envisioning" construction at a later date, which is more cumbersome.	language, but does not change the substance. ADWR will revise to add the phrase "in a timely manner" to clarify that the facilities must be constructed by the time they are required, and may not always be required to be constructed within five years.
Gallogly, Pearce	720	(B) should clarify that a CAWS applicant need only demonstrate consistency with mgmt. plan requirements that apply within the proposed subdivision.	Will clarify that the applicant must submit a "water use plan for the proposed subdivision" to clarify.
Gallogly, Pearce	720	(B)(3) should be deleted because the CAWS applicant does not know and cannot control water use outside the subdivision.	Will delete (B)(3).
Anderson	720	(B)(3) Should specify that CAWS will be issued even if impact on provider would cause provider to be out of compliance.	Will delete (B)(3).
Dishlip, Sweeney	720	(C) certificate/certificant (typo)	Will correct.
CAWCD, Sweeney	721	(A) Raises same questions as the definition of "excess groundwater."	See response to comments on definition of "excess groundwater," above.
Anderson, Gallogly, Pearce, Sweeney	721	(A) should clarify that consistency with goal is determined at the time of application for an analysis, certificate or designation. Should not be on-going enforcement/review. (Gallogly: ongoing enforcement/review should not apply to certificates.) Delete most language in (D) and (E). Ongoing enforcement/review creates uncertainty for CAWS holders.	Will delete subsections (D) and (E) (but will maintain the "rollover" provision for unused credits in the Pinal AMA). After consideration, ADWR has determined that subsections (A) through (C) will provide adequate guidance for calculating the volume of groundwater that is consistent with the management goal after a determination is issued. Note that tracking of "consistent" vs. "not consistent" groundwater use is necessary for GRD member lands and member service areas.
Anderson, Pearce	721	(A)(3) Language suggests that CAGRD is not required to replenish some "excess groundwater." Recommend deleting "excess."	See response to comments on definition of "excess groundwater," above.
Sweeney	721	(A): add "estimate" for groundwater allowance and	The groundwater allowance is a number that is

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		excess groundwater replenishment.	determined by ADWR, based on the estimated water demand (in the Phoenix and Tucson AMAs), but the groundwater allowance is a final number, not an estimate, and does not change for a certificate. (The groundwater allowance may vary for a designated provider as some of the groundwater allowance is used or in the Pinal and Prescott AMAs as the groundwater allowance is increased with increased demands or other factors.) No change required.
Pearce	721	(C) should be revised to clarify that the volume of groundwater determined under (A) might only be a portion of the overall supply.	Will revise.
Anderson	721	(C)(1) How will ADWR determine the 100-year determined water demand that will be met with groundwater?	ADWR will continue to determine the portion of the demand that will be met with groundwater based on the supplies pledged by the applicant.
Gallogly	721	(D) and (E) add "at the subdivision or within the service area."	These sections will be deleted.
Anderson	721	(D) How will ADWR make a determination under this section? Will there be enforcement?	This section will be deleted.
Pearce	721	(F) should be revised to clarify that the drought volume, waterlogging and remedial groundwater exemptions reduce the volume of groundwater to be replenished under (A)(3).	Will be revised; see response to comments on definition of "excess groundwater," above.
Sweeney	721	(F) suggest deleting references to "the holder"	Will revise.
CAWCD	721	(G) Recommend adding the phrase "in accordance with provisions in the applicable reporting agreement between CAGRD and the municipal provider."	Will be revised; see response to comments on definition of "excess groundwater," above.
Anderson	721	(G) See suggested language (more consistent with statutory definition of excess groundwater).	Will be revised; see response to comments on definition of "excess groundwater," above.
Pearce	721	Should add language to allow the director to determine that other supplies are consistent with the management	Only groundwater must be consistent with the management goal, according to ARS 45-576(I)(2), so it

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		goal.	is unnecessary to specify that "other supplies" may be consistent.
Anderson	722	(A)(1) and (G) Should match current rule language (statement of *intent to extinguish*)	ADWR believes the two terms are the same. No change required.
Sweeney	722	(A)(3): is it really necessary to submit the original certificate or an affidavit that the certificate of right is lost?	Will delete (A)(3) and replace with requirement that applicant identify right number.
Gallogly, Sweeney	722	(A)(6) and (D)(1) are new requirements, which we oppose. "An irrigation water right does not lose its legal status simply because the owner has developed the land. An owner of land that has an irrigation right should be allowed to extinguish it."	The rule provisions do not change the legal status of a grandfathered right; the provisions merely state that extinguishment credits are not available if the property was *previously*developed. Note that this is current ADWR practice. No change required.
Sweeney	722	(B): suggest deleting the first sentence.	Will delete the sentence because ADWR will review and verify the information even without the language.
Anderson, Sweeney	722	(D)(2) Eliminates the ability to extinguish a Type 1 and switch to water delivered by a provider. There is no basis for this. How will the Department determine whether the municipal provider will serve these uses? Allowing extinguishment and service by a municipal provider will allow replacement of a non-replenishable use with one that likely will be replenished.	The intent of the extinguishment credit is to grant a credit where a particular use will be discontinued and the existing water use would be replaced with the new subdivision demands, rather than to simply give a credit for new subdivisions. If the same use will continue, and that use will be served by an *undesignated* provider, then there is no water management benefit to extinguishment of the right and no reason to grant a credit. (If it is an existing use, i.e., not part of the new subdivision, and the provider is not designated, the groundwater would not be replenished.) Please note that this provision is included in the existing rules at R12-15-705(P).
Gallogly	722	(F)(1) add "or reissued" after "assigned." (each time)	Will revise.
Sweeney	722	(F)(1) suggest adding "based upon estimated water usage."	Unnecessary. Please note that the sentence concludes with "according to the [estimated] water demand."
Sweeney	722	Mineral extraction or electric general Type 2 are new	According to ARS 45-471(A), a type 2 right issued for

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		bases for not granting extinguishment credits.	mineral extraction or processing or generation of electricity can only be used for those purposes; it makes sense to preclude extinguishing the right to gain credits for a different purpose (a new subdivision). Also note that this restriction is included in the current rules at R12-15-705(P).
Anderson, Sweeney	723	Existing rule calculates groundwater allowance based on allocation factor X demand in year 15 (annual demand after build-out). Proposed rule uses "annual estimated demand." What year is this? Is it the highest annual amount?	Will define "annual estimated water demand" as "the estimated water demand divided by 100."
Sweeney	724	(A)(3) suggest deleting "for the calendar year."	Will delete.
Gallogly	724	(A)(3) typo "municipal"	Will correct.
Sweeney	724	(A)(4) suggest adding "for the calendar year" after service area right population.	Will add.
Gallogly	725	(A)(2)(a)(i) change "active management area" to "AMA"	Will correct.
Dishlip	725	(A)(4)(ii) references R12-15-7xx. Cite rule, but also in "historic sense" because physical availability rule is subject to future changes.	Will revise to cite to R12-15-716.
Dishlip	725	(A)(5)(B) is out of place. Why not just state in 725(A)(2)(a)(ix) that the value cannot be less than 0?	Will revise.
Sweeney	725	Does this change the existing Prescott AMA rules?	No. The draft rule language incorporates session law that is already in effect, but that is not in the current rules.
Anderson	725	How will "annual determined water demand" be determined? What year will be used?	Will define "annual estimated water demand" as "the estimated water demand divided by 100."
Anderson, Sweeney	727	How will "annual determined water demand" be determined? What year will be used?	Will define "annual estimated water demand" as "the estimated water demand divided by 100."

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Scottsdale[18]	728	Appears to be the same as current substantive policy statement. Existing exemption for Scottsdale remains in place.	Yes, draft R12-15-728 is substantially the same as the substantive policy statement. (Some changes appear in 728(E) regarding the priority date, but will not affect existing exemptions.) Current remedial groundwater exemptions determined pursuant to the substantive policy statement will remain in effect.
Marana	728	Decade from 2000-2009 is missing twice. Is this a typo?	Yes. Will revise by replacing "1990-1999" with "2000-2009."
AMWUA, Chandler, Gallogly, Gilbert,[19] Mesa,[20] Pearce, Phoenix,[21] Scottsdale	729	Concerned about fee increases; should not incorporate overhead and occasional borrowed time or expertise; should include anticipated savings from efficiency changes; should include justification of the proposed fees.	The next draft of the rules will include fees. The next draft will also be accompanied by an explanation of the fee changes.
Anderson	G[22]	ADWR should not reuse rule numbers from the existing rule as this will cause confusion in the future with references to the old vs. new rules. Also, many designations currently refer to existing rule numbers.	The rule numbering is an issue to be addressed with GRRC. The preamble will explain that changes in rule numbering will not affect existing designations.
Chandler	G	All defined terms should be capitalized in the rules.	This is an issue to be addressed with GRRC.
Janecek	G	AWS Rules could regulate exempt wells. Require meters, limit annual pumping rate.	This is not within the scope of the AWS Program.
Janecek	G	Current rules do not address the localized impact of separation between groundwater withdrawal wells and recharge basins.	This is not within the scope of the AWS Program.
Anderson, Sweeney	G	If ADWR intends that application forms will require detailed information eliminated from rules, please allow stakeholders to review the forms to determine	ADWR will consult with stakeholders regarding the revised forms.

[18] "Scottsdale" indicates comments received from the City of Scottsdale.
[19] "Gilbert" indicates comments received from the Town of Gilbert.
[20] "Mesa" indicates comments received from the City of Mesa.
[21] "Phoenix" indicates comments received from the City of Phoenix.
[22] "G" indicates that the comment is a general comment, rather than a comment on a specific rule.

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		the impact of any new application requirements.	
Janecek	G	Include penalties/enforcement for not meeting safe yield.	This is not within the scope of the AWS Program.
AMWUA, Anderson, Chandler	G	New rules should include a "grandfathering" provision for existing determinations.	The preamble will explain how existing determinations will be grandfathered.
Tucson	G	Reduce or eliminate inequitable application of rules between designated providers and certificated subdivisions	Certificates and designations are different determinations and both have advantages and disadvantages. ADWR has been willing to consider specific issues raised by stakeholders in this regard.
Anderson, Sweeney	G	The rules and ADWR staff worry too much about ownership and signature authority.	Many changes in the revised rules are intended to address these issues and ease application requirements as much as possible.
Tucson	G	ADWR should assure that if unintended consequences are discovered in the future, the regulated community will be afforded corrective action.	ADWR recognizes that several of the changes may or may not produce their intended effects, and that only in their implementation will we see the true impact of the rule changes. ADWR remains committed to revising the AWS rules as necessary to maintain an efficient and effective program that serves its statutory purposes. To that end, ADWR will be willing to revise the rules in the future as necessary.