



# GOVERNOR'S REGULATORY REVIEW COUNCIL

## CERTIFICATE OF APPROVAL OF FINAL RULES

1. **Agency Name:** DEPARTMENT OF WATER RESOURCES
2. **Chapter Heading:** DEPARTMENT OF WATER RESOURCES
3. **Citation for the Chapter:** 12 A.A.C. 15

**Action:**                      **Subchapters, Articles, Parts and Sections**

**Amend:**                      Article 7; R12-15-701; R12-15-710; R12-15-711; R12-15-720;  
R12-15-723; R12-15-724; R12-15-725

4. **The rules described above are approved as final rules.**

approved as submitted (R1-6-205(A))

approved in part, returned in part (A.R.S. § 41-1052(C))

approved with changes accepted by the agency (R1-6-205(B))

5. **Effective date:**

standard 60-day delayed effective date

immediate effective date

other [specify date:                      ]

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Jessica Klein  
Council Chair

Nov 22, 2024

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Date of Approval

**NOTICE OF FINAL RULEMAKING**  
**TITLE 12. NATURAL RESOURCES**  
**CHAPTER 15. DEPARTMENT OF WATER RESOURCES**

**PREAMBLE**

**1. Permission to proceed with this final rulemaking was granted under A.R.S. § 41-1039(B) by the governor on:**

October 7, 2024

**2. Article, Part, or Section Affected (as applicable)                      Rulemaking Action**

Article 7, Assured Water Supply	Amend
R12-15-701	Amend
R12-15-710	Amend
R12-15-711	Amend
R12-15-720	Amend
R12-15-723	Amend
R12-15-724	Amend
R12-15-725	Amend

**3. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**

Authorizing statute: A.R.S. §§ 45-105(b)(1) and 45-576(H)

Implementing statute: A.R.S. § 45-576

**4. The effective date of the rule:**

This rule shall become effective immediately after a certified original and preamble are filed in the Office of the Secretary of State pursuant to A.R.S. § 41-1032(A). The effective date is \_\_\_\_\_.

**a. If the agency selected a date earlier than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**

To provide a benefit to the public and a penalty is not associated with a violation of the rule and to adopt a rule that is less stringent than the rule that is currently in effect.

**b. If the agency selected a date later than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**

Not applicable

**5. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the current record of the final rule:**

Notice of Rulemaking Docket Opening: volume 30 A.A.R. page 2640, Issue Date: August 23, 2024, Issue Number: 34, File number: R24-156

Notice of Proposed Rulemaking: volume 30 A.A.R. page 2623, Issue Date: August 23, 2024, Issue Number: 34, File number: R24-154

**6. The agency's contact person who can answer questions about the rulemaking:**

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**7. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**

Prior to seeking approval of a plat or a public report, A.R.S. § 45-576 requires the developer of a subdivision to obtain a certificate of Assured Water Supply ("certificate") from the Arizona Department of Water Resources ("ADWR") or a commitment of service from a municipal provider with a designation from ADWR that its service area has an Assured Water Supply ("designation"). In order to obtain a certificate or a designation, an applicant must satisfy several criteria, set forth in the Arizona Administrative Code, Title 12, Chapter 15, Article 7. Among those criteria is a requirement that any water supply be physically available for 100 years, pursuant to A.A.C. R12-15-716.

To demonstrate physical availability of groundwater, "the applicant shall submit a hydrologic study, using a method of analysis approved by the Director, that accurately describes the hydrology of the affected area" which demonstrates that after 100 years of pumping in the area, including pumping to serve the demands in the application, water will not exceed a certain depth below land surface (referred to in the rule as "100-year depth-to-static water level"). A.A.C. R12-15-716(B)(2). In areas where ADWR has a numerical groundwater flow model, including all of the initial active management areas ("AMAs") the applicant is expected to use ADWR's most recent model and the associated Assured Water Supply projection run as the method of analysis.

In ADWR's 2019 Assured Water Supply projection run for the Pinal AMA ("2019 Pinal model"), the model was unable to simulate the withdrawal of all groundwater to meet demands over the 100-year projection period, resulting in substantial "unmet demands" throughout the Pinal AMA. Additionally, the 100-year depth in a large region of the AMA exceeded the 1,100-foot limit for the Pinal AMA set forth in A.A.C. R12-15-716(B)(2)(b). As a result, the 2019 Pinal model could not be used to support applications for Assured Water Supply determinations, including designations and certificates, based on groundwater in the Pinal AMA. Although certain statutory and regulatory changes have been made to allow some flexibility, subdivision growth outside designations

has substantially slowed in the Pinal AMA.

In June 2023, ADWR released an updated groundwater flow model for the Phoenix AMA, including an Assured Water Supply projection run (“2023 Phoenix model”), which, like the 2019 Pinal model, was unable to simulate the withdrawal of all groundwater necessary to meet demands over the 100-year projection period, and showed exceedance of the 1,000-foot depth limit for the Phoenix AMA set forth in A.A.C. R12-15-716(B)(2)(a). As with the 2019 Pinal model, the 2023 Phoenix model could not be used to support applications for Assured Water Supply determinations, including designations and certificates, based on groundwater in the Phoenix AMA.

Although the program rules allow for the use of supplies other than groundwater withdrawn in the AMA, there are substantial barriers to obtaining those supplies and the infrastructure necessary to satisfy the rule requirements. Groundwater has been inexpensive as an Assured Water Supply source, relative to other water supplies. Additionally, many alternative water supplies face legal, financial and infrastructure barriers.

For example, surface water supplies from an in-state stream would likely require the acquisition of land with an appurtenant right to retire the existing use, as well as an authorization by ADWR of the severance and transfer of the right for use on the intended lands. Any infrastructure required to divert from the stream and deliver the water to the proposed subdivision or service area may be subject to separate permitting requirements, financing challenges, and time for construction. The acquisition of on-River Colorado River water for use in central Arizona (to be delivered through the CAP system) requires a recommendation from ADWR in order to begin the process with the Secretary of the Interior to transfer the contract entitlement – which faces significant hurdles that have yet to be completed. The transportation of groundwater from other basins into the Phoenix and Pinal AMAs is subject to the requirements in Title 45, Chapter 2, Article 8.1, but also faces substantial infrastructure hurdles. The most cost-effective method, delivery through the CAP system, requires approval of and/or agreements with the Secretary and the Central Arizona Water Conservation District (“CAWCD”). At this time, such agreements cannot be finalized until the Secretary approves certain water quality requirements and an agreement with CAWCD. Even for the use of effluent, a water treatment facility must be constructed and, if the water will not be used directly after treatment, an underground recharge facility and recovery wells must be permitted and constructed. Financing for significant infrastructure costs for all of the options described is often dependent on obtaining some or all of the necessary approvals, and the time for construction varies depending on the nature of the project.

Additionally, ADWR must consider all water supplies in the system that are used to serve all water demands. If a municipal provider is relying on groundwater withdrawn within the AMA to serve its customers in combination with other supplies (often referred to as “commingling”), the groundwater must satisfy the Assured Water Supply criteria, including physical availability. Alternatively, sufficient alternative supplies must be obtained to replace all groundwater use. Therefore, an application for a certificate or a designation under the current rules would require the replacement of all AMA groundwater supplies in the municipal provider’s system in order to satisfy the physical availability criteria in the Phoenix and Pinal AMAs.

Some stakeholders have suggested that ADWR could consider only the availability of the new supplies relative to the new demands, particularly for certificate applicants. However, such an approach ignores the reality that when the groundwater supply is no longer

available to that provider, the municipal provider will be forced to reduce deliveries to *all* customers. Absent some legal constraint that requires the delivery of the alternative supply to the new subdivision (such as a surface water right that is appurtenant only to the subdivision lands), the new subdivision would be subject to the shortage associated with the groundwater supply just like all other customers in the service area. Therefore, even a developer that is willing to work with a municipal provider to bring in new, non-groundwater supplies cannot proceed with subdivision development if the municipal provider will continue to serve some volume of groundwater to the subdivision.

**Governor’s Water Policy Council Recommendation:**

On January 9, 2023, Governor Katie Hobbs issued an Executive Order to establish the Governor’s Water Policy Council (“Council”). The Council encompassed 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, and the Arizona legislature. Governor Hobbs charged the Council with two objectives, one of which was to produce a package of policy recommendations which strengthen the Assured Water Supply Program and ensure the protection of groundwater resources while enabling continued, sustainable growth.

The Council and its committees met 20 times between May 17, 2023, and November 29, 2023. Members were asked to reach out to their constituents throughout the process to receive additional perspectives on the Assured Water Supply Program, and to bring those perspectives to each meeting. The Assured Water Supply Committee met seven times over the course of six months to develop recommendations for the Council for changes to Assured Water Supply policies - legislatively, administratively, or by executive action - to address the challenges revealed by Assured Water Supply modeling projections, while continuing to:

- Strengthen the integrity of the Assured Water Supply program.
- Protect consumers and aquifers.
- Ensure future growth is not reliant on mined groundwater.

The Committee developed several Assured Water Supply Program recommendations that were approved by the Council as recommendations to the Governor, including a recommendation to amend the Program rules to create an alternative means to obtain a designation of Assured Water Supply, creating a pathway for water providers to grow incrementally on alternative supplies while reducing groundwater mining. This proposed rulemaking is an implementation of that recommendation.

Given the commingling constraints and the legal barriers and costs of acquiring alternative water supplies, the Committee focused on the municipal provider, and the potential for designation, as the path most suited to transitioning to non-groundwater supplies in the Phoenix and Pinal AMAs. However, many undesignated municipal providers with anticipated growth also have existing “legacy” customers that pre-date the Assured Water Supply rules (first adopted in 1995), or even the 1980 Groundwater Management Act. These legacy customers have relied on groundwater without any replenishment requirements or associated costs. Therefore, a sudden imposition of replenishment requirements for all groundwater use would create a financial shock for the municipal provider and, depending on how those costs are managed, potentially their customers. This financial impact is addressed in the rulemaking through the granting of a groundwater allowance in R12-15-724 and R12-15-725. While there may be additional hurdles

for private water companies subject to regulation by the Arizona Corporation Commission, the initial costs of enrollment as a member service area and the overall costs of replenishment of groundwater uses apply to cities and towns, as well as private water companies.

In the development of a path to designation, members of the Committee recognized the importance of replacing existing groundwater use in addition to acquiring new supplies for growth. This component is significant because this alternative path to designation allows the applicant to demonstrate an assured water supply by showing it will reduce that groundwater use over time despite current projections. The declining availability of groundwater in the Phoenix and Pinal AMAs necessitates a shift from reliance on groundwater to alternative supplies for existing uses as well as any new growth. Moreover, while the alternative path to designation might include a component to reduce the financial burden of replenishment, the most cost-effective way to do so is by using an alternative supply in the first place.

**Rule Amendments:**

The alternative designation of Assured Water Supply (“ADAWS”) concept creates a pathway for water providers historically reliant on groundwater to grow incrementally on alternative supplies while reducing groundwater mining. Existing groundwater pumping is grandfathered into the Designation. Physical availability is grandfathered, and a groundwater allowance is granted to provide consistency with the goal without replenishment. “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 (25%) will be used to substitute for existing groundwater pumping to facilitate a transition away from groundwater.

**R12-15-701:**

Two new definitions are added. “New Alternative Water Supplies” is a defined term used in the ADAWS concept and rule language. “Unreplenished groundwater” is a defined term intended to capture legacy groundwater uses that are not subject to replenishment because they predate the Assured Water Supply rules. The term is used for purposes of calculating the groundwater allowance for ADAWS designations pursuant to the amendments in R12-15-724 and R12-15-725.

**R12-15-710:**

The groundwater volumes associated with existing certificates and existing groundwater pumping and non-groundwater recovered outside the area of impact based on annual reporting for 2023 will be “grandfathered in” for purposes of physical availability. Analyses of Assured Water Supply are not included. 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.

The grandfathered volume is subject to reduction under the provisions related to alternative supplies. New growth will be supported

by alternative supplies. The ADAWS applicant must enroll as a member service area of the CAGR. Pursuant to Arizona Senate Bill SB 1181 (2024), the municipal provider may exercise an option to transition customers that are already enrolled as member lands from their member land status into the member service area status over a ten-year period. The water provider will also receive a lump sum groundwater allowance, based on deliveries in 2023. The water provider will then decide how to manage groundwater allowance usage, water supply deliveries, CAGR reporting, and billing individual customers for CAGR assessments.

“New Alternative Supplies” refers to water supplies other than groundwater withdrawn in the Phoenix or Pinal AMA (subject to the location of the application) that were not served in 2023, including effluent, surface water, CAP water, and transported groundwater. ADWR has acknowledged that if an ADAWS applicant (including for a modification) has an existing water supply that is recovered outside the area of impact (and therefore part of the grandfathered groundwater volume), then the municipal provider may subsequently construct and obtain a permit for a recovery well within the area of impact of storage. In such a scenario, the water supply to be recovered within the area of impact becomes a New Alternative Water Supply.

New Alternative Supplies may be delivered directly or stored and recovered within the area of impact. They may be added to the Designation to serve new growth. The grandfathered groundwater volume will be reduced by 25% of the new supplies to facilitate an incremental transition away from groundwater over time. In the case of a New Alternative Water Supply that is created by the establishment of a recovery well within the area of impact of storage, the grandfathered groundwater volume will be reduced by 25% of the New Alternative Supply thus created.

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.

R12-15-711:

The term of an ADAWS designation issued under R12-15-710(H) or (I) may not be greater than 15 years. The rule is also being amended to allow for an “expedited modification” during the term of the designation to include an additional non-groundwater supply. For an expedited modification, ADWR would review only AWS requirements for that additional supply (and the associated reduction in the grandfathered groundwater volume) and the demand schedule. The determinations regarding all other water supplies in the most recent designation would not be subject to review. This rule amendment applies to all designated providers, not just those with an ADAWS designation. This will reduce the administrative burdens for ADWR and applicants, without reducing protections to consumers.

R12-15-720:

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 is extended to private water companies. In recent years, private water

companies have identified alternative financing mechanisms that may not require approval by the Arizona Corporation Commission or otherwise fall within a strict reading of the financial capability rule. Extending this flexibility to private water companies acknowledges the constant changes in financing mechanisms while maintaining consumer protections.

R12-15-723:

To ensure that ADAWS provisions, including the groundwater allowance, could be fairly applied within the Pinal AMA, ADWR needed to address historic extinguishment credits in the Pinal AMA. The original rules adopted in 1995 provided for generous calculation of extinguishment credits in the Pinal AMA, including a volume of water that renews annually, and any unused volume “rolls over” for use in subsequent years. In combination with a similarly generous groundwater allowance for certificates, the resulting volume could exceed the actual demands of the subdivision. In 2007, ADWR modified the rules for consistency with the management goal in the Pinal AMA, revising the calculation of extinguishment credits and groundwater allowances in the Pinal AMA to a lump sum. Inclusion of the groundwater allowances associated with certificates issued prior to 2007 in the groundwater allowance for ADAWS could potentially reduce other replenishment requirements in the service area. To avoid this outcome, while maintaining the status quo, R12-15-723 is modified to clarify that in the Pinal AMA, such extinguishment credits will maintain their value but may only be applied to groundwater use within the subdivision to which they are pledged.

R12-15-724 and R12-15-725:

As mentioned above, the rules for groundwater allowances in the Phoenix AMA and in the Pinal AMA are modified to allow for a volume of groundwater to be used consistent with the management goal and not subject to replenishment. The provider may choose one of two calculations, both based on water deliveries in calendar year 2023. The municipal provider may decide how to manage this groundwater allowance. For example, a municipal provider could choose to use primarily groundwater throughout its service area in the first several years before delivering a New Alternative Supply and to use the groundwater allowance to avoid or reduce replenishment requirements. Another municipal provider might elect to preserve the groundwater allowance and apply it to legacy customers to reduce or avoid replenishment costs that might otherwise be passed on to those legacy customers.

**Conclusion:**

ADWR held three informal public meetings to discuss this proposed rule language and an additional rule amendment to allow a similar path for certificates based on commingled water supplies (“Commingling proposal”). At the first public meeting on April 22, 2024, ADWR described both the ADAWS concept and the Commingling proposal, as well as rule language that would implement both, answered questions, and invited written comments. At the second informal public meeting on May 1, 2024, ADWR allowed an opportunity for public comments. At the third informal public meeting on July 26, 2024, ADWR provided background information, a summary of comments received and ADWR’s responses, and a description of changes to the rule language resulting from comments. Additionally, ADWR announced that the ADAWS concept would be proposed in a separate rulemaking from the Commingling proposal, though both rulemaking packages are intended to proceed in parallel. A formal public hearing on the Proposed Rulemaking was held on September 23, 2024 where ADWR received oral comments and written comments. Those comments provided general support for the rulemaking and are discussed in Section 12 of this Notice.

The ADAWS rulemaking 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 facilitates incremental growth and a steady transition from groundwater to alternative supplies such as surface water, effluent, or transported supplies. ADWR anticipates that at least three municipal providers in the Phoenix and Pinal AMAs will apply for a designation under the ADAWS concept in the coming years. Additional municipal providers may also pursue the ADAWS designation based on the success of “early adopters.”

The ADAWS concept will ensure that all new growth is supported by water supplies, other than groundwater withdrawn in the Phoenix and Pinal AMAs, while reducing and replenishing existing groundwater pumping. Existing customers of municipal providers who are designated under ADAWS will also benefit because their municipal provider will be less reliant on groundwater supplies and will have a more diverse portfolio. Designating these municipal providers will also subject all water uses in their respective service areas to the Assured Water Supply requirements – not just subdivisions. The replacement of existing groundwater uses, combined with the increase in replenishment for legacy groundwater uses, will also likely benefit other residents throughout the basin by extending the availability of groundwater in the Phoenix and Pinal AMAs.

**8. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

None

**9. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**10. A summary of the economic, small business, and consumer impact:**

The ADAWS proposed rulemaking seeks to address challenges that water providers face in pursuing a new Designation of 100-year Assured Water Supply (designation) under the current rules. This rulemaking affects the Phoenix and Pinal AMAs only. It does not repeal nor substantively revise any current AWS rules. Rather, it amends the AWS rules to create an additional, alternative path for a water provider to obtain a designation in AMAs where physical availability of groundwater cannot be demonstrated in the Assured Water Supply (AWS) model. The ADAWS concept creates a voluntary path to designation for water providers historically reliant on groundwater to grow incrementally on alternative supplies while reducing groundwater mining.

Persons who will be directly affected by, bear the costs of, or directly benefit from this AWS rule modification for the Phoenix and Pinal AMAs include: (1) state agencies such as the Department; (2) political subdivisions, including counties, cities, and towns that seek economic development or provide municipal water, private municipal water providers, as well as the CAGR; (3) land subdivision developers; and (4) homeowners and homebuyers in the Phoenix and Pinal AMAs.

The ADAWS rulemaking seeks to create an additional pathway for water providers to voluntarily seek a designation; the alternatives to ADAWS include seeking a designation under the traditional designation rules or continuing without a designation. Therefore, specific costs, benefits and impacts in the Economic Impact Statement were assessed against these two alternatives.

Benefits for those directly affected by ADAWS are expected to be substantial when compared to a designation under the traditional rules or no designation. ADAWS allows for additional development within a water provider’s service area by a granting a volume

of physically available groundwater and groundwater allowance while also facilitating a reduction in groundwater use over time and ensuring that some previously unreplenished groundwater pumping within a provider's service area will be replenished. ADWR has analyzed the monetary benefit afforded to providers through the groundwater allowance volume granted in ADAWS, as compared to the groundwater allowance granted under the traditional designation rules. The benefit is significant and addresses a key financial barrier that has challenged water providers seeking to achieve a traditional designation of assured water supply.

Generally, costs for those directly affected by voluntary pursuit of an ADAWS are expected to be minimal compared to the currently available alternatives: a designation under the traditional rules or no designation. However, because the proposed ADAWS rules create a new opportunity for water providers who had previously faced challenges in achieving designation, and creates an expedited process for all designated providers that reduces the regulatory burden for designation modification, state agencies such as ADWR may incur costs when hiring additional staff necessary to process an increase in applications.

Any costs associated with ADAWS are outweighed by the benefits when compared to the available alternatives.

**11. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:**

Not applicable

**12. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:**

**Comment:** ADWR received 233 total comments, with 226 of those comments in support of the ADAWS rules. Four comments asked questions or raised concerns with the rulemaking, and three comments were neutral. Examples of supportive comments include statements that the implementation of ADAWS will ensure that both current and future developments are supported by a reliable water portfolio and that ADAWS will facilitate a sustainable water supply that is crucial to long-term growth and economic stability.

**Response:**

ADWR appreciates the large number of supportive comments.

**Comment:** Five water providers expressed support for the ADAWS rules, with two expressing a desire to apply for an ADAWS designation expeditiously.

**Response:**

ADWR appreciates the support and is pursuing an immediate effective date for the proposed rules. ADWR has also begun meeting with water providers interested in pursuing an ADAWS designation to discuss the application process.

**Comment:** Developers, and water providers interested in pursuing ADAWS, requested removing the 25% reduction in the groundwater calculation or reducing the percentage considerably ((including a request that it be reduced to 4% and below). Some water providers interested in pursuing ADAWS, and some developers, recommended limiting the 25% reduction in the groundwater calculation to no more than the unreplenished groundwater use within the ADAWS provider's service area.

**Response:**

The ADAWS rules provide an option for designation if physical availability of groundwater cannot be demonstrated through hydrologic modeling. R12-15-710(H) deems a volume of groundwater as physically available according to the calculation in the rule.

The percentage reduction in the calculation of physically available groundwater must strike a balance between supporting new growth and reducing existing and approved groundwater uses in the long-term to provide an assured water supply. A reduction of only 4% would likely have little effect on ensuring physical availability of groundwater and would not offer sufficient protection to consumers. Under current assured water supply rules (and without the ADAWS rules), if a water provider seeking a designation is unable to demonstrate physical availability of groundwater through a hydrologic model, the provider would be required to obtain alternative water supplies sufficient to cover 100% of its demands. This would be significantly more costly to providers than the ADAWS option.

The 25% reduction in the groundwater calculation relates to demonstrating physical availability of groundwater, regardless of whether the groundwater is replenished or unreplenished (which relates to consistency with the management goal). Initial ADAWS applications and designations are unlikely to include large volumes of New Alternative Water Supplies. ADWR can evaluate the program over time, as well as aquifer conditions in the Phoenix and Pinal AMAs, and may consider creating a maximum volume or other limitation on the 25% reduction in the groundwater calculation.

In response to the suggestion that a 4% reduction in groundwater use is appropriate because the recent Phoenix AMA assured water supply model run shows that 4% of groundwater demands are unmet, this does not address the larger deficit in the Pinal AMA, nor does it acknowledge that the unmet demand is concentrated in the areas where growth is likely to occur in the Phoenix AMA, particularly within ADAWS-eligible service areas.

**Comment:** Several commenters refer to the 25% reduction in the physically available groundwater calculation as a “tax” that the Department does not have the authority to authorize. Some developers commented that the 25% reduction in the groundwater calculation is unreasonable and unconstitutional, and reference *Sheetz v. El Dorado County*, California, 601 U.S. 267 (2024).

**Response:**

The 25% reduction in the physically available groundwater calculation is not a tax. It also imposes no fee on developers. The rules deem an initial volume of groundwater as physically available based on the calculation in the rule, and that volume reduces over time as new growth and supplies are added to the water provider’s designation. The ADAWS rules are available when a volume of groundwater cannot be demonstrated as physically available in a hydrologic model. Therefore, it is important that the rules provide a pathway to reducing groundwater use over time as new supplies become available to provide an assured water supply to residents. ADWR will not collect any revenue based on this rulemaking, other than the existing application fees authorized by statute and rule.

**Comment:** Developers, and some providers interested in pursuing ADAWS, stated they believed effluent was being “taxed” twice, and expressed a desire to see effluent exempt from the 25% reduction.

**Response:**

The 25% reduction in the groundwater calculation relates to how the initial physically available volume of groundwater will be calculated and reduced over time as new growth and supplies are added to the designation. It does not impose a tax on any of the water supplies.

**Comment:** Several commenters expressed a desire to see an incentive included in the ADAWS rules for the conversion of agricultural lands to urban uses. Additionally, some water providers requested to allow groundwater volumes resulting from such an “Ag to Urban” program to be added to an ADAWS designation.

**Response:**

There is no agricultural to urban conversion program at this time, and therefore, this is outside the scope of this rulemaking. If there are additional volumes of groundwater that may be appropriate to include in the future, the rule can be amended in the future to address those groundwater volumes.

**Comment:** Some commentors stated that the Economic, Small Business and Consumer Impact Statement (EIS) lacks any quantification of the 25% "tax"; that ADWR did not adequately consider alternatives that allocate different portions of the burden to various land uses; and that the Water Infrastructure Finance Authority (WIFA) could have presented less intrusive and less costly alternatives.

**Response:**

As described in ADWR's responses above, the 25% reduction in the physically available groundwater calculation is not a tax. The ADAWS rules are available when a volume of groundwater cannot be demonstrated as physically available in a hydrologic model. Therefore, it is important that the rules provide a pathway to reducing groundwater use over time as new alternative supplies become available to provide an assured water supply to residents. Water providers are not required to use the ADAWS rules. As described in the EIS, if the ADAWS rulemaking did not move forward, water providers would be in the same position as they are now, but without an additional option. Water providers will retain their existing discretion and authority to determine how costs are managed and distributed. In addition, nothing in this rulemaking prevents or prohibits a water provider from utilizing opportunities offered by WIFA. Suggestions that WIFA be given additional statutory authority are outside the scope of this rulemaking. **Comment:** Some commentors stated that ADWR failed to disclose any study justifying limitation of the proposed rules to only the Phoenix and Pinal AMAs.

**Response:**

The Phoenix and Pinal AMA assured water supply model runs have been publicly available since 2023 and 2019, respectively, as commentors acknowledge. However, the ADAWS rulemaking is limited to the Phoenix and Pinal AMAs based on interests of stakeholders and the discussions to date. If there is interest in pursuing a similar path for other AMAs in the future, ADWR will consider additional rulemakings at that time.

**Comment:** Some commentors stated that the 25% reduction in the physically available groundwater calculation would mean that "25% of such well and facilities will no longer be deemed 'used and useful' in the eyes of the Arizona Corporation Commission for cost recovery purposes."

**Response:**

This comment applies to private water providers regulated by the Arizona Corporation Commission. Water providers' wells will likely remain useful for many reasons. Water providers typically must maintain multiple wells, beyond the daily capacity requirements, to provide redundancy and security to a water system. Groundwater wells are also typically necessary to ensure there are backup supplies available. In addition, many water providers may use wells to recover water supplies that have been stored underground.

**Comment:** Several commentors expressed a desire to see language added to the rules affirming that certificates of assured water supply will be honored should a designation issued under the ADAWS rules lapse.

**Response:**

This language was included in the preamble and explains the intent of the physically available groundwater calculation in the ADAWS rules. Additionally, A.A.C. R12-15-709 provides the criteria for revoking a certificate. If a certificate is not revoked, it will remain in effect if the designation expires or is revoked.

**Comment:** Several commentors requested clarification on how the proposed groundwater availability reductions would function.

**Response:**

R12-15-710(H) provides the calculation for how the volume of groundwater deemed as physically available will be calculated. The starting volume of groundwater is totaled according to R12-15-710(H)(1). Each New Alternative Water Supply included in the designation is multiplied by twenty-five percent. The total of each New Alternative Water Supply (multiplied by twenty-five percent) is then subtracted from the starting volume of groundwater in R12-15-710(H)(1).

**Comment:** Some commentors expressed a desire to see additional oversight added to the rule language, such as requiring annual reports on whether an ADAWS provider is on track with acquiring New Alternative Water Supplies, building infrastructure to use these supplies, and monitoring of how its groundwater allowance is being utilized.

**Response:**

All designated providers are required to report according to A.A.C. R12-15-711(A). Under that rule, the Director may require “[a]ny other information the Director may reasonably require to determine whether the designated provider continues to meet the criteria for a designation of assured water supply.” ADWR will evaluate whether additional reporting information should be added to annual reporting forms for designated providers with ADAWS volumes to ensure that the provider is continuing to meet the criteria in the rules.

**Comment:** Some commentors expressed a desire for a shorter initial designation period for an ADAWS provider, especially if the water provider’s volume of New Alternative Supply is relatively small. Other comments requested that the designation term not be limited to 15 years.

**Response:**

A New Alternative Water Supply must meet all assured water supply requirements to be included in the designation, which ensures that speculative water supplies cannot be added to the designation to support growth. The ADAWS designation term was limited to a number of years that is typical of most designation terms. Those initial designation terms may be modified in the future. In addition, water providers may seek an expedited modification during the term to add additional alternative water supplies.

**Comment:** Some commentors stated that the rules are premature as to the Phoenix AMA based on ongoing discussions of “updating the model,” referencing specifically the Phoenix AMA hydrologic model.

**Response:**

The ADAWS rules do not change the existing groundwater physical availability requirements for hydrologic modeling (in particular, A.A.C. R12-15-716(B)). Applicants seeking to demonstrate physical availability using a groundwater model may continue to apply and will receive a decision from ADWR under those rules. However, as indicated by ADWR previously, ADWR’s recent hydrologic modeling projections show insufficient physical availability of groundwater for current applications in the Pinal and Phoenix AMAs. This rulemaking allows applicants to include some groundwater volume in a new designation of assured water supply without attempting to modify or update the current model and without waiting for others to do so.

**Comment:** Some commenters stated that the cost of the 25% reduction in the physically available groundwater calculation will be borne by landowner/developers/homebuilders and that the EIS does not adequately capture this impact.

**Response:**

As explained in the EIS, the water provider will decide how water supply costs are passed through to customers. This is the case for all designated providers (including those that do not include groundwater under the ADAWS rules). As water supplies diminish and become more costly, water providers must decide how to pass on those costs to existing water users and new development. Notably, in addition to the water supplies required to support new growth, this rulemaking also requires that new supplies be available to replace existing groundwater pumping. This will increase the certainty and reliability of the water supplies for existing customers, as well as new growth.

**Comment:** Some commentors expressed concern regarding the impact of the rules on the CAGRDR replenishment obligation. Some providers interested in seeking a designation expressed a desire to see minimum reporting requirements established during a ramp up period to offset costs, while others recommended more robust reporting requirements. The CAGRDR expressed support for the rulemakings based on their own analysis showing a reduction in future replenishment obligation compared to the replenishment obligation if the providers remain undesignated.

**Response:**

Minimum reporting requirements for water providers under Member Service Area Agreements are established by CAGRDR, and are therefore outside the scope of this rulemaking. ADWR thanks CAGRDR for its support.

**Comment:** Some developers and other commentors state that the rules exceed the Department's authority and state that AMAs having unmet demand is not a classification recognized by Arizona law.

**Response:**

The ADAWS rules do not define or include the term unmet demand. ADWR uses the term "unmet demand" as a shorthand way to describe water demands that are required to be included in hydrologic models but cannot be simulated in the model because insufficient water is available, and therefore relates to groundwater physical availability under A.A.C. R12-15-716(B). While the ADAWS rules do not define or include the term "unmet demand," A.R.S. § 45-576 would not limit ADWR from referencing this term in future rules because it concerns groundwater physical availability.

The ADAWS rules do not exceed the subject matters in A.R.S. § 45-576. The rules specifically provide optional criteria for demonstrating an assured water supply, as defined by A.R.S. § 45-576(M). Demonstrating physical availability of water supplies has always been incorporated as a crucial component of the assured water supply program. Providing an alternative method to demonstrate the physical availability of groundwater, therefore, is also within the scope of A.R.S. § 45-576(M).

**Comment:** Some developers and water providers expressed concern regarding the cost of acquiring New Alternative Water Supplies and building infrastructure. Other commenters stated that EIS should have specifically evaluated the cost of certain water supplies.

**Response:**

Water providers are not required to apply for an ADAWS and may continue to operate under the existing assured water supply rules. Each water provider has a unique water portfolio and unique infrastructure capabilities and may evaluate whether ADAWS provides a suitable path forward. Costs of alternative water supplies are not unique to ADAWS but are relevant to all assured water supply determinations. As groundwater supplies continue to diminish, alternative water supplies will be important for all assured

water supply determinations. Under current assured water supply rules (and without the ADAWS rules), if a water provider seeking a designation is unable to demonstrate physical availability of groundwater through a hydrologic model, the provider would be required to obtain alternative water supplies sufficient to cover 100% of its demands. This would be significantly more costly to providers than the ADAWS option. As the EIS recognizes, it is difficult to predict how many applications may be received and the amount of growth that will be enabled through ADAWS. The water infrastructure that will be needed for alternative water supplies is unique to each water provider, its current portfolio and demand projections. However, ADAWS provides an additional pathway to include a volume of groundwater without hydrologic modeling.

In addition, as the EIS recognizes, the ADAWS rules provide a separate groundwater allowance to water providers (relating to groundwater replenishment), which will significantly reduce the groundwater replenishment costs compared to a pursuing a traditional designation under existing rules. Likewise, A.R.S. § 48-3771(F), et seq., provides flexibility to ADAWS water providers in transitioning to a CAGR member service area.

**Comment:** Some commenters requested that ADWR consider the impact of A.R.S. § 48-3771(F) and related provisions.

**Response:**

ADWR is having conversations with the CAGR and potentially affected water providers to ensure that the transfer of the groundwater allowance associated with certificates of assured water supply is consistent with statute and does not disrupt existing accounting practices more than necessary. As ADWR, the CAGR and water providers obtain greater understanding of the implementation requirements, ADWR will consider whether any additional clarification will require a rulemaking, substantive policy statement, or other guidance. ADWR will also ensure that subdivision residents or other landowners are not negatively affected by implementation.

**Comment:** Some commenters expressed concern about the timeframes associated with the application and review period.

**Response:**

Licensing timeframes for ADAWS applications will be subject to the same licensing timeframe rules as for other designation applications. Any changes to the licensing timeframe rules are outside the scope of this rulemaking.

**Comment:** One commenter stated that the potential impacts of development of alternative water supplies needs to be assessed, evaluated, and, where possible, mitigated.

**Response:**

Any alternative water supplies included in the designation must satisfy existing assured water supply requirements. ADWR does not have authority to require mitigation of impacts.

**Comment:** Some commenters expressed concern about serious consequences in both cost and regulatory time as it relates to how quickly housing projects can move forward and requested a transition period where housing development may move forward before a designation under ADAWS is issued.

**Response:**

ADWR may only issue assured water supply determinations that meet assured water supply requirements. ADWR also notes that the costs of eliminating assured water supply requirements for new growth (in other words, allowing growth to occur without demonstrating sufficient water is available to satisfy the new water demand) could be astronomical and would be particularly devastating to individual homebuyers who find themselves without any water supply.

**Comment:** Some commenters objected to using 2023 as the calculation year for the physically available groundwater volume (under R12-15-710(H)(1)) and for the groundwater allowance (R12-15-724(A)(4)(a)) and instead requested that the water provider be able to use any of the three years prior to its submission of the application.

**Response:**

ADWR intentionally included a specific year of groundwater pumping to avoid creating any incentive for water providers to increase their groundwater use in the short term to obtain a large starting volume of physically available groundwater or groundwater allowance. For example, using any of the 3 years prior to the application would allow a water provider to stop using existing surface water supplies and effluent, and rely entirely on groundwater for one year, then apply for an ADAWS assuming 100% groundwater use in its system. All of the surface water supplies and effluent would then be “New Alternative Supplies” and the water provider could direct those toward growth while effectively increasing its typical groundwater use in the long term. In another example, a water provider could wait until after it has begun serving groundwater to certain large water users that do not require an assured water supply, and then seek an ADAWS, in order to maximize its physically available groundwater and groundwater allowance. Using 2023 as a fixed year for determining the physically available groundwater volume and the groundwater allowance preserves the goal of the ADAWS rulemaking: to facilitate a reduction in groundwater use over time to provide an assured water supply to residents and homeowners.

**Comment:** Some commenters requested that ADWR require a periodic reconsideration of the amount of the percentage reduction in the groundwater calculation, if aquifer conditions improve due to replenishment or otherwise, or if groundwater modeling is updated such that there are no unmet demands attributable to municipal groundwater uses.

**Response:**

The ADAWS rules provide for a calculation of physically available groundwater for water providers seeking a designation when they cannot show the groundwater is physically available through a hydrologic model. Therefore, if aquifer conditions improve, water providers designated through ADAWS may seek to modify their designation using the standard method of demonstrating physical availability of groundwater. Additionally, ADWR is required to evaluate its rules every five years. If aquifer conditions improve and/or if substantial volumes of New Alternative Water Supplies are incorporated, ADWR may consider revising the rules to limit the percentage reduction of groundwater.

**Comment:** One commenter requested that “that the reduction to the groundwater volume calculated in proposed rule 12-15-710(H)(3) and (I)(2) occur two years after the New Alternative Water Supply meets the requirements of an assured water supply, to provide time for the Municipal Provider to bring the new supply into their system.”

**Response:**

The supplies in a water provider’s application must be sufficient to cover the current, committed and projected demands in a water provider’s service area for the term of the designation. This proposal would not be consistent with how designations are issued under the AWS rules. However, the designated provider may allocate their annual use of individual supplies as they deem appropriate or necessary. The quantification of water supplies in the designation is not a limitation on the annual volume of any water supply that may be used in any year.

**Comment:** One commenter requested to “add to subsection (H)(1) those volumes of groundwater, reserved under one or more analysis of assured water supply for lands served or to be served by an ADAWS applicant, in amounts that the analysis holders voluntarily cut-over to the applicant’s portfolio of physically-available groundwater when platting occurs on lands covered by the analysis.”



**Response:**

The initial groundwater volume is calculated based on existing uses and issued certificates because those uses are authorized to move forward in an undesignated water provider's service area regardless of the rulemaking. If groundwater included in analyses of assured water supply were included in the volume in proposed A.A.C. R12-15-710(H)(1), a considerably larger reduction of the initial groundwater volume would be necessary for each New Alternative Supply, and it is likely that sufficient groundwater may not be available to satisfy demands in some cases.

**Comment:** One commenter stated that the EIS should have contained analysis on the cost of well movement or other infrastructure improvements to improve access to groundwater supplies to achieve greater groundwater physical availability when compared to the anticipated costs of acquiring the New Alternative Water Supplies.

**Response:**

This is already permissible under the existing provisions of A.A.C. R12-15-716(B). Nothing in this rulemaking prohibits any applicant from relying on that option in seeking to demonstrate the physical availability of groundwater.

**Comment:** One commenter stated that continued reductions in the water provider's groundwater portfolio would be inconsistent with A.R.S. § 45-576(M), and invalid under A.R.S. § 41-1030(A).

**Response:**

Without the ADAWS rules and if the water provider cannot demonstrate physical availability of groundwater with a hydrologic model, there would not be any groundwater available for a new designated provider's water portfolio. The proposed rules provide a calculation for how a volume of groundwater may be included as physically available and consistent with the management goal in the designation and provide an assured water supply to residents. The calculation is not inconsistent with A.R.S. § 45-576(M) or invalid under A.R.S. § 41-1030(A).

**Comment:** Some commenters stated that the EIS did not adequately consider less burdensome alternatives.

**Response:**

The Governor's Water Policy Council recommended 30% as a reasonable reduction in the physically available groundwater calculation as new alternative supplies are added to the designation. ADWR further reduced the percentage to 25% in the ADAWS rules based on stakeholder input. A reduction to 25% is less burdensome to water providers but maintains the integrity of the assured water supply program and ensures that groundwater use will be meaningfully reduced as growth occurs to protect consumers and homeowners. The alternatives proposed by some commenters that would allow more groundwater in designations (such as reductions of 0%) without ensuring future groundwater availability cannot be considered as "alternatives" because they reduce the assured water supply standards required by statute. Likewise, alternatives that relate to seeking a determination using hydrologic modeling are already allowed by current assured water supply rules for physical availability, which have not changed.

**13. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**

**a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**

While the proposed rules do not require a permit, they do describe the criteria for a designation of Assured Water Supply, which

is a license. Arguably, a designation is a general permit as authorized under A.R.S. 45-576.

**b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**

Not applicable

**c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:**

Not applicable

**14. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:**

Not applicable

**15. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**

Not applicable

**13. The full text of the rules follows:**

Rule text begins on the next page.

**TITLE 12. NATURAL RESOURCES**  
**CHAPTER 15. DEPARTMENT OF WATER RESOURCES**

**ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY**

Section

- R12-15-701. Definitions - Assured and Adequate Water Supply Programs
- R12-15-710. Designation of Assured Water Supply
- R12-15-711. Designation of Assured Water Supply; Annual Report Requirements, Review, Modification, Revocation
- R12-15-720. Financial Capability
- R12-15-723. Extinguishment Credits
- R12-15-724. Phoenix AMA Calculation of Groundwater Allowance and Extinguishment Credits
- R12-15-725. Pinal AMA Calculation of Groundwater Allowance and Extinguishment Credits

**ARTICLE 7. ASSURED AND ADEQUATE WATER SUPPLY**

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

- 1. No change
  - a. No change
  - b. No change
- 2. No change
- 3. No change
  - a. No change
  - b. No change
  - c. No change
- 4. No change
- 5. No change
- 6. No change
- 7. No change
- 8. No change
- 9. No change
- 10. No change
- 11. No change
  - a. No change
  - b. No change
- 12. No change
- 13. No change
- 14. No change
- 15. No change
- 16. No change
  - a. No change
  - b. No change
- 17. No change
- 18. No change
- 19. No change
- 20. No change
- 21. No change
  - a. No change
  - b. No change
- 22. No change
- 23. No change
- 24. No change
- 25. No change
- 26. No change
- 27. No change
- 28. No change
  - a. No change
  - b. No change
- 29. No change
- 30. No change
- 31. No change

- 32. No change
- 33. No change
- 34. No change
  - a. No change
  - b. No change
  - c. No change
  - d. No change
  - e. No change
  - f. No change
  - g. No change
- 35. No change
- 36. No change
- 37. No change
- 38. No change
  - a. No change
  - b. No change
    - i. No change
    - ii. No change
    - iii. No change
  - c. No change
- 39. No change
- 40. No change
- 41. No change
- 42. No change
- 43. No change
- 44. No change
- 45. No change
- 46. No change
- 47. No change
- 48. No change
- 49. No change
- 50. No change
- 51. No change
- 52. No change
- 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 2023 for the Phoenix and Pinal AMAs. The Director shall use the annual report submitted by the municipal provider for calendar year 2023, as verified by the Director, for purposes of this paragraph.
- ~~53~~54. “New municipal provider” means a municipal provider that began serving water for non-irrigation use after January 1, 1990.
- ~~54~~55. “Owner” means:
  - a. For an analysis, certificate, or water report applicant, a person who holds fee title to the land described in the application; or
  - b. For a designation applicant, the person who will be providing water service according to the designation.
- ~~55~~56. “Perennial” means a stream that flows continuously.
- ~~56~~57. “Persons per household” means a measure obtained by dividing the number of persons residing in housing units by the number of housing units.
- ~~57~~58. “Physical availability determination” means a letter issued by the Director stating that an applicant has demonstrated all of the criteria in R12-15-702(C).
- ~~58~~59. “Plat” means a preliminary or final map of a subdivision in a format typically acceptable to a platting entity.
- ~~59~~60. “Potential purchaser” means a person who has entered into a purchase agreement for land that is the subject of an application for a certificate or an assignment of a certificate.
- ~~60~~61. “Projected demand” means the 100-year water demand at build-out, not including committed or current demand, of customers reasonably projected to be added and plats reasonably projected to be approved within the designated provider’s service area and reasonably anticipated expansions of the designated provider’s service area.
- ~~61~~62. “Proposed municipal provider” means a municipal provider that has agreed to serve a proposed subdivision.
- ~~62~~63. “Purchase agreement” means a contract to purchase or acquire an interest in real property, such as a contract for purchase and sale, an option agreement, a deed of trust, or subdivision trust agreement.
- ~~63~~64. “Remedial groundwater” means groundwater withdrawn according to an approved remedial action project, but does not include groundwater withdrawn to provide an alternative water supply according to A.R.S. § 49-282.03.
- ~~64~~65. “Service area” means:
  - a. For an application for an analysis of adequate water supply, a water report, or a designation of adequate water supply, the area of land actually being served water for a non-irrigation use by the municipal provider and additions to the area that contain the municipal provider’s operating distribution system for the delivery of water for a non-irrigation use;

- b. For an application for a designation of adequate water supply according to A.R.S. § 45-108(D), the area of land actually being served water for a nonirrigation use by each municipal provider that serves water within the city or town, and additions to the area that contain each municipal provider's operating distribution system for the delivery of water for a non-irrigation use; or
- c. For an application for a certificate or designation of assured water supply, "service area" has the same meaning as prescribed in A.R.S. § 45-402.
- ~~6566.~~ "Subdivision" has the same meaning as prescribed in A.R.S. § 32-2101.
- ~~6667.~~ "Superfund site" means the site of a remedial action undertaken according to CERCLA.
- ~~6768.~~ "Surface water" means any surface water as defined in A.R.S. § 45-101, including CAP water and Colorado River water.
- ~~69.~~ "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.
- ~~6870.~~ "Water Quality Assurance Revolving Fund site" or "WQARF site" means a site of a remedial action undertaken according to A.R.S. Title 49, Chapter 2, Article 5.
- ~~6971.~~ "Water report" means a letter issued to the Arizona Department of Real Estate by the Director for a subdivision stating whether an adequate water supply exists according to A.R.S. § 45-108 and this Article.

**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 and Pinal Active Management Areas, 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 R12-15-720. 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 2023 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 2023 that are or will be within the service area of the applicant, and multiply the sum by 100;
2. Multiply 25 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);
4. The Director shall use the annual report submitted by the municipal provider for calendar year 2023, as verified by the Director, for purposes of this calculation.

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 25 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 CAGRD.

#### **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. The Director may modify a designation for good cause, including a merger, division of the designated provider, or a change in ownership of the designated provider. 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
1. No change
    - a. No change
    - b. No change
    - c. No change
  2. No change
  3. No change
  4. No change
    - a. No change
    - b. No change
- G. No change
- H. No change
- I. No change
- J. 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 R12-15-710(I), if applicable, and R12-15-716 through R12-15-722.

#### **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;
34. If the applicant is a city or town, the applicant has:
  - a. ~~Adopted~~ 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~~
45. 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.

**R12-15-723. Extinguishment Credits**

- A. No change
  1. No change
  2. No change
  3. No change
  4. No change
    - a. No change
    - b. No change
  5. No change
  6. No change
- B. No change
- C. No change
- D. No change
  1. No change
  2. No change
  3. No change
  4. No change
  5. No change
- E. No change
- F. No change
- G. Extinguishment credits that have not been pledged to a certificate or designation may be conveyed within the same AMA. Extinguishment credits pledged to a certificate or designation shall not be conveyed to another person, except that:
  1. If extinguishment credits are pledged to a certificate that is later assigned or reissued, any unused credits are transferred, by operation of this subsection, to the assigned or reissued certificate. If the certificate is partially assigned or reissued, a pro rata share of the unused extinguishment credits is transferred to each assigned or reissued certificate according to the estimated water demand.
  2. If extinguishment credits are pledged to a certificate for a subdivision that is later served by a designated provider or a municipal provider that is applying for a designation:
    - a. ~~any~~ Any unused extinguishment credits may be used to support the municipal provider's designation as long as the municipal provider serves the subdivision and remains designated;
    - b. For a designation in the Pinal AMA that is issued pursuant to R12-15-710(H) or (I), the extinguishment credits may only be applied to groundwater delivered to the subdivision that is the subject of the certificate;
    - c. ~~If~~ If the municipal provider is no longer serving the subdivision or if the municipal provider loses its designated status, any unused extinguishment credits shall revert, by operation of this subsection, to the certificate to which they were originally pledged.
- H. No change
- I. No change
  1. No change
  2. No change
  3. No change
    - a. No change
    - b. No change
- J. No change
  1. No change
  2. No change
  3. No change
  4. No change
  5. No change
  6. No change
- K. No change
  1. No change

2. No change
3. No change
4. No change

L. No change

**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 groundwater allowance shall be calculated as follows:
  - a. the applicant may select either of the following calculations if the volume does not exceed the applicant's 2023 unreplenished groundwater deliveries multiplied by 100:
    - i. multiply 30 by the total groundwater deliveries during the calendar year 2023 to customers not enrolled as a member land in the CAGR D; or
    - ii. multiply 20 by the total water deliveries from any source during the calendar year 2023 to customers not enrolled as a member land in the CAGR D.
  - 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.
  - c. the Director shall use the annual report submitted by the municipal provider for calendar year 2023, as verified by the Director, for purposes of this calculation.
45. 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

**R12-15-725. Pinal AMA Calculation of Groundwater Allowance and Extinguishment Credits**

A. The Director shall calculate the groundwater allowance for a certificate or designation in the Pinal AMA as follows:

1. If the application is for a certificate:
  - a. If the certificate application is filed before January 1, 2019, multiply the annual estimated water demand for the proposed subdivision by 10.
  - b. If the certificate application is filed on or after January 1, 2019, the groundwater allowance shall be zero.
2. If the application is for a designation:
  - a. If the applicant was designated as having an assured water supply as of October 1, 2007:
    - i. Multiply the applicant's service area population as of October 1, 2007 by 125 gallons per capita per day and multiply the product by 365 days. The service area population shall be determined using the methodology set forth in Section 5-103(D) of the Third Management Plan for the Pinal AMA.
    - ii. Convert the number of gallons determined in subsection (A)(2)(a)(i) into acre-feet by dividing the number by 325,851 gallons.
    - iii. Determine the number of residential lots within plats that were recorded as of October 1, 2007 but not served water as of that date, and to which the applicant commenced water service by January 1, 2010.



- iv. Multiply the number of lots determined in subsection (A)(2)(a)(iii) by 0.35 acre-foot per lot.
  - v. Add the volume from subsection (A)(2)(a)(ii) and the volume from subsection (A)(2)(a)(iv) of this Section.
  - b. If the applicant provided water to its customers before October 1, 2007 but was not designated as having an assured water supply as of that date, and a complete and correct application for designation was filed before January 1, 2012, multiply the applicant's service area population as of October 1, 2007 by 125 gallons per capita per day and multiply the product by 365 days. The service area population shall be determined using the methodology in Section 5-103(D) of the Third Management Plan for the Pinal AMA.
  - c. If the applicant provided water to its customers before October 1, 2007 but was not designated as having an assured water supply as of that date, and a complete and correct application for designation was filed on or after January 1, 2012, the applicant's groundwater allowance is zero acre-feet, except as provided in subsection (A)(2)(e) of this Section.
  - d. If the applicant commenced providing water to its customers on or after October 1, 2007, the applicant's groundwater allowance is zero acre-feet, except as provided in subsection (A)(2)(e) of this Section.
  - e. 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 groundwater allowance shall be calculated as follows: The applicant may select either of the following calculations if the volume does not exceed the applicant's 2023 unreplenished groundwater deliveries multiplied by 100:
    - i. Multiply 30 by the total groundwater deliveries during the calendar year 2023 to customers not enrolled as a member land in the CAGRD;
    - ii. Multiply 20 by the total water deliveries from any source during the calendar year 2023 to customers not enrolled as a member land in the CAGRD;
    - iii. Add the remaining groundwater allowance for each issued certificate of assured water supply that is or will be withdrawn within the service area of the applicant to the volume calculated under subsection (A)(2)(e)(i) or (A)(2)(e)(ii) of this Section; and
    - iv. The Director shall use the annual report submitted by the municipal provider for calendar year 2023, as verified by the Director, for purposes of this calculation.
  - 3. For each calendar year of a designation, the Director shall calculate the volume of incidental recharge for a designated provider within the Pinal 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 by submitting a hydrologic study demonstrating, to the satisfaction of the Director, that the ratio of the average annual amount of incidental recharge expected to be attributable to the designated provider during the management period to the average annual amount of water expected to be withdrawn, diverted or received for delivery by the designated provider for use within its service area during the management period is different than 4%. The hydrologic study shall include the amount of water withdrawn, diverted or received for delivery by the designated provider for use within its service area during each of the preceding five years and the amount of incidental recharge that was attributable to the designated provider during each of those years. The Director may establish a different incidental recharge factor for the designated provider upon such demonstration.
- B. No change**
- 1. No change
    - a. No change
    - b. No change
      - i. No change
      - ii. No change
  - 2. No change
  - 3. No change
    - a. No change
    - b. No change