

April 8, 2024

Alternative Path to Designation of Assured Water Supply (ADAWS)
DRAFT Rules

Proposed Language in Preamble:

The volume of groundwater and stored water recovered outside the area of impact calculated in R12-15-710(H) and (I) represents a volume of water that will be deemed physically available for an applicant for a new designation of assured water supply. Although the volume calculated in R12-15-710(H) and (I) uses estimated demand associated with unbuilt certificates of assured water supply as a metric for the total volume that will be deemed physically available, the rules do not require or provide for any transfer or pledging of those certificates to the applicant's designation. In the event a designation expires or is otherwise terminated, any certificate previously issued in the designated provider's service area would remain in effect.

Section R12-15-701. Definitions - Assured and Adequate Water Supply Programs

53. New Alternative Water Supply: means a volume of water that is not groundwater withdrawn from an AMA and that was not served within the service area of the municipal provider in the calendar year 2021 for the Phoenix AMA.

68. Unreplenished groundwater: means the volume of groundwater withdrawn within the service area of a municipal provider after subtracting the groundwater used consistent with the management goal of the AMA pursuant to R12-15-722.

R12-15-704. Certificate of Assured Water Supply

- A. No change
- B. An applicant for a certificate shall submit an application on a form prescribed by the Director with the fee required by R12-15-103(C) and provide the following:
 - 1. One of the following forms of proof of ownership for each applicant to be listed on the certificate:
 - a. For an applicant that is the current owner, one of the following:
 - i. A title report, condition of title report, limited search title report, or recorded deed, dated within 90 days of the date the application is filed, demonstrating that the applicant is the owner of the land that is the subject of the application; or
 - ii. Evidence that the CAGRDR has reviewed and approved evidence that the applicant is the owner of the land that is the subject of the application.
 - b. For an applicant that is a potential purchaser, evidence of a purchase agreement;

- c. For an applicant that is an affiliate of another applicant, a certification by the other applicant of the affiliate status;
 - 2. A plat of the subdivision;
 - 3. An estimate of the 100-year water demand for the subdivision;
 - 4. If the subdivision is enrolled as a member land in the CAGR and the applicant proposes to install gray water reuse systems in the subdivision, sufficient information for the Director to determine the appropriate reduction in demand;
 - 5. A list of all proposed sources of water that will be used by the subdivision;
 - 6. Evidence that the criteria in subsections (F) or (G) and (N) if applicable of this Section are met; and
 - 7. Any other information that the Director reasonably determines is necessary to decide whether an assured water supply exists for the subdivision.
- C.** No change
- D.** No change
- E.** No change
- 1. No change
 - 2. No change
 - 3. No change
- F.** Except as provided in subsection (G) of this Section, the Director shall issue a certificate if the applicant demonstrates all of the following:
- 1. Sufficient supplies of water are physically available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-716 or as provided in R12-15-704(N);
 - 2. Sufficient supplies of water are continuously available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-717;
 - 3. Sufficient supplies of water are legally available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-718;
 - 4. The sources of water are of adequate quality, according to the criteria in R12-15-719;
 - 5. The applicant has the financial capability to construct adequate delivery, storage, and treatment works for the subdivision, according to the criteria in R12-15-720;
 - 6. The proposed use of groundwater withdrawn within an AMA is consistent with the management plan in effect at the time of the application, according to the criteria in R12-15-721; and
 - 7. The proposed use of groundwater withdrawn within an AMA is consistent with the achievement of the management goal, according to the criteria in R12-15-722.
- G.** No change
- 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - 6. No change

- H.** No change
 - 1. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - 2. No change
- I.** No change
- J.** No change
 - 1. No change
 - a. No change
 - b. No change
 - 2. No change
 - 3. No change
- K.** No change
 - 1. No change
 - 2. No change
 - 3. No change
- L.** No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
- M.** No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
- N.** Until June 30, 2027, for an application for a certificate in the Phoenix or Pinal AMA that includes a proposed source of supply that is not groundwater or stored water recovered outside the area of impact and that will be served through a distribution system that is commingled with groundwater or stored water recovered outside the area of impact, the commingled groundwater or stored water recovered outside the area of impact shall be deemed physically available if all of the following apply:
 - 1. The application includes a proposed source of supply that is not groundwater or stored water recovered outside the area of impact at a volume equal to the estimated water demand for the proposed subdivision that is committed to the proposed subdivision;

2. The proposed source of supply in subsection N(1) of the Section is a new supply that was not served within the service area of the municipal provider as of the calendar year 2022;
3. The proposed source of supply in subsection N(1) of the Section meets the requirements in R12-15-716 through 720;
4. The proposed municipal provider has acquired an additional volume of the proposed source of supply in subsection N(1) of the Section that was not served within the service area of the municipal provider as of the calendar year 2022, equal to 30% of the estimated water demand for the proposed subdivision, to substitute for its existing use of groundwater or stored water recovered outside the area of impact, and the additional volume meets the requirements in R12-15-716 through 720; and
5. The land that is the subject of the application is a member land of the CAGR.

R12-15-710. Designation of Assured Water Supply

A. No change

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change

B. No change

1. No change
2. No change

C. No change

D. No change

1. No change
2. No change
3. No change
4. No change
5. No change

E. The Director shall designate the applicant as having an assured water supply if the applicant demonstrates all of the following:

1. Sufficient supplies of water are physically available to meet the applicant's estimated water demand, according to the criteria in R12-15-716 or as provided in subsection (G), (H) or (I) of this Section;
2. Sufficient supplies of water are continuously available to meet the applicant's estimated water demand, according to the criteria in R12-15-717;

3. Sufficient supplies of water are legally available to meet the applicant's estimated water demand, according to the criteria in R12-15-718;
 4. The proposed sources of water are of adequate quality, according to the criteria in R12-15-719;
 5. The applicant has the financial capability to construct adequate delivery, storage, and treatment works in a timely manner according to the criteria in R12-15-720;
 6. Any proposed groundwater use is consistent with the management plan in effect at the time of the application, according to the criteria in R12-15-721; and
 7. Any proposed use of groundwater withdrawn within an AMA is consistent with the management goal, according to the criteria in R12-15-722.
- F.** No change
- G.** For an application seeking to modify a designation of assured water supply that does not include a volume of groundwater or stored water recovered outside the area of impact pursuant to subsection H or I of this Section, the Director shall not review the physical availability of the volume of groundwater and stored water to be recovered outside the area of impact sought to be included in the designation if the total volume of those sources sought to be included in the designation does not exceed the total volume of those sources included in the previous designation of assured water supply that are required to be accounted for pursuant to A.A.C. R12-15-716(B)(3)(c)(ii), minus the sum of the following:
1. The volume of groundwater withdrawn by the applicant since the previous designation of assured water supply order issuance date; and
 2. The volume of stored water recovered outside the area of impact by the applicant since the previous designation of assured water supply order issuance date.
- H.** For a new application for a designation of assured water supply in the Phoenix Active Management Area, a volume of groundwater and stored water recovered outside the area of impact, as calculated in subsection (H)(1), (2) and (3) of this Section, shall be deemed physically available if the Director determines that a New Alternative Water Supply included in the application meets the requirements in R12-15-716 through 720. The volume of groundwater and stored water recovered outside the area of impact shall be calculated as follows:
1. add the total volume of groundwater withdrawn and stored water recovered outside the area of impact within the service area of applicant during the calendar year 2021 to the estimated groundwater and stored water recovered outside the area of impact demand for unbuilt portions of issued certificates of assured water supply as of 2021 that are or will be within the service area of the applicant, and multiply the sum by 100;
 2. multiply twenty-five percent of each New Alternative Water Supply included in the designation by 100; and
 3. subtract the total volume calculated in subsection (H)(2) of this Section from the total volume calculated in subsection (H)(1).

- I. For an application seeking to modify a designation of assured water supply that includes a volume of groundwater and stored water recovered outside the area of impact pursuant to subsection H of this Section, the following apply:
 - 1. the 100-year volume calculated pursuant to subsection H of this Section shall be reduced by the volume of groundwater withdrawn and stored water recovered outside the area of impact by the applicant since the previous designation order issuance date; and
 - 2. the 100-year volume calculated pursuant to subsection H of this Section shall be further reduced by twenty-five percent of the 100-year volume of each New Alternative Water Supply included in any modified designation but not included in the previous designation.
- J. The director shall not include any additional sources of groundwater withdrawn from the AMA or stored water recovered outside the area of impact in the AMA in a designation of assured water supply that includes a volume of groundwater and stored water recovered outside the area of impact pursuant to subsection H or I of this Section.
- K. An applicant that includes a volume of groundwater or stored water recovered outside the area of impact pursuant to subsection H or I of this Section must be enrolled as a member service area with the CAGR.

R12-15-711. Designation of Assured Water Supply; Annual Report Requirements, Review, Modification, Revocation

- A. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
- B. No change
- C. No change
- D. A designation that includes a volume of groundwater pursuant to R12-15-710(H) or (I) shall be for an initial term of no greater than 15 years.
- E. No change
- F. No change
- G. During the term of the designation, a designated provider may request an expedited modification of the designation to include additional water supplies that do not include groundwater or stored water recovered outside the area of impact from an AMA. The Director shall review only the following for an expedited modification under this subsection:
 - 1. The proposed current, committed and projected demands under the current term of the designation; and

2. The assured water supply requirements for the additional water supply pursuant to R12-15-716 through 722.

Section R12-15-720. Financial Capability

- A. No change
 1. No change
 2. No change
 3. No change
- B. No change
- C. The Director shall determine that an applicant for a designation has the financial capability to construct adequate delivery, storage, and treatment works if the applicant demonstrates one or more of the following for each of those facilities:
 1. The applicant has constructed adequate delivery, storage, and treatment works;
 2. The applicant has entered into written agreements requiring a potential developer to construct adequate delivery, storage, and treatment works;
 3. The applicant has submitted evidence demonstrating that financing mechanisms are in place to construct adequate delivery, storage, and treatment works in a timely manner;
 4. If the applicant is a city or town, the applicant has:
 - a. ~~A~~ adopted a five year capital improvement plan that provides for the construction, or the commencement of construction, of adequate delivery, storage, and treatment works in a timely manner, and has submitted a certification by the applicant's chief financial officer that finances are available to implement that portion of the five-year plan; or
 - b. ~~Submitted evidence demonstrating that financing mechanisms are in place to construct adequate delivery, storage, and treatment works in a timely manner; or~~
 5. If the applicant is a private water company, the applicant has received approval from the Arizona Corporation Commission for financing the construction of adequate delivery, storage, and treatment works.

R12-15-724. Phoenix AMA Calculation of Groundwater Allowance and Extinguishment Credits

- A. The Director shall calculate the groundwater allowance for a certificate or designation in the Phoenix AMA as follows:
 1. If the application is for a certificate, multiply the applicable allocation factor in the table below by the annual estimated water demand for the proposed subdivision.

| MANAGEMENT PERIOD | ALLOCATION FACTOR |
|-------------------|-------------------|
| Third | 4 |
| Fourth | 2 |
| Fifth | 1 |
| After Fifth | 0 |

2. If the application is for a designation and the applicant provided water to its customers prior to February 7, 1995, multiply 7.5 by the total volume of water provided by the applicant to its customers from any source during calendar year 1994, consistent with the municipal conservation requirements established for the applicant pursuant to Section 5-103(A)(1) of the Second Management Plan for the Phoenix AMA.
3. If the application is for a designation and the applicant commenced providing water to its customers on or after February 7, 1995, the applicant's groundwater allowance is zero acre-feet, except as provided in subsection (A)(4) of this Section.
4. If the application is for a designation that includes a volume of groundwater or stored water recovered outside the area of impact pursuant to R12-15-710(H), the volume shall be calculated as follows:
 - a. the applicant may select either of the following calculations if the volume does not exceed the applicant's 2021 unreplenished groundwater deliveries multiplied by 100:
 - i. multiply 30 by the total groundwater deliveries during the calendar year 2021 to customers not enrolled as a member land in the CAGR; or
 - ii. multiply 20 by the total water deliveries from any source during the calendar year 2021 to customers not enrolled as a member land in the CAGR.
 - b. add the remaining groundwater allowance for each issued certificate of assured water supply that is or will be within the service area of the applicant to the volume calculated under subsection (A)(4)(a) of this Section.
5. For each calendar year of a designation, the Director shall calculate the volume of incidental recharge for a designated provider within the Phoenix AMA and add that volume to the designated provider's groundwater allowance. The Director shall calculate the volume of incidental recharge by multiplying the provider's total water use from any source in the previous calendar year by the standard incidental recharge factor of 4%. A designated provider may apply for a variance from the standard incidental recharge factor as provided in A.R.S. § 45-566.01(E)(1). The Director may establish a different incidental recharge factor for the designated provider if the provider demonstrates to the satisfaction of the Director that the ratio of the average annual amount of incidental recharge expected to be attributable to the provider during the management period, to the

average amount of water expected to be withdrawn, diverted, or received for delivery by the provider for use within its service area during the management period, is different than 4%.

B. No change

1. No change

2. No change

a. No change

b. No change