



# Staff Report

**Agenda Item:**           **WORKSESSION TO DISCUSS SB 1575** - Discussion and update on SB 1575 to allow counties, cities and towns to require a new subdivision, located outside an Active Management Area, to have an adequate water supply.

**Sponsored By:**       Mayor Von Gausig

**Staff Contact:**       Gayle Mabery, Town Manager

**Meeting Date:**       July 8, 2008

**Background:**       The following information was published by the Arizona Department of Water Resources, and is a summary of SB 1575, which was adopted during the 2007 Legislative Session.

## **SUMMARY OF SB 1575**

### **Water Adequacy Amendments**

SB 1575 allows counties, cities and towns to require new subdivisions that are located outside an Active Management Area (AMA) to have an adequate water supply in order for the proposed development to be approved.

### **History**

The Statewide Water Advisory Group (SWAG) was formed in 2006 to discuss statewide water resource issues, methods to provide reliable future water supplies issues and to develop recommendations regarding long-term water resource development for the state. SWAG began meeting in May 2006 and continued through the summer and fall. HB 2693 includes SWAG recommendations regarding adequate water supplies for new subdivisions that are located outside AMAs.

Under current law, real estate developers must follow certain requirements when subdividing land. When a developer applies for approval of a subdivision that is outside an AMA, the Arizona Department of Water Resources (ADWR) determines if the subdivision will have an adequate or inadequate water supply. An adequate water supply is one that will be available for current and committed uses for at least 100 years. The one hundred year supply must be physically, legally and continuously available.

If the supply is determined to be inadequate, lots may still be sold, however the information regarding the supply must be included in documents pertaining to the initial sale of the property.

## **Provisions**

### **Authority to adopt adequate water supply requirements**

Authorizes a county board of supervisors to adopt a provision, by unanimous vote, that requires a new subdivision, located outside an AMA, to have an adequate water supply in order for the subdivision to be approved by the platting authority. (ARS 11-806.01, subsection F)

Provides that if a county adopts an adequacy provision, cities and towns within the county may not approve a new subdivision, located outside an AMA, unless the subdivision has an adequate water supply. (ARS 9-463.01, subsection J)

If a county does not adopt an adequacy provision, a city or town may adopt a local adequacy ordinance to require that a new subdivision, located outside an AMA, demonstrate that an adequate water supply exists before the final plat can be approved. A municipality that enacts a local adequacy ordinance must notify the Director of ADWR, the Department of Environmental Quality (DEQ), State Real Estate Commissioner and the Board of Supervisors of the county in which the city is located. (ARS 9-463.01, subsection O)

States that a county shall not rescind the adequacy requirement. (ARS 11-806.01, subsection G, paragraph 3)

Provides that a water provider in a city, town or county that has adopted an adequate water supply requirement may be eligible for financial assistance. (ARS 9-463.01, subsection O and ARS 11-806.01, subsection G)

### **Adequate Water Supply**

Defines *adequate water supply* as sufficient groundwater, surface water or effluent of adequate quality to satisfy the needs of the proposed use for at least 100 years. The supply must be continuously, legally and physically available. In addition, the financial capability to construct the water delivery, treatment and storage facilities must exist. (ARS 45-108, subsection I)

### **Exemptions from Adequacy Requirements**

Allows a city, town or county to provide an exemption for a subdivision if the water supply will be delivered by motor vehicle or train. The local governing body must determine there is no alternative water supply and the delivery will not cause significant risk to the residents of the subdivision. If the transported water will be taken from the service area of a municipal provider, the provider must consent to the withdrawal or diversion. (ARS 9-463.01 subsection K and ARS 11-806.01 subsection G)

Requires written notice and certified copy of approval of the hauled water exemption to be provided to the Director of ADWR, DEQ and the State Real Estate Commissioner. Requires notice to the same parties if the exemption is rescinded. If the exemption is rescinded it can not be readopted for at least five years after the rescission becomes effective. (ARS 9-463.01 subsection L and ARS 11-806.01 subsection G)

Provides an exemption for subdividers who have made a substantial capital investment toward construction of the project or received a final plat approval before the adequacy provision was adopted by the city, town or county. Requires ADWR to determine whether a development qualifies for this exemption. (ARS 45-108.02, ARS 9-463.01, subsection P and ARS 11-806.01, subsection H)

Provides an exemption from the adequacy requirement if the subdivision will be served by a water supply project that is under construction. The project must be completed within 20 years, the subdivision must have an adequate water supply when the project is completed and an interim water supply must provide enough water until the project is completed. Requires ADWR to determine whether a development qualifies for this exemption. (ARS 45-108.03)

### **Real Estate Provisions**

Requires the Real Estate Commissioner to deny issuance of a public report for a subdivision or timeshare that is located in a city, town or county that has adopted a local adequacy requirement if the subdivision or timeshare does not have: 1) an adequate water supply, 2) an exemption from the adequacy requirements or 3) final plat approval before the adequacy requirement has become effective. (ARS 32-2183 and ARS 32-2197.08)

Requires specific information regarding adequacy of water supplies and any exemptions to be included in promotional material and contracts for the sale of the lot. This information must also be recorded on the face of the subdivision's plat.

Requires information regarding any exemption from an adequate water supply requirement based on hauled water to be recorded with the plat. (ARS 33-406)

### **Department of Water Resources (DWR)**

Requires the Director of ADWR to send a copy of an adequacy determination for a subdivision that is located outside an AMA to the city, town or county responsible for platting the subdivision. (ARS 45-108, subsection B) The Director is currently required to provide this information to the Real Estate Commissioner.

Requires the Director to notify cities and towns that are located in a county that has adopted an adequate water supply provision. States that the city or town must comply with the provisions. (ARS 45-108, subsection H)

Outlines the process for ADWR to provide notice and an opportunity for residents and landowners to file a written objection to an application for a water report or a designation of an adequate water supply. (ARS 45-108.01, subsections A and B)

Authorizes the Director to conduct an administrative hearing on an application before making a decision. If a hearing is held, a notice of the hearing must be provided to the applicant and to anyone who filed an objection. The hearing must be held in the groundwater basin in which the use is located. (45-108.01, subsection C and G)

Allows an applicant or a person who filed an objection to seek judicial review of the Director's final decision in superior court. (45-108.01, subsection F)

Requires the Director to consider existing and projected uses when determining whether an adequate water supply exists. (Session law)

Requires the Director to adopt rules that incorporate the adequate water supply provisions included in HB 1575. (Session law)

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Various other documents are attached to this staff report as background information on this item. They include:

- A Power Point presentation given by Doug Dunham (Deputy Assistant Director of the Water Management Division of the ADWR) on June 4, 2008 to the Yavapai County Water Advisory Committee and interested public. The Power Point provides information on the current status of the Rule Making process.
- Hydrologic Data and Draft Recommendations Related to the Review of 100-Year Physical Availability Depth Criteria for Demonstrating Adequate Water Supplies (Study in support of the requirements of SB 1575)
- The May 14, 2008 draft of the Proposed Rule Language for SB 1575

Mayor Von Gausig will also be prepared to give a verbal update to the Council on this topic.

**Recommendation:** This is a worksession only, and requires no action by the Council at this time.

# SB-1575 Adequacy Update

## Yavapai WAC

June 4, 2008

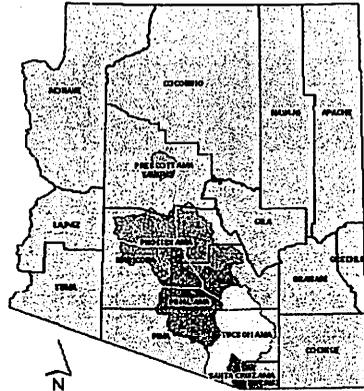
Doug Dunham  
Deputy Assistant Director,  
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Arizona Department of Water Resources



### ADWR's Assured and Adequate Water Supply Programs were created to address the problem of limited water supplies in Arizona:

- The Assured Water Supply Program established in 1980 (Rules adopted in 1995) functions to protect and preserve limited groundwater supplies within Arizona's five Active Management Areas (AMAs).
  - Subdivisions inside AMA's.
  - Plats cannot be approved without demonstrating a 100-year AWS
- Outside the AMAs the Adequate Water Supply Program, established in 1973, while not as protective as the Assured Water Supply Program, acts as a consumer advisory program, ensuring that potential real estate buyers are informed about any water supply limitations.
  - Subdivisions outside AMA's.
  - Plats can be approved if the determination is inadequate, however the inadequate water supply must be disclosed to the first buyer.

**ACTIVE MANAGEMENT AREAS AND COUNTIES  
IN ARIZONA**



## Applicability

- The Assured and Adequate Water Supply Programs apply to subdivisions as defined by the Arizona Department of Real Estate, **A.R.S. § 32-2101**:
  - “Subdivision” means six or more parcels with at least one parcel having an area less than 36 acres. This includes residential or commercial subdivisions, stock cooperatives, condominiums, and all lands subdivided as part of a common promotional plan (including golf courses, parks, schools, and other amenities).
  - Short-term leases (12 months or less) and subdivisions where all parcels are greater than 36 acres in size do not fall under this definition.

## 5 Criteria for Water Adequacy

- 1) **Physical availability of water for 100 years.**
  - Currently, the depth-to-water cannot exceed 1,200 feet after 100 years of pumping for the subdivision served by a water provider including all existing uses
- 2) **Legal availability of water for 100 years.**
  - For all sources of water, legal rights must exist (Arizona Corporation Commission; counties; cities & towns; irrigation districts)
- 3) **Continuous availability of water for 100 years.**
  - Adequate delivery, storage and treatment works must be either in place or financed
- 4) **Financial capability to construct any necessary water storage, treatment and delivery system**
  - The final plat must be submitted to a qualified platting authority or service must be available to each lot
- 5) **Sufficient quality of water supply.**
  - If the water provider is regulated by ADEQ and the public water system is not in significant noncompliance.
  - If the water provider is not regulated by ADEQ water sample test results presented to ADWR – must meet SDWA standards.

## Senate Bill 1575

The modification is only for subdivisions located  
*outside of Active Management Areas*  
(Adequacy Program)

- Authorizes cities, towns and counties to require an adequate water supply determination from ADWR for approval of new subdivisions.
- If adopted, the Department of Real Estate can't approve a public report without an adequate water supply determination.

## Senate Bill 1575

- **Optional hauled water exemption**
  - 5 year suspension if rescinded
- **20-year water project exemption**
  - Bridge supply needed & project under way
- **20-year Colorado River water exemption**
  - Bridge supply needed, allocation type change (M&I, AG)
- **Substantial capital investment exemption**
  - One year window, not land purchase, lasts 5 years unless one lot is sold, possible extensions (2, 5-year max)
- **Public notice for water reports**
  - 2 consecutive weeks, 15-day comment period, paper in same basin
- **Anticipated demands in same basin areas w/o adequacy requirement**
  - In addition to normal C&C demands
- **Aquifer specific criteria may be developed**
  - Deeper in C&R (Coconino Plateau) aquifers & dry lot subdivisions

## Physical Availability Changes

- **Aquifer Specific Modification**
  - C & R Aquifers of the Coconino Plateau
  - Given uncertainties of the deep structure:
  - 70% of demonstrated saturated thickness will remain (with 7-day aquifer test)
  - 50% of demonstrated saturated thickness will remain (with 30-day aquifer test)
- **Depth Exemptions**
  - For central providers: greater than 1,200 feet in alluvial basins if supply is proven, financial capability, and no impact to existing uses.
  - For dry lot subdivisions: lowered to 600 feet if supply is proven, no impact to existing uses; may require well construction standards to prevent vertical cross contamination.

## Questions or Comments?

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## **Hydrologic Data and Draft Recommendations Related to the Review of 100-Year Physical Availability Depth Criteria for Demonstrating Adequate Water Supplies (Study in support of the requirements of SB 1575)**

### **Summary**

The increasing awareness of the special problems and issues that confront water providers and other water users in rural Arizona in finding, developing and producing adequate water supplies resulted in the adoption of S.B. 1575.

The law requires ADWR to amend its rules to establish criteria for demonstrating a one hundred-year supply of groundwater or stored water in specific aquifer systems and groundwater basins and subbasins outside the five Active Management Areas.

The ADWR Hydrology Section prepared a report that shows the depth-to-water currently approaches or exceeds the prescribed depth of 1,200 feet over large portions of the regional aquifer systems of central and northern Arizona. Other highlights of the Hydrology report:

- Depths-to-water currently approach or exceed 1,200 feet BLS in portions of the alluvial basin-fill aquifer systems of northwestern Arizona.
- Well construction data indicate that about 75 percent of the registered domestic wells in the state have depths that are less than 400 feet BLS.
- The evaluation of physical availability of groundwater for water adequacy in groundwater basins adjacent to the Colorado River must take into account any potential diversions of federally controlled Colorado River water.
- Information on the requirements of hydrologic studies indicates the need for systematic groundwater exploration, long-term aquifer testing, the collection of water quality and water level data, the compilation of groundwater demand data, appropriate groundwater modeling and long-term groundwater monitoring.
- Costs to explore for groundwater, drill and log wells, install casing and pump equipment and produce groundwater are important factors for a developer or water supplier to consider when proving an adequate water supply in data limited areas located outside of AMAs.

### **Recommendations from the report include:**

- No modification of the 1200-foot BLS 100-year depth to static water adequacy criteria for most areas of the state.
- For the C and R aquifers the 100-year depth to static water adequacy criteria should be based on the remaining saturated thickness.
- Phased development based on long-term groundwater monitoring for the C and R aquifers
- No modification of the 1,200-foot BLS 100-year depth to static water adequacy criteria for basin-fill aquifers of northwestern Arizona
- No modification of the 400-foot BLS 100-year depth to static water adequacy criterion for dry lot subdivisions anywhere in the state.
- Adoption of criteria that evaluate groundwater surface water interactions for groundwater basins adjacent to the Colorado River.

## PROPOSED RULE LANGUAGE: SB 1575 ADEQUACY RULES

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

In addition to any other definitions in A.R.S. Title 45 and the management plans in effect at the time of application, the following words and phrases in this Article shall have the following meanings, unless the context otherwise requires:

1. "Abandoned plat" means a plat for which a certificate or water report has been issued and that will not be developed because of one of the following:
  - a. The land has been developed for another use; or
  - b. Legal restrictions will preclude approval of the plat.
2. "ADEQ" means the Arizona Department of Environmental Quality.
3. "Adequate delivery, storage, and treatment works" means:
  - a. A water delivery system with sufficient capacity to deliver enough water to meet the needs of the proposed use;
  - b. Any necessary storage facilities with sufficient capacity to store enough water to meet the needs of the proposed use; and
  - c. Any necessary treatment facilities with sufficient capacity to treat enough water to meet the needs of the proposed use.
4. "Adequate storage facilities" means facilities that can store enough water to meet the needs of the proposed use.
5. "Affiliate" means a person who, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the person specified.
6. "AMA" means an active management area as defined in A.R.S. § 45-402.
7. "Analysis" means an analysis of assured water supply or an analysis of adequate water supply.
8. "Analysis holder" means a person to whom an analysis of assured water supply or an analysis of adequate water supply is issued and any current owner of land included in the analysis.
9. "Analysis of adequate water supply" means a determination issued by the Director stating that one or more criteria required for a water report pursuant to R12-15-713 have been demonstrated for a development.
10. "Analysis of assured water supply" means a determination issued by the Director stating that one or more criteria required for a certificate of assured water supply pursuant to R12-15-704 have been demonstrated for a development.
11. "Annual authorized volume" means, for an approved remedial action project, the annual authorized volume specified in a consent decree or other document approved by ADEQ or the EPA, except that:
  - a. If no annual authorized amount is specified in a consent decree or other document approved by ADEQ or the EPA, the annual authorized volume is the largest volume of groundwater withdrawn pursuant to the approved remedial action project in any year prior to January 1, 1999.
  - b. If the Director increases the annual authorized volume pursuant to R12-15-729(C), the annual authorized volume is the amount approved by the Director.
12. "Annual estimated water demand" means the estimated water demand divided by 100.
13. "Approved remedial action project" means a remedial action project approved by ADEQ under A.R.S. Title 49, or by the EPA under CERCLA.
14. "Authorized remedial groundwater use" means, for any year, the amount of remedial groundwater withdrawn pursuant to an approved remedial action project and used by a municipal provider during the year, not to exceed the annual authorized volume of the project.

15. "Build-out" means a condition in which all water delivery mains are in place and active water service connections exist for all lots.
- ~~16.~~ 16. "C aquifer" means a multiple aquifer system that is a part of the regional aquifer system of Northern Arizona and that is comprised of the sequence of rock units between the Kaibab Formation and the Supai Group, inclusive.
- ~~16.~~ 17. "CAP water" means:
- a. All water from the Colorado River or from the Central Arizona Project works authorized in P.L. 90-537, excluding enlarged Roosevelt reservoir, which is made available pursuant to a subcontract with a multi-county water conservation district.
  - b. Any additional water not included in subsection 16(a) of this Section that is delivered by the United States Secretary of the Interior pursuant to an Indian water rights settlement through the Central Arizona Project.
- ~~17.~~ 18. "Central Arizona Groundwater Replenishment District" or "CAGRD" means a multi-county water conservation district acting in its capacity as the entity established pursuant to A.R.S. § 48-3771, et seq., and responsible for replenishing excess groundwater.
- ~~18.~~ 19. "Central distribution system" means a water system that qualifies as a public water system pursuant to A.R.S. § 49-352.
- ~~19.~~ 20. "CERCLA" or "Comprehensive Environmental Response, Compensation, and Liability Act of 1980" has the same meaning as prescribed in A.R.S. § 49-201.
- ~~20.~~ 21. "Certificate" means a certificate of assured water supply issued by the Director for a subdivision pursuant to A.R.S. § 45-576 et seq. and this Article.
- ~~21.~~ 22. "Certificate holder" means any person included on a certificate, except the following:
- a. Any person who no longer owns any portion of the property included in the certificate, and
  - b. Any potential purchaser for whom the purchase contract has been terminated or has expired.
- ~~22.~~ 23. "Certificate of convenience and necessity" means a certificate required by the Arizona Corporation Commission, pursuant to A.R.S. § 40-281, which allows a private water company to serve water to customers within its certificated area.
- ~~23.~~ 24. "Colorado River water" means water from the main stream of the Colorado River. For purposes of this Article, Colorado River water does not include CAP water.
- ~~24.~~ 25. "Committed demand" means the 100-year water demand at build-out of all recorded lots that are not yet served water within the service area of a designation applicant or a designated provider.
- ~~25.~~ 26. "County water augmentation authority" means an authority formed pursuant to A.R.S. Title 45, Chapter 11.
- ~~26.~~ 27. "Current demand" means the 100-year water demand for existing uses within the service area of a designation applicant or designated provider, based on the annual report for the previous calendar year.
- ~~27.~~ 28. "Depth-to-static water level" means the level at which water stands in a well when no water is withdrawn by pumping or by free flow.
- ~~28.~~ 29. "Designated provider" means:
- a. A municipal provider that has obtained a designation of assured or adequate water supply; or
  - b. A city or town that has obtained a designation of adequate water supply pursuant to A.R.S. § 45-108(D).
- ~~29.~~ 30. "Designation" means a decision and order issued by the director designating a municipal provider as having an assured water supply or an adequate water supply.
- ~~30.~~ 31. "Determination of adequate water supply" means a water report, a designation of adequate water supply, or an analysis of adequate water supply.

- ~~31-32.~~ "Determination of assured water supply" means a certificate, a designation of assured water supply, or an analysis of assured water supply.
- ~~32-33.~~ "Development" means either a subdivision or an unplatted development plan.
- ~~33-34.~~ "Diversion works" means a structure or well that allows or enhances diversion of surface water from its natural course for other uses.
- ~~34-35.~~ "Drought response plan" means a plan describing a variety of conservation and augmentation measures, especially the use of backup water supplies, that a municipal provider will utilize in operating its water supply system in times of a water supply shortage. The plan may include the following:
- a. An identification of priority water uses consistent with applicable public policies.
  - b. A description of sources of emergency water supplies.
  - c. An analysis of the potential use of water pressure reduction.
  - d. Plans for public education and voluntary water use reduction.
  - e. Plans for water use bans, restrictions, and rationing.
  - f. Plans for water pricing and penalties for excess water use.
  - g. Plans for coordination with other cities, towns, and private water companies.
- ~~35-36.~~ "Drought volume" means 80% of the volume of a surface water supply, determined by the director under R12-15-716 to be physically available on an annual basis to a certificate holder or a designated provider.
- ~~36-37.~~ "Dry lot development" means a development or subdivision without a central water distribution system.
- ~~37-38.~~ "EPA" means the United States Environmental Protection Agency.
- ~~38-39.~~ "Estimated water demand" means:
- a. For a certificate or water report, the Director's determination of the 100-year water demand for all uses included in the subdivision;
  - b. For a designation, the sum of the following:
    - i. The Director's determination of the current demand;
    - ii. The Director's determination of the committed demand; and
    - iii. The Director's determination of the projected demand during the term of the designation;or
  - c. For an analysis, the Director's determination of the water demand for all uses included in the development.
- ~~39-40.~~ "Existing municipal provider" means a municipal provider that was in operation and serving water for non-irrigation use on or before January 1, 1990.
- ~~40-41.~~ "Extinguish" means to cause a grandfathered right to cease to exist through a process established by the director pursuant to R12-15-723.
- ~~41-42.~~ "Extinguishment credit" means a credit that is issued by the Director in exchange for the extinguishment of a grandfathered right and that may be used to make groundwater use consistent with the management goal of an AMA.
- ~~42-43.~~ "Firm yield" means the minimum annual diversion for the period of record which may include runoff releases from storage reservoirs, and surface water withdrawn from a well.
- ~~43-44.~~ "Management plan" means a water management plan adopted by the director pursuant to A.R.S. § 45-561 et seq.
- ~~45.~~ "Mandatory adequacy jurisdiction" means a municipality or county that has adopted a provision or ordinance providing that the final plat for a subdivision shall not be approved unless the Director has determined that the subdivision has an adequate water supply, the subdivision has obtained a commitment of water service from a designated provider, or a statutorily authorized exemption applies.

- ~~44-46.~~ "Master-planned community" has the same meaning as provided in A.R.S. § 32-2101.
- ~~45-47.~~ "Median flow" means the flow which is represented by the middle value of a set of flow data that are ranked in order of magnitude.
- ~~46-48.~~ "Member land" has the same meaning as provided in A.R.S. § 48-3701.
- ~~47-49.~~ "Member service area" has the same meaning as provided in A.R.S. § 48-3701.
- ~~48-50.~~ "Multi-county water conservation district" means a district established pursuant to A.R.S. Title 48, Chapter 22.
- ~~49-51.~~ "Municipal provider" has the same meaning as provided in A.R.S. § 45-561.
- ~~50-52.~~ "New municipal provider" means a municipal provider that began serving water for non-irrigation use after January 1, 1990.
- ~~51-53.~~ "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 pursuant to the designation.
- ~~52-54.~~ "Perennial" means a stream that flows continuously.
- ~~53-55.~~ "Persons per household" means a measure obtained by dividing the number of persons residing in housing units by the number of housing units.
- ~~54-56.~~ "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).
- ~~55-57.~~ "Plat" means a preliminary or final map of a subdivision in a format typically acceptable to a platting entity.
- ~~56-58.~~ "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.
- ~~57-59.~~ "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.
- ~~58-60.~~ "Proposed municipal provider" means a municipal provider that has agreed to serve a proposed subdivision.
- ~~59-61.~~ "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 a subdivision trust agreement.
- ~~62.~~ "R aquifer" means a multiple aquifer system that is a part of the regional aquifer system of Northern Arizona and that is comprised of the sequence of rock units between the Redwall Limestone and the Tapeats Sandstone, inclusive.
- ~~60-63.~~ "Remedial groundwater" means groundwater withdrawn pursuant to an approved remedial action project, but does not include groundwater withdrawn to provide an alternative water supply pursuant to A.R.S. § 49-282.03.
- ~~61-64.~~ "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 pursuant to A.R.S. § 45-108(D), the area of land actually being served water for a non-irrigation 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.

~~62-65.~~ "Subdivision" has the same meaning as prescribed in A.R.S. § 32-2101.

~~63-66.~~ "Superfund site" means the site of a remedial action undertaken pursuant to CERCLA.

~~64-67.~~ "Surface water" means any surface water as defined in A.R.S. § 45-101, including CAP water and Colorado River water.

~~65-68.~~ "Water Quality Assurance Revolving Fund site" or "WQARF site" means a site of a remedial action undertaken pursuant to A.R.S. Title 49, Chapter 2, Article 5.

~~66-69.~~ "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 pursuant to A.R.S. § 45-108 and this Article.

### **R12-15-713. Water Report**

**A.** An application for a water report shall be filed by the current owner of the land that is the subject of the application.

**B.** An applicant for a water report shall submit an application on a form prescribed by the Director with the fee required by R12-15-730 and provide the following:

1. A title report, condition of title report, limited search title report, or recorded deed, dated within 90 days of the date the application is filed and demonstrating that the applicant is the owner of the land that is the subject of the application;
2. A plat of the subdivision;
3. An estimate of the 100-year water demand for the subdivision;
4. A list of all proposed sources of water that will be used by the subdivision;
5. If the applicant is seeking a finding that the subdivision has an adequate water supply, evidence that the criteria in subsection (E) of this Section are met; and
6. Any other information that the Director reasonably determines is necessary to decide whether an adequate water supply exists for the subdivision.

**C.** Each applicant shall sign the application for a water report. If an applicant is not a natural person, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant shall sign the application. If an applicant submits a letter, signed by the applicant and dated within 90 days of the date the application is submitted, authorizing a representative to submit applications for permits regarding the land to be included in the water report, the authorized representative may sign the application on the applicant's behalf.

~~**D.**~~ If the subdivision is located within a mandatory adequacy jurisdiction, the Director shall give public notice of the application as provided in A.R.S. § 45-108.01.

~~**E.**~~ **E.** After a complete application is submitted, the Director shall review the application and associated evidence to determine:

1. The estimated water demand of the subdivision;
2. Whether the applicant has demonstrated all of the requirements in subsection (E) of this Section.

~~**F.**~~ **F.** The Director shall determine that the subdivision has an adequate water supply if the applicant demonstrates all of the following:

1. Sufficient supplies of water are physically available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-716;
2. Sufficient supplies of water are continuously available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-717;

3. Sufficient supplies of water are legally available to meet the estimated water demand of the subdivision, according to the criteria in R12-15-718;
  4. The proposed sources of water will be of adequate quality, according to the criteria in R12-15-719;
  5. The applicant has the financial capability to construct adequate delivery, storage, and treatment works for the subdivision according to the criteria in R12-15-720.
- ~~F.—G.~~ The Director shall issue a water report to the applicant that states whether the applicant has complied with the requirements in subsection (E) of this Section.
- ~~G.—H.~~ The Director shall review an application for a water report pursuant to the licensing time-frame provisions in R12-15-401.
- ~~H.—I.~~ The Director may review or modify a water report if the Director receives new evidence regarding the criteria in subsection (E) of this Section. The Director shall not modify a water report pursuant to this subsection if any of the residential lots included in the plat have been sold. To determine whether a water report should be modified pursuant to this subsection, the Director shall use the standards in place at the time the original application was submitted for the water report. If the Director modifies a water report, the Director shall:
1. Provide for an administrative hearing pursuant to A.R.S. Title 41, Chapter 6, Article 10; and
  2. Notify the Arizona Department of Real Estate.
- ~~I.—J.~~ An owner of land that is the subject of a water report may request a modification of the water report at any time by submitting an application in accordance with subsection (B) of this Section. To determine whether a water report should be modified pursuant to this Section, the Director shall use the standards in place at the time of review.
- ~~J.—K.~~ A water report is subject to the provisions of R12-15-708.
- ~~L.~~ An owner of a subdivision that will be served Colorado River water by a municipal provider and that is located within a mandatory adequacy jurisdiction may apply for an exemption from the requirement to obtain a water report finding that the subdivision has an adequate water supply or a commitment of water service from a designated provider by submitting an application on a form prescribed by the director and demonstrating that the criteria in subsection (L)(2) of this Section are met. Upon receiving an application pursuant to this subsection, the Director shall:
1. Review the application pursuant to the licensing time frame provisions in R12-15-401
  2. Determine whether the applicant has demonstrated that all of the following apply:
    - a. Sufficient supplies of water will not be legally available to meet the estimated water demand of the subdivision in a timely manner because the municipal provider does not currently have the legal right to serve Colorado River water to the subdivision;
    - b. The municipal provider currently has an entitlement to Colorado River water according to the criteria in R12-15-718(G);
    - c. The municipal provider will have the legal right to serve Colorado River water to the subdivision within twenty years;
    - d. An interim water supply will be used to serve the subdivision until the municipal provider has the legal right to serve Colorado River water to the subdivision and the interim water supply meets all of the criteria in subsection (F) of this Section, except that the supply will be available for the interim period and not for 100 years; and
    - e. When the municipal provider has the legal right to serve Colorado River water to the subdivision, the Colorado River water supply will meet all of the criteria in subsection (F) of this Section.
  3. If the Director determines that the criteria of subsection (L)(2) are met, issue a letter to the applicant, the platting authority, and the Arizona Department of Real Estate stating that the

owner is exempt from the requirement to obtain a water report finding that the subdivision has an adequate water supply or a commitment of water service from a designated provider.

M. An owner of a subdivision that will be served by a water supply project under construction and that is located within a mandatory adequacy jurisdiction may apply for an exemption from the requirement to obtain a water report finding that the subdivision has an adequate water supply or a commitment of water service from a designated provider by submitting an application on a form prescribed by the director and demonstrating that the criteria in subsection (M)(2) of this Section are met. Upon receiving an application pursuant to this subsection, the Director shall:

1. Review the application pursuant to the licensing time frame provisions in R12-15-401.

2. Determine whether the applicant has demonstrated that all of the following apply:

a. Sufficient supplies of water will not be available to meet the estimated water demand of the subdivision in a timely manner because the physical works for delivering water to the subdivision are not complete.

b. The physical works for delivering water to the subdivision are under construction and will be completed within twenty years.

c. An interim water supply will be used to serve the subdivision until the physical works for delivering water to the subdivision are fully constructed and the interim water supply meets all of the criteria in subsection (F) of this Section, except that supply will be available for the interim period and not for 100 years, and

d. When the municipal physical works for delivering water to the subdivision are fully constructed, the water supply will meet all of the criteria in subsection (F) of this Section.

3. If the Director determines that the criteria of subsection (M)(2) of this Section are met, issue a letter to the applicant, the platting authority, and the Arizona Department of Real Estate stating that the owner is exempt from the requirement to obtain a water report finding that the subdivision has an adequate water supply or a commitment of water service from a designated provider.

N. An owner of a subdivision located within a mandatory adequacy jurisdiction may request an exemption from the requirement to obtain a water report finding that the subdivision has an adequate water supply or a commitment of water service from a designated provider pursuant to A.R.S. § 45-108.02 by submitting an application on a form prescribed by the Director and demonstrating that the criteria of A.R.S. § 45-108.02 are met. Upon receiving an application pursuant to this subsection, the Director shall:

1. Review the application pursuant to the licensing time frame provisions in R12-15-401.

2. Determine whether the criteria for an exemption in A.R.S. § 45-108.02 are met.

3. If the Director determines that the criteria of A.R.S. § 45-108.02 are met, issue a letter to the applicant, the platting authority, and the Arizona Department of Real Estate stating that the owner is exempt from the requirement to obtain a water report finding that the subdivision has an adequate water supply or a commitment of water service from a designated provider, and that the exemption expires five years after the date of the letter, unless prior to that date at least one lot in the subdivision is sold to a bona fide purchaser or the Director extends the time period.

O. If the Director grants an exemption from the requirement to obtain a water report finding that the subdivision has an adequate water supply or a commitment of water service from a designated provider pursuant to A.R.S. § 45-108.02, the owner of the subdivision may apply to the director for an extension of the exemption before the exemption expires by submitting an application on a form prescribed by the Director demonstrating that the criteria in A.R.S. § 45-108.02 for an extension of the exemption are met. The Director shall not grant more than two successive five-year extensions. Upon receiving an application pursuant to this subsection (L), (M), (N) or (O) of this Section, the Director shall:

- ~~1. Review the application pursuant to the licensing time frame provisions in R12-15-401.~~
- ~~2. Determine whether the criteria in § 45-108.02 for an extension of the exemption are met.~~
- ~~3. If the Director determines that the criteria for an extension pursuant to A.R.S. § 45-108.02 are met, the Director shall issue a letter to the applicant, the platting authority, and the Arizona Department of Real Estate, stating that the exemption is extended for an additional five years from the previous expiration.~~

#### **R12-15-714. Designation of Adequate Water Supply**

- A.** A municipal provider applying for a designation of adequate water supply shall submit an application on a form prescribed by the Director with the fee required by R12-15-730 and the following:
1. The applicant's current demand;
  2. The applicant's committed demand;
  3. The applicant's projected demand for the proposed term of the designation;
  4. The proposed term of the designation, which shall not be less than two years;
  5. Evidence that the criteria in subsection (E) of this Section are met; and
  6. Any other information that the Director determines is necessary to decide whether an adequate water supply exists for the municipal provider.
- B.** A city or town, other than a municipal provider, that is applying for a designation shall submit an application on a form prescribed by the Director with the fee required in R12-15-730, and provide the following:
1. The current demand of the applicant's service area;
  2. The committed demand of the applicant's service area;
  3. The projected demand of the applicant's service area for the proposed term of the designation;
  4. The proposed term of the designation, which shall not be less than two years; and
  5. Evidence that the requirements in A.R.S. § 45-108(D) are met.
- C.** An application for a designation shall be signed by:
1. If the applicant is a city or town, the city or town manager or a person employed in an equivalent position. The application shall also include a resolution of the governing body of the city or town, authorizing that person to sign the application; or
  2. If the applicant is a private water company, the applicant's authorized officer, managing member, partner, trust officer, trustee, or other person who performs similar decision-making functions for the applicant.
- ~~**D.** If the municipal provider is located within a mandatory adequacy jurisdiction, the Director shall give public notice of the application as provided in A.R.S. § 45-108.01~~
- ~~**E.**~~ **E.** After a complete application is submitted, the Director shall review the application and associated evidence to determine:
1. The annual volume of water that is physically, continuously, and legally available for at least 100 years;
  2. The term of the designation, which shall not be less than two years;
  3. The estimated water demand for the applicant's service area for 100 years; and
  4. Whether the applicant has demonstrated compliance with all requirements in subsection (E) or (F) of this Section.
- ~~**F.**~~ **F.** The Director shall designate the applicant has having an adequate water supply pursuant to subsection (A) of this Section 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;

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; and
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.

~~F.~~ **G.** The Director shall issue a designation pursuant to subsection (B) of this Section if the applicant demonstrates that the requirements of A.R.S. § 45-108(D) are met.

~~G.~~ **H.** The Director shall review an application for a designation of adequate water supply pursuant to the licensing time-frame provisions in R12-15-401.

**R12-15-716. Physical Availability**

- A. The volume of a proposed source of water that is physically available to an applicant for a determination of assured water supply or a determination of adequate water supply is the amount determined by the Director to be physically available pursuant to subsections (B) through ~~(L)~~ **(N)** of this Section.
- B. If the proposed source is groundwater ~~that will not be withdrawn from the C aquifer or the R aquifer outside an AMA~~, 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. Except as provided in subsection ~~(D)~~ **(E)** of this Section, the Director shall determine that the proposed volume of groundwater will be physically available for the proposed use if both of the following apply:
  1. The groundwater will be withdrawn as follows:
    - a. Except as provided in subsection (B)(1)(b) of this Section, from wells owned by the applicant or the proposed municipal provider that are located within the service area of the applicant or the proposed municipal provider or from proposed wells that the Director determines are likely to be constructed for future uses of the applicant or the proposed municipal provider.
    - b. If the application is for a dry lot development, from wells that the Director determines are likely to be constructed on individual lots.
  2. Except as provided in subsections ~~(C)~~ **and (D)** of this Section, the groundwater will be withdrawn from depths that do not exceed the applicable maximum 100-year depth-to-static water level according to the following:

Type and location of development	Maximum 100-year depth-to-static water level
a. Developments in Phoenix, Tucson, or Prescott AMAs, except dry lot developments	1000 feet below land surface
b. Developments in Pinal AMA, except dry lot developments	1100 feet below land surface
c. Developments outside AMAs, except dry lot	1200 feet below land

developments	surface
d. Dry lot developments	400 feet below land surface

3. The Director shall calculate the projected 100-year depth-to-static water level by adding the following for the area where groundwater withdrawals are proposed to occur:
  - a. The depth-to-static water level on the date of application.
  - b. The projected declines caused by existing uses, using the projected decline in the 100-year depth-to-static water level during the 100-year period after the date of application, calculated using records of declines for the maximum period of time for which records are available up to 25 calendar years before the date of application. If evidence is provided to the Director of likely changes in pumpage patterns and aquifer conditions, as opposed to those patterns and conditions occurring historically, the Director may determine projected declines using a model rather than evidence of past declines.
  - c. The projected decline in the depth-to-static water level during the 100-year period after the date of application, calculated by adding the projected decline from each of the following that are not accounted for in subsection (B)(3)(b) of this Section:
    - i. The estimated water demand of issued certificates and water reports that will be met with groundwater or stored water recovered outside the area of impact of the stored water, not including the demand of subdivided lots included in abandoned plats;
    - ii. The estimated water demand of designations that will be met with groundwater or stored water recovered outside the area of impact of the stored water; and
    - iii. The groundwater reserved for developments for which the Director has issued an analysis pursuant to R12-15-703 or R12-15-712.

~~d. If the groundwater withdrawals will occur within a mandatory adequacy jurisdiction, the projected decline in the depth-to-static water level caused by anticipated future uses in the same groundwater basin, if both of the following apply:~~

- ~~i. The anticipated future use will not be located within a mandatory adequacy jurisdiction, and~~
- ~~ii. The anticipated future use is not accounted for in subsections (B)(3)(b) or (B)(3)(c) of this Section.~~

~~■ ■ The projected decline in depth-to-static water level that the Director projects will result from the applicant's proposed use over a 100-year period.~~

C. The Director ~~shall~~ may lower the maximum 100-year depth-to-static water level requirement specified in subsection ~~(B)(2) (B)(2)(c) or subsection (E)(1)~~ of this Section for an applicant seeking a determination of adequate water supply ~~if the applicant demonstrates both of the following: When determining whether to lower the maximum 100-year depth-to-static water level requirement, the Director shall consider the following factors:~~

- ~~1. Groundwater Whether groundwater is available at the lower depth; and~~
- ~~2. The Whether the applicant has the financial capability to obtain the groundwater at the lower depth, according to the criteria in R12-15-720.~~

3. Whether the decline in depth-to-static water level that the Director projects will result from the applicant's proposed groundwater use over a 100-year period will adversely impact other uses in the area; and
  4. Any other site-specific hydrologic or geologic factors that may be appropriate.
- D.** The Director may lower the maximum 100-year depth-to-static water level requirement specified in subsection (B)(2)(d) of this Section to a maximum of 600 feet below land surface for an applicant seeking a determination of adequate water supply. If the Director lowers the maximum depth-to-static water level requirement, before the Director issues the determination of adequate water supply, the applicant shall record with the county recorder a document approved by the Director that contains the legal description of the dry lot development and a statement that the Director may establish site-specific well construction requirements for the drilling of wells on the land to prevent the risk of vertical cross-contamination, as authorized by A.A.C. R12-15-812 and R12-15-821. When determining whether to lower the maximum 100-year depth-to-static water level requirement, the Director shall consider the following factors:
1. Whether groundwater is available at the lower depth;
  2. Whether the decline in depth-to-static water level that the Director projects will result from the applicant's proposed groundwater use over a 100-year period will adversely impact other uses in the area; and
  3. Any other site-specific hydrologic or geologic factors that may be appropriate.
- D. E.** If the proposed source is groundwater that will be withdrawn from a groundwater basin outside an AMA and transported into an AMA, the Director shall determine that the proposed volume of groundwater will be physically available if both of the following apply:
1. The groundwater will be withdrawn from wells owned by the applicant or the proposed municipal provider or from proposed wells that the Director determines are likely to be constructed for the future uses of the applicant or the proposed municipal provider.
  2. Withdrawal of the groundwater will comply with any depth-to-static water level criteria, decline rate criteria, and volume limitation criteria prescribed by statute. If there are no applicable depth-to-static water level criteria prescribed by statute, withdrawal of the groundwater shall comply with the depth-to-static water level criteria in subsection (B)(2) of this Section.
- F.** If the proposed source is groundwater that will be withdrawn from the C aquifer or the R aquifer outside an AMA, the applicant shall meet with the Department before filing the application to discuss the hydrologic study required by this subsection. The Director shall determine that the proposed volume of groundwater will be physically available for the proposed use if all of the following apply:
1. The groundwater will be withdrawn from wells owned by the applicant or the proposed municipal provider that are located within the service area of the applicant or the proposed municipal provider or from proposed wells that the Director determines are likely to be constructed for future uses of the applicant or the proposed municipal provider.
  2. The applicant has submitted a site-specific hydrologic study, using a method of analysis approved by the Director, that accurately describes the hydrology of the affected area. If the demand is 100 acre-feet per year or greater, the applicant shall conduct the hydrologic analysis using a numerical model. The hydrologic study shall incorporate all of the following demands that rely on the same water supply:
    - a. The demand of existing uses;
    - b. The estimated water demand of issued certificates and water reports, not including the demand of subdivided lots included in abandoned plats;
    - c. The estimated water demand of designations;

- d. The demand of developments for which the Director has issued an analysis pursuant to R12-15-703 or R12-15-712.
- e. If the groundwater withdrawals will occur within a mandatory adequacy jurisdiction, the demand of anticipated future uses in the same groundwater basin, if the anticipated future use will not be located within a mandatory adequacy jurisdiction, and
- f. The demand of the applicant's proposed use.

3. One of the following applies:

- a. The subdivision will be a dry lot development and the applicant demonstrates that after 100 years of withdrawing groundwater to meet all of the demands described in subsection (F)(2) of this Section, the projected depth-to-static water level will not exceed 400 feet below land surface, except as provided in subsection (D) of this Section.
- b. The subdivision will not be a dry lot development and the applicant demonstrates that after 100 years of withdrawing groundwater to meet all of the demands described in subsection (F)(2) of this Section, the projected depth-to-static water level will not exceed 1200 feet below land surface.
- c. The subdivision will not be a dry lot development and the applicant demonstrates both of the following:
  - i. After 100 years of withdrawing groundwater to meet all of the demands described in subsection (F)(2) of this Section, at least 70% of the estimated existing saturated thickness of the aquifer will remain, and
  - ii. The applicant has conducted aquifer testing for each well for at least 7 days at the appropriate demand volume.
- d. The subdivision will not be a dry lot development and the applicant demonstrates all of the following:
  - i. After 100 years of withdrawing groundwater to meet all of the demands described in subsection (F)(2) of this Section, at least 50% of the estimated existing saturated thickness of the aquifer will remain.
  - ii. The applicant has conducted aquifer testing for each well for at least 30 days at the appropriate demand volume, and
  - iii. The applicant has utilized geologic mapping and sub-surface characterization of aquifer structure and features using surface geophysical methods.

**E. G.** Subject to subsection (L)-(N) of this Section, if the proposed source of water is surface water, other than CAP water, or Colorado River water, the Director shall determine the annual volume of water that is physically available for the proposed use, taking into consideration the priority date of the right or claim, by calculating 120% of the firm yield of the proposed source at the point of diversion as limited by the capacity of the diversion works; except that if the applicant demonstrates that an alternative source of water will be physically available during times of shortage in the proposed surface water supply, the Director shall determine the annual volume of water available by calculating 100% of the median flow of the proposed source at the point of diversion as limited by the capacity of the diversion works. The Director shall determine the firm yield or median flow as follows:

1. By calculating the firm yield or median flow at the point of diversion based on at least 20 calendar years of flow records from the point of diversion, unless 20 calendar years of records are unavailable and the Director determines that a shorter period of record provides information necessary to determine the firm yield or median flow; or
2. By calculating the firm yield or median flow at the point of diversion using a hydrologic model that projects the firm yield or median flow, taking into account at least 20 calendar years of historic river flows, changes in reservoir storage facilities, and projected changes in water

demand. The yield available to any applicant may be composed of rights to stored water, direct diversion, or normal flow rights. If the permit for the water right was issued less than five years before the date of application, the Director shall require the applicant to submit evidence, as applicable, in accordance with this subsection.

**F. ~~H.~~** Subject to subsection ~~(L)~~ ~~(N)~~ of this Section, if the proposed source of water is CAP water, the Director shall determine the annual volume of water that is physically available for the proposed use as follows:

1. If the applicant or the proposed municipal provider has a non-declining, long-term municipal and industrial subcontract for CAP water, calculate 100% of the annual amount of water established in the subcontract.
2. If the applicant has a lease for Indian priority CAP water, calculate 100% of the annual amount of water established in the lease.
3. If the applicant has a subcontract for CAP water other than a non-declining, long-term municipal and industrial subcontract or a lease for Indian priority CAP water:
  - a. If the applicant submits evidence of sufficient backup water supplies, calculate 100% of the annual amount of water established in the subcontract. The applicant may establish backup water supplies by one or more of the following:
    - i. A drought response plan;
    - ii. Long-term storage credits;
    - iii. A contract for water with a multi-county water conservation district; or
    - iv. Evidence of other backup supplies that are physically, continuously, and legally available.
  - b. If the applicant does not submit evidence of sufficient backup water supplies pursuant to subsection ~~(F)(3)(a)~~ ~~(H)(3)(a)~~ of this Section, calculate the percentage of the annual amount of water established in the subcontract that reasonably reflects the reliability of the applicant's CAP water supply.

**G. ~~I.~~** Subject to subsection ~~(L)~~ ~~(N)~~ of this Section, if the proposed source of water is Colorado River water, the Director shall determine the annual volume of water that is physically available for the proposed use as follows:

1. If the priority of the contract for Colorado River water provides reliability equal to or better than CAP municipal and industrial water, calculate 100% of the annual amount of water established in the contract.
2. If the contract for Colorado River water provides reliability that is less than CAP municipal and industrial water:
  - a. If the applicant submits evidence of sufficient backup water supplies, calculate 100% of the annual amount of water in the contract. The applicant may establish backup water supplies by one or more of the following:
    - i. A drought response plan;
    - ii. Long-term storage credits;
    - iii. A contract for water with a multi-county water conservation district; or
    - iv. Evidence of other backup supplies that are physically, continuously, and legally available.
  - b. If the applicant does not submit evidence of sufficient backup water supplies pursuant to subsection ~~(G)(2)(a)~~ ~~(I)(2)(a)~~ of this Section, calculate the percentage of the annual amount of water established in the contract that reasonably reflects the reliability of the applicant's Colorado River water supply.

**H. ~~J.~~** Subject to subsection ~~(H)~~ ~~(K)~~ of this Section, if the proposed source of water is effluent, the Director shall determine the annual volume of water that will be physically available by evaluating

the current, metered production or the projected production of effluent. The volume of effluent that is physically available shall not include the following:

1. If the effluent will be delivered directly from a wastewater treatment plant, the volume of effluent that exceeds the applicant's estimated water demand that will be met with effluent; and
2. The volume of effluent that does not comply with any applicable water quality requirements for the proposed use of the effluent.

~~I.~~ **K.** If the proposed source of water is stored water to be recovered from recovery wells, the Director shall determine the volume of water that is physically available for the proposed use as follows:

1. If the stored water is represented by long-term storage credits in existence on the date of application, the amount that is physically available is the amount that may be recovered pursuant to the credits in a manner consistent with A.R.S. Title 45, Chapter 3.1, subject to subsection ~~(I)(3)~~ ~~(J)(3)~~ of this Section.
2. If the applicant proposes to use long-term storage credits that do not exist on the date of application or recover stored water on an annual basis pursuant to A.R.S. § 45-851.01, the Director shall evaluate the following in determining whether to include the proposed credits or the water proposed to be stored and recovered annually in the amount of water that is physically available for the applicant's proposed use:
  - a. The terms of a contract to obtain water to store in a storage facility;
  - b. The physical, continuous, and legal availability of the water proposed to be stored;
  - c. The presence of an existing storage facility that will be available for use for the proposed storage;
  - d. The existence of all required permits of an adequate duration; and
  - e. Whether recovery of the stored water will comply with subsection ~~(I)(3)~~ ~~(J)(3)~~ of this Section.
3. If the applicant proposes to recover the stored water from recovery wells located outside the area of impact of storage, the stored water will be considered physically available only if sufficient water exists for the withdrawals consistent with both of the following:
  - a. The maximum 100-year depth-to-static water level requirements established in subsection (B)(2) of this Section; and
  - b. Any criteria for the withdrawals prescribed in the management plan in effect at the time of the application.

~~J.~~ **L.** If the applicant will obtain the source of water through a water exchange agreement, the Director shall determine that the water is physically available for the proposed use if the applicant submits evidence that the source of water the applicant or the applicant's customers will use will be physically available in accordance with the terms of this Section.

~~K.~~ **M.** In the case of two or more pending, conflicting, complete and correct applications for determinations of assured water supply or determinations of adequate water supply, the Director shall give priority to the application with the earliest priority date. The priority date of an application for a determination of assured water supply or determination of adequate water supply shall be the date that a complete and correct application is filed with the Director. The Director shall consider an application complete and correct if it contains all the information required and the Director verifies that the information is accurate.

~~L.~~ **N.** For a certificate applicant that proposes to use surface water, the Director shall determine that the proposed source is physically available only if the applicant demonstrates one of the following:

1. The land that is the subject of the application is a member land of the CAGR.
2. The applicant has independently obtained the surface water supply.
3. The proposed municipal provider would satisfy the criteria in R12-15-722 if the municipal provider were subject to those requirements.