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**Draft Rules for Alternative Path to Designation of
Assured Water Supply (Draft ADAWS Rules)
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Introduction

Arizona is facing significant water supply challenges as climate change, aridification and over-allocation of water supplies threaten the future of the southwest. With the Colorado River in shortage, significantly less Colorado River water is available for importation to the Phoenix Active Management Area via the Central Arizona Project canal. This is likely to be the case more or less permanently.

In the meantime, groundwater -- which provides over 40 percent of the state's water supply -- is being extracted at rates that cannot be sustained. In June 2023, the Arizona Department of Water Resources released projections of its updated groundwater model for the Phoenix AMA and concluded that the area "has reached the anticipated limits of growth on groundwater supplies." As a result, the Department may not issue new Certificates of Assured Water Supply for proposed subdivisions in the AMA that would rely on groundwater.

Some in the development community have challenged the Department's modeling, claiming that the Department under-estimated the water supply available for new subdivisions. But it is more likely that the Department over-estimated the supply, given that its modeling assumptions are based on historical conditions and do not include modifications for climate change, reduced Colorado River water availability, and fewer "spills" from dams into the Salt, Gila and Aqua Fria Rivers. Additionally, the Department's model does not assume any new groundwater use in the future, which is highly unlikely in the service areas of undesignated municipal water providers.

The Assured Water Supply Committee (Committee) of Governor Hobbs' Water Policy Council (Council) was established to make recommendations to address challenges revealed by the Department's Assured Water Supply modeling projections. From the beginning, the Committee was counseled that its recommendations:

- *must protect the strength and integrity of the Assured Water Supply program,*
- *must protect consumers and ensure there is water before growth, and*
- *should enable future growth without reliance on mined groundwater.*

These principles must guide the evaluation of the draft rules.

Draft ADAWS Rules

The Department proposed the Alternative Path to an Assured Water Supply (ADAWS) to the Committee at its September 27, 2023 meeting. The ADAWS concept recognizes that the future of the Assured Water Supply program lies in Designations of Assured Water Supply, rather than the issuance of individual Certificates, and opens an opportunity for municipal providers that are currently ineligible for a Designation to obtain one.

At its meeting on October 27 meeting, the Council endorsed the Committee's recommendation that the Department draft rules to implement the ADAWS concept.

The Draft ADAWS Rules are largely consistent with the original proposal presented by the Department, with two exceptions. First, the Draft ADAWS Rules contain a "commingling" concept for Certificates of Assured Water Supply. Second, the Draft ADAWS Rules would require that, as each new Alternative Water Supply is acquired by the municipal provider, the provider's physically available groundwater will be reduced by 25 percent rather than 30 percent.

Commingling

Currently, the developer of a subdivision that will be served by a municipal water provider lacking a Designation must demonstrate the physical availability of any groundwater delivered by the municipal provider through its system even if the developer acquires an alternative supply for the new subdivision. This is because, in a commingled water system, the water delivered to the new subdivision will include groundwater, putting homeowners in the subdivision at risk for groundwater shortages.

In response to requests from the development community, and separate from the ADAWS concept, the Department presented a commingling proposal to the Committee at its June 27, 2023 meeting. Under that proposal, the developer of a proposed subdivision within the service area of a municipal provider lacking a Designation and that includes unmet demand could bring a new Alternative Water Supply to serve the subdivision and obtain a Certificate of Assured Water Supply if an *equivalent* amount of new water was secured for the municipal provider. Requiring an equivalent amount of a New Alternative Water Supply was intended to lessen the risk of groundwater shortages to homeowners in the new subdivision. The Committee did not take a position on this proposal.

The Draft ADAWS Rules propose for an application for a Certificate in the Phoenix or Pinal AMA that will be served by a "commingled system" that the municipal provider must secure an additional volume of Alternative Water Supplies equal to 30 percent of the demand for the proposed subdivision, rather than 100 percent. While this proposed change would expire on June 30, 2027, it weakens the integrity of the Assured Water Supply program, contrary to the Department's guidance, by increasing the risk of groundwater shortages to homeowners in the new subdivision. Requiring only 30 percent as an additional volume of Alternative Water Supplies essentially guarantees that growth will in fact occur on mined groundwater.

The Department has given no explanation for reducing the amount of the new Alternative Water Supply that must be secured by the municipal provider. The Department should, at a minimum, require the municipal provider to secure an additional volume of Alternative Water Supplies equal to 100 percent of the demand for the proposed subdivision.

25 Percent Reduction in Physically Available Groundwater

The original ADAWS proposal would have required that, if a municipal provider includes new Alternative Water Supplies in an application for an ADAWS, 30 percent of each New Alternative Supply must be used to substitute for the provider's existing groundwater pumping. An additional 30 percent reduction in groundwater pumping would be required each time a new Alternative Water Supply was added to the ADAWS. The Draft ADAWS Rules reduce 30 percent to 25 percent, without explanation.

The required reduction of groundwater pumping when Alternative Water Supplies are acquired was an important issue for many members of the Committee because of the large amount of groundwater that would be "deemed" to be physically available under an ADAWS despite the unmet demand in the Phoenix AMA. For example, the amount of groundwater that would be deemed physically available to the Town of Queen Creek is over 35,000 acre-feet annually. To help protect consumers and the aquifers and to further the municipal provider's transition to alternative supplies, the Department should require at least a 30 percent reduction in groundwater pumping as each New Alternative Supply is acquired.

Other Comments

Increasing Groundwater Pumping

About the ADAWS, the Department stated, "It is a pathway to grow incrementally on alternative water supplies while reducing groundwater mining." While the ADAWS concept is intended to reduce groundwater mining eventually, because of the large groundwater allowance associated with an ADAWS, new growth that is dependent on mined groundwater can immediately commence. The ADAWS constitutes a loan against the aquifer in which the municipal provider is allowed to pump groundwater under the promise that the groundwater will be paid back in the future. A loan against the aquifer can be productive if there is adequate collateral for the loan to reduce the risk of default and if the repayment of groundwater (through recharge or replenishment) occurs within the area of hydrologic impact of the new groundwater pumping. If these two conditions are not met, the risk is that new growth will deplete the physically available groundwater assigned to nearby municipal providers in their Designations. To reduce this risk, the Department should consider revising the formula for determining the groundwater allowance and explore strategies to drive replenishment to the area of hydrologic impact.

At the informal public meetings on the Draft ADAWS Rules, several speakers encouraged the Department to make changes to the draft rules. These suggested changes included further decreasing the 25 percent reduction of groundwater pumping when new Alternative Supplies

are acquired, excluding effluent from this calculation, and increasing the amount of groundwater pumping allowed. One speaker stated that the situation "is not as dire as the model predicts." The Department should reject such changes as incompatible with its modeling projections and the Committee's mission.

Length of ADAWS Determination

The Draft ADAWS rules provide that the initial term of an ADAWS may be as long as 15 years. Tens of thousands of homes can be built in that time. Should the municipal provider default on its obligations to acquire New Alternative Water Supplies, reduce local groundwater mining, or otherwise mitigate the impact of new growth dependent on mined groundwater, the aquifer will be further depleted, the goal of achieving Safe Yield will be made more difficult to achieve, and neighboring communities will be deprived of physically available groundwater in their Designations that they otherwise would have been entitled to. The Department should consider reducing the initial term of an ADAWS and strengthening the rules for revocation of an ADAWS.

Enrolling in CAGR

The Draft ADAWS Rules provide that an ADAWS applicant must be enrolled as a member service area of the CAGR. The goal of this provision is to ensure that a portion of previously unreplenished groundwater pumping within the municipal provider's service area is replenished. Under current law, membership in CAGR would require the municipal provider to assume the replenishment obligation for member lands within its service area. Assuming this obligation acts as an incentive for the municipal provider to incorporate new supplies into its water deliveries rather than continuing to rely on groundwater. It reduces the risk that the provider will blow through its groundwater allowance to serve growth before making the necessary investments in New Alternative Water Supplies and infrastructure.

Unfortunately, the Arizona Legislature is considering SB 1181 that would allow a CAGR member service area to avoid assuming any replenishment obligation for member lands it serves for at least ten years. This change would enable growth on mined groundwater contrary to the Department's guidance. Given the extremely large groundwater allowances authorized by the Draft ADAWS Rules, the Department should consider reducing the groundwater allowance for any municipal provider that chooses not to assume the replenishment obligation for member lands within its service area.

Conclusion

The Department's updated modeling projections show that the Phoenix AMA has reached the limits of growth on finite and dwindling groundwater supplies. These limits are likely more severe than projected since the modeling did not account for climate change, reduced Colorado River water, and fewer spills from dams into rivers in the Phoenix AMA.

The Assured Water Supply Committee was asked to consider the ADAWS concept as a pathway to grow incrementally on alternative water supplies ***while reducing groundwater mining***. The ADAWS concept is a window of opportunity for some municipal providers to obtain a Designation. It should not be used to escalate groundwater mining or push the acquisition of New Alternative Water Supplies further into the future.

The Department's ADAWS Rules must be structured to protect the strength and integrity of the Assured Water Supply program, protect consumers, ensure there is water before growth, and enable future growth is not reliant on mined groundwater. For the wellbeing of all water users in the AMA, the Department must adhere to its own guidance to the Committee.