



May 3, 2024

Tom Buschatzke, Director
Arizona Department of Water Resources
1110 W Washington St., Suite 310
Phoenix, Arizona 85007

Re: Comments on Draft Rules for Alternative Pathway to Designation

The Arizona Municipal Water Users Association (AMWUA) believes the designation framework is the best path for future development to remain consistent with the tenets of the Assured Water Supply Program. Arizona's economic success and our way of life is a direct result of the ten AMWUA cities and other designated municipal water providers who have invested in water resources and infrastructure to prove a 100-year assured water supply. AMWUA and its members recognize first-hand the benefits gained from wise water management under their designations.

We are supportive of developing rules for an Alternative Pathway to Designation (ADAWS) for undesignated water providers in the Phoenix Active Management Area (AMA) as well as a set of rules that would apply in the Pinal AMA. These rules have the potential to reduce unmet demand in these AMAs, which would be beneficial for water management and the economy. To do so, these rules must be consistent with the objectives of the Governor's Water Policy Council, namely that they protect the strength and integrity of the Assured Water Supply Program, ensure that future growth is not reliant on mined groundwater, and that they protect consumers.

We analyzed the draft ADAWS rules and concluded that, as currently written, they would reduce groundwater pumping over a 100-year period. With that being said, we strongly believe it is important that the rules are sufficiently bolstered to protect the aquifer and safeguard the groundwater that has been set aside as physically available for existing designated providers since modeling for the Phoenix and Pinal AMAs has shown demand will exceed current groundwater supplies. Based on the comments made at informal public meetings held by the Arizona Department of Water Resources (ADWR), we are concerned that further changes could be made to these rules that would enable more groundwater pumping and consequently undermine the sustainable goal this novel concept sets out to achieve.

We acknowledge that the success of ADAWS depends in part on how many water providers will rise to the challenge and pursue designation under this new framework. However, our comments are primarily focused on how to best ensure that the ADAWS is consistent with the Assured Water Supply Program by actually reducing a water provider's current rate of pumping at a time when the health of the Phoenix AMA's aquifer is already in question and is faced with a convergence of many risks, including anticipated cutbacks in Colorado River water deliveries. Plus, lowering groundwater

Arizona Municipal Water Users Association

levels will increase pumping costs and complicate recovery of water that has been stored underground over the past decades.

To address the reality and risks facing the Phoenix and Pinal AMAs, the ADAWS rules must limit and reduce a designated provider's unreplenished groundwater pumping. Therefore, we question the sizeable volume of physically available groundwater and groundwater allowances these rules would give to a water provider without additional guardrails. Both taken together could enable current unsustainable pumping patterns to continue, which would harm local aquifers and adversely impact neighboring communities—an outcome that is antithetical to the very purpose of this proposal. With that in mind, we provide the following comments in an effort to strengthen the ADAWS rules.

ADWR should quantitatively analyze any proposed changes that could impact ADAWS

To help evaluate the draft ADAWS rules, we strongly recommend that ADWR quantitatively analyze the impact of any proposed changes compared to the current version of these rules on likely ADAWS candidates and share the results of this analysis. It is also our expectation that ADWR will similarly analyze the impacts of any pending legislation on the ADAWS rules. Doing so will immeasurably assist ADWR and stakeholders' ability to determine whether these proposed changes would further the purpose of ADAWS by reducing unreplenished groundwater pumping while placing development on a more sustainable trajectory. Although we (along with others) have conducted our own analysis, it would be beneficial to us and the greater water community if we had evidence of concurring results from ADWR.

ADWR should require any proposed changes to the ADAWS rules that would enable additional groundwater pumping to include a written analysis explaining why such changes are necessary for an undesignated provider to obtain and maintain its designation. We are sympathetic to the challenges awaiting undesignated providers that choose to pursue ADAWS. There are fewer renewable water supplies readily available today, and these supplies are considerably more expensive. These providers will also be competing against other water providers and entities like the Central Arizona Groundwater Replenishment District (CAGR) to acquire these supplies. However, we cannot ignore the projections of the Phoenix and Pinal AMA groundwater models. We have hit a wall in groundwater availability, and we must cautiously and wisely manage this finite resource and not allow increased pumping to proliferate. Therefore, the onus must be on undesignated providers and stakeholders to explain why the proposed ADAWS rules are insufficient.

Physically available groundwater granted to ADAWS providers is overly generous

Under the proposed ADAWS rules, the volume of groundwater that can be considered physically available for an ADAWS provider is remarkably large, particularly when there is unmet demand projected in the Phoenix and Pinal AMA groundwater models. Our analysis of the ADAWS rules showed three providers (Buckeye, EPCOR-Agua Fria, and Queen Creek) would each have on average over 3.27 million acre-feet of groundwater physically available under ADAWS. That amount is greater than the groundwater physical availability for Avondale, Gilbert, Glendale, Goodyear, Mesa, Peoria, Scottsdale, or Tempe when each of these municipalities had their designations modified in

2010. Although ADAWS providers will face reductions to this physically available groundwater each time they add New Alternative Water Supplies to their designations, there is no guarantee of how frequently this will occur.

To remedy this concern, we believe that 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” (proposed R12-15-710(H) and (I)) should be reduced. The actual demand for these developments is often less than the issued demand on the certificate. The groundwater physical availability calculation should reflect this reality by using reported pumping data for recently issued certificates to estimate pumping for these unbuilt portions.

The 25% reduction to a provider’s physically available groundwater when incorporating renewable supplies should not be lowered

We are concerned with requests made at the April 22 and May 1, 2024 informal meetings to have ADWR reduce the cut that any New Alternative Water Supplies would take out of a provider’s physically available groundwater from 25% to a lower value. It is worth noting that the ADAWS proposal approved by the Governor’s Water Policy Council featured a 30% cut. Reducing this cut by 5 percentage points effectively gave ADAWS providers more physically available groundwater than they would otherwise have had under the Council’s proposal. For example, if a provider included 2,000 acre-feet/year of a New Alternative Water Supply when initially applying for an ADAWS, it would have 10,000 acre-feet more physically available groundwater under the 25% cut compared to the original 30% cut. This trend would continue with each New Alternative Water Supply that the provider subsequently incorporated into its designation.

Further reducing the New Alternative Water Supply cut beyond 25% will enable more groundwater pumping that would have otherwise occurred and could delay the provider’s transition to renewable supplies. This is a concerning prospect considering that the groundwater pumped is not necessarily “physically available.” The current 25% cut should not be lowered further since it is an important requirement to ensure ADAWS is consistent with the Assured Water Supply Program.

Large groundwater allowances for ADAWS providers will enable more unreplenished pumping

As currently proposed, the groundwater allowance for an ADAWS provider is estimated to rival those of much larger currently designated municipal water providers such as Glendale and Tempe. It is unclear to us why granting such substantial groundwater allowances is necessary when they would effectively sanction more unreplenished groundwater pumping from already stressed aquifers. These large groundwater allowances, coupled with the large physical availability volumes described above, could act as a disincentive for ADAWS providers to obtain renewable supplies and transition off groundwater. ADWR should reevaluate how this groundwater allowance is determined.

We would encourage ADWR to consider ways to reduce the total groundwater allowance because ADAWS is being proposed at a time when the Phoenix and Pinal AMA Groundwater Models have

shown demand will exceed supply. One approach would be to reduce the total groundwater allowance established by this calculation to 80% of the resulting value (proposed R12-15-724(A)(4)).

Alternatively, ADWR ought to consider establishing guardrails on how this allowance could be used that would further protect the aquifer. For example, it could limit how much pumping an ADAWS provider could report as groundwater allowance each year. This reporting requirement could be inversely related to the percentage of New Alternative Water Supplies that an ADAWS provider has in its designation to meet current, committed, and future demands. Incorporating this requirement would incentivize ADAWS providers to obtain more New Alternative Water Supplies. This approach would address the concern that an ADAWS provider could burn through its groundwater allowance before physically putting a new supply to use. It is possible that the need for this requirement could be mitigated if CAGR D establishes a minimum reporting requirement for ADAWS providers. Although this reporting requirement is beyond ADWR's regulatory scope, we nonetheless recommend that ADWR discuss this possibility further with CAWCD.

Additional oversight to ensure ADAWS is implemented as planned

As we have previously indicated, ADAWS is being considered in AMAs with projected unmet demand, which means that any groundwater pumped by qualifying providers is not necessarily "physically available." To better protect the aquifer and minimize impacts to neighboring communities, there should be additional checks to ensure that ADAWS providers are on track with acquiring New Alternative Water Supplies and building infrastructure to use these supplies, whether for direct use or recharge underground. Additionally, ADWR ought to evaluate whether these providers are recharging any New Alternative Water Supplies within or in close proximity to their service areas.

Ensure parity with currently designated providers when absorbing certificates within service area

We believe the provisions that allow ADAWS providers to "absorb" the physical availability of groundwater and remaining groundwater allowances of certificates that are within their service areas should also be applied to existing designated water providers (proposed R12-15-710(H)(1) and R12-15-724(A)(4)(b)). Currently, designated providers are effectively penalized for incorporating certificated lands into their service areas because doing so forces them to stretch their limited groundwater allowance and physical availability of groundwater further. Doing so creates a disincentive for these providers, which also have sizeable portfolios of renewable supplies, to serve certificated developments and possibly reduce overall groundwater pumping and CAGR D's replenishment obligation. We propose that the process for absorbing certificated lands could be done similar to the proposed expedited designation process for an ADAWS provider that is adding a New Alternative Water Supply to its designation.

Further clarify the differences between currently designated providers and ADAWS providers

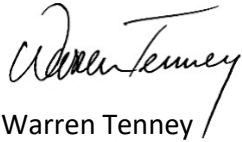
We appreciate that ADWR has drafted these rules so that certain provisions, such as the reduction to physically available groundwater due to the introduction of New Alternative Water Supplies, only apply to an ADAWS provider. However, we believe further clarification is needed to ensure that

there is no future confusion regarding the applicability of ADAWS-specific provisions. We are particularly focused on the characterization of an ADAWS provider as one with a designation that “includes a volume of groundwater and stored water recovered outside the area of impact.” Although there are cross-references to the applicable ADAWS sections, we are concerned someone could misinterpret this language as applying to currently designated providers because their designations do have groundwater and stored water recovered outside the area of impact. ADWR could remedy this concern by incorporating “alternative” into the language of the proposed R12-15-710(H) and (I) so that these subsections would read “a new application for an alternative designation of assured water supply” and “an application seeking to modify an alternative designation of assured water supply”, respectively.

Concluding thoughts

Thank you again for the opportunity to review and comment on the initial draft of the proposed ADAWS rules. We believe that our suggestions will enhance this proposal and the security for all groundwater users in the Phoenix AMA. AMWUA looks forward to participating in the formal rulemaking process.

Sincerely,

A handwritten signature in black ink that reads "Warren Tenney". The signature is written in a cursive style with a large, sweeping initial "W".

Warren Tenney
Executive Director