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November 29, 2023

The Honorable Katie M. Hobbs
Governor
State of Arizona
1700 W. Washington St.
Phoenix, AZ 85007

Dear Governor Hobbs,

It is my pleasure to transmit to you recommendations from your Water Policy Council that address the Assured Water Supply program and the management of rural groundwater. The recommendations are impactful policy prescriptions that add to the sustainability of Arizona's water supplies now and in the future.

On May 17, 2023, you convened a diverse group of stakeholders with representation from agriculture, water providers, Tribes, executive agency cabinet officers, cities, the business community, industry, conservation organizations, university experts, the Arizona legislature, and more. At this inaugural meeting, the Council was charged with two objectives: developing proposals and recommendations for better management of rural groundwater and producing a package of policy recommendations which strengthen our Assured Water Supply Program and ensure that we protect our groundwater resources while enabling continued, sustainable growth. With these charges laid out before us and a deadline to submit proposals to you by the end of the year, the Governor's Water Policy Council embarked on a process to develop consensus policy recommendations in a robust, inclusive, and transparent manner.

Two committees were established to focus on each issue: an Assured Water Supply Committee and a Rural Groundwater Management Committee, and Council members were given the option to choose which Committee they wanted to participate in. The Council and its committees met twenty times over the past six months, and members were asked to attend each meeting in person whenever possible, with virtual attendance options made available. Members were asked to reach out to their constituents throughout the process to receive additional perspectives on the Assured Water Supply Program and the rural groundwater management challenges and potential solutions, and to bring those perspectives to each meeting. Committee and Council meetings were livestreamed and open to the public for viewing.

ADWR chaired each Committee and Council meeting, developing agendas, providing technical presentations, and drafting documents for Council member review, revision, and discussion. ADWR staff, in parallel with the Committee and Council meetings, met with members individually to receive input, discuss perspectives, and revise documents to reflect the input. Revisions were shared with Committee members. All verbal and written communications by Committee members associated with the recommendations have been recorded and acknowledged by ADWR. All Committee meeting communications have been considered in the final drafting of these recommendations.

Consensus-based approval of the recommendations was first achieved by each Committee, and then the recommendations were brought to the Council for their discussion, consideration, and final approval. Support from the Council for the final five recommendations contained in this letter was achieved at the October 27, 2023, and the November 29, 2023, Council meetings.

The Council's Assured Water Supply Program recommendations provide a launch point and guidance for drafting new rules for an Alternative Designation of Assured Water Supply (ADAWS) program. This ADAWS concept creates a pathway for water providers historically reliant on groundwater to grow incrementally on alternative supplies while reducing groundwater mining. The Assured Water Supply recommendations also provide a path for closing statutory loopholes associated with "wildcat" subdivisions and "Build-to-Rent" developments.

The Council's Rural Groundwater recommendations provide a foundational framework to craft legislation for creating a new groundwater management program for rural Arizona, filling a water management gap that has gone unaddressed for decades and providing an opportunity for rural communities and water users to benefit from improved water management and protection. Finally, the Council has developed recommendations to bolster the measuring and reporting of water use and monitoring of groundwater conditions throughout the state.

The full text of the Council's recommendations is included in this letter for your review, and the Department is preparing a full report of the Council's activities. Thank you for your leadership and commitment to protecting Arizona's water supplies. I look forward to continuing to build upon the work we have achieved thus far.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Buschatzke", written in a cursive style.

Tom Buschatzke

Director, Arizona Department of Water Resources
Chair, Governor's Water Policy Council

Alternative Path to Designation Proposal

Background

Many private utilities and smaller municipalities that would like to pursue a Designation of 100-year Assured Water Supply (DAWS) face hurdles to doing so, including:

- Legacy groundwater use from subdivisions that predate the Assured Water Supply (AWS) rules or uses that fall outside of the subdivision definition.
- Limited renewable supplies.
- Historic barriers to cost recovery for the expense and effort of securing renewable supplies and applying for designation.

When the original AWS rules were promulgated, existing providers at the time were allowed to transition from reliance on groundwater to renewable supplies under a DAWS, including certain exemptions and groundwater allowances.

Purposes of Proposal

The Alternative Pathway to Designation proposal seeks to address the following challenges:

- The commingling issue associated with Certificates and alternative water supplies.
- Unmet demand and/or exceedances of depth-to-water limit in AMA model.
- Incorporating new, non-groundwater supplies into a provider's water portfolio to reduce unmet demand and support new growth.
- Facilitating near-term growth while future infrastructure is under development.
- Creating a long-term benefit for the aquifer.

ADWR generated this proposal based on stakeholder feedback and suggestions from the AWS Committee related to "Hybrid" and "Transitional" Designation concepts.

Overview of the Proposal

Existing groundwater pumping is grandfathered into the Designation. Physical availability is grandfathered, and a groundwater allowance is granted to provide Consistency with the Goal.

New Alternative Water Supplies can be added to the Designation portfolio. Groundwater can be used in the interim period before supplies are delivered. A portion of the new supplies [30%] will be used to substitute for existing groundwater pumping to facilitate a transition away from groundwater.

Existing Groundwater Demands: Physical Availability

The following groundwater volumes would be "grandfathered in" for purposes of physical availability:

- Issued Certificates of Assured Water Supply; and
- Existing groundwater pumping and non-groundwater recovered outside the area of impact (AOI) based on annual reporting for 2021.

Analyses of Assured Water Supply are not included. The grandfathered volume is subject to reduction under the provisions related to alternative supplies. New growth will be supported by alternative supplies.

Existing Groundwater Demands: Consistency with the Management Goal

For the existing groundwater demands that would be grandfathered into the new Designation, Consistency with the Management Goal will be met by:

- The water provider would enroll as a member service area with CAGRDR.
- The water provider would receive a lump sum groundwater allowance, based on deliveries in 2021¹.

The water provider will then decide how to manage groundwater allowance usage, water supply deliveries, CAGRDR reporting, and billing individual customers for CAGRDR assessments.

New Alternative Supplies

“New Alternative Supplies” refers to water supplies other than groundwater withdrawn in the AMA that were not served in 2021, including effluent, surface water, CAP water, transported groundwater. They may be delivered directly or stored and recovered within the area of impact.

New Alternative Supplies may be added to the Designation to serve new growth. The grandfathered groundwater volume will be reduced by [30%] of the new supplies to facilitate an incremental transition away from groundwater over time.

New Alternative Supplies must meet AWS requirements for designations including physical, continuous, and legal availability and financial capability. Adding New Alternative Supplies to the Designation that will require future infrastructure construction would be evaluated under ADWR's existing rules for designations. The provider must include a construction plan and schedule demonstrating that construction will be completed in a timely manner. All major permits and approvals and environmental compliance necessary for the unbuilt water infrastructure must be completed before the designation is issued.

ADWR's current financial capability rule for designations allows for flexibility on financing for cities and towns. Under the rule, a city or town may submit evidence demonstrating that “financing mechanisms are in place to construct adequate delivery, storage and treatment works in a timely manner.” This flexibility may be extended to private water providers.

Expedited Modification for Incremental Growth

During the designation term, the Department will allow for an expedited modification to include an additional non-groundwater supply. For an expedited modification, the Department would review only AWS requirements for that additional supply and the demand schedule. ADWR rules could be amended to allow expedited modifications to all designated providers.

¹ 2021 was used because the Phoenix AMA model is based on 2021 reporting data.

Designation Term / Modification

The designation has an initial term of no greater than 15 years, which may be renewed or modified for additional terms of up to 15 years, subject to demonstrating that the Designation requirements are met. If modified or extended, the grandfathered groundwater volume will be reduced by volume of reported pumping since the most recent designation was issued, consistent with the existing AWS rules. A provider may continue under alternative designation framework indefinitely.

Overview

The Alternative Pathway to Designation proposal addresses the challenges that non-designated water providers have had in obtaining a designation. It addresses previously unconstrained groundwater pumping that is not subject to the Assured Water Supply Program, reduces unmet demand by ultimately reducing groundwater pumping over the 100-year period, and facilitating incremental growth and a steady transition from groundwater to alternative supplies such as surface water, effluent, or transported supplies.

Build to Rent Proposal

1. Define residential lease community (RLC)
 - a. 6 or more detached residential dwelling units on one or more lots, parcels, or fractional interests.
 - b. Offered for the purpose of lease without regard to lease term; including lease terms of one year or less.
 - c. For purposes of the AWS program, an RLC is the same as a subdivision.
2. Ensure all applicable fees are paid (CAGR).D).
3. A City or County may approve a building permit for an RLC within an AMA if the units have obtained a certificate of assured water supply or a written commitment of water service from a designated municipality or private water company.

“Wildcat” Development Proposal

Governor’s Water Policy Council

The Governor’s Water Policy Council recommends the following statutory changes to address “wildcat” developments:

1. Strengthen subdivision law by clarifying that any entity, individual or combination thereof with any ownership in six or more lots offered for sale or lease in one or more adjoining sections of land is evidence of “acting in concert”.
2. Clarify the definition of “contiguous” when evaluating if nearby lots constitute a subdivision by:
 - a. Using one or more adjoining Sections of Land as the defined geographic area for considering whether lots are considered contiguous.
 - b. Clarifying that lots separated by a "street" or "road" are contiguous.
 - c. Retaining county, state, federal highways and “natural or man-made barriers” that divide lots as non-contiguous.
3. Apply civil penalties to each lot instead of the unauthorized subdivision as a whole.
4. Provide counties and municipalities authority to:
 - a. Collect ownership information at the time of application for subdivision and building permits, and;
 - b. Require a subdivider to obtain a subdivision public report based on ownership findings.

“Rural Groundwater Management Area” Framework Proposal

The Governor’s Water Policy Council recommends that the “Rural Groundwater Management Area” Framework be submitted to the Governor as a foundation for a new groundwater management program in rural Arizona.

DESIGNATION OF “RURAL GROUNDWATER MANAGEMENT AREA”

1. ADWR Initiation Criteria

- a. Director has the option to initiate a “Rural Groundwater Management Area” designation process.
- b. The criteria to initiate should not be more onerous than an AMA.
 - i. Should be created when there has been a significant decrease in groundwater indicators over time and access to groundwater supplies is being threatened.

2. Local Initiation Process

- a. Process can be initiated by county board of supervisors resolution(s) or petition by percentage of area registered voters.

3. Hearing and Designation

- a. ADWR to conduct a hearing process, similar to an AMA or INA, prior to a decision on designation.
- b. Director has final designation authority.

4. Interim Pause

- a. There is a need for a pause on groundwater use expansion that begins when a “Rural Groundwater Management Area” is designated and continues until the area Management Plan is approved by ADWR.
 - i. No new non-exempt wells within area boundaries, with exceptions for supplies necessary for the protection of human health and safety.

ACKNOWLEDGEMENT OF EXISTING USES

1. There is a need to document current and historical groundwater uses and users if a “Rural Groundwater Management Area” is designated.
 - a. Applies to all sectors and water use types served by non-exempt wells.
 - b. Need sufficient information to make an “acknowledgement” determination.
2. The process to establish an “acknowledgement” should be more streamlined than the AMA application process.
3. Is subject to conservation or efficiency measures or other actions identified in the area Management Plan needed to achieve the area Goal(s).

4. Should provide flexibility for water users and the local economy while achieving the area Goal(s).

COUNCIL DUTIES

1. Required Duties

- a. Make a complete record of its proceedings that are open to public review.
- b. Respectfully cooperate with federally recognized Tribes, cities, towns, counties, water providers², and other local, state, or federal agencies or organizations within the area to engage in coordinated regional planning.
- c. Coordinate with ADWR in creating area Goal(s) and Management Plan that address the needs of the local basin.
 - i. Request technical assistance from ADWR.
- d. Recommend and send to the Director the area Goal(s) and Management Plan.
 - i. ADWR issues final approval of Goal(s) and portions of Management Plan to be implemented by ADWR, striking illegal and unconstitutional provisions and recommending against impractical provisions.

2. Optional Duties

- a. Gather additional information and data.
- b. Establish a steering committee, advisory committee, or other structure to solicit and receive participation, comment, and advice from residents and other interested parties regarding the development and operation of the area Management Plan.
- c. The Council may have other duties, responsibilities, and capabilities, to be finalized in legislation.

AREA GOALS

1. Each “Rural Groundwater Management Area” must have at least one Goal, with all Goals tied to the needs and conditions of the local area.
 - a. The Goal(s) must address the groundwater conditions and criteria identified when ADWR designated the “Rural Groundwater Management Area”.
 - b. The Goal(s) will remain the same throughout the duration of the “Rural Groundwater Management Area”.
2. The Council must draft and recommend Goal(s) in consultation with ADWR.
 - a. The Council should respectfully cooperate with federally recognized Tribes, cities, towns, counties, water providers, and other local, state, or federal agencies or organizations within the area when drafting Goals.

² Throughout this document, “water providers” refers to all entities that provide water to end users, such as private water companies, irrigation districts, and ditch companies.

- b. Director issues final approval of Goal(s).

AREA MANAGEMENT PLAN

1. The Area Management Plan Shall Include:

- a. One or more management Goals for the area, approved by the Director.
- b. A description of the appropriate physical and socioeconomic conditions in the area and how the Goal(s) relate to those conditions.
- c. Summary and consideration of other relevant government management plans currently in place in the area, including tribal, federal, state, and local governments.
- d. Methods to monitor and report on progress toward the Goal(s).
- e. Measuring and annual reporting for non-exempt wells in the area.
- f. Rules governing well location.
- g. Mandatory water conservation programs for all sectors.

2. The Area Management Plan May Include:

- a. Other water management practices or programs within ADWR's statutory authority deemed appropriate by the Council for achieving the Goal(s), with approval by and coordination with ADWR or other entities as necessary.
- b. Recommended (not mandated) supplemental water conservation and management actions for implementation by cities, towns, counties, water providers, and other public agencies within the area.

COUNCIL MEMBERSHIP

1. Council Members

- a. The Council shall consist of no fewer than five and no more than nine members.
- b. No more than one member may reside outside the area boundaries.
- c. Membership should represent all major water use sectors within the area, such as agricultural, industrial, and municipal users.
- d. The Council must include some number of at-large members to meet the specific needs of the local economy, population, and water users of relevant sectors.

2. Appointment Process

- a. Members must be appointed.
- b. Members shall be appointed from lists of recommended individuals submitted by federally recognized Tribes, cities, towns, counties, water providers, and state legislators within the area boundaries.
- c. Appointed based on knowledge of, interest in, and experience related to the condition, development, or use of water within the area.
- d. Members serve five-year terms, with member terms staggered.

SUNSET AND REVIEW

1. Every ten years after the designation, the Director shall review whether the conditions for designating the “Rural Groundwater Management Area” still exist.
2. If the Director determines that the area Goal(s) have been achieved, the Director may rescind the “Rural Groundwater Management Area” designation after following the same notice and hearing procedures that were used for the initial designation process.
3. Unless the “Rural Groundwater Management Area” is rescinded by the Director, the Council shall review and either recommend to readopt the existing area Management Plan for an additional term of ten years or draft and recommend a new Management Plan.

Rural Groundwater Measuring and Reporting Proposal

The Governor's Water Policy Council recommends the following actions to enhance the non-regulatory assessment of groundwater conditions and use across the rural areas of the state:

1. ADWR should pursue additional measuring, monitoring, and collection of groundwater data to more fully assess basin aquifer conditions.
2. ADWR should investigate the utilization of emerging technologies, such as remote sensing, to analyze conditions and to supplement water use data.
3. ADWR should provide financial assistance for non-exempt well measuring devices in unregulated areas of the state in exchange for voluntary annual reporting from well users.
4. ADWR should provide financial assistance for non-exempt well measuring devices in newly regulated areas of the state.