ARIZONA’S ASSURED WATER SUPPLY RULES

SUMMARY

Excerpts from Governor’s Water Management Commission Briefing Notebook, August 2000.

OVERVIEW

ASSURED WATER SUPPLY FOR NEW SUBDIVISIONS

Arizona's Assured Water Supply Program is designed to sustain the State's economic health by preserving groundwater resources and promoting long-term water supply planning. This is accomplished through regulations that mandate the demonstration of renewable water supplies for new subdivisions. The program is an integral component of Arizona's 1980 Groundwater Code, which was designed to address severe groundwater level decline rates in major urban and agricultural areas.

History

In 1973, the Arizona Legislature enacted a statewide water adequacy statute as a consumer protection measure (A.R.S. § 45-108). The law was passed in response to incidences of land fraud involving the sale of subdivision lots that were later found to have insufficient water supplies. This law required developers to obtain a determination from the State regarding the availability of water supplies prior to marketing new subdivision lots. Developers were then required to disclose any "inadequacy" of the supply to potential lot buyers.

The 1980 Groundwater Code contains more rigorous provisions for new subdivisions in the Active Management Areas (AMAs). The 1980 Code prohibits the sale or lease of subdivided land in an AMA without demonstration of an assured water supply. An assured water supply determination is required to gain approval of a subdivision plat by local governments, and to obtain authorization to sell lots by the Department of Real Estate. A subdivision is defined as land divided into six or more parcels where at least one parcel is less than 36 acres. Land divisions resulting in parcels larger than 36 acres are classified as "unsubdivided" lands and do not require an assured water supply determination.

1995 Assured Water Supply Rules

In 1991, the Arizona Department of Water Resources (ADWR) began developing formal administrative rules for meeting the statutory criteria. The effort, which involved considerable public input, culminated in the adoption of the Assured Water Supply (AWS) Rules in February 1995.

The two most common types of documentation for an AWS are a Certificate of Assured Water Supply (Certificate of AWS) and a Designation of Assured Water Supply
(Designation of AWS). New subdivisions are required by the 1980 Groundwater Code to have a Certificate of AWS, unless a water provider designated as having an assured water supply serves them. The Certificate of AWS states that the developer has proven that sufficient water supplies exist for the subdivision for 100 years. If the new subdivision or development is within the service area of a Designated Water Provider, then a Certificate of AWS is not required; provided that the developer has obtained a written commitment of service from a water provider designated as having an assured water supply. As an example, if a subdivision is being built in the Tucson AMA within the City of Tucson’s service area, the developer only needs to provide written proof to ADWR of the City of Tucson’s commitment of service to meet the AWS requirements, since the City of Tucson has already met the AWS criteria and obtained a Designation of AWS.

For municipal private water providers, a Designation of AWS is issued. This Designation of AWS states that the municipality or private water provider has proven sufficient water supplies to service their current, committed and future demand for 100 years. Municipalities and private water providers are not required to apply for a Designation of AWS, but there are incentives to do so. A Designated Water Provider can deliver water to new developments within their service area, without the new subdivision having to apply for their own Certificate of AWS. The most populous cities within AMAs have obtained a Designation of AWS, and thus a majority of new subdivisions qualify through this process.

Assured Water Supply Criteria

1. To obtain an assured water supply determination, the statute requires a demonstration of:
   2. Physical, legal and continuous water availability for 100 years;
   3. Water quality standards attainment;
   4. Financial capability to construct the delivery system and related features;
   5. Consistency with the AMA’s management plan; and
   6. Consistency with the AMA’s management goal.

Meeting the Assured Water Supply Criteria

Developers seeking a Certificate of AWS must demonstrate that sufficient qualifying water supplies are available to meet subdivision demands for at least 100 years. Water providers seeking a Designation of AWS must demonstrate that sufficient qualifying supplies are available to meet current demand, committed demand (i.e. that which is associated with recorded, undeveloped lots) and at least two years of projected growth for a 100 year period.
A. Assured Water Supply Regulations for Subdivisions

Two avenues exist for obtaining an AWS determination for a proposed subdivision. The method used will depend upon the access to a Designated Water Provider. If the water provider has acquired a Designation of AWS, then the developer may obtain a written commitment of service from that water provider. If the water provider has not acquired a Designation of AWS, the developer must independently obtain a Certificate of AWS by submitting an application to ADWR.

Commitment of Service by a Designated Water Provider

Designated water providers may include cities, towns, and private water companies that have previously satisfied the AWS criteria for current, committed, and projected customers. If a developer intends to take advantage of a provider's designated status, the developer need only obtain a written commitment from the provider to serve the proposed subdivision. The written commitment is presented to the platting entity, and must be noted on the subdivision plat. An application to ADWR is not required.

Certificate of Assured Water Supply

To acquire a Certificate of AWS for a proposed subdivision, the property owner must file an application with ADWR. If the application is found to meet the AWS criteria, public notification is posted in a local newspaper. If no protests are received, a Certificate of AWS is issued. A typical application is processed in about three months. The Certificate of AWS is issued in the name of the property owner, and is valid only for that owner. A Certificate of AWS may be reissued in the name of a new owner if ADWR is notified within 90 days of the transaction.

Certificates of AWS are issued only for subdivision plats. For "master planned" areas that are not yet platted, the developer may obtain a pre-qualification for an AWS determination by applying to ADWR for an Analysis of AWS.

Assured Water Supply Statutory Requirements

While these basic criteria have been required since 1980, the 1995 AWS Rules strengthen the management goal component significantly and establish standards for many sources of water, including Central Arizona Project water, other surface water and effluent. The 1995 AWS Rules also raise the depth-to-water standard, and simplify the financial capability requirements. The most important provisions of the five program criteria are discussed in the following sections.

1. Physical, Legal and Continuous Availability; R12-15-703

The applicant must describe the sources of water to be served to the subdivision. This involves demonstrating the actual water availability and the existence of a delivery system.
Water must be physically and continuously available to the subdivision to meet its demand for at least 100 years. This is typically demonstrated through a hydrologic study which must be submitted with the application, unless the entity providing water has previously submitted a valid study to ADWR. To show that supplies will be continuously available, adequate delivery, storage, and treatment works must also exist or be financed. Evidence of a legal right to the water supply or supplies is also required.

A legally recognized water provider must be committed to supply service. If a system does not presently serve the area, two options exist: a) a new water company or co-op may be established in accordance with the applicable Arizona Corporation Commission, ADEQ and ADWR requirements; or b) the subdivision may be developed as a "dry lot subdivision" where individual domestic wells will be drilled on each lot by purchasers. If the subdivision is to be served by a private water company, the proposed subdivision must be within the area prescribed in the company's Certificate of Convenience and Necessity.

2. Water Quality; R12-15-704

The applicant's proposed source(s) of water must satisfy existing state water quality standards as well as other water quality standards applicable to the proposed use after treatment. ADWR will consider the possible migration of poor quality water that may impact the applicant's source. Designated providers must continue to satisfy all applicable state water quality requirements in order to maintain their designation.

3. Consistency with Management Goal; R12-15-705

All five AMAs have water management goals related to reduction in groundwater use. The AWS Rules require that municipal users in growing areas limit the use of mined groundwater through the use of alternative supplies and conservation practices. Mined groundwater is groundwater that is used in excess of the goal of the AMA. A certain amount of mined groundwater is allocated to Certificate and Designation of AWS applicants to allow for the "phasing in" of renewable supplies. Renewable supplies must meet any demand over the groundwater allocations. Each AMA, except the Santa Cruz AMA, has its own formula to calculate the amount of mined groundwater that can be used when demonstrating an AWS, which is discussed in Part Three, Chapter IV, Section C. Although the applicant may meet the goal criterion through recharging a renewable supply outside of the service area and pump groundwater, the groundwater must still be physically available.

The following sections are general ideas for maintaining consistency with the management goal. It is important to keep in mind that dry lot subdivisions of 20 lots or less are exempt from the consistency with management goal requirement in all AMAs. For subdivisions that will be receiving groundwater in an AMA, the Certificate of AWS applicant may demonstrate consistency with the management goal through any or all of the following methods: membership in the Groundwater Replenishment District (GRD),
extinguishment credits, use of poor quality water or use of water from a waterlogged area.

4. Consistency with Management Plan; R12-15-706

The applicant will need to estimate the amount of water use per lot and for any additional subdivision features such as golf courses, parks, or lakes. A build-out schedule must be supplied for all subdivisions. Demand estimates are evaluated in the context of water conservation guidelines.

If the subdivision is for more than 50 lots, a description of any proposed conservation measures will need to be provided. If the development is designed so that it conforms to water conservation practices, it will be easier for the serving provider to meet its conservation requirements as prescribed in the management plan for the AMA. While ADWR cannot deny a certificate application if the demand will make it more difficult for the provider to comply with its conservation requirements, the provider will be notified of the potential impact of the new subdivision. A certificate application will not be denied if the water provider is out of compliance with its conservation requirements.

5. Financial Capability; R12-15-707

The developer's financial capability to construct the water delivery system is typically considered through the platting entity's process of approving a plat. The developer's capacity to finance any features that are not included in the plat approval process, such as storage and treatment facilities, generally requires the posting of a performance bond.

B. Assured Water Supply Regulations for Water Providers

If a water company is designated as having an assured water supply then individual subdivisions to be served by the water company are relieved of having to independently demonstrate an AWS. The same basic criteria, which apply to Certificates of AWS, also apply to water providers seeking a Designation of AWS. Important items that are unique to the Designation of AWS are addressed in the following sections.

Physical, Legal, Continuous Availability; R12-15-703

Demand and supply information must be provided for the entire service area. The water must be physically and continuously available to the water provider in amounts sufficient to meet current demand, committed demand and a minimum of two years of projected demands for at least 100 years. The water provider must have a legal right to all water to be served. If the provider is not a city or town, applicable Arizona Corporation Commission approvals must exist for private water company regulations.
Consistency with Management Goal; R12-15-705

"Consistency with the management goal" can be demonstrated through utilization of a CAP allocation, other surface water, recharge credits, extinguished grandfathered water rights, water exchange agreements or membership in the GRD. If the water provider meets the consistency with the management goal requirement through membership in the GRD, the service area must be enrolled as a member service area. The provider will pay an annual assessment to the GRD based on the amount of mined groundwater pumped for the entire service area.

Consistency with Management Plan; R12-15-706

Existing water providers can show consistency with the management plan if they are in compliance with their conservation requirements. If the provider is out of compliance, the violation must be remedied by entering into a stipulated agreement with ADWR. New water providers must describe the measures that will be implemented to meet ADWR's conservation requirements. If the water provider is out of compliance, the Designation could be lost.

Financial Capabilities; R12-15-707

To demonstrate financial capability for storage and treatment facilities, private water companies can show Arizona Corporation Commission approval of financing as evidence. Cities and towns can present evidence that financing is available for a five-year capital improvement plan containing these facilities.

C. Groundwater Allocation and Management Goal Accounting

Assured Water Supply applicants are allowed to utilize a certain volume of groundwater to allow for the "phasing in" of renewable supplies. This volume is calculated differently depending on the type of applicant and the AMA. Each AMA's groundwater allocation and goal were discussed in Part Three, Chapter IV, Section A- Consistency with Management Goal.

The methods for calculating the allocation, how the groundwater allocation may be used, and the accounting mechanism to determine compliance with the consistency with management goal criterion are explained below.

Calculating the Groundwater Allocation

The groundwater allocation is comprised of three components: the basic allocation, the incidental recharge factor and extinguishment credits. Each of the following sections describes how to calculate these parts of the groundwater allocation. Groundwater used
above the total of the mined groundwater allocation, the incidental recharge allocation and the extinguishment credits must be replenished unless it is exempt.

**Basic Allocation**

Designation applications for existing water providers can pledge the 1994 demand (water usage) multiplied by 7.5% in the Phoenix AMA and by 15% in the Tucson AMA. For example in the Phoenix AMA, if an existing water provider's 1994 water usage was 1000 af, then 1000 af X 7.5% would equal their basic groundwater allocation. 75 af/yr would be the amount of groundwater that would not have to be replenished. New water companies formed after February 7, 1995 that apply for a Designation of AWS do not receive a basic allocation.

For Certificates of AWS in the Tucson and Phoenix AMAs, the 15-year demand of the development (which may be the build-out demand) is multiplied by the appropriate factor shown in the table below. This amount is the basic 100-year allocation and not an annual amount. For the Pinal AMA, the basic allowance is determined by multiplying the population of the subdivision by 125 gallons per person per day. For certificates in the Prescott AMA, the groundwater allowance is their 15 year demand of the development, multiplied by the number of years until 2025, divided by two. The rules do not establish a groundwater allowance for the Santa Cruz AMA.

**Calculating the Basic Groundwater Allocation for Certificates**

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<th>Location of Proposed Development</th>
<th>Management Period in Effect on Date of Application</th>
<th>Allocation Factor</th>
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<tr>
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<td>Fourth (2010-2020)</td>
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<td>Phoenix</td>
<td>Third (2000-2010)</td>
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<td>1</td>
</tr>
<tr>
<td></td>
<td>After 2025</td>
<td>0</td>
</tr>
</tbody>
</table>

**Incidental Recharge Factor**

Holders of designations under the new rules (except those in the Pinal, Prescott, and Santa Cruz AMAs) annually receive an incidental recharge allocation based on 4 percent of the demand in the previous year. Designation applicants may also apply for a higher incidental recharge allocation factor if they can demonstrate that incidental recharge is higher than 4 percent in their service area.
**Extinguishment Credits**

Groundwater credits can be accumulated through the extinguishment of grandfathered groundwater rights. The credit is based on a calculation prescribed in the rules, which varies depending on the AMA in which the right is extinguished, the type of right, and the year that the right is extinguished. Extinguishment credits may be conveyed so long as they have not already been used as the basis of a Certificate of AWS.

Use of the Mined Groundwater Allocation

The mined groundwater allocation can be used at any time during the 100-year period. It may be spread out over a period of years or the use may occur during a specific time period. Private water companies that applied for a Designation of AWS by August 7, 1995 were given three years before they needed to show consistency with the management goal of the AMA. This means that for 1996, 1997, and 1998 they may use groundwater and not have it subtracted from their groundwater account. Similarly, if deemed providers (cities or towns with CAP allocations) applied for a Designation of AWS by January 1, 1997, they do not have to comply with the goal consistency provision until 2001.

Consistency with Management Goal Accounting

To determine compliance with the consistency with management goal requirements, ADWR establishes an account for each holder of a Certificate or Designation of AWS, which includes the water supply and demand status of the holder. The account is updated annually and includes the volume of the mined groundwater allocation, including any extinguishment credits and the incidental recharge allocation as applicable. As mined groundwater is used, it will be subtracted from the account unless it is exempt.

Wet Water v. Paper Water

The process of calculating the basic allocation, the incidental recharge factor and extinguishment credits produce an amount of "paper water." It may be the case that an existing water provider is entitled to an amount of groundwater on paper that does not exist in the aquifer. It is important to remember that physical availability of the water must still be proven, even if the applicant is entitled to a groundwater allocation.