



September 12, 2012

Via E-Mail and Hand-Delivery

Phoenix Groundwater Users Advisory Council
Arizona Department of Water Resources
3550 North Central, Second Floor
Phoenix, AZ 85012

RE: Fourth Management Plans for the AMAs

Dear GUAC Members:

The Arizona Municipal Water Users Association (AMWUA) is following the work of the Arizona Department of Water Resources (ADWR) as it develops the Fourth Management Plans for the Active Management Areas (AMA). We understand that the Groundwater Users Advisory Council (GUAC) meetings will serve as a forum for comments during the plan development process. AMWUA's members collectively provide water to over 3.2 million people in the Phoenix AMA and have a vital interest in ensuring that the management plans continue to move the Phoenix AMA closer to safe-yield. Consequently, we appreciate the opportunity to submit some preliminary comments early in the plan-development process.

As required by the 1980 Groundwater Management Act, the first, second, and third management plans focused primarily on conservation to achieve reductions in groundwater withdrawals. In the fourth management plans, however, the statutes seem to suggest that the reductions to be achieved from economically reasonable conservation requirements may be limited. As we approach the year 2025, AMWUA believes that other strategies are needed to help attain safe-yield. Following are some ideas for your consideration.

Arizona Municipal Water Users Association

General Industrial Use Permits

Safe-yield is a long-term balance between the amount of water withdrawn in an AMA and the amount of water recharged. Safe-yield will be difficult to achieve and maintain if new uses of groundwater are allowed. One potential source of new uses is the general industrial use permit. ADWR is required to issue a general industrial use permit if certain conditions are met. One of these conditions is that “the management plan for the active management area can be adjusted to accommodate the intended general industrial use consistent with the achievement of the management goal for the active management area.” A.R.S. § 45-515.A.5.

AMWUA Recommendation: ADWR should consider whether the management plan can be adjusted to accommodate new industrial uses of groundwater without a corresponding replenishment requirement. Alternatively, ADWR should consider whether other strategies are needed to limit the issuance of general industrial use permits in the future.

Type 2 Grandfathered Rights

A Type 2 Right is not appurtenant to any land and may be transferred for a new use at a new location within the same AMA. A Type 2 Right does not expire for non-use. There are a number of Type 2 Rights that are not currently being exercised, but that could be exercised at any point in the future. A Type 2 Right may be withdrawn from a new well in a new location in the same AMA if the new well complies with ADWR's well-spacing rules. A Type 2 Right may be withdrawn from a new point of withdrawal within the service area of a municipal provider even if the municipal provider is ready and able to provide water service for the use being contemplated.

AMWUA Recommendation: ADWR should consider whether a proposed change in the point of withdrawal of a Type 2 Right that is transferred for a new use should be subject to notice and an opportunity to protest the change of location, or whether limitations on the change of the point of withdrawal are needed.

Exempt Wells

New exempt wells are another source of increased groundwater mining within an AMA. Restrictions on exempt wells have been hotly debated in the past and currently provide, among other things, that an exempt well may not be drilled on land that is within one hundred feet of the operating water distribution system of a municipal provider with an assured water supply

designation, except under certain situations. Unfortunately, the exemptions from this prohibition are not as clear as they could be.

AMWUA Recommendation: ADWR should review the process and implications for the use of exempt wells within or adjacent to municipal service areas.

Certificates of Assured Water Supply

Certificates of Assured Water Supply are issued for a specific subdivision plat and a projected water use. If the plat is revised and the changes to the plat are material, the Certificate may no longer be valid. A.A.C. R12-15-708. However, if the plat never changes or the changes are not material, the Certificate does not expire even if the development never proceeds.

AMWUA Recommendation: ADWR should consider whether a Certificate of Assured Water Supply should be subject to revocation if a substantial capital investment in the development of the land pursuant to the plat is not made within a reasonable number of years.

Recharge, Replenishment and Recovery

Since passage of the Underground Water Storage Act, many entities have been storing water underground for future use. The Central Arizona Groundwater Replenish District (CAGR) has also been replenishing excess groundwater pumped by its members. State law allows ADWR to issue an underground storage facility permit if, among other things, the storage facility will not cause unreasonable harm to land or other water users within the maximum area of impact of the facility. A.R.S. § 45-811.01.C. The statutes allow stored water to be recovered within the same AMA but outside the area of impact of the stored water if, among other things, ADWR "determines that recovery at the proposed location is consistent with the management plan and achievement of the management goal for the active management area." A.R.S. § 45-834.01.A. In recent years, many have become concerned that the location of recharge and replenishment and the recovery of stored water do not take into account local groundwater levels.

AMWUA Recommendation: ADWR should consider whether incentives should be provided for recharge and replenishment in areas where groundwater levels are declining and recovery of stored water in areas where groundwater levels are rising.

Connecting Water Supplies with Growth

In recent years, significant residential development has occurred far beyond the boundaries of existing water infrastructure. This development relies almost exclusively on groundwater supplies that will later be replenished by CAGRD. While CAGRD is required to replenish the excess groundwater withdrawn to serve its member lands and member service areas, CAGRD is not required to replenish in the areas where the groundwater is being withdrawn. As a result, a significant amount of residential development is now relying on a finite amount of groundwater without certainty that renewable supplies will be physically available for those uses after 100 years.

AMWUA Recommendation: ADWR should consider incentives to encourage infill in locations where infrastructure and renewable water resources are available.

Long-Term Storage Credits for Effluent

Under the Underground Water Storage Act, long-term storage credits may be earned only for storing underground "water that cannot reasonably be used directly." This term is defined to include effluent, but only until the year 2025. A.R.S. § 45-802.01. While 2025 may have seemed like a reasonable date for putting all effluent to direct use, we now know that even after 2025 this will be very difficult.

AMWUA Recommendation: The 2025 date for eliminating long-term storage credits for effluent should be extended.

Use of Remediated Groundwater

By session law in 1997, the legislature provided that until 2025, a specified amount of groundwater withdrawn in the AMAs pursuant to approved remedial action projects under CERCLA or Title 49, Arizona Revised Statutes, ("remediated groundwater") would be consistent with the management goal of the AMA. Laws 1997, Chapter 287, Section 52. The session law required a municipal provider to apply for an exemption under this provision by January 1, 2010. It further directed ADWR to amend its assured water supply rules to carry out the purpose of this session law. At least one municipal provider in the Phoenix area will be required by consent decree to accept remediated groundwater into its municipal water system after 2025.

AMWUA Recommendation: ADWR should evaluate methods to reconcile the importance of limiting groundwater withdrawals in order to achieve the management goal of the AMA and the need to withdraw and treat polluted groundwater, pursuant to federal and state law, in order to achieve the equally important goal of protecting the quality of remaining groundwater supplies.

AMWUA appreciates the work of ADWR and the GUAC in developing the management plans and looks forward to providing additional comments as your work progresses.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen Ferris". The signature is fluid and cursive, with the first name being more prominent than the last.

Kathleen Ferris
AMWUA Executive Director

KF:mla:dsp

c: Sandy Fabritz-Whitney, Director, Arizona Department of Water Resources
Tom Buschatske, Assistant Director, Arizona Department of Water Resources
J. Scott Miller, Director, Statewide Active Management Area