



Water Resources

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15 August 2008

VIA ELECTRONIC AND HAND DELIVERY

Mr. Douglas W. Dunham
Deputy Assistant Director
Arizona Department of Water Resources
3550 N. Central Ave.
Phoenix, AZ 85012

RE: City of Scottsdale Comments regarding Draft Groundwater Transportation Rule,
A.A.C. R12-15-1401 et seq

Dear Doug:

I am writing on behalf of the City of Scottsdale to comment on the Department's draft groundwater transportation rule. Our comments focus on R12-15-1407, relating to transport of groundwater from the Harquahala INA to an initial active management area. The City has also reviewed the comments as submitted on behalf of Desert Mountain Properties Limited Partnership, a primary participant in the acquisition and development of the Harquahala Valley groundwater supply. Their comments for a large part, parallel our own, and we support implementation of the recommended changes contained therein.

Scottsdale appreciates the Department's willingness to seek informal comment on these rules prior to promulgation. The City also appreciates the recent opportunity to meet with Department staff to discuss our concerns regarding the implementation of these draft rules, and their potential impact on the transportation of groundwater from the City's Harquahala Valley farmland. Our concern regarding the impact of groundwater transportation rules upon the City's assured water supply is not a new one.

In fact, Desert Mountain and City representatives met with the Department in the fall of 2007, as a result of the Department's proposed rulemaking involving the assured water

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supply rules. At that meeting, we expressed concern regarding potential impact of the proposed rules on the City's groundwater transportation plans from the Harquahala Valley. Subsequent to that meeting, on 10 October 2007, I submitted a letter and a detailed information package regarding the City's long-term plans to withdraw and transport these supplies for use in the City service area. We believe that this information package demonstrated that the City has in fact met all statutory criteria for transport of the Harquahala Valley water. We have yet to receive a written response to this submittal.

The central issues for the City regarding the transport of Harquahala Valley groundwater have not yet been resolved. Therefore, we urge the Department to consider the comments as detailed below and to consider changing the draft rules as recommended. The City and its partners remain committed to working with the Department, and request that the Department staff continue to discuss with us ways to address our concerns prior to moving forward with finalization of any proposed groundwater transportation rules.

Background

As you know, the City acquired 1,215 acres of agricultural land in the Harquahala Valley in 2002. The City will be required to withdraw 3,645 acre-feet of groundwater annually from this Harquahala Valley land for transportation into the City as a requirement of its water availability status contract to replenish with the CAGR. This contract to replenish serves as the basis for the City's water availability status membership in CAGR. The amount of groundwater withdrawn from the farmland is reduced by 5 percent to account for transportation losses through the CAP canal, thus resulting in 3,460 acre-feet of water available to the City for use as an assured water supply.

The CAGR water availability status membership was extensively reviewed by the Department as a part of the City's assured water supply application, pursuant to the criteria set forth in A.R.S. 45-756.07. Based upon this review, the Director issued a Decision and Order modifying Scottsdale's assured water supply to include the CAGR membership on April 25, 2002. This decision was issued based at least in part on the assumption and understanding that Harquahala Valley groundwater would be available as a guarantee of the water availability status membership. Therefore, the City has a substantial interest in continuing to preserve its ability to withdraw and transport the groundwater from its Harquahala Valley farmlands to the City.

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Permit requirement not statutory

Rule R12-15-1407 as currently drafted requires the granting of a permit to any entity that wishes to transport groundwater from the Harquahala INA. The statute does not expressly require the granting of such a permit. Furthermore, this permit requirement was not in existence at the time that Scottsdale's assured water supply was modified to include the CAGR water availability status membership. As noted above, the Department intensively reviewed the terms of the CAGR membership at the time of the application for modification.

One of the key components of the City's water availability status membership was the provision of a backup water supply consisting of Harquahala Valley groundwater. A.R.S.45-576.07 requires that a five-year backup supply of credits be stored within the replenishment area specified in the membership contract (in this case, the Carefree basin) but this is certainly no guarantee of supply in the long-term should the Harquahala Valley groundwater not be available.

Without the availability of the Harquahala Valley groundwater, the Department would have had no assurance that a long-term supply would have been in place to meet the expected demands. Therefore, there is no doubt that if a permitting system had been in place at the time of the designation review, the Department would have made such a permit a requirement of receiving the designation modification. Thus, it is only fair to assume that the City de facto met the permit requirements at the time of application for its modification, and should not be required to reapply.

In spite of this, the City does recognize the potential benefits of providing a framework for transportation of groundwater to active management areas ("AMAs"). Therefore, whether or not the Department determines that Scottsdale is indeed required to apply for a permit at this time, we offer the following comments regarding several specific areas of the draft rule which we suggest will clarify the language and more appropriately reflect the statutory intent.

Transportation Priority

First, the City requests that should the Department determine that a permit system be required, that each permit granted should carry a priority date for transportation based upon the date that the permit was initially issued. This provision was included in the Department's initial rule modifications dealing with groundwater transportation from

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the Harquahala Valley, which were included as part of a package making changes to the assured and adequate water supply rules.

Two of the proposed Assured Water Supply rules were of particular interest to Scottsdale at that time. The first, R12-15-716.L.3, set criteria for assigning priority dates for transportation of groundwater to be pumped in the Harquahala Valley for transport to an initial AMA. The second proposed rule, R12-15-716.B.3.d., would have required the Department to take into account early priority transportation volumes when making assured and adequate water supply decisions in the Harquahala Valley. It is our understanding that the Department no longer plans to develop specific rules regarding the priority of groundwater. The City urges the Department to reconsider this decision.

If the City's transportation of groundwater is not given priority when considering physical availability for assured or adequate supply purposes, the City runs the risk of losing that portion of its designation of assured water supply that is based upon the availability of the Harquahala Valley supply. Therefore, Scottsdale believes that including these priority protection provisions is an essential element of any transportation rule relating to the Harquahala INA.

Additionally, since it can be demonstrated that the City met all statutory transportation requirements at the time of its designation modification in April of 2002, the City requests that its transportation priority be determined to be the date of that designation. We believe that the information we submitted in October 2007 supports this priority.

Hydrologic modeling and physical availability

The City agrees that hydrologic modeling is necessary in order for the Department to properly determine whether proposed groundwater pumping meets the statutory depth to water and groundwater decline rate requirements. However, the rules as currently drafted do not provide sufficient guidance to a potential permit applicant in determining what type of hydrologic study will be required. Both R12-15-1407.A.9 & R12-15-1407.A.10. require that a hydrologic study be conducted, "...using a method of analysis approved by the director,....". This requirement is extremely vague.

Desert Mountain's recommendation that the modeling requirements be set forth specifically in rule has a great deal of merit. However, should the Department not choose to take this approach, at a minimum the rule language must be modified to incorporate a more detailed description of the type of modeling that would be required. For exam-

ple, the following language "...using a numerical groundwater flow model or other scientifically accepted form of hydrologic analysis,..." could easily be substituted for the previous clause.

Scottsdale further requests that the draft rule be modified to exclude any permit applicant who has previously received a designation of assured water supply based on a water availability status membership which relies upon Harquahala Valley groundwater as a backup supply from the hydrologic study requirement. This could be accomplished by providing in rule that:

"...Any previously approved physical availability determination which includes the points of withdrawal identified pursuant to R12-15-1707.A.8 shall be deemed to have met the hydrologic study requirements set forth in this section provided that:

- (a) the groundwater to be withdrawn for transport is identified as a long term water supply in a water availability status contract to replenish and member service area agreement, and
- (b) that the water availability status membership based upon that contract to replenish has been included as a part of a designation of assured water supply issued to a political subdivision of the state which is located in an initial AMA."

As referenced above, Scottsdale can demonstrate that it met the statutory requirements for transportation of the Harquahala Valley groundwater as of the date of issuance of its assured water supply designation modification. A key component of the statutory criteria for transportation is the demonstration that any groundwater pumped for transportation would not cause groundwater levels to decline by more than 10 feet per year over a 100 year period, and that such groundwater pumping would not cause groundwater levels to decline to more than 1,000 feet below land surface. In Scottsdale's case, this requirement has been met through the issuance of two letters of physical availability determination by the Department. Copies of these letters were included with the City's October 2007 information submittal to the Department.

A previous owner of the Harquahala Valley property, the Vidler Water Company, applied for physical availability determinations on all of its landholdings in the Harquahala Valley, which included the property currently owned by the City of Scottsdale. The Department determined that a groundwater supply had met the statutory criteria to be demonstrated as physically available in both cases. Application No. 20-300567 (Application #1), for 13,683 acre-feet of water, was granted a physical availability de-

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termination on March 11, 1999. Application No. 20-400379 (Application #2), for 38,326 acre-feet of water, was granted on November 8, 2000.

In its letters, the Department states that the hydrologic analyses submitted in support of the above applications demonstrated that the proposed groundwater withdrawals would cause the following depth to water and decline rates:

Application #1: 13,683 af/yr pumping for 100 years
= depth to water of 600 feet bls
= 600 ft/100 years
= avg decline rate of maximum of 6 ft/yr

Application #2: 38,326 af/yr pumping for 100 years
= depth to water of 900 ft bls
= 900 ft/100 years
= avg decline rate of maximum of 9 ft/yr

Three of the wells (55-610759, 55-610760, 55-610763) proposed as the points of withdrawal for the Harquahala Valley groundwater were included in the groundwater withdrawal analysis in Application #1. The fourth well (55-635433) was included in the groundwater withdrawal analysis in Application #2. The impacts of these wells have been considered and have been found to be in compliance with the statutory drawdown criteria, which are included in draft rules 12-15-1407.A.9 & 10 by reference.

Therefore, city requests that the Department consider the previously issued physical availability determinations as adequate to meet the hydrologic requirements under the draft rules, particularly as the City has relied upon this groundwater in its demonstration of an assured water supply based upon its CAGR water availability status membership.

Permit term

As you are aware, although the City has acquired lands within the Harquahala INA with the intent to transport groundwater, the City does not plan to actually begin such transportation activities for a considerable time. Assuming the City applies for a permit, we are concerned that the term of the permit match our transportation plans. Our recent discussions suggest that the Department is willing to establish a permitting timeline, where a permit would be issued and effective as of the date of approval, but that

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the duration of permit would cover a 100-year period beginning at the initiation of transportation activity.

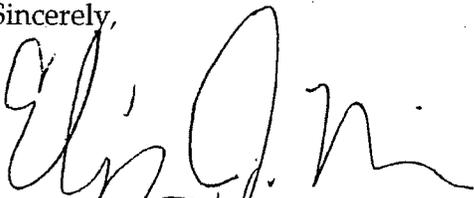
The City requests that the Department modify the rules to be consistent with this concept. Notification of the Department of the commencement of transport would also be appropriate and would trigger the commencement of the 100-year permit period.

Public notice

Finally, the City concurs with Desert Mountain's comment that if the Department does in fact move forward to establish a formal permitting process for transportation pursuant to A.R.S. § 45-554, a formal public noticing and objection procedure should be established. Specifically, the City requests that the Department provide first-class mail notice and an opportunity to object to all holders of a previously issued transportation permits. We believe that to the extent that the Department will be "allocating" supplies for transportation from the Harquahala INA it is important for permit holders to have the opportunity to be notified, and if appropriate file administrative objections, to subsequent requests for allocations that may have the potential for impact prior approved transportation supplies.

Again, the City of Scottsdale appreciates the opportunity to provide input on the draft rules. As I have expressed previously, the City has a substantial interest in continuing to preserve its ability to withdraw and transport the groundwater from its Harquahala Valley farmlands to the City. Therefore, the City look forward to working closely with the Department as it proceeds toward finalizing the rules. In the meantime, please feel free to call me should you have any questions or require any clarification regarding the City's comments.

Sincerely,



Elizabeth Miller
Water resources advisor
City of Scottsdale